

OPEXA THERAPEUTICS, INC.

FORM POS EX

(Post-effective amendment filed solely to add exhibits to a registration statement)

Filed 08/08/13

Address	2635 TECHNOLOGY FOREST BLVD. THE WOODLANDS, TX 77381
Telephone	(281) 272-9331
CIK	0001069308
Symbol	OPXA
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Drugs
Sector	Healthcare
Fiscal Year	12/31

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

**POST-EFFECTIVE AMENDMENT NO. 1 TO
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

OPEXA THERAPEUTICS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Texas
(State or Other Jurisdiction of
Incorporation or Organization)

2834
(Primary Standard Industrial
Classification Code Number)

76-0333165
(I.R.S. Employer
Identification Number)

**2635 Technology Forest Blvd.
The Woodlands, Texas 77381
(281) 272-9331**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

**Neil K. Warma
President and Chief Executive Officer
OPEXA THERAPEUTICS, INC.
2635 Technology Forest Blvd.
The Woodlands, Texas 77381
(281) 272-9331**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

**Mike Hird, Esq.
Patty M. DeGaetano, Esq.
Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real, Suite 300
San Diego, CA 92130
(619) 234-5000**

**Christopher S. Auguste, Esq.
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9100**

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

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, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) 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. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) 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. ☐

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. ☒ (333-189395)

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. (Check one):

Large accelerated filer ☐

Accelerated filer ☐

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

Smaller reporting company ☒

This Registration Statement shall become effective upon filing in accordance with Rule 462(d) under the Securities Act of 1933.

EXPLANATORY NOTE

This Post-Effective Amendment No. 1 to Form S-1 Registration Statement (File No. 333-189395) is filed pursuant to Rule 462(d) solely to add an updated Exhibit 5.1 with respect to such Registration Statement.

Part II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits

See the Exhibit Index on the page immediately preceding the exhibits for a list of exhibits filed as part of this registration statement on Form S-1, which Exhibit Index is incorporated hereby by reference.

(b) Financial Statement Schedules.

Not applicable.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of The Woodlands, State of Texas, on August 7, 2013.

OPEXA THERAPEUTICS, INC.

By: /s/ Neil K. Warma
Neil K. Warma
President and Chief Executive Officer

POWER OF ATTORNEY

Pursuant to the requirements 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>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Neil K. Warma</u> Neil K. Warma	President, Chief Executive Officer and Director (Principal Executive Officer)	August 7, 2013
<u>/s/ Karthik Radhakrishnan</u> Karthik Radhakrishnan	Chief Financial Officer (Principal Financial and Accounting Officer)	August 7, 2013
<u>*</u> David E. Jorden	Director	August 7, 2013
<u>*</u> Gail J. Maderis	Director	August 7, 2013
<u>*</u> Michael S. Richman	Director	August 7, 2013
<u>*</u> Scott B. Seaman	Director	August 7, 2013
 * By: <u>/s/ Neil K. Warma</u> Neil K. Warma Attorney-in-fact		

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
1.1**	Form of underwriting agreement.
2.1	Stock Purchase Agreement by and among Sportan United Industries, Inc., Jason G. Otteson, PharmaFrontiers Corp., Warren C. Lau and other PharmaFrontiers stockholders, dated May 5, 2004 (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed June 4, 2004, File No. 000-25513).
2.2	Agreement and Plan of Reorganization by and among PharmaFrontiers Corp., Pharma Acquisition Corp and Opexa Pharmaceuticals, Inc. dated October 7, 2004 (incorporated by reference to Exhibit 2.1 to the Company's Current Report on 8-K filed October 8, 2004, File No. 000-25513).
3.1	Restated Certificate of Formation of Opexa Therapeutics, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on July 26, 2012).
3.2	Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock of Opexa Therapeutics, Inc. (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on July 26, 2012).
3.3	Certificate of Amendment of the Restated Certificate of Formation of Opexa Therapeutics, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on December 14, 2012).
3.4	Amended and Restated By-laws, as amended (incorporated by reference to Exhibit 3.3 to the Company's Annual Report on Form 10-K filed on March 8, 2011).
4.1	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.7 to the Company's Registration Statement on Form S-3 filed on November 13, 2009, File No. 333-163108).
4.2	Unit Purchase Agreement dated August 8, 2008 by and among Opexa Therapeutics, Inc. and the Investors named therein in connection with Unit offering of common stock and Series F Warrants (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 12, 2008).
4.3	Form of Series F Warrant issued in connection with August 8, 2008 financing (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed August 12, 2008).
4.4	Registration Rights Agreement dated August 8, 2008 between Opexa Therapeutics, Inc. and the Investors named therein in connection with common stock and Series F Warrants (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed August 12, 2008).
4.5	Unit Purchase Agreement dated April 14, 2009 by and among Opexa Therapeutics, Inc. and the Investors party thereto for the 10% Convertible Notes and Series G Warrants (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed April 16, 2009).
4.6	Form of Series G Warrant issued on April 14, 2009 (incorporated by reference to Exhibit 10.4 of the Company's Current Report on Form 8-K filed April 16, 2009).
4.7	Form of Securities Purchase Agreement dated as of December 9, 2009 by and between Opexa Therapeutics, Inc. and each investor signatory thereto for Unit offering of Common Stock and Series A and Series B Warrants (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed December 10, 2009).
4.8	Form of Common Stock Purchase Warrant for Series A and Series B Warrants (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed December 10, 2009).
4.9	Form of Series H Warrant issued on February 11, 2011 (incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K filed February 8, 2011).
4.10	Form of Series I Warrant issued on July 25, 2012 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on July 26, 2012).

4.11	Form of Series J Warrant issued on January 23, 2013 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on January 23, 2013).
4.12	Form of Series K Warrant issued on January 30, 2013 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on January 30, 2013).
4.13	Form of Series L Warrant issued on February 11, 2013 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on February 7, 2013).
4.14	Form of Securities Purchase Agreement, dated as of February 7, 2013, by and between Opexa Therapeutics, Inc. and each investor signatory thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 7, 2013).
4.15	Placement Agent Agreement, dated February 7, 2013, by and between Opexa Therapeutics, Inc. and Dawson James Securities, Inc. (incorporated by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K filed on February 7, 2013).
5.1*	Opinion of Pillsbury Winthrop Shaw Pittman LLP.
10.1+	Opexa Therapeutics, Inc. June 2004 Compensatory Stock Option Plan (incorporated by reference to Exhibit B to the Company's Definitive Information Statement on Schedule 14C filed on June 29, 2004, File No. 000-25513).
10.2+	Certificate of Amendments to the Opexa Therapeutics, Inc. June 2004 Compensatory Stock Option Plan (incorporated by reference to Exhibit 10.15 of the Company's Annual Report on Form 10-K filed March 5, 2010).
10.3+	Employment Agreement dated June 16, 2008 by and between Opexa Therapeutics, Inc. and Neil K. Warma (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on June 18, 2008).
10.4+	Amended and Restated Employment Agreement entered into on April 21, 2010 by and between Opexa Therapeutics, Inc. and Donna R. Rill (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed April 27, 2010).
10.6	License Agreement dated September 5, 2001 by and between Opexa Therapeutics, Inc. and Baylor College of Medicine (incorporated by reference to Exhibit 10.14 to the Company's Annual Report on Form 10-KSB filed April 15, 2005, File No. 000-25513).
10.7	Lease dated August 19, 2005 by and between Opexa Therapeutics, Inc. and Dirk D. Laukien (incorporated by reference to Exhibit 10.13 to the Company's Annual Report on Form 10-KSB filed March 31, 2006, File No. 000-25513).
10.8	License Agreement dated January 13, 2006 by and between Opexa Therapeutics, Inc. and Shanghai Institute for Biological Services (incorporated by reference to Exhibit 10.23 to the Company's Registration Statement on Form SB-2 (Amendment No. 1) filed February 9, 2006, File No. 333-126687).
10.9	Fourth Amended and Restated License Agreement, dated November 2, 2011, by and between Opexa Therapeutics, Inc. and the University of Chicago (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed November 4, 2011).
10.10+	Opexa Therapeutics, Inc. 2010 Stock Incentive Plan (incorporated by reference to Appendix A to the Company's Schedule 14A definitive proxy statement filed September 14, 2010).
10.11+	Form of award agreement for awards to be made under the Opexa Therapeutics, Inc. 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K filed October 22, 2010).
10.12	Form of Note Purchase Agreement, dated July 25, 2012, by and among Opexa Therapeutics, Inc. and the investors signatory thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on July 26, 2012).
10.13	Form of 12% Convertible Secured Promissory Note issued to investors on July 25, 2012 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on July 26, 2012).
10.14	Form of Security Agreement, dated July 25, 2012, by and among Opexa Therapeutics, Inc., the investors signatory thereto, and Alkek & Williams Ventures, Ltd. as collateral agent for the investors (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on July 26, 2012).

10.15	Deposit Account Control Agreement, dated July 25, 2012, by and among Opexa Therapeutics, Inc., Alkek & Williams Ventures, Ltd. as collateral agent for the investors, and Wells Fargo Bank, National Association (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed on July 26, 2012).
10.16	Form of Registration Rights Agreement, dated July 25, 2012, by and among Opexa Therapeutics, Inc. and the investors signatory thereto (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed on July 26, 2012).
10.17	Sales Agreement, dated September 6, 2012, by and between Opexa Therapeutics, Inc. and Brinson Patrick Securities Corporation (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 7, 2012).
10.18	\$15,000,000 Purchase Agreement, dated as of November 2, 2012, by and between Opexa Therapeutics, Inc. and Lincoln Park Capital Fund, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 5, 2012).
10.19	\$1,500,000 Purchase Agreement, dated as of November 5, 2012, by and between Opexa Therapeutics, Inc. and Lincoln Park Capital Fund, LLC (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on November 5, 2012).
10.20	Registration Rights Agreement, dated as of November 2, 2012, by and between Opexa Therapeutics, Inc. and Lincoln Park Capital Fund, LLC (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed November 5, 2012).
10.21	Form of unsecured 12% Convertible Promissory Note issued to investors on January 23, 2013 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 23, 2013).
10.22	Form of Waiver and Omnibus Amendment, dated January 30, 2013, by and between Opexa Therapeutics, Inc. and certain investors (incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K filed on March 29, 2013).
10.23##	Option and License Agreement, dated February 4, 2013, by and between Ares Trading SA, a wholly owned subsidiary of Merck Serono S.A., and Opexa Therapeutics, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 5, 2013).
10.24+	Offer Letter, effective March 29, 2013, by and between Opexa Therapeutics, Inc. and Karthik Radhakrishnan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on April 1, 2013).
21.1	List of Subsidiaries (incorporated by reference to Exhibit 21.1 to the Company's Annual Report on Form 10-K filed on March 29, 2013).
23.1*	Consent of Pillsbury Winthrop Shaw Pittman LLP (included in Exhibit 5.1).
23.2**	Consent of MaloneBailey, LLP.
24.1**	Power of Attorney (included on signature page).
101.INS@**	XBRL Instance Document.
101.SCH@**	Taxonomy Extension Schema Document.
101.CAL@**	Taxonomy Extension Calculation Linkbase Document.
101.DEF@**	Taxonomy Extension Definition Linkbase Document.
101.LAB@**	Taxonomy Extension Labels Linkbase Document.
101.PRE@**	Taxonomy Extension Presentation Linkbase Document.

* Filed herewith

-
- ** Previously filed
 - + Management contract or compensatory plan or arrangement
 - ## Confidential treatment has been granted with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.
 - @ In accordance with Rule 406T of Regulation S-T, the XBRL-related information in Exhibit 101 to this registration statement is deemed not filed or part of this registration statement or prospectus for purposes of Section 11 or 12 of the Securities Act, is deemed not filed for purposes of Section 18 of the Exchange Act, and otherwise is not subject to liability under these sections.



Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real, Suite 300 | San Diego, CA 92130-4088 | tel 619.234.5000 | fax 858.509.4010

August 7, 2013

Opexa Therapeutics, Inc.
2635 Technology Forest Boulevard
The Woodlands, Texas 77381

Re: Registration Statement on Form S-1

Ladies and Gentlemen:

We are acting as counsel for Opexa Therapeutics, Inc., a Texas corporation (the "Company"), in connection with the Registration Statement on Form S-1 (Registration No. 333-189395) relating to the registration under the Securities Act of 1933 (the "Act") of 13,800,000 shares of common stock, par value \$0.01 per share (the "Common Stock"), of the Company, all of which are authorized but heretofore unissued shares (including 1,800,000 shares subject to the underwriters' over-allotment option) to be offered and sold by the Company. Such Registration Statement, as amended, and including any registration statement related thereto and filed pursuant to Rule 462(b) under the Act (a "Rule 462(b) Registration Statement") is herein referred to as the "Registration Statement."

We have reviewed and are familiar with such corporate proceedings and other matters as we have deemed necessary for the opinions expressed in this letter. Based upon the foregoing, we are of the opinion that the shares of Common Stock to be offered and sold by the Company (including any shares of Common Stock registered pursuant to a Rule 462(b) Registration Statement) have been duly authorized and, when issued and sold by the Company in the manner described in the Registration Statement and in accordance with the resolutions adopted by the board of directors of the Company, will be validly issued, fully paid and nonassessable. The opinions set forth in this letter are limited to the Texas Corporation Law of the State of Texas, as in effect on the date hereof.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Registration Statement and in the Prospectus included therein. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Pillsbury Winthrop Shaw Pittman LLP