
U.S. SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K/A

(Amendment No. 1)

CURRENT REPORT

**PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): October 31, 2018

AKERS BIOSCIENCES, INC.

(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction of
incorporation or organization)

001-36268
(Commission
File Number)

22-2983783
(I.R.S. Employer
Identification Number)

201 Grove Road
Thorofare, New Jersey USA 08086
(Address of principal executive offices, including zip code)

(856) 848-8698
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the Company 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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

EXPLANATORY NOTE

This Current Report on Form 8-K/A (Amendment No. 1) (the “8-K/A”) amends the Current Report on Form 8-K filed by Akers Biosciences, Inc. (the “Company”) with the Securities and Exchange Commission on October 31, 2018 (the “Original 8-K”) to report the Company’s signing of a securities purchase agreement with certain investors (the “Purchase Agreement”) pursuant to which the Company agreed to issue and sell an aggregate of (i) 5,555,556 shares of common stock and (ii) warrants to purchase 5,555,556 shares of common stock (the “Warrants”). The combined purchase price for one share of common stock and each Warrant is \$0.36 (the “Offering”). The purpose of this 8-K/A is to report the closing of the transactions contemplated by the Purchase Agreement and to affix a copy of the opinion of Ellenoff Grossman & Schole LLP relating to the legality of the securities offered by the Company in the Offering. Except as set forth herein, no modifications have been made to the information contained in the Original 8-K.

Item 1.01 Entry into a Material Definitive Agreement

On November 2, 2018, the Company closed its offering of common stock and Warrants for gross proceeds of \$2 million. A copy of the opinion of Ellenoff Grossman & Schole LLP relating to the legality of the securities offered by us is attached as Exhibit 5.1 hereto.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|---|
| 4.1* | Form of Warrant |
| 5.1 | Opinion of Ellenoff Grossman & Schole LLP |
| 10.1* | Form of Securities Purchase Agreement, dated October 31, 2018, by and among the Company and the investors signatory thereto |
| 23.1 | Consent of Ellenoff Grossman & Schole LLP (US) (included in Exhibit 5.1) |

* filed previously with the Company’s Current Report on Form 8-K with the Securities and Exchange Commission on October 31, 2018.

SIGNATURE

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 hereunto duly authorized.

AKERS BIOSCIENCES, INC.

Date: November 2, 2018

By: /s/ Howard R. Yeaton
Howard R. Yeaton
Chief Executive Officer

ELLENOFF GROSSMAN & SCHOLE LLP
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November 2, 2018

Akers Biosciences, Inc.
201 Grove Road Thorofare
New Jersey USA 0808

Re: Registration Statement on Form S-3 (File No. 333-221746)

Ladies and Gentlemen:

We have acted as counsel to Akers Biosciences, Inc., a New Jersey corporation (the "Company"), in connection with the issuance and sale, pursuant to the above referenced registration statement on Form S-3, declared effective on November 16, 2016 (including the prospectus contained therein, the "Registration Statement") and the prospectus supplement dated November 2, 2018 (the "Prospectus Supplement" and together with the prospectus contained in the Registration Statement, the "Prospectus"), by the Company under the Registration Statement of (i) 5,555,556 shares (the "Shares") of the Company's common stock, no par value per share (the "Common Stock"), and (ii) warrants to purchase up to an aggregate of 5,555,556 shares of Common Stock (the "Warrants"). The shares of Common Stock underlying the Warrants are referred to herein as the "Warrant Shares." The Shares, the Warrants and the Warrant Shares are covered by the Registration Statement. We understand that the Shares, the Warrants and the Warrant Shares are to be offered and sold in the manner set forth in the Prospectus.

For purposes of this opinion, we have examined such documents and reviewed such questions of law as we have considered necessary and appropriate for the purposes of our opinion set forth below. In rendering our opinion, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies. We have also assumed the legal capacity for all purposes relevant hereto of all natural persons and, with respect to all parties to agreements or instruments relevant hereto other than the Company, that such parties had the requisite power and authority (corporate or otherwise) to execute, deliver and perform such agreements or instruments, that such agreements or instruments have been duly authorized by all requisite action (corporate or otherwise), executed and delivered by such parties and that such agreements or instruments are the valid, binding and enforceable obligations of such parties. As to questions of fact material to our opinions, we have relied upon certificates of officers of the Company and of public officials.

Based upon and subject to the foregoing, we are of the opinion that (i) the Shares have been duly authorized and, when issued and paid for as described in the Prospectus, will be validly issued, fully paid and non-assessable, (ii) provided that the Warrants have been duly executed and delivered by the Company and duly delivered to the purchasers thereof against payment therefor, then the Warrants, when issued and sold as described in the Prospectus, will be valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity) and implied covenants of good faith and fair dealing, and (iii) the Warrant Shares, when issued upon exercise or exchange of the Warrants in accordance with their terms, will have been duly authorized and validly issued and will be fully paid and non-assessable.

The opinions expressed herein are limited to the laws of the General Corporation Law of the State of Delaware and the laws of the State of New York, as currently in effect, and no opinion is expressed with respect to any other laws or any effect that such other laws may have on the opinions expressed herein.

This opinion letter has been prepared, and is to be understood, in accordance with customary practice of lawyers who regularly give and lawyers who regularly advise recipients regarding opinions of this kind, is limited to the matters expressly stated herein and is provided solely for purposes of complying with the requirements of the Securities Act of 1933, as amended (the "Act"), and no opinions may be inferred or implied beyond the matters expressly stated herein. The opinions expressed herein are rendered and speak only as of the date hereof and we specifically disclaim any responsibility to update such opinions subsequent to the date hereof or to advise you of subsequent developments affecting such opinions.

We consent to the filing of this opinion with the SEC as Exhibit 5.1 to the Company's Current Report on Form 8-K, dated November 2, 2018, which is incorporated by reference in the Prospectus. We also consent to the reference of our firm under the caption "Experts" in the Prospectus and in each case in any amendment or supplement thereto. In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 and Section 11 of the Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder, nor do we admit that we are experts with respect to any part of the Prospectus within the meaning of the term "expert" as used in the Act or the related rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Ellenoff Grossman & Schole LLP
