

CONAGRA BRANDS INC.

Form S-3ASR

October 09, 2018

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As filed with the Securities and Exchange Commission on October 9, 2018

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**FORM S-3**  
**REGISTRATION STATEMENT**  
***UNDER***  
***THE SECURITIES ACT OF 1933***

**CONAGRA BRANDS, INC.**

**(Exact name of registrant as specified in its charter)**

**Delaware**  
**(State or jurisdiction of**  
**incorporation or organization)**

**47-0248710**  
**(I.R.S. Employer**  
**Identification Number)**

**222 Merchandise Mart Plaza, Suite 1300**

**Chicago, Illinois 60654**

**(312) 549-5000**

**(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)**

**Colleen R. Batcheler**

**Executive Vice President, General Counsel and Corporate Secretary**

**Conagra Brands, Inc.**

**222 Merchandise Mart Plaza, Suite 1300**

**Chicago, Illinois 60654**

**(312) 549-5000**

**(Name, address, including zip code, and telephone number, including area code, of agent for service)**

*Copies to:*

**Michael J. Solecki**

**Jones Day**

**901 Lakeside Avenue**

**Cleveland, Ohio 44114**

**Phone: (216) 586-3939**

**Fax: (216) 579-0212**

**Approximate date of commencement of proposed sale to the public:** From time to time after this registration statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company, and emerging growth company in Rule 12b-2 of the Exchange Act.

Large accelerated filer  
Non-accelerated filer

Accelerated filer  
Smaller reporting company  
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Offering Price Per Unit(1)</b>	<b>Proposed Maximum Aggregate</b>	<b>Amount of Registration Fee(2)</b>
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**Offering Price(1)**

Common Stock  
Preferred Stock  
Debt Securities  
Total

- (1) An indeterminate aggregate initial offering price or number of securities are being registered and may from time to time be offered at (i) indeterminate prices or (ii) upon conversion of or exchange for preferred stock or debt securities that provide for conversion or exchange, or pursuant to the antidilution provisions of any such securities.
- (2) In accordance with Rules 456(b) and 457(r) of the Securities Act of 1933, the Registrant is deferring payment of all of the registration fees, which will be paid from time to time in connection with one or more offerings of securities to be made hereunder.

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**PROSPECTUS**

**Conagra Brands, Inc.**

**Common Stock**

**Preferred Stock**

**Debt Securities**

We may from time to time offer and sell, in one or more offerings, common stock, preferred stock, debt securities, or any combination of these securities. This prospectus describes some of the general terms that may apply to these securities. We will provide specific terms of these securities in supplements to this prospectus. The prospectus supplement may also add, update or change information contained in this prospectus. This prospectus may not be used to sell securities unless accompanied by the applicable prospectus supplement. You should read this prospectus and any prospectus supplement carefully before you invest.

We may offer and sell these securities to or through one or more underwriters, dealers or agents, or directly to other purchasers, on a continuous or delayed basis. The names of any underwriters, dealers or agents that are included in a sale of securities to you, and any applicable commissions or discounts, will be stated in an accompanying prospectus supplement.

Our common stock is listed on the New York Stock Exchange under the symbol CAG. If we decide to seek a listing of any securities offered by this prospectus, we will disclose the exchange or market on which the securities will be listed, if any, or where we have made an application for listing, if any, in one or more supplements to this prospectus.

**You should carefully consider the risk factors included in any accompanying prospectus supplement and in the reports we file with the Securities and Exchange Commission that are incorporated in this prospectus by reference for certain risks and uncertainties you should consider. See Risk Factors on page 5 of this prospectus and the information included and incorporated by reference in this prospectus.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is October 9, 2018.**

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the U.S. Securities and Exchange Commission, which we refer to as the SEC, using an automatic shelf registration process. Under this shelf registration process, we may at any time and from time to time sell the securities described in this prospectus in one or more offerings at prices and on other terms to be determined at the time of offering.

This prospectus provides you with general information about us and the securities we may offer. Each time we sell such securities, we will provide a prospectus supplement that will contain more specific information about the terms of that offering. For a more complete understanding of the offering of the securities, you should refer to the registration statement, including its exhibits. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information under the heading **Where You Can Find More Information** and **Information We Incorporate By Reference**.

You should rely only on the information contained or incorporated by reference in this prospectus and in any prospectus supplement or in any free writing prospectus that we may provide to you. We have not authorized anyone to provide you with different information. You should not assume that the information contained in this prospectus, any prospectus supplement or any document incorporated by reference is accurate as of any date other than the date mentioned on the cover page of these documents. Our business, financial condition, results of operations and prospects may have changed since those respective dates. We are not making offers to sell the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation.

References in this prospectus to the terms **we**, **us**, **our**, **Conagra**, **Conagra Brands**, **the Company** or other similar terms mean Conagra Brands, Inc. and its consolidated subsidiaries, unless we state otherwise or the context indicates otherwise.

**WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the informational reporting requirements of the Securities Exchange Act of 1934, which we refer to as the Exchange Act. We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available over the Internet at the SEC's web site at [www.sec.gov](http://www.sec.gov). You may read and copy any reports, statements and other information filed by us at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call 1-800-SEC-0330 for further information about the Public Reference Room. You may also inspect our SEC reports and other information at the New York Stock Exchange, 20 Broad Street, New York, New York 10005, or at our website at <http://www.conagrabrands.com>. The information contained on or accessible through our website is not part of this prospectus, other than the documents that we file with the SEC that are incorporated by reference in this prospectus.

**INFORMATION WE INCORPORATE BY REFERENCE**

The SEC allows us to incorporate by reference the information we file with it, which means:

incorporated documents are considered part of this prospectus;



we can disclose important information to you by referring you to those documents; and

information that we file with the SEC after the date of this prospectus will automatically update and supersede the information contained in this prospectus and incorporated filings.

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We incorporate by reference the documents listed below that we filed with the SEC under the Exchange Act:

our Annual Report on Form 10-K for the fiscal year ended May 27, 2018;

our Quarterly Report on Form 10-Q for the quarterly period ended August 26, 2018;

our Current Reports on Form 8-K filed with the SEC on June 27, 2018 (Items 1.01 and 8.01), July 17, 2018, August 8, 2018 and September 27, 2018 (Item 5.07); and

the description of Conagra Brands' common stock contained in registration statements on Form 8-A filed under the Exchange Act, including any amendments or reports filed with the SEC for the purpose of updating such description.

We also incorporate by reference each of the documents that we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act on or after the date of this prospectus and until the completion of the offering of securities described in this prospectus. We will not, however, incorporate by reference in this prospectus any documents or portions thereof that are not deemed filed with the SEC, including any information furnished pursuant to Item 2.02 or Item 7.01 of our Current Reports on Form 8-K after the date of this prospectus unless, and except to the extent, specified in such Current Reports.

We will provide you with a copy of any of these filings (other than an exhibit to these filings, unless the exhibit is specifically incorporated by reference into the filing requested) at no cost, if you submit a request to us by writing or telephoning us at the following address or telephone number:

Conagra Brands, Inc.

222 Merchandise Mart Plaza, Suite 1300

Chicago, Illinois 60654

Attention: Corporate Secretary

(312) 549-5000

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**DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus, including the documents incorporated by reference, contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, which we refer to as the Securities Act, and Section 21E of the Exchange Act. These forward-looking statements are based on management's current views and assumptions of future events and financial performance and are subject to certain risks, uncertainties and changes in circumstances. These forward-looking statements include, among others, statements regarding our expected future financial performance or position, results of operations, business strategy, plans and objectives of management for future operations, and other statements that are not historical facts. You can identify forward-looking statements by their use of forward-looking words, such as may, will, anticipate, expect, believe, estimate, intend, plan, should, seek or complete. Forward-looking statements are not guarantees of performance or results. Forward-looking statements provide our current expectations and beliefs concerning future events and are subject to risks, uncertainties, and factors relating to our business and operations, all of which are difficult to predict and could cause our actual results to differ materially from the expectations expressed in or implied by such forward-looking statements. In addition to the risk factors referred to or described in this prospectus under Risk Factors, as well as in documents incorporated by reference in this prospectus, important factors that could cause our actual results to differ materially from those in forward-looking statements include, among others:

the failure to obtain shareholder approval from Pinnacle Foods Inc., which we refer to as Pinnacle, of the pending merger, which we refer to as the Merger, whereby a wholly owned subsidiary of ours will merge with and into Pinnacle, with Pinnacle surviving as our wholly owned subsidiary;

the possibility that the closing conditions to the Merger may not be satisfied or waived;

delay in closing the Merger or the possibility of non-consummation of the Merger;

the risk that the cost savings and any other synergies from the Merger may not be fully realized or may take longer to realize than expected, including that the Merger may not be accretive within the expected timeframe or to the extent anticipated;

the occurrence of any event that could give rise to termination of the Merger Agreement;

the risk that shareholder litigation in connection with the Merger may affect the timing or occurrence of the Merger or result in significant costs of defense, indemnification and liability;

risks related to the disruption of the Merger to us and our management;

the effect of the announcement of the Merger on our ability to retain and hire key personnel and maintain relationships with customers, suppliers and other third parties;

our ability to achieve the intended benefits of recent and pending acquisitions and divestitures, including the recent spin-off of our Lamb Weston business;

the continued evaluation of the role of our Wesson® oil business;

general economic and industry conditions;

our ability to successfully execute our long-term value creation strategy;

our ability to access capital on acceptable terms or at all;

our ability to execute our operating and restructuring plans and achieve our targeted operating efficiencies from cost-saving initiatives and to benefit from trade optimization programs;

the effectiveness of our hedging activities and our ability to respond to volatility in commodities;

the competitive environment and related market conditions;

our ability to respond to changing consumer preferences and the success of our innovation and marketing investments;

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the ultimate impact of any product recalls and litigation, including litigation related to the lead paint and pigment matters;

actions of governments and regulatory factors affecting our businesses, including the ultimate impact of recently enacted U.S. tax legislation and related regulations or interpretations;

the availability and prices of raw materials, including any negative effects caused by inflation or weather conditions;

risks and uncertainties associated with intangible assets, including any future goodwill or intangible assets impairment charges; and

and other risks described in our most recent Annual Report on Form 10-K and other reports we file with the SEC.

The forward-looking statements in this prospectus and in the documents incorporated by reference speak only as of the date of the document in which the forward-looking statement is made, and we undertake no obligation to update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as required by applicable law.

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**THE COMPANY**

Conagra Brands, Inc., a Delaware corporation, together with its consolidated subsidiaries (collectively, the Company, we, our, or us), is one of North America's leading branded food companies. Guided by an entrepreneurial spirit, the Company combines a rich heritage of making great food with a sharpened focus on innovation. The Company's portfolio is evolving to satisfy people's changing food preferences. Its iconic brands such as *Marie Callender*<sup>®</sup>, *Reddi-wip*<sup>®</sup>, *Hunt* *s*<sup>®</sup>, *Healthy Choice*<sup>®</sup>, *Slim Jim*<sup>®</sup>, and *Orville Redenbacher* *s*<sup>®</sup>, as well as emerging brands, including *Alexia*<sup>®</sup>, *Angie* *s*<sup>®</sup> *BOOMCHICKAPOP*<sup>®</sup>, *Blake* *s*<sup>®</sup>, *Duke* *s*<sup>®</sup> and *Frontera*<sup>®</sup>, offer choices for every occasion.

Our Grocery & Snacks reporting segment principally includes branded, shelf stable food products sold in various retail channels in the United States.

Our Refrigerated & Frozen reporting segment principally includes branded, temperature controlled food products sold in various retail channels in the United States.

Our International reporting segment principally includes branded food products, in various temperature states, sold in various retail and foodservice channels outside of the United States.

Our Foodservice reporting segment includes branded and customized food products, including meals, entrees, sauces and a variety of custom-manufactured culinary products, packaged for sale to restaurants and other foodservice establishments in the United States.

Our Commercial reporting segment included commercially branded and private label food and ingredients, which were sold primarily to commercial, restaurant, foodservice, food manufacturing, and industrial customers. The segment's primary food items included a variety of vegetable, spice, and frozen bakery goods, which were sold under brands such as Spicetec Flavors & Seasonings<sup>®</sup>. In the first quarter of fiscal 2017, we sold our Spicetec and JM Swank businesses. These businesses comprise the entire Commercial segment following the presentation of Lamb Weston as discontinued operations.

**Corporate Information**

We were initially incorporated as a Nebraska corporation in 1919 and were reincorporated as a Delaware corporation in December 1975. Our principal executive offices are located at 222 Merchandise Mart Plaza, Suite 1300, Chicago, Illinois 60654, and our main telephone number is (312) 549-5000. Our website is [www.conagrabrands.com](http://www.conagrabrands.com). The information contained on or accessible through our website is not part of this prospectus, other than the documents that we file with the SEC that are incorporated by reference in this prospectus. For additional information concerning Conagra Brands, please see our most recent Annual Report on Form 10-K and our other filings with the SEC, which are incorporated by reference into this document. See [Where You Can Find More Information](#).

**RISK FACTORS**

Investing in our securities involves risk. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading [Risk Factors](#) in our most recent Annual Report on Form 10-K filed with the SEC, in each case as these risk factors are amended or supplemented by subsequent Quarterly Reports on Form 10-Q, which have been or will be incorporated by reference into this document. The risks and uncertainties we have described are not the only ones we face. Additional risks and uncertainties that are not yet identified may also materially harm our business, operating results and financial condition and could result in a

complete loss of your investment.

**Table of Contents****USE OF PROCEEDS**

Unless we otherwise state in the applicable prospectus supplement, we intend to use the net proceeds we receive from the sale of the securities offered by this prospectus and the accompanying prospectus supplement(s) for our operations and for general corporate purposes, including working capital, acquisitions, retirement of debt and other business opportunities.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratio of earnings to fixed charges for the periods presented.

	<b>Thirteen Weeks Ended</b>			<b>Fiscal Years Ended May</b>		
	<b>August 26, 2018</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>
Ratio of earnings to fixed charges	5.2	6.0	4.5	1.4	2.8	1.9

For purposes of calculating the ratio of earnings to fixed charges, earnings are equal to the amount resulting from (1) adding (a) income from continuing operations before income taxes and equity method investment earnings, (b) fixed charges and (c) distributed income of equity method investees and (2) subtracting capitalized interest. Fixed charges are equal to the sum of (1) interest expense, (2) capitalized interest and (3) an estimate of the interest within rental expense (which we estimate to be one-third of the total of such expense).

Because we have no preferred stock issued (and have not had any issued during the fiscal years or periods shown above), a ratio of earnings to combined fixed charges and preferred dividends is not presented.

**DESCRIPTION OF CAPITAL STOCK****General**

Our authorized capital stock consists of 1,200,000,000 shares of common stock, par value \$5.00 per share; 150,000 shares of Class B preferred stock, \$50.00 par value; 250,000 shares of Class C preferred stock, \$100.00 par value; 1,100,000 shares of Class D preferred stock, without par value; and 16,550,000 shares of Class E preferred stock, without par value.

**Dividends on Capital Stock**

The board of directors may declare and pay dividends on our common stock out of funds legally available for that purpose, subject to the rights of holders of preferred stock.

**Preferred Stock**

We may issue preferred stock in series with rights and preferences as authorized by our board of directors. We will distribute a prospectus supplement with regard to each series of preferred stock offered under this prospectus. Each prospectus supplement will describe, as to the preferred stock to which it relates:



the title of the series;

the voting rights of the holders of the preferred stock;

the dividends, if any, which will be payable with regard to the series;

the terms, if any, on which the series may or will be redeemed;

the preference, if any, to which holders of the series will be entitled upon our liquidation;

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the right, if any, of holders of the series to convert them into another class of our stock or securities; and

any other material terms of the series.

### **Common Stock**

Our common stock is listed on the New York Stock Exchange under the symbol **CAG**. The holders of our common stock are entitled to one vote for each share. Upon liquidation, the holders of our common stock are entitled to share ratably in assets available for distribution to stockholders after satisfaction of any liquidation preferences of any outstanding preferred stock. The issuance of any shares of any series of preferred stock in future financings, acquisitions or otherwise may result in dilution of voting power and relative equity interest of the holders of shares of our common stock and will subject our common stock to the prior dividend and liquidation rights of the outstanding shares of the series of preferred stock.

The shares of our common stock offered under this prospectus will be fully paid and non-assessable. Our common stock has no conversion rights nor are there any redemption or sinking fund provisions with respect to the common stock. Holders of our common stock have no pre-emptive right to subscribe for or purchase any additional stock or securities of Conagra Brands.

### **Provisions of Our Amended and Restated Certificate of Incorporation and Delaware Law That May Have an Anti-Takeover Effect**

Article XII of our amended and restated certificate of incorporation, which we refer to as our certificate of incorporation, prescribes relevant factors, including social and economic effects on employees, customers, suppliers and other constituents of Conagra Brands, to be considered by the board of directors when reviewing any proposal by another corporation to acquire or combine with Conagra Brands.

Article XIII of our certificate of incorporation requires that any action required or permitted to be taken by Conagra Brands stockholders must be effected at a duly called annual or special meeting of the stockholders and may not be effected by a consent in writing by the stockholders.

Article XIV of our certificate of incorporation provides in general that any direct or indirect purchase by Conagra Brands or any subsidiary of Conagra Brands of any of its voting stock, as defined in Article XIV, or rights to acquire voting stock, known to be beneficially owned by any person or group that holds more than 3% of a class of its voting stock, referred to in this paragraph as an interested stockholder, and that has owned the securities being purchased for less than two years, must be approved by the affirmative vote of at least a majority of the votes entitled to be cast by the holders of the voting stock, excluding voting stock held by an interested stockholder. Article XVIII is intended to prevent **greenmail**, which is a term used to describe the accumulation of a block of a corporation's stock by a speculator and the subsequent attempt by the speculator to coerce the corporation into repurchasing its shares, typically at a substantial premium over the market price.

We are governed by the provisions of Section 203 of the General Corporation Law of the State of Delaware. In general, Section 203 prohibits a public Delaware corporation from engaging in a **business combination** with an **interested stockholder** for a period of three years following the time that the person became an interested stockholder, unless:

prior to the time that the person became an interested stockholder the corporation's board of directors approved either the business combination or the transaction that resulted in the stockholder's becoming an interested stockholder;

upon consummation of the transaction which resulted in the stockholder's becoming an interested stockholder, the stockholder owned at least 85% of the outstanding voting stock of the corporation at

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the time the transaction commenced, excluding for the purpose of determining the number of shares outstanding those shares owned by the corporation's officers and directors and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

at or subsequent to the time, the business combination is approved by the corporation's board of directors and authorized at an annual or special meeting of its stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of its outstanding voting stock that is not owned by the interested stockholder.

A business combination includes mergers, asset sales or other transactions resulting in a financial benefit to the stockholder. An interested stockholder is a person who, together with affiliates and associates, owns (or within three years did own) 15% or more of the corporation's voting stock.

The provisions of our certificate of incorporation and Delaware law described in this section may be deemed to have anti-takeover effects. These provisions may discourage or make more difficult an attempt by a stockholder or other entity to acquire control of Conagra Brands. These provisions may also make more difficult an attempt by a stockholder or other entity to remove management.

## **DESCRIPTION OF DEBT SECURITIES**

The following description sets forth certain general terms and provisions of the debt securities that we may issue, which may be issued as convertible or exchangeable debt securities. We will set forth the particular terms of the debt securities we offer in a prospectus supplement and the extent, if any, to which the following general terms and provisions will apply to particular debt securities.

The debt securities will be issued under an indenture dated as of October 12, 2017 between us and Wells Fargo Bank, National Association, as trustee. The indenture, and any supplemental indentures thereto, are subject to, and governed by, the Trust Indenture Act of 1939, as amended. The following description of general terms and provisions relating to the debt securities and the indenture under which the debt securities will be issued is a summary only and therefore is not complete and is subject to, and qualified in its entirety by reference to, the terms and provisions of the indenture. The indenture has been filed with the SEC and is incorporated by reference as an exhibit to the registration statement, of which this prospectus forms a part, and you should read the indenture for provisions that may be important to you. For more information on how you can obtain a copy of the form of the indenture, see [Where You Can Find More Information](#).

Capitalized terms used in this section and not defined herein have the meanings specified in the indenture. When we refer to we, us, our, Conagra, Conagra Brands, the Company or other similar terms in this section, we mean Conagra Brands, Inc. and its consolidated subsidiaries, unless we state otherwise or the context indicates otherwise.

### **General**

Unless otherwise specified in a prospectus supplement, the debt securities will be our direct, unsecured obligations and will rank equally with all of our existing and future senior unsecured indebtedness senior in right of payment to all of our subordinated indebtedness.

The indenture does not limit the aggregate principal amount of debt securities that may be issued under it and provides that debt securities may be issued under it from time to time in one or more series. We may specify a maximum aggregate principal amount for the debt securities of any series.



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Unless otherwise specified in the applicable prospectus supplement, the indenture does not afford the holders of the debt securities the right to require us to repurchase or redeem the debt securities in the event of a highly-leveraged transaction.

We are not obligated to issue all debt securities of one series at the same time and, unless otherwise provided in the applicable prospectus supplement, we may reopen a series, without the consent of the holders of the outstanding debt securities of that series, for the issuance of additional debt securities of that series. Additional debt securities of a particular series will have the same terms and conditions as outstanding debt securities of such series, except for the issue date and, in some cases, the public offering price and the first interest payment date, and will be consolidated with, and form a single series with, such outstanding debt securities; provided, however, that if such additional debt securities are not fungible with the outstanding debt securities of such series for U.S. federal income tax purposes, the additional debt securities will have a separate CUSIP number.

We will set forth in a prospectus supplement relating to any debt securities being offered, the aggregate principal amount and the following terms of the debt securities, if applicable:

the title of debt securities;

the price or prices (expressed as a percentage of the principal amount) at which the debt securities will be issued;

any limit on the aggregate principal amount of the series of debt securities;

whether the debt securities will be senior debt securities or subordinated debt securities, and if they are subordinated debt securities, the terms of the subordination;

the date or dates on which the principal on the series of debt securities is payable;

the rate or rates (which may be fixed or variable) per annum or the method used to determine such rate or rates (including any commodity, commodity index, stock exchange index or financial index) at which the series of debt securities will bear interest, if any, the date or dates from which such interest, if any, will accrue, the date or dates on which such interest, if any, will commence and be payable and any regular record date for the interest payable on any interest payment date;

the right, if any to extend the interest periods and the duration of that extension;

the place or places where the principal of, and premium and interest, if any, on, the debt securities will be payable;

the terms and conditions upon which the debt securities may be redeemed;

any obligation we may have to redeem or purchase the debt securities pursuant to any sinking fund or analogous provisions or at the option of a holder of the debt securities;

the dates on which and the price or prices at which we will repurchase the debt securities at the option of the holders of the debt securities and other detailed terms and provisions of such repurchase obligations;

the denominations in which the debt securities will be issued, if other than denominations of \$2,000 and integral multiples of \$1,000 in excess thereof;

whether the debt securities will be issued in the form of certificated debt securities or global debt securities;

the portion of principal amount of the debt securities payable upon declaration of acceleration of the maturity date, if other than the principal amount;

the designation of the currency, currencies or currency units in which payment of principal of, premium and interest, if any, on the debt securities will be made if other than U.S. dollars;

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any provisions relating to any security provided for the debt securities;

any addition to or change in the events of default described in this prospectus or in the indenture and any change in the acceleration provisions described in this prospectus or in the indenture with respect to the debt securities;

any addition to or change in the covenants described in this prospectus or in the indenture with respect to the debt securities;

any other terms of the debt securities (which may supplement, modify or delete any provision of the indenture as it applies to such debt securities);

any depositories, interest rate calculation agents, exchange rate calculation agents or other agents with respect to the series of debt securities, if other than appointed in the indenture; and

any provisions relating to conversion of the debt securities.

The foregoing is not intended to be an exclusive list of the terms that may be applicable to any offered debt securities.

In addition, the indenture does not limit our ability to issue convertible, exchangeable or subordinated debt securities. Any conversion, exchange or subordination provisions of debt securities will be described in the relevant prospectus supplement. Such terms may include provisions for conversion or exchange, either mandatory, at the option of the holder or at our option, in which case the number of shares of common stock or other securities to be received by the holders of debt securities would be calculated as of a time and in the manner stated in the prospectus supplement.

We may issue debt securities that provide for an amount less than their stated principal amount to be due and payable upon declaration of acceleration of their maturity pursuant to the terms of the indenture. We will provide you with information on the U.S. federal income tax considerations and other special considerations applicable to any of these debt securities in the applicable prospectus supplement.

If we denominate the purchase price of any of the debt securities in a foreign currency or currencies or a foreign currency unit or units, or if the principal of and any premium and interest on any series of debt securities is payable in a foreign currency or currencies or a foreign currency unit or units, we will provide you with information on the restrictions, elections, general tax considerations, specific terms and other information with respect to that issue of debt securities and such foreign currency or currencies or foreign currency unit or units in the applicable prospectus supplement.

**Exchange and Transfer**

Debt securities may be transferred or exchanged at the office of the registrar or co-registrar designated by us.

We will not impose a service charge for any transfer or exchange, but we may require holders to pay any tax or other governmental charges associated with any transfer or exchange.



In the event of any redemption of debt securities of any series, we will not be required to:

issue, register the transfer of or exchange, any debt security of that series during a period beginning at the opening of 15 business days before the day of sending of a notice of redemption and ending at the close of business on the day such notice is sent; or

register the transfer of or, exchange any, debt security of that series selected, called or being called for redemption, in whole or in part, except the unredeemed portion of any series being redeemed in part.

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We may initially appoint the trustee as the registrar. Any transfer agent, in addition to the registrar initially designated by us, will be named in the prospectus supplement. We may designate additional transfer agents or change transfer agents or change the office of the transfer agent. However, we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

**Global Securities**

The debt securities of any series may be represented, in whole or in part, by one or more global securities. Each global security will:

be registered in the name of a depositary that we will identify in a prospectus supplement;

be deposited with the trustee as custodian for the depositary or its nominee; and

bear any required legends.

No global security may be exchanged in whole or in part for debt securities registered in the name of any person other than the depositary or any nominee unless:

the depositary has notified us that it is unwilling or unable to continue as depositary or has ceased to be qualified to act as depositary, and in either case we fail to appoint a successor depositary registered as a clearing agency under the Exchange Act within 90 days of such event;

we execute and deliver to the trustee an officer's certificate to the effect that such global securities shall be so exchangeable; or

an event of default with respect to the debt securities represented by such global securities shall have occurred and be continuing.

As long as the depositary, or its nominee, is the registered owner of a global security, the depositary or nominee will be considered the sole owner and holder of the debt securities represented by the global security for all purposes under the indenture. Except in the above limited circumstances, owners of beneficial interests in a global security:

will not be entitled to have the debt securities registered in their names;

will not be entitled to physical delivery of certificated debt securities; and

will not be considered to be holders of those debt securities under the indenture.

Payments on a global security will be made to the depositary or its nominee as the holder of the global security. Some jurisdictions have laws that require that certain purchasers of securities take physical delivery of such securities in definitive form. These laws may impair the ability to transfer beneficial interests in a global security.

Institutions that have accounts with the depositary or its nominee are referred to as participants. Ownership of beneficial interests in a global security will be limited to participants and to persons that may hold beneficial interests through participants. The depositary will credit, on its book-entry registration and transfer system, the respective principal amounts of debt securities represented by the global security to the accounts of its participants. Each person owning a beneficial interest in a global security must rely on the procedures of the depositary (and, if such person is not a participant, on procedures of the participant through which such person owns its interest) to exercise any rights of a holder under the indenture.

Ownership of beneficial interests in a global security will be shown on and effected through records maintained by the depositary, with respect to participants' interests, or by any participant, with respect to interests of persons held by participants on their behalf. Payments, transfers and exchanges relating to beneficial interests in a global security will be subject to policies and procedures of the depositary. The depositary policies

## **Table of Contents**

and procedures may change from time to time. Neither we nor the trustee will have any responsibility or liability for the depositary's acts or omissions or any participant's records with respect to beneficial interests in a global security.

## **Payment and Paying Agent**

The provisions of this subsection will apply to the debt securities unless otherwise indicated in the prospectus supplement. Payment of interest on a debt security on any interest payment date will be made to the person in whose name the debt security is registered at the close of business on the regular record date. Payment on debt securities of a particular series will be payable at the office of a paying agent or paying agents designated by us. However, at our option, we may pay interest by mailing a check to the record holder.

We may also name any other paying agents in the prospectus supplement. We may designate additional paying agents, change paying agents or change the office of any paying agent. However, we will be required to maintain a paying agent in each place of payment for the debt securities of a particular series.

Subject to any applicable abandoned property law, all moneys paid by us to a paying agent for payment on any debt security that remain unclaimed at the end of two years after such payment was due will be repaid to us. Thereafter, the holder may look only to us for such payment.

## **Consolidation, Merger and Sale of Assets**

Except as otherwise set forth in the applicable prospectus supplement, we may not merge or consolidate with or into any other person, in a transaction in which we are not the surviving corporation, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of the properties and assets of us and our subsidiaries, taken as a whole, to any person, unless:

the successor or transferee is a U.S. corporation, limited liability company, partnership, trust or other entity;

the successor or transferee assumes our obligations on the debt securities and under the indenture pursuant to a supplemental indenture in form reasonably satisfactory to the trustee;

immediately after giving effect to the transaction and treating our obligations in connection with or as a result of such transaction as having been incurred as of the time of such transaction, no default or event of default under the indenture shall have occurred and be continuing; and

an officer's certificate and an opinion of counsel have been delivered to the trustee in connection with the foregoing.

In the event of the above transaction, if there is a successor or transferee, then the successor or transferee will expressly assume all of our obligations under the indenture and automatically be substituted for us in the indenture and as issuer of the debt securities and may exercise every right and power of ours under the indenture with the same effect as if such successor or transferee had been named in our place in the indenture; provided, however, that the predecessor company will not be re

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Xinzhou Li (Paul Li)

4,000,000

(iii) Sole power to dispose or to direct the disposition of:

Pioneer Pharma (Singapore) Pte. Ltd.

0

Pioneer Pharma Co. Ltd

0

Xinzhou (Paul) Li

120,000

(iv) Shared power to dispose or to direct the disposition of:

Pioneer Pharma (Singapore) Pte. Ltd.

4,000,000

Pioneer Pharma Co. Ltd

4,000,000

Xinzhou Li (Paul Li)

4,000,000

The 4,000,000 shares beneficially owned by each of Pioneer Pharma (Singapore) Pte. Ltd. Pioneer Pharma Co. Ltd. and Mr. Xinzhou Li (Paul Li) consists of 2,000,000 shares held directly by Pioneer Pharma (Singapore) Pte. Ltd. and a warrant to purchase 2,000,000 shares of NovaBay's common stock held directly by Pioneer Pharma (Singapore) Pte. Ltd. Pioneer Pharma (Singapore) Pte. Ltd. is a 100% wholly-owned subsidiary of Pioneer Pharma Co. Ltd. and Mr. Xinzhou Li (Paul Li), is the sole owner of Pioneer Pharma Co. Ltd, and, as a result, Pioneer Pharma Co. Ltd. and Mr. Xinzhou Li (Paul Li) may be deemed to beneficially own the shares held by Pioneer Pharma (Singapore) Pte. Ltd. In addition, Mr. Xinzhou Li (Paul Li) directly owns 120,000 shares.

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Schedule 13G

Item 5. Ownership of Five Percent or Less of a Class.

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following. [ ]

Item 6. Ownership of More than Five Percent on Behalf of Another Person.

Not applicable.

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company or Control Person.

Pioneer Pharma (Singapore) Pte. Ltd. is a 100% Holding company of Pioneer Pharma Co. Ltd. and Mr. Xinzhou Li (Paul Li) is the sole owner of Pioneer Pharma Co. Ltd.

Item 8. Identification and Classification of Members of the Group.

This filing is on behalf of Pioneer Pharma (Singapore) Pte. Ltd., Pioneer Pharma Co. Ltd. and Mr. Xinzhou Li (Paul Li).

Item 9. Notice of Dissolution of Group.

Not applicable.

Item 10. Certifications.

By signing below, I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect, other than activities solely in connection with a nomination under § 240.14a-11.

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Schedule 13G

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

February 15, 2013  
(Date)

Pioneer Pharma (Singapore) Pte. Ltd.

/s/Xinzhou Li

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Xinzhou Li (Paul Li)  
President

Pioneer Pharma Co. Ltd.

/s/Xinzhou Li

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Xinzhou Li (Paul Li)  
President

Xinzhou Li (Paul Li)

/s/Xinzhou Li

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Xinzhou Li (Paul Li)

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EXHIBIT A

Joint Filing Agreement

This Joint Filing Agreement is dated as of February 15, 2013, by and among Pioneer Pharma (Singapore) Pte. Ltd. , Pioneer Pharma Co. Ltd. and Mr. Xinzhou Li (Paul Li).

WHEREAS, pursuant to Rule 240.13d-1(k) promulgated under Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the parties hereto have decided to satisfy their filing obligations under the Exchange Act by a single joint filing;

NOW THEREFORE, the parties hereto agree as follows:

1. The Schedule 13G with respect to NovaBay Pharmaceuticals, Inc. to which this agreement is attached as Exhibit A (the "Schedule 13G") is filed on behalf of each of the parties hereto.
2. Each of the parties hereto is eligible to use the Schedule 13G.
3. Each of the parties hereto is responsible for the timely filing of the Schedule 13G and any amendments thereto, and for the completeness and accuracy of the information concerning such person or entity contained in the Schedule 13G; provided that each person or entity is not responsible for the completeness or accuracy of the information concerning any other person making such filing contained in the Schedule 13G, unless such person or entity knows or has reason to believe that such information is inaccurate.

IN WITNESS WHEREOF, the parties hereto have executed this Joint Filing Agreement as of the date first above written.

Pioneer Pharma (Singapore) Pte. Ltd.

/s/Xinzhou Li

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Xinzhou Li (Paul Li)  
President

Pioneer Pharma Co. Ltd.

/s/Xinzhou Li

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Xinzhou Li (Paul Li)  
President

Xinzhou (Paul) Li

/s/Xinzhou Li

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Xinzhou Li (Paul Li)