

OPEXA THERAPEUTICS, INC.

FORM 8-K (Current report filing)

Filed 12/14/12 for the Period Ending 12/14/12

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**

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (date of earliest event reported): December 14, 2012

OPEXA THERAPEUTICS, INC.
(Exact name of registrant as specified in its charter)

Texas (State or other jurisdiction of incorporation)	001-33004 (Commission File Number)	76-0333165 (IRS Employer Identification No.)
2635 Technology Forest Blvd., The Woodlands, Texas (Address of principal executive offices)		77381 (Zip Code)
Registrant's telephone number, including area code: (281) 272-9331		
N/A (Former name or former address, if changed since last report)		

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 3.03. Material Modifications to Rights of Securities Holders

To the extent required by Item 3.03 of Form 8-K, the information contained in Item 5.03 of this Current Report on Form 8-K is incorporated by reference herein.

Item 5.03. Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year

On December 14, 2012, Opexa Therapeutics, Inc. (the "Company") filed with the Secretary of State of the State of Texas a Certificate of Amendment of the Company's Restated Certificate of Formation (the "Certificate of Amendment") to effect a 1-for-4 reverse stock split of its common stock (the "Reverse Stock Split") which decreased the number of common shares issued and outstanding from approximately 23.6 million shares to approximately 5.9 million shares. The Company's authorized common shares will not be affected by the Reverse Stock Split. A copy of the Certificate of Amendment is attached as Exhibit 3.1 hereto and incorporated herein by reference.

As previously disclosed, the Company's shareholders approved the Reverse Stock Split of the Company's common stock at the annual meeting of shareholders on November 15, 2012, as determined by the Board of Directors in its discretion, at a ratio of not less than 1-for-2 and not more than 1-for-4.

The Reverse Stock Split became effective as of 4:00 p.m. EST on December 14, 2012, at which time every four (4) shares of the Company's issued and outstanding common stock automatically converted into one (1) issued and outstanding share of the Company's common stock, without any change in the par value per share. In addition, a proportionate adjustment was made to the per share exercise price and the number of shares issuable upon the exercise of all outstanding options and warrants to purchase shares of the Company's common stock, and the number of shares reserved for issuance pursuant to the Company's equity incentive compensation plans was reduced proportionately. A proportionate adjustment was also made to the conversion price and number of shares of common stock issuable upon conversion of the authorized but unissued Series A convertible preferred stock into which the Company's outstanding convertible secured promissory notes are convertible.

No fractional shares will be issued as a result of the Reverse Stock Split, and shareholders who otherwise would be entitled to a fractional share will receive, in lieu thereof, a cash payment based on the closing sale price of the Company's common stock as reported on the NASDAQ Capital Market on the trading day immediately preceding the effective date of the Reverse Stock Split. The Company's transfer agent, Continental Stock Transfer & Trust Company, will provide instructions to stockholders of record regarding the process for exchanging shares.

Trading of the Company's common stock will continue on the NASDAQ Capital Market ("NASDAQ") on a Reverse Stock Split-adjusted basis under the trading symbol "OPXAD" for a period of 20 trading days to reflect the Reverse Stock Split, after which time the trading symbol will revert to "OPXA." The new CUSIP number for the Company's common stock following the Reverse Stock Split is 68372T 202.

Item 8.01 Other Events.

On December 14, 2012, the Company issued a press release announcing the implementation of the Reverse Stock Split. A copy of such press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Amendment of the Company's Restated Certificate of Formation
99.1	Press release dated December 14, 2012, announcing implementation of the Reverse Stock Split

SIGNATURES

Pursuant to the requirements 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.

Dated: December 14, 2012

OPEXA THERAPEUTICS, INC.

By: /s/ Neil K. Warma

Neil K. Warma

President & Chief Executive Officer

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
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**CERTIFICATE OF AMENDMENT
TO THE
RESTATED CERTIFICATE OF FORMATION
OF
OPEXA THERAPEUTICS, INC.**

Pursuant to the provisions of Section 3.053 of the Texas Business Organizations Code, Opexa Therapeutics, Inc., a Texas corporation (the "Corporation"), hereby adopts the following Certificate of Amendment to its Restated Certificate of Formation (the "Restated Certificate").

ARTICLE I.

The name of the Corporation is Opexa Therapeutics, Inc. The file number issued to the Corporation by the Secretary of State of the State of Texas is 118585600 and the date of formation of the Corporation is March 15, 1991.

ARTICLE II.

The Restated Certificate is hereby amended by adding the following paragraph to the end of Article IV:

"Upon this Certificate of Amendment to the Restated Certificate of Formation becoming effective pursuant to the Texas Business Organizations Code of the State of Texas (the "Effective Date"), each share of Common Stock, par value \$0.01 per share (the "Old Common Stock"), issued and outstanding immediately prior to the Effective Date, shall be, and hereby is, reclassified as and changed into one-fourth (1/4th) of a share of Common Stock, par value \$0.01 per share (the "New Common Stock"). Each outstanding stock certificate which immediately prior to the Effective Date represented one or more shares of Old Common Stock shall thereafter, automatically and without the necessity of surrendering the same for exchange, represent the number of whole shares of New Common Stock determined by multiplying the number of shares of Old Common Stock represented by such certificate immediately prior to the Effective Date by one-fourth (1/4th) and rounding such number down to the nearest whole integer, and shares of Old Common Stock held in uncertificated form shall be treated in the same manner. The Corporation shall not be required to issue or deliver any fractional shares of New Common Stock. Each holder of such New Common Stock shall be entitled to receive for such fractional interest, and at the Effective Date any such fractional interest in such shares of New Common Stock shall be converted into the right to receive, an amount in cash, without interest, determined by multiplying (i) such fractional share interest to which the holder would otherwise be entitled by (ii) the closing sale price of the Common Stock (on a post-reverse-split basis as adjusted for the amendment effected hereby) on the trading day immediately prior to the Effective Date on The NASDAQ Stock Market, or if the principal exchange on which the Common Stock is then traded is other than The NASDAQ Stock Market, such exchange as may be applicable. Shares of Common Stock that were outstanding prior to the Effective Date and that are not outstanding after the Effective Date shall resume the status of authorized but unissued shares of Common Stock."

ARTICLE III.

This Certificate of Amendment to the Restated Certificate has been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the Corporation.

ARTICLE IV.

This Certificate of Amendment shall become effective on December 14, 2012 at 3:00 p.m. Central Standard Time.

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Dated: December 13, 2012

/s/ Neil K. Warma

Neil K. Warma

President and Chief Executive Officer

Opexa Therapeutics Announces Reverse Stock Split

THE WOODLANDS, Texas--(BUSINESS WIRE)--December 14, 2012--Opexa Therapeutics, Inc. (NASDAQ: OPXA), a company developing Tcelna™, a novel T-cell therapy for multiple sclerosis (MS), today announced that its Board of Directors approved a 1-for-4 reverse stock split of its common stock which became effective immediately following the close of trading December 14, 2012. The consolidated common shares will begin trading on a split-adjusted basis on December 17, 2012 on the NASDAQ Capital Market.

The Company's shareholders approved the reverse stock split at its annual meeting of shareholders on November 15, 2012, as determined by the Board of Directors in its discretion, at a ratio of not less than 1-for-2 and not more than 1-for-4. The reverse stock split was implemented by Opexa to maintain the listing of its common stock on the NASDAQ Capital Market. Opexa received a deficiency notice from NASDAQ in February 2012 and, following a 180-day cure period, received an additional 180 days from NASDAQ in August 2012 to regain compliance with the minimum bid price requirement. To regain compliance, the closing bid price of the Company's common stock must be at least \$1.00 per share for a minimum of ten consecutive business days (or such longer period of time as the NASDAQ staff may require) before February 4, 2013. There can be no assurance that the reverse stock split will have the desired effect of raising the closing bid price of Opexa's common stock prior to such date to meet this requirement.

"The primary objective in effecting the reverse stock split at this time is to enable Opexa to maintain its listing on the NASDAQ Capital Market," said Neil K. Warma, President and Chief Executive Officer of Opexa. "Over the second half of 2012, we have executed on our key strategic initiative by commencing the Phase 2b Abili-T clinical study of Tcelna in secondary progressive multiple sclerosis patients. As we continue to activate clinical sites and enroll patients into the study, we believe that maintaining our listing on the NASDAQ Capital Market is an important action needed to secure the necessary capital resources needed to fund the Abili-T study."

The reverse split reduced the number of shares of Opexa's outstanding common stock from approximately 23.6 million shares to approximately 5.9 million shares. Fractional shares created as a result of the stock split will be settled in cash. Informational letters will be sent to all shareholders of record by Opexa's transfer agent, Continental Stock Transfer & Trust Company. Additional information about the reverse stock split can be found in the Company's Form 8-K filed with the Securities and Exchange Commission.

About Opexa

Opexa Therapeutics, Inc. is dedicated to the development of patient-specific cellular therapies for the treatment of autoimmune diseases such as MS. The Company's leading therapy, Tcelna™, is a personalized cellular immunotherapy treatment that is in late stage clinical development for MS. Tcelna is derived from T-cells isolated from peripheral blood, expanded ex vivo, and reintroduced into the patients via subcutaneous injections. This process triggers a potent immune response against specific subsets of autoreactive T-cells known to attack myelin and, thereby, reduces the risk of relapse over time.

For more information visit the Opexa Therapeutics website at www.opexatherapeutics.com.

Cautionary Statement Relating to Forward-Looking Information for the Purpose of "Safe Harbor" Provisions of the Private Securities Litigation Reform Act of 1995

This press release contains forward-looking statements which are made pursuant to the safe harbor provisions of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. The words "expects," "believes," "hopes," "anticipates," "estimates," "may," "could," "intends," "exploring," "enable," "enhance," "evaluating," "progressing," "proceeding" and similar expressions are intended to identify forward-looking statements. The forward-looking statements in this release do not constitute guarantees of future performance. Investors are cautioned that statements in this press release which are not strictly historical statements, including, without limitation, statements regarding the development of the Company's product candidate, Tcelna, constitute forward-looking statements. Such forward-looking statements are subject to a number of risks and uncertainties that could cause actual results to differ materially from those anticipated, including, without limitation, risks associated with: our capital position, the rights and preferences provided to the Series A Convertible Preferred Stock and investors in the convertible secured notes issued by the Company in July 2012 (including a secured interest in all of our assets), the ability of the Company to enter into and benefit from a partnering arrangement for the Company's product candidate, Tcelna, on reasonably satisfactory terms (if at all), our dependence (if partnered) on the resources and abilities of any partner for the further development of Tcelna, our ability to compete with larger, better financed pharmaceutical and biotechnology companies, new approaches to the treatment of our targeted diseases, our expectation of incurring continued losses, our uncertainty of developing a marketable product, our ability to raise additional capital to continue our development programs (including to undertake and complete any ongoing or further clinical studies for Tcelna) including in this regard our ability to satisfy various conditions required to access the financing potentially available under the purchase agreements with Lincoln Park (such as the minimum closing price for our common stock, the registration of the underlying shares of common stock under the Securities Act of 1933, as amended, and the requirement for an ongoing trading market for our stock), our ability to regain and maintain compliance with NASDAQ listing standards, the success of our clinical trials, the efficacy of Tcelna for any particular indication, such as for relapsing remitting MS or secondary progressive MS, our ability to develop and commercialize products, our ability to obtain required regulatory approvals, our compliance with all Food and Drug Administration regulations, our ability to obtain, maintain and protect intellectual property rights (including for Tcelna), the risk of litigation regarding our intellectual property rights or the rights of third parties, the success of third party development and commercialization efforts with respect to products covered by intellectual property rights that the Company may license or transfer, our limited manufacturing capabilities, our dependence on third-party manufacturers, our ability to hire and retain skilled personnel, our volatile stock price, and other risks detailed in our filings with the Securities and Exchange Commission. These forward-looking statements speak only as of the date made. We assume no obligation or undertaking to update any forward-looking statements to reflect any changes in expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based. You should, however, review additional disclosures we make in our reports filed with the Securities and Exchange Commission, including our Annual Report on Form 10-K for the year ended December 31, 2011.

CONTACT:

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