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NOVASTAR FINANCIAL INC
Form 8-K
May 01, 2007

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

April 25, 2007
Date of Report (Date of earliest event reported)

NOVASTAR FINANCIAL, INC.

(Exact name of registrant as specified in its charter)

Maryland	001-13533	74-2830661
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(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification No.)

8140 Ward Parkway, Suite 300, Kansas City, MO 64114

(Address of principal executive offices)
(Zip Code)

(816) 237-7000

(Registrant's telephone number, including area code)

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

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))

Section 1--Registrant's Business and Operations

Item 1.01 Entry into a Material Definitive Agreement.

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Wachovia Master Repurchase Agreement (2007 Servicing Rights)

On April 25, 2007, NovaStar Mortgage, Inc. ("NovaStar Mortgage") executed a Master Repurchase Agreement (2007 Servicing Rights) (the "Facility") with Wachovia Bank, N.A. and Wachovia Capital Markets, LLC (collectively "Wachovia"), providing for the financing of certain mortgage servicing rights of NovaStar Mortgage. The Facility is guaranteed by NovaStar Financial, Inc., NovaStar Mortgage, NFI Holding Corporation, and HomeView Lending, Inc. (collectively, the "NovaStar Parties"). In addition, the Facility is secured by all of the stock of NovaStar Mortgage and is cross-collateralized with all other repurchase and similar financing facilities between any of the NovaStar Parties or their affiliates (collectively, "NovaStar") and Wachovia or any of its affiliates. In addition to this Facility, Wachovia and its affiliates provide certain other financing facilities to NovaStar and routinely engage in other ordinary course financial transactions with NovaStar, including but not limited to acting as an underwriter for certain securitizations sponsored by NovaStar.

Mortgage servicing rights eligible for financing under the Facility include rights of NovaStar Mortgage under existing servicing agreements relating to certain of NovaStar's 2006 and 2007 securitizations and, subject to certain approvals of the related securitization trustees, other existing mortgage servicing rights of NovaStar Mortgage. Servicing rights arising in connection with future securitizations may also be financed under the Facility if mutually agreed by NovaStar and Wachovia. In each case, the related servicing agreement must be acceptable to Wachovia.

The maximum amount that may be outstanding at any time under the Facility is \$70 million, which amount could be reduced so that the aggregate amount outstanding from time to time under the Facility and the Wachovia Master Repurchase Agreement (2007 Residual Securities) executed on April 18, 2007 among certain NovaStar entities and Wachovia Investment Holdings, LLC and Wachovia Capital Markets, LLC does not exceed \$100 million. The Facility provides for an advance rate of up to 60% of the market value of the servicing rights purchased by Wachovia under the Facility, as such market value is determined from time to time by Wachovia. Advances under the Facility bear interest at LIBOR plus 375 basis points. In addition, the NovaStar Parties are required to pay Wachovia certain fees and expenses in connection with the Facility, including but not limited to a structuring fee, a usage fee, and additional fees in the event of voluntary termination by NovaStar or the occurrence of an event of default.

Proceeds from the Facility will be used for general corporate purposes. The Facility has a term of 364 days, subject to automatic renewal for another 364 days unless Wachovia gives at least 120 days notice of its intent to terminate the Facility on the maturity date; provided, however, that in the event of a change of control of NovaStar Financial, Inc.,

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Wachovia has the right to terminate the Facility and require the payment of a termination fee.

NovaStar Mortgage and its affiliates are required to notify Wachovia of any margin calls totaling more than \$5 million in the aggregate under repurchase facilities between NovaStar and any third parties, in which event Wachovia will have the option to increase the aggregate amount available under other financing facilities between NovaStar and Wachovia or its affiliates and to cause the assets that are subject to the margin call to be moved to and financed under those other Wachovia facilities.

The Facility requires that NovaStar Mortgage service the related mortgage loans

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in accordance with the standards set forth in the applicable servicing agreement. If an event occurs that would permit the removal of NovaStar as servicer under any servicing agreement, Wachovia has the right to require that NovaStar be replaced as the servicer.

In addition, NovaStar Mortgage must exercise any option to purchase the mortgage loans serviced under any eligible servicing agreement during the month in which such option becomes exercisable, provided that financing is available to NovaStar Mortgage for such purpose.

The Facility requires that the adjusted consolidated tangible net worth of NovaStar Financial, Inc. exceed both a specified minimum and an amount equal to a portion of the value of various classes of assets held by NovaStar Financial, Inc. and its consolidated subsidiaries. In addition, NovaStar Financial, Inc. is required to maintain, on a consolidated basis, a certain minimum level of liquidity.

The Facility prohibits NovaStar Financial, Inc. from paying any dividends (other than dividends payable in stock), except for the payment of dividends in the amounts and at the times necessary for NovaStar Financial, Inc. to comply with tax law requirements applicable to real estate investment trusts. Absent the prior consent of Wachovia, permitted dividends can be paid only in the form of notes, bonds, debentures, or common or preferred stock, and not in cash, except to the extent that the liquidity of NovaStar Financial, Inc. following payment in cash would exceed \$125 million or to the extent that payment in notes, bonds, debentures, or common or preferred stock would be financially impractical. Further, NovaStar cannot declare or pay a cash dividend more than 15 days before the date required by applicable tax law. As a real estate investment trust, NovaStar Financial, Inc. is required to declare dividends based on its 2006 taxable income before filing its 2006 tax return, which is due on September 15, 2007 and such dividends are required to be paid by December 31, 2007. In addition, NovaStar Mortgage is prohibited from paying dividends by the related Guaranty and Pledge Agreement.

The Facility contains other customary affirmative and negative covenants, including but not limited to covenants prohibiting fundamental changes in the nature of the business of the NovaStar Parties, prohibiting sales by any NovaStar Party of a material portion of its

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business or assets outside of the ordinary course of business, and prohibiting transactions between a NovaStar Party and any of its other affiliates that are not on arms-length terms.

Events of default under the Facility include termination of NovaStar Mortgage, for cause, as servicer of mortgage loans underlying ten percent or more of NovaStar Mortgage's servicing rights portfolio, certain downgrades to NovaStar Mortgage's servicing rating, and the failure of NovaStar Mortgage to service loans in accordance with the standards set forth in the applicable servicing agreement or to otherwise keep all servicing agreements relating to servicing rights financed under the Facility in full force and effect.

The Facility provides for certain additional events of default, including but not limited to the failure by NovaStar Mortgage to make any payment due or to satisfy any margin call or to comply with any other material covenant (including financial covenants) or agreement under the Facility, representations or warranties made by the NovaStar Parties under the Facility and related agreements proving to be materially incorrect, certain cross defaults involving other contracts to which NovaStar is a party, an act of insolvency occurring

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with respect to any NovaStar entity, the failure by NovaStar to satisfy certain final non-appealable monetary judgments, regulatory enforcement actions that materially curtail the conduct of business by any NovaStar entity, and the occurrence of a material adverse change in the business, performance, assets, operations or condition of NovaStar Financial, Inc. and its consolidated subsidiaries taken as a whole.

If an event of default exists under the Facility, Wachovia has the right, in addition to other rights and remedies, to accelerate the repurchase and other obligations of NovaStar under the Facility and the related Guaranty and Pledge Agreement, to cause all income generated by the purchased assets to be applied to the accelerated obligations, to terminate NovaStar Mortgage as the servicer with respect to the servicing rights pledged pursuant to the Facility and transfer such servicing rights to a successor servicer, to sell or retain the purchased assets to satisfy obligations owed to it, and to recover any deficiency from NovaStar. In addition, an event of default under the Facility would cross-default all other financing facilities between NovaStar and Wachovia or any of its affiliates, and generally would permit Wachovia and its affiliates to set off any outstanding obligations of NovaStar against any collateral pledged by NovaStar to Wachovia or any of its affiliates under the Facility or under any other agreement. Further, the NovaStar Parties would be liable to Wachovia for all reasonable legal fees or other expenses incurred in connection with the event of default, the cost of entering into replacement transactions and entering into or terminating hedge transactions in connection or as a result of the event of default, and any other losses, damages, costs or expenses arising or resulting from the occurrence of the event of default.

The foregoing is a summary of the terms of the Facility and the related Guaranty and Pledge Agreement. This summary is qualified in its entirety by reference to the full text of the Facility and the related Guaranty and Pledge Agreement, which are attached hereto as Exhibit 10.1 and 10.2, respectively, and are incorporated herein by reference.

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Wachovia Master Repurchase Agreements

On April 27, 2007, NovaStar Financial, Inc. and certain of its subsidiaries entered into short-term extensions of three existing one-year warehouse repurchase agreements with Wachovia (the "Wachovia One-Year Repurchase Agreements"), further extending the termination date of the Wachovia One-Year Repurchase Agreements. The termination date of the Whole Loan Facility (as defined below) and the Securities Facility (as defined below) is May 4, 2007, and the termination date of the Regulatory Facility (as defined below) is May 27, 2007.

As previously disclosed, the Wachovia One-Year Repurchase Agreements consist of a Master Repurchase Agreement that sets forth the terms of a repurchase facility under which certain subsidiaries of NovaStar Financial, Inc. may sell and Wachovia may purchase certain mortgage loans (the "Whole Loan Facility"), and a Master Repurchase Agreement that sets forth the terms of a repurchase facility under which certain subsidiaries of NovaStar Financial, Inc. may sell and Wachovia may purchase certain mortgage securities (the "Securities Facility"), in each case against an obligation of the relevant subsidiaries of NovaStar Financial, Inc. to repurchase the mortgage loans or mortgage securities purchased by Wachovia. NovaStar Financial, Inc. and certain of its other subsidiaries have guaranteed the obligations of the Company's subsidiaries under these facilities. The Whole Loan Facility and the Securities Facility each provide for borrowing capacity of \$800 million, but amounts outstanding under both facilities combined cannot exceed \$800 million in the aggregate. The

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Wachovia One-Year Repurchase Agreements also include a Master Repurchase Agreement between NovaStar Mortgage, Inc. and Wachovia, providing for borrowing capacity of \$1 million as required for certain regulatory purposes (the "Regulatory Facility").

Section 2--Financial Information

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

See "Wachovia Master Repurchase Agreement (2007 Servicing Rights)" under Item 1.01 of this Current Report which is incorporated herein by reference.

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, regarding management's beliefs, estimates, projections, and assumptions with respect to, among other things, our future operations, business plans and strategies, as well as industry and market conditions, all of which are subject to change at any time without notice. Actual results and operations for any future period may vary materially from those discussed herein. Some important factors that could cause actual results to differ materially from those anticipated include: our ability to generate and maintain sufficient liquidity on favorable terms; the size, frequency and structure of our securitizations; our ability to sell loans we originate in the marketplace; impairments on our mortgage assets; increases in

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prepayment or default rates on our mortgage assets; increases in loan repurchase requests; inability of potential borrowers to meet our underwriting guidelines; changes in assumptions regarding estimated loan losses and fair value amounts; finalization of the amount and terms of any severance provided to terminated employees; finalization of the accounting impact of our previously-announced reduction in workforce; events impacting the subprime mortgage industry in general, including events impacting our competitors and liquidity available to the industry; the initiation of margin calls under our credit facilities; the ability of our servicing operations to maintain high performance standards and maintain appropriate ratings from rating agencies; our ability to generate acceptable origination volume while maintaining an acceptable level of overhead; residential property values; our continued status as a REIT; interest rate fluctuations on our assets that differ from our liabilities; the outcome of litigation or regulatory actions pending against us or other legal contingencies; our compliance with applicable local, state and federal laws and regulations or opinions of counsel relating thereto and the impact of new local, state or federal legislation or regulations or opinions of counsel relating thereto or court decisions on our operations; our ability to adapt to and implement technological changes; compliance with new accounting pronouncements; our ability to successfully integrate acquired businesses or assets with our existing business; the impact of general economic conditions; and the risks that are from time to time included in our filings with the SEC, including our Annual Report on Form 10-K for the year ended December 31, 2006. Other factors not presently identified may also cause actual results to differ. Words such as "believe," "expect," "anticipate," "promise," "plan," and other expressions or words of similar meanings, as well as future or conditional verbs such as "will," "would," "should," "could," or "may" are generally intended to identify forward-looking statements. This Current Report speaks only as of its date and we expressly disclaim any duty to update the information herein.

Section 9--Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits

(d) Exhibits. The following exhibits are filed herewith:

- 10.1 Master Repurchase Agreement (2007 Servicing Rights), dated as of April 25, 2007, among Wachovia Bank, N.A., Wachovia Capital Markets, LLC, and NovaStar Mortgage, Inc.
- 10.2 Guaranty and Pledge Agreement, dated as of April 25, 2007, made by NovaStar Financial, Inc., NFI Holding Corporation, NovaStar Mortgage, Inc. and HomeView Lending, Inc. in favor of Wachovia Bank, N.A.

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SIGNATURE

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 thereunto duly authorized.

NOVASTAR FINANCIAL, INC.

DATE: May 1, 2007

/s/ Gregory S. Metz

Gregory S. Metz
Chief Financial Officer

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Exhibit Index

**Exhibit
Number**

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