

KERYX BIOPHARMACEUTICALS INC  
Form 425  
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Filed by Akebia Therapeutics, Inc.

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Akebia Therapeutics, Inc.

Commission File No.: 001-36352

Date: November 13, 2018

**FOR IMMEDIATE RELEASE**

**Akebia Therapeutics Sends Letter to Shareholders**

*Recommends Shareholders Vote FOR the Proposals Relating to the Merger*

**CAMBRIDGE, Mass.** November 13, 2018 Akebia Therapeutics, Inc. (Nasdaq: AKBA) mailed a letter to Akebia shareholders in connection with the special meeting of Akebia shareholders (the Special Meeting ) that has been called to approve shareholder proposals relating to the previously announced proposed merger of Akebia and Keryx Biopharmaceuticals.

The Special Meeting will be held at 11:00 a.m. Eastern Time on December 11, 2018, at the offices of Latham & Watkins LLP, which are located at 200 Clarendon Street, Boston, MA 02116. Holders of record of Akebia common stock as of 5:00 p.m. Eastern Time on October 22, 2018, will be entitled to vote at the Special Meeting.

**The Akebia Board of Directors unanimously recommends that Akebia shareholders vote FOR the proposals relating to the proposed merger with Keryx.**

Dear Fellow Akebia Shareholder:

The Special Meeting to approve our proposed merger with Keryx is approaching. The Board unanimously believes this combination will provide substantial strategic, financial and operational benefits to Akebia, and increase the long-term value of Akebia.

We came to this conclusion following a robust strategic evaluation. This included considering the advice of our independent financial advisors, Evercore and J.P. Morgan.

Accordingly, we recommend that shareholders vote today **FOR** the Akebia proposals set forth in the definitive proxy statement, including **FOR** the proposal to issue shares of Akebia common stock to Keryx shareholders in relation to

the proposed merger.

Notably, we have talked with numerous shareholders and key opinion leaders who support the actions we are taking. Importantly, several independent research analysts are equally supportive<sup>1</sup>:

From Akebia's perspective, the merger offers a highly experienced, readily leveraged marketing and sales infrastructure [ ] We believe this infrastructure should improve the future launch of vadadustat in partnership with Otsuka. H.C. Wainwright, 08/10/18

<sup>1</sup> Permission to use quotes was neither sought nor obtained

We continue to think the deal makes good strategic sense, particularly given physician survey feedback that we think portends well for the Auryxia sales trajectory. Piper Jaffray, 08/08/18

We like the merger from a strategic and financial standpoint over time. We believe Keryx and Akebia products are complementary and will provide multiple avenues of value creation for the new Akebia. Mizuho, 07/02/18

**VOTE FOR THE PROPOSALS RELATING TO**

**AKEBIA KERYX MERGER TODAY**

Your vote is extremely important, no matter how many shares you own. Please take a moment to vote **FOR** the proposals set forth on the enclosed proxy card today by internet, telephone toll-free or by signing, dating and returning the enclosed proxy card in the postage-paid envelope provided.

If you have any questions or need assistance voting your shares, please contact MacKenzie Partners, Inc., our proxy solicitor, by calling toll-free at (800) 322-2885 (from the U.S. and Canada) or (212) 929-5500 (call collect from other locations) or via email at [proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com).

On behalf of the Akebia Board of Directors, thank you for your continued support of Akebia.

Sincerely,

Muneer A. Satter

Chairperson of the Akebia Board of Directors

**About Akebia**

Akebia Therapeutics, Inc. is a biopharmaceutical company headquartered in Cambridge, Massachusetts, focused on delivering innovative therapies to patients with kidney disease through hypoxia-inducible factor biology. For more information, please visit our website at [www.akebia.com](http://www.akebia.com), which does not form a part of this release.

**Additional Information and Where to Find It**

In connection with the proposed merger, Akebia has filed with the U.S. Securities and Exchange Commission (the SEC) a Registration Statement on Form S-4, which, as amended, includes a final prospectus with respect to the shares of Akebia's common stock to be issued in the proposed merger and a definitive joint proxy statement of Keryx and Akebia with respect to the proposed merger. The Registration Statement was declared effective by the SEC on October 30,

2018, and the definitive joint proxy statement was mailed or otherwise made available to Keryx's and Akebia's respective stockholders on October 31, 2018. BEFORE MAKING ANY VOTING DECISION, KERYX'S AND AKEBIA'S RESPECTIVE STOCKHOLDERS ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS IN ITS ENTIRETY AND ANY OTHER DOCUMENTS FILED BY EACH OF AKEBIA AND KERYX WITH THE SEC IN CONNECTION WITH THE PROPOSED MERGER OR INCORPORATED BY REFERENCE THEREIN BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES TO THE PROPOSED TRANSACTION. Investors and stockholders can obtain a free copy of the joint proxy statement/prospectus and other documents containing important information about Akebia and Keryx, once such documents are filed with the SEC, through the website maintained by the SEC at [www.sec.gov](http://www.sec.gov). Akebia and Keryx make available free of charge at [www.akebia.com](http://www.akebia.com) (in the Investors section) and [www.keryx.com](http://www.keryx.com) (in the Investors & Media section), respectively, copies of materials they file with, or furnish to, the SEC.

### **Participants in the Merger Solicitation**

Akebia, Keryx and their respective directors, executive officers and certain employees and other persons may be deemed to be participants in the solicitation of proxies from the stockholders of Akebia and Keryx in connection with the proposed merger. Information regarding the interests of such individuals in the proposed merger, by security holdings or otherwise, is included in the joint proxy statement/prospectus relating to the proposed merger that has been filed with the SEC. In addition, security holders may obtain information regarding the names, affiliations and interests of Akebia's directors and officers in Akebia's Annual Report on Form 10-K for the fiscal year ended December 31, 2017, which was filed with the SEC on March 12, 2018, and its definitive proxy statement for the 2018 annual meeting of stockholders, which was filed with the SEC on April 30, 2018, and information regarding the names, affiliations and interests of Keryx's directors and officers in Keryx's Annual Report on Form 10-K for the fiscal year ended December 31, 2017, which was filed with the SEC on February 21, 2018, and the Amendment No. 1 on Form 10-K/A, which was filed with the SEC on April 30, 2018, and its definitive proxy statement for the 2018 annual meeting of stockholders, which was filed with the SEC on May 31, 2018. To the extent the holdings of Akebia securities by Akebia's directors and executive officers or the holdings of Keryx securities by Keryx's directors and executive officers have changed since the amounts set forth in the joint proxy statement/prospectus, such changes have been or will be reflected on Statements of Change in Ownership on Form 4 filed with the SEC. These documents (when available) may be obtained free of charge from the SEC's website at [www.sec.gov](http://www.sec.gov), Akebia's website at [www.akebia.com](http://www.akebia.com) and Keryx's website at [www.keryx.com](http://www.keryx.com).

This document does not constitute a solicitation of proxy, an offer to purchase or a solicitation of an offer to sell any securities.

### **Forward Looking Statements**

This document contains forward-looking statements within the meaning of the federal securities law. Such statements are based upon current plans, estimates and expectations that are subject to various risks and uncertainties. The inclusion of forward-looking statements should not be

regarded as a representation that such plans, estimates and expectations will be achieved. Words such as anticipate, create, expect, project, intend, believe, may, will, should, plan, could, target, contemplate, potential, opportunity and words and terms of similar substance used in connection with any discussion of future plans, actions or events identify forward-looking statements. All statements, other than historical facts, including statements regarding the ability of the parties to complete the merger; expectations for the combined company; the value proposition of the transaction for stockholders; and the consummation of the merger and the potential benefits of the merger are forward looking statements. Important factors that could cause actual results to differ materially from Akebia's and Keryx's plans, estimates or expectations could include, but are not limited to: (i) Akebia or Keryx may be unable to obtain stockholder approval as required for the merger; (ii) conditions to the closing of the merger may not be satisfied; (iii) the merger may involve unexpected costs, liabilities or delays; (iv) the effect of the announcement of the merger on the ability of Akebia or Keryx to retain and hire key personnel and maintain relationships with customers, suppliers and others with whom Akebia or Keryx does business, or on Akebia's or Keryx's operating results and business generally; (v) Akebia's or Keryx's respective businesses may suffer as a result of uncertainty surrounding the merger and disruption of management's attention due to the merger; (vi) the outcome of any legal proceedings related to the merger; (vii) Akebia or Keryx may be adversely affected by other economic, business, and/or competitive factors, including the receipt by Keryx of a notice letters on October 31, 2018, and November 6, 2018, regarding abbreviated new drug applications submitted to the FDA requesting approval to market, sell and use a generic version of the Auryxia; (viii) the occurrence of any event, change or other circumstances that could give rise to the termination of the merger agreement; (ix) risks that the merger disrupts current plans and operations and the potential difficulties in employee retention as a result of the merger; (x) the risk that Akebia or Keryx may be unable to obtain governmental and regulatory approvals required for the transaction, or that required governmental and regulatory approvals may delay the transaction or result in the imposition of conditions that could reduce the anticipated benefits from the proposed transaction or cause the parties to abandon the proposed transaction; (xi) risks that the anticipated benefits of the merger or other commercial opportunities may otherwise not be fully realized or may take longer to realize than expected; (xii) the impact of legislative, regulatory, competitive and technological changes, including the recent changes to reimbursement coverage for Auryxia that could have a material adverse effect on Auryxia sales and profitability; (xiii) expectations for future clinical trials, the timing and potential outcomes of clinical trials and interactions with regulatory authorities; and (xiv) other risks to the consummation of the merger, including the risk that the merger will not be consummated within the expected time period or at all. Additional factors that may affect the future results of Akebia and Keryx are set forth in their respective filings with the SEC, including each of Akebia's and Keryx's most recently filed Annual Report on Form 10-K, subsequent Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, the definitive joint proxy statement/prospectus filed by Akebia and Keryx and other filings with the SEC, which are available on the SEC's website at [www.sec.gov](http://www.sec.gov). See in particular Risk Factors in the joint proxy statement/prospectus, Item 1A of Akebia's Quarterly Report on Form 10-Q for the quarter ended September 30, 2018, under the heading Risk Factors and Item 1A of Keryx's Quarterly Report on Form 10-Q for the quarter ended September 30, 2018, under the heading Risk Factors. The risks and uncertainties described above and in the definitive joint proxy statement/prospectus, Akebia's most recent Quarterly Report on Form 10-Q and Keryx's most

recent Quarterly Report on Form 10-Q are not exclusive and further information concerning Akebia and Keryx and their respective businesses, including factors that potentially could materially affect their respective businesses, financial condition or operating results, may emerge from time to time. Readers are urged to consider these factors carefully in evaluating these forward-looking statements, and not to place undue reliance on any forward-looking statements. Readers should also carefully review the risk factors described in other documents that Akebia and Keryx file from time to time with the SEC. The forward-looking statements in these materials speak only as of the date of these materials. Except as required by law, Akebia and Keryx assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future.

**Akebia Therapeutics Contact**

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