

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

AKERS BIOSCIENCES, INC.

(Exact name of registrant as specified in its charter)

New Jersey
(State or jurisdiction of
incorporation or organization)

2835
(Primary Standard Industrial
Classification Code Number)

22-2983783
(IRS Employer
Identification No.)

201 Grove Road
Thorofare, NJ 08086
(856) 848-8698

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Christopher C. Schreiber
Executive Chairman
Akers Biosciences, Inc.
201 Grove Road
Thorofare, New Jersey USA 08086
(856) 848-8698

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Barry I. Grossman, Esq.
Sarah E. Williams, Esq.
Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas
New York, New York 10105
Telephone: (212) 370-1300

Rick A. Werner, Esq.
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Haynes and Boone, LLP
30 Rockefeller Plaza, 26th Floor
New York, New York 10112
Tel. (212) 659-7300
Fax (212) 884-8234

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

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, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. 333-234447

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.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

| | | | |
|-------------------------|-------------------------------------|---------------------------|-------------------------------------|
| Large accelerated filer | <input type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input checked="" type="checkbox"/> | Smaller reporting company | <input checked="" type="checkbox"/> |
| | | Emerging growth company | <input checked="" type="checkbox"/> |

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 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered (2) | Proposed Maximum Aggregate Offering Price (1) | Amount of Registration Fee |
|--|--|-------------------------------|
| Class A Units consisting of: | \$ 460,000 | \$ 59.71 |
| (i) Common Stock, no par value (3) | | |
| (ii) Warrants to purchase 115,000 shares of Series C Convertible Preferred Stock, no par value (4) | — | — |

Class B Units consisting of:

| | | |
|--|-------------------|---------------------|
| (i) Pre-funded Warrants to purchase Common Stock | | |
| (ii) Warrants to purchase 115,000 shares of Series C Convertible Preferred Stock (4) | — | — |
| Placement Agent Warrants to purchase Common Stock (5) | — | — |
| Common Stock issuable upon exercise of Pre-funded Warrants to purchase Common Stock (3) | | |
| Shares of Series C Convertible Preferred Stock issuable upon exercise of Warrants to purchase Series C Convertible Preferred Stock included in the Class A Units and Class B Units (3) | \$ 460,000 | \$ 59.71 |
| Common Stock issuable upon exercise of Placement Agent Warrants to purchase Common Stock (3) | \$ 46,000 | \$ 5.97 |
| Total (6) | \$ 966,000 | \$ 125.39(7) |

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended (the "Securities Act").
- (2) Represents only the additional number of securities being registered. Does not include the securities that the Registrant previously registered on the Registration Statement on Form S-1 (File No. 333-234447).
- (3) Pursuant to Rule 416 under the Securities Act of 1933, as amended, the securities being registered hereunder include such indeterminate number of additional securities as may be issuable to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (4) No additional registration fee is payable pursuant to Rule 457(i) under the Securities Act.
- (5) No additional registration fee is payable pursuant to Rule 457(g) under the Securities Act.
- (6) The proposed maximum aggregate offering price of the Class A Units will be reduced on a dollar-for-dollar basis based on the offering price of any Class B Units offered and sold in the offering, and the proposed maximum aggregate offering price of the Class B Units to be sold in the offering will be reduced on a dollar-for-dollar basis based on the offering price of any Class A Units sold in the offering.
- (7) The Registrant previously registered securities having a proposed maximum aggregate offering price of \$15,750,000 on its Registration Statement on Form S-1, as amended (File No. 333-234447) (the "Related Registration Statement"), which was declared effective by the Securities and Exchange Commission on December 5, 2019 and paid a fee of \$2,044.35. In accordance with Rule 462(b) under the Securities Act, an additional number of securities having a proposed maximum offering price of no more than 20% of the maximum aggregate offering price of the remaining securities eligible to be sold under the Related Registration Statement is hereby registered.

The 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

Akers Biosciences, Inc. (the "Company") is filing this registration statement with the Securities and Exchange Commission, or SEC, pursuant to Rule 462(b) under the Securities Act of 1933, as amended. This registration statement relates to the public offering of securities contemplated by the registration statement on Form S-1, as amended (File No. 333-234447), which was originally filed with the SEC on November 1, 2019 and declared effective on December 5, 2019 (the "Registration Statement").

We are filing this registration statement for the purpose of registering additional securities of the Company with the proposed maximum aggregate offering price not to exceed \$966,000. The information set forth in the Registration Statement, including all exhibits thereto and all information incorporated by reference therein, is incorporated by reference in this filing.

The required opinions and consents are listed on the exhibit index and filed with this filing.

CERTIFICATION

The Company hereby certifies to the SEC that (1) it has instructed its bank to pay the filing fee set forth on the cover page of this Registration Statement by a wire transfer of such amount to the SEC's account at U.S. Bank as soon as practicable (but no later than the close of business as of December 6, 2019), (2) it will not revoke such instructions, (3) it has sufficient funds in the relevant account to cover the amount of such filing fee and (4) it will confirm receipt of such instructions by its bank during regular business hours no later than December 6, 2019.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits and Financial Statement Schedules.

(a) *Exhibits.* All exhibits filed with or incorporated by reference in the Registration Statement on Form S-1 (SEC File No. 333-234447) are incorporated by reference into, and shall be deemed a part of, this Registration Statement, and the following additional exhibits are filed herewith, as part of this Registration Statement:

| Exhibit No. | Description |
|--------------------|---|
| 5.1 | Legal opinion of Ellenoff Grossman & Schole LLP |
| 23.1 | Consent of Morison Cogen LLP, Independent Registered Public Accounting Firm |
| 23.2 | Consent of Ellenoff Grossman & Schole LLP (included in Exhibit 5.1) |

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the State of New Jersey, on this December 5, 2019.

AKERS BIOSCIENCES, INC.

By: /s/ Christopher C. Schreiber
Christopher C. Schreiber
Executive Chairman of the Board of Directors and Director (Principal Executive Officer)

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 and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|---|------------------|
| <u>/s/ Howard R. Yeaton</u> Howard R. Yeaton | Chief Executive Officer and Interim Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | December 5, 2019 |
| <u>/s/ Christopher C. Schreiber</u> Christopher C. Schreiber | Executive Chairman of the Board and Director (Principal Executive Officer) | December 5, 2019 |
| <u>/s/ Joshua Silverman</u> Joshua Silverman | Independent Director | December 5, 2019 |
| <u>/s/ Bill J. White</u> Bill J. White | Independent Director | December 5, 2019 |
| <u>/s/ Robert C. Schroeder</u> Robert C. Schroeder | Independent Director | December 5, 2019 |

ELLENOFF GROSSMAN & SCHOLE LLP
1345 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10105
TELEPHONE: (212) 370-1300
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www.egslp.com

December 5, 2019

Akers Biosciences, Inc.
201 Grove Road
Thorofare, New Jersey 08086

Re: Akers Biosciences, Inc., Registration Statement on Form S-1

Ladies and Gentlemen:

We have acted as counsel to Akers Biosciences, Inc., a New Jersey corporation (the "Company"), in connection with its filing of a Registration Statement on Form S-1 (the "462(b) Registration Statement") for the purpose of registering with the Securities and Exchange Commission (the "Commission") pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the "Act"), the sale by the Company of a proposed maximum aggregate offering price of \$966,000 of (A) (a) additional Class A Units (the "Class A Units"), each consisting of a share of the common stock of the Company, no par value (the "Common Stock"), and a warrant (each, a "Preferred Stock Warrant" and, collectively, the "Preferred Stock Warrants") to purchase one share of series C convertible preferred stock of the Company, no par value (the "Series C Preferred Stock"); and (b) Class B Units (the "Class B Units"), each consisting of a pre-funded warrant to purchase one share of Common Stock (each, a "Pre-Funded Common Warrant" and, collectively, the "Pre-Funded Common Warrants") and one Preferred Stock Warrant, and (B) warrants to purchase shares of Common Stock being issued to the Placement Agent (the "Placement Agent Warrants") as compensation for its services pursuant to an engagement letter entered into by and between the Company and the Placement Agent, with a proposed maximum aggregate offering price of \$966,000. The shares of Common Stock, which include the shares of Common Stock being issued as part of the Class A Units, issuable from time to time upon the exercise of the Pre-Funded Common Warrants and issuable upon exercise of the Placement Agent Warrants (collectively, the "Shares") and up to \$460,000 shares of Series C Preferred Stock issuable from time to time upon the exercise of the Preferred Stock Warrants (the "Preferred Shares") are being registered pursuant to the 462(b) Registration Statement. The Class A Units, Preferred Stock Warrants, Class B Units, Pre-Funded Common Warrants, the Placement Agent Warrants, the Shares, and the Preferred Shares are collectively referred to herein as the "Securities". The 462(b) Registration Statements related to the Company's Registration Statement on Form S-1, as amended (File No. 333-234447), initially filed by the Company with the Commission on November 1, 2019 (the "Registration Statement") and declared effective by the Commission on December 5, 2019. This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the 462(b) Registration Statement.

In connection with this opinion letter, we have examined the 462(b) Registration Statement and originals, or copies certified or otherwise identified to our satisfaction, of the Company's amended and restated certificate of incorporation, as amended, and the Company's amended and restated bylaws and such other documents, records and instruments as we have deemed appropriate for purposes of the opinion set forth herein.

We have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of the documents submitted to us as originals, the conformity with the originals of all documents submitted to us as certified, facsimile, or photostatic copies and the authenticity of the originals of all documents submitted to us as copies.

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) execution and delivery by the Company of the Securities Purchase Agreement (the "Agreement") with the various purchaser signatory thereto, (ii) effectiveness of the 462(b) Registration Statement and Registration Statement, (iii) issuance of the Securities pursuant to the terms of the Agreement, and (iv) receipt by the Company of the consideration for the Securities, as applicable:

- (a) The Class A Units, Class B Units and Placement Agent Warrants will be duly authorized for issuance and, when issued and sold in accordance with the Agreement and the engagement agreement between the Company and the placement agent, as applicable, and duly executed and delivered by the Company to the purchasers thereof against payment therefor, will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms;
- (b) The Preferred Stock Warrants and Pre-Funded Common Warrants will be duly authorized for issuance and, when issued and sold in accordance with the Agreement and duly executed and delivered by the Company to the purchasers thereof against payment therefor, will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms; and
- (c) The Shares and Preferred Shares will be duly authorized and when issued and paid for in accordance with the provisions of the Class A Units, Pre-Funded Common Warrants, Placement Agent Warrants and Preferred Stock Warrants, as applicable, will be validly issued and be fully paid and nonassessable.

The opinions above are subject to the effects of (i) bankruptcy, insolvency, fraudulent conveyance, fraudulent transfer, reorganization, receivership, moratorium and other similar laws relating to or affecting enforcement of creditors' rights or remedies generally, (ii) general principles of equity, whether such principles are considered in a proceeding of law or at equity, and (iii) an implied covenant of good faith, reasonableness and fair dealing and standards of materiality.

This opinion is limited to the New Jersey Business Corporation Act, including the statutory provisions of the New Jersey Business Corporation Act and all applicable provisions of the New Jersey Constitution and reported judicial decisions interpreting these laws. We hereby consent to the filing of this opinion as an exhibit to the 462(b) Registration Statement and to the use of our name under the caption "Legal Matters" in the Prospectus. In giving our consent, we do not thereby admit that we are experts with respect to any part of the 462(b) Registration Statement, Registration Statement, the Prospectus, or any Prospectus Supplement within the meaning of the term "expert," as used in Section 11 of the Securities Act or the rules and regulations promulgated thereunder by the Commission, nor do we admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Yours truly,

/s/ Ellenoff Grossman & Schole LLP
Ellenoff Grossman & Schole LLP

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated April 1, 2019, contained in the Annual Report on Form 10-K for Akers Biosciences, Inc. incorporated by reference in the Registration Statement on Form S-1, pursuant to Rule 462(b) under the Securities Act of 1933, as amended, dated December 5, 2019 and the related prospectus of Akers Biosciences, Inc. included therein.

/s/ Morison Cogen LLP

Blue Bell, Pennsylvania
December 5, 2019
