

KERYX BIOPHARMACEUTICALS INC
Form S-3MEF
January 21, 2015

As filed with the Securities and Exchange Commission on January 21, 2015

Registration No. 333-

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

FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

KERYX BIOPHARMACEUTICALS, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

750 Lexington Avenue

New York, New York 10022

13-4087132
(I.R.S. Employer
Identification No.)

(212) 531-5965

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

James F. Oliviero

Chief Financial Officer

Keryx Biopharmaceuticals, Inc.

750 Lexington Avenue

New York, New York 10022

(212) 531-5965

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

The Commission is requested to send copies of all communications to:

Mark F. McElreath

Matthew W. Mamak

Alston & Bird LLP

90 Park Avenue

New York, New York 10016-1387

Telephone: (212) 210-9595

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

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

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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, other than securities offered only in connection with dividend or interest reinvestment plans, 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, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. x (File No. 333-201605)

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 state offering. " _____

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. x

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. "

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 Securities Exchange Act of 1934.

Large accelerated filer x Accelerated filer "
 Non-accelerated filer " (Do not check if a smaller reporting company) Smaller reporting company "

CALCULATION OF REGISTRATION FEE

| Title of Each Class Of Securities To Be Registered | Amount to be Registered | Proposed Maximum Offering Price Per Share (1) | Proposed Maximum Aggregate Offering Price (1) | Amount of Registration Fee (2) |
|---|--------------------------------|--|--|---------------------------------------|
| Common Stock, \$0.001 par value per share | N/A | N/A | \$11,500,000 | \$ |

(1) The \$11,500,000 proposed maximum aggregate offering price is in addition to the remaining proposed maximum aggregate offering price registered pursuant to the Registrant's Registration Statement on Form S-3 (File No. 333-201605).

- (2) In accordance with Rules 456(b) and 457(r), the registrant is deferring payment of all of the registration fee and will pay the registration fee subsequently in advance or on a pay-as-you-go basis.

THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE UPON FILING WITH THE SECURITIES AND EXCHANGE COMMISSION IN ACCORDANCE WITH RULE 462(B) UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

EXPLANATORY NOTE AND INCORPORATION BY REFERENCE OF

EARLIER REGISTRATION STATEMENT

This Registration Statement is being filed with respect to the registration of additional securities pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the Act), and General Instruction IV of Form S-3. The contents of the Registration Statement on Form S-3 (Registration No. 333-201605) initially filed by Keryx Biopharmaceuticals, Inc. with the Securities and Exchange Commission (the Commission) on January 20, 2015, including certain exhibits thereto, and declared effective by the Commission on January 20, 2015, are incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of New York, State of New York, on January 21, 2015.

KERYX BIOPHARMACEUTICALS, INC.

By: /s/ James F. Oliviero
James F. Oliviero

Chief Financial Officer and Treasurer

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities indicated as of January 21, 2015.

| Signatures | Title |
|--------------------------|---------------------------------------|
| /s/ Ron Bentsur* | Chief Executive Officer and Director |
| Ron Bentsur | |
| /s/ James F. Oliviero | Chief Financial Officer and Treasurer |
| James F. Oliviero | |
| /s/ Michael P. Tarnok* | Chairman of the Board of Directors |
| Michael P. Tarnok | |
| /s/ Kevin J. Cameron* | Director |
| Kevin J. Cameron | |
| /s/ Joseph Feczko, M.D.* | Director |
| Joseph Feczko, M.D. | |
| /s/ Wyche Fowler, Jr.* | Director |
| Wyche Fowler, Jr. | |
| /s/ Jack Kaye* | Director |
| Jack Kaye | |

/s/ Daniel Regan*

Director

Daniel Regan

*By: /s/ James F. Oliviero
James F. Oliviero

Attorney-in-Fact

EXHIBIT INDEX

| Exhibit Number | Description |
|-----------------------|--|
| 5.1 | Opinion of Alston & Bird LLP. |
| 23.1 | Consent of UHY LLP. |
| 23.2 | Consent of Alston & Bird LLP (included in Exhibit 5.1). |
| 24.1 | Power of Attorney (included on the signature page to this Registration Statement). |