



CymaBay Therapeutics, Inc.  
7575 Gateway Blvd.  
Suite 110  
Newark, CA 94560  
[www.cymabay.com](http://www.cymabay.com)  
510-293-8800 office  
510-293-9090 fax

July 24, 2019

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-0609

Re: File No. S7-06-19: Amendments to the Accelerated Filer and Large Accelerated Filer Definitions

Dear Ms. Countryman:

On behalf of CymaBay Therapeutics, Inc. (CymaBay), we are pleased to support the SEC's proposed rule to amend the definitions of "accelerated" and "large accelerated" filers. CymaBay is a clinical stage biopharmaceutical company focused on providing access to innovative therapies for patients with liver and other chronic diseases with high unmet need. Our company went public in 2014 as an emerging growth company (EGC), which enabled us to access public capital markets earlier in our growth cycle due to the onramp and regulatory relief provisions provided by the JOBS Act of 2012.

Both the ability to access public capital markets and the regulatory relief afforded EGCs have enabled us to invest significantly in research and development to advance our clinical pipeline and make potential breakthrough drug discoveries to treat chronic diseases. For instance, in 2018, we invested over \$58 million in research and development, alone. We commend the SEC for pursuing thoughtful and targeted regulatory relief—as indicated by the proposed rule—to enable companies like ours to continue to invest heavily in generating long-term value for our shareholders and patients, alike.

CymaBay shares industry concerns about the compliance costs resulting from Sarbanes-Oxley (SOX) 404(b), the auditor's attestation of internal controls over financial reporting. The company became subject to SOX 404(b) in 2018 when its public float surpassed the \$700 million threshold to be recognized as a large accelerated filer, one year before the expiration of our five-year exemption from the regulation included in the JOBS Act's IPO On-Ramp. We recorded no revenue during the same year. The costs incurred in 2018 to comply with SOX 404(b) were significant.

If the proposed rule is implemented in its current form, small public companies, including biotechs like CymaBay, will benefit from relief from SOX 404(b), until their annual revenue exceeds \$100 million and their public float exceeds \$700 million. The certainty and predictability provided by the proposed rule will enable small public biotech companies in particular to prioritize investments in factors that actually determine success or failure in the biotech industry, such as the science and technology underpinning their potential, expanding their clinical pipelines to treat new and broader patient populations, and the design and execution of clinical trials that enhance their opportunity to garner approval from the Food and Drug Administration, among others. While well-intentioned, SOX 404(b) has harmed small public biotech companies because of its disproportionate expense, which diverts capital away from research and development.<sup>1</sup> We strongly believe that this proposed rule will benefit small public biotech

companies by freeing up more capital to hire talent, invest further in research and development, and expand their clinical pipelines to improve their ability to innovate and succeed in developing new drugs to treat the nation's most intractable health problems. For these reasons, the SEC's proposal to expand relief from SOX 404(b) for small public companies is a welcome step forward to making our public capital markets more accessible and attractive to small companies.

Sincerely,



Dan Menold  
Vice President, Finance

---

<sup>1</sup> Study by Profs. Craig Lewis and Joshua T. White of Vanderbilt University, "Science or Compliance: Will Section 404(b) Compliance Impede Innovation by Emerging Growth Companies in the Biotech Industry?" February 2019, [https://www.bio.org/sites/default/files/BIO\\_EGC\\_White\\_Paper\\_02\\_11\\_2019\\_FINAL.pdf](https://www.bio.org/sites/default/files/BIO_EGC_White_Paper_02_11_2019_FINAL.pdf).