

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-8  
REGISTRATION STATEMENT**  
*UNDER  
THE SECURITIES ACT OF 1933*

**CYMABAY THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of Incorporation or organization)

**94-3103561**  
(I.R.S. Employer Identification No.)

**7575 Gateway Blvd., Suite 110**  
**Newark, California 94560**  
(Address of principal executive offices) (Zip code)

**2013 Equity Incentive Plan**  
**2020 New Hire Plan**  
(Full titles of the plans)

**Sujal Shah**  
**President and Chief Executive Officer**  
**CymaBay Therapeutics, Inc.**  
**7575 Gateway Boulevard, Suite 110**  
**Newark, California 94560**  
**(510) 293-8800**

(Name and address of agent for service) (Telephone number, including area code, of agent for service)

*Copies to:*

**Matthew B. Hemington**  
**Brett D. White**  
**Cooley LLP**  
**3175 Hanover Street**  
**Palo Alto, California 94304**  
**(650) 843-5000**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, anon-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
Non-accelerated filer  Smaller reporting company   
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 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.0001 per share	2,552,786 (2)	\$4.89 (3)	\$12,483,124	\$1,361.91
Common Stock, par value \$0.0001 per share	955,057 (4)	\$5.77 (5)	\$5,510,679	\$601.21
Total	3,507,843		\$17,993,803	\$1,963.12

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of common stock, par value \$0.0001 per share (“Common Stock”), of CymaBay Therapeutics, Inc. (the “Registrant”) that become issuable under the Registrant’s 2013 Equity Incentive Plan (the “2013 Plan”) and the 2020 New Hire Plan (the “2020 Plan”) by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without receipt of consideration which results in an increase in the number of outstanding shares of Common Stock.
- (2) Represents the sum of (a) 1,802,786 shares of Common Stock reserved for issuance and available for grant under the 2013 Plan and (b) 750,000 shares of Common Stock reserved for issuance and available for grant under the 2020 Plan.
- (3) Estimated in accordance with Rules 457(c) and 457(h) under the Securities Act solely for the purpose of calculating the registration fee on the basis of \$4.89 per share, which is the average of the high and low prices of a share of the Registrant’s Common Stock on March 18, 2021.
- (4) Represents shares of Common Stock reserved for issuance pursuant to stock options outstanding under the 2013 Plan.

- (5) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee. The proposed maximum offering price per share and proposed maximum aggregate offering price are calculated using the weighted average exercise price per share of stock options outstanding under the 2013 Plan.
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**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS**

The information called for by Part I of Form S-8 is omitted from this Registration Statement in accordance with Rule 428 of the Securities Act of 1933, as amended (the "Securities Act"), and the instructions to Form S-8. In accordance with the rules and regulations of the Securities and Exchange Commission (the "SEC") and the instructions to Form S-8, such documents are not being filed with the SEC either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed by the Registrant with the SEC are incorporated by reference into this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 filed with the SEC on March 25, 2021.
- (b) The description of the Registrant's Common Stock that is contained in a registration statement on [Form 8-A](#) filed with the SEC on June 16, 2014, including any amendment or report filed for the purpose of updating such description, including Exhibit 4.2 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 filed with the SEC on March 25, 2021.
- (c) All other reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the filing of such reports and documents. Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed document that also is deemed to be incorporated by reference herein modifies or supersedes such earlier statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law (the "DGCL") authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act. The Registrant's amended and restated certificate of incorporation permits indemnification of our directors, officers and other agents of the Registrant (and any other persons to which applicable law permits the Registrant to provide indemnification) to the maximum extent permitted by the DGCL, and the Registrant's amended and restated bylaws provide that the Registrant will indemnify its directors and executive officers and permit the Registrant to indemnify its other officers, employees and other agents, in each case to the maximum extent permitted by the DGCL.

The Registrant has entered into indemnification agreements with its directors and officers, whereby it has agreed to indemnify its directors and officers to the fullest extent permitted by law, including indemnification against expenses and liabilities incurred in legal proceedings to which the director or officer was, or is threatened to be made, a party by reason of the fact that such director or officer is or was a director, officer, employee or agent of the Registrant, provided that such director or officer acted in good faith and in a manner that the director or officer reasonably believed to be in, or not opposed to, the best interest of the Registrant.

The Registrant maintains insurance policies that indemnify its directors and officers against various liabilities arising under the Securities Act and the Exchange Act that might be incurred by any director or officer in his or her capacity as such.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

Exhibit Number	Description	Incorporation by Reference			
		Form	File No.	Exhibit	Filing Date
4.1	<a href="#">Amended and Restated Certificate of Incorporation</a>	10	000-55021	3.1	10/17/2013
4.2	<a href="#">Certificate of Amendment to Amended and Restated Certificate of Incorporation</a>	8-K	001-36500	3.1	6/26/2020
4.3	<a href="#">Amended and Restated Bylaws</a>	10	000-55021	3.2	10/17/2013
5.1	<a href="#">Opinion of Cooley LLP.</a>				
23.1	<a href="#">Consent of Independent Registered Public Accounting Firm.</a>				
23.2	<a href="#">Consent of Cooley LLP (reference is made to Exhibit 5.1).</a>				
24.1	<a href="#">Power of Attorney (reference is made to the signature page hereto).</a>				
99.1	<a href="#">CymaBay Therapeutics, Inc. 2013 Equity Incentive Plan.</a>	8-K	001-36500	10.1	6/7/2018
99.2	CymaBay Therapeutics, Inc. 2020 New Hire Plan.	10-K	001-36500	10.7	3/25/2021

**Item 9. Undertakings.**

A. The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.  
*Provided, however,* that paragraphs (A)(1)(i) and (A)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability of the Registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
  - (i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;
  - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;
  - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
  - (iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Newark, State of California, on March 25, 2021.

### CYMABAY THERAPEUTICS, INC.

By: /s/ Sujal Shah  
Sujal Shah  
President and Chief Executive Officer

## POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints Sujal A. Shah, Daniel Menold and Paul Quinlan, and each of them, as his or her true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him or her and in their name, place or stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on FormS-8 has been signed by the following persons in the capacities and on the dates indicated.

<u>Name and Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Sujal Shah</u> Sujal Shah	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	March 25, 2021
<u>/s/ Daniel Menold</u> Daniel Menold	Vice President, Finance <i>(Principal Financial and Accounting Officer)</i>	March 25, 2021
<u>/s/ Robert J. Wills</u> Robert J. Wills, Ph.D.	Chairman of the Board and Director	March 25, 2021
<u>/s/ Caroline Loewy</u> Caroline Loewy	Director	March 25, 2021
<u>/s/ Paul F. Truex</u> Paul F. Truex	Director	March 25, 2021
<u>/s/ Kurt von Emster</u> Kurt von Emster	Director	March 25, 2021



Matthew B. Hemington  
+1 650 843 5062  
hemingtonmb@cooley.com

March 25, 2021

CymaBay Therapeutics, Inc.  
7575 Gateway Boulevard, Suite 110  
Newark, CA 94560

Ladies and Gentlemen:

We have acted as counsel to CymaBay Therapeutics, Inc., a Delaware corporation (the "**Company**") in connection with the filing of a Registration Statement on Form S-8 (the "**Registration Statement**") with the U.S. Securities and Exchange Commission covering the offering of up to 3,507,843 shares (the "**Shares**") of the Company's Common Stock, par value \$0.0001 per share (the "**Common Stock**"), consisting of (a) 1,802,786 shares of Common Stock pursuant to the Company's 2013 Equity Incentive Plan (the "**2013 Plan**"); (b) 955,057 shares of Common Stock reserved for issuance pursuant to stock options outstanding under the 2013 Plan and (c) 750,000 shares of Common Stock issuable pursuant to the Company's 2020 New Hire Plan (the "**2020 Plan**" and together with the 2013 Plan, the "**Plans**").

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and related prospectuses, (b) the Plans, (c) the Company's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, each as currently in effect and (d) originals or copies certified to our satisfaction of such other records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Plans, the Registration Statement and related prospectus, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

We consent to the filing of this opinion as an exhibit to the Registration Statement.

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Cooley LLP 3175 Hanover Street Palo Alto, CA 94304-1130  
t: (650) 843-5000 f: (650) 849-7400 cooley.com





CymaBay Therapeutics, Inc.  
March 25, 2021  
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Very truly yours,

**COOLEY LLP**

By: /s/ Matthew B. Hemington  
Matthew B. Hemington

Cooley LLP 3175 Hanover Street Palo Alto, CA 94304-1130  
t: (650) 843-5000 f: (650) 849-7400 cooley.com

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (FormS-8) pertaining to the 2013 Equity Incentive Plan and 2020 New Hire Plan of CymaBay Therapeutics, Inc. of our report dated March 25, 2021, with respect to the consolidated financial statements of CymaBay Therapeutics, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2020, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Redwood City, California  
March 25, 2021