

NAVIDEA BIOPHARMACEUTICALS, INC.

Form 10-K/A

March 21, 2013

UNITED STATES

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K/A**

**(Amendment No. 1)**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2012

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE EXCHANGE ACT

For the transition period from to    to   

Commission file number H01-35076

**NAVIDEA BIOPHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

31-1080091

(I.R.S. Employer Identification No.)

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425 Metro Place North, Suite 450, Dublin, Ohio  
(Address of principal executive offices)

43017-1367  
(Zip Code)

Registrant's telephone number, including area code (614) 793-7500

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, par value \$.001 per share (Title of Class)	NYSE MKT (Name of Each Exchange on Which Registered)
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Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.



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

Large accelerated filer  Accelerated filer   
Non-accelerated filer  Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12-b-2 of the Act.)

Yes  No

The aggregate market value of shares of common stock held by non-affiliates of the registrant on June 30, 2012 was \$355,918,124.

The number of shares of common stock outstanding on March 1, 2013 was 117,610,966.

#### DOCUMENTS INCORPORATED BY REFERENCE

None.

## EXPLANATORY NOTE

The sole purpose of this Amendment No. 1 on Form 10-K/A to our Annual Report on Form 10-K for the period ended December 31, 2012, originally filed with the Securities and Exchange Commission on March 18, 2013 (the "Form 10-K"), is to furnish Exhibit 101 to the Form 10-K, which contains the XBRL (eXtensible Business Reporting Language) Interactive Data File for the financial statements and notes included in the Form 10-K.

The Company is filing Exhibit 101 in accordance with the temporary hardship exemption provided by Rule 201 of Regulation S-T.

No other changes have been made to the Form 10-K. This Amendment No. 1 speaks as of the original filing date of the Form 10-K, and does not reflect events that may have occurred subsequent to the original filing date and does not modify or update in any way disclosures made in the original Form 10-K. Accordingly, this amendment should be read in conjunction with the original Form 10-K filing.

## Item 15. Exhibits, Financial Statement Schedules

Exhibit

Number

Exhibit Description

Amended and Restated Certificate of Incorporation of Navidea Biopharmaceuticals, Inc., as corrected February 18, 1994, and amended June 27, 1994, July 25, 1995, June 3, 1996, March 17, 1999, May 9, 2000, June 13, 2003, July 3.1 29, 2004, June 22, 2005, November 20, 2006, December 26, 2007, April 30, 2009, July 27, 2009, August 2, 2010, and January 5, 2012)(incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K filed March 7, 2012, and incorporated herein by reference).

Certificate of Ownership Merging Neoprobe Name Change, Inc. into Neoprobe Corporation, effective January 5, 3.2 2012, as filed with the Delaware Secretary of State (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K filed December 21, 2011, and incorporated herein by reference).

Amended and Restated By-Laws dated July 21, 1993, as amended July 18, 1995, May 30, 1996 and July 26, 2007 3.3 (filed as Exhibit 3.2 to the Company's Current Report on Form 8-K filed August 3, 2007, and incorporated herein by reference).

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Certificate of Designations, Voting Powers, Preferences, Limitations, Restrictions, and Relative Rights of Series B  
4.1 Cumulative Convertible Preferred Stock (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed June 28, 2010).

Certificate of Designations, Voting Powers, Preferences, Limitations, Restrictions, and Relative Rights of Series C  
4.2 10% Cumulative Convertible Preferred Stock (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed June 28, 2010).

Navidea Biopharmaceuticals, Inc. Fourth Amended and Restated 2002 Stock Incentive Plan (incorporated by  
10.1 reference to Appendix A to the Definitive Proxy Statement for the Company's 2012 Annual Meeting of Stockholders, filed July 10, 2012).

Form of Stock Option Agreement under the Navidea Biopharmaceuticals, Inc. Fourth Amended and Restated  
10.2 2002 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed December 21, 2006).

10.3 Form of Restricted Stock Award and Agreement under the Fourth Amended and Restated 2002 Stock Incentive Plan (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed January 9, 2008).

10.4 Form of Employment Agreement between the Company and each of Dr. Frederick O. Cope and Mr. Brent L. Larson. This agreement is one of two substantially identical employment agreements and is accompanied by a schedule which identifies material details in which each individual agreement differs from the form filed herewith (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed January 7, 2013).

10.5 Schedule identifying material differences between the employment agreements incorporated by reference as Exhibit 10.4 to this Annual Report on Form 10-K (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed January 7, 2013).

10.6 Employment Agreement, effective April 15, 2011, by and between the Company and Mark J. Pykett (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed April 1, 2011).

10.7 Relocation Agreement, dated March 30, 2011, by and between the Company and Mark J. Pykett (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed April 1, 2011).

10.8 Employment Agreement, dated June 1 2012, between the Company and Thomas H. Tulip, Ph.D (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed June 7, 2012).

10.9 Employment Agreement, effective November 1, 2012, between the Company and Cornelia Reininger, M.D. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 6, 2012).

10.10 Separation Agreement and Release, dated March 30, 2011, between the Company and David C. Bupp (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed April 1, 2011).

10.11 Consulting Agreement, dated March 30, 2011, between the Company and David C. Bupp (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed April 1, 2011).

10.12 Consulting Services Agreement, dated August 3, 2011, between the Company and Eric K. Rowinsky, M.D. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 4, 2011).

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Consulting Services Agreement, dated August 27, 2012, between the Company and Eric K. Rowinsky, M.D. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 30, 2012).

10.14 Navidea Biopharmaceuticals, Inc. 2012 Cash Bonus Plan (incorporated by reference to the Company's Current Report on Form 8-K filed April 13, 2012).

10.15 Navidea Biopharmaceuticals, Inc. 2013 Cash Bonus Plan (incorporated by reference to the Company's Current Report on Form 8-K filed February 27, 2013).

10.16 Technology Transfer Agreement, dated July 29, 1992, between the Company and The Dow Chemical Corporation (portions of this Exhibit have been omitted pursuant to a request for confidential treatment and have been filed separately with the Commission) (incorporated by reference to Exhibit 10.10 to the Company's Form S-1 filed October 15, 1992).



10.17 Cooperative Research and Development Agreement between the Company and the National Cancer Institute (incorporated by reference to Exhibit 10.3.31 to the Company's September 30, 1995, Form 10-QSB).

10.18 License, dated May 1, 1996, between the Company and The Dow Chemical Company (incorporated by reference to Exhibit 10.3.45 to the Company's June 30, 1996, Form 10-QSB).

10.19 License Agreement, dated May 1, 1996, between the Company and The Dow Chemical Company (portions of this Exhibit have been omitted pursuant to a request for confidential treatment and have been filed separately with the Commission) (incorporated by reference to Exhibit 10.3.46 to the Company's June 30, 1996, Form 10-QSB).

10.20 License Agreement, dated January 30, 2002, between the Company and the Regents of the University of California, San Diego, as amended on May 27, 2003 and February 1, 2006 (portions of this Exhibit have been omitted pursuant to a request for confidential treatment and have been filed separately with the Commission) (incorporated by reference to Exhibit 10.11 to the Company's Annual Report on Form 10-KSB filed March 31, 2006).

10.21 Evaluation License Agreement, dated March 31, 2005, between the Company and the Regents of the University of California, San Diego (portions of this Exhibit have been omitted pursuant to a request for confidential treatment and have been filed separately with the Commission) (incorporated by reference to Exhibit 10.12 to the Company's Annual Report on Form 10-KSB filed March 31, 2006).

10.22 Product Supply Agreement between the Company and TriVirix International, Inc., dated February 5, 2004 (portions of this Exhibit have been omitted pursuant to a request for confidential treatment and have been filed separately with the Commission) (incorporated by reference to Exhibit 10.17 to the Company's December 31, 2004 Form 10-KSB).

10.23 Supply and Distribution Agreement, dated November 15, 2007, between the Company and Cardinal Health 414, LLC (portions of this Exhibit have been omitted pursuant to a request for confidential treatment and have been filed separately with the Commission) (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed November 21, 2007).

10.24 Manufacture and Supply Agreement, dated November 30, 2009, between the Company and Reliable Biopharmaceutical Corporation (portions of this Exhibit have been omitted pursuant to a request for confidential treatment and have been filed separately with the Commission) (incorporated by reference to Exhibit 10.1 to the Company's June 30, 2010 Form 10-Q).

10.25

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Sublicense Agreement, dated July 31, 2012, between Alseres Pharmaceuticals, Inc. and the Company (portions of this Exhibit have been omitted pursuant to a request for confidential treatment and have been filed separately with the United States Securities and Exchange Commission)(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 6, 2012).

10.26 Registration Rights Agreement, dated July 31, 2012, between the Company and Alseres Pharmaceuticals, Inc. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed August 6, 2012).

Securities Purchase Agreement, dated as of December 26, 2007, between the Company and Platinum-Montaur  
10.27 Life Sciences, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K  
filed January 2, 2008).

Amendment and Waiver for Securities Purchase Agreement, dated April 16, 2008, between the Company and  
10.28 Platinum-Montaur Life Sciences, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current  
Report on Form 8-K filed April 18, 2008).

Agreement Modifying the Interest and Dividend Payment Dates of the Company's Series A and B Promissory  
Notes and Series A Preferred Stock, and Exercise and Conversion Price Adjustment Provisions of the Company's  
10.29 Series X and Y Warrants and Series A Preferred Stock, dated March 31, 2009, between the Company and  
Platinum-Montaur Life Sciences, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current  
Report on Form 8-K filed April 6, 2009).

Securities Amendment and Exchange Agreement, dated July 24, 2009, between the Company and  
10.30 Platinum-Montaur Life Sciences, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current  
Report on Form 8-K filed July 29, 2009).

Amended and Restated Series X Warrant to Purchase Shares of Common Stock of the Company issued to  
10.31 Platinum-Montaur Life Sciences, LLC (incorporated by reference to Exhibit 10.5 to the Company's Current  
Report on Form 8-K filed July 29, 2009).

Amendment to Series X Warrant, dated December 13, 2012, between the Company and Platinum Montaur Life  
10.32 Sciences, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed  
December 19, 2012).

Wavier of Automatic Conversion of Series B Convertible Preferred Stock, dated December 13, 2012, by and  
10.33 among the Company, Platinum Montaur Life Sciences, LLC, and Platinum Partners Value Arbitrage Fund, L.P.  
(incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed December 19,  
2012).

Series AA Warrant to Purchase Shares of Common Stock of the Company issued to Platinum-Montaur Life  
10.34 Sciences, LLC (incorporated by reference to Exhibit 10.7 to the Company's Current Report on Form 8-K filed  
July 29, 2009).

Registration Rights Agreement, dated December 26, 2007, between the Company and Platinum-Montaur Life  
10.35 Sciences, LLC (incorporated by reference to Exhibit 10.7 to the Company's Current Report on Form 8-K filed  
January 2, 2008).

10.36 Second Amendment to Registration Rights Agreement, dated April 16, 2008, between the Company and Platinum-Montaur Life Sciences, LLC (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed April 18, 2008).

10.37 Third Amendment to Registration Rights Agreement, dated July 10, 2008, between the Company and Platinum-Montaur Life Sciences, LLC (incorporated by reference to Exhibit 10.55 to pre-effective amendment No. 2 to the Company's Registration Statement on Form S-1, filed July 24, 2008, Registration file No. 333-150650).

10.38 Fourth Amendment to Registration Rights Agreement, dated December 5, 2008, between the Company and Platinum-Montaur Life Sciences, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed December 9, 2008).

10.39 Fifth Amendment to Registration Rights Agreement, dated December 21, 2009, between the Company and Platinum-Montaur Life Sciences, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed December 22, 2009).

Securities Exchange Agreement, dated June 22, 2010, by and between the Company and Platinum-Montaur Life Sciences, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed June 28, 2010).

Settlement Agreement, dated April 18, 2011, by and among Platinum-Montaur Life Sciences, LLC, Platinum Partners Value Arbitrage Fund, L.P. and the Company (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed April 18, 2011).

Loan Agreement, dated July 25, 2012, between the Company and Platinum-Montaur Life Sciences LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed July 31, 2012).

Promissory Note, dated July 25, 2012, made by Navidea Biopharmaceuticals, Inc. in favor of Platinum-Montaur Life Sciences LLC (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed July 31, 2012).

Securities Exchange Agreement, dated November 27, 2012, between the Company and Platinum Partners Value Arbitrage Fund, L.P. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed December 3, 2012).

Securities Purchase Agreement, dated November 7, 2010, by and among the Company and each purchaser identified on the signature pages thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed November 12, 2010).

Form of Series EE Common Stock Purchase Warrant (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed November 12, 2010).

Underwriting Agreement, dated January 29, 2013, between the Company and Ladenburg Thalmann & Co. Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed January 31, 2013).

Asset Purchase Agreement, dated May 24, 2011, between Devicor Medical Products, Inc. and the Company (portions of this Exhibit have been omitted pursuant to a request for confidential treatment and have been filed separately with the SEC) (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K/A filed July 19, 2011).

License Agreement, dated December 9, 2011, between AstraZeneca AB and the Company (portions of this Exhibit have been omitted pursuant to a request for confidential treatment and have been filed separately with

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the United States Securities and Exchange Commission) (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K/A filed April 11, 2012).

Loan and Security Agreement, dated December 29, 2011, between the Company and Hercules Technology II, 10.50 L.P. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed January 5, 2012).

Series GG Warrant to Purchase Common Stock of the Company issued to Hercules Technology II, L.P. on 10.51 December 29, 2011 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed January 5, 2012).

21.1 Subsidiaries of the registrant.\*

23.1 Consent of BDO USA, LLP.\*

24.1 Power of Attorney.\*

31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\*

31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\*

32.1 Certification of Chief Executive Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.\*

32.2 Certification of Chief Financial Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.\*

101.INS

XBRL Instance Document\*\*

101.SCH

XBRL Taxonomy Extension Schema Document\*\*

101.CAL

XBRL Taxonomy Extension Calculation Linkbase Document\*\*

101.DEF

XBRL Taxonomy Extension Definition Linkbase Document\*\*

101.LAB

XBRL Taxonomy Extension Label Linkbase Document\*\*

101.PRE

XBRL Taxonomy Extension Presentation Linkbase Document\*\*

\* Filed with our Form 10-K on March 18, 2013

\*\* Furnished with this Amendment 1 to Form 10-K

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) 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.

Dated: March 21, 2013

**NAVIDEA  
BIOPHARMACEUTICALS,  
INC.**  
(the Company)

By: /s/ Mark J. Pykett  
Mark J. Pykett  
President and Chief  
Executive Officer