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NOVASTAR FINANCIAL INC
Form 8-K
June 06, 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

May 31, 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

(State or other jurisdiction of
incorporation or organization)

(Commission
File Number)

(I.R.S. Employer
Identification Number)

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.

Master Repurchase Agreement (2007 Non-Investment Grade Securities)

On May 31, 2007, Wachovia Investment Holdings, LLC and Wachovia Capital Markets, LLC (together with their affiliates, "Wachovia"), NovaStar Mortgage, Inc., NovaStar Certificates Financing, LLC, NovaStar Certificates Financing Corporation, NFI Holding Corporation and NovaStar Financial, Inc. (together with their affiliates, "NovaStar"), executed a Master Repurchase Agreement (2007 Non-Investment Grade Securities) (the "Non-Investment Grade Securities Facility"). The Non-Investment Grade Securities Facility provides financing for certain eligible non-investment grade mortgage securities and has a term of 363 days. All obligations under the Non-Investment Grade Securities Facility are guaranteed by NovaStar Financial, Inc. and NFI Holding Corporation and are secured by the mortgage securities financed under the Non-Investment Grade Securities Facility. In addition to the financing facilities described in this Current Report, Wachovia and certain of its affiliates provide additional 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.

The maximum amount available under the Non-Investment Grade Securities Facility is \$400 million, which amount will be reduced to the extent that amounts outstanding at such time under certain other repurchase facilities between Wachovia and NovaStar exceed \$1.5 billion. The advance rate under the Non-Investment Grade Securities Facility is up to 65% of the market value of the mortgage securities securing the advance. The interest rate applicable to such advances will range from one-month LIBOR plus 1% to one-month LIBOR plus 2.5%, depending on the type of mortgage securities securing the advance.

The market value of the mortgage securities will be determined by Wachovia in its sole discretion. If, in Wachovia's opinion, the market value of mortgage securities that are then financed under the Non-Investment Grade Securities Facility decreases for any reason, NovaStar will be required to repay the margin or difference in market value, or provide additional collateral.

The Non-Investment Grade Securities Facility is cross-collateralized with all other repurchase and similar financing facilities between NovaStar and Wachovia. NovaStar will be required to pay Wachovia a structuring fee in connection with the Non-Investment Grade Securities Facility and certain additional fees and expenses, including but not limited to reimbursement of due diligence expenses and payment of certain fees in the event of voluntary prepayment or termination by NovaStar or the occurrence of an event of default. In addition, upon a change of control of NovaStar Financial, Inc., Wachovia has the right to terminate the Non-Investment Grade Securities Facility and require the payment of a termination fee.

The Non-Investment Grade Securities Facility requires that the adjusted consolidated tangible net worth of NovaStar Financial, Inc. exceed both \$517 million (less the amount of required REIT dividends) and an amount equal to a portion of the value of various classes of assets held by NovaStar Financial,

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Inc. and its consolidated subsidiaries. In addition, NovaStar Financial, Inc. is required to maintain, on a consolidated basis, at least \$30 million of liquidity.

The Non-Investment Grade Securities Facility prohibits NovaStar Financial, Inc. from paying any dividends (other than dividends payable in stock), except for the payment of (i) 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 and (ii) dividends on NovaStar Financial, Inc.'s 8.90% Series C Cumulative Redeemable Preferred Stock and on the trust preferred securities issued by NovaStar Capital Trust I and NovaStar Capital Trust II. Absent the prior consent of Wachovia, permitted dividends may not be paid in cash. Dividends on the 8.90% Series C Cumulative Redeemable Preferred Stock and on the trust preferred securities can only be paid if after such payments NovaStar Financial, Inc. has \$30 million of liquidity. Further, dividends paid to enable NovaStar Financial, Inc. to comply with applicable tax requirements 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 necessary pursuant to applicable tax laws 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.

The Non-Investment Grade Securities Facility contains other customary affirmative and negative covenants, including but not limited to covenants prohibiting fundamental changes in the nature of the business of NovaStar, prohibiting sales by NovaStar of a material portion of its 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.

The Non-Investment Grade Securities Facility provides for certain events of default, including but not limited to the failure by NovaStar 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 Non-Investment Grade Securities Facility, representations or warranties made by NovaStar under the Non-Investment Grade Securities 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 with respect to NovaStar, the failure by NovaStar to satisfy certain final non-appealable monetary judgments, regulatory enforcement actions that materially curtail the conduct of business by NovaStar, 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 Non-Investment Grade Securities Facility, Wachovia has the right, in addition to other rights and remedies, to accelerate the repurchase and other obligations of NovaStar under the Non-Investment Grade Securities Facility and the related Guaranty, to cause all

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income generated by the purchased assets to be applied to the accelerated obligations, to terminate NovaStar Mortgage, Inc. as the servicer with respect to the purchased assets 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 Non-Investment Grade Securities 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 Non-Investment Grade Securities Facility or under any other agreement. Further, NovaStar 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 Non-Investment Grade Securities Facility and the related Guaranty. This summary is qualified in its entirety by reference to the full text of the Non-Investment Grade Securities Facility and the related Guaranty, which are attached hereto as Exhibit 10.1 and 10.2, respectively, and are incorporated herein by reference.

Master Repurchase Agreement (2007 Investment Grade Securities)

On May 31, 2007, Wachovia Bank, N.A., Wachovia Capital Markets, LLC, NovaStar Mortgage, Inc., NovaStar Certificates Financing, LLC, NovaStar Certificates Financing Corporation, NFI Holding Corporation and NovaStar Financial, Inc. executed a Master Repurchase Agreement (2007 Investment Grade Securities) (the "Investment Grade Securities Facility"). The Investment Grade Securities Facility provides financing for certain eligible investment grade mortgage and other asset backed securities and has a term of 363 days. All obligations under the Investment Grade Securities Facility are guaranteed by NovaStar Financial, Inc. and NFI Holding Corporation and are secured by the securities financed under the Investment Grade Securities Facility.

The maximum amount available under the Investment Grade Securities Facility is \$400 million, which amount will be reduced to the extent that amounts outstanding at such time under certain other repurchase facilities between Wachovia and NovaStar exceed \$1.5 billion. The advance rate under the Investment Grade Securities Facility ranges from 70% to 97% of the market value of the securities securing the advance. The interest

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rate applicable to such advances will range from one-month LIBOR to one-month LIBOR plus 0.65%, depending on the type of securities securing the advance.

The market value of the securities will be determined by Wachovia in its sole discretion. If, in Wachovia's opinion, the market value of securities that are then financed under the Investment Grade Securities Facility decreases for any reason, NovaStar will be required to repay the margin or difference in market value, or provide additional collateral.

The Investment Grade Securities Facility is cross-collateralized with all other repurchase and similar financing facilities between NovaStar and Wachovia. NovaStar will be required to pay Wachovia a structuring fee in connection with

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the Investment Grade Securities Facility and certain additional fees and expenses, including but not limited to reimbursement of due diligence expenses and payment of certain fees in the event of voluntary prepayment or termination by NovaStar or the occurrence of an event of default. In addition, upon a change of control of NovaStar Financial, Inc., Wachovia has the right to terminate the Investment Grade Securities Facility and require the payment of a termination fee.

The Investment Grade Securities Facility contains substantially similar covenants, events of default and remedies as are described above under the heading "Master Repurchase Agreement (2007 Non-Investment Grade Securities) in connection with the Non-Investment Grade Securities Facility.

The foregoing is a summary of the terms of the Investment Grade Securities Facility and the related Guaranty. This summary is qualified in its entirety by reference to the full text of the Investment Grade Securities Facility and the related Guaranty, which are attached hereto as Exhibit 10.3 and 10.4, respectively, and are incorporated herein by reference.

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

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See "*Master Repurchase Agreement (2007 Non-Investment Grade Securities)*" and "*Master Repurchase Agreement (2007 Investment Grade Securities)*" under Item 1.01 of this Current Report which is incorporated herein by reference.

Section 9---Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits

Exhibits. The following exhibits are filed herewith:

10.1 Master Repurchase Agreement (2007 Non-Investment Grade Securities), dated as of May 31, 2007, among Wachovia Investment Holdings, LLC, as Buyer, Wachovia Capital Markets, LLC, as Agent, NovaStar Mortgage, Inc., NovaStar Certificates Financing, LLC, and NovaStar Certificates Financing Corporation, as Sellers, and NFI Holding Corporation and NovaStar Financial, Inc., as Guarantors.

10.2 Guaranty, dated as of May 31, 2007, among NovaStar Financial, Inc., NFI Holding Corporation, and Wachovia Investment Holdings, LLC.

10.3 Master Repurchase Agreement (2007 Investment Grade Securities), dated as of May 31, 2007, among Wachovia Bank, N.A., as Buyer, Wachovia Capital Markets, LLC, as Agent, NovaStar Mortgage, Inc., NovaStar Certificates Financing, LLC, and NovaStar Certificates Financing Corporation, as Sellers, and NFI Holding Corporation and NovaStar Financial, Inc., as Guarantors.

10.4 Guaranty, dated as of May 31, 2007, among NovaStar Financial, Inc., NFI Holding Corporation, and 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: June 6, 2007

/s/ Gregory S. Metz

Gregory S. Metz
Chief Financial Officer

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Exhibit Index

**Exhibit
Number**

- 10.1 Master Repurchase Agreement (2007 Non-Investment Grade Securities), dated as of May 31, 2007, among Wachovia Investment Holdings, LLC, as Buyer, Wachovia Capital Markets, LLC, as Agent, NovaStar Mortgage, Inc., NovaStar Certificates Financing, LLC, and NovaStar Certificates Financing Corporation, as Sellers, and NFI Holding Corporation and NovaStar Financial, Inc., as Guarantors.
- 10.2 Guaranty, dated as of May 31, 2007, among NovaStar Financial, Inc., NFI Holding Corporation, and Wachovia Investment Holdings, LLC.
- 10.3 Master Repurchase Agreement (2007 Investment Grade Securities), dated as of May 31, 2007, among Wachovia Bank, N.A., as Buyer, Wachovia Capital Markets, LLC, as Agent, NovaStar Mortgage, Inc., NovaStar Certificates Financing, LLC, and NovaStar Certificates Financing Corporation, as Sellers, and NFI Holding Corporation and NovaStar Financial, Inc., as Guarantors.
- 10.4 Guaranty, dated as of May 31, 2007, among NovaStar Financial, Inc., NFI Holding Corporation, and Wachovia Bank, N.A..

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