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

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

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**CYMABAY THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

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**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)

**2020 New Hire Plan**  
(Full title of the plan)

**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**  
**Allison Pang**  
**Cooley LLP**  
**3175 Hanover Street**  
**Palo Alto, California 94304**  
**(650) 843-5000**

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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   
Non-accelerated filer

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.

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## EXPLANATORY NOTE

Pursuant to General Instruction E of Form S-8, CymaBay Therapeutics, Inc. (the “Registrant”) is filing this Registration Statement with the Securities and Exchange Commission (the “SEC”) to register 1,000,000 additional shares of its common stock under the 2020 New Hire Plan. In accordance with the instructional note to Part I of Form S-8 as promulgated by the SEC, the information specified by Part I of the Form S-8 has been omitted from this Registration Statement.

### 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, 2022, filed with the SEC on March 23, 2023;
- (b) The Registrant’s Quarterly Report on Form [10-Q](#) for the fiscal quarter ended March 31, 2023, filed with the SEC on May 15, 2023;
- (c) The Registrant’s Quarterly Report on Form [10-Q](#) for the fiscal quarter ended June 30, 2023, filed with the SEC on August 10, 2023;
- (d) The Registrant’s Current Reports on Form 8-K filed with the SEC on [January 9, 2023](#), [January 23, 2023](#), [January 25, 2023](#), [February 23, 2023](#), [May 9, 2023](#), and [June 6, 2023](#);
- (e) 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; and
- (f) 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/A	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/A	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. 2020 New Hire Plan.</a>	10-Q	333-36500	10.4	8/10/2023
107*	<a href="#">Filing Fee Table.</a>				

\* Filed herewith.

**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.

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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.

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.

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**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 August 10, 2023.

**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, Harish Shantharam 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.

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<b>Name and Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ Sujal Shah</u> Sujal Shah	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	August 10, 2023
<u>/s/ Harish Shantharam</u> Harish Shantharam	Chief Financial Officer <i>(Principal Financial Officer)</i>	August 10, 2023
<u>/s/ Daniel Menold</u> Daniel Menold	Vice President, Finance <i>(Principal Accounting Officer)</i>	August 10, 2023
<u>/s/ Robert J. Wills</u> Robert J. Wills, Ph.D.	Chairman of the Board and Director	August 10, 2023
<u>/s/ Janet Dorling</u> Janet Dorling	Director	August 10, 2023
<u>/s/ Éric Lefebvre</u> Éric Lefebvre	Director	August 10, 2023
<u>/s/ Caroline Loewy</u> Caroline Loewy	Director	August 10, 2023
<u>/s/ Kurt von Emster</u> Kurt von Emster	Director	August 10, 2023
<u>/s/ Thomas G. Wiggans</u> Thomas G. Wiggans	Director	August 10, 2023



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

August 10, 2023

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

Ladies and Gentlemen:

You have requested our opinion as counsel to CymaBay Therapeutics, Inc., a Delaware corporation (the "**Company**") in connection with the filing by the Company of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission (the "**Commission**") covering the offering of up to 1,000,000 shares (the "**Shares**") of the Company's Common Stock, par value \$0.0001 per share ("**Common Stock**"), issuable pursuant to the Company's 2020 New Hire Plan (the "**Plan**").

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and the related prospectus, (b) the Company's certificate of incorporation and bylaws, each as currently in effect, (c) the Plan, and (d) 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, 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 of such documents. 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 Plan, the Registration Statement and the related prospectus, will be validly issued, fully paid and nonassessable (except as to shares issued pursuant to deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

This opinion is limited to the matters expressly set forth in this letter, and no opinion should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof and we undertake no obligation or responsibility to update or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

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



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August 10, 2023

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We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission thereunder.

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 CymaBay Therapeutics, Inc. 2020 New Hire Plan of our report dated March 23, 2023, 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, 2022, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Mateo, California  
August 10, 2023

## Calculation of Filing Fee Table

Form S-8

(Form Type)

CymaBay Therapeutics, Inc.  
 (Exact name of Registrant as specified in its charter)

Table 1: Newly Registered Securities

Security Type	Title of Securities to be Registered	Fee Calculation Rule(2)	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, \$0.0001 par value per share	Rule 457(c) and Rule 457(h)	1,000,000	\$12.18	\$12,180,000	0.00011020	\$1,342.24
	<b>TOTAL</b>				<b>\$12,180,000</b>		<b>\$1,342.24</b>

- (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 Registrant's common stock, par value \$0.0001 per share ("Common Stock"), of CymaBay Therapeutics, Inc. (the "Registrant") that become issuable under the 2020 New Hire 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) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) and (h) under the Securities Act on the basis of \$12.18 per share, which is the average of the high and low prices of a share of the Registrant's common stock on the Nasdaq Global Select Market on August 7, 2023.