

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

Date of Report (Date of earliest event reported): April 30, 2013

Biota Pharmaceuticals, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35285
(Commission
File Number)

59-1212264
(IRS Employer
Identification No.)

2500 Northwinds Parkway, Suite 100
Alpharetta, GA
(Address of principal executive offices)

30009
(Zip Code)

Registrant's telephone number, including area code: (678) 221-3351

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))

Item 1.01 Entry Into a Material Definitive Agreement.

On April 30, 2013, Biota Pharmaceuticals, Inc. (the “Company”) entered into a new form of indemnification agreement (the “Agreement”) with its directors and executive officers, which Agreement was approved by the Company’s Board of Directors (the “Board”). The Agreement provides, among other things, that the Company will indemnify each director and executive officer (each, an “Indemnitee”) in the event that the Indemnitee becomes a party or otherwise a participant in any action or proceeding on account of the Indemnitee’s service to the Company (or service for another corporation or entity in any capacity at the request of the Company) to the fullest extent permitted by applicable law. Under the Agreement, the Company will pay, in advance of the final disposition of any such action or proceeding, expenses (including attorneys’ fees) reasonably incurred by the Indemnitee in defending or otherwise responding to such action or proceeding upon receipt of satisfactory documentation supporting such expenses, subject to repayment by the Indemnitee if it is ultimately determined that the Indemnitee is not entitled to indemnification by the Company. The contractual rights to indemnification provided by the Agreement are subject to the limitations and conditions specified in the Agreement, and are in addition to any other rights each Indemnitee may have under the Company’s Restated Certificate of Incorporation and By-Laws, each as amended from time to time, and applicable law.

The foregoing summary of the Agreement is qualified in its entirety by reference to the Agreement, which is filed herewith as Exhibit 10.1 and incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On April 30, 2013, Raafat Fahim, Ph.D., tendered his resignation from the Board, effective immediately. On May 1, 2013, Paul Bell also tendered his resignation from the Board, effective immediately. There were no disagreements between either of Messrs. Fahim or Bell and the Company on any matter relating to the Company’s operations, policies or practices relative to their respective resignations.

On May 1, 2013, the Board appointed Anne M. VanLent and Michael R. Dougherty as directors to fill the vacancies created by the resignations of Messrs. Fahim and Bell. Ms. VanLent was also appointed as Chair of the Audit Committee. The Board determined that each of Ms. VanLent and Mr. Dougherty are independent directors under the NASDAQ listing standards. There is no arrangement or understanding between either of Ms. VanLent or Mr. Dougherty and any other person pursuant to which either was elected as a director. There are no transactions in which either of Ms. VanLent or Mr. Dougherty has an interest requiring disclosure under Item 404(a) of Regulation S-K.

As non-employee directors, Ms. VanLent and Mr. Dougherty are eligible to receive compensation in accordance with the Company’s non-employee director compensation practices. On May 1, 2013, the Board adopted changes to the Company’s non-employee director compensation, pursuant to which:

- each non-employee director will receive an annual retainer of \$37,000 payable as cash compensation for the director’s service during the year;
- each non-employee director serving on a committee, or active as the Chair of a committee, will receive certain additional annual cash retainers as follows:

Audit Committee Chair	\$	17,500
Audit Committee Member (non-chair)	\$	8,750
Nominating and Corporate Governance Chair	\$	9,000
Nominating and Corporate Governance Member (non-chair)	\$	4,500
Compensation Committee Chair	\$	12,500
Compensation Committee Member (non-chair)	\$	6,250

- each non-employee director will receive, upon the initial effective date of such director’s membership, an award of either (i) options to purchase 30,000 shares of the Company’s common stock or (ii) 17,400 restricted stock units under the Company’s 2007 Omnibus Equity Incentive Plan, one-third (33%) of which award shall vest on the first anniversary of the date of grant, with the remaining two-thirds (67%) of such award vesting ratably over the following eight (8) quarters; and
 - each non-employee director will receive an annual award of either (i) options to purchase 15,000 shares of the Company’s common stock or (ii) 8,700 restricted stock units under the Company’s 2007 Omnibus Equity Incentive Plan, each award vesting in 12 equal monthly installments from the date of grant.
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In connection with their respective appointments as a director, each of Ms. VanLent and Mr. Dougherty were granted options to purchase 30,000 shares of the Company's common stock in accordance with the Company's non-employee director compensation practices described above. The Company issued a press release announcing the appointment of each of Ms. VanLent and Mr. Dougherty as a director, a copy of which is attached hereto as Exhibit 99.1.

Item 8.01 Other Events.

On May 1, 2013, the Board approved the retirement of the Company's 5,867,361 shares of treasury stock and the return of those shares to the status of authorized but unissued shares.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

10.1 Form of Indemnification Agreement for Directors and Executive Officers

99.1 Press release dated May 6, 2013

SIGNATURES

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.

Biota Pharmaceuticals, Inc.

Date: May 6, 2013

/s/ Russell H Plumb

Name: Russell H Plumb
Title: President and Chief Executive Officer
(Duly Authorized Officer)

EXHIBIT INDEX

<i>Exhibit Number</i>	<i>Description</i>
10.1	Form of Indemnification Agreement for Directors and Executive Officers
99.1	Press release dated May 6, 2013

INDEMNIFICATION AGREEMENT

This Indemnification Agreement, dated _____, 20__, is made between Biota Pharmaceuticals, Inc., a Delaware corporation (the “Company”), and _____ (the “Indemnitee”).

RECITALS

- A. The Company desires to attract and retain the services of talented and experienced individuals, such as Indemnitee, to serve as directors and officers of the Company and its subsidiaries and wishes to indemnify such directors and officers to the maximum extent permitted by law;
- B. The Company and Indemnitee recognize that corporate litigation in general has subjected directors and officers to expensive litigation risks;
- C. Section 145 of the General Corporation Law of Delaware, under which the Company is organized (“Section 145”), empowers the Company to indemnify its directors and officers by agreement and to indemnify persons who serve, at the request of the Company, as the directors and officers of other corporations or enterprises, and expressly provides that the indemnification provided by Section 145 is not exclusive;
- D. Section 145(g) allows for the purchase of management liability (“D&O”) insurance by the Company, which in theory can cover asserted liabilities without regard to whether they are indemnifiable or not;
- E. Individuals considering service or presently serving as a director or officer of the Company expect to be extended market terms of indemnification commensurate with their role or position, and that the Company will endeavor to maintain appropriate D&O insurance; and
- F. In order to induce Indemnitee to serve or continue to serve as a director or officer of the Company and/or one or more its subsidiaries, the Company and Indemnitee enter into this Agreement.

AGREEMENT

NOW, THEREFORE, Indemnitee and the Company hereby agree as follows:

1. Definitions. As used in this Agreement:

(a) “Agent” means any person who is or was a director, officer, employee or other agent of the Company or a subsidiary of the Company; or is or was serving at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company as a director, officer, employee or agent of another foreign or domestic corporation, limited liability company, employee benefit plan, nonprofit entity, partnership, joint venture, trust or other enterprise; or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the Company or a subsidiary of the Company, or was a director, officer, employee or agent of another enterprise at the request of, for the convenience of, or to represent the interests of such predecessor corporation.

(b) “Board” means the Board of Directors of the Company.

(c) A “Change in Control” shall be deemed to have occurred if (i) any “person,” as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority of the total voting power represented by the Company’s then outstanding voting securities, (ii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board, together with any new directors whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination was previously so approved, cease for any reason to constitute a majority of the Board, (iii) the stockholders of the Company approve a merger or consolidation or a sale of all or substantially all of the Company’s assets with or to another entity, other than a merger, consolidation or asset sale that would result in the holders of the Company’s outstanding voting securities immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least a majority of the total voting power represented by the voting securities of the Company or such surviving or successor entity outstanding immediately thereafter, or (iv) the stockholders of the Company approve a plan of complete liquidation of the Company.

(d) “Expenses” shall include all out-of-pocket costs of any type or nature whatsoever (including, without limitation, all attorneys’ fees and related disbursements), actually and reasonably incurred by Indemnitee in connection with either the investigation, defense or appeal of a Proceeding or establishing or enforcing a right to indemnification under this Agreement, or Section 145 or otherwise; provided, however, that “Expenses” shall not include any judgments, fines, ERISA excise taxes or penalties, or amounts paid in settlement of a Proceeding.

(e) “Independent Counsel” means a law firm, or a partner (or, if applicable, member) of such a law firm, that is experienced in relevant matters of corporation law and neither currently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party or (ii) any other party to or witness in the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(f) “Proceeding” means any threatened, pending, or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding whether formal or informal, civil, criminal, administrative, or investigative, including any such investigation or proceeding instituted by or on behalf of the Corporation or its Board of Directors, in which Indemnitee is or reasonably may be involved as a party or target, that is associated with Indemnitee’s being an Agent of the Corporation.

(g) “Subsidiary” means any corporation of which more than 50% of the outstanding voting securities is owned directly or indirectly by the Company, by the Company and one or more other subsidiaries, or by one or more other subsidiaries.

2. Agreement to Serve. Indemnitee agrees to serve and/or continue to serve as an Agent of the Company, at its will (or under separate agreement, if such agreement exists), in the capacity Indemnitee currently serves as an Agent of the Company, so long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the Bylaws of the Company or any subsidiary of the Company or until such time as Indemnitee tenders his or her resignation in writing; provided, however, that nothing contained in this Agreement is intended to create any right to continued employment or other service by Indemnitee.

3. Liability Insurance.

(a) Maintenance of D&O Insurance. The Company hereby covenants and agrees that, so long as Indemnitee shall continue to serve as an Agent of the Company and thereafter so long as Indemnitee shall be subject to any possible Proceeding by reason of the fact that Indemnitee was an Agent of the Company, the Company, subject to Section 3(c), shall promptly obtain and maintain in full force and effect directors’ and officers’ liability insurance (“D&O Insurance”) in reasonable amounts from established and reputable insurers, as more fully described below. In the event of a Change in Control, the Company shall, as set forth in Section (c) below, either: i) maintain such D&O Insurance for six years; or ii) purchase a six year tail for such D&O Insurance.

(b) Rights and Benefits. For all D&O Insurance, Indemnitee shall qualify as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company’s independent directors (as defined by the insurer) if Indemnitee is such an independent director; of the Company’s non-independent directors if Indemnitee is not an independent director; of the Company’s officers if Indemnitee is an officer of the Company; or of the Company’s key employees, if Indemnitee is not a director or officer but is a key employee.

(c) Limitation on Required Maintenance of D&O Insurance. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain D&O Insurance at all, or of any type, terms, or amount, if the Company determines in good faith that: such insurance is not readily available on commercially reasonable terms or the premium costs for such insurance are materially disproportionate to the amount of coverage provided or available. In the event that the Company is acquired by merger or otherwise, the Company shall purchase a tail of six years duration effective upon closing and covering Indemnitee.

4. Mandatory Indemnification. Subject to the terms of this Agreement:

(a) Third Party Actions. If Indemnitee is a person who was or is a party or is threatened to be made a party to any Proceeding (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was an Agent of the Company, or by reason of anything done or not done by Indemnitee in any such capacity, the Company shall indemnify Indemnitee against all Expenses and liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes and penalties, and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such Proceeding, provided Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or Proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) Derivative Actions. If Indemnitee is a person who was or is a party or is threatened to be made a party to any Proceeding by or in the right of the Company by reason of the fact that Indemnitee is or was an Agent of the Company, or by reason of anything done or not done by Indemnitee in any such capacity, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such Proceeding, provided Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; except that no indemnification under this Section 4(b) shall be made in respect to any claim, issue or matter as to which Indemnitee shall have been finally adjudged to be liable to the Company by a court of competent jurisdiction unless and only to the extent that the Delaware Court of Chancery or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such amounts which the Delaware Court of Chancery or such other court shall deem proper.

(c) Actions where Indemnitee is Deceased. If Indemnitee is a person who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that Indemnitee is or was an Agent of the Company, or by reason of anything done or not done by Indemnitee in any such capacity, and if, prior to, during the pendency of or after completion of such Proceeding Indemnitee is deceased, the Company shall indemnify Indemnitee's heirs, executors and administrators against all Expenses and liabilities of any type whatsoever to the extent Indemnitee would have been entitled to indemnification pursuant to this Agreement were Indemnitee still alive.

(d) Certain Terminations. The termination of any Proceeding or of any claim, issue, or matter therein by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal action or Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(e) Limitations. Notwithstanding the foregoing provisions of Sections 4(a), 4(b), 4(c) and 4(d) hereof, but subject to the exception set forth in Section 14 which shall control, the Company shall not be obligated to indemnify the Indemnitee for Expenses or liabilities of any type whatsoever for which payment (and the Company's indemnification obligations under this Agreement shall be reduced by such payment) is actually made to or on behalf of Indemnitee, by the Company or otherwise, under a corporate insurance policy, or under a valid and enforceable indemnity clause, right, by-law, or agreement; and, in the event the Company has previously made a payment to Indemnitee for an Expense or liability of any type whatsoever for which payment is actually made to or on behalf of the Indemnitee under an insurance policy, or under a valid and enforceable indemnity clause, by-law or agreement, Indemnitee shall return to the Company the amounts subsequently received by the Indemnitee from such other source of indemnification.

(f) Witness. In the event that Indemnitee is not a party or has not been threatened to be made a party to a Proceeding, but is subpoenaed (or given a written request to be interviewed by a government authority) in such a Proceeding by reason of the fact that the Indemnitee is or was an Agent of the Company, or by reason of anything witnessed or allegedly witnessed by the Indemnitee in that capacity, the Company shall indemnify the Indemnitee against all actually and reasonably incurred out of pocket costs of any type or nature whatsoever (including, without limitation, all attorneys' fees and related disbursements), actually and reasonably incurred by Indemnitee in responding to such subpoena or written request for an interview. As a condition to this right, Indemnitee must provide notice of such subpoena or request to the Company within 14 days of Indemnitee's receipt thereof (this notice condition shall control over Section 7(a), which shall not apply to this section 4(f)).

5. Indemnification for Expenses in a Proceeding in Which Indemnitee is Wholly or Partly Successful.

(a) Successful Defense. Notwithstanding any other provisions of this Agreement, to the extent Indemnitee has been successful, on the merits or otherwise, in defense of any Proceeding (including, without limitation, an action by or in the right of the Company) in which Indemnitee was a party by reason of the fact that Indemnitee is or was an Agent of the Company at any time, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by or on behalf of Indemnitee in connection with the investigation, defense or appeal of such Proceeding.

(b) Partially Successful Defense. Notwithstanding any other provisions of this Agreement, to the extent that Indemnitee is a party to any Proceeding (including, without limitation, an action by or in the right of the Company) in which Indemnitee was a party by reason of the fact that Indemnitee is or was an Agent of the Company at any time and is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by or on behalf of Indemnitee in connection with each successfully resolved claim, issue or matter.

(c) Dismissal. For purposes of this section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(d) Contribution. If the indemnification provided in this Agreement is unavailable and may not be paid to Indemnitee for any reason other than statutory limitations, then in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in such proportion as is appropriate to reflect (i) the relative benefits received by the Company on the one hand and Indemnitee on the other hand from the transaction from which such action, suit or proceeding arose, and (ii) the relative fault of Company on the one hand and of Indemnitee on the other in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Company on the one hand and of Indemnitee on the other shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Company agrees that it would not be just and equitable if contribution pursuant to this section were determined by pro rata allocation or any other method of allocation which does not take account of the foregoing equitable considerations.

6. Mandatory Advancement of Expenses.

(a) Subject to the terms of this Agreement and following notice pursuant to Section 7(a) below, the Company shall advance all Expenses reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any Proceeding to which Indemnitee is a party or is threatened to be made a party by reason of the fact that Indemnitee is or was an Agent of the Company (unless there has been a final determination that Indemnitee is not entitled to indemnification for such Expenses) upon receipt satisfactory documentation supporting such Expenses. By execution of this Agreement, Indemnitee agrees to repay the amount advanced only in the event and to the extent that it shall ultimately be determined that Indemnitee is not entitled to indemnification by the Company to the extent set forth in this agreement and under Delaware law. Such advances are intended to be an obligation of the Company to Indemnitee hereunder and shall in no event be deemed to be a personal loan. Such advancement of Expenses shall otherwise be unsecured and without regard to Indemnitee's ability to repay. The advances to be made hereunder shall be paid by the Company to Indemnitee within 30 days following delivery of a written request therefore by Indemnitee to the Company, along with such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to advancement (which shall include without limitation detailed invoices for legal services). The Company shall discharge its advancement duty by, at its option, (a) paying such Expenses on behalf of Indemnitee, (b) advancing to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimbursing Indemnitee for Expenses already paid by Indemnitee. In the event that the Company fails to pay Expenses as incurred by Indemnitee as required by this paragraph, Indemnitee may seek mandatory injunctive relief (including without limitation specific performance) from any court having jurisdiction to require the Company to pay Expenses as set forth in this paragraph. If Indemnitee seeks mandatory injunctive relief pursuant to this paragraph, it shall not be a defense to enforcement of the Company's obligations set forth in this paragraph that Indemnitee has an adequate remedy at law for damages.

(b) Undertakings. Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which constitutes an undertaking whereby Indemnitee promises to repay any amounts advances in the event there shall be a final determination that Indemnitee is not entitled to indemnification by the Company.

7. Notice and Other Indemnification Procedures.

(a) Notice by Indemnitee. Promptly after receipt by Indemnitee of notice of the commencement of or the threat of commencement of any Proceeding, Indemnitee shall, if Indemnitee believes that indemnification with respect thereto may be sought from the Company under this Agreement, notify the Company in writing of the commencement or threat of commencement thereof.

(b) Insurance. If the Company receives notice pursuant to Section 7(a) hereof of the commencement of a Proceeding that may be covered under D&O Insurance then in effect, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies.

(c) Defense. In the event the Company shall be obligated to pay the Expenses of any Proceeding against Indemnitee, the Company shall be entitled to assume the defense of such Proceeding, with counsel selected by the Company and approved by Indemnitee (which approval shall not be unreasonably withheld), upon the delivery to Indemnitee of written notice of the Company's election so to do. After delivery of such notice, and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same Proceeding, provided that (i) Indemnitee shall have the right to employ his or her own counsel in any such Proceeding at Indemnitee's expense; and (ii) Indemnitee shall have the right to employ his or her own counsel in any such Proceeding at the Company's expense if (A) the Company has authorized the employment of counsel by Indemnitee at the expense of the Company; (B) Indemnitee shall have reasonably concluded based on the written advice of Indemnitee's legal counsel that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense; or (C) the Company shall not, in fact, have employed counsel to assume the defense of such Proceeding. In addition to all the requirements above, if the Company has D&O Insurance, or other insurance, with a panel counsel requirement that may cover the matter for which indemnity is claimed by Indemnitee, then Indemnitee shall use such panel counsel or other counsel approved by the insurers, unless there is an actual conflict of interest posed by representation by all such counsel, or unless and to the extent Company waives such requirement in writing. Indemnitee and its counsel shall provide reasonable cooperation with such insurer on request of the Company.

8. Right to Indemnification.

(a) Right to Indemnification. In the event that Section 5(a) is inapplicable, the Company shall indemnify Indemnitee pursuant to this Agreement unless, and except to the extent that, it shall have been determined by one of the methods listed in Section 8(b) that Indemnitee has not met the applicable standard of conduct required to entitle Indemnitee to such indemnification.

(b) Determination of Right to Indemnification. A determination of Indemnitee's right to indemnification under this Section 8 shall be made at the election of the Board by (i) a majority vote of directors who are not parties to the Proceeding for which indemnification is being sought, even though less than a quorum, or by a committee consisting of directors who are not parties to the Proceeding for which indemnification is being sought, who, even though less than a quorum, have been designated by a majority vote of the disinterested directors, or (ii) if there are no such disinterested directors or if the disinterested directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee. However, in the event there has been a Change in Control, then the determination shall, at Indemnitee's sole option, be made by Independent Counsel as in (b)(ii), above, with Indemnitee choosing the Independent Counsel subject to Company's consent, such consent not to be unreasonably withheld.

(c) Submission for Decision. As soon as practicable, and in no event later than 30 days after Indemnitee's written request for indemnification, the Board shall select the method for determining Indemnitee's right to indemnification. Indemnitee shall cooperate with the person or persons or entity making such determination with respect to Indemnitee's right to indemnification, including providing to such person, persons or entity, upon reasonable advance request, any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel or member of the Board shall act reasonably and in good faith in making a determination regarding Indemnitee's entitlement to indemnification under this Agreement.

(d) Application to Court. If (i) a claim for indemnification or advancement of Expenses is denied, in whole or in part, (ii) no disposition of such claim is made by the Company within 60 days after the request therefore, (iii) the advancement of Expenses is not timely made pursuant to Section 6 of this Agreement or (iv) payment of indemnification is not made pursuant to Section 5 of this Agreement, Indemnitee shall have the right to apply to the Delaware Court of Chancery, the court in which the Proceeding is or was pending, or any other court of competent jurisdiction, for the purpose of enforcing Indemnitee's right to indemnification (including the advancement of Expenses) pursuant to this Agreement.

(e) Expenses Related to the Enforcement or Interpretation of this Agreement. The Company shall indemnify Indemnitee against all reasonable Expenses incurred by Indemnitee in connection with any hearing or proceeding under this Section 8 involving Indemnitee, and against all reasonable Expenses incurred by Indemnitee in connection with any other proceeding between the Company and Indemnitee involving the interpretation or enforcement of the rights of Indemnitee under this Agreement, if and to the extent Indemnitee is successful.

(f) In no event shall Indemnitee's right to indemnification (apart from advancement of Expenses) be determined prior to a final adjudication in the Proceeding at issue if the Proceeding is both ongoing, and of the nature to have a final adjudication.

(g) In any proceeding to determine Indemnitee's right to indemnification or advancement, Indemnitee shall be presumed to be entitled to indemnification or advancement, with the burden of proof on the Company to prove, by a preponderance of the evidence (or higher standard if required by relevant law) that Indemnitee is not so entitled.

(h) Indemnitee shall be fully indemnified for those matters where, in the performance of his duties for the Company, he relied in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any of the Company's officers or employees, or committees of the board of directors, or by any other person as to matters Indemnitee reasonably believed were within such other person's professional or expert competence and who was selected with reasonable care by or on behalf of the Company.

(i) The knowledge or actions, or failure to act, of any director, officer, agent, or employee of the Company, or the Company itself, shall not be imputed to Indemnitee for purposes of determining any rights hereunder.

9. Exceptions. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated:

(a) Claims Initiated by Indemnitee. To indemnify or advance Expenses to Indemnitee with respect to Proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, with a reasonable allocation where appropriate, unless (i) such indemnification is expressly required to be made by law, (ii) the Proceeding was authorized by the Board, (iii) such indemnification is provided by the Company, in its sole discretion, pursuant to the powers vested in the Company under the General Corporation Law of Delaware or (iv) the Proceeding is brought pursuant to Section 8 specifically to establish or enforce a right to indemnification under this Agreement or any other statute or law or otherwise as required under Section 145 in advance of a final determination, in which case 8(e)'s fees-on-fees provision shall control;

(b) Fees on Fees. To indemnify Indemnitee for any Expenses incurred by Indemnitee with respect to any Proceeding instituted by Indemnitee to enforce or interpret this Agreement, to the extent Indemnitee is not successful in such a Proceeding;

(c) Unauthorized Settlements. To indemnify Indemnitee under this Agreement for any amounts paid in settlement of a Proceeding unless the Company consents to such settlement, which consent shall not be unreasonably withheld;

(d) Claims Under Section 16(b). To indemnify Indemnitee for Expenses associated with any Proceeding related to, or the payment of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law (provided, however, that the Company must advance Expenses for such matters as otherwise permissible under this Agreement); or

(e) Payments Contrary to Law. To indemnify or advance Expenses to Indemnitee for which payment is prohibited by applicable law.

10. Non-Exclusivity. The provisions for indemnification and advancement of Expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may have under any provision of law, the Company's Certificate of Incorporation or Bylaws, the vote of the Company's stockholders or disinterested directors, other agreements, or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while occupying Indemnitee's position as an Agent of the Company. Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as an Agent of the Company and shall inure to the benefit of the heirs, executors and administrators of Indemnitee.

11. Permitted Defenses. It shall be a defense to any action for which a claim for indemnification is made under this Agreement (other than an action brought to enforce a claim for Expenses pursuant to Section 6 hereof, provided that the required documents have been tendered to the Company) that Indemnitee is not entitled to indemnification because of the limitations set forth in Sections 4 and 9 hereof. Neither the failure of the Company (including its Board of Directors) or an Independent Counsel to have made a determination prior to the commencement of such enforcement action that indemnification of Indemnitee is proper in the circumstances, nor an actual determination by the Company (including its Board of Directors) or an Independent Counsel that such indemnification is improper, shall be a defense to the action or create a presumption that Indemnitee is not entitled to indemnification under this Agreement or otherwise.

12. Subrogation. In the event the Company is obligated to make a payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery under any corporate insurance policy or any other indemnity agreement covering Indemnitee, who shall execute all documents reasonably required and take all action that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights (provided that the Company pays Indemnitee's costs and expenses of doing so), including without limitation by assigning all such rights to the Company or its designee to the extent of such indemnification or advancement of Expenses. The Company's obligation to indemnify or advance expenses under this Agreement shall be reduced by any amount Indemnitee has collected from such other source, and in the event that Company has fully paid such indemnity or expenses, Indemnitee shall return to the Company any amounts subsequently received from such other source of indemnification. With regard to Fund Indemnitors, however, Section 14 shall control over this section.

13. Information Sharing. If Indemnitee is the subject of or is implicated in any investigation, whether formal or informal, by a government or regulatory entity or agency, the Company shall provide to Indemnitee any information provided to the investigating entity concerning the investigation; provided, that by executing this Agreement, Indemnitee agrees to use such information solely in connection with the defense of such investigation and if Indemnitee is no longer serving as a Director or employed by the Company, Indemnitee shall at the Company's request execute a confidentiality agreement substantially in the form of the confidentiality agreement in effect while such Indemnitee was a director or employed by the Company.

14. Primacy of Indemnification. The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of expenses or liability insurance provided by a third-party investor and certain of its affiliates (collectively, the “Fund Indemnitors”). The Company hereby agrees that (i) it is the indemnitor of first resort, *i.e.*, its obligations to Indemnitee under this Agreement and any indemnity provisions set forth in its Certificate of Incorporation, Bylaws or elsewhere (collectively, “Indemnity Arrangements”) are primary, and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee is secondary and excess, (ii) it shall advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement by or on behalf of Indemnitee, to the extent legally permitted and as required by any Indemnity Arrangement, without regard to any rights Indemnitee may have against the Fund Indemnitors, and (iii) it irrevocably waives, relinquishes and releases the Fund Indemnitors from any claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind arising out of or relating to any Indemnity Arrangement. The Company further agrees that no advancement or indemnification payment by any Fund Indemnitor on behalf of Indemnitee shall affect the foregoing, and the Fund Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Fund Indemnitors are express third party beneficiaries of the terms of this Section 14. The Company, on its own behalf and on behalf of its insurers to the extent allowed by the policies, waives subrogation rights against Indemnitee.

15. Survival of Rights.

(a) All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an Agent of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible claim or threatened, pending or completed Proceeding by reason of the fact that Indemnitee was serving in the capacity referred to herein.

(b) The Company shall require any successor to the Company (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

16. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent permitted by law, including those circumstances in which indemnification would otherwise be discretionary.

17. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (i) the validity, legality and enforceability of the remaining provisions of the Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby, and (ii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 14 hereof.

18. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless it is in a writing signed by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

19. Notice. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) upon delivery if delivered by hand to the party to whom such notice or other communication shall have been directed, (b) if mailed by certified or registered mail with postage prepaid, return receipt requested, on the third business day after the date on which it is so mailed, (c) one business day after the business day of deposit with a nationally recognized overnight delivery service, specifying next day delivery, with written verification of receipt, or (d) on the same day as delivered by confirmed facsimile transmission if delivered during business hours or on the next successive business day if delivered by confirmed facsimile transmission after business hours. Addresses for notice to either party shall be as shown on the signature page of this Agreement, or to such other address as may have been furnished by either party in the manner set forth above.

20. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware. This Agreement is intended to be an agreement of the type contemplated by Section 145(f) of the General Corporation Law of Delaware.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforcement is sought needs to be produced to evidence the existence of this Agreement.

The parties hereto have entered into this Indemnification Agreement, including the undertaking contained herein, effective as of the date first above written.

Indemnatee:

Address: _____

The Company:

BIOTA PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____



PRESS RELEASE

FOR IMMEDIATE RELEASE

BIOTA PHARMACEUTICALS ANNOUNCES CHANGES TO ITS BOARD OF DIRECTORS

ATLANTA, GA – May 6, 2013 —Biota Pharmaceuticals, Inc. (Nasdaq: BOTA) (“Biota” or the “Company”), a biopharmaceutical company focused on the discovery and development of anti-infective products to prevent and treat serious and potentially life-threatening infectious diseases, today announced changes to its Board of Directors, including the resignations of Dr. Raafat Fahim and Mr. Paul Bell, and the appointments of Ms. Anne M. VanLent and Mr. Michael R. Dougherty to fill those vacancies. Ms. VanLent will serve as Chair of the Audit Committee.

“On behalf of Biota, I want to thank Raafat and Paul for their significant contributions toward creating the new Biota Pharmaceuticals and positioning it for future growth,” said Dr. James Fox, Chairman of Biota Pharmaceuticals, Inc.

Ms. VanLent joins Biota’s Board with extensive experience in corporate advisory and financial services roles within life sciences. Ms. VanLent is currently the President of AMV Advisors, an advisory firm which she founded in 2008 to provide corporate strategy and financial consulting services to emerging growth life science companies. Previously, Ms. VanLent was Executive Vice President and Chief Financial Officer of Barrier Therapeutics, Inc. Prior to that, she was Executive Vice President, Portfolio Management for Sarnoff Corporation, a multidisciplinary research and development firm. Earlier in her career, she served as Senior Vice President and Chief Financial Officer of The Liposome Company, Inc. Ms. VanLent also currently serves as a member of the Board of Directors of Integra LifeSciences, Aegerion Pharmaceuticals, and Tranzyme Pharma, the latter two of which she serves as Chair of the Audit Committee. She previously served as a member of the Board of Directors of i-STAT Corporation and Penwest Pharmaceuticals.

Mr. Dougherty also brings to Biota significant corporate and operational life sciences experience, having served in key executive and director roles at several biopharmaceutical companies over his career. Most recently, Mr. Dougherty was Chief Executive Officer of Kalidex Pharmaceuticals, a privately-held, venture-backed infectious disease company. Prior to Kalidex, he served as Chief Executive Officer and a director of Adolor Corporation, a biopharmaceutical company acquired by Cubist Pharmaceuticals in 2011. He also served in other executive roles at Adolor before being appointed CEO, including Chief Operating Officer, Chief Financial Officer, and Senior Vice President, Commercial Operations. Prior to joining Adolor, he served in a number of executive roles, including Chief Operating Officer of Genomics Collaborative, Chief Executive Officer, Chief Financial Officer and a director of Genaera Corp, and Chief Financial Officer of Centocor, Inc. Mr. Dougherty currently serves on the Board and Chairs the Audit Committee of ViroPharma, Inc. (Nasdaq: VPHM).

“We are very pleased to welcome Anne and Michael to our Board,” Dr. Fox added. “Anne brings deep experience serving life science companies at a similar stage to Biota’s, as well as a diverse skill set inclusive of financial expertise and corporate governance. Michael has demonstrated an ability to successfully undertake a number of strategic, operational and financial roles over his career, oversee a novel product approval by the FDA, and successfully direct the acquisition of Adolor. We look forward to their respective contributions as Biota transitions to its next stage of corporate growth.”

“The addition of Anne and Michael will provide valuable experience and perspective to me and the Board during an exciting time for Biota as we advance our development as a leading infectious disease company,” added Russell H. Plumb, President and Chief Executive Officer of Biota Pharmaceuticals.

About Biota

Biota Pharmaceuticals, Inc. is a biopharmaceutical company focused on the discovery and development of anti-infective products to prevent and treat a number of serious and potentially life-threatening infectious diseases. The Company has discovered two generations of neuraminidase inhibitors (NIs) that have been commercialized, the first of which is zanamivir, marketed world-wide as Relenza[®] by GlaxoSmithKline. The Company’s second generation NIs are referred to as long-acting neuraminidase inhibitors (LANIs), which allow for a single inhaled treatment, as compared to five-day, twice-daily dosing associated with first generation inhaled or oral neuraminidase inhibitors. The Company and Daiichi Sankyo Inc. have cross-licensed the world-wide rights to develop and commercialize LANIs, including laninamivir octanoate, which is marketed by Daiichi Sankyo Inc. as Inavir[®] in Japan.

The Company currently has two Phase 2 clinical-stage product candidates; laninamivir octanoate, which it is developing under an existing contract with the U.S. Office of Biomedical Advanced Research and Development Authority (“BARDA”) to provide up to \$231 million in financial support to complete the clinical development of laninamivir octanoate for the treatment of influenza A and B infections in the U.S. market; and vapendavir, a potent, oral broad-spectrum capsid inhibitor of human rhinovirus (HRV). In addition, the Company has preclinical programs focused on developing treatments for respiratory syncytial virus (RSV) as well as for gram-negative and multi-drug resistant bacterial infections. For additional information about the Company, please visit www.biotapharma.com.

Biota is a registered trademark of Biota Holdings Limited. Relenza[™] is a trademark of GlaxoSmithKline plc, Inavir[®] is a registered trademark of Daiichi Sankyo Company, Ltd.

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