

OPEXA THERAPEUTICS, INC.

FORM 8-K (Current report filing)

Filed 09/25/13 for the Period Ending 09/23/13

Address	2635 TECHNOLOGY FOREST BLVD. THE WOODLANDS, TX 77381
Telephone	(281) 272-9331
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**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): September 23, 2013

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 1.01. Entry into a Material Definitive Agreement

On September 23, 2013, Opexa Therapeutics, Inc. (the “**Company**”), entered into an amendment with certain holders of its 12% convertible secured promissory notes originally issued on July 25, 2012 (the “**Notes**”) with respect to certain terms relating to conversion of the Notes. Pursuant to such Omnibus Amendment to All Outstanding 12% Convertible Secured Promissory Notes of Opexa Therapeutics, Inc. and Associated Registration Rights Agreement (the “**Amendment**”), all outstanding Notes and the related registration rights agreement dated July 25, 2012 (the “**Registration Rights Agreement**”) were amended such that, in addition to the existing conversion arrangements, the Notes became convertible at the Company’s election directly into shares of common stock (rather than any intermediate conversion to shares of Series A convertible preferred stock (“**Series A**”)), at a conversion price of not less than \$1.50 nor more than \$2.25, based on the most recent closing market price of the Company’s common stock on the NASDAQ Stock Market at the time of the Company’s election to convert the Notes plus any accrued but unpaid interest through the conversion date (the “**Outstanding Balance**”) into shares of common stock. Pursuant to the Amendment, upon conversion of the Notes into common stock, the Company covenanted to promptly file a Form S-3 registration statement to register for resale the shares of common stock and to use commercially reasonable efforts to cause such registration statement to be declared effective under the Securities Act of 1933. Notes in the aggregate principal amount of \$3,185,000 were outstanding at the time of the Amendment. The Amendment was approved by requisite holders of more than 75% of the outstanding Notes, thereby amending all outstanding Notes and the Registration Rights Agreement.

The form of Amendment is attached hereto as Exhibit 10.1 and incorporated herein. The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment.

As a result of the Company’s conversion of all outstanding Notes into shares of common stock as described below in Item 3.02, the security interest granted to the Noteholders in all of the Company’s assets will be released, including \$500,000 of restricted cash from proceeds of the July 2012 Note offering which has to this point been held in a controlled deposit account.

Investors in the original July 2012 Note offering included several significant shareholders of the Company at that time, as well as three members of the Company’s Board of Directors and/or affiliates of such Directors. Entities affiliated with Scott B. Seaman invested an aggregate of \$1.3 million in the original Note offering, David E. Jorden invested \$115,000 in the original Note offering and Neil K. Warma invested \$15,000 in the original Note offering. An independent special committee of the Company’s Board of Directors reviewed and recommended approval of the terms of the Amendment and the conversion of the Notes into common stock on behalf of the Company and its Board of Directors.

Item 3.02 Unregistered Sales of Equity Securities

The disclosure in Item 1.01 above is incorporated herein by reference. On September 24, 2013, the Company converted the Outstanding Balance as of such date of \$3,275,053 into an aggregate of 1,714,697 shares of common stock at a conversion price of \$1.91, which was the most recent closing market price of the Company's common stock on the NASDAQ Stock Market when the Company effected such conversion. The issuance of the shares of common stock upon conversion of the Notes was made without registration under the Securities Act of 1933, as amended (the "Act"), or the securities laws of applicable states, in reliance on the exemptions provided by Section 4(2) of the Act and Regulation D under the Act and in reliance on similar exemptions under applicable state laws, based upon representations made by the investors (each of whom is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D).

Item 3.03 Material Modification to Rights of Security Holders

The disclosure in Item 1.01 above is incorporated herein by reference.

Item 8.01 Other Events.

On September 25, 2013, the Company issued a press release announcing the conversion of the Notes and release of the security interest in its assets, as described above in Items 1.01 and 3.02. A copy of the 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>
10.1	Form of Omnibus Amendment to All Outstanding 12% Convertible Secured Promissory Notes of Opexa Therapeutics, Inc. and Associated Registration Rights Agreement, made effective as of September 23, 2013, by and among Opexa Therapeutics, Inc. and certain holders of its 12% Convertible Secured Promissory Notes.
99.1	Press Release issued by Opexa Therapeutics, Inc. on September 25, 2013.

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: September 25, 2013

OPEXA THERAPEUTICS, INC.

By: /s/ Neil K. Warma

Neil K. Warma

President & Chief Executive Officer

EXHIBIT INDEX

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99.1	Press Release issued by Opexa Therapeutics, Inc. on September 25, 2013.

**OMNIBUS AMENDMENT TO ALL OUTSTANDING 12% CONVERTIBLE SECURED
PROMISSORY NOTES OF OPEXA THERAPEUTICS, INC. AND
ASSOCIATED REGISTRATION RIGHTS AGREEMENT**

This Omnibus Amendment to All Outstanding 12% Convertible Secured Promissory Notes of Opexa Therapeutics, Inc. and Associated Registration Rights Agreement (this “**Amendment**”) is made effective as of September 20, 2013 (or such later date as described in Section 5 below), by and among Opexa Therapeutics, Inc., a Texas corporation (the “**Company**”), and certain holders of the Company’s outstanding 12% convertible secured promissory notes (the “**Notes**”), but shall apply to all of the outstanding Notes (and, with respect to the Notes, to bind all holders thereof) as well as the Registration Rights Agreement (defined below) for all intents and purposes, as described below.

WHEREAS, the Notes were issued by the Company in a private placement on July 25, 2012, and are evidenced by individual Notes issued to holders (each an “**Investor**”) in the amount of such Investor’s individual investment. The Notes are currently convertible into shares of the Company’s Series A convertible preferred stock, no par value (the “**Series A**”), at a conversion price of \$100, and the Series A is convertible into shares of the Company’s Common Stock, \$0.01 par value (“**Common Stock**”), at a conversion price of \$3.1225. In connection with issuance of the Notes, the Company and each Investor also entered into a Registration Rights Agreement of even date (the “**Registration Rights Agreement**”). An aggregate of \$3,185,000 in principal amount of the Notes is currently outstanding.

WHEREAS, as a result of the Company’s August 2013 underwritten public offering of Common Stock, the Company met the conditions precedent stated in the Notes in order to convert the Notes, at the Company’s election, into shares of Series A.

WHEREAS, pursuant to Section 10 of the Notes, any term or provision of the Notes may be waived or amended in any respect with the written consent of the Company and holders of at least 66-2/3% in principal amount of the then outstanding Notes; provided, that any such amendment or waiver must apply to all Notes, and provided further, that terms and provisions of the Notes regarding payment or conversion require the written consent of holders of at least 75% in principal amount of the then outstanding Notes (the “**Requisite Holders**”). Pursuant to Section 7(a) of the Registration Rights Agreement, the Registration Rights Agreement may be amended or waived only by a writing signed by (i) the Company and (ii) the Investors holding 66-2/3% of the Issuable Shares (as defined in the Registration Rights Agreement). Inasmuch as no transfers of the Notes have taken place since their original issuance, execution of this Amendment by the Requisite Holders will satisfy the requirement of Section 7(a) of the Registration Rights Agreement (in addition to execution by the Company) in order to amend the Registration Rights Agreement as provided herein.

WHEREAS, the Company and the Requisite Holders desire to amend certain terms of the Notes relating to conversion features such that, in addition to the existing conversion arrangements, the Notes are convertible based upon a conversion price stated herein directly into shares of Common Stock (rather than any intermediate conversion to Series A). Upon execution of this Amendment by the Company and the Requisite Holders, this Amendment shall apply to all outstanding Notes (and, with respect to the Notes, to bind all holders thereof) as well as the Registration Rights Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Requisite Holders agree as follows:

1. Conversion into Common Stock. At the sole election of the Company, the outstanding principal balance of each and every outstanding Note plus any accrued but unpaid interest through the conversion date (the “**Outstanding Balance**”), shall be convertible directly into shares of Common Stock. The number of shares of Common Stock into which the Outstanding Balance is convertible (the “**Conversion Shares**”) shall be determined by dividing (i) the Outstanding Balance by (ii) the “**Conversion Price**.” The Conversion Price shall be the most recent closing market price of the Company’s Common Stock on the NASDAQ Stock Market at the time of the Company’s election to convert the Outstanding Balance into shares of Common Stock as provided herein (the “**Conversion Time**”). For the avoidance of doubt, any election by the Company pursuant to this Section 1 shall apply uniformly to all Notes outstanding at the time of such election. Notwithstanding any provision herein to the contrary, however, the Company may not elect to convert the Outstanding Balance into shares of Common Stock if the Conversion Price would, for purposes of such conversion, be less than \$1.50 per share of Common Stock or more than \$2.25 per share of Common Stock. Promptly following its election, the Company will send written notice to each holder of a Note (each a “**Noteholder**”) of the Company’s election to convert the Outstanding Balance into shares of Common Stock, with such notice to be transmitted to each Noteholder via email at the email address appearing below the Noteholder’s signature hereto or in the Company’s records.

2. Registration of Common Stock. The Company has previously filed a Registration Statement on Form S-3 (the “**First S-3**”) with respect to certain shares of Common Stock issuable with respect to the Notes and the Warrants (as defined in the Registration Rights Agreement); *however*, the First S-3 does not cover the Conversion Shares as contemplated by this Amendment. Promptly following the Conversion Time, the Company shall prepare and file another Registration Statement on Form S-3 (the “**Second S-3**”), including the prospectus to be used in connection therewith, covering the resale by the Noteholders of their respective Conversion Shares. Subject to any comments of the U.S. Securities and Exchange Commission, the Second S-3 shall include the plan of distribution attached to the Registration Rights Agreement as Exhibit A. The Company shall use its commercially reasonable efforts to cause the Second S-3 to be declared effective under the Securities Act of 1933, as amended, as promptly as reasonably practicable after the filing thereof. Each Noteholder shall use its commercially reasonable efforts to furnish to the Company such information regarding itself, the Conversion Shares and any other securities of the Company held by it, as shall be reasonably required of a selling shareholder in order to effect registration of the Conversion Shares pursuant to the Second S-3. Except for the provisions of Section 2(a) of the Registration Rights Agreement (inasmuch as such provisions relate to the First S-3, which the parties hereto acknowledge have been fully satisfied), the parties hereto agree that the provisions of the Registration Rights Agreement shall apply to the Second S-3, such that the Registration Rights Agreement is modified and amended hereby as appropriate to apply to the Second S-3 as though it were the “Registration Statement” referenced therein (but with such Registration Statement applicable solely to the Conversion Shares as contemplated hereby – *i.e.*, as though the Conversion Shares are, for purposes of the Second S-3, the only “Registrable Securities” as referenced in the Registration Agreement).

3. No Further Amendment. Except as otherwise expressly provided herein, the Notes and the Registration Rights Agreement are unaffected hereby and remain in full force and effect in accordance with their respective terms. Without limiting the foregoing, the preexisting conversion features of the Notes continue to remain in full force and effect (including, without limitation, the Company's right to effect a conversion into shares of Series A as provided in the Notes), and the provisions of this Amendment shall not be deemed to limit such features or otherwise be in derogation of the Company's rights with respect thereto.

4. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature to this Amendment transmitted electronically shall have the same authority, effect and enforceability as an original signature.

5. Binding Effect. Upon execution of this Amendment by the Company and the Requisite Holders, this Amendment shall (i) amend and be deemed to amend all outstanding Notes, irrespective of whether or not the individual Noteholder has executed this Amendment, and (ii) amend the Registration Rights Agreement. The Amendment shall be effective as of September 20, 2013 or, if necessary, such later date when the Company and sufficient Requisite Holders constituting 75% of the outstanding Notes have executed this Amendment.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Amendment or caused their duly authorized officer to execute this Amendment as of the date first above written.

THE COMPANY:

OPEXA THERAPEUTICS, INC.

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

[signature page to Omnibus Amendment]

IN WITNESS WHEREOF, the parties have executed this Amendment or caused their duly authorized officer to execute this Amendment as of the date first above written.

THE NOTEHOLDER:

By: _____
Printed
Name: _____
Title (if
applicable): _____
Entity
Name (if
applicable): _____
Email: _____

Delivery instructions for Conversion Shares:

1. ____ Physical certificate

Address: _____

or (check only one)

2. ____ DWAC

Account name: _____
Broker name: _____
DTC#: _____
Account No.: _____

[signature page to Omnibus Amendment]

Opexa Announces Conversion of all Convertible Secured Promissory Notes into Common Stock

THE WOODLANDS, Texas--(BUSINESS WIRE)--September 25, 2013--Opexa Therapeutics, Inc. (NASDAQ:OPXA), a biotechnology company developing Tcelna[®], a patient-specific T-cell immunotherapy for the treatment of multiple sclerosis (MS), today announced the conversion of the Company's outstanding 12% convertible secured promissory notes into shares of common stock. Notes in the aggregate principal amount of \$3.185 million plus accrued interest were converted into an aggregate of 1,714,697 shares of Opexa common stock on September 24, 2013 at a conversion price of \$1.91, which represented the most recent closing market price of Opexa's common stock at the time of conversion. Opexa intends to file a Form S-3 registration statement with the Securities and Exchange Commission to register the common stock.

The conversion of the notes also triggered the release of \$500,000 of restricted cash to Opexa that has been held in a controlled account, as well as the release of the security interest in all other assets of Opexa.

"Through the conversion of these notes, the Company is now debt-free and has strengthened its balance sheet considerably," commented Neil K. Warma, President and Chief Executive Officer of Opexa. "Importantly, this transaction enables us to preserve cash for the continued funding of our ongoing Abili-T clinical trial in patients with Secondary Progressive Multiple Sclerosis."

About Opexa

Opexa's mission is to lead the field of Precision Immunotherapy[™] by aligning the interests of patients, employees and shareholders. The Company's leading therapy candidate, Tcelna[®], is a personalized T-cell immunotherapy currently in a Phase IIb clinical development program (the "Abili-T" trial) for the treatment of Secondary Progressive Multiple Sclerosis. Tcelna is derived from T-cells isolated from the patient's 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.

About Multiple Sclerosis (MS)

Multiple Sclerosis is a chronic, inflammatory condition of the central nervous system and is the most common, non-traumatic, disabling neurological disease in young adults. It is estimated that approximately two million people have MS worldwide.

While symptoms can vary, the most common symptoms of MS include blurred vision, numbness or tingling in the limbs and problems with strength and coordination. The relapsing forms of MS are the most common. The Secondary Progressive form of MS represents about a third of the MS patient population.

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

About Tcelna[®]

Tcelna is a potential personalized therapy that is under development to be specifically tailored to each patient's disease profile. Tcelna is manufactured using ImmPath™, Opexa's proprietary method for the production of a patient-specific T-cell immunotherapy, which encompasses the collection of blood from the MS patient, isolation of peripheral blood mononuclear cells, generation of an autologous pool of myelin-reactive T-cells (MRTCs) raised against selected peptides from myelin basic protein (MBP), myelin oligodendrocyte glycoprotein (MOG) and proteolipid protein (PLP), and the return of these expanded, irradiated T-cells back to the patient. These attenuated T-cells are reintroduced into the patient via subcutaneous injection to trigger a therapeutic immune system response.

Opexa is currently conducting a Phase IIb study of Tcelna. Named "Abili-T," the trial is a randomized, double-blind, placebo-controlled clinical study in patients who demonstrate evidence of disease progression with or without associated relapses. The trial is expected to enroll 180 patients at approximately 30 leading clinical sites in the U.S. and Canada with each patient receiving two annual courses of Tcelna treatment consisting of five subcutaneous injections per year. The trial's primary efficacy outcome is the percentage of brain volume change (atrophy) at 24 months. Study investigators will also measure several important secondary outcomes commonly associated with MS, including disease progression as measured by the Expanded Disability Status Scale (EDSS), annualized relapse rate and changes in disability as measured by EDSS and the MS Functional Composite.

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. Statements contained in this release, other than statements of historical fact, constitute "forward-looking statements." The words "expects," "believes," "anticipates," "estimates," "enables," "may," "could," "intends," 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 report which are not strictly historical statements, including, without limitation, statements regarding a registration statement for resale of the common stock and the financing and development of the Company's product candidate, Tcelna (imilecleucel-T), 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. These risks and uncertainties include, but are not limited to, risks associated with: market conditions; our capital position; 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 Capital Fund, LLC ("Lincoln Park") (such as the minimum closing price for our common stock and the requirement for an ongoing trading market for our stock); our ability to raise additional capital through the sale of shares of our common stock under the purchase agreements with Lincoln Park or under our at-the-market (ATM) facility; our ability to maintain compliance with NASDAQ listing standards; the success of our clinical trials (including the Phase IIb trial for Tcelna in secondary progressive MS which, depending upon results, may determine whether Ares Trading SA ("Merck") elects to exercise its option for an exclusive license to Tcelna for the treatment of MS (the "Option")); whether Merck exercises its Option and, if so, whether we receive any development or commercialization milestone payments or royalties from Merck pursuant to the Option; our dependence (if Merck exercises its Option) on the resources and abilities of Merck for the further development of Tcelna; 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 we 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 SEC. 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 Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K filed with the SEC.

CONTACT:

Company

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or

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The Trout Group
646-378-2936

