

NOVADEL PHARMA INC
Form S-1/A
June 22, 2010

As filed with the Securities and Exchange Commission on June 22, 2010

Registration Statement No. 333-167425

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

AMENDMENT NO. 1

TO

FORM S-1

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

NovaDel Pharma Inc.
(Exact name of Registrant as Specified in Its Charter)

Delaware (State or other jurisdiction of incorporation or organization)	2834 (Primary Standard Industrial Classification Code)	22-2407152 (I.R.S. Employer Identification No.)
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1200 Route 22 East, Suite 2000
Bridgewater, New Jersey 08807
(908) 203-4640

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

Steven B. Ratoff
Chairman, President and Chief Executive Officer

Novadel Pharma, Inc.
1200 Route 22 East, Suite 2000
Bridgewater, New Jersey 08807
(908) 203-4640

(Name, address, including zip code, and telephone number including area code, of

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agent for service)

Copies to:

Emilio Ragosa, Esq.

Morgan, Lewis & Bockius, LLP, 502 Carnegie Center, Princeton, New Jersey 08540
(609) 919-6600

Approximate date of commencement of proposed sale to public: From time to time or at one time after this Registration Statement becomes effective in light of market conditions and other factors.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

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

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Explanatory Note

This Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (File No. 333-167425) is being filed solely for the purpose of correcting the signature pages to the registration statement, and no changes or additions are being made hereby to the prospectus, which forms a part of the registration statement. Accordingly, the prospectus has been omitted from this filing.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth estimated expenses expected to be incurred in connection with the issuance and distribution of the common stock being registered.

SEC Registration Fee	\$ 150
Printing and Engraving Expenses	\$ 10,000
Accounting Fees and Expenses	\$ 4,000
Legal Fees and Expenses	\$ 25,000
Miscellaneous	\$ 5,000
TOTAL	\$ 44,150

All expenses, other than the SEC Registration Fee, are estimated.

ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145 of the Delaware General Corporation Law (the "DGCL") empowers a corporation to indemnify its directors and officers and to purchase insurance with respect to liability arising out of the performance of their duties as directors and officers. The DGCL provides further that the indemnification permitted thereunder shall not be deemed exclusive of any other rights to which the directors and officers may be entitled under the corporation's by-laws, any agreement, vote of stockholders or otherwise.

Article Nine of our Certificate of Incorporation eliminates the personal liability of directors to the fullest extent permitted by Section 102 of the DGCL. Article Ten provides for indemnification of all persons whom we shall have the power to indemnify pursuant to Section 145 of the DGCL.

The effect of the foregoing is to require us, to the extent permitted by law, to indemnify our officers and directors for any claims arising against such persons in their official capacities if such persons acted in good faith and in a manner that they reasonably believed to be in or not opposed to our best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

We currently have liability insurance coverage for our officers and directors.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES

During the three year period preceding the date of the filing of this registration statement, we have issued securities in the transactions described below without registration under the Securities Act of 1933. These securities were offered and sold by us in reliance upon exemptions from the registration requirements provided by Section 4(2) of the Securities Act of 1933 or Regulation D under the Securities Act as transactions by an issuer not involving a public offering.

In May 2008, we had entered into definitive agreements for the private placement with ProQuest Investments II, L.P., ProQuest Investments II Advisors Fund, L.P., and ProQuest Investments III, L.P., collectively referred to herein as ProQuest, for an aggregate of up to \$4,000,000 in gross proceeds, in the form of secured convertible promissory notes with an interest rate of 10%, and warrants to purchase shares of our common stock, referred to herein as the 2008 Financing. In May 2008, we sold securities in the initial closing of the 2008 Financing, resulting in the issuance of notes convertible into 5,000,000 shares of our common stock, and warrants to purchase 3,000,000 shares of our common stock. The sale of the notes and warrants resulted in gross proceeds to us of \$1,475,000, before deducting certain fees and expenses.

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In October 2008, we sold securities in the subsequent closing of the 2008 Financing, resulting in the issuance of notes convertible into 10,744,681 shares of our common stock, and warrants to purchase 6,446,809 shares of our common stock. The sale of the notes and warrants resulted in gross proceeds to us of \$2,525,000, before deducting certain fees and expenses.

In December 2009, we entered into an amendment agreement with ProQuest, whereby ProQuest agreed to convert the outstanding aggregate principal amount of all of their convertible notes and liquidated damages notes, in each case, plus accrued interest thereon, in an amount equal to \$3,657,517 into 23,237,083 shares of our common stock, \$0.001 par value per shares. Immediately following such transaction, ProQuest's equity ownership in the Company consisted of (i) 29,504,653 shares of common stock and (ii) warrants to purchase 11,433,345 shares of the common stock at an exercise price of \$0.1888 per share.

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

The following exhibits are included with this prospectus. All management contracts or compensatory plans or arrangements are marked with an asterisk.

EXHIBIT NO.	DESCRIPTION	METHOD OF FILING
1.1	Placement Agent Agreement, dated as of March 31, 2010, between the Company and Chardan Markets, LLC as placement agent	Incorporated by reference to Exhibit 1.1 of the Company's Current Report on Form 8-K, as filed with the SEC on March 31, 2010.
3.1	Restated Certificate of Incorporation of the Company	Incorporated by reference to Exhibit 3.1 of the Company's Quarterly Report on Form 10-QSB, as filed with the SEC on June 14, 2004.
3.2	Certificate of Amendment to the Certificate of Incorporation of the Company	Incorporated by reference to Exhibit 3.1 of the Company's Annual Report on Form 10-K, as filed with the SEC on March 26, 2007.
3.3	Amended and Restated By-laws of the Company	Incorporated by reference to Exhibit 3.1 of the Company's Form 8-K, as filed with the SEC on September 9, 2005.
4.1	Form of Class C Warrant for the Purchase of Shares of Common Stock	Incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, as filed with the SEC on January 12, 2004.
4.2	Form of Warrant issued to certain accredited investors and placement agents	Incorporated by reference to Exhibit 4.1 of the Company's Form 8-K, as filed with the SEC on April 17, 2006.
4.3	Form of Warrant issued to certain accredited investors and the placement agent	Incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K filed with the SEC on January 4, 2007.
4.4	Form of Warrant	Incorporated by reference to Exhibit 4.2 of the Company's Current Report on Form 8-K, as

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filed with the SEC on June 3, 2008.

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| 4.5 | Form of Series A Warrant | Incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K, as filed with the SEC on March 31, 2010. |
| 4.6 | Form of Series B Warrant | Incorporated by reference to Exhibit 4.2 of the Company's Current Report on Form 8-K, as filed with the SEC on March 31, 2010. |
| 5.1 | Opinion of Morgan, Lewis & Bockius LLP | Filed herewith. |
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10.1*	1992 Stock Option Plan	Incorporated by reference to the Company's Registration Statement on Form SB-2, as filed with the SEC on August 8, 1997 (File No. 333-33201).
10.2*	Form of Incentive Stock Option Agreement under the 1992 Stock Option Plan	Incorporated by reference to the Company's Registration Statement on Form SB-2, as filed with the SEC on August 8, 1997 (File No. 333-33201).
10.3*	1997 Stock Option Plan	Incorporated by reference to Exhibit 10.8 to the Company's Registration Statement on Form SB-2, as filed with the SEC on August 8, 1997 (File No. 333-33201).
10.4*	Form of Non-Qualified Option Agreement under the 1997 Stock Option Plan	Incorporated by reference to the Company's Registration Statement on Form SB-2, as filed with the SEC on August 8, 1997 (File No. 333-33201).
10.5*	1998 Stock Option Plan	Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-8, as filed with the SEC on June 18, 2004 (File No. 333-116665).
10.6*	Form of Stock Option Agreement under the 1998 Stock Option Plan	Incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-8, as filed with the SEC on June 18, 2004 (File No. 333-116665).
10.7*	Form of Non-Qualified Option Agreement	Incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-8, as filed with the SEC on June 18, 2004 (File No. 333-116665).
10.8	Common Stock and Warrant Purchase Agreement, dated December 12, 2001, by and among the Company and certain	Incorporated by reference to Exhibit A to the Schedule 13D as filed by Lindsay A. Rosenwald with the SEC on December 21,

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| | purchasers | 2001. |
| 10.9 | Amendment No. 1, dated January 6, 2002, to the Common Stock and Warrant Purchase Agreement dated December 12, 2001 between the Company and certain purchasers | Incorporated by reference to Exhibit 10.25 to the Company's Registration Statement of Form SB-2, as filed with the SEC on April 15, 2002 (File No. 333-86262). |
| 10.10 | License and Development Agreement, effective as of April 4, 2003, by and between the Company and Manhattan Pharmaceuticals, Inc. | Incorporated by reference to Exhibit 10.31 to the Company's Annual Report on Form 10-KSB, as filed with the SEC on March 11, 2004. |
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10.11	Development, Manufacturing and Supply Agreement, dated July 28, 2004, by and between the Company and Par Pharmaceutical, Inc.	Incorporated by reference to Exhibit 10.13 to the Company's Annual Report on Form 10-KSB, as filed with the SEC on November 15, 2004.
10.12	Second Amendment to License and Development Agreement, dated as of June 22, 2004, by and between the Company and the Veterinary Company, Inc.	Incorporated by reference to Exhibit 10.14 to the Company's Annual Report on Form 10-KSB, as filed with the SEC on November 15, 2004.
10.13*	Disclosure and Release Agreement Related to the Exchange of Non-Plan Options for Stock Options under the NovaDel Pharma Inc. 1998 Stock Option Plan by and between the Company and Thomas E. Bonney	Incorporated by reference to Exhibit 10.3 of the Company's Form 8-K, as filed with the SEC on August 2, 2005.
10.14*	Disclosure and Release Agreement Related to the Exchange of Non-Plan Options for Stock Options under the NovaDel Pharma Inc. 1998 Stock Option Plan by and between the Company and Charles Nemeroff	Incorporated by reference to Exhibit 10.4 of the Company's Form 8-K, as filed with the SEC on August 2, 2005.
10.15*	1998 Stock Option Plan Nonqualified Stock Option Agreement dated July 28, 2005, by and between the Company and Thomas E. Bonney	Incorporated by reference to Exhibit 10.25 of the Company's Annual Report on Form 10-KSB for the period ended July 31, 2005, as filed with the SEC on October 31, 2005.
10.16*	1998 Stock Option Plan Nonqualified Stock Option Agreement dated July 28, 2005, by and between the Company and Charles Nemeroff	Incorporated by reference to Exhibit 10.29 of the Company's Annual Report on Form 10-KSB for the period ended July 31, 2005, as filed with the SEC on October 31, 2005.
10.17	Amendment No. 1 to License and Development Agreement dated as of August 8, 2005, by and between the Company and Hana Biosciences Inc.	Incorporated by reference to Exhibit 99.1 of the Company's Form 8-K, as filed with the SEC on August 12, 2005.

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| 10.18* | NovaDel Pharma Inc. 2006 Equity Incentive Plan | Incorporated by reference to Exhibit 10.1 of the Company's Form 8-K, as filed with the SEC on January 23, 2006. |
| 10.19* | 1998 Stock Option Plan Nonqualified Stock Option Agreement dated January 17, 2006, by and between the Company and Thomas Bonney | Incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q, as filed with the SEC on March 15, 2006. |
| 10.20* | 1998 Stock Option Plan Nonqualified Stock Option Agreement dated January 17, 2006, by and between the Company and Charles Nemeroff | Incorporated by reference to Exhibit 10.5 of the Company's Quarterly Report on Form 10-Q, as filed with the SEC on March 15, 2006. |
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10.21*	1998 Stock Option Plan Nonqualified Stock Option Agreement dated January 17, 2006, by and between the Company and Steven Ratoff	Incorporated by reference to Exhibit 10.6 of the Company's Quarterly Report on Form 10-Q, as filed with the SEC on March 15, 2006.
10.22*	Employment Agreement dated December 4, 2006 by and between the Company and David H. Bergstrom, Ph.D.	Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, as filed with the SEC on December 8, 2006.
10.23*	Incentive Stock Option Award between the Company and David H. Bergstrom dated December 4, 2006	Incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K, as filed with the SEC on December 8, 2006.
10.24*	Nonqualified Stock Option Award between the Company and David H. Bergstrom, dated December 4, 2006	Incorporated by reference to Exhibit 10.3 of the Company's Current Report on Form 8-K, as filed with the SEC on December 8, 2006.
10.25*	Amendment 2007-1 to the NovaDel Pharma Inc. 1998 Stock Option Plan dated March 2, 2007	Incorporated by reference to Exhibit 10.45 of the Company's Annual Report on Form 10-K, as filed with the SEC on March 26, 2007.
10.26*	Amendment 2007-1 to the NovaDel Pharma Inc. 2006 Equity Incentive Plan dated March 2, 2007	Incorporated by reference to Exhibit 10.46 of the Company's Annual Report on Form 10-K, as filed with the SEC on March 26, 2007.
10.27	Amended and Restated License and Development Agreement, dated as of July 31, 2007, by and between NovaDel Pharma Inc. and HANA Biosciences, Inc.	Incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q, as filed with the SEC on November 14, 2007.
10.28	Product Development and Commercialization Sublicense Agreement, dated as of July 31, 2007, by and among NovaDel Pharma Inc., HANA Biosciences	Incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q, as filed with the SEC on November 14, 2007.

and PAR Pharmaceuticals, Inc.

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| 10.29 | Termination Agreement, dated as of July 31, 2007, by and between NovaDel Pharma Inc. and PAR Pharmaceuticals, Inc. | Incorporated by reference to Exhibit 10.3 of the Company's Quarterly Report on Form 10-Q, as filed with the SEC on November 14, 2007. |
| 10.30+ | License Agreement, dated May 19, 2008, by and among the Company and BioAlliance Pharma SA. | Incorporated by reference to Exhibit 10.4 of the Company's Quarterly Report on Form 10-Q, as filed with the SEC on August 7, 2008. |
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10.31+	Supply Agreement, dated July 7, 2008, by and among the Company and BioAlliance Pharma SA.	Incorporated by reference to Exhibit 10.5 of the Company's Quarterly Report on Form 10-Q, as filed with the SEC on August 7, 2008.
10.32*	Separation, Consulting and General Release Agreement, effective as of April 30, 2009, by and between NovaDel Pharma Inc. and Deni M. Zodda	Incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K, as filed with the SEC on May 1, 2009.
10.33	Common Stock Purchase Agreement, by and between the Company and Seaside 88, LP, dated June 26, 2009	Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, as filed with the SEC on June 30, 2009.
10.34	Agreement, by and between the Company and Arthur W. Wood Company, dated June 15, 2009	Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, as filed with the SEC on July 20, 2009.
10.35+	License and Distribution Agreement, dated October 27, 2009, between NovaDel Pharma Inc. and Mist Acquisition, LLC	Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, as filed with the SEC on December 10, 2009.
10.36+	License and Distribution Agreement, dated November 12, 2009, between NovaDel Pharma Inc. and ECR Pharmaceuticals Company, Inc.	Incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K, as filed with the SEC on December 10, 2009.
10.37	Lease Agreement, dated as of December 7, 2009 and effective as of February 1, 2010, by and between Regus Management Group, LLC, as Landlord, and NovaDel Pharma Inc., as Tenant	Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, as filed with the SEC on January 14, 2010.
10.38	Amendment Agreement, dated December 31, 2009, by and among NovaDel Pharma Inc., ProQuest Investment II, L.P., ProQuest	Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, as filed with the SEC on January 7,

	Investment Advisors Fund II, L.P. and ProQuest Investments III, L.P.	2010.
10.39	Employment Agreement, dated January 8, 2010, by and between NovaDel Pharma Inc. and Steven B. Ratoff.	Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, as filed with the SEC on January 11, 2010.
10.40	Securities Purchase Agreement, dated March 31, 2010, among the Company and the investors set forth therein.	Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, as filed with the SEC on March 31, 2010.
10.41	Termination Agreement, dated as of March 26, 2010, between the Company and Seaside 88, LP.	Incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K, as filed with the SEC on March 31, 2010.
10.42	Employment Agreement, dated June 8, 2010, by and between NovaDel Pharma Inc. and Craig Johnson.	Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, as filed with the SEC on June 9, 2010.
21.1	Subsidiaries of the Registrant	The registrant has no subsidiaries.
23.1	Consent of J.H. Cohn LLP	Previously filed with the original registration statement.
23.2	Consent of Morgan Lewis & Bockius LLP (included in Exhibit 5.1)	Filed herewith.
24.1	Power of Attorney	Previously filed with the original registration statement.

* Compensation Related Contract.

+ Confidential Treatment Requested. Confidential Materials omitted and filed separately with the Securities and Exchange Commission.

ITEM 17. UNDERTAKINGS.

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

Inssofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Act, NovaDel Pharma Inc. certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-1 and has duly caused this amendment no. 1 to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Bridgewater, State of New Jersey, on June 22, 2010.

NOVADEL PHARMA
INC.

By: /s/ Steven B.
Ratoff
Name: Steven
B. Ratoff
Title:
President and
Chief
Executive
Officer
(principal
executive
officer)

By: /s/ Craig A.
Johnson
Name: Craig
A. Johnson
Title: Senior
Vice President,
Chief Financial
Officer and
Secretary
(principal
financial and
accounting
officer)

Pursuant to the requirements of the Securities Act, this amendment no. 1 to the registration statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURES	TITLE	DATE
/s/ Steven B. Ratoff Steven B. Ratoff	Chairman, President, Chief Executive Officer and Director (principal executive officer)	June 22, 2010
/s/ Craig A. Johnson Craig A. Johnson	Senior Vice President, Chief Financial Officer and Secretary (principal financial and accounting officer)	June 22, 2010
* Mark J. Baric	Director	June 22, 2010
* Thomas E. Bonney	Director	June 22, 2010
* Charles Nemeroff	Director	June 22, 2010
* /s/ Steven B. Ratoff By: Steven B. Ratoff, Attorney in Fact		June 22, 2010

