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

**Amendment No. 2 to
Form F-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

ERYTECH Pharma S.A.

(Exact name of registrant as specified in its charter)

Not Applicable

(Translation of registrant's name into English)

France
(State or other jurisdiction of
incorporation or organization)

Not Applicable
(I.R.S. Employer
Identification Number)

**60 Avenue Rockefeller
69008 Lyon France**

Tel: +33 4 78 74 44 38

(Address and telephone number of registrant's principal executive offices)

**ERYTECH Pharma, Inc.
One Main Street, Suite 1150
Cambridge, Massachusetts 02142
+1 857 706 1585**

(Name, address and telephone number of agent for service)

Copies of all communications, including communications sent to agent for service, should be sent to:

**Marc A. Recht
Brian F. Leaf
Courtney T. Thorne
Cooley LLP
500 Boylston Street
Boston, Massachusetts 02116
+1 617 937 2300**

**Arnaud Duhamel
Guilhem Richard
Gide Loyrette Nouel A.A.R.P.I.
15 rue de Laborde
75008 Paris France
+33 1 40 75 00 00**

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.C. or a post-effective amendment thereto that shall become effective on filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.C. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933.

Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, 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.

[†] The term “new or revised financial accounting standard” refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered | Amount to be Registered | Proposed Maximum Aggregate Price per Unit | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee(1) |
|----------------------------------------------------|-------------------------|-------------------------------------------|-------------------------------------------|-------------------------------|
| Ordinary shares, €0.10 nominal value per share(2) | (3) | (4) | (4) | — |
| Warrants | (3) | (4) | (4) | — |
| Total | (3) | | \$100,000,000 | \$12,120(5) |

- (1) Calculated pursuant to Rule 457(o) under the Securities Act of 1933, as amended, or the Securities Act.
- (2) These ordinary shares are represented by American Depositary Shares, or ADSs, each of which represents one ordinary share of the registrant. ADSs issuable on deposit of the ordinary shares registered hereby have been registered pursuant to a separate registration statement on Form F-6 (File No. 333-201279).
- (3) There are being registered hereunder such indeterminate number of ordinary shares and such indeterminate number of warrants as may be sold by the registrant from time to time at indeterminate prices, in U.S. dollars or the equivalent thereof denominated in foreign currencies, with the maximum aggregate offering price not to exceed \$100,000,000. Any securities registered by this Registration Statement may be sold separately or in combination with other securities registered hereunder. The proposed maximum initial offering price per security will be determined, from time to time, by the registrant in connection with the sale of the securities registered hereunder. The securities registered also include such indeterminate amounts and numbers of ordinary shares as may be issued upon exercise of warrants. Pursuant to Rule 416 under the Securities Act, the ordinary shares represented by ADSs being registered hereunder include such indeterminate number of ordinary shares as may be issuable with respect to the ordinary shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.
- (4) The proposed maximum aggregate offering price per class of security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder and is not specified as to each class of security pursuant to General Instruction I.C. of Form F-3 under the Securities Act.
- (5) Previously paid.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 2 ("Amendment No. 2") to the Registration Statement on Form F-3 ("Registration Statement") is being filed solely for the purpose of updating Part II of the Registration Statement. This Amendment No. 2 does not modify any provision of the prospectus that forms a part of the Registration Statement and accordingly, such prospectus has been omitted.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 8. Indemnification of Directors and Officers.

Under French law, provisions of bylaws that limit the liability of directors are prohibited. However, French law allows *sociétés anonymes* to contract for and maintain liability insurance against civil liabilities incurred by any of their directors and officers involved in a third-party action, provided that they acted in good faith and within their capacities as directors or officers of the company. Criminal liability cannot be indemnified under French law, whether directly by the company or through liability insurance.

We have liability insurance for our directors and officers, and we also have coverage for insurance against liability under the Securities Act. We have entered into agreements with our directors and executive officers to provide contractual indemnification. With certain exceptions and subject to limitations on indemnification under French law, these agreements provide for indemnification for damages and expenses including, among other things, attorneys' fees, judgments and settlement amounts incurred by any of these individuals in any action or proceeding arising out of his or her actions in that capacity.

These agreements may discourage shareholders from bringing a lawsuit against our directors and executive officers for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and executive officers, even though such an action, if successful, might otherwise benefit us and our shareholders. Furthermore, a shareholder's investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these insurance agreements.

Item 9. Exhibits.

The following exhibits are filed with this registration statement or are incorporated herein by reference.

| <u>Exhibit Number</u> | <u>Exhibit Description</u> | <u>Filed Herewith</u> | <u>Incorporated by Reference herein from Form or Schedule</u> | <u>Filing Date</u> | <u>SEC File/Reg. Number</u> |
|-----------------------|----------------------------------------------------------------------------------------------------------------------|-----------------------|---------------------------------------------------------------|--------------------|-----------------------------|
| 1.1* | Form of Underwriting Agreement. | | | | |
| 1.2** | Sales Agreement, dated September 21, 2020, by and between the Registrant and Cowen and Company, LLC. | | F-3 (Exhibit 1.2) | September 21, 2020 | 333-248953 |
| 4.1** | Bylaws (statuts) of the registrant (English translation). | | F-3 (Exhibit 4.1) | September 21, 2020 | 333-248953 |
| 4.2** | Amended and Restated Deposit Agreement. | | F-3 (Exhibit 4.2) | September 21, 2020 | 333-248953 |
| 4.3** | Form of American Depositary Receipt (included in Exhibit 4.2). | | F-3 (Exhibit 4.3) | September 21, 2020 | 333-248953 |
| 4.4* | Form of Warrant. | | | | |
| 5.1** | Opinion of Gide Loyrette Nouel A.A.R.P.I. | | F-3/A (Exhibit 5.1) | October 7, 2020 | 333-248953 |
| 5.2** | Opinion of Gide Loyrette Nouel A.A.R.P.I. | | F-3 (Exhibit 5.2) | September 21, 2020 | 333-248953 |
| 23.1** | Consent of KPMG S.A. | | F-3 (Exhibit 23.1) | September 21, 2020 | 333-248953 |

| <u>Exhibit Number</u> | <u>Exhibit Description</u> | <u>Filed Herewith</u> | <u>Incorporated by Reference herein from Form or Schedule</u> | <u>Filing Date</u> | <u>SEC File/Reg. Number</u> |
|-----------------------|-----------------------------------------------------------------------------------------------------------|-----------------------|---------------------------------------------------------------|--------------------|-----------------------------|
| 23.2** | Consent of Gide Loyrette Nouel A.A.R.P.I. (included in the opinion filed as Exhibit 5.1). | | F-3/A (Exhibit 23.2) | October 7, 2020 | 333-248953 |
| 24.1** | Powers of Attorney (included on signature page). | | F-3 (Exhibit 24.1) | September 21, 2020 | 333-248953 |

* To be subsequently filed, if applicable, by an amendment to this registration statement or as an exhibit to a report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, including any Report on Form 6-K, and incorporated herein by reference.

** Previously filed.

Item 10. 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 of 1933;

(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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent 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), (a)(1)(ii), and (a)(1)(iii) above 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 Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is a part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, 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) To file a post-effective amendment to the registration statement to include any financial statements required by Item 8.A of Form 20-F at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Securities Act of 1933 need not be

furnished, provided, that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to registration statements on Form F-3, a post-effective amendment need not be filed to include financial statements and information required by Section 10(a)(3) of the Securities Act of 1933, or Item 8.A of Form 20-F if such financial statements and information are contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Form F-3.

(5) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(6) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 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.

(7) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's Annual Report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's Annual Report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(9) Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 Securities and Exchange Commission 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 F-3 and has duly caused this Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Lyon, France on October 8, 2020.

ERYTECH PHARMA S.A.

By: /s/ Gil Beyen

Name: Gil Beyen

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 2 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| <u>Name</u> | <u>Title</u> | <u>Date</u> |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| <u>/s/ Gil Beyen</u> Gil Beyen | Chief Executive Officer and Director <i>(Principal Executive Officer)</i> | October 8, 2020 |
| * <u>Eric Soyer</u> | Chief Financial Officer, Chief Operating Officer and Deputy General Manager <i>(Principal Financial Officer and Principal Accounting Officer)</i> | October 8, 2020 |
| * <u>Jean-Paul Kress, M.D.</u> | Chairman of the Board of Directors | October 8, 2020 |
| * <u>Sven Andréasson</u> | Director | October 8, 2020 |
| * <u>Philippe Archinard, Ph.D.</u> | Director | October 8, 2020 |
| * <u>Luc Dochez, Pharm.D.</u> | Director | October 8, 2020 |
| * <u>Martine Ortin George, M.D.</u> | Director | October 8, 2020 |
| * <u>Melanie Rolli</u> | Director | October 8, 2020 |
| * <u>Hilde Windels</u> | Director | October 8, 2020 |

*By: /s/ Gil Beyen
Gil Beyen
Attorney-in-fact

SIGNATURE OF AUTHORIZED U.S. REPRESENTATIVE

Pursuant to the Securities Act of 1933, as amended, the undersigned, the duly authorized representative in the United States of ERYTECH Pharma S.A., has signed this Amendment No. 2 to the registration statement on October 8, 2020.

ERYTECH PHARMA, INC.

By: /s/ Gil Beyen
Name: Gil Beyen
Title: President