

Advaxis, Inc.
Form S-1/A
September 11, 2012

File No. 333-183682

As filed with the Securities and Exchange Commission on September 11, 2012

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

AMENDMENT NO. 1

TO

FORM S-1

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

ADVAXIS, INC.

(Exact name of registrant as specified in its charter)

Delaware	2836	02-0563870
(State or other jurisdiction	(Primary Standard Industrial	(I.R.S.
of incorporation or organization)	Classification Code Number)	Employer
		Identification
		No.)

305 College Road East

Princeton, New Jersey 08540

(609) 452-9813

(Address, including zip code, and telephone number, including area code, of registrant's principal executive office)

Mr. Thomas A. Moore

Chief Executive Officer

305 College Road East

Princeton, New Jersey 08540

(609) 452-9813

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Robert H. Cohen, Esq.

Greenberg Traurig, LLP

The MetLife Building

200 Park Avenue

New York, New York 10166

Phone: (212) 801-9200

Fax: (212) 801-6400

Approximate date of commencement of proposed sale to the public. From time to time after this Registration Statement becomes effective, as determined by the selling stockholder named in the prospectus contained herein.

If any of the Securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended, check the following box:

Edgar Filing: Advaxis, Inc. - Form S-1/A

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act Registration Statement number of the earlier effective Registration Statement for the same offering: "

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, please check the following box and list the Securities Act Registration Statement number of the earlier effective Registration Statement for the same offering: "

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act Registration Statement number of the earlier effective Registration Statement for the same offering: "

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

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share		Proposed maximum aggregate offering price	Amount of registration fee
		\$			
Common Stock, par value \$0.001 per share	8,076,923 shares (2)	\$.061	(3)	\$ 492,692.30	\$ 56.46 (3)
Common Stock, par value \$0.001 per share, issuable upon conversion of convertible notes.	3,250,000 shares (4)	\$.061	(3)	\$ 198,250.00	\$ 22.72 (3)
Total	11,326,923 shares	-		-	\$ 79.18 (5)

- Pursuant to Rule 416 under the Securities Act of 1933, as amended, this Registration Statement shall be deemed to cover the additional securities (i) to be offered or issued in connection with any provision of any securities purported to be registered hereby to be offered pursuant to terms which provide for a change in the amount of securities being offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions and (ii) of the same class as the securities covered by this Registration Statement issued or issuable prior to completion of the distribution of the securities covered by this Registration Statement as a result of a split of, or a stock dividend on, the registered securities.
- (2) Represents shares of the registrant’s issued and outstanding common stock being registered for resale. Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) of the Securities Act of 1933, as amended, based on the average of the high and low prices of the common stock of the registrant as reported on the OTC Bulletin Board on August 30, 2012.
 - (3) 1933, as amended, based on the average of the high and low prices of the common stock of the registrant as reported on the OTC Bulletin Board on August 30, 2012.
 - (4) This Registration Statement covers the resale by our selling stockholder of up to 3,250,000 shares of common stock issuable upon conversion of the principal amount of a convertible promissory note (the “August 2012 Note”).
 - (5) Previously paid.

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the commission, acting pursuant to section 8(a) may determine.

EXPLANATORY NOTE

This Amendment No. 1 to the Registration Statement on Form S-1 (SEC File No. 333-183682) is being filed solely for the purposes of amending the Exhibit Index in Item 16 of Part II of the Registration Statement and furnishing the XBRL exhibits indicated in such Item. Accordingly, this Amendment No. 1 consists only of the facing page, this explanatory note, Part II to the Registration Statement and the Exhibit Index. The XBRL information furnished with this Amendment No. 1 had been previously included with the registrant's periodic reports filed pursuant to its reporting obligations under the Securities Exchange Act of 1934, as amended.

No changes are being made to the prospectus constituting Part I of the Registration Statement by this filing, and therefore it has been omitted.

PART II - INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the costs and expenses other than underwriting discounts and commissions, if any, payable by the registrant relating to the sale of common stock being registered. All amounts are estimates except the SEC registration fee.

Printing and engraving expenses	5,000
Legal fees and expenses	30,000
Accounting fees and expenses	5,000
Transfer agent and registrar's fees and expenses	1,000
Miscellaneous expense	750
Total	\$41,750

Item 14. Indemnification of Directors and Officers.

Delaware General Corporation Law. The registrant is a Delaware corporation. Section 102(b)(7) of the Delaware General Corporation Law (the "DGCL") enables a corporation to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of the director's fiduciary duty, except:

- for any breach of the director's duty of loyalty to the corporation or its stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions); or
- for any transaction from which the director derived an improper personal benefit.

In accordance with Section 102(b)(7) of the DGCL, the registrant's certificate of incorporation includes a provision eliminating, to the fullest extent permitted by the DGCL, the liability of the registrant's directors to the registrant or its stockholders for monetary damages for breach of fiduciary as director. If the DGCL is subsequently amended to

further eliminate or limit the liability of a director, then a director of the registrant, in addition to the circumstances in which a director is not personally liable as set forth in provision described in the preceding sentence, will not be liable to the fullest extent permitted by the amended DGCL.

Subsection (a) of Section 145 of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Section 145 of the DGCL further provides that a corporation similarly may indemnify any such person serving in any such capacity who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or such other court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Certificate of Incorporation and Bylaws. The registrant's amended and restated certificate of incorporation contains provisions which provide that the registrant will indemnify the registrant's directors and officers in each and every situation where, under Section 145 of the DGCL, as amended from time to time, the registrant is permitted or empowered to make such indemnification, and to the fullest extent permitted by law. The registrant may, in the sole discretion of its Board of Directors, indemnify any other person who may be indemnified pursuant to Section 145 of the DGCL to the extent the Board of Directors deems advisable, as permitted by Section 145 of the DGCL.

The registrant's bylaws contain provisions which provide, among other things, that the registrant shall indemnify any officer or director who was or is a party or is threatened to be made a party to any threatened, pending or completed (i) action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the registrant) by reason of the fact that he is or was a director, officer, employee or agent of the registrant, or is or was serving at the request of the registrant as a director, officer, employee or agent of another registrant, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the registrant, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful and (ii) action or suit by or in the right of the registrant to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the registrant, or is or was serving at the request of the registrant as a director, officer, employee or agent of another registrant, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the registrant; except that no indemnification shall be made in respect of any claim, issue or matters as to which such person shall have been adjudged to be liable to the registrant unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper. Any indemnification under the provisions in the bylaws (unless ordered by a court) shall be made by the registrant only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth above. Such determination shall be made (i) by a majority vote of the directors who were not parties to such action, suit or proceeding even though less than a quorum, or (ii) if there are no such directors, or, if such directors so direct, by independent legal counsel in a written opinion, or (iii) by the stockholders. To the extent, however, that a director, officer, employee or agent of the registrant has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, without the necessity of authorization in the specific case.

The DGCL provides that the indemnification described above shall not be deemed exclusive of any other indemnification that may be granted by a corporation pursuant to its by-laws, disinterested directors' vote, stockholders' vote, agreement or otherwise.

Insurance Policies. The DGCL also provides corporations with the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation in a similar capacity for another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability as described above. The registrant has directors and officer's liability insurance in an amount not less than \$5 million.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed

that in the opinion of the Commission such indemnification is against public policy as expressed in such Securities Act and is therefore unenforceable.

Item 15. Recent Sales of Unregistered Securities.

During the last three years, the registrant has issued unregistered securities to the persons, as described below. None of these transactions involved any underwriters, underwriting discounts or commissions, except as specified below, or any public offering, and the registrant believes that, except as set forth below, each transaction was exempt from the registration requirements of the Securities Act of 1933 by virtue of Section 4(2) thereof and/or Regulation D promulgated thereunder. All recipients had adequate access, through their relationships with the registrant, to information about the registrant.

On June 18, 2009, the registrant completed a private placement with certain accredited investors pursuant to which it issued (i) senior convertible promissory notes in the aggregate principal face amount of \$1,131,353, for an aggregate net purchase price of \$961,650 and (ii) senior bridge warrants to purchase 2,404,125 shares of its common stock at an exercise price of \$0.20 per share (subject to adjustment upon the occurrence of certain events). In consideration for the agreement of the holders of the senior bridge notes to extend the maturity date of such notes to periods into February and March 2010, the registrant issued warrants to purchase an additional 1,228,441 shares of common stock. In addition, as a result of the anti-dilution protection provisions in the senior bridge warrants, the registrant reduced the exercise price of the senior bridge warrants to \$0.17 per share and issued warrants to purchase an additional 641,039 shares of common stock at an exercise price of \$0.17 per share.

On July 21, 2009, the registrant issued options to certain of its officers, directors and employees to purchase up to an aggregate of 10,150,000 shares of common stock pursuant to the registrant's 2009 Stock Option Plan. The exercise price per share was \$0.10. No consideration was paid to the registrant by the recipient of the foregoing options for the grant of stock options.

On September 24, 2009, the registrant entered into a preferred stock purchase agreement (the “Optimus purchase agreement”) with Optimus Capital Partners, LLC (“Optimus”), pursuant to which Optimus committed to purchase up to \$5.0 million shares of the Series A preferred stock at a price of \$10,000 per share of Series A preferred stock, subject to satisfaction of certain closing conditions. At the time of execution of the Optimus purchase agreement, the registrant issued to an affiliate of Optimus a three-year warrant to purchase up to 33,750,000 shares of the registrant’s common stock, at an initial exercise price of \$0.20 per share, subject to adjustment as provided in the warrant.

On January 5, 2010, the registrant issued options to one of its executive officers to purchase up to 1,000,000 shares of common stock pursuant to the registrant’s 2009 Stock Option Plan. The exercise price per share was \$0.10. No consideration was paid to the registrant by the recipient of the foregoing options for the grant of stock options.

On January 11, 2010, the registrant issued and sold 145 shares of Series A preferred stock to Optimus for an aggregate purchase price of \$1.45 million.

On March 29, 2010, the registrant issued and sold 200 shares of Series A preferred stock to Optimus pursuant to the terms of the Optimus purchase agreement. On April 1, 2010, the registrant issued and sold an additional 16 shares of Series A preferred stock to Optimus pursuant to the terms of the Optimus purchase agreement. The aggregate purchase price for the 216 shares of Series A preferred stock was \$2.16 million.

On April 29, 2010, the registrant agreed with its Chief Executive Officer, Thomas A. Moore, to make a payment of \$200,000 due to Mr. Moore under certain of the registrant’s senior promissory notes held by Mr. Moore in the form of 1,176,471 shares of the registrant’s common stock based on a price of \$0.17 per share.

As of April 30, 2010, the registrant agreed with certain of the holders of its junior unsecured convertible promissory notes to make payments of approximately \$2.42 million aggregate principal amount due to such holders under certain of such notes in the form of 14,237,489 shares of its common stock based on a price of \$0.17 per share.

On May 10, 2010, the registrant entered into a Stock Purchase Agreement with Numoda Capital Innovations, LLC (“Numoda”) pursuant to which the registrant agreed to issue 3,500,000 shares of its common stock to Numoda, at a price per share of \$0.17, in satisfaction of \$595,000 of services rendered to the registrant by Numoda Corporation. The registrant has agreed to register such shares of common stock within 120 days of May 10, 2010.

On May 10, 2010, the registrant and the University of Pennsylvania (“Penn”) entered into a Second Amendment Agreement to their 20-year exclusive worldwide license agreement. As part of this amendment the registrant exercised its option for the rights to seven additional patent dockets at an option exercise fee payable in the form of \$35,000 in cash and \$70,000 in shares of common stock (approximately 388,889 shares of our common stock based on a price of

\$0.18 per share).

On May 13, 2010, the registrant issued and sold 139 shares of Series A preferred stock to Optimus pursuant to the terms of the Optimus purchase agreement. The aggregate purchase price for the shares of Series A preferred stock was \$1.39 million. In connection with such issuance, the registrant issued an additional three-year warrant to an affiliate of Optimus to purchase up to 2,818,000 shares of common stock at an exercise price of \$0.18 per share, subject to customary anti-dilution adjustments.

As of April 30, 2010, the registrant issued in private placements to certain accredited investors (i) junior bridge notes in the aggregate principal face amount of \$3,343,249, for an aggregate net purchase price of \$2,840,000 and (ii) junior bridge warrants to purchase 5,743,750 shares of our common stock at an exercise price of \$0.20 per share (prior to giving effect to anti-dilution adjustments which have subsequently reduced the exercise price to \$0.17 per share), subject to adjustments upon the occurrence of certain events. As a result of the anti-dilution protection provisions in the junior bridge warrant, the registrant reduced the exercise price of the junior bridge warrants to \$0.17 per share (subject to further adjustment upon the occurrence of certain events) and issued warrants to purchase an additional 1,013,603 shares of common stock at an exercise price of \$0.17 per share (subject to adjustment upon the occurrence of certain events).

On June 29, 2010, the registrant issued 750,000 shares of its common stock to its chief executive officer in satisfaction of certain conditions set forth in his employment agreement.

On July 19, 2010, the registrant entered into a preferred stock purchase agreement with Optimus, pursuant to which Optimus committed to purchase up to \$7.5 million shares of the Series B preferred stock at a price of \$10,000 per share of Series B preferred stock, subject to satisfaction of certain closing conditions, of which \$2.84 million of Series B preferred stock remains available for purchase. At the time of the satisfaction of the conditions necessary to effect the commitment closing under the preferred stock purchase agreement, the registrant issued to an affiliate of Optimus a three-year warrant to purchase up to 40,500,000 shares of the registrant's common stock, at an initial exercise price of \$0.25 per share, subject to adjustment as provided in the warrant. The warrant will become exercisable on the earlier of (i) the date on which this registration statement becomes effective and (ii) the first date on which the shares of common stock underlying the warrant are eligible for resale without limitation under Rule 144 (assuming a cashless exercise of the warrant).

On July 19, 2010, the registrant issued 500 shares of Series B preferred stock to Optimus in exchange for 500 shares of Series A preferred stock. Such transaction was exempt from the registration requirements of the Securities Act of 1933 by virtue of Section 3(a)(9) thereof.

On August 13, 2010, the registrant issued and sold 124 shares of Series B preferred stock to Optimus for an aggregate purchase price of \$1.24 million.

On September 28, 2010, the registrant issued and sold 165 shares of Series B preferred stock to Optimus for an aggregate purchase price of \$1.65 million.

On October 14, 2010, the registrant issued options to certain of its officers, directors and employees to purchase up to an aggregate of 6,750,000 shares of common stock pursuant to the registrant's 2009 Stock Option Plan. The exercise price per share was \$0.15. No consideration was paid to the registrant by the recipient of the foregoing options for the grant of stock options.

In November 2010, the registrant issued in private placements to certain accredited investors convertible promissory notes of the Company in the aggregate principal face amount of \$931,579, for an aggregate net purchase price of \$835,000. In connection with the purchase of these notes, the registrant issued to such investors warrants to purchase an aggregate of 3,087,500 shares of its common stock, each at an exercise price of \$0.17 per share, subject to adjustments upon the occurrence of certain events.

On November 15, 2010, the registrant issued and sold 61 shares of Series B preferred stock to Optimus for an aggregate purchase price of \$610,000.

On December 30, 2010, the registrant issued and sold 72 shares of Series B preferred stock to Optimus for an aggregate purchase price of \$720,000.

In January and February 2011, the registrant issued in private placements to certain accredited investors, (i) junior unsecured convertible promissory notes in the aggregate principal face amount of \$452,941, for an aggregate net purchase price of \$395,000 and (ii) warrants to purchase an aggregate of 1,642,500 shares of its common stock, each at an exercise price of \$0.15 per share, subject to adjustments upon the occurrence of certain events.

From February 1, 2011 through March 15, 2011, the registrant issued in private placements to certain accredited investors (i) junior unsecured convertible promissory notes in the aggregate principal face amount of \$246,000, for an aggregate net purchase price of \$225,000 and (ii) warrants to purchase 487,500 shares of our common stock at an exercise price of \$0.17 per share, subject to adjustments upon the occurrence of certain events.

On March 14, 2011, the registrant issued and sold 44 shares of Series B preferred stock to Optimus for an aggregate purchase price of \$440,000.

On April 28, 2011, the registrant issued and sold to JMJ Financial, an accredited investor, an aggregate of \$1,300,000 of its convertible promissory notes in return for the payment in cash of \$580,000 and a secured and collateralized promissory note issued by JMJ Financial to the registrant in the principal amount of \$800,000.

On May 12, 2011, the registrant issued in a private placement to certain accredited investors (i) convertible promissory notes in the aggregate principal face amount of \$7,077,936, for an aggregate purchase price of \$6,016,250 and (ii) warrants to purchase an aggregate of 23,593,122 shares of its common stock, each at an exercise price of \$0.15 per share. Also on May 12, 2011, the registrant issued warrants to purchase an aggregate of 1,887,448 shares of its common stock to Rodman & Renshaw, LLC as partial compensation for its services in connection with the offering to the investors.

From June 2011 through November 2011, the registrant has entered into exchange agreements with certain of the holders of the warrants outstanding from its October 17, 2007 private placement, including its Chief Executive Officer, Thomas A. Moore, pursuant to which such holders received shares of the registrant's common stock and/or warrants to purchase shares of the registrant's common stock in amounts that were determined in such negotiations. As of August 29, 2012, the registrant has exchanged October 2007 warrants to purchase 39,690,911 shares of its common stock in return for 7,437,857 shares of its common stock and new warrants to purchase 21,040,303 shares of its common stock. The new warrants issued pursuant to the exchanges are substantially identical to the October 2007 warrants, except that such warrants do not contain any economic anti-dilution adjustment rights.

On October 31, 2011, the registrant issued in a private placement to certain accredited investors (i) convertible promissory notes in the aggregate principal face amount of \$2,326,471, for an aggregate purchase price of \$1,977,500 and (ii) warrants to purchase an aggregate of 8,620,977 shares of its common stock, each at an exercise price of \$0.15 per share. The convertible promissory notes purchased in this offering were paid for in cash or, with respect to the convertible promissory notes acquired by Thomas A. Moore, the registrant's Chairman and Chief Executive Officer, in exchange for the cancellation of \$400,000.00 of outstanding indebtedness owed by the registrant. Also on October 31, 2011, the registrant issued warrants to purchase an aggregate of 866,078 shares of its common stock to Rodman & Renshaw, LLC as partial compensation for its services in connection with the offering to the investors.

On January 9, 2012, the registrant issued in a private placement to certain accredited investors (i) convertible promissory notes in the aggregate principal face amount of \$ \$1,232,353, for an aggregate purchase price of \$1,047,500 and (ii) warrants to purchase an aggregate of 4,107,842 shares of its common stock, each at an exercise price of \$0.15 per share. Also on January 9, 2012, the registrant issued warrants to purchase an aggregate of 575,098 shares of its common stock to Rodman & Renshaw, LLC as partial compensation for its services in connection with the offering to the investors.

On May 8, 2012, the registrant entered into a settlement agreement with JMJ Financial, pursuant to which the registrant agreed to issue 4,000,000 newly issued shares of its common stock to JMJ Financial as consideration for the cancellation of certain notes and a release.