

NovaBay Pharmaceuticals, Inc.  
Form 424B5  
October 26, 2015  
**Explanatory Note**

**This filing is made solely to correct the per share dilution effects of this offering based on our net tangible book value as of June 30, 2015 as disclosed on pages S-5 and S-9 as follows: (i) our as adjusted net tangible book value is changed from \$0.10 per share to \$0.08 per share, (ii) the immediate increase in net tangible book value to existing stockholders is changed from \$0.03 per share to \$0.01 per share, and (iii) the immediate dilution in net tangible book value to new investors purchasing our shares of common stock in this offering is changed from \$0.10 per share to \$0.12 per share. No other changes have been made to the prospectus supplement or the accompanying base prospectus.**

**Filed Pursuant to Rule 424(b)(5)**

**Registration No. 333-180460**

**PROSPECTUS SUPPLEMENT**

**(To the Prospectus Dated May 1, 2012)**

**12,300,000 Shares of Common Stock  
Warrants to Purchase 11,070,000 Shares of Common Stock**

We are offering 12,300,000 shares of our common stock. Each investor will also receive a warrant to purchase 0.90 of a share of our common stock at any time on or before 60 months from the date of issuance and at an exercise price of \$0.20 per share for each share of common stock purchased. The common stock and warrants will be issued separately.

Our common stock is listed on the NYSE MKT under the symbol "NBY." On October 22, 2015, the last reported sale price of our common stock was \$0.32 per share. There is no established public trading market for the warrants, and we do not expect a market to develop. In addition, we do not intend to apply for the listing of the warrants on any national securities exchange or other nationally recognized trading system.

As of October 20, 2015, the aggregate market value of our outstanding common stock held by non-affiliates was approximately \$27.2 million, based on 74,717,961 shares of outstanding common stock, of which approximately 60,509,550 shares are held by non-affiliates, and a per share price of \$0.45, based on the closing sale price of our common stock on September 11, 2015. As of the date hereof, excluding the securities to be sold in this offering, we have sold \$1,578,642 of our common stock pursuant to General Instruction I.B.6 of Form S-3 during the prior 12 calendar month period that ends on and includes the date hereof.

**Investing in our securities involves significant risks. Before purchasing our common stock and warrants, please review the information, including information incorporated by reference, under the heading "Risk Factors" beginning on page S-5 of this prospectus supplement and page 6 of the accompanying 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 supplement. Any representation to the contrary is a criminal offense.**

	<b>Per Share and</b>	
	<b>Warrant</b>	<b>Accompanying Total</b>
Public offering price	\$0.200	\$2,460,000
Underwriting discounts and commissions (1)	\$0.014	\$172,200
Proceeds to us (before expenses)(2)	\$0.186	\$2,287,800

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In addition, we have agreed to reimburse the underwriter for certain out-of-pocket expenses. See "Underwriting" (1) beginning on page S-12 of this prospectus supplement for a description of the compensation payable to the underwriter.

- (2) The amount of the offering proceeds to us presented in this table does not give effect to any exercise of the warrants being issued in this offering.

The above summary of offering proceeds to us does not give effect to any exercise of the warrants being issued in this offering. We estimate the total expenses of this offering payable by us, excluding the underwriting discounts and commissions, will be approximately \$200,000.

We anticipate that delivery of the shares of our common stock and warrants will be made against payment therefor on or about October 27, 2015, subject to customary closing conditions.

#### **Roth Capital Partners**

The date of this prospectus supplement is October 23, 2015.

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### Prospectus

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You should rely only on the information incorporated by reference or provided in this prospectus supplement, the accompanying prospectus and any free writing prospectus that we have authorized for use in connection with this offering. Neither we nor the underwriter have authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. This prospectus supplement and the

accompanying prospectus do not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this prospectus supplement and the accompanying prospectus in any jurisdiction where it is unlawful to make such offer or solicitation. You should assume that the information contained in this prospectus supplement or the accompanying prospectus, or any document incorporated by reference in this prospectus supplement or the accompanying prospectus, and any free writing prospectus that we have authorized for use in connection with this offering is accurate only as of the date of those respective documents. Neither the delivery of this prospectus supplement nor any distribution of securities pursuant to this prospectus supplement shall, under any circumstances, create any implication that there has been no change in the information set forth or incorporated by reference into this prospectus supplement or in our affairs since the date of this prospectus supplement. Our business, financial condition, results of operations and prospects may have changed since that date.

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## **ABOUT THIS PROSPECTUS SUPPLEMENT**

This prospectus supplement is part of a registration statement (No. 333-180460) that we filed with the Securities and Exchange Commission, or the SEC, using a "shelf" registration process. Under the registration statement, we registered the offering by us of common stock, preferred stock, debt securities and warrants for sale from time to time in one or more offerings. This prospectus supplement provides specific information about the offering by us of our common stock and accompanying warrants under the shelf registration statement. This document is in two parts. The first part is the prospectus supplement, which adds to and updates information contained in the accompanying prospectus. The second part, the prospectus, provides more general information, some of which may not apply to this offering. Generally, when we refer to this prospectus, we are referring to both parts of this document combined. To the extent there is a conflict between the information contained in this prospectus supplement, on the one hand, and the information contained in the accompanying prospectus, on the other hand, you should rely on the information in this prospectus supplement.

Before purchasing any securities, you should carefully read both this prospectus supplement and the accompanying prospectus, together with the documents incorporated by reference herein as described under the heading "Incorporation of Certain Information by Reference" and the additional information described under the heading, "Where You Can Find More Information" in this prospectus supplement, as well as any free writing prospectus prepared by or on behalf of us or to which we have referred you.

We are offering to sell, and are seeking offers to buy, the shares and warrants only in jurisdictions where such offers and sales are permitted. The distribution of this prospectus supplement and the accompanying prospectus and the offering of the shares and warrants in certain jurisdictions or to certain persons within such jurisdictions may be restricted by law. Persons outside the United States who come into possession of this prospectus supplement and the accompanying prospectus must inform themselves about and observe any restrictions relating to the offering of the shares and warrants and the distribution of this prospectus supplement and the accompanying prospectus outside the United States. This prospectus supplement and the accompanying prospectus do not constitute, and may not be used in connection with, an offer to sell, or a solicitation of an offer to buy, any securities offered by this prospectus supplement and the accompanying prospectus by any person in any jurisdiction in which it is unlawful for such person to make such an offer or solicitation.

Unless the context requires otherwise, all references in this report to "we," "our," "us," the "Company," "NovaBay" and "NovaBay Pharmaceuticals" refer to NovaBay Pharmaceuticals, Inc. and its subsidiaries, and with respect to NovaBay Pharmaceuticals, Inc. refer to the California corporation prior to the date of the Reincorporation (as defined herein), and to the Delaware corporation on and after the date of the Reincorporation.

This prospectus supplement and the accompanying prospectus, including the information incorporated by reference into this prospectus supplement and the accompanying prospectus, include trademarks, service marks and trade names

owned by us or other companies. All trademarks, service marks and trade names included or incorporated by reference into this prospectus supplement and the accompanying prospectus, or any related free writing prospectus, are the property of their respective owners.

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## PROSPECTUS SUPPLEMENT SUMMARY

*This summary highlights selected information about our company, this offering and information appearing elsewhere in this prospectus supplement, in the accompanying prospectus, in the documents we incorporate by reference and in any free writing prospectus that we have authorized for use in connection with this offering. This summary is not complete and does not contain all the information that you should consider before investing in our common stock and the accompanying warrants. You should read this entire prospectus supplement and the accompanying prospectus carefully, including the "Risk Factors" contained in this prospectus supplement, the accompanying prospectus and the financial documents and notes incorporated by reference in this prospectus supplement and the accompanying prospectus and any free writing prospectus that we have authorized for use in connection with this offering, before making an investment decision. This prospectus supplement may add to, update or change information in the accompanying prospectus.*

### Overview

NovaBay Pharmaceuticals, Inc. is a biopharmaceutical company focused on addressing the unmet therapeutic needs of the global, topical anti-infective market with two distinct technologies: (1) Neutrox,<sup>TM</sup> our proprietary pure hypochlorous acid solution, and (2) our novel Aganocide<sup>®</sup> compounds. In addition, we recently expanded our eye care market offerings by improving upon existing hydrogen peroxide disinfection technology.

Using the Neutrox technology, we have developed three branded products, namely, Avenova<sup>TM</sup> (previously known as i-Lid Cleanser) for the eye care market, NeuroPhase<sup>®</sup> for the wound-care market, and CelleRx<sup>®</sup> for the dermatology market. Our novel and patented Aganocide compounds are still in clinical development.

In April 2015, we received 510(k) clearance from the U.S. Food and Drug Administration, or FDA, to market our newly developed product for the eye care market, Intelli-Case,<sup>TM</sup> which uses microprocessor technology to ensure the safe use of hydrogen peroxide cleaning solutions by contact lens wearers.

### Products Containing Neutrox

Neutrox is a pure, proprietary, stable formulation of hypochlorous acid, or HOCl, in saline. HOCl is a naturally occurring compound that has been perfected over millions of years by the human immune system to be the "molecule of choice" to destroy pathogens. *In vitro* studies with HOCl have demonstrated broad-spectrum, anti-microbial, anti-inflammatory and anti-bacterial toxin activity. Three branded Neutrox-containing products are currently being

commercialized as prescription medical devices: Avenova, NeutroPhase, and CelleRx.

***Avenova (Ophthalmology)***. Launched in the United States in 2014, Avenova (0.01% Neutrox) is the only prescription product for daily eyelid and eyelash hygiene. Cleansing with Avenova removes microorganisms and debris from the skin on eyelids and lashes without burning or irritation.

A growing number of patients with blepharitis, meibomian gland dysfunction, MGD, and associated dry eye have found Avenova to be soothing and effective at removing microorganisms and debris, and many key opinion leaders in the field of eye care have embraced Avenova for the management of these eye conditions.

In August 2014, we launched Avenova through a dedicated direct salesforce in the United States. Our medical sales representatives are targeting both optometrists and ophthalmologists, educating them on the attributes of Avenova as an advancement in the management of blepharitis, MGD and associated dry eye. Avenova is available under a prescription from approximately 90 percent of the retail pharmacies nationwide through distribution agreements with AmerisourceBergen Corporation, Cardinal Health and McKesson Corporation. Avenova also has been added to the Vision Source Independent Optometry Network, which is the largest independent optometry network in the country, representing 2,800 independent optometrist offices.

Avenova is well suited for daily use by the millions of Americans who suffer from chronic eye conditions like blepharitis and MGD. We estimate the U.S. market size for Avenova for the management of blepharitis and MGD at approximately \$500 million, and we believe that no other commercial products offer the unique advantages of Avenova. We are currently in the process of seeking partners to distribute Avenova outside of the U.S.

Avenova is priced reasonably for consumers and is subject to private pay.

**NeutroPhase (Wound Care).** Since its U.S. launch in 2013, NeutroPhase has made a significant impact in wound care. Consisting of 0.03% Neutrox, NeutroPhase may be used to cleanse and remove microorganisms from any type of acute or chronic wound, and can be used with any type of wound care modality. Recently, NeutroPhase has been found to be an effective irrigation solution as part of the adjunct treatment for Necrotizing Fasciitis, NF. Also known as flesh-eating disease, NF typically has a high mortality and amputation rate (30% and 70%, respectively) even with aggressive debridement and antibiotic treatment. In vitro studies have shown that NeutroPhase not only kills the microorganisms implicated in NF, but also neutralizes the toxins secreted by the microorganisms. Success using NeutroPhase as an irrigation solution has established it as an effective part of the adjunct treatment for this deadly disease.

We believe that NeutroPhase is well-suited to treat the six-million patients in the U.S. who suffer from chronic non-healing wounds, such as pressure, venous stasis and diabetic ulcers. In March 2015, NeutroPhase was named the official wound cleanser by the National Necrotizing Fasciitis Foundation. In the U.S. and internationally, NeutroPhase is distributed through commercial partners. In January 2012, we entered into an exclusive distribution agreement with Pioneer Pharma Holdings Limited (HK: 1345), or "Pioneer," a Shanghai-based company, for the distribution of NeutroPhase throughout Southeast Asia and mainland China. We recently expanded the agreement with Pioneer so that it includes the licensing rights to CelleRx and Avenova in the same markets. In the U.S., NeutroPhase is distributed through our partner, Principle Business Enterprise. We also have international distribution agreements for NeutroPhase with (1) Biopharm for MENA region (Middle East North Africa), (2) Alpha Pharma LLC for Ukraine, and (3) Shin-Poong Pharma for South Korea. We are in the process of securing other partnerships for distribution of NeutroPhase around the world.

**CelleRx (Dermatology).** Created for cosmetic procedures, CelleRx™ (0.015% Neutrox) is a gentle cleansing solution, which is effective for post laser resurfacing, chemical peels and other cosmetic surgery procedures. Cosmetic surgeons and aesthetic dermatologists have found that CelleRx results in less pain, less erythema, and less exudates compared to saline. CelleRx is a non-alcohol formulation that doesn't dry or stain the skin, and most importantly, may reduce the patient's down-time post procedure. We are currently looking for partners to commercialize CelleRx around the world.

### **Aganocide Compounds Still in the Development Stage**

Our first-in-class Aganocide compounds, led by auriclosene (NVC-422), are patented, synthetic molecules with a broad spectrum of activity against bacteria, viruses and fungi. In 2013, the World Health Organization (WHO) approved *auriclosene* as the new generic nomenclature for NVC-422, one of our Aganocide compounds. We have explored the use of our auriclosene in the indications of urology, dermatology, and ophthalmology. We are seeking development partners for our auriclosene products.

### **Newly Developed Intelli-Case with Hydrogen Peroxide Solutions**

In April 2015, we received 510(k) clearance from the FDA to market our newly developed product Intelli-Case for the eye care market.

Following the launch of Avenova, Intelli-Case with hydrogen peroxide solutions is the second in a series of new products that we are developing in the eye care market. Hydrogen peroxide is an industry standard for disinfection of contact lenses, but can irritate the eye or fail to kill bacteria if not used correctly. Our new Intelli-Case ensures the adequacy of the disinfection cycle and that the contact lenses are safe for insertion into the eyes, potentially benefiting millions of contact lens users.

The Intelli-Case is an innovative and easy-to-use device for the millions of Americans who wear contact lenses and want to use an effective disinfection system. The Intelli-Case monitors the neutralization of hydrogen peroxide during the disinfection cycle with microprocessor electronics embedded in the cap of what otherwise looks like a standard peroxide lens case. The high-tech cap has three LED lights labeled UNSAFE, BUSY and READY.

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Lenses are placed into the case with hydrogen peroxide solution. The green light (READY) blinks when lenses are safe to insert into the eyes and continues to blink green until contact lenses are removed from the case.

The intelli-Case can be co-packaged with a hydrogen peroxide disinfection and cleaning solution, and we are actively seeking a partnership with a hydrogen peroxide manufacturer. We believe that replacing the standard case that is typically boxed with hydrogen peroxide solutions with intelli-Case would make a differentiated product attractive to both eye care professionals and contact lens users.

### **Company Information**

We were incorporated under the laws of the State of California on January 19, 2000 as NovaCal Pharmaceuticals, Inc., and subsequently changed our name to NovaBay Pharmaceuticals, Inc. In June 2010, we changed the state in which we are incorporated, which we refer to as the Reincorporation, and are now incorporated under the laws of the State of Delaware.

Our corporate address is 5980 Horton Street, Suite 550, Emeryville, CA 94608, and our telephone number is (510) 899-8800. Our website address is [www.novabaypharma.com](http://www.novabaypharma.com). Information found on, or accessible through, our website is not a part of, and is not incorporated into, this prospectus supplement or the accompanying prospectus, and you should not consider it part of this prospectus supplement or the accompanying prospectus. Our website address is included in this document as an inactive textual reference only.

Unless the context requires otherwise, all references in this report to "we," "our," "us," the "Company," "NovaBay" and "NovaBay Pharmaceuticals" refer to NovaBay Pharmaceuticals, Inc. and its subsidiaries, and with respect to NovaBay Pharmaceuticals, Inc. refer to the California corporation prior to the date of the Reincorporation, and to the Delaware corporation on and after the date of the Reincorporation.

## The Offering

Common stock offered by us pursuant to this prospectus supplement	12,300,000 shares
Warrants offered	Warrants to purchase up to 11,070,000 shares of common stock. The warrants will be exercisable during the period commencing on the date of original issuance and ending 60 months from such issuance date at an exercise price of \$0.20 per share of common stock. The warrants have certain price protection features against subsequent dilutive equity sales as described in more details in the section entitled “Description of Securities We Are Offering – Warrants” and the form of warrant, which is attached as Annex A to

this prospectus supplement.

This prospectus also relates to the offering of the shares of common stock issuable upon exercise of the warrants.

Common stock to be outstanding immediately after the offering

85,941,978 shares

Use of proceeds

We currently intend to use the net proceeds from this offering for working capital and general corporate purposes, including research and development, clinical trials and selling, general and administrative expenses. See "Use of Proceeds" below.

NYSE MKT Symbol for our common stock

NBY

Risk factors

Investing in our securities involves a high degree of risk. See "Risk Factors" beginning on page S-5 of this prospectus supplement and page 6 of the

accompanying  
prospectus.

The number of shares of our common stock that will be issued and outstanding immediately after this offering as disclosed above is based on 73,641,978 shares of common stock issued and outstanding as of June 30, 2015, and excludes the following:

shares of common stock issuable upon the exercise of stock options outstanding, of which there were approximately 8.7 million outstanding as of June 30, 2015, with a weighted average exercise price of \$1.44 per share;

shares of common stock issuable upon the vesting of outstanding restricted stock units, of which there were approximately 9,000 outstanding as of June 30, 2015;

shares of common stock issuable upon the exercise of our outstanding warrants, of which there were warrants outstanding as of June 30, 2015, to purchase approximately 4.9 million shares of common stock at an exercise price of \$1.42 per share, and approximately 21.9 million shares of common stock at an exercise price of \$0.62 per share; and

approximately 1.9 million shares of common stock not subject to stock awards and reserved for issuance under our equity incentive plans.

#### **Waiver of Contractual Pre-emptive Right and Amendment of Issued Warrants**

On March 3, 2015, we entered into a securities purchase agreement with certain purchasers, pursuant to which we issued and sold Company securities that included warrants with a 5-year term, or the Long-Term Warrants, to purchase up to 6,954,998 shares of common stock and warrants with a 15-month term, or the Short-Term Warrants, to purchase up to 9,273,332 shares of common stock. The securities purchase agreement also provided the purchasers with a contractual right to purchase their pre-emptive pro rata portion of any equity securities we may issue until March 3, 2016, and set forth a procedure to exercise this right that included an extended 20 business days prior notice period. In order for the Company to expeditiously raise capital in this offering and in future offerings, we have obtained the waiver of the 20 business days notice period from purchasers in the Company's March 2015 offering in exchange for a two business days notice period until such right expires in March 3, 2016. We intend to amend the securities purchase agreement to reflect the terms of the waiver in connection with this offering.

As consideration for the purchasers in the March 2015 offering delivering the waiver as described above, we will amend the Long-Term Warrants and the Short-Term Warrants held by the purchasers to lower the exercise price of those warrants to an amount equal to the closing price per share of our common stock NYSE MKT on the date of commencement of this offering and add anti-dilution protections relating to

future issuances of Company securities. The Short-Term Warrants will also be amended to increase the exercise period for which these warrants could be exercised from 15 months to five years. In addition, certain purchasers in our March 2015 offering as described above were also purchasers in the Company's July 2011 equity offering in which warrants to purchase 3,488,005 shares of common stock with an exercise price of \$1.33 per share were issued. We have agreed to amend the warrants from the July 2011 offering to lower the exercise price of those warrants to an amount equal to the closing price per share of our common stock on NYSE MKT on the date of commencement of this offering, add anti-dilution protections relating to future issuances of Company securities, and extend the expiration date of exercise period for which these warrants could be exercised from July 5, 2016 to March 3, 2020. See "Description of Securities We Are Offering – Waiver and Amendment of Certain Securityholders' Rights in Connection with this Offering."

As of October 20, 2015, there were outstanding Long-Term Warrants, Short-Term Warrants and July 2011 Warrants to purchase 6,954,998 shares, 9,273,332 shares and 3,465,505 shares of our common stock, respectively.

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## **RISK FACTORS**

*Any investment in our securities involves a high degree of risk, including the risks described below and in the section titled "Risk Factors" contained in both our Annual Report on Form 10-K filed with the SEC on March 26, 2015, and our Quarterly Reports on Form 10-Q filed with the SEC on May 14, 2015 and August 13, 2015, which are incorporated by reference herein. Before purchasing our common stock and the accompanying warrants, you should carefully consider the risk factors set forth below and in our Annual Report and Quarterly Reports as well as all other information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus, including our consolidated financial statements in our Annual Report and any free writing prospectus that we have authorized for use in connection with this offering. The risks and uncertainties described below and in our Annual Report and Quarterly Reports are not the only risks and uncertainties we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. If any of the risks described below or in our Annual Report and Quarterly Reports actually occur, our business, financial condition and results of operations could suffer. As a result, the trading price of our stock could decline, perhaps significantly, and you could lose all or part of your investment. The risks discussed below and in our Annual Report and Quarterly Reports also include forward-looking statements and our actual results may differ substantially from those discussed in these forward-looking statements. See the section entitled "Forward-Looking Information."*

### **Risks Relating to our Common Stock and this Offering**

*Management will have broad discretion as to the use of the proceeds from this offering, and we may not use the proceeds effectively.*

Our management will have broad discretion in the application of the net proceeds from this offering and could spend the proceeds in ways that do not improve our results of operations or enhance the value of our common stock. You will be relying on the judgment of our management with regard to the use of these net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the net proceeds are being used appropriately. It is possible that the net proceeds will be invested in a way that does not yield a favorable, or any, return for us. Our failure to apply these funds effectively could have a material adverse effect on our business or the commercialization of our product candidates and cause the price of our common stock to decline.

*You will experience immediate and substantial dilution in the net tangible book value per share of the common stock you purchase.*

Since the price per share of our common stock being offered is substantially higher than the net tangible book value per share of our common stock, you will suffer substantial dilution in the net tangible book value of the common stock

you purchase in this offering. Based on the sale of 12,300,000 shares of common stock in this offering and warrants to purchase 11,070,000 shares of common stock and the public offering price of \$0.20 per share and accompanying warrant, if you purchase shares of common stock in this offering, you will suffer immediate and substantial dilution of \$0.12 per share in the net tangible book value of the common stock. See the section entitled "Dilution" below for a more detailed discussion of the dilution you will incur if you purchase common stock and accompanying warrants in this offering.

***We will require additional capital funding, and as a result you may experience future dilution as a result of future equity offerings.***

We will require that significant additional capital in the future to continue our planned operations and comply with NYSE MKT listing requirements. To raise additional capital, we may in the future offer additional shares of our common stock or other securities convertible into or exchangeable for our common stock. We cannot assure you that additional capital will be available when needed or that we will be able to sell shares or other securities in any other offering at a price per share that is equal to or greater than the price per share paid by investors in this offering, and investors purchasing shares or other securities in the future could have rights, preferences and privileges superior to existing stockholders. The price per share at which we sell additional shares of our common stock or other securities convertible into or exchangeable for our common stock in future transactions may be higher or lower than the price per share in this offering.

Additionally, you may incur dilution as a result of grants of equity awards under our equity incentive plans, or upon exercise of options or warrants currently outstanding with exercise prices at or below the public offering price of our common stock in this offering. See the section entitled "Dilution" below for a more detailed discussion of the dilution you will incur if you purchase common stock and accompanying warrants in this offering. In connection with this offering, the Company agreed to amend previously issued long-term warrants from the March 2015 offering that are exercisable for an aggregate of 6,954,998 shares of common stock, short-term warrants from the March 2015 offering that are exercisable for an aggregate of 9,273,332 shares of common stock and warrants from the July 2011 offering that are exercisable for an aggregate of 3,465,505 shares of common stock, which amendments include lowering the exercise price of those warrants that were previously \$0.65 per share, \$0.60 per share and \$1.33 per share, respectively, to an amount equal to the closing price per share of our common stock NYSE MKT on the date of commencement of this offering and the extension of the exercise period of certain of these warrants. See the section entitled "Description of Securities We Are Offering - Waiver and Amendment of Certain Securityholders' Rights in Connection with this Offering."

***The price of our common stock may fluctuate substantially, which may result in losses to our stockholders.***

The stock prices of many companies in the pharmaceutical and biotechnology industry have generally experienced wide fluctuations, which are often unrelated to the operating performance of those companies. The market price of our common stock is likely to be volatile and could fluctuate in response to, among other things:

successful shifting in strategy to focus on eye care market started at the end of 2014;

the results of preclinical or clinical trials relating to our product candidates;

the announcement of new products by us or our competitors;

announcement of partnering arrangements by us or our competitors;

quarterly variations in our or our competitors' results of operations;

announcements by us related to litigation;

changes in our earnings estimates, investors' perceptions, recommendations by securities analysts or our failure to achieve analysts' earnings estimates;

developments in our industry; and

general economic and market conditions, including the recent volatility in the financial markets and decrease in consumer confidence and other factors unrelated to our operating performance or the operating performance of our competitors.

***A substantial number of shares of our common stock may be sold in this offering, which could cause the price of our common stock to decline.***

In this offering we will sell 12,300,000 shares, or approximately 16.5% of our outstanding common stock as of October 20, 2015, together with warrants to purchase 11,070,000 shares, or approximately 14.8% of our outstanding common stock as of October 20, 2015. This sale and any future sales of a substantial number of shares of our common stock in the public market, or the perception that such sales may occur, could adversely affect the price of our common stock. We cannot predict the effect, if any, that market sales of those shares of common stock or the availability of those shares of common stock for sale will have on the market price of our common stock.

***There is no public market for the warrants to purchase shares of common stock being offered in this offering.***

There is no established public trading market for the warrants being offered in this offering, and we do not expect a market to develop. In addition, we do not intend to apply to list the warrants on any national securities exchange or other nationally recognized trading system, including the NYSE MKT. Without an active market, the liquidity of the warrants will be limited. The warrants in this offering will be issued in physical form.

*The warrants are speculative in nature.*

The warrants do not confer any rights of common stock ownership on its holders, such as voting rights or the right to receive dividends, but rather merely represent the right to acquire shares of common stock at a fixed price for a limited period of time. Specifically, commencing on the date of issuance, holders of the warrants may exercise their right to acquire the common stock and pay an exercise price of \$0.20 per share, subject to certain adjustments, prior to 60 months from the date of issuance, after which date any unexercised warrants will expire and have no further value. Moreover, following this offering, the market value of the warrants is uncertain and there can be no assurance that the market value of the warrants will equal or exceed their public offering price. The warrants will not be listed or quoted for trading on any market or exchange. There can be no assurance that the market price of the common stock will ever equal or exceed the exercise price of the warrants, and consequently, whether it will ever be profitable for holders of the warrants to exercise the warrants.

***The volume of trading of our common stock may be low, leaving our common stock open to the risk of high volatility.***

The number of shares of our common stock being traded may be very low. Any stockholder wishing to sell his/her stock may cause a significant fluctuation in the price of our stock. In addition, low trading volume of a stock increases the possibility that, despite rules against such activity, the price of the stock may be manipulated by persons acting in their own self-interest. We may not have adequate market makers and market making activity to prevent manipulation.

***Our limited operating history may make it difficult for you to evaluate our business and to assess our future viability.***

Our operations to date have been limited to organizing and staffing our company, developing our technology, researching and developing our compounds, conducting clinical trials, and building the foundation of a commercial organization. We have not demonstrated the long term ability to succeed in achieving clinical endpoints, obtain regulatory approvals, formulate and manufacture products on a commercial scale or conduct sales and marketing activities. Consequently, any predictions you make about our future success or viability are unlikely to be as accurate as they could be if we had a longer operating history.

***Our amended and restated certificate of incorporation and bylaws and Delaware law, contain provisions that could discourage a third party from making a takeover offer that is beneficial to our stockholders.***

Anti-takeover provisions of our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law may have the effect of deterring or delaying attempts by our stockholders to remove or replace management, engage in proxy contests and effect changes in control. The provisions of our charter documents include:

- a classified board so that only one of the three classes of directors on our Board of Directors is elected each year;
- elimination of cumulative voting in the election of directors;
- procedures for advance notification of stockholder nominations and proposals;
- the ability of our Board of Directors to amend our bylaws without stockholder approval; and
- the ability of our Board of Directors to issue up to 5,000,000 shares of preferred stock without stockholder approval upon the terms and conditions and with the rights, privileges and preferences as our Board of Directors may determine.

In addition, as a Delaware corporation, we are subject to the Delaware General Corporation Law, which includes provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in control or management of our company. Provisions of the Delaware General Corporation Law could make it more difficult for a third party to acquire a majority of our outstanding voting stock by discouraging a hostile bid, or delaying, preventing or deterring a merger, acquisition or tender offer in which our stockholders could receive a premium for their shares, or effect a proxy contest for control of NovaBay or other changes in our management.

***We have not paid dividends in the past and do not expect to pay dividends in the future, and any return on investment may be limited to the value of our stock.***

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future. The payment of dividends on our common stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as our Board of Directors may consider relevant. If we do not pay dividends, you will experience a return on your investment in our shares only if our stock price appreciates. We cannot assure you that you will receive a return on your investment when you do sell your shares or that you will not lose the entire amount of your investment.

*If our stockholder equity does not meet the minimum standards of the NYSE MKT, we may be subject to delisting procedures.*

On April 28, 2015, we received a letter from the NYSE MKT notifying us that our stockholders' equity as of December 31, 2014 was below the minimum requirements of Sections 1003(a) (ii) and (iii) of the NYSE MKT Company Guide. In order to maintain our listing, we submitted a plan of compliance, addressing how we intend to regain compliance with the Company Guide within 18 months, or by November 28, 2016. We continue our listing but will be subject to periodic reviews by the exchange. If we do not make progress consistent with the plan, the exchange will initiate delisting procedures, as appropriate. We are pursuing options to address the deficiency as indicated in our plan; however, we cannot guarantee that we will either meet and/or be able to maintain the listing requirements, and therefore our common stock may be subject to delisting. If our common stock is delisted, this could, among other things, substantially impair our ability to raise additional funds; result in a loss of institutional investor interest and fewer financing opportunities for us; and/or result in potential breaches of representations or covenants of our warrants, subscription agreements or other agreements pursuant to which we made representations or covenants relating to our compliance with applicable listing requirements. Claims related to any such breaches, with or without merit, could result in costly litigation, significant liabilities and diversion of our management's time and attention and could have a material adverse effect on our financial condition, business and results of operations.

## **FORWARD-LOOKING INFORMATION**

Certain statements contained in this prospectus supplement and the accompanying prospectus, including the documents incorporated by reference therein, related to the anticipated size of clinical trials, the anticipated timing of initiation of clinical trials, the expected availability of clinical trial results, the sufficiency of our cash resources, the estimated costs of clinical trials and the amounts of certain revenues and certain costs in comparison to prior years, or that otherwise relate to future periods, are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. The words "believe," "may," "estimate," "continue," "anticipate," "intend," "expect," "predict," "potential" and similar expressions are intended to identify forward-looking statements. These statements are based on assumptions that may not prove accurate. Actual results could differ materially from those anticipated due to certain risks inherent in the biotechnology industry and for companies engaged in the development of new products in a regulated market. Among other things: we will need to raise additional capital, and we may not be able to do so on acceptable terms or at all; we are an early stage company with a history of losses and expect to incur net losses for the foreseeable future; we only have four marketable products in the USA, and if we are unable to develop and obtain regulatory approval for other products we may never generate significant product revenues; our marketable products have yet to generate any substantial revenue and may fail to achieve the market acceptance necessary to do so; we will require substantial funds to continue development which may not be available; if our therapeutic product candidates do not receive regulatory approval, neither our third-party collaborators, our contract manufacturers nor we will be able to manufacture and market them; and we have limited experience in developing drugs and medical devices, and we may be unable to commercialize any of the new products we develop. These and other risks, including those related to current economic and financial market conditions, are described in more detail in "Risk Factors" above and the additional risk factors contained in our most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q. We undertake no obligation to publicly update any forward-looking

statements, regardless of any new information, future events or other occurrences. We advise you, however, to consult any additional disclosures we make in our reports to the SEC on Forms 10-K, 10-Q and 8-K.

## **USE OF PROCEEDS**

We estimate the net proceeds from this offering will be approximately \$2.1 million, excluding the proceeds, if any, from the exercise of the warrants, after deducting underwriting discounts and commissions and our estimated offering expenses. We cannot predict when or if the warrants will be exercised, and it is possible that the warrants may expire and never be exercised.

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We currently intend to use the net proceeds from this offering for working capital and general corporate purposes, including research and development, clinical trials and selling, general and administrative expenses. As a result, our management will retain broad discretion in the allocation and use of the net proceeds of this offering, and investors will be relying on the judgment of our management with regard to the use of these net proceeds. Pending application of the net proceeds for the purposes as described above, we expect to invest the net proceeds in short-term, interest-bearing securities, investment grade securities, certificates of deposit or direct or guaranteed obligations of the U.S. government.

## DILUTION

Our net tangible book value as of June 30, 2015, was approximately \$4.9 million, or \$0.07 per share of common stock. Net tangible book value per share is determined by dividing our total tangible assets, less total liabilities, by the number of our shares of common stock outstanding as of June 30, 2015. Dilution in net tangible book value per share represents the difference between the amount per share paid by purchasers of common stock in this offering and the net tangible book value per share of our common stock immediately after this offering.

After giving effect to the sale of 12,300,000 shares of common stock and accompanying warrants in this offering at the public offering price of \$0.20 per share and accompanying warrant, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, and excluding the proceeds, if any, from the exercise of the warrants issued pursuant to this offering, our as adjusted net tangible book value as of June 30, 2015, would have been approximately \$7.0 million, or \$0.08 per share. This represents an immediate increase in net tangible book value of \$0.01 per share to existing stockholders and immediate dilution in net tangible book value of \$0.12 per share to new investors purchasing our shares of common stock in this offering. The following table illustrates this dilution on a per share basis:

Public offering price per share and accompanying warrant	\$ 0.20
Net tangible book value per share as of June 30, 2015	\$0.07
Increase per share attributable to investors participating in this offering	\$ 0.01
As adjusted net tangible book value per share after this offering	\$ 0.08
Dilution per share to investors participating in this offering	\$ 0.12

The foregoing table does not take into account further dilution to new investors that could occur upon the exercise of outstanding options and warrants having a per share exercise price less than the per share offering price to the public in this offering or upon the vesting of outstanding restricted stock units.

The above discussion and table are based on 73,641,978 shares of common stock issued and outstanding as of June 30, 2015, and excludes the following:

• shares of common stock issuable upon the exercise of stock options outstanding, of which there were approximately 8.7 million outstanding as of June 30, 2015, with a weighted average exercise price of \$1.44 per share;

• shares of common stock issuable upon the vesting of outstanding restricted stock units, of which there were approximately 9,000 outstanding as of June 30, 2015;

• shares of common stock issuable upon the exercise of our outstanding warrants, of which there were warrants outstanding as of June 30, 2015, to purchase approximately 4.9 million shares of common stock at an exercise price of \$1.42 per share, and approximately 21.9 million shares of common stock at an exercise price of \$0.62 per share; and

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approximately 1.9 million shares of common stock not subject to stock awards and reserved for issuance under our equity incentive plans.

We expect that significant additional capital will be needed in the future to continue our planned operations and comply with NYSE MKT listing requirements. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our stockholders.

## **DESCRIPTION OF SECURITIES WE ARE OFFERING**

We are offering 12,300,000 shares of our common stock and warrants to purchase 11,070,000 shares of our common stock (and the shares of our common stock issuable from time to time upon exercise of the offered warrants). The common stock and warrants will be issued separately. The common stock offered by this prospectus supplement and the accompanying prospectus is described in the accompanying prospectus under the heading "Description of Capital Stock." The warrants offered by this prospectus supplement and the accompanying prospectus are described immediately below.

### **Common Stock**

A description of the securities we are offering pursuant to this prospectus supplement is set forth hereunder and under the heading "The Securities We May Offer" starting on page 3 of the accompanying prospectus. As of October 20, 2015, we had 74,717,961 shares of common stock outstanding.

### **Warrants**

The following is a brief summary of certain terms and conditions of the warrants and is subject in all respects to the provisions contained in the warrants.

*Form.* The warrants will be issued as individual warrant agreements to the investors. The form of warrant is attached as Annex A to this Prospectus Supplement.

*Exercisability.* The warrants are exercisable at any time after the date of issuance and until the date that is five years from the date of issuance, at which time any unexercised warrants will expire and cease to be exercisable. The warrants will be exercisable, at the option of each holder, in whole or in part by delivering to us a duly executed exercise notice and by payment in full in immediately available funds for the number of shares of common stock purchased upon such exercise. If a registration statement registering the issuance of the shares of common stock underlying the warrants under the Securities Act is not then effective or available, the holder may exercise the warrant through a cashless exercise, in whole or in part, in which case the holder would receive upon such exercise the net number of shares of common stock determined according to the formula set forth in the warrant. No fractional shares of common stock will be issued in connection with the exercise of a warrant. In lieu of fractional shares, we will either pay the holder an amount in cash equal to the fractional amount multiplied by the exercise price or round up to the next whole share.

*Exercise Limitation.* A holder will not have the right to exercise any portion of the warrant if the holder (together with its affiliates) would beneficially own in excess of 4.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the warrants, provided that such beneficial ownership limitation may be increased or decreased by the holder upon notice to use, provided further that any increase in such beneficial ownership limitation shall not be effective until 61 days following such notice to us.

*Exercise Price.* Each warrant will be exercisable for the purchase of 0.90 of a share of common stock at an exercise price of \$0.20 per whole share, payable in U.S. dollars. The exercise price and the number of shares issuable upon exercise of the warrants is subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our common stock.

*Cashless Exercise.* In addition, the warrant holders are entitled to a "cashless exercise" option if at the time of exercise there is no effective registration statement registering, or no current prospectus available for, the issuance or resale of the shares underlying the warrants. This option entitles the warrant holders to elect to receive fewer shares without paying the cash exercise price. The number of shares to be issued would be determined by a formula based on the total number of shares with respect to which the warrant is being exercised, the daily volume weighted average price for our shares on the trading day immediately prior to the date of exercise and the applicable exercise price of the warrants.

*Transferability.* Subject to applicable laws, the warrants may be offered for sale, sold, transferred or assigned without our consent. There is currently no trading market for the warrants and a trading market is not expected to develop.

*Exchange Listing.* There is no public trading market for the warrants, and we do not expect a market to develop. In addition, we do not intend to apply for listing of the warrants on any securities exchange or other trading system.

*Subsequent Equity Sales.* While the warrants are outstanding, if we issue, or grant options or right to purchase our common stock, at an effective price per share less than the exercise price of the warrants, then the exercise price of the warrants will be reduced to equal such lower price, subject to certain exemptions as described in the warrants.

*Fundamental Transactions.* In the event of a fundamental transaction, as described in the warrants and generally including any reorganization, recapitalization or reclassification of our common stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the holders of the warrants will be entitled to receive upon exercise of the warrants the kind and amount of securities, cash or other property that the holders would have received had they exercised the warrants immediately prior to such fundamental transaction. In addition, in the event of a fundamental transaction, the holders of the warrants will have the right to require us or our successor to repurchase the warrants at their value based on Black and Scholes Option Pricing Model as described in the warrants.

*Rights as a Stockholder.* Except as otherwise provided in the warrants or by virtue of such holder's ownership of shares of our common stock, the holder of a warrant does not have the rights or privileges of a holder of our common stock, including any voting rights, until the holder exercises the warrant; provided, holders will be entitled to participate in any rights offering which we may undertake in the future, on an as-if-exercised basis.

*Equal Treatment of Holders.* No consideration may be offered to any holder of the warrants issued in this offering to amend or consent to a waiver under the warrants unless the same consideration is also offered to all holders of the warrants. However, no holder may take any action to prevent such amendment, consent or waiver if such holder receives the same consideration as offered to all the other holders of the warrants.

## **Waiver and Amendment of Certain Securityholders' Rights in Connection with this Offering**

### ***March 2015 Purchasers***

On March 3, 2015, we entered into a securities purchase agreement with certain purchasers, pursuant to which we issued and sold to the purchasers an aggregate of 9,273,332 immediately separable units comprising an aggregate of 9,273,332 shares of common stock, warrants with a 5-year term, or the Long-Term Warrants, to purchase up to 6,954,998 additional shares of common stock and warrants with a 15-month term, or the Short-Term Warrants, to purchase up to 9,273,332 additional shares of common stock. The Short-Term Warrants and the Long-Term Warrants are collectively referred to below as the March 2015 Warrants. Under the securities purchase agreement, subject to certain exceptions and restrictions, each purchaser is entitled to purchase its pre-emptive pro rata portion of any equity securities we may issue until March 3, 2016, including the common stock and warrants offered in this prospectus supplement. In addition, the purchasers are also entitled to various notices and exercise periods relating to such pre-emptive rights, including a 20 business days' notice prior to the issuance of the equity securities. For more details about the securities purchase agreement and the March 2015 Warrants, please see our Current Report on Form 8-K filed with the SEC on March 9, 2015, which is incorporated into this prospectus supplement by reference.

In order for the Company to expeditiously raise capital in this offering and in future offerings, we have obtained all the purchasers' waiver of their rights to the notices and exercise periods and consents to amend the March 2015 Warrants as follows:

The purchasers will waive their right to the various notices and exercise periods, including a 20 business days' advance notice, relating to their preemptive rights in our equity securities offerings, including both this offering and our future offerings, *provided that* (a) we will give the purchasers written notice of any such offering at least two business days before the proposed securities issuance date, (b) we will provide the purchasers additional documents for any purchaser who decides to participate in such offering otherwise in accordance their preemptive rights provided in the securities purchase agreement, and (c) the March 2015 Warrants will be amended as follows:

For the Short-Term Warrants, (a) the expiration date will be extended from 15 months after the issuance date to 60 months after the issuance date, (b) the exercise price will be reduced from \$0.60 per share of common stock to the closing price per share of common stock on NYSE MKT on the date of commencement of this offering, subject to adjustment as provided within the Short-Term Warrants, and (c) certain pricing protection will be included in the amended Short-Term Warrants, providing that generally in the event that the Company undertakes a third party

equity financing in the future at a price less than the exercise price, the exercise price of the Short-Term Warrants will be adjusted downward to the offering price in the new transaction.

For the Long-Term Warrants, (a) the exercise price will be reduced from \$0.65 per share of common stock to the closing price per share of common stock NYSE MKT on the date of commencement of this offering, subject to adjustment as provided within the Long-Term Warrants, and (b) certain pricing protection will be included in the amended Short-Term Warrants, providing that generally in the event that the Company undertakes a third party equity financing in the future at a price less than the exercise price, the exercise price of the Short-Term Warrants will be adjusted downward to the offering price in the new transaction.

We intend to amend both the March 2015 Warrants as described above and the securities purchase agreement to reflect the terms of the waiver in connection with this offering. As of October 20, 2015, there were outstanding Long-Term Warrants and Short-Term Warrants to purchase 6,954,998 shares of our and 9,273,332 shares common stock, respectively.

### ***July 2011 Investors***

On July 5, 2011, we completed the offering and sale of immediately separable units comprising an aggregate of 4,650,675 shares of common stock and warrants to purchase 3,488,005 shares of common stock with an exercise price of \$1.33 per share, or the July 2011 Warrants, through a shelf takedown from our registration statement on Form S-3. For more details about the July 2011 Warrants, please see our Current Report on Form 8-K filed with the SEC on June 29, 2011, which is incorporated into this prospectus supplement by reference. Certain purchasers in our March 2015 offering as described above were also purchasers of our July 2011 Warrants. In connection with such purchasers in the March 2015 offering delivering the waiver as described above, we will also amend the July 2011 as follows: (a) the expiration date will be extended from July 5, 2016 to March 3, 2020, (b) the exercise price will be reduced from \$1.33 per share of common stock to the closing price per share of common stock on NYSE MKT on the date of commencement of this offering, subject to adjustment as provided within the July 2011 Warrants, and (c) certain pricing protection will be included in the amended July 2011 Warrants, providing that generally in the event that the Company undertakes a third party equity financing in the future at a price less than the exercise price, the exercise price of the July 2011 Warrants will be adjusted downward to the offering price in the new transaction.

As of October 20, 2015, there were outstanding July 2011 Warrants to purchase 3,465,505 shares of our common stock.

## UNDERWRITING

Under the terms and subject to the conditions in an underwriting agreement dated on or about the date of this prospectus supplement, the underwriter named below has agreed to purchase, and we have agreed to sell, the number of shares of common stock and warrants at the public offering price, less the underwriting discount, as set forth on the cover page of this prospectus supplement, as indicated below:

<b>Underwriter</b>	<b>Number of Shares</b>	<b>Number of Warrants</b>
Roth Capital Partners, LLC	12,300,000	12,300,000 <sup>(1)</sup>

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(1) The warrants are exercisable for up to an aggregate of 11,070,000 shares of common stock.

The underwriter is offering the common stock and warrants subject to their acceptance of the common stock and warrants from us and subject to prior sale. The underwriting agreement provides that the obligations of the underwriter to pay for and accept delivery of the common stock and warrants offered by this prospectus supplement are subject to the approval of certain legal matters by their counsel and to other conditions. Subject to the terms and conditions of the underwriting agreement, the underwriter is obligated to take and pay for all of the common stock and warrants offered by this prospectus supplement if any are purchased. Maxim Group LLC acted as financial advisor in the offering and will receive \$25,000 out of the fee paid to the underwriter.

The underwriter initially proposes to offer the common stock and warrants directly to the public at the public offering price listed on the cover page of this prospectus supplement. After the initial offering of the common stock and warrants, the offering price and other selling terms may from time to time be varied by the underwriter, in which case we will file a further supplement to this prospectus supplement setting forth such altered terms.

The underwriting agreement provides that the obligations of the underwriter are subject to certain conditions precedent, including the absence of any material adverse change in our business and the receipt of customary legal opinions, letters and certificates.

## Discount and Expenses

The following table summarizes the public offering price, underwriting discount and proceeds before expenses to us:

	<u>Per Share and Accompanying Warrant</u>	<u>Total</u>
<b>Public offering price</b>	\$0.200	\$2,460,000
<b>Underwriting discount</b>	\$0.014	\$172,200
<b>Proceeds to us (before expenses)</b>	\$0.186	\$2,287,800

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The expenses of the offering, not including the underwriting discount, payable by us are estimated to be \$200,000, which includes an amount equal to 1% of the aggregate public offering price hereunder that we have agreed to reimburse the underwriter for its expenses in connection with this offering.

We have also agreed to pay the underwriter a fee equal to 7% of gross proceeds that are invested by investors contacted by the underwriter in this offering in any subsequent offering by us through July 31, 2016. In addition, subject to certain exceptions, we have agreed to grant the underwriter a right of first refusal to act as our exclusive placement agent or lead underwriter and sole book runner in any subsequent offering of securities by us through September 30, 2016.

### **No Sales of Similar Securities**

We and each of our executive officers and directors, subject to certain exceptions, have agreed with the underwriter not to dispose of or hedge any of our shares of common stock or securities convertible into or exercisable or exchangeable for common stock for 90 days in our case and also 90 days in the case of our executive officers and directors, after the date of this prospectus without first obtaining the written consent of Roth Capital Partners, LLC. However, we may issue securities during the lock-up period in connection with (i) our sale of securities pursuant to this offering or the common stock pursuant to the exercise of the warrants offered in this offering; (ii) the issuance of equity awards pursuant to our benefit plans, qualified equity incentive plans or other compensation plans as such plans are in existence on the date hereof and described in the prospectus or as hereafter approved by our stockholders; (iii) the issuance of common stock pursuant to the valid exercises or conversions of options, warrants or rights outstanding on the date hereof or granted after the date hereof under the plans described in clause (ii); and (iv) the issuance of common stock or any securities convertible into or exercisable or exchangeable for common stock in connection with any arm's-length, bona fide joint ventures, commercial relationships or other strategic transactions not involving any of our affiliates not to exceed 5% of the total outstanding shares immediately following the completion of the offering. The "lock-up" period is subject to extension such that, in the event that either (i) during the last 17 days of the "lock-up" period, we issue an earnings or financial results release or material news or a material event relating to us occurs, or (ii) prior to the expiration of the "lock-up" period, we announce that we will release earnings or financial results during the 16-day period beginning on the last day of the "lock-up" period, then in either case the expiration of the "lock-up" period will be extended until the expiration of the 18-day period beginning on the issuance of the earnings or financial results release or the occurrence of the material news or material event, as applicable, unless Roth Capital Partners, LLC waives, in writing, such an extension.

## **Indemnification**

We and the underwriter have agreed to indemnify each other, and we have also agreed to indemnify the underwriter against certain liabilities, including liabilities under the Securities Act of 1933, as amended, and liabilities arising from breaches of representations and warranties contained in the underwriting agreement. We have also agreed to contribute to payments the underwriter may be required to make in respect of such liabilities.

## **Price Stabilization, Short Positions**

In order to facilitate the offering of the common stock and warrants, the underwriter may engage in transactions that stabilize, maintain or otherwise affect the price of our common stock. Specifically, the underwriter may sell more common stock than they are obligated to purchase under the underwriting agreement, creating a short position. The underwriter must close out any short position by purchasing shares of common stock in the open market. A short position may be created if the underwriter is concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchased in this offering. As an additional means of facilitating this offering, the underwriter may bid for, and purchase, shares of our common stock in the open market to stabilize the price of the common stock. These activities may raise or maintain the market price of our common stock above independent market levels or prevent or slow a decline in the market price of our common stock. The underwriter is not required to engage in these activities, and may end any of these activities at any time.

A prospectus in electronic format may be made available on websites maintained by the underwriter. The underwriter may agree to allocate a number of shares of common stock and warrants to other underwriters for sale to its online brokerage account holders. Internet distributions will be allocated by the underwriter on the same basis as other allocations.

## **NOTICE TO INVESTORS**

### **United Kingdom**

This document is only being distributed to and is only directed at (i) persons who are outside the United Kingdom or (ii) to investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (iii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (e) of the Order (all such persons together being referred to as

"relevant persons"). The shares of common stock and accompanying warrants are only available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such shares of common stock and accompanying warrants will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

The underwriter has represented and agreed that:

they have only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of (a) the Financial Services and Markets Act 2000 or FSMA) received by them in connection with the issue or sale of the shares of common stock and accompanying warrants in circumstances in which Section 21(1) of the FSMA does not apply to us, and

they have complied with, and will comply with all applicable provisions of FSMA with respect to anything done (b) by them in relation to the shares of common stock and accompanying warrants in, from or otherwise involving the United Kingdom.

### **European Economic Area**

To the extent that the offer of the shares of common stock and accompanying warrants is made in any Member State of the European Economic Area that has implemented the Prospectus Directive before the date of publication of a prospectus in relation to the shares of common stock and accompanying warrants which has been approved by the competent authority in the Member State in accordance with the Prospectus Directive (or, where appropriate, published in accordance with the Prospectus Directive and notified to the competent authority in the Member State in accordance with the Prospectus Directive), the offer (including any offer pursuant to this document) is only addressed to qualified investors in that Member State within the meaning of the Prospectus Directive or has been or will be made otherwise in circumstances that do not require us to publish a prospectus pursuant to the Prospectus Directive.

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), the underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date") they have not made and will not make an offer of shares of common stock and accompanying warrants to the public in that Relevant Member State prior to the publication of a prospectus in relation to the shares of common stock and accompanying warrants which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of shares of common stock and accompanying warrants to the public in that Relevant Member State at any time:

- (a) to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities,

to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial (b) year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts, or

in any other circumstances which do not require the publication by us of a prospectus pursuant to Article 3 of the Prospectus Directive. For the purposes of this provision, the expression an "offer of shares of common stock and accompanying warrants to the public" in relation to any shares of common stock and accompanying warrants in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares of common stock and accompanying warrants to be offered so as to enable an (c) investor to decide to purchase or subscribe the shares of common stock and accompanying warrants, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State and the expression "Prospectus Directive" means Directive 2003/71/EC, (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in each Relevant Member State. The expression "2010 PD Amending Directive" means Directive 2010/73/EU.

The EEA selling restriction is in addition to any other selling restrictions set out below. In relation to each Relevant Member State, each purchaser of shares of common stock and accompanying warrants (other than the underwriter) will be deemed to have represented, acknowledged and agreed that it will not make an offer of shares of common stock and accompanying warrants to the public in any Relevant Member State, except that it may, with effect from and including the date on which the Prospectus Directive is implemented in the Relevant Member State, make an offer of shares of common stock and accompanying warrants to the public in that Relevant Member State at any time in any circumstances which do not require the publication by us of a prospectus pursuant to Article 3 of the Prospectus Directive, provided that such purchaser agrees that it has not and will not make an offer of any shares of common stock and accompanying warrants in reliance or purported reliance on Article 3(2)(b) of the Prospectus Directive. For the purposes of this provision, the expression an "offer of shares of common stock and accompanying warrants to the public" in relation to any shares of common stock and accompanying warrants in any Relevant Member State has the same meaning as in the preceding paragraph.

## Switzerland

This document does not constitute a prospectus within the meaning of Art. 652a of the Swiss Code of Obligations. The securities may not be sold directly or indirectly in or into Switzerland except in a manner which will not result in a public offering within the meaning of the Swiss Code of Obligations. Neither this document nor any other offering materials relating to the securities may be distributed, published or otherwise made available in Switzerland except in a manner which will not constitute a public offer of the securities in Switzerland.

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## **LEGAL MATTERS**

Certain legal matters with respect to the validity of the issuance of the securities offered hereby will be passed upon by our counsel, Squire Patton Boggs (US) LLP, Washington, DC. Certain legal matters will be passed upon for the underwriter by Ellenoff Grossman & Schole LLP, New York, New York.

## **EXPERTS**

OUM & Co. LLP, independent registered public accounting firm, has audited our consolidated balance sheet as of December 31, 2014 and 2013, and the related consolidated statements of operations and comprehensive loss, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2014, as set forth in their report, which is incorporated by reference in this prospectus supplement and elsewhere in the registration statement of which this prospectus supplement forms a part. Our financial statements are incorporated by reference in reliance on OUM & Co. LLP's report, given on their authority as experts in accounting and auditing.

## **WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the reporting requirements of the Exchange Act and file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy these reports, proxy statements and other information at the SEC's public reference facilities at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You can request copies of these documents by writing to the SEC and paying a fee for the copying cost. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference facilities. SEC filings are also available at the SEC's website at <http://www.sec.gov>.

This prospectus supplement and the accompanying prospectus are only part of a registration statement on Form S-3 that we have filed with the SEC under the Securities Act and therefore omit certain information contained in the registration statement. We have also filed exhibits and schedules with the registration statement that are excluded from this prospectus supplement and the accompanying prospectus, and you should refer to the applicable exhibit or schedule for a complete description of any statement referring to any contract or other document. You may inspect a copy of the registration statement, including the exhibits and schedules, without charge, at the public reference room or obtain a copy from the SEC upon payment of the fees prescribed by the SEC.

We also maintain a website at <http://www.novabay.com>, through which you can access our SEC filings. The information set forth on our website is not part of this prospectus supplement.

## **INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC allows us to "incorporate by reference" the information we file with the SEC. This permits us to disclose important information to you by referring to these filed documents. Any information referred to in this way is considered part of this prospectus supplement. The information incorporated by reference is an important part of this prospectus supplement and the accompanying prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the following documents that have been filed with the SEC (other than information furnished under Item 2.02 or Item 7.01 of Form 8-K and all exhibits related to such items):

our Annual Report on Form 10-K for the year ended December 31, 2014, filed with the SEC on March 26, 2015, as amended by our Form 10-K/A filed with the SEC on April 14, 2015;

the information specifically incorporated by reference into our Annual Report on Form 10-K for the year ended December 31, 2014, from our definitive proxy statement in connection with our 2015 Annual Meeting of Stockholders which was filed with the SEC on April 30, 2015;

our Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2015 and June 30, 2015, as filed with the SEC on May 14, 2015 and August 13, 2015, respectively;

our current reports on Form 8-K, filed with the SEC on June 29, 2011, March 9, 2015, March 24, 2015, April 14, 2015, May 1, 2015, May 22, 2015, June 18, 2015, July 16, 2015, and October 2, 2015; and

the description of our common stock in our registration statement on Form 8-A filed with the SEC on August 29, 2007, as updated by our Form 8-K filed with the SEC on June 29, 2010.

Any information in any of the foregoing documents will automatically be deemed to be modified or superseded to the extent that information in this prospectus supplement and the accompanying prospectus or in a later filed document that is incorporated or deemed to be incorporated herein by reference modifies or replaces such information.

We also incorporate by reference any future filings (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items) made with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus supplement and prior to the termination of the offering of the securities made by this prospectus supplement and the accompanying prospectus. Information in such future filings updates and supplements the information provided in this prospectus supplement and the accompanying prospectus. Any statements in any such future filings will automatically be deemed to modify and supersede any information in any document we previously filed with the SEC that is incorporated or deemed to be incorporated herein by reference to the extent that statements in the later filed document modify or replace such earlier statements.

We will provide, upon written or oral request, without charge to each person, including any beneficial owner, to whom a copy of this prospectus supplement and the accompanying prospectus is delivered, a copy of any or all of the information incorporated herein by reference (exclusive of exhibits to such documents unless such exhibits are specifically incorporated by reference herein). You may request in writing or orally a copy of these filings, at no cost, by writing or telephoning us at the following address:

NovaBay Pharmaceuticals, Inc.

5980 Horton Street, Suite 550

Emeryville, CA 94608

(510) 899-8800

Attn: Secretary

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**Annex A**

**COMMON STOCK PURCHASE WARRANT**

**NovaBay Pharmaceuticals, Inc.**

Warrant Shares: \_\_\_\_\_

Initial Exercise Date: October  
\_\_\_\_, 2015

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, \_\_\_\_\_ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after October \_\_, 2015 (the "Initial Exercise Date") and on or prior to the close of business on the five (5) year anniversary of the Initial Exercise Date (the "Termination Date") but not thereafter, to subscribe for and purchase from NovaBay Pharmaceuticals, Inc., a Delaware corporation (the "Company"), up to \_\_\_\_\_ shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings set forth in this Section 1:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Commission" means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

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“Exempt Issuance” means the issuance of (a) shares of Common Stock or stock awards such as stock options, unrestricted and restricted common stock, stock units, dividend equivalent rights and stock appreciation rights to employees, officers, directors, scientific advisors or outside consultants (provided issuances to consultants shall not exceed 500,000 shares in any 12-month period, subject to adjustment for reverse and forward stock splits and the like) of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities upon the exercise or exchange of or conversion of this Warrant and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Warrant, provided that such securities have not been amended after the date of this Warrant to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities, and (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company, a private equity fund or an owner of an asset in a business synergistic with the business of the Company and shall, in the case of a strategic transaction, provide to the Company other additional benefits in addition to the investment of funds as deemed reasonably appropriate by the Company, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or, in the case of a strategic transaction, to an entity whose primary business is investing in securities.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“Transfer Agent” means Computershare Shareholder Services, Inc., located in Providence, Rhode Island, Providence County, which is the transfer agent and registrar for the Company's Common Stock in the United States and (ii) Computershare Investor Services, Inc., located in Toronto, Ontario, Canada, which is the co-transfer agent and registrar for Company's Common Stock in Canada, and any successor transfer agent of the Company.

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“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder, the fees and expenses of which shall be paid by the Company.

“Warrants” means the substantially identical warrants initially issued by the Company on or about the date first written above and having the same exercise price as this Warrant.

Section 2. Exercise.

a) Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed copy of the Notice of Exercise in the form annexed hereto by facsimile or e-mail attachment. Within three (3) Trading Days following the date that said Notice of Exercise is received by the Company, the Company shall have received from the Holder the payment of the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is permitted and is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Days of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

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b) Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be \$\_\_\_\_\_, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing  $[(A-B) (X)]$  by (A), where:

(A) = the last VWAP immediately preceding the exercise of this Warrant by means of a "cashless exercise," as set forth in the applicable Notice of Exercise, with the determination of the date for the VWAP to be based upon the time that the Notice of Exercise is received by the Company;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of a certificate or registered in the Company's share register, in each case, in the name of the Holder or its designee for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is three (3) Trading Days after the receipt by the Company of the Notice of Exercise (such date, the "Warrant Share

Delivery Date”). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares; provided payment of the aggregate Exercise Price (other than in the case of a Cashless Exercise) is received within three (3) Trading Days of delivery of the Notice of Exercise. For clarity, the Company shall have no obligation to issue any Warrant Shares for which it has not been paid (unless cashless exercise is permissible).

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ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates, such other Persons, "Attribution Parties"), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder, its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates or Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates or Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder and the Company shall have no obligation to verify or confirm the accuracy of such determination and shall have no liability for exercises of the Warrant that are not in compliance with the Beneficial Ownership Limitation. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally or in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

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Section 3. Certain Adjustments.