



**Part II Organizational Action** (continued)

17 List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based ▶ Please see attached.

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18 Can any resulting loss be recognized? ▶ Please see attached.

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19 Provide any other information necessary to implement the adjustment, such as the reportable tax year ▶ Please see attached.

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Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here  
Signature ▶ R. Karthikeyan Date ▶ June 4, 2015

Print your name ▶ Karthik Radhakrishnan Title ▶ Chief Financial Officer

<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ▶				Firm's EIN ▶
	Firm's address ▶				Phone no.

Opexa Therapeutics, Inc.  
EIN: 76-0333165

Form 8937 Attachment

Part II, 14

On March 16, 2015 (the “Distribution Date”), Opexa Therapeutics, Inc. (“Opexa”) distributed at no charge to holders of its common stock and to holders of its outstanding Series L warrants who were entitled to participate in the offering (the “Rights Offering”), as of 5:00 p.m., Eastern time, on March 13, 2015 (the “Record Date”), non-transferable subscription rights (“Subscription Rights”) to purchase up to 28,776,419 “Units” at a subscription price of \$0.55 per Unit (the “Subscription Price”).<sup>1</sup>

Each Subscription Right entitled holders to purchase one Unit (the “Basic Subscription Right”), consisting of one share of Opexa’s common stock and a warrant (a “Warrant”) representing the right to purchase one share of Opexa’s common stock. The Warrants entitle the holder to purchase one share of Opexa’s common stock at an exercise price of (i) \$0.50 per share from the date of issuance (April 9, 2015) through June 30, 2016 and (ii) \$1.50 per share from July 1, 2016 through their expiration three years from the date of issuance.

If a holder fully exercised the holder’s Basic Subscription Rights, and other shareholders or warrant holders did not fully exercise their Basic Subscription Rights, the holder was entitled to an oversubscription privilege to purchase a portion of the unsubscribed Units at the Subscription Price, subject to proration and ownership limitations (the “Over-Subscription Privilege”).

The Subscription Rights expired at 5:00 p.m., Eastern Time, on April 8, 2015.

Opexa raised \$13,804,140 in gross proceeds, before expenses, through subscriptions for 25,098,437 Units, including the exercise of Over-Subscription Privileges.

For further information, please refer to the Prospectus and the two Prospectus Supplements relating to the Rights Offering which may be accessed at:

Prospectus:

<http://www.sec.gov/Archives/edgar/data/1069308/000119312515062793/d848715d424b4.htm>

Prospectus Supplement No. 1:

<http://www.sec.gov/Archives/edgar/data/1069308/000115752315000872/a51054459.htm>

Prospectus Supplement No. 2:

<http://www.sec.gov/Archives/edgar/data/1069308/000119312515114957/d902889d424b3.htm>

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<sup>1</sup> The original subscription price of \$0.70 per Unit was reduced on March 31, 2015 to \$0.55 per Unit.

The discussions in Part II, 15, 17, 18 and 19 below are qualified in their entirety by the discussion under “Material U.S. Federal Income Tax Consequences” in the Prospectus.

#### Part II, 15

If the fair market value of the Subscription Rights the holder received was less than 15% of the fair market value of the holder’s existing shares of Opexa’s common stock or Series L warrants (with respect to which the Subscription Rights were distributed) on the date the holder received the Subscription Rights, the Subscription Rights would be allocated a zero basis for U.S. federal income tax purposes, unless the holder elects to allocate the holder’s basis in the existing shares of common stock or Series L warrants between the holder’s existing shares of common stock or Series L warrants and the Subscription Rights in proportion to the relative fair market values of the existing shares of common stock or Series L warrants and the Subscription Rights determined on the date of receipt of the Subscription Rights. If the holder chooses to allocate basis between the holder’s existing common shares or Series L warrants and the Subscription Rights, the holder must make this election on a statement included with the holder’s timely filed tax return (including extensions) for the taxable year in which the holder received the Subscription Rights. Such an election is irrevocable.

If the fair market value of the Subscription Rights the holder received was 15% or more of the fair market value of the holder’s existing shares of Opexa’s common stock or Series L warrants on the date the holder received the Subscription Rights, then the holder must allocate the basis in the holder’s existing shares of common stock or Series L warrants between those shares or Series L warrants and the Subscription Rights the holder received in proportion to their fair market values determined on the date the holder received the Subscription Rights.

The fair market value of the Subscription Rights on the date that the Subscription Rights were distributed is uncertain. Opexa has not obtained, and does not intend to obtain, an appraisal of the fair market value of the Subscription Rights on that date. In determining the fair market value of the Subscription Rights, the holder should consider all relevant facts and circumstances, including any difference between the Subscription Price of the Subscription Rights and the trading price of Opexa’s shares of common stock on the date that the Subscription Rights were distributed, the exercise price of the Series L warrants, the length of the period during which the Subscription Rights could be exercised and the fact that the Subscription Rights were non-transferable.

#### Part II, 16

The closing price of the common stock of Opexa on the Record Date was \$0.64 per share. The closing price of the common stock of Opexa on the Distribution Date was \$0.69. Opexa has not obtained, and does not intend to obtain, an appraisal of the fair market value of the Subscription Rights. Accordingly, a calculation is not provided.

## Part II, 17

Although the authorities governing transactions such as the Rights Offering are complex and do not speak directly to the consequences of certain aspects of the Rights Offering, including the inclusion of the right to purchase Warrants in the Subscription Rights (rather than the right to purchase only shares of Opexa's common stock), the distribution of Subscription Rights to Series L warrant holders and the effects of the Over-Subscription Privilege, Opexa does not believe a holder's receipt of Subscription Rights pursuant to the Rights Offering should be treated as a taxable distribution with respect to the holder's existing shares of Opexa's common stock or Series L warrants for U.S. federal income tax purposes. The foregoing position is based on Section 305(a) and Section 305(d) of the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulations Sections 1.305-1. The discussion in this attachment is based upon the treatment of the Subscription Rights issuance as a nontaxable distribution with respect to a holder's existing shares of Opexa's common stock or Series L warrants for U.S. federal income tax purposes. The determination of the impact on the tax basis of the Subscription Rights and the holder's existing shares of common stock or Series L warrants is based on Section 307 of the Code and Treasury Regulations Sections 1.307-1 and 1.307-2.

## Part II, 18

A holder should not recognize any loss on the distribution of Subscription Rights. If a holder allowed Subscription Rights received in the Rights Offering to expire, the holder should not recognize any gain or loss U.S. federal income tax purposes, and the holder should re-allocate any portion of the tax basis in the holder's existing common shares or Series L warrants previously allocated to the Subscription Rights that have expired to the existing common shares or Series L warrants.

If a holder exercised a Subscription Right received in the Rights Offering after disposing of the shares of common stock or Series L warrants with respect to which such Subscription Right was received, then certain aspects of the tax treatment of the exercise of the Subscription Right are unclear, including (1) the allocation of the tax basis between the shares of common stock or Series L warrants previously sold and the Subscription Right, (2) the impact of such allocation on the amount and timing of gain or loss recognized with respect to the shares of the common stock or Series L warrants previously sold, and (3) the impact of such allocation on the tax basis of the shares of our common stock and Series L warrants acquired upon exercise of the Subscription Right. If a holder exercised a Subscription Right received in the Rights Offering after disposing of shares of common stock or Series L warrants with respect to which the Subscription Right was received, the holder should consult with the holder's tax advisor.

## Part II, 19

For a holder whose taxable year is a calendar year, the reportable tax year is 2015. The irrevocable election as described in Part II, 15 must be made on a statement attached to the holder's tax return for the year in which the Subscription Rights were received.