

AtheroNova Inc.  
Form 10-K/A  
May 08, 2013

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM 10-K

(Amendment #1)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2012

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number 000-52315

AtheroNova Inc.  
(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

20-1915083  
(I.R.S. Employer Identification No.)

2301 Dupont Drive, Suite 525, Irvine, CA 92612  
(Address of principal executive offices and zip code)

(949) 476-1100  
(Registrant's telephone number, including area code)

Securities registered under Section 12(b) of the Act:  
None

Securities registered under Section 12(g) of the Exchange Act:  
Common Stock, par value \$0.001 per share  
(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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 ☐ Smaller reporting company ☒

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, as of the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$9,195,993.

As of March 18, 2013 there were 38,082,875 shares of the issuer's common stock, \$0.0001 par value per share, outstanding.

Explanatory Note

This Amendment No. 1 on Form 10-K/A (the “Form 10-K/A”) amends the Annual Report on Form 10-K for the year ended December 31, 2012, filed by AtheroNova Inc. (the “Company”), which was originally filed with the Securities and Exchange Commission on April 1, 2013 (the “Form 10-K”).

On June 15, 2012, the Company amended certain of its Senior Convertible Note and warrant agreements that were issued in 2010. The initial Senior Convertible Notes and warrants included an anti-dilution provision that allowed for the automatic reset of the conversion or exercise price upon any future sale of common stock instruments at or below the current conversion or exercise price. The amended notes and warrants removed the price-based anti-dilution provisions contained in the Senior Convertible Notes and warrants. The modification was initially accounted for as an extinguishment based on an error in a calculation of the change to the Beneficial Conversion Feature. Management has determined that the transaction should have been accounted for as a modification rather than as an extinguishment.

The Form 10-K/A includes amended disclosure regarding the Company’s internal control over financial reporting for the period ended December 31, 2012.

The Form 10-K/A amends and restates the following items of the Form 10-K as described above: (i) Part II, Item 9A – Controls and Procedures and (ii) Part IV, Item 15 – Exhibits, Financial Statement Schedules.

All information in the Form 10-K, as amended by the Form 10-K/A, speaks as to the date of the original filing of the Form 10-K for such period and does not reflect any subsequent information or events except as noted in the Form 10-K/A. All information contained in the Form 10-K/A is subject to updating and supplementing as provided in the Company’s reports, as amended, filed with the Securities and Exchange Commission subsequent to the date of the initial filing of the Form 10-K.

AtheroNova Inc.

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For the Fiscal Year Ended December 31, 2012

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## PART II

### ITEM 9A. CONTROLS AND PROCEDURES.

#### Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer, who serves as our principal executive officer and our Chief Financial officer, who serves as our principal financial and accounting officer, as appropriate, to allow timely decisions regarding required disclosure as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act.

As of December 31, 2012, our Chief Executive Officer and Chief Financial Officer conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that as of December 31, 2012, our disclosure controls and procedures were effective.

#### Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act and for assessing the effectiveness of internal control over financial reporting.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness of internal control over financial reporting to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2012. In making its assessment of internal control over financial reporting, management used the criteria established in Internal Control — Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission. This assessment included an evaluation of the design of our internal control over financial reporting and testing of the operational effectiveness of those controls. Based on the results of this assessment, management has concluded that our internal control over financial reporting was effective as of December 31, 2012.

#### Changes in Internal Control over Financial Reporting

During the fourth quarter of the year ended December 31, 2012, and as a result of our subsequent identification of material deficiencies in our disclosure controls and procedures for the fiscal quarters ended June 30 and September 30, 2012 that lead to a restatement of the financial statements for such fiscal quarters, we commenced the implementation of changes designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of our financial statements for external purposes in accordance with generally accepted accounting principles that have materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting. Specifically, our management thoroughly reviewed and gained fluency in the application of the relevant accounting guidance regarding accounting for derivative liabilities and modifications thereto, including, without limitation, EITF Issue No. 96-19, ASC 470-50-40 and ASC 815-15-35-4 (EITF 06-07). We believe that these steps are reasonably likely to materially improve our internal controls over financial reporting with respect to accounting for derivative liabilities and modifications thereto, and are reasonably likely to prevent a recurrence of the

error that led to the restatement of our financial statements for the fiscal quarters ended June 30 and September 30, 2012.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES.

The financial statements filed as part of this Annual Report on Form 10-K are listed on page 26 to the Form 10-K.

The exhibits filed with this Annual Report on Form 10-K are listed in the attached Exhibit Index.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ATHERONOVA INC.  
(Registrant)

Date: May 8, 2013

By: /s/Thomas W. Gardner  
Thomas W. Gardner  
Chairman, Chief Executive Officer &  
President  
(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1933, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| Signature                                 | Title                                                                                 | Date        |
|-------------------------------------------|---------------------------------------------------------------------------------------|-------------|
| /s/Thomas W. Gardner<br>Thomas W. Gardner | Chairman, Chief Executive Officer and President<br>(Principal Executive Officer)      | May 8, 2013 |
| /s/Mark Selawski<br>Mark Selawski         | Chief Financial Officer and Secretary<br>(Principal Financial and Accounting Officer) | May 8, 2013 |
| *                                         |                                                                                       |             |
| Chaim Davis                               | Director                                                                              | May 8, 2013 |
| *                                         |                                                                                       |             |
| Gary Freeman                              | Director                                                                              | May 8, 2013 |
| *                                         |                                                                                       |             |
| Boris Ratiner, M.D.                       | Director                                                                              | May 8, 2013 |
| *                                         |                                                                                       |             |
| Alexander Polinsky                        | Director                                                                              | May 8, 2013 |
| *                                         |                                                                                       |             |
| Paul DiPerna                              | Director                                                                              | May 8, 2013 |
| *                                         |                                                                                       |             |
| Johan (Thijs) Spoor                       | Director                                                                              | May 8, 2013 |
| *                                         |                                                                                       |             |
| Fred Knoll                                | Director                                                                              | May 8, 2013 |

\* By: /s/ Mark Selawski



Mark Selawski  
as Attorney-in-Fact

Exhibit Index

| Exhibit Number | Description of Exhibit                                                                                                                                                                                                                                                                                                            |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2.1            | Merger Agreement by and between Trist Holdings, Inc., Z&Z Merger Corporation and Z&Z Medical Holdings, Inc., dated March 26, 2010. Incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on April 1, 2010.                            |
| 3.1            | Amended and Restated Certificate of Incorporation. Incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on June 25, 2010.                                                                                                            |
| 3.2            | Amended and Restated Bylaws. Incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on June 23, 2010.                                                                                                                                  |
| 4.1            | Amended and Restated Certificate of Incorporation. Incorporated by reference to Exhibit 3.1.                                                                                                                                                                                                                                      |
| 4.2            | Amended and Restated Bylaws. Incorporated by reference to Exhibit 3.2.                                                                                                                                                                                                                                                            |
| 4.3            | 2010 Stock Incentive Plan. Incorporated by reference to Exhibit B to the Definitive Information Statement on Schedule 14C (File No. 000-52315) filed with the Securities and Exchange Commission on June 3, 2010. **                                                                                                              |
| 10.1           | Securities Purchase Agreement dated May 13, 2010, among AtheroNova Inc., W-Net Fund I, L.P., Europa International, Inc. and MKM Opportunity Master Fund, Ltd. Incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on May 20, 2010. |
| 10.2           | Security Agreement dated May 13, 2010, among AtheroNova Inc., W-Net Fund I, L.P., Europa International, Inc. and MKM Opportunity Master Fund, Ltd. Incorporated by reference to Exhibit 10.5 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on May 20, 2010.            |
| 10.3           | IP Security Agreement dated May 13, 2010, among AtheroNova Inc., W-Net Fund I, L.P., Europa International, Inc. and MKM Opportunity Master Fund, Ltd. Incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on May 20, 2010.         |
| 10.4           | Form of Promissory Note. Incorporated by reference to Exhibit 10.7 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on May 20, 2010.                                                                                                                                      |
| 10.5           | Form of Warrant. Incorporated by reference to Exhibit 10.8 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on May 20, 2010.                                                                                                                                              |
| 10.6           | Management Consulting Agreement dated August 30, 2010, between AtheroNova Inc. and Thomas W. Gardner. Incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on September 3, 2010. †                                                  |

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- 10.7      Employment Agreement dated August 30, 2010, between AtheroNova Inc. and Mark Selawski. Incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on September 3, 2010. †
  - 10.8      Stock Purchase Agreement dated November 3, 2011, between the Registrant and OOO CardioNova. Incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q (File No. 000-52315) filed with the Securities and Exchange Commission on November 10, 2011. \*
  - 10.9      License Agreement dated November 4, 2011, between the Registrant, AtheroNova Operations, Inc. and OOO CardioNova. Incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (File No. 000-52315) filed with the Securities and Exchange Commission on November 10, 2011. \*
  - 10.10     Securities Purchase Agreement, dated as of May 14, 2012, by and among AtheroNova Inc., ACT Capital Partners, L.P., and Amir L. Ecker. Incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on May 25, 2012.
  - 10.11     Form of 12% Convertible Note. Incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on May 25, 2012.
  - 10.12     Form of Common Stock Purchase Warrant. Incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on May 25, 2012.
  - 10.13     Subsidiary Guarantee, dated as of May 14, 2012, made by AtheroNova Operations, Inc. in favor of ACT Capital Partners, L.P. and Amir L. Ecker. Incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on May 25, 2012.
  - 10.14     Form of Amendment and Exchange Agreement dated June 15, 2012. Incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on June 20, 2012.
  - 10.15     Form of Second Amended and Restated 2.5% Senior Secured Convertible Note. Incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on June 20, 2012.
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- 10.16 Form of Amended and Restated Common Stock Purchase Warrant. Incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on June 20, 2012.
- 10.17 Office Lease dated June 15, 2012 between AtheroNova Inc. and TR Dupont Centre LLC. Incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on June 20, 2012.
- 10.18 Form of Subscription Agreement. Incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on October 5, 2012.
- 10.19 Form of Common Stock Purchase Warrant. Incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on October 5, 2012.
- 10.20 First Amendment to Employment Agreement dated December 4, 2012 and effective August 29, 2012, between AtheroNova Inc. and Mark Selawski. Incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-52315) filed with the Securities and Exchange Commission on December 6, 2012.
- 21.1 Subsidiaries of the Registrant. Incorporated by reference to Exhibit 21.1 to the Registration Statement on Form S-1 (File No. 333-167866) filed with the Securities and Exchange Commission on June 29, 2010.
- 23.1 Consent of Independent Registered Public Accounting Firm. Incorporated by reference to Exhibit 23.1 to the Annual Report on Form 10-K (File No. 000-52315) filed with the Securities and Exchange Commission on April 1, 2013.
- 24.1 Power of Attorney. Incorporated by reference to the signature page to the Annual Report on Form 10-K (File No. 000-52315) filed with the Securities and Exchange Commission on April 1, 2013.
- 31.1 Certification of Principal Executive Officer pursuant to Securities Exchange Act Rules 13a-14(a) and 15d-14(a) as adopted pursuant to section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Principal Financial Officer pursuant to Securities Exchange Act Rules 13a-14(a) and 15d-14(a) as adopted pursuant to section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002.

101.INS\*\*

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XBRL Instance. Incorporated by reference to Exhibit 101.INS to the Annual Report on Form 10-K (File No. 000-52315) filed with the Securities and Exchange Commission on April 1, 2013.

- 101.SCH\*\* XBRL Taxonomy Extension Schema. Incorporated by reference to Exhibit 101.SCH to the Annual Report on Form 10-K (File No. 000-52315) filed with the Securities and Exchange Commission on April 1, 2013.
- 101.CAL\*\* XBRL Taxonomy Extension Calculation. Incorporated by reference to Exhibit 101.CAL to the Annual Report on Form 10-K (File No. 000-52315) filed with the Securities and Exchange Commission on April 1, 2013.
- 101.DEF\*\* XBRL Taxonomy Extension Definition. Incorporated by reference to Exhibit 101.DEF to the Annual Report on Form 10-K (File No. 000-52315) filed with the Securities and Exchange Commission on April 1, 2013.
- 101.LAB\*\* XBRL Taxonomy Extension Labels. Incorporated by reference to Exhibit 101.LAB to the Annual Report on Form 10-K (File No. 000-52315) filed with the Securities and Exchange Commission on April 1, 2013.
- 101.PRE\*\* XBRL Taxonomy Extension Presentation. Incorporated by reference to Exhibit 101.PRE to the Annual Report on Form 10-K (File No. 000-52315) filed with the Securities and Exchange Commission on April 1, 2013.

† Each a management contract or compensatory plan or arrangement required to be filed as an exhibit to this report on Form 10-K.

\* Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

\*\* XBRL information is furnished and not filed or a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections.