

KERYX BIOPHARMACEUTICALS INC
Form 425
November 09, 2018

Filed by Keryx Biopharmaceuticals, Inc.

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Subject Corporation:

Keryx Biopharmaceuticals, Inc.

Commission File No.: 000-30939

November 9, 2018

Dear Fellow Keryx Stockholder:

As Chairperson of the Board of Keryx Biopharmaceuticals, Inc. (Keryx), I am writing on behalf of the Keryx Board of Directors to encourage you to support the proposed combination of Keryx with Akebia Therapeutics, Inc. at the upcoming Special Meeting of Keryx stockholders that will be held on December 11, 2018. Please vote your shares

FOR the merger proposal by internet, telephone or mail using the enclosed voting instruction form no later than December 10, 2018. Your vote is important.

Akebia is a dynamic biopharmaceutical company that is focused on the development of innovative drugs for people living with chronic kidney disease. Our Board believes that Keryx and Akebia are complementary companies and that the merger will create a fully integrated company with an FDA-approved, marketed drug and a Phase 3 product candidate for potential future growth that is financially stronger and more efficient.

Our Board has unanimously approved the merger and our largest stockholder, The Baupost Group, LLC, has committed to voting in favor of it. We encourage you to vote in favor of this transformative transaction, as well.

The transaction is a merger of equals in which the companies will come together as equal partners and the stockholders of each company will own approximately half of the combined company. The combined company will have the on-going revenue stream from Auryxia® (ferric citrate), in addition to Keryx's commercial capabilities and market presence. Akebia is contributing a promising Phase 3 product candidate, vadadustat, in addition to nearly \$400 million on the balance sheet and a strong executive team with renal experience to help lead the combined company.

We believe the combined business with Keryx's FDA-approved product, Auryxia, and Akebia's product candidate, vadadustat, established commercial operations, a strong balance sheet and an excellent executive team with renal

experience will be substantially stronger than the two companies operating separately.

In short, the combined company, in which we would all participate as stockholders, would be well positioned for future growth. I encourage you to read more about Akebia and the compelling reasons to support the merger in the joint proxy statement you should have received last week. It is also available on the Keryx website and at www.sec.gov.

I encourage you vote by internet, telephone or mail to ensure your shares are voted in support of this merger. Approval of the merger requires the affirmative vote of a majority of outstanding Keryx shares. *Unless you take action to vote your shares in favor of this transaction*, you are effectively voting against it. By not voting, you risk losing this attractive opportunity to create a fully integrated biopharmaceutical company focused on helping people living with chronic kidney disease.

Please join with the Keryx Board and our largest stockholder in voting in FOR the Akebia merger today.

If you have any questions, please call Georgeson LLC at (888)-680-1525.

Sincerely,

Michael Rogers

Chairperson of the Board

One Marina Park Drive, 12th Floor, Boston, MA 02210

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. Akebia and Keryx make available free of charge at www.akebia.com and www.keryx.com, respectively (in the Investors section), 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, Akebia's website at www.akebia.com and Keryx's website at 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, plan, could, target, contemplate, estimate, position, predict, potential, opportunity and words and terms

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 Keryx's stockholder; 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 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, in 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. 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 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.