
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d)

of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 18, 2022

Kala Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38150
(Commission
File Number)

27-0604595
(I.R.S. Employer
Identification Number)

1167 Massachusetts Avenue
Arlington, MA 02476

(Address of principal executive offices) (Zip Code)

Company's telephone number, including area code: **(781) 996-5252**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	KALA	The Nasdaq Global Select Market

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

Emerging growth company

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

Item 3.03. Material Modification to Rights of Security Holders.

The disclosure set forth in Item 5.03 below is hereby incorporated herein by reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Series D Preferred Stock

On August 18, 2022, the board of directors (the “**Board**”) of Kala Pharmaceuticals, Inc. (the “**Company**”) declared a dividend of one one-thousandth of a share of Series D Preferred Stock, par value \$0.001 per share (“**Series D Preferred Stock**”), for each outstanding share of the Company’s common stock, par value \$0.001 per share (“**Common Stock**”) to stockholders of record at 5:00 p.m. Eastern Time on August 29, 2022 (the “**Record Date**”).

General; Transferability. Shares of Series D Preferred Stock will be uncertificated and represented in book-entry form. No shares of Series D Preferred Stock may be transferred by the holder thereof except in connection with a transfer by such holder of any shares of Common Stock held by such holder, in which case a number of one one-thousandths (1/1,000ths) of a share of Series D Preferred Stock equal to the number of shares of Common Stock to be transferred by such holder will be automatically transferred to the transferee of such shares of Common Stock.

Voting Rights. Each share of Series D Preferred Stock will entitle the holder thereof to 1,000,000 votes per share (and, for the avoidance of doubt, each fraction of a share of Series D Preferred Stock will have a ratable number of votes). Thus, each one-thousandth of a share of Series D Preferred Stock would entitle the holder thereof to 1,000 votes. The outstanding shares of Series D Preferred Stock will vote together with the outstanding shares of Common Stock of the Company as a single class exclusively with respect to (1) any proposal to adopt an amendment to the Company’s Restated Certificate of Incorporation, as amended (the “**Certificate of Incorporation**”), to reclassify the outstanding shares of Common Stock into a smaller number of shares of Common Stock at a ratio specified in or determined in accordance with the terms of such amendment (the “**Reverse Stock Split**”) and (2) any proposal to adjourn any meeting of stockholders called for the purpose of voting on Reverse Stock Split (the “**Adjournment Proposal**”). The Series D Preferred Stock will not be entitled to vote on any other matter, except to the extent required under the Delaware General Corporation Law.

Unless otherwise provided on any applicable proxy or ballot with respect to the voting on the Reverse Stock Split or the Adjournment Proposal, the vote of each share of Series D Preferred Stock (or fraction thereof) entitled to vote on the Reverse Stock Split, the Adjournment Proposal or any other matter brought before any meeting of stockholders held to vote on the Reverse Stock Split and the Adjournment Proposal will be cast in the same manner as the vote, if any, of the share of Common Stock (or fraction thereof) in respect of which such share of Series D Preferred Stock (or fraction thereof) was issued as a dividend is cast on the Reverse Stock Split, the Adjournment Proposal or such other matter, as applicable, and the proxy or ballot with respect to shares of Common Stock held by any holder on whose behalf such proxy or ballot is submitted will be deemed to include all shares of Series D Preferred Stock (or fraction thereof) held by such holder. Holders of Series D Preferred Stock will not receive a separate ballot or proxy to cast votes with respect to the Series D Preferred Stock on the Reverse Stock Split, the Adjournment Proposal or any other matter brought before any meeting of stockholders held to vote on the Reverse Stock Split.

Dividend Rights. The holders of Series D Preferred Stock, as such, will not be entitled to receive dividends of any kind.

Liquidation Preference. The Series D Preferred Stock will rank senior to the Common Stock as to any distribution of assets upon a liquidation, dissolution or winding up of the Company, whether voluntarily or involuntarily (a “**Dissolution**”). Upon any Dissolution, each holder of outstanding shares of Series D Preferred Stock will be entitled to be paid out of the assets of the Company available for distribution to stockholders, prior and in preference to any distribution to the holders of Common Stock, an amount in cash equal to \$0.001 per outstanding share of Series D Preferred Stock.

Redemption. All shares of Series D Preferred Stock that are not present in person or by proxy at any meeting of stockholders held to vote on the Reverse Stock Split and the Adjournment Proposal as of immediately prior to the opening of the polls at such meeting (the “**Initial Redemption Time**”) will automatically be redeemed in whole, but not in part, by the Company at the Initial Redemption Time without further action on the part of the Company or the holder of shares of Series D Preferred Stock (the “**Initial Redemption**”). Any outstanding shares of Series D Preferred Stock that have not been redeemed pursuant to an Initial Redemption will be redeemed in whole, but not in part, (i) if such redemption is ordered by the Board in its sole discretion, automatically and effective on such time and date specified by the Board in its

sole discretion or (ii) automatically upon the approval by the Company's stockholders of the Reverse Stock Split at any meeting of the stockholders held for the purpose of voting on such proposal.

Each share of Series D Preferred Stock redeemed in any redemption described above will be redeemed in consideration for the right to receive an amount equal to \$0.10 in cash for each one hundred whole shares of Series D Preferred Stock that are "beneficially owned" by the "beneficial owner" (as such terms are defined in the certificate of designation with respect to the Series D Preferred Stock (the "*Certificate of Designation*")) thereof as of the applicable redemption time and redeemed pursuant to such redemption, payable upon receipt by the Company of a written request submitted by the applicable holder to the corporate secretary of the Company (each a "Redemption Payment Request") following the applicable redemption time. Such Redemption Payment Request shall (i) be in a form reasonably acceptable to the Company (ii) set forth in reasonable detail the number of shares of Series D Preferred Stock beneficially owned by the holder at the applicable redemption time and include evidence reasonably satisfactory to the Company regarding the same, and (iii) set forth a calculation specifying the amount in cash owed to such Holder by the Company with respect to the shares of Series D Preferred Stock that were redeemed at the applicable redemption time. However, the redemption consideration in respect of the shares of Series D Preferred Stock (or fractions thereof) redeemed in any redemption described above: (i) will entitle the former beneficial owners of less than one hundred whole shares of Series D Preferred Stock redeemed in any redemption to no cash payment in respect thereof and (y) will, in the case of a former beneficial owner of a number of shares of Series D Preferred Stock (or fractions thereof) redeemed pursuant to any redemption that is not equal to a whole number that is a multiple of one hundred, entitle such beneficial owner to the same cash payment, if any, in respect of such redemption as would have been payable in such redemption to such beneficial owner if the number of shares (or fractions thereof) beneficially owned by such beneficial owner and redeemed pursuant to such redemption were rounded down to the nearest whole number that is a multiple of one hundred (such, that for example, the former beneficial owner of 150 shares of Series D Preferred Stock redeemed pursuant to any redemption will be entitled to receive the same cash payment in respect of such redemption as would have been payable to the former beneficial owner of 100 shares of Series D Preferred Stock redeemed pursuant to such redemption).

The Series D Preferred Stock is not convertible into, or exchangeable for, shares of any other class or series of stock or other securities of the Company. The Series D Preferred Stock has no stated maturity and is not subject to any sinking fund. The Series D Preferred Stock is not subject to any restriction on the redemption or repurchase of shares by the Company while there is any arrearage in the payment of dividends or sinking fund installments.

The Certificate of Designation was filed with the Delaware Secretary of State and became effective on August 19, 2022. The foregoing description of the Series D Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the Certificate of Designation, which is filed as Exhibit 3.1 to this Current Report and is incorporated herein by reference.

Amendment of By-laws

On August 18, 2022, the Board approved an amendment to the Amended and Restated By-Laws of the Company (the "***Amendment***"), which will be effective as of August 18, 2022. The Amendment amends and restates Section 1.6 of the Company's existing Amended and Restated By-Laws in its entirety to lower the number of shares of outstanding stock represented at a meeting of stockholders constituting a quorum, in person or by proxy, from a majority to one-third of the voting power of the shares of the capital stock of the Company issued and outstanding and entitled to vote at the meeting. Specifically, the restated paragraph states: "Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, the holders of one third of the voting power of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business."

The foregoing description of the Amendment is qualified in its entirety by reference to the full text of the Amendment, a copy of which is filed as Exhibit 3.2 to this Current Report on Form 8-K and is incorporated by reference herein.

Item 7.01. Regulation FD Disclosure.

On August 18, 2022, the Company issued a press release announcing the Series D Preferred Stock dividend. A copy of that press release is furnished as Exhibit 99.1 to this Current Report and incorporated herein by reference.

In accordance with General Instruction B.2 of Form 8-K, the information in Exhibit 99.1, which is incorporated into this Item 7.01, is being furnished pursuant to Item 7.01 and shall not be deemed “filed” for the purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Exchange Act of 1934, as amended, or the Securities Act of 1933, as amended, except as shall be expressly set forth by reference in such a filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
3.1	<u>Certificate of Designation of the Series D Preferred Stock of the Company, dated August 19, 2022 (incorporated by reference to Exhibit 3.1 to the Company’s Registration Statement on Form 8-A, filed with the Securities and Exchange Commission on August 19, 2022, File No. 001-38150)</u>
3.2	<u>Amendment to the Amended and Restated By-laws of Kala Pharmaceuticals, Inc., dated August 18, 2022</u>
99.1	<u>Press Release, issued August 18, 2022 (furnished pursuant to Item 7.01)</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: August 19, 2022

KALA PHARMACEUTICALS, INC.

By: /s/ Mary Reumuth

Name: Mary Reumuth

Title: Chief Financial Officer

**AMENDMENT TO THE AMENDED AND RESTATED BY-LAWS
OF KALA PHARMACEUTICALS, INC.**

Pursuant to Article Sixth of the Amended and Restated Certificate of Incorporation of Kala Pharmaceuticals, Inc., a Delaware corporation (the “*Company*”), Article VI of the Amended and Restated By-laws of the Company (as amended heretofore, the “*By-laws*”) of the Corporation, and Section 109 of the General Corporation Law of the State of Delaware, on the date hereof, the By-laws of the Company are hereby amended as follows:

The Section 1.6 is hereby deleted in its entirety and replaced with the following By-law:

“Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, the holders of one third of the voting power of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or classes or series of capital stock is required by law or the Certificate of Incorporation, the holders of one third of the voting power of the shares of such class or classes or series of the capital stock of the corporation issued and outstanding and entitled to vote on such matter, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.”

IN WITNESS WHEREOF, this amendment to the By-laws of the Company is executed on August 18, 2022.

By: /s/ Mary Reumuth

Name: Mary Reumuth

Title: Chief Financial Officer



Kala Pharmaceuticals Announces Distribution of Series D Preferred Stock to Holders of its Common Stock

August 18, 2022

ARLINGTON, Mass., Aug. 18, 2022 -- Kala Pharmaceuticals, Inc. (NASDAQ:KALA) ("Kala" or the "Company"), a clinical-stage biopharmaceutical company dedicated to the research, development and commercialization of innovative therapies for rare diseases of the eye, today announced that its Board of Directors declared a dividend of one one-thousandth of a share of newly designated Series D Preferred Stock, par value \$0.001 per share, for each outstanding share of the Company's common stock held of record as of 5:00 p.m. Eastern Time on August 29, 2022. The shares of Series D Preferred Stock will be distributed to such recipients at 5:00 p.m. Eastern Time on August 30, 2022. The outstanding shares of Series D Preferred Stock will vote together with the outstanding shares of the Company's common stock, as a single class, exclusively with respect to a reverse stock split, as well as any proposal to adjourn any meeting of stockholders called for the purpose of voting on the reverse stock split, and will not be entitled to vote on any other matter, except to the extent required under the Delaware General Corporation Law. Subject to certain limitations, each outstanding share of Series D Preferred Stock will have 1,000,000 votes per share (or 1,000 votes per one one-thousandth of a share of Series D Preferred Stock).

All shares of Series D Preferred Stock that are not present in person or by proxy at the meeting of stockholders held to vote on the reverse stock split as of immediately prior to the opening of the polls at such meeting will automatically be redeemed by the Company. Any outstanding shares of Series D Preferred Stock that have not been so redeemed will be redeemed if such redemption is ordered by the Company's Board of Directors or automatically upon the approval by the Company's stockholders of an amendment to the Company's certificate of incorporation effecting the reverse stock split at such meeting.

The Series D Preferred Stock will be uncertificated, and no shares of Series D Preferred Stock will be transferable by any holder thereof except in connection with a transfer by such holder of any shares of the Company's common stock held by such holder. In that case, a number of one one-thousandths of a share of Series D Preferred Stock equal to the number of shares of the Company's common stock to be transferred by such holder would be transferred to the transferee of such shares of common stock.

Further details regarding the Series D Preferred Stock will be contained in a report on Form 8-K to be filed by the Company with the Securities and Exchange Commission.

About Kala Pharmaceuticals, Inc.

Kala is a clinical-stage biopharmaceutical company dedicated to the research, development and commercialization of innovative therapies for rare diseases of the eye. Kala's biologics-based investigational therapies utilize Kala's proprietary Mesenchymal Stem Cell Secretome (MSC-S) platform. Kala's lead product candidate, KPI-012, is in clinical development for the treatment of persistent corneal epithelial defect (PCED), a rare disease of impaired corneal healing, which has received orphan drug designation from the U.S. Food and Drug Administration. Kala is also targeting the potential development of KPI-012 for the treatment of Partial Limbal Stem Cell Deficiency and ocular manifestations of moderate-to-severe Sjögren's and plans to initiate preclinical studies to evaluate the utility of its MSC-S platform for retinal degenerative diseases, such as Retinitis Pigmentosa and Stargardt Disease. For more information on Kala, please visit www.kalarx.com.

Forward Looking Statements:

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that involve substantial risks and uncertainties. Any statements in this press release about Kala's future expectations, plans and prospects, including but not limited to statements about Kala's Mesenchymal Stem Cell Secretome platform, the development of its lead product candidate, KPI-012, and other statements containing the words "anticipate," "believe," "estimate," "expect," "intend," "may," "plan," "predict," "project," "target," "potential," "likely," "will," "would," "could," "should," "continue," and similar expressions constitute forward-looking statements. Actual results may differ materially from those indicated by such forward-looking statements as a result of various important factors, including: Kala's ability to realize the anticipated benefits of planned or completed transactions, including the uncertainty regarding the receipt of any milestone payments from Alcon Inc.; the impact of extraordinary external events, such as the current pandemic health event resulting from the novel coronavirus (COVID-19), and their collateral consequences; the uncertainties inherent in the initiation and conduct of preclinical studies and clinical trials; uncertainties regarding availability and timing of data from clinical trials; whether results of early clinical trials or trials in different disease indications will be indicative of the results of ongoing or future trials; whether results of the Phase 1b clinical trial of KPI-012 will be indicative of results for any future clinical trials and studies of KPI-012; uncertainties associated with regulatory review of clinical trials and applications for marketing approvals; Kala's ability to retain and hire key personnel; the sufficiency of cash resources and need for additional financing and other important factors, any of which could cause the Kala's actual results to differ from those contained in the forward-looking statements, discussed in the "Risk Factors" section of Kala's Annual Report on Form 10-K, most recently filed Quarterly Report on Form 10-Q and other filings Kala makes with the Securities and Exchange Commission. These forward-looking statements represent Kala's views as of the date of this press release and should not be relied upon as representing Kala's views as of any date subsequent to the date hereof. Kala does not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

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