

Akebia Therapeutics, Inc.
Form 424B4
March 21, 2014
Table of Contents

**Filed Pursuant to Rule 424(b)(4)
Registration Nos. 333-193969 and 333-194695**

PROSPECTUS

5,882,353 Shares

Akebia Therapeutics, Inc.

Common Stock

This is the initial public offering of shares of common stock of Akebia Therapeutics, Inc.

We are offering 5,882,353 shares of our common stock. Prior to this offering, there has been no public market for our common stock. Our common stock has been approved for listing on the NASDAQ Global Market under the trading symbol AKBA.

We are an emerging growth company under the federal securities laws and are subject to reduced public company reporting requirements.

Investing in our common stock involves a high degree of risk. See Risk Factors beginning on page 11.

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

	Per share	Total
Initial public offering price	\$ 17.00	\$ 100,000,001
Underwriting discounts and commissions(1)	\$ 1.19	\$ 7,000,000
Proceeds, before expenses, to Akebia	\$ 15.81	\$ 93,000,001

(1) See Underwriting for additional disclosure regarding underwriting discounts, commissions and expenses.

To the extent that the underwriters sell more than 5,882,353 shares of common stock, the underwriters have an option to purchase up to an additional 879,647 shares from us at the initial public offering price.

The underwriters expect to deliver the shares against payment in New York, New York on March 25, 2014.

Certain of our existing stockholders and their affiliated entities, including holders of more than 5% of our common stock, have agreed to purchase an aggregate of 887,929 shares of our common stock in this offering at the initial public offering price. The underwriters will receive the same underwriting discount on any shares purchased by these stockholders as they will on the shares sold to the public in this offering.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed on the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

Morgan Stanley

UBS Investment Bank

Credit Suisse

Nomura

March 19, 2014

Table of Contents**Table of Contents**

	Page
<u>Summary</u>	1
<u>Risk Factors</u>	11
<u>Cautionary Note Regarding Forward-Looking Statements</u>	44
<u>Industry and Market Data</u>	45
<u>Use of Proceeds</u>	46
<u>Dividend Policy</u>	47
<u>Capitalization</u>	48
<u>Dilution</u>	50
<u>Selected Financial Data</u>	52
<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	53
<u>Business</u>	70
	Page
<u>Management</u>	102
<u>Executive Compensation</u>	109
<u>Certain Relationships and Related Party Transactions</u>	127
<u>Principal Stockholders</u>	132
<u>Description of Capital Stock</u>	135
<u>Shares Eligible for Future Sale</u>	140
<u>Material United States Federal Income Tax Considerations for Non-U.S. Holders</u>	144
<u>Underwriting</u>	148
<u>Legal Matters</u>	153
<u>Experts</u>	153
<u>Where You Can Find More Information</u>	153

We are responsible for the information contained in this prospectus and in any free-writing prospectus we prepare or authorize. We have not, and the underwriters have not, authorized anyone to provide you with different information, and we take no responsibility for any other information others may give you. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the cover page of this prospectus.

Table of Contents

Summary

This summary highlights information contained in other parts of this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our common stock, you should carefully read this entire prospectus, including our financial statements and the related notes and the information set forth under the sections titled Risk Factors, Cautionary Note Regarding Forward-Looking Statements and Management's Discussion and Analysis of Financial Condition and Results of Operations. Unless the context requires otherwise, references in this prospectus to Akebia, we, us, our, the Company and similar designations refer to Akebia Therapeutics, Inc.

Overview

We are a biopharmaceutical company focused on the development of novel proprietary therapeutics based on hypoxia inducible factor, or HIF, biology and the commercialization of these products for patients with kidney disease. HIF is the primary regulator of the production of red blood cells, or RBCs, in the body and a potentially novel mechanism of treating anemia. Our lead product candidate, AKB-6548, is being developed as a once-daily oral therapy that has successfully completed a Phase 2a proof of concept study demonstrating that AKB-6548 safely and predictably raised hemoglobin levels in patients with anemia secondary to chronic kidney disease, or CKD, not requiring dialysis.

We are conducting a Phase 2b trial for AKB-6548 in patients with anemia secondary to CKD who are not dependent on dialysis and expect data to be available in the fourth quarter of 2014. We have also initiated a development program for patients dependent on dialysis. If the results of our Phase 2b trial are positive, we would expect to initiate Phase 3 trials for anemia secondary to CKD in 2015, and would anticipate submitting a New Drug Application, or NDA, for AKB-6548 in the United States by 2018 if the Phase 3 data are favorable.

We own worldwide rights to our HIF-based product candidates, including AKB-6548. If approved by regulatory authorities, we plan to commercialize AKB-6548 in the United States ourselves and intend to seek one or more collaborators to commercialize the product candidate in additional markets.

Anemia is a serious medical condition in which blood is deficient in RBCs and hemoglobin, both of which are critical in delivering oxygen to tissue. Anemia generally exists when hemoglobin, a protein in RBCs that carries oxygen, is less than 13 g/dL in men or 12 g/dL in women. Untreated anemia is associated with chronic fatigue, increased risk of progression of multiple diseases and death. Anemia is common in patients with CKD, cancer, heart failure, inflammatory diseases and other critical illnesses, as well as in the elderly.

More than 30 million people in the United States have CKD, with estimates that over 1.8 million of these patients suffer from anemia. Anemia from these indications is currently treated by injectable recombinant protein erythropoiesis stimulating agents, or rESAs including Epogen, Aranesp and Procrit with iron supplementation or an RBC transfusion. Based on the reported revenues of companies that market and sell rESAs, we estimate that global sales of injectable rESAs were \$6.3 billion in 2012, the vast majority of which were for renal indications.

rESAs are designed to stimulate production of RBCs by binding directly to and saturating erythropoietin, or EPO, receptors. While injectable rESAs and transfusions may be effective in raising hemoglobin levels, they carry significant potential side effects and also need to be delivered subcutaneously or intravenously. In particular, injectable rESAs may lead to thrombosis, stroke, myocardial infarction and death, and these risks are described in black box warnings on the prescribing information of all products marketed in this class. These safety concerns, which became

evident starting in 2006, have led to a significant reduction in the use of

Table of Contents

injectable rESAs. Today anemia is either not treated or inadequately treated in the majority of CKD patients, and we believe that a safe, effective, oral therapeutic option will take significant market share and meaningfully grow the market in patients not requiring dialysis.

AKB-6548 works by a differentiated mechanism of action that we believe has the potential to be safer than that of injectable rESAs. This novel mechanism of action is referred to as HIF prolyl-hydroxylase, or HIF-PH, inhibition. Instead of binding directly to the EPO receptors on cells in the bone marrow, AKB-6548 leads to activation of critical pathways for hemoglobin and RBC production. This approach mimics the physiological adjustment made by the body when exposed to reduced oxygen levels at higher altitudes.

To date, AKB-6548 has been studied in eight clinical trials across four separate patient populations: healthy volunteers and patients with CKD stages 3, 4 and 5 (non-dialysis). Our largest study was a Phase 2a trial in 91 patients with anemia secondary to CKD, which showed significantly increased hemoglobin levels among subjects taking AKB-6548 compared to baseline in a dose-dependent manner across all treatment arms ($p < 0.0001$). No drug-related serious adverse events were reported, and dosing was well-tolerated. In addition, AKB-6548 was also shown to stabilize the iron supply to the bone marrow while improving hemoglobin production.

Our ongoing Phase 2b trial explores a dosing approach for AKB-6548 to enable subjects with anemia secondary to CKD to appropriately and safely raise hemoglobin levels. As of February 28, 2014, we had enrolled over 80% of our targeted 200 patients in this study at investigational sites in the United States, with data expected in the fourth quarter of 2014. With positive data, we plan to progress to Phase 3 global registration studies for AKB-6548 in patients with anemia secondary to CKD. We anticipate the design of the Phase 3 studies will mirror the Phase 2b study, except that they will be longer and larger in size, positioning us to file for approval in the United States by 2018.

Given the burdens of the current standard of care and costs associated with administering an injectable rESA, we believe AKB-6548 is a promising alternative for the overall cost-effective treatment of anemia. We intend to commercialize AKB-6548 ourselves in the United States for the treatment of anemia in patients with CKD. These patients are primarily treated by approximately 7,000 nephrologists, and we believe we can reach most of this market with a specialty sales force of approximately 125 people. We intend to seek one or more commercial collaborators for the development and commercialization of AKB-6548 outside of the United States. We may also explore opportunities to expand AKB-6548 into additional markets not adequately addressed by injectable rESAs because of safety or dosing delivery issues, including idiopathic anemia of aging, or IAA, and anemia of congestive heart failure.

We are led by a team of experienced biopharmaceutical executives with a background in developing and commercializing drugs for the treatment of renal and metabolic disorders. John P. Butler, our CEO, was former President of Genzyme Corp.'s renal division which grew to over \$1 billion in annual revenue under his leadership, and is current Chairman of the Board of the American Kidney Fund, the leading patient advocacy organization for kidney disease patients. Earlier in his career, Mr. Butler held sales and marketing positions at Amgen, working on the early commercial launch of injectable rESAs in the renal anemia market. Our executive team also includes Robert Shalwitz, M.D., CMO and co-founder of Akebia. Dr. Shalwitz is an academic pediatric endocrinologist and has extensive industry experience developing novel pharmaceuticals at Abbott Laboratories and Reliant Pharmaceuticals. He has developed extensive knowledge of HIF biology over his career, particularly over the past seven years in leading development at Akebia.

Table of Contents

Our Strategy

Our strategy is to develop novel therapeutics for patients based on HIF biology and to commercialize products for patients with kidney disease, beginning with AKB-6548 for patients with anemia secondary to CKD. The key elements of our strategy are to:

Complete the development of AKB-6548 for anemia secondary to CKD. We plan to complete the Phase 2b trial that is currently enrolling in the United States. We intend to initiate a Phase 3 development program in 2015 following our end of Phase 2 meeting with the United States Food and Drug Administration, or FDA.

Obtain regulatory approval of AKB-6548 for anemia secondary to CKD in the United States, Europe and other markets. We plan to complete an end of Phase 2 meeting with the FDA and seek scientific advice from the European Medicines Agency, or EMA, to define the Phase 3 development program necessary to secure regulatory approval to market AKB-6548. We would expect to initiate Phase 3 trials for anemia secondary to CKD in 2015, and would anticipate submitting an NDA for AKB-6548 in the United States by 2018 if the Phase 3 data are favorable.

Commercialize AKB-6548 in the United States and other territories. We will establish a specialty sales and marketing organization to commercialize AKB-6548 in the United States. Outside of the United States, we intend to seek one or more commercial collaborators.

Continue to develop AKB-6548 for further indications. We plan to initiate, in the first half of 2014, a Phase 2 study for AKB-6548 in dialysis patients with anemia, the second indication we intend to pursue. Additionally, we plan to evaluate the product candidate in IAA and other indications.

Advance our earlier stage pipeline asset. We plan to advance AKB-6899, a second HIF-PH inhibitor product candidate, which we believe, based on preclinical testing, has the ability to increase EPO levels while reducing vascular endothelial growth factor, or VEGF, levels. We intend to file an Investigational New Drug, or IND, application and begin Phase 1 trials to determine its potential use in oncology and ophthalmology.

Acquire or in-license additional nephrology products. If we are able to successfully launch AKB-6548, we will look to leverage our commercial infrastructure with additional products that would be prescribed by nephrologists.

We may enter into strategic collaborations to fully realize all of the elements of our strategy.

AKB-6548 as a Potential Solution

We are developing our lead product candidate, AKB-6548, to be a best in class HIF-PH inhibitor for the treatment of anemia secondary to CKD. We expect AKB-6548 to offer:

Predictable, meaningful and sustained improvements in hemoglobin levels;

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

Once a day therapy delivered orally;

A dosing regimen that restores the normal diurnal EPO pattern;

Robust pharmacodynamics and substantially lower peak EPO levels than with injectable rESAs; and

Reduced administration of IV or oral iron supplementation to patients treated for anemia secondary to CKD.

-3-

Table of Contents

Potential Best in Class Profile

We believe AKB-6548 has compelling clinical data demonstrating a best in class profile with several potential safety and efficacy advantages over current injectable rESA therapy in the treatment of anemia secondary to CKD.

AKB-6548 significantly increases hemoglobin in anemic CKD patients. We have successfully completed a Phase 2a trial, in which AKB-6548 significantly increased hemoglobin levels compared to baseline in a dose-dependent manner across all treatment arms ($p < 0.0001$). Further, AKB-6548 provides a physiologic reticulocyte, or newly formed RBC, response, which leads to a more gradual and consistent increase in hemoglobin levels than what is seen with injectable rESA therapies, meaning that these improvements occur without causing patients' hemoglobin to rise to levels that cause concern.

AKB-6548 may have the potential to restore the normal diurnal variation of EPO for a patient with anemia in a way that an injectable rESA cannot. Instead of binding directly to and saturating the EPO receptor for prolonged periods of time as is the case with current injectable rESA treatments, AKB-6548 acts by simulating the body's natural response to hypoxia that is carried out by stabilization of HIF α .

Oral, once-daily dosing. Once-daily, oral dosing of AKB-6548 offers improved convenience for patients as compared to injectable rESAs. This convenience may increase access to anemia therapy for the largely underserved population of patients with anemia secondary to CKD who are not yet on dialysis and for patients with other forms of anemia, such as idiopathic anemia of aging. AKB-6548 offers the potential of flexible oral dosing that provides a more gradual and reliable means of titration than that of injectable rESAs.

Ability to stabilize the iron supply to the bone marrow while improving hemoglobin production. In clinical trials, AKB-6548 has demonstrated a dose-related increase in total iron binding capacity. These results indicate that AKB-6548 will stabilize the iron supply to the bone marrow while improving hemoglobin production and should improve EPO responsiveness. As a result, unlike injectable rESAs, which have no effect on iron mobilization, AKB-6548 offers the added potential benefit of reducing the amount of supplemental iron required by anemia patients.

Differentiated safety profile. AKB-6548's novel mechanism of action and dosing profile offer the opportunity to potentially avoid the black box label ascribed to injectable rESAs. In our recently completed Phase 2a study, no drug-related serious adverse events were reported. Dosing was well-tolerated and there was no evidence of undesirable vascular response.

Risk Associated with Our Business

An investment in our common stock involves a high degree of risk. Any of the factors set forth under **Risk Factors** may limit our ability to successfully execute our business strategy. You should carefully consider all of the information set forth in this prospectus and, in particular, should evaluate the specific factors set forth under **Risk Factors** in deciding whether to invest in our common stock. These risk factors include, among others:

We depend heavily on the success of one product candidate, AKB-6548, which is in a Phase 2b clinical trial. Even if we obtain favorable clinical results, we may not be able to obtain regulatory approval for, or successfully commercialize, AKB-6548.

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

We have incurred significant losses since inception and anticipate that we will continue to incur significant losses for the foreseeable future and may never achieve or maintain profitability.

We will require substantial additional financing. A failure to obtain this necessary capital when needed could force us to delay, limit, reduce or terminate our product development or commercialization efforts.

-4-

Table of Contents

We have not obtained agreement with the FDA, the EMA or other regulatory authorities on the design of our Phase 3 development program.

Clinical drug development is a lengthy and expensive process with an uncertain outcome, and positive results from Phase 1 and Phase 2a clinical trials of AKB-6548 are not necessarily predictive of the results of our current Phase 2b and any future clinical trials of AKB-6548. If we cannot replicate the positive results from our Phase 1 and Phase 2a clinical trials of AKB-6548 in our Phase 2b and subsequent clinical trials, we may be unable to successfully develop, obtain regulatory approval for and commercialize AKB-6548.

Even if we receive regulatory approval for our product candidates, such drug products will be subject to ongoing regulatory review, which may result in significant additional expense. Additionally, our product candidates, if approved, could be subject to labeling and other restrictions, and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated problems with our products.

If our efforts to protect our proprietary technologies are not adequate, we may not be able to compete effectively in our market. We are currently involved in an opposition proceeding involving one of our European patents, and the outcome of that proceeding may affect our ability to establish a competitive advantage in the market or successfully commercialize our lead product candidate in the European Union.

Third-party claims of intellectual property infringement may be costly and time consuming, and may delay or harm our drug discovery and development efforts. We are currently involved in an opposition proceeding involving the granted European patent of one of our potential competitors.

Implications of Being an Emerging Growth Company

As a company with less than \$1 billion in revenue during our most recently completed fiscal year, we qualify as an emerging growth company as defined in Section 2(a) of the Securities Act of 1933, as amended, or the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. As an emerging growth company, we may take advantage of specified reduced disclosure and other requirements that are otherwise applicable, in general, to public companies that are not emerging growth companies. These provisions include:

Reduced disclosure about our executive compensation arrangements;

Exemption from the non-binding shareholder advisory votes on executive compensation or golden parachute arrangements;

Exemption from the auditor attestation requirement in the assessment of our internal control over financial reporting; and

Reduced disclosure of financial information in this prospectus, such as being permitted to include only two years of audited financial information and two years of selected financial information in addition to any required unaudited interim financial statements, with correspondingly reduced Management's Discussion and Analysis of Financial Condition and Results of Operations disclosure.

We may take advantage of these exemptions for up to five years or such earlier time that we are no longer an emerging growth company. We would cease to be an emerging growth company if we have more than \$1 billion in annual revenues as of the end of a fiscal year, have more than \$700 million in market value of our capital stock held by non-affiliates as of any June 30 or if we issue more than \$1 billion of non-convertible

debt over a three-year-period. We may choose to take advantage of some, but not all, of the available exemptions. We have

Table of Contents

taken advantage of some reduced reporting burdens in this prospectus. Accordingly, the information contained herein may be different than the information you receive from other public companies in which you hold stock.

The JOBS Act permits an emerging growth company to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We have irrevocably elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies.

Corporate Information

We were incorporated under the laws of the state of Delaware in February 2007. In December 2011, we spun out our programs focused on the treatment of diabetic eye disease and inflammatory bowel disease into Aerpio Therapeutics, Inc., or Aerpio, which has since operated as a stand-alone company. Our principal executive office is located at 245 First Street, Suite 1100, Cambridge MA 02142, and our telephone number is 617-871-2098. Our website address is www.akebia.com. We have included our website address in this prospectus solely as an inactive textual reference. The information on, or that can be accessed through, our website is not part of this prospectus, and you should not rely on any such information in making the decision whether to purchase our common stock.

This prospectus contains trademarks and tradenames of other businesses that are the property of their respective owners. We have omitted the ® and ™ designations, as applicable, for the trademarks named in this prospectus.

Table of Contents

The Offering

Common stock offered by us	5,882,353 shares
Common stock to be outstanding immediately following this offering	19,268,027 shares
Underwriters' over-allotment option	The underwriters have an option to purchase up to 879,647 additional shares of common stock to cover over-allotments as described in "Underwriting."
Use of proceeds	The net proceeds from the issuance of our common stock in this offering will be approximately \$90.2 million, or approximately \$104.1 million if the underwriters exercise their over-allotment option in full, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We intend to use the net proceeds from this offering to continue clinical development of AKB-6548 in patients with anemia secondary to CKD, including the preparation for and initiation of the Phase 3 trials; to conduct a Phase 2 clinical trial of AKB-6548 in idiopathic anemia of aging; to advance our preclinical candidate, AKB-6899, through Phase 1 development in oncology; and for working capital and other general corporate purposes. See "Use of Proceeds" for additional information.
Risk factors	See "Risk Factors" and the other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in our common stock.
NASDAQ Global Market symbol	Our common stock has been approved for listing on the NASDAQ Global Market under the symbol "AKBA."

Certain of our existing stockholders and their affiliated entities, including holders of more than 5% of our common stock, have agreed to purchase an aggregate of 887,929 shares of our common stock in this offering at the initial public offering price.

The number of shares of common stock to be outstanding after this offering is based on 13,385,674 shares of common stock outstanding as of December 31, 2013, including 957,189 shares of restricted stock and 12,002,329 shares of our common stock issuable upon the conversion of all outstanding shares of our preferred stock, and excludes the following:

1,251,398 shares of common stock issuable upon exercise of stock options outstanding as of December 31, 2013 at a weighted-average exercise price of \$1.01 per share;

155,108 shares of common stock reserved for future issuance under our Amended and Restated 2008 Equity Incentive Plan as of December 31, 2013;

1,785,000 shares of common stock reserved for future issuance under our 2014 Incentive Plan; and

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

112,853 shares of common stock issuable upon conversion of our Series C preferred stock with respect to dividends accrued between December 31, 2013 and the consummation of the offering.

-7-

Table of Contents

Unless otherwise indicated, all information in this prospectus reflects or assumes the following:

a 1.75-for-1 forward stock split of our common stock that we effected on March 6, 2014;

the amendment and restatement of our certificate of incorporation and bylaws, which will occur immediately prior to the closing of this offering;

the conversion of all of our outstanding shares of preferred stock into 12,002,329 shares of common stock, which is calculated based upon accrued dividends through December 31, 2013 and excludes 112,853 shares of common stock issuable upon conversion of our Series C preferred stock at the closing of this offering with respect to dividends accrued between December 31, 2013 and the consummation of the offering;

no grants, exercises or forfeitures of stock options or restricted stock on or after December 31, 2013; and

no exercise by the underwriters of their option to purchase up to an additional 879,647 shares of common stock in this offering.

Table of Contents**Summary Financial Data**

The following summary financial data for the years ended December 31, 2012 and 2013, and the period from February 27, 2007 (inception) to December 31, 2013 are derived from our audited financial statements included elsewhere in this prospectus. You should read this data together with our financial statements and related notes included elsewhere in this prospectus and the information under the captions "Selected Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our historical results for any prior period are not necessarily indicative of results to be expected in any future period, and our interim period results are not necessarily indicative of results to be expected for a full year or any other interim period.

	Year Ended December 31,		Period from
	2012	2013	February 27, 2007 (Date of Inception) to December 31, 2013
	(dollars in thousands, except per share data)		
Consolidated statements of operations data:			
Revenue		\$	\$
Expenses:			
Research and development	5,632	10,781	51,748
General and administrative	2,891	5,152	15,269
Total expenses	8,523	15,933	67,017
Loss from operations	(8,523)	(15,933)	(67,017)
Other income, net	327	2,766	3,975
Net loss	\$ (8,196)	\$ (13,167)	\$ (63,042)
Net loss per share applicable to common stockholders - basic and diluted ⁽¹⁾	\$ (27.82)	\$ (126.94)	\$ (481.04)
Weighted-average number of common shares used in net loss per share applicable to common stockholders - basic and diluted		544,002	
Pro forma net loss per share applicable to common stockholders - basic and diluted (unaudited) ⁽¹⁾		\$ (1.31)	
Pro forma weighted-average number of common shares used in net loss per share applicable to common stockholders - basic and diluted (unaudited)		10,132,528	

- (1) See Note 2 within the notes to our financial statements appearing elsewhere in this prospectus for a description of the method used to calculate basic and diluted net loss per share of common stock. Pro forma basic and diluted net loss per share of common stock is calculated by dividing net loss attributable to common stockholders, excluding the impact of gains (losses) on the extinguishment of preferred stock, accretion of preferred stock and including the impact of compensation expense associated with awards of restricted stock that contain a performance condition wherein vesting is contingent upon our consummation of a Liquidity Event, as defined in the Restricted Stock Agreement from the December 23, 2013 grants, by the pro forma weighted-average number of common shares outstanding.

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

The pro forma balance sheet data set forth below give effect to an assumed conversion as of December 31, 2013 of all outstanding shares of our preferred stock into an aggregate of 12,002,329 shares of our common stock, which does not include an additional 112,853 shares issuable upon such conversion with respect to dividends on our Series C preferred stock between December 31, 2013 and the consummation of the offering, at which time all shares of our preferred stock will automatically convert into common stock.

The pro forma as adjusted balance sheet data set forth below give further effect to our issuance and sale of 5,882,353 shares of our common stock in this offering at the initial public offering price of \$17.00 per share, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

Table of Contents

	As of December 31, 2013		
	Actual	Pro forma (in thousands)	Pro forma as adjusted
Balance Sheet Data:			
Cash and cash equivalents	\$ 21,215	\$ 21,215	\$ 111,411
Working capital	29,529	29,529	119,725
Total assets	34,665	34,665	124,861
Redeemable convertible preferred stock	157,827		
Deficit accumulated during the development stage	(127,072)	(63,707)	(63,707)
Total stockholders (deficit) equity	(127,072)	30,755	120,951

Table of Contents

Risk Factors

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below together with all of the other information contained in this prospectus, including our financial statements and the related notes appearing at the end of this prospectus, before deciding to invest in our common stock. If any of the following risks actually occur, our business, prospects, operating results and financial condition could suffer materially, the trading price of our common stock could decline and you could lose all or part of your investment. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also adversely affect our business.

Risks Related to Our Financial Position and Need for Additional Capital

We have incurred significant losses since inception and anticipate that we will continue to incur significant losses for the foreseeable future and may never achieve or maintain profitability.

We have incurred net losses each year since our inception, including net losses of \$8.2 million for the year ended December 31, 2012, and \$13.2 million for the year ended December 31, 2013. As of December 31, 2013, we had an accumulated deficit of \$127.1 million. To date, we have not commercialized any products or generated any revenues from the sale of products, and we do not expect to generate any product revenues in the foreseeable future. We do not know whether or when we will generate revenue or become profitable.

We have devoted most of our financial resources to research and development, including our clinical and preclinical development activities. To date, we have financed our operations primarily through private placements of our preferred stock. The amount of our future net losses will depend, in part, on the rate of our future expenditures, and our financial position will depend, in part, on our ability to obtain funding through equity or debt financings, strategic collaborations or grants. Our lead product candidate, AKB-6548, is currently in an ongoing Phase 2b clinical trial, and our other product candidate is in preclinical development. As a result, we expect that it will be several years, if ever, before we have a product candidate ready for commercialization. Even if we obtain regulatory approval to market AKB-6548, our future revenues will depend upon the size of any markets in which AKB-6548 has received approval, our ability to achieve sufficient market acceptance, reimbursement from third-party payors and other factors.

We expect to continue to incur significant expenses and increasing operating losses for the foreseeable future. We anticipate that our expenses will increase significantly if and as we:

continue our Phase 2b trial and prepare for a future Phase 3 development program of AKB-6548 for the treatment of anemia secondary to CKD;

seek regulatory approvals for our product candidates that successfully complete clinical studies;

have our product candidates manufactured for clinical trials and for commercial sale;

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

establish a sales, marketing and distribution infrastructure to commercialize any products for which we may obtain marketing approval;

initiate additional preclinical, clinical or other studies for AKB-6548, AKB-6899 and other product candidates that we may develop or acquire;

seek to discover and develop additional product candidates;

acquire or in-license other commercial products, product candidates and technologies;

make royalty, milestone or other payments under any future in-license agreements;

maintain, protect and expand our intellectual property portfolio;

attract and retain skilled personnel; and

Table of Contents

create additional infrastructure to support our operations as a public company.

Because of the numerous risks and uncertainties associated with pharmaceutical product development, we are unable to accurately predict the timing or amount of increased expenses or when, if at all, we will be able to achieve profitability. If we are required by the United States Food and Drug Administration, or FDA, the EMA or other regulatory authorities to perform studies in addition to those currently expected, or if there are any delays in completing our clinical trials or the development of any of our product candidates, our expenses could increase.

The net losses we incur may fluctuate significantly from quarter to quarter and year to year, such that a period-to-period comparison of our results of operations may not be a good indication of our future performance. In any particular quarter or quarters, our operating results could be below the expectations of securities analysts or investors, which could cause our stock price to decline.

To become and remain profitable, we must succeed in developing and commercializing our product candidates, which must generate significant revenue. This will require us to be successful in a range of challenging activities, including completing preclinical testing and clinical trials of our product candidates, discovering additional product candidates, obtaining regulatory approval for these product candidates and manufacturing, marketing and selling any products for which we may obtain regulatory approval. We are only in the preliminary stages of most of these activities. We may never succeed in these activities and, even if we do, may never generate revenues that are significant enough to achieve profitability.

Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable could depress the value of our company and could impair our ability to raise capital, expand our business, maintain our research and development efforts, diversify our product offerings or even continue our operations. A decline in the value of our company could cause you to lose all or part of your investment.

We will require substantial additional financing. A failure to obtain this necessary capital when needed could force us to delay, limit, reduce or terminate our product development or commercialization efforts.

As of December 31, 2013, our cash and cash equivalents were \$21.2 million. We believe that we will continue to expend substantial resources for the foreseeable future developing AKB-6548, AKB-6899 and any other product candidates that we may develop or acquire. These expenditures will include costs associated with research and development, potentially obtaining regulatory approvals and having our products manufactured, as well as marketing and selling products approved for sale, if any. In addition, other unanticipated costs may arise. Because the outcome of our current and anticipated clinical trials is highly uncertain, we cannot reasonably estimate the actual amounts necessary to successfully complete the development and commercialization of our product candidates.

Our future capital requirements depend on many factors, including:

the rate of progress, results and cost of completing our Phase 2b clinical trial of AKB-6548 and our operating costs incurred as we conduct these trials and through our end of Phase 2 meeting with the FDA, and equivalent meetings with the EMA and other regulatory authorities;

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

assuming AKB-6548 advances to Phase 3 clinical trials, the scope, size, rate of progress, results and costs of initiating and completing our Phase 3 development program of AKB-6548;

assuming favorable clinical results, the cost, timing and outcome of our efforts to obtain marketing approval for AKB-6548 in the United States, Europe and in other jurisdictions, including to fund the preparation and filing of regulatory submissions for AKB-6548 with the FDA, the EMA and other regulatory authorities;

the scope, progress, results and costs of preclinical development, laboratory testing and clinical trials for AKB-6899 and any other product candidates that we may develop or acquire;

-12-

Table of Contents

the timing of, and the costs involved in, obtaining regulatory approvals for AKB-6899 if clinical trials are successful;

the cost and timing of future commercialization activities for our products, if any of our product candidates are approved for marketing, including product manufacturing, marketing, sales and distribution costs;

the revenue, if any, received from commercial sales of our product candidates for which we receive marketing approval;

the cost of having our product candidates manufactured for clinical trials in preparation for regulatory approval and in preparation for commercialization;

our ability to establish and maintain strategic collaborations, licensing or other arrangements and the financial terms of such agreements;

the costs involved in preparing, filing, prosecuting patent applications, maintaining, defending and enforcing our intellectual property rights, including litigation costs and the outcome of such litigation; and

the extent to which we acquire or in-license other products or technologies.

Based on our current operating plan, and absent any future financings or strategic partnerships, we believe that the net proceeds we receive from this offering, and our existing cash and cash equivalents and investments will be sufficient to fund our projected operating expenses and capital expenditure requirements through the first half of 2016. However, our operating plan may change as a result of many factors currently unknown to us, and we may need additional funds sooner than planned. In addition, we may seek additional capital due to favorable market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. Additional funds may not be available when we need them on terms that are acceptable to us, or at all. If adequate funds are not available to us on a timely basis, we may be required to delay, limit, reduce or terminate preclinical studies, clinical trials or other development activities for AKB-6548, AKB-6899 or any other product candidates that we develop or acquire, or delay, limit, reduce or terminate our establishment of sales and marketing capabilities or other activities that may be necessary to commercialize our product candidates.

Raising additional capital may cause dilution to our existing stockholders, restrict our operations or require us to relinquish rights to product candidates on unfavorable terms to us.

Until such time, if ever, as we can generate substantial product revenues, we expect to finance our cash needs through a combination of equity offerings, debt financings and license, development and commercialization agreements with collaborators. To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest will be diluted, and the terms may include liquidation or other preferences and anti-dilution protections that adversely affect your rights as a stockholder. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take certain actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through strategic collaborations with third parties, we may have to relinquish valuable rights to our product candidates, future revenue streams, research programs or product candidates or grant licenses on terms that are not favorable to us. If we are unable to raise additional funds through equity or debt financing when needed, we may be required to delay, limit, reduce or terminate our product development or commercialization efforts for AKB-6548, AKB-6899 or any other product candidates that we develop or acquire, or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

Table of Contents

Our limited operating history may make it difficult for you to evaluate the success of our business to date and to assess our future viability.

We commenced active operations in 2007, and our operations to date have been limited to organizing and staffing our company, business planning, raising capital, identifying potential product candidates, undertaking preclinical studies and conducting clinical trials. We currently have two product candidates, one of which is in preclinical development. Biopharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. Only a small fraction of biopharmaceutical development programs ultimately result in commercial products or even product candidates and a number of events could delay our development efforts and negatively impact our ability to obtain regulatory approval for, and to manufacture, market and sell, a drug product. We have not yet demonstrated our ability to successfully complete later stage clinical trials, obtain regulatory approvals, manufacture a commercial scale product, or arrange for a third party to do so on our behalf, or conduct sales and marketing activities necessary for successful product commercialization. Consequently, any predictions you make about our future success or viability may not be as accurate as they could be if we had a longer operating history.

In addition, as a young business, we may encounter unforeseen expenses, difficulties, complications, delays and other known and unknown factors. We will need to expand our capabilities to support commercial activities. We may not be successful in adding such capabilities.

Risks Related to Our Business and the Clinical Development, Regulatory Review and Approval of AKB-6548 and AKB-6899

We depend heavily on the success of one product candidate, AKB-6548, which is in a Phase 2b clinical trial. Even if we obtain favorable clinical results, we may not be able to obtain regulatory approval for, or successfully commercialize, AKB-6548.

We currently have only one product candidate, AKB-6548, in clinical development, and our business depends almost entirely on the successful clinical development, regulatory approval and commercialization of that product candidate, which may never occur. We currently have no drug products for sale, generate no revenues from sales of any drugs, and may never be able to develop marketable drug products. AKB-6548, which is currently in an ongoing Phase 2b clinical trial, will require substantial additional clinical development, testing, manufacturing process development, and regulatory approval before we are permitted to commence its commercialization. Our other product candidate, AKB-6899, is in preclinical development. None of our product candidates has advanced into a pivotal study, and it may be years before such study is initiated, if ever. The clinical trials of our product candidates are, and the manufacturing and marketing of our product candidates will be, subject to extensive and rigorous review and regulation by numerous government authorities in the United States and in other countries where we intend to test and, if approved, market any product candidates. Before obtaining regulatory approval for the commercial sale of any product candidate, we must demonstrate through extensive preclinical testing and clinical trials that the product candidate is safe and effective for use in each target indication. This process can take many years. Of the large number of drugs in development in the United States, only a small percentage successfully complete the FDA regulatory approval process and are commercialized. Accordingly, even if we are able to obtain the requisite capital to continue to fund our development and clinical programs, we may be unable to successfully develop or commercialize AKB-6548.

We are not permitted to market AKB-6548 in the United States until we receive approval of an NDA from the FDA, or in any foreign countries until we receive the requisite approval from such countries. As a condition to submitting an NDA to the FDA for AKB-6548 regarding its ability to treat patients with anemia secondary to CKD, we must complete our ongoing Phase 2b clinical trial, Phase 3 studies, and any additional non-clinical or clinical studies required by the FDA. To date, we have only commenced the Phase 2b clinical trial. AKB-6548 may not be successful in clinical trials or receive regulatory approval. Further, AKB-6548 may not receive regulatory approval even if it is successful in clinical trials. Obtaining approval of an NDA is a complex, lengthy, expensive and uncertain process that typically takes many years following the commencement of clinical trials

Table of Contents

and depends upon numerous factors, including the substantial discretion of the regulatory authorities. In addition, the safety concerns associated with injectable rESAs and the black box warnings in their prescribing information may affect the FDA's review of the safety results of AKB-6548. Further, the policies or regulations, or the type and amount of clinical data necessary to gain approval, may change during the course of a product candidate's clinical development and may vary among jurisdictions. We have not obtained regulatory approval for any product candidate and it is possible that AKB-6548 will never obtain regulatory approval. The FDA may delay, limit or deny approval of AKB-6548 for many reasons, including, among others:

we may not be able to demonstrate that AKB-6548 is safe and effective in treating anemia secondary to CKD to the satisfaction of the FDA;

the results of our clinical trials may not meet the level of statistical or clinical significance required by the FDA for marketing approval;

the FDA may disagree with the number, design, size, conduct or implementation of our clinical trials;

the FDA may not approve the formulation, labeling or specifications of AKB-6548;

the FDA may require that we conduct additional clinical trials;

the contract research organizations, or CROs, that we retain to conduct our clinical trials may take actions outside of our control that materially adversely impact our clinical trials;

we may fail to perform in accordance with the FDA's good clinical practice, or GCP, requirements;

the FDA may disagree with our interpretation of data from our preclinical studies and clinical trials;

the FDA may not approve the manufacturing processes or facilities of third-party manufacturers with which we contract; or

the policies or regulations of the FDA may significantly change in a manner that renders our clinical data insufficient for approval, or requiring that we amend or submit new clinical protocols.

In addition, similar reasons may cause the EMA or other regulatory authorities to delay, limit or deny approval of AKB-6548 outside the United States.

Any of these factors, many of which are beyond our control, could jeopardize our ability to obtain regulatory approval for and successfully market AKB-6548. Because our business is almost entirely dependent upon AKB-6548, any such setback in our pursuit of regulatory approval would have a material adverse effect on our business and prospects.

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

Alternatively, even if we obtain regulatory approval, that approval may be for indications or patient populations that are not as broad as we intend or desire or may require labeling that includes significant use or distribution restrictions or safety warnings. We may also be required to perform additional, unanticipated clinical trials to obtain approval or be subject to additional post marketing testing requirements to maintain regulatory approval. In addition, regulatory authorities may withdraw their approval of a product or the FDA may require a risk evaluation and mitigation strategy, or REMS, for a product, which could impose restrictions on its distribution. Any of the foregoing scenarios could materially harm the commercial prospects for our product candidates.

We have not obtained agreement with the FDA, EMA or other regulatory authorities on the design of our Phase 3 development program.

As we have not completed our Phase 2b clinical trial, we have not obtained agreement with the FDA on the design of our Phase 3 development program. We plan to hold an end of Phase 2 meeting with the FDA upon successful completion of our Phase 2b clinical trial. If the FDA determines that the Phase 2b trial results do not support moving into a pivotal program, we would be required to conduct additional Phase 2 studies. Alternatively, the FDA could disagree with our proposed design of our Phase 3 development program and could

Table of Contents

suggest a larger number of subjects or a longer course of treatment than our current expectations. If the FDA takes such positions, the costs of our AKB-6548 development program could increase materially and the potential market introduction of AKB-6548 could be delayed or we could risk not obtaining FDA approval even if the Phase 3 trials meet their primary endpoints. The FDA also may require that we conduct additional clinical, nonclinical or manufacturing validation studies and submit that data before it will consider an NDA application.

We have not yet sought guidance for the regulatory path for AKB-6548 with the EMA or other regulatory authorities. We cannot predict what additional requirements may be imposed by these regulatory authorities or how such requirements might delay or increase costs for our planned Phase 3 development program. Because our business is almost entirely dependent upon the successful development, regulatory approval, and commercialization of AKB-6548, any such delay or increase costs would have an adverse effect on our business.

We may find it difficult to enroll patients in our clinical studies, which could delay or prevent clinical studies of our product candidates.

Identifying and qualifying patients to participate in clinical studies of our product candidates is critical to our success. The timing of our clinical studies depends on the speed at which we can recruit patients to participate in testing our product candidates. Patients may be unwilling to participate in our clinical trials for AKB-6548 because of negative publicity from adverse events observed in injectable rESAs, other investigational agents and commercial products in CKD or for other reasons, including competitive clinical studies for similar patient populations. In addition, patients controlling their disease with current injectable rESAs may be reluctant to participate in a clinical trial with an investigational drug. As a result, the timeline for recruiting patients, conducting studies and obtaining regulatory approval of potential products may be delayed. These delays could result in increased costs, delays in advancing our development of AKB-6548 or termination of the clinical studies altogether.

We may not be able to identify, recruit and enroll a sufficient number of patients, or those with required or desired characteristics to achieve diversity in a study, to complete our clinical studies in a timely manner. Patient enrollment is affected by factors including:

severity of the disease under investigation;

design of the study protocol;

size and nature of the patient population;

eligibility criteria for and design of the study in question;

perceived risks and benefits of the product candidate under study;

proximity and availability of clinical study sites for prospective patients;

availability of competing therapies and clinical studies and clinicians' and patients' perceptions as to the potential advantages of AKB-6548 in relation to available therapies or other products under development;

efforts to facilitate timely enrollment in clinical studies;

patient referral practices of physicians; and

ability to monitor patients adequately during and after treatment.

We may not be able to initiate or continue clinical studies if we cannot enroll a sufficient number of eligible patients to participate in the clinical studies required by regulatory agencies. If we have difficulty enrolling a sufficient number of patients to conduct our clinical studies as planned, we may need to delay, limit or terminate on-going or planned clinical studies, any of which would have an adverse effect on our business.

Table of Contents

We may not be able to comply with requirements of foreign jurisdictions in conducting trials outside of the United States. In addition, we may not be able to obtain regulatory approval in foreign jurisdictions.

We currently expect to seek regulatory approval for AKB-6548 for the treatment of anemia secondary to CKD in major markets outside the United States, including the European Union. Our ability to successfully initiate, enroll and complete a clinical study in any foreign country, should we attempt to do so, is subject to numerous risks unique to conducting business in international markets, including:

difficulty in establishing or managing relationships with qualified CROs and physicians;

different local standards for the conduct of clinical studies;

the potential burden of complying with a variety of foreign laws, medical standards and regulatory requirements, including the regulation of pharmaceutical and biotechnology products and treatments; and

the acceptability of data obtained from studies conducted in the United States to the EMA and other regulatory authorities.

If we fail to successfully meet requirements for the conduct of clinical trials outside of the United States, we may be delayed in obtaining, or be unable to obtain, regulatory approval for AKB-6548 in countries outside of the United States.

Regulatory authorities outside the United States will require compliance with numerous and varying regulatory requirements. The approval procedures vary among jurisdictions and may involve requirements for additional testing, and the time required to obtain approval may differ from that required to obtain FDA approval. In addition, in many countries outside the United States, a drug product must be approved for reimbursement before it can be approved for sale in that country. In some cases, the price that we intend to charge for our drug product is also subject to approval. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries or by the FDA. However, the failure to obtain approval in one jurisdiction may negatively impact our ability to obtain approval in another jurisdiction. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval. We may not obtain foreign regulatory approvals on a timely basis, if at all. We may not be able to file for regulatory approvals and may not receive necessary approvals to commercialize our drug products in any market.

Clinical drug development is a lengthy and expensive process with an uncertain outcome, and positive results from Phase 1 and Phase 2a clinical trials of AKB-6548 are not necessarily predictive of the results of our current Phase 2b and any future clinical trials of AKB-6548. If we cannot replicate the positive results from our Phase 1 and Phase 2a clinical trials of AKB-6548 in our Phase 2b and subsequent clinical trials, we may be unable to successfully develop, obtain regulatory approval for and commercialize AKB-6548.

Clinical testing is expensive and can take many years to complete, and its outcome is inherently uncertain. Failure can occur at any time during the clinical trial process. Success in preclinical studies may not be predictive of similar results in humans during clinical trials, and successful results from early or small clinical trials may not be replicated in later and larger clinical trials. For example, our early encouraging preclinical and clinical results for AKB-6548 do not ensure that the results of our ongoing Phase 2b clinical trial or any future clinical trials will demonstrate similar results. Our current Phase 2b clinical trial and our planned Phase 3 development program will enroll a larger number of subjects and will treat subjects for longer periods than our prior trials, which will result in a greater likelihood that adverse events may be observed. Many companies in the pharmaceutical and biotechnology industries have suffered significant setbacks in late-stage clinical trials after

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

achieving positive results in early stage development, and we may face similar setbacks. If the results of our ongoing or future clinical trials for AKB-6548 are inconclusive with respect to efficacy, if we do not meet our clinical endpoints

Table of Contents

with statistical significance, or if there are safety concerns or adverse events, we may be prevented from or delayed in obtaining marketing approval for AKB-6548.

We may experience delays in our ongoing Phase 2b clinical trial for AKB-6548 and we do not know whether planned clinical trials will begin on time, need to be redesigned, enroll patients on time or be completed on schedule, if at all.

Clinical trials can be delayed or aborted for a variety of reasons, including delay or failure to:

obtain regulatory approval to commence a clinical trial;

reach agreement on acceptable terms with prospective CROs and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;

obtain institutional review board, or IRB, approval at each site;

recruit, enroll and retain patients through the completion of clinical trials;

maintain clinical sites in compliance with trial protocols through the completion of clinical trials;

address any patient safety concerns that arise during the course of the trial;

initiate or add a sufficient number of clinical trial sites; or

manufacture sufficient quantities of our product candidate for use in clinical trials.

We could encounter delays if a clinical trial is suspended or terminated by us, by the relevant IRBs at the sites at which such trials are being conducted, by the Data Safety Monitoring Board, or DSMB, for such trial or by the FDA or other regulatory authorities. Such authorities may impose such a suspension or termination due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold, unforeseen safety issues or adverse side effects, changes in laws or regulations, or lack of adequate funding to continue the clinical trial. Any delays in completing our clinical trials will increase our costs, slow down our product candidate development and approval process and jeopardize our ability to commence product sales and generate revenues. Any of these occurrences may harm our business, financial condition and prospects significantly.

Even if we receive regulatory approval for our product candidates, such drug products will be subject to ongoing regulatory review, which may result in significant additional expense. Additionally, our product candidates, if approved, could be subject to labeling and other restrictions, and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated problems with our products.

Any regulatory approvals that we receive for our product candidates may be subject to limitations on the approved indicated uses for which the product may be marketed or to conditions of approval, or contain requirements for potentially costly post-marketing testing, including Phase 4 clinical trials, and surveillance to monitor the safety and efficacy of the drug product. In addition, if the FDA approves any of our product candidates, the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for the product will be subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with current Good Manufacturing Practice, or cGMP, requirements and GCP requirements for any clinical trials that we conduct post-approval.

Post-approval discovery of previously unknown problems with an approved drug product, including adverse events of unanticipated severity or frequency or relating to manufacturing operations or processes, or failure to comply with regulatory requirements, may result in, among other things:

restrictions on the marketing or manufacturing of the drug product, withdrawal of the drug product from the market, or drug product recalls;

Table of Contents

fines, warning letters or holds on clinical trials;

refusal by the FDA to approve pending applications or supplements to approved applications filed by us, or suspension or revocation of product approvals;

product seizure or detention, or refusal to permit the import or export of products;

a REMS program; and

injunctions or the imposition of civil or criminal penalties.

The FDA's policies may change and additional government regulations may be enacted. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or are not able to maintain regulatory compliance, we may lose any marketing approval that may have been obtained and we may not achieve or sustain profitability, which would adversely affect our business.

Risks Related to Our Reliance on Third Parties

We rely on third parties to conduct preclinical studies and clinical trials for our product candidates, and if they do not properly and successfully perform their obligations to us, we may not be able to obtain regulatory approvals for our product candidates.

We rely on third party CROs and other third parties to assist in managing, monitoring and otherwise carrying out our ongoing Phase 2b trial of AKB-6548. We expect to continue to rely on third parties, such as CROs, clinical data management organizations, medical institutions and clinical investigators to conduct our clinical trials in the future, including our Phase 3 development program for AKB-6548. We compete with many other companies for the resources of these third parties. The third parties on whom we rely may terminate their engagements with us at any time, and having to enter into alternative arrangements would delay development and commercialization of our product candidates.

Our reliance on these third parties for research and development activities will reduce our control over these activities but will not relieve us of our responsibilities. For example, the FDA and foreign regulatory authorities require compliance with regulations and standards, including GCP requirements, for designing, conducting, monitoring, recording, analyzing and reporting the results of clinical trials to ensure that the data and results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Although we rely on third parties to conduct our clinical trials, we are responsible for ensuring that each of these clinical trials is conducted in accordance with its general investigational plan and protocol under legal and regulatory requirements. Regulatory authorities enforce these GCP requirements through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of our CROs fail to comply with applicable GCP requirements, the clinical data generated in our clinical trials may be deemed unreliable and the FDA, EMA or other regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with GCP requirements. In addition, our clinical trials must be conducted with product produced under applicable cGMP regulations. Failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process.

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

If these third parties do not successfully carry out their duties under their agreements, if the quality or accuracy of the data they obtain is compromised due to their failure to adhere to clinical trial protocols or to regulatory requirements, or if they otherwise fail to comply with clinical trial protocols or meet expected deadlines, the clinical trials of our product candidates may not meet regulatory requirements. If clinical trials do not meet regulatory requirements or if these third parties need to be replaced, preclinical development activities or clinical trials may be extended, delayed, suspended or terminated. If any of these events occur, we may not be able to obtain regulatory approval of our product candidates on a timely basis or at all.

-19-

Table of Contents

We also expect to rely on other third parties to store and distribute drug supplies for our clinical trials. Any performance failure on the part of our distributors could delay clinical development or marketing approval of our product candidates or commercialization of our products, producing additional losses and depriving us of potential product revenue.

We intend to rely on third parties to conduct some or all aspects of our product manufacturing, and these third parties may not perform satisfactorily.

We do not have any manufacturing facilities and do not expect to independently conduct our product candidate manufacturing for research and preclinical and clinical testing. We currently rely, and expect to rely, on third parties to manufacture and supply drug products for our AKB-6548 clinical trials, and we expect to continue to rely on third parties for the manufacture of clinical and, if necessary, commercial quantities of our product candidates. This reliance on third parties increases the risk that we will not have sufficient quantities of our product candidates or such quantities at an acceptable cost or quality, which could delay, prevent or impair our development or commercialization efforts.

Any of these third parties may terminate their engagement with us at any time. We believe we have sufficient drug product to complete our ongoing Phase 2b trial of AKB-6548. On February 28, 2014, we entered into an agreement with Evonik Corporation, or Evonik, for the manufacturing of the drug substance for the Phase 3 development program of AKB-6548. If Evonik cannot perform as agreed, we may be required to find replacement manufacturers. We also do not currently have arrangements in place for the manufacturing of drug product for the Phase 3 development program. Although we believe that there are several potential alternative manufacturers who could manufacture our product candidates, we may incur significant delays and added costs in identifying, qualifying and contracting with any such replacement, as well as producing the drug product. In addition, we have to enter into technical transfer agreements and share our know-how with the third-party manufacturers, which can be time-consuming and may result in delays. These delays could result in a suspension of our clinical trials or, if AKB-6548 is approved and marketed, a failure to satisfy patient demand.

Reliance on third party manufacturers entails risks to which we would not be subject if we manufactured the product candidates ourselves, including:

the inability to negotiate manufacturing agreements with third parties under commercially reasonable terms;

reduced control as a result of using third party manufacturers for all aspects of manufacturing activities, including regulatory compliance and quality assurance;

termination or nonrenewal of manufacturing agreements with third parties in a manner or at a time that is costly or damaging to us;

the possible misappropriation of our proprietary information, including our trade secrets and know-how; and

disruptions to the operations of our manufacturers or suppliers caused by conditions unrelated to our business or operations, including the bankruptcy of the manufacturer or supplier or a catastrophic event affecting our manufacturers or suppliers.

Edgar Filing: Akebia Therapeutics, Inc. - Form 424B4

Any of these events could lead to clinical study delays or failure to obtain regulatory approval, or affect our ability to successfully commercialize future products. Some of these events could be the basis for FDA action, including injunction, recall, seizure or total or partial suspension of production.

The facilities used by our contract manufacturers to manufacture our product candidates must be approved by the FDA pursuant to inspections that will be conducted after we submit our NDA to the FDA. We do not control the manufacturing process of, and are completely dependent on, our contract manufacturers for compliance with

Table of Contents

cGMP requirements for manufacture of both drug substance and finished drug product. If our contract manufacturers cannot successfully manufacture material that conforms to our specifications and the strict regulatory requirements of the FDA, we will not be able to secure and/or maintain regulatory approval for our product candidates. In addition, we have no control over the ability of our contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If the FDA, EMA or other regulatory authorities do not approve these facilities for the manufacture of our product candidates or if they withdraw any such approval in the future, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, obtain regulatory approval for or market our product candidates, if approved. Moreover, our failure, or the failure of our third party manufacturers, to comply with applicable regulations could result in sanctions being imposed on us, including clinical holds, fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of product candidates or products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our products or product candidates.

In addition, our product candidates and any products that we may develop may compete with other product candidates and products for access to manufacturing facilities. Certain of these manufacturing facilities may be contractually prohibited from manufacturing our product due to non-compete agreements with our competitors. There are a limited number of manufacturers that operate under cGMP regulations and that might be capable of manufacturing for us.

Our current and anticipated future dependence upon others for the manufacture of our product candidates or products may adversely affect our future profit margins and our ability to commercialize any products that receive marketing approval on a timely and competitive basis.

If we are unable to manufacture our product candidates in sufficient quantities, at sufficient yields, we may experience delays in product development, clinical trials, regulatory approval and commercial distribution.

Completion of our clinical trials and commercialization of our product candidates require access to, or development of, facilities to manufacture our product candidates at sufficient yields and at commercial scale. We have limited experience manufacturing, or managing third parties in manufacturing, any of our product candidates in the volumes that will be necessary to support large-scale clinical trials or commercial sales. Efforts to establish these capabilities may not meet initial expectations as to scheduling, scale-up, reproducibility, yield, purity, cost, potency or quality.

Our reliance on contract manufacturers may adversely affect our operations or result in unforeseen delays or other problems beyond our control. Because of contractual restraints and the limited number of third-party manufacturers with the expertise, required regulatory approvals and facilities to manufacture our bulk drug product on a commercial scale, replacement of a manufacturer may be expensive and time-consuming and may cause interruptions in the production of our drug product. A third-party manufacturer may also encounter difficulties in production. These problems may include:

difficulties with production costs, scale-up and yields;

availability of raw materials and supplies;

quality control and assurance;

shortages of qualified personnel;

compliance with strictly enforced federal, state and foreign regulations that vary in each country where a product might be sold; and

lack of capital funding.

Any delay or interruption in our supply of product candidates could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Table of Contents

We may not be successful in establishing and maintaining strategic collaborations, which could adversely affect our ability to develop and commercialize our product candidates, negatively impacting our operating results.

We plan to commercialize AKB-6548 ourselves in the United States and will likely seek one or more strategic collaborators to commercialize AKB-6548 in additional markets. We face competition in seeking appropriate collaborators for our product candidates, and the negotiation process is time-consuming and complex. In order for us to successfully collaborate with a third party on our product candidates, potential collaborators must view these product candidates as economically valuable. Even if we are successful in our efforts to establish strategic collaborations, the terms that we agree upon may not be favorable to us, and we may not be able to maintain such strategic collaborations if, for example, development or approval of a product is delayed or sales of an approved product are disappointing. Any delay in entering into strategic collaboration agreements related to our product candidates could delay the development and commercialization of our product candidates and reduce their competitiveness even if they reach the market.

In addition, our strategic collaborators may terminate any agreements they enter into with us, and we may not be able to adequately protect our rights under these agreements. Furthermore, our strategic collaborators will likely negotiate for certain rights to control decisions regarding the development and commercialization of our product candidates, if approved, and may not conduct those activities in the same manner as we do.

If we fail to establish and maintain strategic collaborations related to our product candidates, we will bear all of the risk and costs related to the development and commercialization of any such product candidate, and we may need to seek additional financing, hire additional employees and otherwise develop expertise. This could negatively affect the development of any unpartnered product candidate.

Risks Related to Our Intellectual Property

If our efforts to protect our proprietary technologies are not adequate, we may not be able to compete effectively in our market. We are currently involved in an opposition proceeding involving one of our European patents, and the outcome of that proceeding may affect our ability to establish a competitive advantage in the market or successfully commercialize our lead product candidate in the European Union.

We rely upon a combination of patents, trade secret protection and confidentiality agreements to protect the intellectual property related to our technologies. We will only be able to protect our product candidates, proprietary technologies and their uses from unauthorized use by third parties to the extent that valid and enforceable patents or trade secrets cover them. Any disclosure to or misappropriation by third parties of our confidential proprietary information could enable competitors to quickly duplicate or surpass our technological achievements, thus eroding our competitive position in our market.

In July of 2011, a third party filed an opposition to one of our issued European patents, European Patent No. 2044005, which we refer to as the 005 Patent. During the oral proceedings, which took place on April 10, 2013, the Opposition Division of the European Patent Office decided to maintain certain claims of the patent directed to a compound chosen from a group of eight compounds, including AKB-6548, as well as claims to compositions and methods for treating various diseases, including, but not limited to anemia. Both parties have appealed the decision of the Opposition Division and final resolution of the opposition proceeding will likely take a number of years. We cannot be assured of the breadth of the claims that will remain in the 005 Patent or that the patent will not be revoked in its entirety. If the European Patent Office decides to narrow the scope of the claims or revoke the 005 Patent, we may not be able to establish a competitive advantage in the European Union in our market or successfully commercialize our lead product candidates in the European Union, which could materially adversely affect our business, operating results and financial condition.

Composition-of-matter patents on the active pharmaceutical ingredient are generally considered to be the strongest form of intellectual property protection for pharmaceutical products, as such patents provide protection without regard to any method of use. Method-of-use patents protect the use of a product for the specified method.

Table of Contents

This type of patent does not prevent a competitor from making and marketing a product that is identical to our product for an indication that is outside the scope of the patented method. Moreover, even if competitors do not actively promote their product for our targeted indications, physicians may prescribe these products off-label. Although off-label prescriptions may infringe or contribute to the infringement of method-of-use patents, the practice is common and such infringement is difficult to prevent or prosecute.

The strength of patents in the biotechnology and pharmaceutical field involves complex legal and scientific questions and can be uncertain. The patent applications that we own or license may fail to result in issued patents in the United States or in other foreign countries. Even if the patents do successfully issue, third parties may challenge the validity, enforceability, inventorship, or scope thereof, which may result in such patents being narrowed, invalidated or held unenforceable. Furthermore, even if they are unchallenged, our patents and patent applications may not adequately protect our intellectual property or prevent others from designing around our claims. If the breadth or strength of protection provided by the patent applications we hold with respect to our product candidates is threatened, it could dissuade companies from collaborating with us to develop, and threaten our ability to commercialize, our product candidates. Further, if we encounter delays in our clinical trials, the period of time during which we could market our product candidates under patent protection would be reduced. Since patent applications in the United States and most other countries are confidential for a period of time after filing, we cannot be certain that we were the first to file any patent application related to our product candidates. Furthermore, for applications in which all claims are entitled to a priority date before March 16, 2013, an interference proceeding can be provoked by a third-party or instituted by the USPTO, to determine who was the first to invent any of the subject matter covered by the patent claims of our applications. For applications containing a claim not entitled to priority before March 16, 2013, there is greater level of uncertainty in the patent law with the passage of the America Invents Act (2011), which brings into effect significant changes to the U.S. patent laws and which introduces new procedures for challenging pending patent applications and issued patents. A primary change under this reform is creating a first to file system in the United States. This will require us to be cognizant of the time from invention to filing of a patent application.

In addition to the protection afforded by patents, we seek to rely on trade secret protection and confidentiality agreements to protect proprietary know-how that is not patentable, processes for which patents are difficult to enforce and any other elements of our drug discovery and development processes that involve proprietary know-how, information or technology that is not covered by patents. Although we require all of our employees to assign their inventions to us, and require all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information or technology to enter into confidentiality agreements, we cannot be certain that our trade secrets and other confidential proprietary information will not be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. Furthermore, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. As a result, we may encounter significant problems in protecting and defending our intellectual property both in the United States and abroad. If we are unable to prevent unauthorized material disclosure of our intellectual property to third parties, we will not be able to establish or maintain a competitive advantage in our market, which could materially adversely affect our business, operating results and financial condition.

Our reliance on third parties requires us to share our trade secrets, which increases the possibility that a competitor will discover them or that our trade secrets will be misappropriated or disclosed.

Because we rely on third parties to research and develop and to manufacture our product candidates, we must, at times, share trade secrets with them. We seek to protect our proprietary technology in part by entering into confidentiality agreements and, if applicable, material transfer agreements, consulting agreements or other similar agreements with our advisors, employees, third-party contractors and consultants prior to beginning research or disclosing proprietary information. These agreements typically limit the rights of the third parties to use or disclose our confidential information, including our trade secrets. Despite the contractual provisions employed when working with third parties, the need to share trade secrets and other confidential information

Table of Contents

increases the risk that such trade secrets become known by our competitors, are inadvertently incorporated into the technology of others, or are disclosed or used in violation of these agreements. Given that our proprietary position is based, in part, on our know-how and trade secrets, a competitor's discovery of our trade secrets or other unauthorized use or disclosure would impair our competitive position and may have a material adverse effect on our business.

In addition, these agreements typically restrict the ability of our advisors, employees, third-party contractors and consultants to publish data potentially relating to our trade secrets, although our agreements may contain certain limited publication rights. For example, any academic institution that we may collaborate with in the future will usually expect to be granted rights to publish data arising out of such collaboration, provided that we are notified in advance and given the opportunity to delay publication for a limited time period in order for us to secure patent protection of intellectual property rights arising from the collaboration, in addition to the opportunity to remove confidential or trade secret information from any such publication. In the future we may also conduct joint research and development programs that may require us to share trade secrets under the terms of our research and development or similar agreements. Despite our efforts to protect our trade secrets, our competitors may discover our trade secrets, either through breach of our agreements with third parties, independent development or publication of information by any of our third-party collaborators. A competitor's discovery of our trade secrets would impair our competitive position and have an adverse impact on our business.

Third-party claims of intellectual property infringement may be costly and time consuming, and may delay or harm our drug discovery and development efforts. We are currently involved in an opposition proceeding involving the granted European patent of one of our potential competitors.

Our commercial success depends in part on our avoiding infringement of the patents and proprietary rights of third parties. The pharmaceutical and biotechnology industries are characterized by extensive litigation over patent and other intellectual property rights. We may become a party to, or threatened with, future adversarial litigation or other proceedings regarding intellectual property rights with respect to our drug candidates. As the pharmaceutical and biotechnology industries expand and more patents are issued, the risk increases that our drug candidates may give rise to claims of infringement of the patent rights of others.

While our product candidates are in preclinical studies and clinical trials, we believe that the use of our product candidates in these preclinical studies and clinical trials in the United States falls within the scope of the exemptions provided by 35 U.S.C. Section 271(e), which provides that it shall not be an act of infringement to make, use, offer to sell, or sell within the United States or import into the United States a patented invention solely for uses reasonably related to the development and submission of information to the FDA. As our product candidates progress toward commercialization, the possibility of a patent infringement claim against us increases. We attempt to ensure that our product candidates and the methods we employ to manufacture them, as well as the methods for their use we intend to promote, do not infringe other parties' patents and other proprietary rights. There can be no assurance they do not, however, and competitors or other parties may assert that we infringe their proprietary rights in any event.

Third parties may hold or obtain patents or other intellectual property rights and allege in the future that the use of our product candidates infringes these patents or intellectual property rights, or that we are employing their proprietary technology without authorization. For example, we are aware of certain patents that have been acquired by FibroGen, Inc., or FibroGen, directed to certain heterocyclic carboxamide compounds that are described as inhibitors of prolyl-4-hydroxylase. Those patents, however, expire as of December 2014, absent extension, before we anticipate receiving regulatory approval for our product candidates. In addition, we are aware of subsequent U.S. patents issued to FibroGen directed to purportedly new methods of using such previously known heterocyclic carboxamide compounds for purposes of treating or affecting specified conditions. We do not believe these currently issued FibroGen U.S. patents conflict with our intellectual property rights; nor do we make any admission that any of such patents are valid or enforceable. Under U.S. law, a party may be able to patent a discovery of a new way to use a previously known compound, even if such compound

Table of Contents

itself is patented, provided the newly discovered use is novel and nonobvious. Such a method-of-use patent, however, if valid, only protects the use of a claimed compound for the specified methods claimed in the patent. This type of patent does not prevent persons from using the compound for any previously known use of the compound. Further, this type of patent does not prevent persons from making and marketing the compound for an indication that is outside the scope of the patented method. We are not aware of any valid U.S. patents issued to FibroGen that claim methods of using any of our product candidates for purposes of inhibiting hypoxia-inducible factor prolyl-hydroxylases, or HIF-PHs, for the treatment of anemia secondary to CKD. In June 2013, the European Patent Office granted European Patent No. 1463823, or the '823 patent, to FibroGen. The '823 patent claims, among other things, the use of a heterocyclic carboxamide compound selected from the group consisting of pyridine carboxamides, quinoline carboxamides, isoquinoline carboxamides, cinnoline carboxamides, and beta-carboline carboxamides that inhibits HIF-PH enzyme activity in the manufacture of a medication for increasing endogenous EPO in the prevention, pretreatment or treatment of anemia. On December 5, 2013, we filed an opposition to the '823 patent requesting that the '823 patent be revoked in its entirety. While, for the reasons set forth in our opposition, we believe the '823 patent should be revoked in its entirety, the ultimate outcome of the opposition remains uncertain. If the European Patent Office decides not to revoke the '823 patent in its entirety, or only certain claims of the '823 patent, and any surviving claims are determined to encompass our intended use of our lead product candidate, we may not be able to commercialize our lead product candidate in the European Union for its intended use, which could materially adversely affect our business, operating results and financial condition. FibroGen has filed patent applications related to the '823 patent in the United States and in other countries, and some of these applications have since issued as patents outside of the U.S. FibroGen is also pursuing other patent applications in the United States and other countries, and some of these have issued as patents. To the extent any such patents issue or have been issued, we may initiate opposition or other legal proceedings with respect to those patents.

There may be patents of third parties, including FibroGen, of which we are currently unaware with claims to materials, formulations, methods of manufacture or methods for treatment related to the use or manufacture of our drug candidates. Also, because patent applications can take many years to issue, there may be currently pending patent applications which may later result in issued patents that our product candidates may infringe. Notwithstanding the above, third parties, including FibroGen, may in the future claim that our product candidates and other technologies infringe upon these patents and may file suit against us.

Parties making claims against us may seek and obtain injunctive or other equitable relief, which could effectively block our ability to further develop and commercialize AKB-6548 or AKB-6899. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of any of our product candidates, any molecules formed during the manufacturing process or any final product itself, the holders of any such patents may be able to block our ability to commercialize such product candidate unless we obtained a license under the applicable patents, or until such patents expire or they are finally determined to be held invalid or unenforceable. Similarly, if any third-party patent were held by a court of competent jurisdiction to cover aspects of our formulations, processes for manufacture or our intended methods of use, including patient selection methods, the holders of any such patent may be able to block or impair our ability to develop and commercialize the applicable product candidate unless we obtained a license or until such patent expires or is finally determined to be held invalid or unenforceable. We may also elect to enter into a license in order to settle litigation or in order to resolve disputes prior to litigation. Furthermore, even in the absence of litigation, we may need to obtain licenses from third parties to advance our research or allow commercialization of our product candidates. Should a license to a third party patent become necessary, we cannot predict whether we would be able to obtain a license, or if a license were available, whether it would be available on commercially reasonable terms. If such a license is necessary and a license under the applicable patent is unavailable on commercially reasonable terms, or at all, our ability to commercialize our product candidates may be impaired or delayed, which could in turn significantly harm our business.

Further, defense of infringement claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful claim

Table of Contents

of infringement against us, we may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement, pay royalties or redesign our products, which may be impossible or require substantial time and monetary expenditure.

We are currently involved in opposition proceedings and may in the future be involved in lawsuits or administrative proceedings to protect or enforce our patents, which could be expensive, time consuming, and unsuccessful.

We are currently involved in two opposition proceedings in the European Patent Office. These proceedings may be ongoing for a number of years and may involve substantial expense and diversion of employee resources from our business. For more information, see the other risk factors under Risks Related to Intellectual Property.

Competitors may infringe our patents or misappropriate our trade secrets or confidential information. To counter infringement or unauthorized use, we may be required to file infringement or misappropriation claims, which can be expensive and time-consuming. We may not be able to prevent infringement of our patents or misappropriation of our trade secrets or confidential information, particularly in countries where the laws may not protect those rights as fully as in the United States. In addition, in an infringement proceeding, a court may decide that a patent of ours is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated, held unenforceable, or interpreted narrowly and could put our patent applications at risk of not issuing. In addition, there may be a challenge or dispute regarding inventorship or ownership of patents or applications currently identified as being owned by or licensed to us. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business.

Various administrative proceedings are also available for challenging patents, including interference, reexamination, *inter partes* review, and post-grant review proceedings before the USPTO or oppositions and other comparable proceedings in foreign jurisdictions. Interference proceedings provoked by third parties or brought by the USPTO may be necessary to determine the priority of inventions with respect to our patents or patent applications. An unfavorable outcome could require us to cease using the related technology or to attempt to license rights to it from the prevailing party. Our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms or at all. Even if we are successful, participation in interference or other administrative proceedings before the USPTO or a foreign patent office may result in substantial costs and distract our management and other employees.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation and some administrative proceedings, there is a risk that some of our confidential information could be compromised by disclosure. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance fees on any issued patent are due to be paid to the USPTO and foreign patent agencies in several stages over the lifetime of the patent. The USPTO and various foreign governmental patent agencies also require compliance with a number of procedural, documentary, fee payment (such as annuities) and other similar provisions during the patent application process. While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can

result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction.
Non-compliance events that could result in

Table of Contents

abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. In such an event, our competitors might be able to enter the market, which would have a material adverse effect on our business.

We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed confidential information of third parties.

We have received confidential and proprietary information from collaborators, prospective licensees and other third parties. In addition, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies. We may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed confidential information of these third parties or our employees' former employers. We may also be subject to claims that former employees, collaborators or other third parties have an ownership interest in our patents or other intellectual property. We may be subject to ownership disputes in the future arising, for example, from conflicting obligations of consultants or others who are involved in developing our drug candidates. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, valuable intellectual property. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against these claims, litigation could result in substantial cost and be a distraction to our management and employees.

We may not be able to protect our intellectual property rights throughout the world.

Filing, prosecuting and defending patents on product candidates in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. In addition, the laws of some countries do not protect intellectual property rights to the same extent as laws in the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States, or from selling or importing products made using our inventions in and into the United States or other countries. Competitors may use our technologies in countries where we have not obtained patent protection to develop their own products and further, may infringe our patents in territories where we have patent protection, but enforcement is not as strong as in the United States. These products may compete with our products and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in certain countries. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets and other intellectual property, particularly those relating to pharmaceutical and biotechnology products, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign countries could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

Table of Contents

Risks Related to Commercialization

Our future commercial success depends upon attaining significant market acceptance of our product candidates, if approved, among physicians, patients, third-party payors and others in the medical community.

Even if we obtain marketing approval for AKB-6548, AKB-6899 or any other product candidates that we may develop or acquire in the future, these product candidates may not gain market acceptance among physicians, third-party payors, patients and others in the medical community. In addition, market acceptance of any approved products depends on a number of other factors, including:

the efficacy and safety of the product, as demonstrated in clinical trials;

the clinical indications for which the product is approved and the label approved by regulatory authorities for use with the product, including any warnings that may be required on the label;

acceptance by physicians and patients of the product as a safe and effective treatment and the willingness of the target patient population to try new therapies and of physicians to prescribe new therapies;

the cost, safety and efficacy of treatment in relation to alternative treatments;