

NovaBay Pharmaceuticals, Inc.
Form 8-K
October 02, 2015

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of earliest event reported: September 30, 2015

NovaBay Pharmaceuticals, Inc.

(Exact Name of Registrant as Specified in Charter)

| | | |
|---|---------------------------------|---|
| Delaware | 001-33678 | 68-0454536 |
| (State or Other Jurisdiction of Incorporation) | (Commission File Number) | (I.R.S. Employer Identification No.) |

5980 Horton Street, Suite 550, Emeryville, CA 94608

(Address of Principal Executive Offices) (Zip Code)

(510) 899-8800

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

On September 30, 2015, NovaBay Pharmaceuticals, Inc. (the “Company”) held a Special Meeting of Stockholders, at which the Company’s stockholders approved an amendment to the Company’s Amended and Restated Certificate of Incorporation, as amended, to increase the number of authorized shares of Company common stock from 120,000,000 to 240,000,000. A copy of the Certificate of Amendment of Amended and Restated Certificate of Incorporation of NovaBay Pharmaceuticals, Inc. is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders

On September 30, 2015, the Company held a Special Meeting of Stockholders, at which the Company’s stockholders considered two (2) proposals, each of which is described in more detail in the Company’s definitive proxy statement filed with the Securities and Exchange Commission on September 4, 2015. There were 74,813,656 outstanding shares entitled to vote and there were 58,403,689 shares present in person or by proxy, representing 78.07% of the shares outstanding and entitled to vote. The voting results are presented below.

To approve an amendment to the Amended and Restated Certificate of Incorporation, as amended, of the Company

1. to increase the number of authorized shares of Company common stock from 120,000,000 to 240,000,000. The results were as follows:

| <u>For</u> | <u>Against</u> | <u>Abstain</u> | <u>Broker Non-Votes</u> ¹ |
|------------|----------------|----------------|--------------------------------------|
| 51,638,910 | 5,551,824 | 734,347 | 478,608 |

2. To adjourn the Special Meeting, if necessary or appropriate, to establish a quorum or to permit further solicitation of proxies if there are not sufficient votes cast at the meeting in favor of the above proposal.

| <u>For</u> | <u>Against</u> | <u>Abstain</u> | <u>Broker Non-Votes</u> ¹ |
|------------|----------------|----------------|--------------------------------------|
| 53,718,739 | 4,146,899 | 538,051 | 0 |

Item 9.01 Exhibits

| Exhibit No. | Description |
|--------------------|--------------------|
|--------------------|--------------------|

3.1 Certificate of Amendment of Amended and Restated Certificate of Incorporation of NovaBay Pharmaceuticals, Inc.

¹ A broker non-vote occurs when a broker, bank or other nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to the item and has not received voting instructions from the beneficial owner of the shares it holds. Broker non-votes are counted when determining whether the necessary quorum of stockholders is present or represented at each annual meeting.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

NovaBay Pharmaceuticals, Inc.

(Registrant)

By: /s/ Thomas Paulson
Thomas J. Paulson
Chief Financial Officer and Treasurer

Dated: October 1, 2015