
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

AKEBIA THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-8756903
(I.R.S. Employer
Identification No.)

245 First Street, Cambridge, MA
(Address of Principal Executive Offices)

02142
(Zip Code)

**Akebia Therapeutics, Inc. 2014 Incentive Plan
Inducement Grant Awards (January 2019 – December 2019)**
(Full titles of the plans)

Nicole R. Hadas
Senior Vice President, Chief Legal Officer and Secretary
245 First Street
Cambridge, MA 02142
(Name and address of agent for service)

(617) 871-2098
(Telephone number, including area code, of agent for service)

Please send copies of all communications to:
Lia Der Marderosian
Jonathan Wolfman
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
617-526-6000

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

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered (1) | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price (2) | Amount of Registration Fee |
|---|-----------------------------|---|---|----------------------------|
| Common Stock, \$0.00001 par value per share | 4,031,376 (2) | \$7.96 (4) | \$32,089,752.96 | \$4,165.25 |
| Common Stock, \$0.00001 par value per share | 33,000 (3) | \$5.51 (5) | \$181,830 (5) | \$23.60 (5) |
| Common Stock, \$0.00001 par value per share | 30,500 (3) | \$7.28 (5) | \$222,040 (5) | \$28.82 (5) |
| Common Stock, \$0.00001 par value per share | 147,750 (3) | \$8.19 (5) | \$1,210,073 (5) | \$157.07 (5) |
| Common Stock, \$0.00001 par value per share | 93,950 (3) | \$6.04 (5) | \$567,458 (5) | \$73.66 (5) |
| Common Stock, \$0.00001 par value per share | 344,200 (3) | \$4.45 (5) | \$1,531,690 (5) | \$198.81 (5) |
| Common Stock, \$0.00001 par value per share | 47,850 (3) | \$4.84 (5) | \$231,594 (5) | \$30.06 (5) |
| Common Stock, \$0.00001 par value per share | 120,350 (3) | \$4.19 (5) | \$504,267 (5) | \$65.45 (5) |
| Common Stock, \$0.00001 par value per share | 277,250 (3) | \$4.13 (5) | \$1,145,043 (5) | \$148.63 (5) |
| Common Stock, \$0.00001 par value per share | 41,300 (3) | \$3.92 (5) | \$161,896 (5) | \$21.01 (5) |
| Common Stock, \$0.00001 par value per share | 26,400 (3) | \$3.73 (5) | \$98,472 (5) | \$12.78 (5) |
| Common Stock, \$0.00001 par value per share | 136,550 (3) | \$6.29 (5) | \$858,900 (5) | \$111.49 (5) |
| Common Stock, \$0.00001 par value per share | 113,450 (3) | \$6.32 (5) | \$717,004 (5) | \$93.07 (5) |

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement also covers such additional securities that may from time to time be offered or issued to prevent dilution from stock splits, stock dividends or similar transactions.
- (2) Reflects 4,031,376 shares added to the Akebia Therapeutics, Inc. 2014 Incentive Plan, as amended, as of January 1, 2020, pursuant to such plan’s evergreen provision.
- (3) Consists of shares issuable under new hire inducement stock option awards granted between January 31, 2019 and December 31, 2019 in accordance with Nasdaq Listing Rule 5635(c)(4).

- (4) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) of the Securities Act. The price per share and aggregate offering price are calculated on the basis of \$7.96, the average of the high and low sale price of the Registrant's Common Stock on The Nasdaq Global Market on January 17, 2020, in accordance with Rule 457(c) under the Securities Act.
- (5) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) of the Securities Act. The price per share and aggregate offering price are calculated on the basis of the exercise price of the options outstanding under the applicable inducement stock option award.

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The information required by Item 1 is included in documents sent or given to participants in the plans covered by this Registration Statement pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the "Securities Act").

Item 2. Registrant Information and Employee Plan Annual Information.

The written statement required by Item 2 is included in documents sent or given to participants in the plans covered by this Registration Statement pursuant to Rule 428(b)(1) of the Securities Act.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant is subject to the informational and reporting requirements of Sections 13(a), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). The following documents, which are on file with the Commission, are incorporated in this Registration Statement by reference:

(a) The Registrant's Annual Report on Form 10-K for the year ended [December 31, 2018](#), filed with the Commission on March 26, 2019, including the information specifically incorporated by reference into our Annual Report on Form 10-K from our definitive proxy statement for the 2019 Annual Meeting of Stockholders, filed with the Commission on [April 26, 2019](#), as supplemented on [April 26, 2019](#) and [May 9, 2019](#);

(b) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended [March 31, 2019](#), [June 30, 2019](#) and [September 30, 2019](#), filed with the Commission on May 9, 2019, August 8, 2019 and November 12, 2019, respectively;

(c) The Registrant's Current Reports on Form 8-K filed with the Commission on [January 7, 2019](#), [March 18, 2019](#), [April 10, 2019](#), [April 18, 2019](#), [May 9, 2019](#), [June 11, 2019](#), [September 11, 2019](#) and [November 12, 2019](#). Any report or portion thereof "furnished" on Form 8-K shall not be incorporated by reference; and

(d) The description of the Registrant's securities contained in the Registrant's Registration Statement on [Form 8-A](#), filed with the Commission on March 12, 2014 under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of the filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers

The Registrant's Ninth Amended and Restated Certificate of Incorporation contains provisions that eliminate, to the maximum extent permitted by the General Corporation Law of the State of Delaware (the "DGCL"), the personal liability of directors for monetary damages for breach of their fiduciary duties as a director. The Registrant's Ninth Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws provide that the Registrant shall indemnify its directors and executive officers and may indemnify its employees and other agents to the fullest extent permitted by the DGCL.

Section 145 of the DGCL empowers a Delaware corporation to 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 rights of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person. The statute provides that it is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

Section 102(b)(7) of the DGCL permits a corporation to provide in its charter that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) for payments of unlawful dividends or unlawful stock purchases or redemptions, or (4) for any transaction from which the director derived an improper personal benefit.

The Registrant has entered into indemnification agreements with each of its directors and officers, in addition to the indemnification provided for in the Registrant's Ninth Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws.

The Registrant maintains insurance on behalf of any person who is or was a director or officer of the Registrant against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 4.1 | <u>Ninth Amended and Restated Certificate of Incorporation (previously filed as Exhibit 3.1 to the Current Report on Form 8-K filed on March 28, 2014 (File No. 001-36352) and incorporated herein by reference).</u> |
| 4.2 | <u>Amended and Restated Bylaws (previously filed as Exhibit 3.2 to the Current Report on Form 8-K filed on March 28, 2014 (File No. 001-36352) and incorporated herein by reference).</u> |
| 4.3 | <u>Akebia Therapeutics, Inc. 2014 Incentive Plan (previously filed as Exhibit 10.29 to Amendment No. 1 to the Registration Statement on Form S-1 (File No. 333-193969) filed on March 4, 2014 and incorporated herein by reference).</u> |
| 4.4 | <u>Amendment No. 1 to the Akebia Therapeutics, Inc. 2014 Incentive Plan (previously filed as Exhibit 4.4 to the Registration Statement on Form S-8 filed on January 25, 2019 (File No. 333-229366) and incorporated herein by reference).</u> |
| 4.5 | <u>Form of Officer Inducement Award Non-Statutory Stock Option Agreement (previously filed as Exhibit 4.4 to the Registration Statement on Form S-8 (File No. 333-222728) filed on January 26, 2018 and incorporated herein by reference).</u> |
| 4.6 | <u>Form of Inducement Award Non-Statutory Stock Option Agreement (previously filed as Exhibit 4.5 to the Registration Statement on Form S-8 (File No. 333-222728) filed on January 26, 2018 and incorporated herein by reference).</u> |
| 5.1 | <u>Opinion of Wilmer Cutler Pickering Hale and Dorr LLP (included in Exhibit 5.1) (filed herewith).</u> |
| 23.1 | <u>Consent of Ernst & Young LLP (filed herewith).</u> |
| 23.2 | <u>Consent of UHY LLP (filed herewith).</u> |
| 23.3 | <u>Consent of Wilmer Cutler Pickering Hale and Dorr LLP (included in the opinion filed as Exhibit 5.1).</u> |
| 24.1 | <u>Power of attorney (included on the signature page of this Registration Statement under the caption "Power of Attorney").</u> |

Item 9. Undertakings.

- (a) The undersigned Registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of a prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) above shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
 - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cambridge, Commonwealth of Massachusetts, on this 24th day of January, 2020.

AKEBIA THERAPEUTICS, INC.

By: /s/ John P. Butler

Name: John P. Butler

Title: President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John P. Butler and Jason A. Amello, and each of them, either of whom may act without the joinder of the other as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirement of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Capacity</u> | <u>Date</u> |
|---|--|------------------|
| <u>/s/ Adrian Adams</u> Adrian Adams | Chairperson and Director | January 24, 2020 |
| <u>/s/ John P. Butler</u> John P. Butler | Director, President and Chief Executive Officer (Principal Executive Officer) | January 24, 2020 |
| <u>/s/ Jason A. Amello</u> Jason A. Amello | Senior Vice President, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer) | January 24, 2020 |
| <u>/s/ Mark J. Enyedy</u> Mark J. Enyedy | Director | January 24, 2020 |

| <u>Signature</u> | <u>Capacity</u> | <u>Date</u> |
|---|-----------------|------------------|
| <hr/> <i>/s/ Steven C. Gilman</i> Steven C. Gilman | Director | January 24, 2020 |
| <hr/> <i>/s/ Maxine Gowen</i> Maxine Gowen | Director | January 24, 2020 |
| <hr/> <i>/s/ Michael T. Heffernan</i> Michael T. Heffernan | Director | January 24, 2020 |
| <hr/> <i>/s/ Jodie P. Morrison</i> Jodie P. Morrison | Director | January 24, 2020 |
| <hr/> <i>/s/ Michael Rogers</i> Michael Rogers | Director | January 24, 2020 |
| <hr/> <i>/s/ Cynthia Smith</i> Cynthia Smith | Director | January 24, 2020 |

January 24, 2020

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wilmerhale.com

Akebia Therapeutics, Inc.
245 First Street, Suite 110
Cambridge, MA 02142

Re: Akebia Therapeutics, Inc. 2014 Incentive Plan; Inducement Grant Awards (January 2019 through December 2019)

Ladies and Gentlemen:

We have assisted in the preparation of a Registration Statement on Form S-8 (the "Registration Statement") to be filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), relating to an aggregate of 5,443,926 shares (the "Shares") of common stock, \$0.00001 par value per share (the "Common Stock"), of Akebia Therapeutics, Inc. a Delaware corporation (the "Company"), consisting of (i) an aggregate of 4,031,376 shares of Common Stock issuable under the Company's 2014 Incentive Plan, as amended (the "Plan") and (ii) 1,412,550 shares of Common Stock issuable pursuant to non-statutory stock option agreements providing for employee inducement grants between the Company and various employees, which were entered into in connection with the commencement of such employees' employment with the Company pursuant to Nasdaq Stock Market Rule 5635(c)(4) (the "Inducement Award Agreements").

We have examined the Certificate of Incorporation and Bylaws of the Company, each as amended and restated to date, and originals, or copies certified to our satisfaction, of all pertinent records of the meetings of the directors and stockholders of the Company, the Registration Statement, certificates of representatives of the Company and such other documents relating to the Company as we have deemed material for the purposes of this opinion.

In our examination of the foregoing documents, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, photostatic or other copies, the authenticity of the originals of any such documents and the legal competence of all signatories to such documents.

We assume that the appropriate action will be taken, prior to the offer and sale of the Shares in accordance with the Plan and the Inducement Award Agreements, to register and qualify the Shares for sale under all applicable state securities or "blue sky" laws.

We express no opinion herein as to the laws of any state or jurisdiction other than the state laws of The Commonwealth of Massachusetts, the General Corporation Law of the State of Delaware and the federal laws of the United States of America.

Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109

Beijing Berlin Boston Brussels Denver Frankfurt London Los Angeles New York Palo Alto San Francisco Washington

Akebia Therapeutics, Inc.
January 24, 2020
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It is understood that this opinion is to be used only in connection with the offer and sale of the Shares while the Registration Statement is in effect.

Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized for issuance and, when the Shares are issued and paid for in accordance with the terms and conditions of the Plan or the Inducement Award Agreements, as applicable, the Shares will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion with the Commission in connection with the Registration Statement in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act. In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

Very truly yours,

WILMER CUTLER PICKERING HALE AND DORR LLP

By: /s/ Lia Der Marderosian

Lia Der Marderosian, Partner

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2014 Incentive Plan and Inducement Grant Awards (January 2019 – December 2019) of Akebia Therapeutics, Inc. of our report dated March 26, 2019, with respect to the consolidated financial statements of Akebia Therapeutics, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2018, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Boston, Massachusetts
January 24, 2020

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Akebia Therapeutics, Inc. 2014 Incentive Plan and Inducement Grant Awards (January 2019 – December 2019) of our report dated February 21, 2018, with respect to the consolidated balance sheets of Keryx Biopharmaceuticals, Inc. and Subsidiaries as of December 31, 2017 and 2016, and the related consolidated statements of operations, stockholders' (deficit) equity, and cash flows for each year in the three-year period ended December 31, 2017 included in Akebia Therapeutics, Inc.'s Annual Report on Form 10-K as of December 31, 2018, filed with the Securities and Exchange Commission.

/s/ UHY LLP

Albany, New York
January 24, 2020