

NovaBay Pharmaceuticals, Inc.
Form DEF 14A
April 23, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

(Amendment No. __)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

NovaBay Pharmaceuticals, Inc.

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

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NOVABAY PHARMACEUTICALS, INC.

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

TO BE HELD JUNE 5, 2008

To the Shareholders of NovaBay Pharmaceuticals, Inc.:

NOTICE IS HEREBY GIVEN that the 2008 Annual Meeting of Shareholders (the Annual Meeting) of NovaBay Pharmaceuticals, Inc., a California corporation, will be held on June 5, 2008 at 2:00 p.m. Pacific Time at The Marriot Hotel, 5555 Shellmound Street, Emeryville, California 94608 for the following purposes:

1. To elect three Class I directors to hold office for a term of three years or until their respective successors are elected and qualified. The nominees for election are Anthony Dailley, John (Jack) O Reilly and Robert R. Tufts.
2. To approve an amendment to the NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan, which would automatically increase the number of shares of common stock authorized for issuance under the plan every year, beginning January 2009, in an amount equal to the lesser of (a) 1,000,000 shares or (b) 4% of the number of shares of our common stock outstanding on the last day of the preceding year or (c) such lesser number as determined by our Board of Directors.
3. To transact any other business which may properly come before the Annual Meeting or any adjournment or postponement thereof. Only shareholders of record at the close of business on April 21, 2008 are entitled to notice of and to vote at the Annual Meeting and any adjournment or postponement thereof. A list of shareholders entitled to vote at the Annual Meeting will be available for inspection at the Annual Meeting.

All shareholders are cordially invited to attend the meeting in person. Whether or not you plan to attend, please sign, date and return the enclosed proxy card in the enclosed postage-paid and addressed envelope. If your shares are held in street name (i.e., your shares are held in the name of a brokerage firm, bank or other nominee) you should receive from that institution an instruction form for voting in lieu of a proxy card. Should you receive more than one proxy card or voting instruction form because your shares are held in multiple accounts or registered in different names or addresses, please sign, date and return each proxy card or voting instruction form to ensure that all of your shares are voted. You may revoke your proxy at any time prior to the Annual Meeting. If you attend the Annual Meeting and vote by ballot, your proxy will be revoked automatically and only your vote at the Annual Meeting will be counted.

By Order of the Board of Directors,

April 23, 2008

Ramin (Ron) Najafi, Ph.D.
Chairman of the Board, Chief Executive
Officer and President

YOUR VOTE IS VERY IMPORTANT REGARDLESS OF THE NUMBER OF SHARES YOU OWN. PLEASE READ THE ATTACHED PROXY STATEMENT CAREFULLY, COMPLETE, SIGN AND DATE THE ENCLOSED PROXY CARD AS PROMPTLY AS POSSIBLE AND RETURN IT IN THE ENCLOSED ENVELOPE.

NOVABAY PHARMACEUTICALS, INC. 5980 Horton Street, Suite 550 Emeryville, California 94608

PROXY STATEMENT

These proxy materials and the enclosed proxy card are being furnished in connection with the solicitation of proxies by the Board of Directors of NovaBay Pharmaceuticals, Inc., a California corporation, to be voted at the 2008 Annual Meeting of Shareholders to be held on June 5, 2008 (the Annual Meeting) and at any adjournment or postponement of the meeting. The Annual Meeting will be held at 2:00 p.m. Pacific Time at The Marriot Hotel, 5555 Shellmound Street, Emeryville, California 94608. These proxy solicitation materials are expected to be mailed on or about May 2, 2008 to all shareholders entitled to vote at the Annual Meeting.

Purpose of Meeting

The specific proposals to be considered and acted upon at the Annual Meeting are summarized in the accompanying Notice of the Annual Meeting of Shareholders (the Notice) and are described in more detail in this proxy statement.

Voting; Quorum

The record date for determining those shareholders who are entitled to notice of, and to vote at, the Annual Meeting has been fixed as April 21, 2008. Only shareholders of record at the close of business on the Record Date are entitled to notice of and to vote at the Annual Meeting and any adjournment or postponement thereof. Each shareholder is entitled to one vote for each share of our common stock held by such shareholder as of the record date. As of the record date, 21,301,270 shares of our common stock were outstanding and no shares of our preferred stock were outstanding. The presence at the Annual Meeting, either in person or by proxy, of holders of a majority of the outstanding shares of our common stock entitled to vote will constitute a quorum for the transaction of business at the Annual Meeting. If a quorum is not present, the Annual Meeting will be adjourned until a quorum is obtained.

In the election of directors under Proposal One, the three nominees receiving the highest number of affirmative votes of our common stock, present or represented by proxy and entitled to vote at the Annual Meeting, will be elected. Proposal Two requires the affirmative vote of the holders of a majority of our common stock present or represented by proxy and entitled to vote at the Annual Meeting. All votes will be tabulated by the inspector of election appointed for the Annual Meeting, who will separately tabulate affirmative and negative votes, abstentions and broker non-votes (i.e., shares held by a broker or nominee that are represented at the Annual Meeting, but with respect to which such broker or nominee is not instructed to vote on a particular proposal and does not have discretionary voting power). Abstentions and broker non-votes are counted as present for purposes of determining the presence or absence of a quorum for the transaction of business. For Proposal One, broker non-votes and votes marked withheld will not be counted towards the tabulation of votes cast on such proposal presented to the shareholders. For Proposal Two, abstentions and broker non-votes will be counted towards the tabulation of votes cast on such proposal presented to the shareholders and will have the same effect as negative votes. Because proposals regarding modifications to stock incentive plans like the 2007 Omnibus Incentive Plan are not matters on which brokers are empowered to vote without instructions, there may be broker non-votes on Proposal Two.

Proxies

Please use the enclosed proxy card to vote by mail. If your shares are held in street name, then in lieu of a proxy card you should receive from that institution an instruction form for voting. Should you receive more than one proxy card or voting instruction form because your shares are held in multiple accounts or registered in different names or addresses, please be sure to complete, sign, date and return each proxy card or voting instruction form to ensure that all of your shares will be voted. Only proxy cards that have been signed, dated and timely returned will be counted in the quorum and voted.

If the enclosed proxy card is properly signed and returned to us, the shares represented thereby will be voted at the Annual Meeting in accordance with the instructions specified thereon. If the proxy does not specify how the shares represented thereby are to be voted, the proxy will be voted FOR the election of the directors proposed by the Board under Proposal One unless the authority to vote for the election of such directors is withheld and, if no contrary instructions are given, the proxy will be voted FOR the approval of Proposal Two described in the Notice and this proxy statement. The enclosed proxy also grants the proxy holders discretionary authority to vote on any other business that may properly come before the Annual Meeting. We have not been notified by any shareholder of his or her intent to present a shareholder proposal at the Annual Meeting.

If your shares are held in your name, you may revoke or change your vote at any time before the Annual Meeting by filing a notice of revocation or another signed proxy card with a later date with our corporate Secretary at our principal executive offices at 5980 Horton Street, Suite 550, Emeryville, California 94608. If your shares are held in street name, you should contact the record holder to obtain instructions if you wish to revoke or change your vote before the Annual Meeting. If you attend the Annual Meeting and vote by ballot, any proxy that you submitted previously to vote the same shares will be revoked automatically and only your vote at the Annual Meeting will be counted. Please note, however, that if your shares are held in street name, your vote in person at the Annual Meeting will not be effective unless you have obtained and present a proxy issued in your name from the record holder. Attendance at the Annual Meeting will not, by itself, revoke a proxy.

Voting by Telephone or through the Internet

If your shares are registered in the name of a bank or brokerage firm, you may be eligible to vote your shares by telephone or through the Internet. A large number of banks and brokerage firms provide eligible shareholders the opportunity to vote in this manner. If your bank or brokerage firm allows for this, your voting form will provide instructions for such alternative method of voting.

Solicitation

We will bear the entire cost of proxy solicitation, including the costs of preparing, assembling, printing and mailing this proxy statement, the proxy card and any additional solicitation material furnished to the shareholders. Copies of the solicitation materials will be furnished to brokerage houses, fiduciaries and custodians holding shares in their names that are beneficially owned by others so that they may forward this solicitation material to such beneficial owners. In addition, we may reimburse such persons for their reasonable expenses in forwarding the solicitation materials to the beneficial owners. The original solicitation of proxies by mail may be supplemented by a solicitation by personal contact, telephone, facsimile, email or any other means by our directors, officers or employees. No additional compensation will be paid to these individuals for any such services.

In the discretion of management, we may retain a professional firm of proxy solicitors to assist in the solicitation of proxies. Although we do not currently expect to retain such a firm, we estimate that the fees of such firm would range from \$5,000 to \$20,000 plus out-of-pocket expenses, all of which would be paid by us.

Note with Respect to Forward-Looking Statements

We have made certain forward-looking statements in this proxy statement that relate to expectations concerning matters that are not historical facts. Words such as projects, believes, anticipates, plans, expects, intends and similar words and expressions are intended to identify forward-looking statements. Although we believe that such forward-looking statements are reasonable, there can be no assurance that such expectations will prove to be correct. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from such expectations. All forward-looking statements attributable to us are expressly qualified in their entirety by such language. We do not undertake any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.

MATTERS TO BE CONSIDERED AT THE ANNUAL MEETING

PROPOSAL ONE:

ELECTION OF DIRECTORS

Our articles of incorporation provides for a classified board of directors consisting of three classes of directors, each serving staggered three-year terms and each as nearly equal in number as possible as determined by our Board of Directors. As a result, a portion of our Board of Directors will be elected each year. Our Board of Directors currently consists of eight persons. Messrs. Dailley, O Reilly and Tufts have been designated Class I directors whose terms expire at this Annual Meeting. Messrs. Cashion, McPherson and Wicks have been designated Class II directors whose terms expire at the 2009 Annual Meeting. Messrs. Freiman and Najafi have been designated Class III directors whose terms expire at the 2010 Annual Meeting.

The class whose term of office expires at the Annual Meeting currently consists of three directors. On the recommendation of the Nominating and Corporate Governance Committee, our Board of Directors selected and approved Anthony Dailley, John (Jack) O Reilly and Robert R. Tufts as nominees for election in the class being elected at the Annual Meeting to serve for a term of three years, expiring at the 2011 Annual Meeting of Shareholders, or until their successors are duly elected and qualified or until their earlier resignation or removal. Each nominee for election is currently a member of our Board of Directors and has agreed to serve if elected. Management has no reason to believe that any of the nominees will be unavailable to serve. In the event any of the nominees named herein is unable to serve or declines to serve at the time of the Annual Meeting, the persons named in the enclosed proxy will exercise discretionary authority to vote for substitutes. Unless otherwise instructed, the proxy holders will vote the proxies received by them FOR the nominees named below.

Shareholder Approval

The three nominees receiving the highest number of affirmative votes of the outstanding shares of our common stock present or represented by proxy and entitled to vote at the Annual Meeting shall be elected as directors.

Recommendation of Our Board of Directors

Our Board of Directors recommends a vote FOR the Class I director nominees listed below.

Directors and Nominees

The names of our directors and nominees, their ages and positions with us as of March 31, 2008, and biographical information about them, are as follows:

Name	Age	Current Position(s)
Ramin (Ron) Najafi, Ph.D.	49	Chairman of the Board, Chief Executive Officer and President
Charles J. Cashion(1)	57	Director
Anthony Dailley, D.D.S.(2)	52	Director
Paul E. Freiman(1)(2)(3)	73	Director
T. Alex McPherson, M.D., Ph.D.(2)(3)	69	Director
John (Jack) O Reilly	65	Director and SVP, Corporate and Business Development
Robert R. Tufts	74	Director
Tony D.S. Wicks(1)(2)(3)	69	Director

- (1) Member of the Audit Committee.
- (2) Member of the Compensation Committee.
- (3) Member of the Nominating and Corporate Governance Committee.

Class I Director Nominees

Anthony Dailley, D.D.S. has served as a director since May 2002. Dr. Dailley is one of our founders and has been involved in a number of start-up companies, including serving as a director of NovaCal Pharmaceuticals, LLC (NovaCal LLC) from January 2000 to May 2002. We acquired all of the assets of NovaCal LLC in July 2002. Dr. Dailley currently serves as the President of Breathcare, a specialty dental practice which he founded in 2000. From 1995 to 2000, he was the Treasurer and a member of the board of directors of Indicator Technologies, Inc., a medical device company in California. From 1985 to 1987, he was a co-owner of 1-800-DENTIST, a dentist referral service which he co-founded. Dr. Dailley also held a teaching position at the University of the Pacific School of Dentistry for a number of years. Dr. Dailley received his B.S. in cell and molecular biology from San Francisco State University and his dental degree from the University of the Pacific School of Dentistry in San Francisco.

John (Jack) O Reilly has served as a director and officer since July 2002, as our Senior Vice President, Corporate and Business Development since November 2004. Mr. O Reilly also served as our Chief Executive Officer from July 2002 to October 2004, and as our Chief Financial Officer and Treasurer from November 2004 to January 2008. From February 2002 to June 2002, Mr. O Reilly was a director and the Chief Executive Officer of NovaCal LLC. From 2000 to January 2002, he was the Executive Chairman of Xomol Inc., a healthcare information technology company. Mr. O Reilly s prior experience also includes several positions at Syntex Corporation, where he served as the Senior Director of Corporate Development, Finance Director of the Pharmaceutical Group and CFO of operating units in France and Switzerland, as the President of Vectorpharma International, Inc., a drug delivery company which was sold to Recordati S.p.A., a multinational European pharmaceutical company, and as the Chief Executive Officer of Spectra Biomedical, Inc., a clinical genetics company sold to GlaxoSmithKline. Mr. O Reilly received a B.A. in history from Oxford University and an M.B.A. from Stanford University.

Robert R. Tufts has served as a director since May 2002. He also served as a director of NovaCal LLC from February 2001 to May 2002. Mr. Tufts is a founding law partner of Tufts Stephenson & Kasper, LLP, which he founded in April 1999, and was formerly a partner with Jackson Tufts Cole and Black, LLP for over 35 years. He specializes in corporate representation for start-up and emerging businesses, business financings, mergers and acquisitions, and in corporate taxation. Mr. Tufts received his B.A. in history from New York University and received his law degree from Harvard Law School.

Directors Whose Terms Continue

Class II Directors Terms Expiring at the 2009 Annual Meeting

Charles J. Cashion has served as a director since November 2005. Mr. Cashion currently serves as the Senior Vice President, Finance and Chief Financial Officer of Conatus Pharmaceuticals Inc., a biotechnology start-up company focused in the areas of inflammation and liver disease, which he co-founded with other senior management of Idun Pharmaceuticals, Inc. following the sale of Idun to Pfizer, Inc. in July 2005. From 2001 to July 2005, Mr. Cashion was the Executive Vice President, Chief Financial Officer and Secretary of Idun. Mr. Cashion s prior experience also includes serving as the Senior Vice President, Chief Financial Officer and Secretary of Quidel Corporation, a publicly owned, medical diagnostics company, and as the Senior Vice President, Finance, Chief Financial Officer, Secretary, and Treasurer of The Immune Response Corporation, a publicly owned biopharmaceutical company. Mr. Cashion received his B.S. in accounting and an M.B.A. in finance from Northern Illinois University.

T. Alex McPherson, M.D., Ph.D. has served as a director since July 2006. Dr. McPherson was President and Chief Executive Officer of Biomira, Inc., a biotechnology company specializing in the development of products for the treatment of cancer, from 1991 until his retirement in May 2006. He is a Fellow of the Australasian, Canadian and American Colleges of Physicians and is a past President of both the Alberta and Canadian Medical Associations. Dr. McPherson is currently a Professor Emeritus in the Faculty of Medicine of

the University of Alberta, and was Deputy Minister of the Alberta Ministry of Hospitals and Medical Care, and was Deputy Commissioner and Executive Director of the Premier's Commission on Future Health Care for Albertans (The Rainbow Report). He also serves on the board of directors of Carrington Laboratories, Inc. Dr. McPherson received his M.D. in medicine from the University of Alberta and his Ph.D. from the University of Melbourne.

Tony D.S. Wicks has served as a director since May 2002. He also served as a director of NovaCal LLC from March 2001 to May 2002. Since 1995, Mr. Wicks has been pursuing private investments, venture work and participating in property investments. Prior to that, from 1986 to 1995, Mr. Wicks was the Chief Executive Officer of American Resource Corporation Inc., a public company in the mining industry with activities in North & South America. Prior to that, he served as the Chief Executive Officer of several public and private companies in Europe and the U.S. and was directly involved in company start-up operations, and with public listings. Mr. Wicks received his H.N.C. in electrical engineering from Essex Polytechnic.

Class III Directors Terms Expiring at the 2010 Annual Meeting

Paul E. Freiman has served as a director since May 2002. He also served as a director of NovaCal LLC from May 2001 to May 2002. Since May 1997, Mr. Freiman has been the President and Chief Executive Officer of Neurobiological Technologies, Inc., a biotechnology company focused on acquiring and developing central nervous system related drug candidates. He has also served as a member of the board of directors of Neurobiological Technologies since April 1997. Mr. Freiman's prior experience includes serving as the former chairman and chief executive officer of Syntex Corporation, which was sold to The Roche Group for \$5.3 billion during his tenure. Mr. Freiman currently serves as Chairman of Penwest Pharmaceutical Co., and serves on the boards of Calypte Biomedical Corporation and NeoPharm, Inc. Mr. Freiman received a B.S. degree in pharmacy from Fordham University and an honorary doctorate from the Arnold & Marie Schwartz College of Pharmacy.

Ramin (Ron) Najafi, Ph.D. has served as our Chairman of the Board and President since July 2002, and as our Chief Executive Officer since November 2004. Prior to joining us, from January 2000 to June 2002, Dr. Najafi served in various management positions with NovaCal LLC, including as Chairman of the Board from January 2000 to June 2002, as President and Chief Scientific Officer from February 2002 to June 2002, and as Chief Executive Officer from January 2000 to February 2002. From 1996 to December 2000, Dr. Najafi was the President and Chief Executive Officer of California Pacific Labs, Inc., a chemical laboratory supplies company. Dr. Najafi's prior experience also includes serving as a scientist at Aldrich Chemical, Rhone Poulenc Rorer (now Sanofi-Aventis), and at Applied Biosystems (a division of PerkinElmer, Inc.). Dr. Najafi received a B.S. and M.S. degree in Chemistry from the University of San Francisco and a Ph.D. in Organic Chemistry from the University of California at Davis.

Family Relationships

There are no family relationships among any of our directors, executive officers or director nominees.

CORPORATE GOVERNANCE

Code of Ethics and Business Conduct

Our Board of Directors has adopted a Code of Ethics and Business Conduct which applies to all directors, officers (including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions) and employees. The full text of our Code of Ethics and Business Conduct is available on the Corporate Governance section of our website at www.novabaypharma.com. We intend to disclose future amendments to certain provisions of the Code of Ethics and Business Conduct, and any waivers of provisions of the Code of Ethics required to be disclosed under the rules of the Securities and Exchange Commission (SEC), at the same location on our website.

Director Independence

The Board of Directors has determined that Messrs. Cashion, Dailley, Freiman, McPherson, Tufts and Wicks each satisfies the requirements for independence as defined in the AMEX Company Guide.

Board Committees and Meetings

Our Board of Directors has an Audit Committee, a Compensation Committee, and a Nominating and Corporate Governance Committee. The Audit Committee, the Compensation Committee, and the Nominating and Corporate Governance Committee each has a written charter that is reviewed annually and revised as appropriate. A copy of each committee's charter is available on the Corporate Governance section of our website at www.novabaypharma.com.

During the year ended December 31, 2007, the Board of Directors and the various committees of the Board held the following number of meetings: Board of Directors eleven; Audit Committee six; Compensation Committee six; and Nominating and Corporate Governance Committee none. During 2007, no director other than Paul Freiman attended fewer than 75% of the aggregate of the total number of meetings of the Board of Directors and the total number of meetings of any committees of the Board held while he was serving on the Board or such committee.

Audit Committee. Our Audit Committee consists of Messrs. Cashion, Freiman and Wicks. Mr. Cashion is the Chair of the Audit Committee. Our Board of Directors has determined that each member of the Audit Committee is independent, as defined in the AMEX Company Guide and Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the Exchange Act). Mr. Cashion qualifies as an audit committee financial expert as that term is defined in the rules and regulations established by the SEC. The functions of this committee include:

meeting with our management periodically to consider the adequacy of our internal controls and the objectivity of our financial reporting;

meeting with our independent auditors and with internal financial personnel regarding these matters;

pre-approving audit and non-audit services to be rendered by our independent auditors;

engaging and determining the compensation of our independent auditors and oversight of the work of our independent auditors;

reviewing our financial statements and periodic reports and discussing the statements and reports with our management and independent auditors, including any significant adjustments, management judgments and estimates, new accounting policies and disagreements with management;

establishing procedures for the receipt, retention and treatment of complaints received by us regarding accounting, internal accounting controls and auditing matters; and

reviewing our financing plans and reporting recommendations to our full Board of Directors for approval and to authorize action. Both our independent auditors and internal financial personnel regularly meet privately with the Audit Committee and have unrestricted access to this committee.

Compensation Committee. Our Compensation Committee consists of Messrs. Wicks, Dailley, Freiman and McPherson. Mr. Wicks is the Chair of our Compensation Committee. Our Board of Directors has determined that each member of the Compensation Committee is independent, as defined in the AMEX Company Guide. The functions of this committee include:

reviewing and, as it deems appropriate, recommending to our Board of Directors, policies, practices and procedures relating to the compensation of our directors, officers and other managerial employees and the establishment and administration of our employee benefit plans;

exercising authority under our employee benefit plans;

reviewing and approving executive officer and director indemnification and insurance matters; and

advising and consulting with our officers regarding managerial personnel and development.

Nominating and Corporate Governance Committee. Our Nominating and Corporate Governance Committee consists of Messrs. McPherson, Freiman and Wicks. Mr. McPherson is the Chair of our Nominating and Corporate Governance Committee. Our Board of Directors has determined that each member of the Nominating and Corporate Governance Committee is independent, as defined in the AMEX Company Guide. The functions of this committee include:

identifying qualified candidates to become members of our Board of Directors;

selecting nominees for election of directors at the next annual meeting of shareholders (or special meeting of shareholders at which directors are to be elected);

selecting candidates to fill vacancies of our Board of Directors;

developing and recommending to our Board of Directors our corporate governance guidelines; and

overseeing the evaluation of our Board of Directors.

In connection with their recommendations regarding the size and composition of the Board, the Nominating and Corporate Governance Committee reviews the appropriate qualities and skills required of directors in the context of the then current make-up of the Board. This includes an assessment of each candidate's independence, personal and professional integrity, financial literacy or other professional or business experience relevant to an understanding of our business, ability to think and act independently and with sound judgment, and ability to serve our and its shareholders' long-term interests. These factors, and others as considered useful by the Nominating and Corporate Governance Committee, are reviewed in the context of an assessment of the perceived needs of the Board at a particular point in time. As a result, the priorities and emphasis of the Nominating and Corporate Governance Committee and of the Board may change from time to time to take into account changes in business and other trends, and the portfolio of skills and experience of current and prospective directors. The Nominating and Corporate Governance Committee leads the search for and selects, or recommends that the Board select candidates for election to the Board. Consideration of new director candidates typically involves a series of committee discussions, review of information concerning candidates and interviews with selected candidates. Candidates for nomination to our Board typically have been suggested by other members of the Board or by our executive officers. From time to time, the Nominating and Corporate Governance Committee may engage the services of a third-party search firm to identify director candidates.

The Nominating and Corporate Governance Committee will consider candidates for directors recommended by our shareholders who meet the eligibility requirements for submitting shareholder proposals for inclusion in our next proxy statement. This committee will evaluate such recommendations applying its regular nominee criteria. Eligible shareholders wishing to recommend a nominee must submit such recommendation in writing to the Chair, Nominating and Corporate Governance Committee, care of the corporate Secretary, by the deadline for shareholder proposals set forth in the prior year's proxy statement, specifying the following information: (i) the shareholder's intent to nominate one or more persons for election as director of the corporation, the name of each such nominee proposed by the shareholder giving the notice, and the reason for making such nomination at the annual meeting, (ii) name and address, as they appear on the corporation's books, of the shareholder proposing such nomination and the beneficial owner, if any, on whose behalf the nomination is proposed, (iii) the class and number of shares of the corporation that are owned beneficially and of record by the shareholder proposing such nomination and the beneficial owner, if any, on whose behalf the nomination is proposed, (iv) any material interest of such shareholder proposing such nomination and the beneficial owner, if any, on whose behalf the proposal is made, (v) a description of all arrangements or understandings between or among any of (A) the shareholder giving the notice, (B) each nominee and (C) any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder giving the notice, (vi) such information as the Board of Directors or the Nominating and Corporate Governance Committee, or similar committee appointed by the Board of Directors, may require pursuant to resolutions of the Board or such committee's charter, (vii) such other information regarding each nominee proposed by the shareholder giving the notice as would be required to be included in a proxy statement filed in accordance with proxy rules of the SEC had the nominee been nominated, or intended to be nominated, by the Board and (viii) the signed consent of each nominee proposed by the shareholder giving the notice to serve as a director of the corporation if so elected.

No candidates for director nominations were submitted to the Nominating and Corporate Governance Committee by any shareholder in connection with the election of directors at the Annual Meeting. Each of the director nominees standing for election at this Annual Meeting is a current director of the company.

Annual Meeting Attendance

We do not have a formal policy regarding attendance by members of our Board of Directors at annual meetings of shareholders; however, directors are encouraged to attend all such meetings. We completed our initial public offering in October 2007. Accordingly, the 2008 Annual Meeting of Shareholders will be the first meeting of shareholders that we hold as a public company.

Shareholder Communications to the Board

Our Board of Directors has implemented a process by which shareholders may send written communications directly to the attention of the Board, any committee of the Board or any individual Board member, care of our Chairman, Dr. Ramin (Ron) Najafi, at 5980 Horton Street, Suite 550, Emeryville, California 94608. The name of any specific intended Board recipient should be noted in the communication. Our Chairman will be primarily responsible for collecting, organizing and monitoring communications from shareholders and, where appropriate depending on the facts and circumstances outlined in the communication, providing copies of such communications to the intended recipients. Communications will be forwarded to directors if they relate to appropriate and important substantive corporate or Board matters. Communications that are of a commercial or frivolous nature or otherwise inappropriate for the Board's consideration will not be forwarded to the Board.

PROPOSAL TWO:

AMENDMENT OF 2007 OMNIBUS INCENTIVE PLAN

The Board of Directors has adopted, and the shareholders have approved, our 2007 Omnibus Incentive Plan (the 2007 Plan), a discretionary plan designed to serve as a comprehensive equity incentive program to attract and retain the services of individuals essential to our long-term growth and financial success. The Board of Directors has adopted, subject to shareholder approval, an amendment to the 2007 Plan which would automatically increase the number of shares of common stock authorized for issuance under the plan every year, beginning January 2009, in an amount equal to the lesser of (a) 1,000,000 shares or (b) 4% of the number of shares of our common stock outstanding on the last day of the preceding year or (c) such lesser number as determined by our Board of Directors. The shareholders are being asked to approve the amendment.

The Board of Directors believes the amendment is necessary to assure that a sufficient reserve of our common stock remains continuously available under the 2007 Plan to allow us to continue to utilize equity incentives as and when necessary to attract and retain the services of key individuals essential to our long-term growth and financial success. Equity incentives play a significant role in our efforts to remain competitive in the market for talented individuals, and we rely on such incentives as a means to attract and retain highly qualified individuals in the positions vital to our success. As of March 31, 2008, there were options outstanding to purchase 3,105,002 shares of our common stock, granted under the 2007 Plan and our previous equity incentive plans, and 1,158,963 shares of common stock available for issuance pursuant to awards to be granted under our 2007 Plan.

We are required to obtain shareholder approval of the amendment under the rules of the American Stock Exchange. Such approval is also necessary to permit us to grant incentive stock options to employees under Section 422 of the Internal Revenue Code, as amended (the Code), and to ensure that compensation paid under the 2007 Plan is eligible for an exemption from the limits on tax deductibility imposed by Section 162(m) of the Code, which limits the deductibility of certain compensation paid to individuals who are, at the end of the tax year for which we would otherwise claim our tax deduction, our chief executive officer and our four other most highly paid executive officers.

This proposal, and the effectiveness of the amendment, will not affect awards already granted under the 2007 Plan or the shares currently reserved under the 2007 Plan; however, as indicated above, only 1,158,963 shares of common stock remain available for grant under the 2007 Plan as of March 31, 2008. If the amendment is approved by the shareholders at the Annual Meeting, the shareholders will suffer further dilution upon the exercise of future awards granted under the 2007 Plan.

Summary of 2007 Omnibus Incentive Plan

The following is a summary of the principal features of the 2007 Plan and is qualified in its entirety by reference to the 2007 Plan. A copy of the 2007 Plan, as amended and restated and proposed to be approved, is set forth in full as Appendix A to this proxy statement.

Administration. The Compensation Committee of the Board has the authority to administer the 2007 Plan. The Board may at any time appoint another committee of directors to administer the 2007 Plan provided that such committee is comprised of at least two or more independent directors. The committee administering the 2007 Plan (the committee) will have full power and authority to determine when and to whom awards will be granted, and the type, amount, form of payment and other terms and conditions of each award, consistent with the provisions of the 2007 Plan. Subject to the provisions of the 2007 Plan, the committee may amend or waive the terms and conditions, or accelerate the exercisability, of an outstanding award. The committee has authority to interpret the 2007 Plan, and establish rules and regulations for the administration of the 2007 Plan. In addition, the Board may exercise the powers of the committee at any time, but only to the extent it would not cause a loss of any benefits under Section 162(m) of the Code.

Eligible Participants. Any employee, officer, consultant, advisor or director providing services to us or any of our affiliates (including our current and future subsidiaries), who is selected by the committee, is eligible to receive an award under the 2007 Plan. Accordingly, each of our executive officers, directors and nominees for election as a director is eligible to receive awards under the 2007 Plan. However, any such grants will be made by the committee at its discretion.

Shares Available For Awards. An aggregate of 2,000,000 shares of our common stock have been reserved for issuance over the term of the 2007 Plan. We are seeking shareholder approval of an amendment which would automatically increase the number of shares of common stock authorized for issuance under the plan every year, beginning January 2009, in an amount equal to the lesser of (a) 1,000,000 shares or (b) 4% of the number of shares of our common stock outstanding on the last day of the preceding year or (c) such lesser number as determined by our Board of Directors.

The shares of common stock issuable under the 2007 Plan may be drawn from shares of authorized but unissued common stock or from shares of common stock that we acquire. The committee may adjust the number of shares and share limits described above in the case of a stock dividend or other distribution, including a stock split, merger or other similar corporate transaction or event, in order to prevent dilution or enlargement of the benefits or potential benefits intended to be provided under the 2007 Plan.

If any shares of our common stock subject to any award or to which an award relates are forfeited or are reacquired by us, or if any award terminates without the delivery of any shares, the shares previously set aside for such awards will be available for future awards under the 2007 Plan. In addition, shares used by award recipients as payment of the exercise price of an award or in satisfaction of the tax obligations relating to an award other than an incentive stock option will be available again for award grants.

Types of Awards and Terms and Conditions. The 2007 Plan permits the granting of:

stock options (including both incentive and non-qualified stock options);

stock appreciation rights (SARs);

restricted stock and restricted stock units;

performance awards of cash, stock or property;

dividend equivalents; and

other stock grants.

Awards may be granted alone, in addition to, in combination with or in substitution for, any other award granted under the 2007 Plan or any other compensation plan. Awards can be granted for no cash consideration or for cash or other consideration as determined by the committee or as required by applicable law. Awards may provide that upon the grant or exercise thereof, the holder will receive shares of our common stock or other securities or property, or any combination of these, in a single payment or installments. The exercise price per share under any stock option and the grant price of any SAR will be determined by the committee and may not be less than the fair market value on the date of grant of such option or SAR, or less than 110% of fair market value for incentive stock options granted to holders of more than 10% of our common stock. Determinations of fair market value under the 2007 Plan will be made in accordance with methods and procedures established by the committee. The term of awards will not be longer than 10 years, or in the case of incentive stock options, longer than 5 years with respect to holders of more than 10% of our common stock.

Stock Options. The holder of an option will be entitled to purchase a number of shares of our common stock at a specified exercise price during a specified time period, all as determined by the committee. The option exercise price may be payable either in cash or, at the discretion of the committee, in other securities or other property having a fair market value on the exercise date equal to the exercise price. The shares subject to each

option will generally vest in one or more installments over a specified period of service measured from the grant date. We receive no payment for the grant of an option. Upon cessation of service, the optionee will have a limited period of time in which to exercise his or her outstanding options to the extent exercisable for vested shares.

Stock Appreciation Rights. The holder of a SAR is entitled to receive the excess of the fair market value (calculated as of the exercise date or, at the committee's discretion, as of any time during a specified period before or after the exercise date) of a specified number of shares of our common stock over the grant price of the SAR, as determined by the committee, paid solely in shares of common stock. SARs vest and become exercisable in accordance with a vesting schedule established by the committee. This type of SAR is sometimes described as a stock only settled stock appreciation right.

Restricted Stock and Restricted Stock Units. The holder of restricted stock will own shares of our common stock subject to restrictions imposed by the committee (including, for example, restrictions on transferability or on the right to vote the restricted shares or to receive any dividends with respect to the shares) for a specified time period determined by the committee. The restrictions, if any, may lapse or be waived separately or collectively, in installments or otherwise, as the committee may determine. The holder of restricted stock units will have the right, subject to any restrictions imposed by the committee, to receive shares of our common stock at some future date determined by the committee. The committee also may permit accelerated vesting in the case of a participant's death, disability or retirement, or a change in control. If the participant's employment or service as a director terminates during the vesting period for any other reason, the restricted stock and restricted stock units will be forfeited, unless the committee determines that it would be in our best interest to waive the remaining restrictions.

Performance Awards. Performance awards granted under the 2007 Plan are intended to qualify as performance-based compensation within the meaning of Section 162(m) of the Code. Performance awards give participants the right to receive payments in stock or property based solely upon the achievement of certain performance goals during a specified performance period. The committee must designate all participants for each performance period, and establish performance goals and target awards for each participant no later than 90 days after the beginning of each performance period within the parameters of Section 162(m) of the Code. Performance goals must be based solely on one or more of the following business criteria: (i) revenue; (ii) cash flow; (iii) gross profit; (iv) earnings before interest and taxes; (v) earnings before interest, taxes, depreciation and amortization; (vi) net earnings; (vii) diluted earnings per share; (viii) margins, including gross profit, operating and net income margins; (ix) returns, including return on assets, equity, investment, capital and revenue and total shareholder return; (x) stock price; (xi) economic value added; (xii) working capital; (xiii) market share; (xiv) cost reductions; (xv) workforce satisfaction and diversity goals; (xvi) employee retention; (xvii) customer satisfaction; (xviii) completion of key projects; and (ixx) strategic plan development and implementation.

Dividend Equivalents. The holder of a dividend equivalent will be entitled to receive payments in shares of our common stock, other securities or other property equivalent to the amount of cash dividends paid by us to our shareholders, with respect to the number of shares determined by the committee. Dividend equivalents will be subject to other terms and conditions determined by the committee.

Stock Awards. The committee may grant unrestricted shares of our common stock, subject to terms and conditions determined by the committee and the 2007 Plan limitations.

Duration, Termination and Amendment. Unless earlier discontinued or terminated by the Board, the 2007 Plan will expire on the tenth anniversary of its adoption. No awards may be made after that date. However, unless otherwise expressly provided in an applicable award agreement, any award granted under the 2007 Plan prior to expiration may extend beyond the end of such period through the award's normal expiration date.

The Board and, pursuant to the delegation of its authority, the committee may amend, alter or discontinue the 2007 Plan at any time, although shareholder approval must be obtained for any action that would, absent such

approval, (i) violate the rules and regulations of the American Stock Exchange or any other securities exchange applicable to us, (ii) cause Rule 16b-3 of the Securities Exchange Act of 1934 or Section 162(m) of the Internal Revenue Code to become unavailable with respect to the 2007 Plan or (iii) cause us to be unable under the Internal Revenue Code to grant incentive stock options under the 2007 Plan.

Acceleration. The committee may permit accelerated vesting of an award upon the occurrence of certain events, including a change in control, regardless of whether the award is assumed, substituted or otherwise continued in effect by the successor corporation. The acceleration of vesting in the event of a change in the ownership or control may be seen as an anti-takeover provision and may have the effect of discouraging a merger proposal, a takeover attempt or other efforts to gain control of the company.

Transferability of Awards. Unless otherwise provided by the committee, awards under the 2007 Plan may only be transferred by will or by the laws of descent and distribution.

Delivery of Shares for Tax Obligation. Under the 2007 Plan, the committee may permit participants receiving or exercising awards, subject to the discretion of the committee and upon such terms and conditions as it may impose, to deliver shares of our common stock (either shares received upon the receipt or exercise of the award or shares previously owned by the holder of the option) to us to satisfy federal and state income tax obligations.

Certain Federal Income Tax Consequences

The following is a summary of the principal U.S. federal income tax consequences generally applicable to awards under the 2007 Plan.

Grant of Options and SARs. The grant of a stock option or SAR is not expected to result in any taxable income for the recipient.

Exercise of Options and SARs. Upon exercising a non-qualified stock option, the optionee will recognize ordinary income equal to the excess of the fair market value of the shares of our common stock acquired on the date of exercise over the exercise price, and we will generally be entitled at that time to an income tax deduction for the same amount. Upon exercising an incentive stock option, the optionee generally will not recognize taxable income (except that an alternative minimum tax liability may arise), and we will not be entitled to an income tax deduction. Upon exercising a SAR, the recipient of the SAR will recognize ordinary income in an amount equal to the fair market value on the exercise date of any shares of our common stock received, and we will receive an income tax deduction in the same amount.

Disposition of Shares Acquired Upon Exercise of Options and SARs. The tax consequence upon a disposition of shares acquired through the exercise of an option or SAR will depend on how long the shares have been held and whether the shares were acquired by exercising an incentive stock option or by exercising a non-qualified stock option or SAR. Generally, there will be no tax consequence to us in connection with the disposition of shares acquired under an option or SAR, except that we may be entitled to an income tax deduction in the case of the disposition of shares acquired under an incentive stock option before the applicable incentive stock option holding periods set forth in the Code have been satisfied.

Awards Other than Options and SARs. As to other awards granted under the 2007 Plan that are payable in either cash or shares of our common stock that are either transferable or not subject to substantial risk of forfeiture, the holder of the award must recognize ordinary income equal to (a) the amount of cash received or, as applicable, (b) the excess of (i) the fair market value of the shares received (determined as of the date of receipt) over (ii) the amount (if any) paid for the shares by the holder of the award. We will generally be entitled at that time to an income tax deduction for the same amount.

As to an award that is payable in shares of our common stock that are restricted from transfer and subject to substantial risk of forfeiture, unless a special election is made by the holder of the award under the Code, the holder must recognize ordinary income equal to the excess of (i) the fair market value of the shares received (determined as of the first time the shares become transferable or not subject to substantial risk of forfeiture, whichever occurs earlier) over (ii) the amount (if any) paid for the shares by the holder of the award. We will generally be entitled at that time to an income tax deduction for the same amount.

Income Tax Deduction. Subject to the usual rules concerning reasonable compensation, and assuming that, as expected, performance awards paid under the 2007 Plan are qualified performance-based compensation within the meaning of Section 162(m) of the Code, we will generally be entitled to a corresponding income tax deduction at the time a participant recognizes ordinary income from awards made under the 2007 Plan.

Deductibility of Executive Compensation Under Code Section 162(m). Section 162(m) of the Code generally limits to \$1,000,000 the amount that a publicly-held corporation is allowed each year to deduct for the compensation paid to each of the corporation's chief executive officer and the corporation's other four most highly compensated executive officers. However, qualified performance-based compensation is not subject to the \$1,000,000 deduction limit. In general, to qualify as performance-based compensation, the following requirements need to be satisfied: (1) payments must be computed on the basis of an objective, performance-based compensation standard determined by a committee consisting solely of two or more outside directors, (2) the material terms under which the compensation is to be paid, including the business criteria upon which the performance goals are based, and a limit on the maximum bonus amount which may be paid to any participant pursuant with respect to any performance period, must be approved by a majority of our shareholders and (3) the committee must certify that the applicable performance goals were satisfied before payment of any performance-based compensation.

The 2007 Plan has been designed to permit grants of stock options and SARs issued under the 2007 Plan to qualify under the performance-based compensation rules so that income attributable to the exercise of a non-qualified stock option or a SAR may be exempt from \$1,000,000 deduction limit. Grants of other awards under the 2007 Plan may not so qualify for this exemption. The 2007 Plan's provisions are consistent in form with the performance-based compensation rules, so that if the committee that grants options or SARs consists exclusively of members of our Board of Directors who qualify as outside directors, and the exercise price (or deemed exercise price, with respect to SARs) is not less than the fair market value of the shares of common stock to which such grants relate, the compensation income arising on exercise of those options or SARs should qualify as performance-based compensation which is deductible even if that income would be in excess of the otherwise applicable limits on deductible compensation income under Code Section 162(m).

Shareholder Approval

The affirmative vote of the holders of a majority of the shares of our common stock present or represented and entitled to vote at the Annual Meeting is required for approval of the proposed amendment to the 2007 Plan.

Recommendation of Our Board of Directors

Our Board of Directors recommends that the shareholders vote FOR the approval of the amendment of the 2007 Omnibus Incentive Plan.

FEES PAID TO INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM
Principal Accountant Fees

The accounting firm of Davidson & Company LLP (Davidson) was engaged to serve as our independent registered public accounting firm for the fiscal years ended December 31, 2006 and 2007, and Davidson currently continues to serve in that capacity. A representative of Davidson is expected to be present at the Annual Meeting and will have the opportunity to make a brief presentation to the shareholders if he or she so desires and is expected to be available to respond to appropriate questions from shareholders.

The following table sets forth the fees billed to us by Davidson for the fiscal years ended December 31, 2006 and 2007:

	2006	2007
Audit Fees	\$ 111,500	\$ 115,486
Audit-Related Fees		
Tax Fees		
All Other Fees		
Total Fees	\$ 111,500	\$ 115,486

Audit Fees. Audit fees consisted of fees billed by Davidson for professional services rendered in connection with the audit and quarterly reviews of our consolidated financial statements. Such fees included fees associated with the preparation and review of the registration statement on Form S-1 relating to our initial public offering completed in October 2007.

Audit-Related Fees. There were no fees billed by Davidson for audit-related services in 2006 or 2007.

Tax Fees. There were no fees billed by Davidson for tax services in 2006 or 2007.

All Other Fees. There were no fees billed by Davidson for other services in 2006 or 2007.

Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services

All engagements for services by Davidson or other independent registered public accountants are subject to prior approval by the Audit Committee; however, de minimis non-audit services may instead be approved in accordance with applicable SEC rules. The Audit Committee approved all services provided by Davidson for the fiscal years ended December 31, 2006 and 2007.

AUDIT COMMITTEE REPORT

The following is the report of the Audit Committee with respect to the audited consolidated financial statements of NovaBay Pharmaceuticals, Inc. (the Company) for the fiscal year ended December 31, 2007 included in the Annual Report on Form 10-K for that year.

The Audit Committee has reviewed and discussed the audited financial statements of the Company for the fiscal year ended December 31, 2007 with the Company's management. The Audit Committee has discussed with the Company's independent auditors, Davidson & Company LLP, the matters required to be discussed by Statement on Auditing Standards No. 61, *Communication With Audit Committees*.

The Audit Committee has also received the written disclosures and the letter from Davidson & Company LLP required by Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*, and has discussed with Davidson & Company LLP the independence of Davidson & Company LLP.

Based on the review and discussions referred to above in this report, the Audit Committee recommended to the Company's Board of Directors that the audited financial statements be included in the Company's Annual Report on Form 10-K for the year ended December 31, 2007 for filing with the Securities and Exchange Commission.

Submitted by the Audit Committee

of the Board of Directors:

Charles J. Cashion

Paul E. Freiman

Tony D.S. Wicks

EXECUTIVE COMPENSATION AND OTHER INFORMATION
Executive Officers

The table below sets forth certain information regarding our executive officers as of March 31, 2008.

Name	Age	Current Position(s)
Ramin (Ron) Najafi, Ph.D.	49	Chairman of the Board, Chief Executive Officer and President
Thomas J. Paulson	61	Chief Financial Officer and Treasurer
John (Jack) O Reilly	65	Senior Vice President, Corporate and Business Development and Director
Behzad Khosrovi, Ph.D.	64	Vice President, Research and Development
Colin Scott, MB, Ch.B.	56	Vice President, Clinical Research and Development

The following is certain biographical information regarding our executive officers. The biographies of Messrs. Najafi and O Reilly appear earlier in this proxy statement. See Proposal One: Election of Directors.

Thomas J. Paulson has served as our Chief Financial Officer and Treasurer since January 2008. Prior to joining us, Mr. Paulson was a partner at Tatum LLC, an executive services and consulting firm which he joined in April 2007, and the President and Chief Executive Officer of The Paulson Group, a management consulting company whose clients included high-technology and biotechnology companies, which he founded in February 2006. Immediately prior to forming the consulting firm, Mr. Paulson was Vice President-Finance, Chief Financial Officer and Secretary of Avigen, Inc., a publicly traded biopharmaceutical company focused on unique and small molecule therapeutics and biologics, from 1996 to January 2006. From 1994 to 1996, Mr. Paulson was a consultant to several high-technology and biotechnology companies. From 1989 to 1994, Mr. Paulson served as Chief Financial Officer, Secretary and Treasurer of Neurogen Corporation, a publicly traded development stage biotechnology company. Mr. Paulson's earlier career included financial positions at Ciba-Corning Diagnostics, Quidel Corporation and Abbott Laboratories. Mr. Paulson received a B.A. in Business Administration from Loyola University in Chicago and an M.B.A. from the University of Chicago.

Behzad Khosrovi, Ph.D. has served as our Vice President, Research & Development since November 2003. From 1998 to November 2003, Dr. Khosrovi was a consultant in the biotechnology industry, generally working with start-up companies in the San Francisco Bay Area. Dr. Khosrovi's prior experience also includes serving as the Vice President of Development at Neurobiological Technologies, Inc. from 1992 to 1998 and at Cetus Corporation from 1976 to 1990. Dr. Khosrovi received an M.A. in natural science from Cambridge University and a Ph.D. in applied microbiology and biochemical engineering from Manchester University.

Colin Scott, MB, Ch.B. has served as our Vice President, Clinical Research and Development since January 2006. Prior to joining us, from October 2004 to December 2005, Dr. Scott was the Vice President, Drug Development for GlycoMimetics, a biotech company that specializes in the modification of carbohydrate/protein interactions. From June 2004 to September 2004, Dr. Scott was a consultant to several biopharmaceutical companies. From September 2002 to May 2004, Dr. Scott served as the Vice President, Clinical and Regulatory at Arriva Pharmaceuticals, Inc., a biopharmaceutical company focused on the development of anti-inflammatory therapies for respiratory indications. From March 2001 to May 2002, he served as the Vice President, Clinical of Emisphere Technologies, Inc., a biopharmaceutical company focused on developing oral forms of injectable drugs. Dr. Scott received a medical degree in pulmonology and infectious diseases from Glasgow University in Scotland.

Our executive officers are elected by our Board of Directors and serve at the discretion of our Board until their successors have been duly elected and qualified or until their earlier resignation or removal.

Compensation Discussion and