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NOVASTAR FINANCIAL INC  
Form 8-K  
May 05, 2008

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 29, 2008  
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

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(Address of principal executive offices)  
(Zip Code)

(816) 237-7000

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(Registrant's telephone number, including area code)

Not Applicable

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(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:

- 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))

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**Item 1.01. Entry into a Material Definitive Agreement.**

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### Forbearance Agreements.

To preserve short-term liquidity flexibility, on March 30, 2008, NovaStar Mortgage, Inc. ("NMI"), a wholly-owned subsidiary of NovaStar Financial, Inc. ("NFI"), did not make a quarterly interest payment of \$1,302,506.10 ("First Payment Failure") due on its unsecured junior subordinated notes (the "Notes") issued to NovaStar Capital Trust I ("Trust I") and NovaStar Capital Trust II ("Trust II"). In addition, on April 30, 2008 NMI did not make a quarterly interest payment of \$439,867.38 (the "Second Payment Failure," and together with the First Payment Failure, the "Payment Failure"). As a result, Trust I and Trust II were unable to make corresponding payments owed to the holders of the trust preferred securities issued by the trusts. NFI has guaranteed NMI's obligations under the Notes, including NMI's obligations to make periodic interest payments thereon. Under the terms of the Indentures governing the Notes (the "Indentures"), NMI had a grace period of 30 days from March 30, 2008 and April 30, 2008 (the respective interest payment due dates) before the nonpayment gave the parties to, or beneficiaries of, the Indentures a right to accelerate the obligations under the Notes based on the Payment Failure. Copies of the Indentures and related documents have previously been filed with the Securities and Exchange Commission.

NMI, NFI, The Bank of New York Trust Company, National Association ("BONY"), Trust I, the Administrative Trustees, as defined therein, Taberna Preferred Funding I, Ltd. and Taberna Preferred Funding II, Ltd. entered into a Forbearance Agreement, dated as of April 29, 2008 (the "Taberna Forbearance Agreement"), and NMI, NFI, BONY, Trust II, the Administrative Trustees, as defined therein, Kodiak CDO I, Ltd. and Kodiak CDO II, Ltd. entered into a Forbearance Agreement, dated as of April 29, 2008 (the "Kodiak Forbearance Agreement," and together with the Taberna Forbearance Agreement, the "Forbearance Agreements"). Pursuant to the Forbearance Agreements, the parties thereto agreed to forbear in the exercise of their rights and remedies under the respective Indenture, the respective Notes and the other applicable documents and instruments with respect to the Payment Failure until May 30, 2008. Other than with respect to the Payment Failure, the parties to each Indenture preserved all of their rights and remedies under the applicable Indenture, the applicable Notes and the other applicable documents and instruments related thereto. As a condition to the aforementioned forbearance, until May 30, 2008, NMI agreed: (1) not to incur any additional indebtedness (other than ordinary trade accounts payable); (2) not to convey, transfer, or lease any of its properties and assets (other than in the ordinary course of business); (3) not to consolidate with or merge into any other person; and (4) to fully repay 100% of the outstanding borrowings and remaining fees due under the Whole Loan Agreement, the Investment Grade Securities Agreement and the Non-Investment Grade Securities Agreement (each as defined below) which as of the date of the Forbearance Agreements totaled \$11,879,613.66.

While NFI intends to negotiate with the applicable parties to restructure the terms of the Indentures, to make the payments required thereunder on or before May 30, 2008 and to repay the Wachovia facilities as required by the Forbearance Agreements, there can be no assurance that it will be able to do so. In the event that NFI is unable to restructure the terms of the Indentures, fails to pay the interest owed on the Notes or fails to repay the Wachovia facilities as

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required by the Forbearance Agreements, the parties to the Forbearance Agreements may seek an acceleration of the obligations under the Indentures. An acceleration of these obligations would cause a default under the Agreements (as defined below) with Wachovia to the extent such Agreements are then outstanding. Such events would have a material adverse effect on NFI and its financial condition and liquidity and are likely to cause NFI and/or certain of its subsidiaries to seek the protection of applicable federal and state bankruptcy

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laws.

The foregoing is a summary of the terms of the Forbearance Agreements. This summary is qualified in its entirety by reference to the full text of the Forbearance Agreements, which are attached hereto as Exhibits 10.1 and 10.2, respectively, and are incorporated herein by reference.

### Waiver Agreement.

NFI and certain of its affiliates (the "Company") entered into a Master Repurchase Agreements Waiver, dated April 30, 2008 ("Waiver Agreement"), with Wachovia Bank N.A. and certain of its affiliates ("Wachovia") pursuant to which, for a period ending on May 29, 2008 (the "Waiver Period"), Wachovia agreed not to enforce, and waived any breach or event of default that would otherwise have resulted solely from the Company's failure to comply with, the requirement under the Agreements described below that the Company maintain a specified adjusted tangible net worth. Further, the requirement under the Agreements that the Company maintain liquidity of at least \$30 million was amended to require the Company to maintain liquidity of at least \$5.5 million during the Waiver Period. Wachovia expressly reserved the right to terminate the Waiver Agreement prior to May 29, 2008, if any other event of default or breach occurs under the Agreements other than as described above.

The agreements affected by the Waiver Agreement are the following (the "Agreements"), copies of which have previously been filed with the Securities and Exchange Commission:

1. Master Repurchase Agreement (2007 Whole Loan) dated as of May 9, 2007 (the "Whole Loan Agreement"), among Wachovia Bank, National Association, NFI Repurchase Corporation, NMI Repurchase Corporation, NMI Property Financing, Inc., HomeView Lending, Inc., NovaStar Financial Inc., NFI Holding Corporation and NovaStar Mortgage, Inc.
2. Master Repurchase Agreement (2007 Non-investment Grade) dated as of May 31, 2007 (the "Non-Investment Grade Securities Agreement"), among Wachovia Investment Holdings, LLC, Wachovia Capital Markets LLC, NovaStar Mortgage, Inc., NovaStar Certificates Financing LLC, and NovaStar Certificates Financing Corp.
3. Master Repurchase Agreement (2007 Investment Grade) dated as of May 31, 2007 (the "Investment Grade Securities Agreement"), among Wachovia Bank, National Association, Wachovia Capital Markets LLC, NovaStar Mortgage, Inc., NovaStar Certificates Financing LLC, and NovaStar Certificates Financing Corp.
4. Master Repurchase Agreement (New York) dated as of July 6, 2007 (the "NY Agreement"), between Wachovia Bank, National Association and NovaStar Mortgage, Inc.

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The foregoing is a summary of the terms of the Waiver Agreement. This summary is qualified in its entirety by reference to the full text of the Waiver Agreement, which is attached hereto as Exhibit 10.3 and is incorporated herein by reference.

### Amendment Number Two to the Master Repurchase Agreement (2007 Whole Loan)

The Company and Wachovia entered into Amendment Number Two to the Whole Loan Agreement, dated April 30, 2008, pursuant to which the termination date of the Whole Loan Agreement was extended from May 8, 2008 until May 29, 2008.

The foregoing is a summary of the terms of Amendment Number Two to the Whole Loan Agreement. This summary is qualified in its entirety by reference to the

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full text of Amendment Number Two to the Whole Loan Agreement, which is attached hereto as Exhibit 10.4 and is incorporated herein by reference.

In addition to the financing agreements listed above, Wachovia in the past has routinely engaged in other ordinary course financial transactions with the Company, including but not limited to financial derivative transactions, and has acted as an underwriter for certain securitizations sponsored by the Company.

Statements in this Report on Form 8-K which are not historical facts are "forward-looking statements" within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. Forward looking statements are those that predict or describe future events and that do not relate solely to historical matters and include statements regarding intentions or beliefs with respect to NFI's ability to renegotiate the terms of the Indentures or to make the payments required thereunder or under the Forbearance Agreements. Some important factors that could cause actual results to differ materially from those anticipated include: NFI's ability to manage its business during this difficult period for the subprime industry; its ability to negotiate with the parties to the Forbearance Agreements regarding a restructuring of its obligations; its ability to continue as a going concern; its ability to maintain sufficient liquidity; its ability to repay Wachovia in a manner and time period acceptable to Wachovia and the parties to the Forbearance Agreements; its ability to remain in compliance with the agreements governing its indebtedness or its ability to obtain waivers in the event of non-compliance therewith; and the risks that are from time to time included in NFI's filings with the Securities and Exchange Commission ("SEC"). Other factors not presently identified may also cause actual results to differ. This report on Form 8-K speaks only as of its date and NFI expressly disclaims any duty to update the information herein except as required by federal securities laws.

### Item 9.01 Financial Statement and Exhibits

(d) Exhibits.

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<u>Exhibit No.</u>	<u>Document</u>
10.1	Forbearance Agreement, dated April 29, 2008, by and among NovaStar Mortgage, Inc., NovaStar Financial, Inc., The Bank of New York Trust Company, National Association, NovaStar Capital Trust I, W. Lance Anderson, Rodney E. Schwatken, Todd M. Phillips, Taberna Preferred Funding I, Ltd., and Taberna Preferred Funding II, Ltd.
10.2	Forbearance Agreement, dated April 29, 2008, by and among NovaStar Mortgage, Inc., NovaStar Financial, Inc., The Bank of New York Trust Company, National Association, NovaStar Capital Trust II, W. Lance Anderson, Rodney E. Schwatken, Todd M. Phillips, Kodiak CDO I, Ltd. and Kodiak CDO II, Ltd.
10.3	Master Repurchase Agreements Waiver, dated April 30, 2008, by and among NovaStar Mortgage, Inc., NovaStar Certificates Financing LLC, NovaStar Certificates Financing Corporation, NFI Repurchase Corporation, NMI Repurchase Corporation, NMI Property Financing, Inc., HomeView Lending, Inc., NovaStar Financial, Inc., NFI Holding Corporation, Wachovia Bank, N.A. and Wachovia Investment Holdings, LLC.
10.4	Amendment Number Two to Master Repurchase Agreement (2007 Whole Loan), dated April 30, 2008, by and among NFI Repurchase Corporation, NMI Repurchase Corporation, Homeview Lending, Inc.,

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NMI Property Financing, Inc., Wachovia Bank National Association,  
NFI Holding Corporation, NovaStar Financial, Inc., NovaStar  
Mortgage Inc. and Home View Lending, Inc.

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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 hereunto duly authorized.

NOVASTAR FINANCIAL, INC.

DATE: May 5, 2008

/s/ Rodney Schwatken  
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Rodney Schwatken  
Chief Financial Officer

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### **Index to Exhibits**

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10.3	Master Repurchase Agreements Waiver, dated April 30, 2008, by and among NovaStar Mortgage, Inc., NovaStar Certificates Financing LLC, NovaStar Certificates Financing Corporation, NFI Repurchase Corporation, NMI Repurchase Corporation, NMI Property Financing, Inc., HomeView Lending, Inc., NovaStar Financial, Inc., NFI Holding Corporation, Wachovia Bank, N.A. and Wachovia Investment Holdings, LLC.
10.4	Amendment Number Two to Master Repurchase Agreement (2007 Whole Loan), dated April 30, 2008, by and among NFI Repurchase Corporation, NMI Repurchase Corporation, Homeview Lending, Inc., NMI Property Financing, Inc., Wachovia Bank National Association, NFI Holding Corporation, NovaStar Financial, Inc., NovaStar Mortgage Inc. and Home View Lending, Inc.