

NOVARTIS AG
Form S-8
April 08, 2011

As filed with the Securities and Exchange Commission on April 8, 2011

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Novartis AG

(Exact name of registrant as specified in its charter)

Switzerland
(State or other jurisdiction of
incorporation or organization)

Not applicable
(I.R.S. Employer Identification No.)

Lichtstrasse 35

CH-4056 Basel, Switzerland

(Address of principal executive offices) (Zip Code)

Amended 2002 Alcon Incentive Plan

(Full title of the plan)

Thomas Werlen

Novartis AG

Lichtstrasse 35

CH-4056 Basel

Switzerland

(Name and address of agent for service)

+41 61 324 1111

(Telephone number, including area code, of agent for service)

Copy to:

Eric S. Shube

Allen & Overy LLP

1221 Avenue of the Americas

New York, New York 10020

+1 212 610 6300

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (2)	Proposed Maximum Offering Price Per Share (3)	Proposed Maximum Aggregate Offering Price (3)	Amount of Registration Fee (4)
Ordinary Shares of Novartis AG, nominal value CHF 0.50 per share (Novartis Shares)				
(1)	22,000,000	\$ 54.455	\$ 1,198,010,000	\$ 43,419.87

- (1) The Novartis Shares will be represented by American Depositary Shares of Novartis AG (**Novartis ADSs**), each of which currently represents one Novartis Share. A separate registration statement on Form F-6 (File No. 333-162725) has been filed with the Securities and Exchange Commission (the **Commission**) on October 29, 2009 for the registration of Novartis ADSs evidenced by American Depositary Receipts issuable upon deposit of the Novartis Shares.
- (2) The number of Novartis Shares registered is based on the maximum number of Novartis Shares or Novartis ADSs deliverable by Novartis AG upon the exercise of options and certain other equity awards that are outstanding under the Amended 2002 Alcon Incentive Plan (the **Outstanding Alcon Awards**).
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) and 457(c) under the Securities Act of 1933, as amended (the **Securities Act**), based upon the average of the high and low prices for the Novartis ADSs on the New York Stock Exchange on April 4, 2011.

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- (4) On April 8, 2011, Alcon, Inc. merged with and into Novartis AG (the **Merger**). As a result of the Merger, Novartis AG became the successor (within the meaning of Rule 405 of Regulation C) of Alcon, Inc. In addition, at the effective time of the Merger, all Outstanding Alcon Awards converted into corresponding awards exercisable for Novartis Shares or Novartis ADSs in accordance with the terms of the Merger Agreement, dated December 14, 2010, between Novartis AG and Alcon, Inc. Alcon, Inc. previously paid (i) aggregate registration fees of \$79,724.25 with regard to 10,000,000 common shares, nominal value CHF 0.20 per share (the **Alcon Shares**), that were registered by Alcon, Inc. pursuant to a registration statement on Form S-8 (Registration No. 333-162738) filed with the Commission on October 29, 2009 (the **Incentive Plan Registration Statement**) for issuance under and pursuant to the Amended 2002 Alcon Incentive Plan and (ii) aggregate registration fees of \$15,944.85 with regard to 2,000,000 Alcon Shares that were registered by Alcon, Inc. pursuant to a registration statement on Form S-8 (Registration No. 333-162736) filed with the Commission on October 29, 2009 (the **401(K) Plan Registration Statement**) for issuance under and pursuant to the Alcon 401(K) Plan and Trust. Immediately prior to the filing of this registration statement, Alcon, Inc. has filed (i) a post-effective amendment to the Incentive Plan Registration Statement to deregister the Alcon Shares that will not be issued under the Incentive Plan Registration Statement and (ii) a post-effective amendment to the 401(K) Plan Registration Statement to deregister the Alcon Shares that will not be issued under the 401(K) Plan Registration Statement (together, the **Remaining Alcon Shares**). In accordance with Rule 457(p), Novartis AG offsets the registration fee due in connection with the registration of the Novartis Shares under this registration statement against the total registration fees that had already been paid by Alcon, Inc. with regard to the Remaining Alcon Shares.
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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information required by Item 1 and Item 2 of Part I of Form S-8 is omitted from this filing in accordance with Rule 428 under the Securities Act and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the participants in the plan covered by this registration statement as required by Rule 428(b)(1).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of documents by reference.

The following documents previously filed with or furnished to the Commission by Novartis AG and Alcon, Inc. are incorporated by reference herein and shall be deemed to be a part hereof:

- (a) Novartis AG's Annual Report on Form 20-F for the year ended December 31, 2010, filed with the Commission on January 27, 2011;
- (b) Novartis AG's reports on Form 6-K, furnished to the Commission on February 23, 2011 (Results of Shareholder Votes at 2011 Annual General Meeting) and April 8, 2011 (Results of Shareholder Votes at 2011 Extraordinary General Meeting);
- (c) Alcon, Inc.'s Annual Report on Form 20-F for the year ended December 31, 2010, filed with the Commission on March 18, 2011;
- (d) Alcon, Inc.'s report on Form 6-K, furnished to the Commission on April 7, 2011 (Results of Shareholder Votes at 2011 Annual General Meeting); and

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(e) The descriptions of the Novartis Shares and Novartis ADSs contained in Novartis AG's Annual Report on Form 20-F for the year ended December 31, 2010.

All documents filed with or furnished to the Commission by Novartis AG pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the **Exchange Act**), including any Annual Report on Form 20-F and reports on Form 6-K, subsequent to the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered herein have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date such reports are filed or furnished, as applicable.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes hereof or of the related prospectus to the extent that a statement contained herein or in any other subsequently filed document which is also incorporated or deemed to be incorporated herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Under Swiss law, directors and senior officers acting in violation of their statutory duties – whether dealing with bona fide third parties or performing any other acts on behalf of the corporation – may become liable to the corporation, its shareholders and (in bankruptcy) its creditors for damages. The directors' liability is joint and several but only to the extent the damage is attributable to each director based on willful or negligent violation of duty. If the board of directors lawfully delegated the power to carry out day-to-day management to a different corporate body, such as the executive board, the board of directors is not vicariously liable for the acts of the members of the executive board. Instead, the directors can be held liable for their failure to properly select, instruct or supervise the executive board members. If directors and officers enter into a transaction on behalf of the corporation with bona fide third parties in violation of their statutory duties, the transaction is nevertheless valid as long as it is not excluded by the corporation's business purpose.

Under Swiss law, a corporation may indemnify a director or officer of the corporation against losses and expenses (unless arising from his gross negligence or willful misconduct), including attorney's fees, judgments, fines and settlement amounts actually and reasonably incurred in a civil or criminal action, suit or proceeding by reason of having been the representative of or serving at the request of the corporation.

Novartis AG's articles of incorporation do not contain provisions regarding the indemnification of directors and officers but according to general principles of Swiss employment law, an employer may, under certain circumstances, be required to indemnify an employee against losses and expenses incurred by him in the execution of his duties under the employment agreement, unless the losses and expenses arise from the employee's gross negligence or willful misconduct.

Novartis AG currently maintains directors' and officers' insurance for its directors and officers as well as officers and directors of certain of its subsidiaries.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See Exhibit Index which is incorporated herein by reference.

Item 9. Undertakings.

(a) 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;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this 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 this 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; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the registration statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished by the registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this registration statement 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions of the registrant's articles of incorporation, regulations of the board and committee charters or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act 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 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant, Novartis AG, certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Basel, Switzerland, on April 8, 2011.

NOVARTIS AG

By: /s/ Jonathan Symonds
 Name: Jonathan Symonds
 Title: Chief Financial Officer

By: /s/ Dr. Thomas Werlen
 Name: Dr. Thomas Werlen
 Title: General Counsel

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Jonathan Symonds, Thomas Werlen, Juergen Brokatzky-Geiger, Gijs van Bussel, Peter Rupprecht and Barry Rosenfeld, jointly and severally, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Joseph Jimenez Joseph Jimenez	Chief Executive Officer (principal executive officer)	April 8, 2011
/s/ Jonathan Symonds Jonathan Symonds	Chief Financial Officer (principal financial and accounting officer)	April 8, 2011
/s/ Dr. Daniel Vasella Dr. Daniel Vasella	Chairman of the Board of Directors	April 8, 2011
/s/ Dr. Ulrich Lehner Dr. Ulrich Lehner	Vice-Chairman of the Board of Directors	April 8, 2011
/s/ Dr. William Brody Dr. William Brody	Director	April 8, 2011

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Signature	Title	Date
/s/ Srikant Datar, Ph.D Srikant Datar, Ph.D.	Director	April 8, 2011
/s/ Ann Fudge Ann Fudge	Director	April 8, 2011
/s/ Pierre Landolt Pierre Landolt	Director	April 8, 2011
/s/ Dr. Enrico Vanni Dr. Enrico Vanni	Director	April 8, 2011
/s/ Dr. Andreas von Planta Dr. Andreas von Planta	Director	April 6, 2011
/s/ Dr. Ing. Wendelin Wiedeking Dr. Ing. Wendelin Wiedeking	Director	April 7, 2011
/s/ Marjorie M. Yang Marjorie M. Yang	Director	April 8, 2011
/s/ Dr. Rolf M. Zinkernagel Dr. Rolf M. Zinkernagel	Director	April 8, 2011
/s/ Barry Rosenfeld Barry Rosenfeld	Authorized U.S. Representative	April 8, 2011

EXHIBIT INDEX

EXHIBIT	DESCRIPTION
4.1	Articles of Incorporation of Novartis AG, as amended February 26, 2010 (English translation) (incorporated by reference to Exhibit 3.1 to Novartis AG's registration statement on Form F-4 (File No. 333-171381) filed on December 23, 2010)
4.2	Regulations of the Board and Committee Charters of Novartis AG, as amended February 1, 2010 (incorporated by reference to Exhibit 3.2 to Novartis AG's registration statement on Form F-4 (File No. 333-171381) filed on December 23, 2010)
4.3	Amended and Restated Deposit Agreement, dated as of May 11, 2000 among Novartis AG, JPMorgan Chase Bank (fka Morgan Guaranty Trust Company of New York), as depositary, and all holders from time to time of ADRs issued thereunder (incorporated by reference to Exhibit (a)(1) to Post-Effective Amendment No. 1 to Novartis AG's registration statement on Form F-6 (File No. 333-11758) filed September 8, 2000)
4.4	Amendment No. 1 to the Amended and Restated Deposit Agreement (incorporated by reference to Exhibit (a)(2) to Post-Effective Amendment No. 1 to Novartis AG's registration statement on Form F-6 (File No. 333-11758) filed September 8, 2000)
4.5	Restricted Issuance Agreement dated as of January 11, 2002 among Novartis AG, JPMorgan Chase Bank, as depositary, and all holders from time to time of ADRs issued thereunder (incorporated by reference to Exhibit 4 to Novartis AG's registration statement on Form F-3 (File No. 333-81862) filed on January 31, 2002)
4.6	Amendment No. 2 to the Amended and Restated Deposit Agreement (incorporated by reference to Exhibit (a)(3) to Novartis AG's registration statement on Form F-6 (File No. 333-13446) filed on May 7, 2001)
4.7	Letter Agreement dated December 14, 2007 between Novartis AG and JPMorgan Chase Bank, as depositary (incorporated by reference to Exhibit 2.4 to Novartis AG's Annual Report on Form 20-F for the year ended on December 31, 2007)
4.8	Amended 2002 Alcon Incentive Plan, as amended December 1, 2010
23.1	Consent of Independent Auditors - PricewaterhouseCoopers AG
24	Powers of Attorney (included on signature pages)