

**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): October 30, 2023

Zevra Therapeutics, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36913
(Commission File Number)

20-5894398
(I.R.S. Employer Identification No.)

**1180 Celebration Boulevard, Suite 103,
Celebration, FL 34747**

(Address of principal executive offices) (Zip Code)

(321) 939-3416
(Registrant's telephone number, including area code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

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, \$0.0001 par value per share	ZVRA	The Nasdaq Stock Market LLC (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 8.01. Other Events

As previously disclosed, on August 30, 2023, Zevra Therapeutics, Inc., a Delaware corporation (“**Zevra**”), entered into an Agreement and Plan of Merger (the “**Merger Agreement**”) by and among Zevra, Aspen Z Merger Sub, Inc., a Delaware corporation and an indirect wholly owned subsidiary of Zevra (“**Merger Sub**”), and Acer Therapeutics Inc., a Delaware corporation (“**Acer**”). Pursuant to the Merger Agreement, Merger Sub will, at the closing (the “**Closing**”), merge with and into Acer (the “**Merger**”), and Acer will become a wholly owned subsidiary of Zevra upon the filing of the certificate of merger with the Delaware Secretary of State.

In connection with the proposed Merger, on October 10, 2023, Zevra filed a definitive proxy statement/prospectus (the “**Proxy Statement/Prospectus**”), which forms part of a registration statement on Form S-4 filed with the Securities and Exchange Commission (the “**SEC**”). The Proxy Statement/Prospectus also constitutes a notice of meeting and a proxy statement of Acer under Section 14(a) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), with respect to the Acer Special Meeting of Stockholders (the “**Acer Special Meeting**”) to be held at 11:00 a.m., Eastern Time on November 8, 2023, at which Acer Stockholders are being asked to consider and vote on, among other proposals, a proposal to adopt the Merger Agreement.

On October 30, 2023, Acer issued a “Supplement to Proxy Statement for the Special Meeting of Stockholders” (the “**Proxy Supplement**”) to make certain supplemental disclosures related to the Proxy Statement/Prospectus and described therein. Such supplemental disclosures are being made solely in order to avoid the risk that certain lawsuits and demand letters described therein may delay or otherwise adversely affect the consummation of the Merger, or further harm Acer’s financial condition. Nothing in the Proxy Supplement is deemed an admission of the legal necessity or materiality under applicable laws of the supplemental disclosures.

Reference is made to the Proxy Supplement, which is filed as Exhibit 99.1 to this Current Report on Form 8-K and are incorporated by reference in this Item 8.01. Other than the above-described amendments, which are set forth in detail within the Proxy Supplement, the revisions do not alter any other aspects of the Proxy Statement/Prospectus. The Prospectus Supplement is not complete without the Proxy Statement/Prospectus. The Prospectus Supplement should be read in conjunction with the Proxy Statement/Prospectus, and is qualified by reference thereto, except to the extent that the information in the Prospectus Supplement updates or supersedes the information contained in the Proxy Statement/Prospectus.

Forward-Looking Statements

This communication contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements contained in this communication that do not relate to matters of historical fact should be considered forward-looking statements, including statements regarding our anticipated financial performance, including the anticipated Closing of and synergies related to the Merger, our industry, business strategy, plans, goals and expectations concerning our market position, future operations and other financial and operating information.

These statements are neither promises nor guarantees, but involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements, including, but not limited to, the following: uncertainties as to the timing of the consummation of the proposed transactions and the ability of the parties to consummate the proposed transactions; the satisfaction of the conditions precedent to consummation of the proposed transactions, including the approval of Acer’s stockholders; the ability to obtain required regulatory approvals at all or in a timely manner; any litigation related to the proposed transaction, including the litigation and threatened litigation described in the Proxy Supplement; disruption of Acer’s or Zevra’s current plans and operations as a result of the proposed transaction; the ability of Acer or Zevra to retain and hire key personnel; competitive responses to the proposed transaction; unexpected costs, charges or expenses resulting from the proposed transaction; the ability of Zevra to successfully integrate Acer’s operations, products, product candidates and technology; the ability of Zevra to implement its plans, forecasts and other expectations with respect to Acer’s business after the completion of the transaction and realize additional opportunities for growth and innovation; the ability of Zevra to realize the anticipated synergies and related benefits from the proposed transaction in the anticipated amounts or within the anticipated timeframes or at all; and the ability to maintain relationships with Zevra’s and Acer’s respective employees, customers, other business partners and governmental authorities. These and other important factors are discussed under the caption “*Risk Factors—Risks Related to the Merger*” and “*--Risks Related to the Combined Company Following the Merger*” in the Proxy Statement/Prospectus, under the caption “*Risk Factors*” in our Annual Report on Form 10-K filed with the SEC on March 7, 2023, as updated by our Quarterly Report on Form 10-Q filed with the SEC on August 14, 2023, and in our other filings with the SEC could cause actual results to differ materially from those indicated by the forward-looking statements made herein. Any such forward-looking statements represent management’s beliefs as of the date of this Current Report on Form 8-K. While we may elect to update such forward-looking statements at some point in the future, we disclaim any obligation to do so, even if subsequent events cause our views to change.

Important Additional Information Regarding the Transaction Filed With the SEC

In connection with the proposed Merger, Zevra filed the Proxy Statement/Prospectus on Form S-4 that includes a prospectus of Zevra and that also includes a proxy statement of Acer, and the Proxy Statement/Prospectus was mailed to shareholders of Acer. This communication is not a substitute for the Proxy Statement/Prospectus or any other document Zevra or Acer may file with the SEC in connection with the Merger.

INVESTORS AND SECURITY HOLDERS OF ZEVRA AND ACER ARE URGED TO READ THE PROXY STATEMENT/PROSPECTUS THAT WAS INCLUDED IN THE REGISTRATION STATEMENT ON FORM S-4, AND OTHER RELEVANT DOCUMENTS FILED OR TO BE FILED WITH THE SEC IN CONNECTION WITH THE PROPOSED TRANSACTION OR INCORPORATED BY REFERENCE IN THE PROXY STATEMENT/PROSPECTUS (IF ANY) CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION, THE PARTIES TO THE PROPOSED TRANSACTION AND THE RISKS ASSOCIATED WITH THE PROPOSED TRANSACTION. Investors and security holders are able to obtain, without charge, a copy of the registration statement, the Proxy Statement/Prospectus and other relevant documents filed with the SEC (when available) from the SEC's website at www.sec.gov. Copies of the documents filed with the SEC by Zevra are available free of charge on Zevra's investor relations website at investors.zevra.com under the tab "SEC Filings." Copies of the documents filed with the SEC by Acer are available free of charge on Acer's investor relations website at www.acertx.com/investor-relations under the tab "SEC Filings."

Participants in the Solicitation

Zevra, Acer and certain of their directors, executive officers and other members of management may be deemed to be participants in the solicitation of proxies with respect to the proposed transactions. Information regarding the persons who may, under the rules of the SEC, be deemed participants in the solicitation of the shareholders of Acer in connection with the proposed transactions, including a description of their direct or indirect interests, by security holdings or otherwise, are set forth in the Proxy Statement/Prospectus filed with the SEC on October 10, 2023. Information regarding Zevra's directors and executive officers is contained in Zevra's definitive proxy statement, which was filed with the SEC on March 15, 2023, the definitive proxy statement filed by Daniel J. Mangless, together with the other participants named therein, which was filed with the SEC on March 17, 2023, and Zevra's Current Reports on Form 8-K, filed with the SEC on March 30, 2023, May 8, 2023, May 15, 2023, and August 7, 2023. Information regarding Acer's directors and executive officers is contained in Acer's definitive proxy statement, which was filed with the SEC on April 14, 2023. Security holders and investors may obtain additional information regarding the interests of such persons, which may be different than those of Zevra's security holders generally, by reading the Proxy Statement/Prospectus and other relevant documents regarding the transaction filed with the SEC. You may obtain these documents free of charge through the website maintained by the SEC at www.sec.gov and Zevra's or Acer's investor relations websites as described above.

No Offer or Solicitation

This communication is not intended to and does not constitute an offer to sell or the solicitation of an offer to subscribe for or buy or an invitation to purchase or subscribe for any securities or the solicitation of any vote or approval in any jurisdiction pursuant to the proposed transactions or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. This communication does not constitute a prospectus or prospectus equivalent document. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act. In connection with the proposed transactions, Zevra filed a registration statement on Form S-4 that includes the Proxy Statement/Prospectus, which constitutes both the proxy statement of Acer and a prospectus of Zevra. INVESTORS AND SECURITY HOLDERS OF ZEVRA AND ACER ARE URGED TO READ THE PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY CONTAIN IMPORTANT INFORMATION.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Description

No.

99.1 [Supplement to the Proxy Statement for the Special Meeting of Stockholders, dated October 30, 2023](#)

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.

Zevra Therapeutics, Inc.

By:

/s/ R. LaDuane Clifton

R. LaDuane Clifton, CPA

Chief Financial Officer, Secretary and Treasurer

Date: October 30, 2023

ACER THERAPEUTICS INC. SUPPLEMENT
TO PROXY STATEMENT FOR
THE SPECIAL MEETING OF STOCKHOLDERS
To be held on November 8, 2023

October 30, 2023

Explanatory Note

As previously disclosed, on August 30, 2023, Acer Therapeutics Inc. (“Acer” or the “Company”), Zevra Therapeutics, Inc., a Delaware corporation (“Zevra”), and Aspen Z Merger Sub, Inc., a Delaware corporation and a direct wholly-owned subsidiary of Zevra (“Merger Sub”), entered into the Agreement and Plan of Merger (as it may be amended from time to time, the “Merger Agreement”), pursuant to which Merger Sub will, at the closing (the “Closing” and the date on which the Closing occurs, the “Closing Date”), merge with and into Acer (the “Merger”), and Acer will become a wholly-owned subsidiary of Zevra upon the filing of the certificate of merger with the Delaware Secretary of State (the “Effective Time”).

On October 10, 2023, Acer filed a definitive proxy statement (the “Proxy Statement”) for a Special Meeting of Stockholders (the “Special Meeting”) to be held at 11:00 a.m., Eastern Time on November 8, 2023. Stockholders will be able to attend the special meeting by visiting <https://www.cstproxy.com/acertx/sm2023>. This supplement (this “Supplement”) to the Proxy Statement supplements the Proxy Statement as filed and should be read in conjunction with the Proxy Statement. Also on October 10, 2023, Zevra announced that Neil F. McFarlane has been named President and Chief Executive Officer of Zevra and appointed to its Board of Directors, effective October 10, 2023.

Following announcement of the Merger, as of the date of this Supplement, three purported stockholders of Acer have filed complaints entitled *Jerry Beavee v. Acer Therapeutics, Inc., et al.*, No. 1:23-cv-08995 (S.D.N.Y. filed Oct. 12, 2023), *Kevin Turner v. Acer Therapeutics, Inc., et al.*, No. 1:23-cv-01185 (D. Del. filed Oct. 20, 2023) and *Matthew Jones v. Acer Therapeutics, Inc., et al.*, No. 1:23-cv-01186 (D. Del. filed Oct. 20, 2023) (the “Complaints”) alleging that the Proxy Statement omitted material information with respect to the Merger and demanding that the Merger be enjoined unless certain supplemental disclosures are made. Certain other purported stockholders have sent demand letters to the Company making allegations and demands similar to those in the Complaints. It is possible that other complaints will be filed or demand letters received. The Company believes that the alleged omissions are immaterial and that no supplemental disclosure is required by applicable rule, statute, regulation or law.

However, solely in order to avoid the risk that these lawsuits and demand letters may delay or otherwise adversely affect the consummation of the Merger, or further harm the Company’s financial condition, the Company has determined to voluntarily make the supplemental disclosures to the Proxy Statement set forth below. Nothing in this Supplement shall be deemed an admission of the legal necessity or materiality under applicable laws of the supplemental disclosures. The Company’s board of directors continues to recommend unanimously that you vote “FOR” the proposals being considered at the Special Meeting.

The information contained herein and in the supplemental disclosures should be read in conjunction with the Proxy Statement, which should be read in its entirety, along with periodic reports and other information Acer has filed with the Securities and Exchange Commission (the “SEC”). To the extent that the information set forth herein differs from or updates information contained in the Proxy Statement, the information set forth herein shall supersede or supplement the information in the Proxy Statement. All page references below are to pages in the Proxy Statement, and terms used below, unless otherwise defined herein, have the meanings given to such terms in the Proxy Statement. Paragraph references used herein refer to the Proxy Statement before any additions or deletions resulting from the supplemental disclosures. The information contained herein speaks only as the date of this Supplement, unless the information indicates another date applies.

This Supplement supplements and updates the disclosures in the Proxy Statement as follows:

- Under “The Merger – Relevant Historical Background for Acer – Strategic Review, Outreach and Engagement” on page 83, the first paragraph thereof is supplemented to add the following two sentences at the end of that paragraph to read as follows:

“None of the confidentiality agreements entered into with the 23 parties (including Zevra) included standstill provisions with “don’t ask, don’t waive” provisions or other provisions that would prevent others from making competing offers. None of the four parties (including Zevra) that engaged in substantive discussions with Acer regarding a potential transaction, indicated an interest in offering employment to Acer’s directors or executive officers following a potential transaction.”

- Under “The Merger – Opinion of Acer’s Financial Advisor – Analysis of Consideration” on page 97, the first sentence in the third paragraph thereof is amended and restated to read as follows (new language is underlined):

“For analytical purposes, William Blair calculated the net present value (“NPV”) of the CVR milestone payments as set forth in the following table based upon certain probability of success and timing assumptions with respect to the Company’s products and product pipeline, in each case as prepared by senior management based on published industry data for clinical trial and regulatory approval success rates and confirmed by the Acer Board, and approved for William Blair’s use on August 24, 2023, in each case as described in the table below.”

- Under “The Merger – Opinion of Acer’s Financial Advisor – Acer Financial Analyses- Acer Discounted Cash Flow Analysis” on page 99, the fourth sentence in the first paragraph thereof is amended and restated to read as follows (new language is underlined):

“In this analysis, William Blair exercised its professional judgment, based on its experience and expertise, and used the perpetuity growth method to estimate a terminal value of Acer by utilizing a perpetuity growth rate of negative 80.0%, which reflects the likely loss of product exclusivity upon the expiration, in 2036, of Acer’s U.S. and foreign patents with claims related to OLPRUVA™ and upon the expiration, in 2038, of Acer’s U.S. patent with claims related to EDSIVO™, and assumed an effective tax rate of 26.0%, per estimates of senior management of Acer.”

- Under “The Merger – Opinion of Acer’s Financial Advisor – Acer Financial Analyses- Acer Discounted Cash Flow Analysis” on page 99, the first sentence in the third paragraph thereof is amended and restated to read as follows (new language is underlined):

“William Blair aggregated the present value of the after-tax unlevered free cash flows over the applicable forecast period, the present value of the potential tax savings expected to result from utilization of Acer’s future NOLs (\$3.2 million and \$7.0 million for Management Plan 1 and Management Plan 2, respectively), and the present value of the assumed terminal value. William Blair then derived a range of implied equity values per share by subtracting Acer’s net debt of \$34.4 million as of July 31, 2023, and the upfront and buy-out payments to Relief Therapeutics of \$11.5 million, and dividing such amount by Acer’s total diluted shares outstanding as of August 28, 2023 (consisting of 24,463,726 common shares, options to purchase 3,011,506 common shares, and warrants to purchase 3,920,306 common shares); as adjusted to take into account the impact of dilutive securities based on the treasury stock method at the implied share price), and further adjusted to incorporate the pro forma impacts of the referenced capital raises in the preceding paragraph. This analysis resulted in (i) a range of implied equity values of \$0.90 to \$2.71 per share with respect to Management Plan 1 and (ii) a range of implied equity values of \$1.13 to \$3.63 per share with respect to Management Plan 2.”

- Under “The Merger – Opinion of Acer’s Financial Advisor – Zevra Financial Analysis – Zevra Selected Public Companies Analysis” on page 100, the first table is amended and restated as follows:

<u>Company</u>	<u>Enterprise Value (\$ in millions)</u>	<u>Enterprise Value / CY 2026E Revenue</u>
Amarin Corporation PLC	\$ 127	0.25x
Calliditas Therapeutics AB	\$ 460	0.78x
Cara Therapeutics, Inc.	\$ 59	0.35x
Genfit S.A.	\$ 118	1.28x
Intercept Pharmaceuticals, Inc.	\$ 383	1.08x
Lexicon Pharmaceuticals, Inc.	\$ 312	1.43x
Optinose, Inc.	\$ 202	0.95x
Rigel Pharmaceuticals, Inc.	\$ 204	1.04x
Xeris Biopharma Holdings, Inc.	\$ 454	1.59x

- Under “The Merger – Opinion of Acer’s Financial Advisor – Zevra Financial Analysis – Zevra Selected Precedent Transactions Analysis” on page 101, the first table is amended and restated as follows:

<u>Date Announced</u>	<u>Target</u>	<u>Acquiror</u>	<u>Upfront Enterprise Value (\$ in millions)</u>	<u>Upfront + CVR Enterprise Value (\$ in millions)</u>	<u>Enterprise Value / Revenue Upfront + CVR Upfront CY+3 CVR DY+3</u>
Jan. 2023	Concert Pharmaceuticals, Inc.	Sun Pharmaceutical Industries	\$ 426	\$ 679	1.84x 2.92x
Oct. 2021	Adamas Pharmaceuticals	Supernus Pharmaceuticals	\$ 456	\$ 505	3.05x 3.39x
Oct. 2020	AMAG Pharmaceuticals	Covis Group SARL	\$ 673	\$ 673	3.07x 3.07x
Apr. 2018	Wilson Therapeutics	Alexion Pharmaceuticals	\$ 802	\$ 802	NMF NMF
Oct. 2017	Dimension Therapeutics	Ultragenyx Pharmaceuticals	\$ 127	\$ 127	0.39x 0.39x
Sept. 2016	Raptor Pharmaceuticals	Horizon Therapeutics	\$ 754	\$ 754	3.69x 3.69x

- Under “The Merger – Management’s Forecasts – Summary of Management Forecasts” on page 104, the second paragraph thereof is supplemented to include a new second sentence to read as follows:

“For clarity, the Acer Board did not have access to any non-public financial projections for Zevra.”

- Under “The Merger – Interests of Acer Directors and Executive Officers in the Merger – New Employment Arrangements” on pages 109-110, the paragraph is amended and restated to read as follows:

“As of the date of the Merger Agreement and as of the date of the Proxy Statement, none of Acer’s directors or executive officers had entered into any agreement, arrangement or understanding with Zevra or any of its executive officers, directors or affiliates regarding employment with Zevra or any of their affiliates. Subsequent to the date of the Proxy Statement, certain of Acer’s executive officers entered into discussions with Zevra or its affiliates regarding continued employment following the closing of the transaction, although no agreements have been entered into as of the date of this Supplement.”

Important Information

In connection with the solicitation of proxies, the Company filed the Proxy Statement on October 10, 2023 with the SEC. Stockholders can access the Proxy Statement and other proxy materials and vote at <https://www.cstproxy.com/acertx/sm2023>. **THE COMPANY'S STOCKHOLDERS ARE STRONGLY ADVISED TO READ THE PROXY STATEMENT AND ANY OTHER RELEVANT SOLICITATION MATERIALS FILED BY THE COMPANY WITH THE SEC BEFORE MAKING ANY VOTING OR INVESTMENT DECISION BECAUSE THESE DOCUMENTS CONTAIN IMPORTANT INFORMATION.** In addition, the Company files annual, quarterly and current reports with the SEC. These reports can be obtained free of charge at the SEC's web site at www.sec.gov or from the Company's website www.acertx.com.