August 8, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-0609

Re: File No. S7-12-16: *Amendments to Smaller Reporting Company Definition*

To whom it may concern:

Calithera Biosciences is a clinical-stage biopharmaceutical company focused on discovering and developing novel small molecule drugs directed against tumor metabolism and tumor immunology targets for the treatment of cancer. I am the Senior Vice President and Chief Financial Officer of Calithera, and I appreciate the opportunity to provide comment to the Securities and Exchange Commission (SEC) on File No. S7-12-16: *Amendments to Smaller Reporting Company Definition*.

I was honored to give a presentation on this topic before last year's SEC Government-Business Forum on Small Business Capital Formation. I have included the slide deck that accompanied my talk as an addendum to this letter. As in previous years, the 2015 Forum approved a recommendation urging the SEC to revise the definitions of both smaller reporting company (SRC) and non-accelerated filer. Specifically, the Forum recommended:

> *The definitions of "smaller reporting company" and "non-accelerated filer," as defined or used in Rule 12b-2 of the Exchange Act, should be revised to include:*
>
> *i. an issuer with a public float of less than $250 million as of the last business day of its most recently completed second fiscal quarter; or*
>
> *ii. an issuer with annual revenues of less than $100 million during its most recently completed fiscal year and a public float of less than $700 million as of the last business day of its most recently completed second fiscal quarter.*

I strongly support the Forum's recommendation, and urge the SEC to make the recommended changes.

The SEC's proposal would reform the public float test in the SRC definition by increasing it to $250 million. However, the SEC's proposal rejects the remainder of the Forum's recommendation by omitting an alternative revenue test and by failing to make any changes to the non-accelerated filer definition.

Compliance with Sarbanes-Oxley (SOX) Section 404(b), which is governed by the non-accelerated filer definition, is extremely costly for emerging biotechnology companies like Calithera. When we are forced to become compliant with Section 404(b) following the expiration of our emerging growth company (EGC) status, we estimate that we will spend more than $400,000 annually on SOX compliance. Those funds would be better spent conducting research to support our effort to bring medicines to patients.

As I noted in my presentation, raising the non-accelerated filer public float test to $250 million, as recommended by the Forum, would provide important regulatory relief and more accurately classify companies – all while resulting in a *de minimis* change in the percentage of total public float represented by companies exempt from SOX 404(b). The SEC's release notes that non-accelerated filers currently comprise 0.01% of total public float; the proposed change would bring that total to just 0.03%.

Similarly, instituting a $100 million revenue test for companies with a public float below $700 million (a much more limited universe than the $1 billion revenue test that qualifies companies for the JOBS Act

SOX 404(b) exemption) would allow growing companies like Calithera to focus our critical innovation capital on R&D without substantially increasing investor risk.

I appreciate the SEC's attention to this important topic, and I am hopeful that the final rule will implement the vital reforms – to both the SRC and non-accelerated filer definitions – recommended by the Small Business Forum.

Sincerely,

William D. Waddill
Senior Vice President and Chief Financial Officer
Calithera Biosciences, Inc.

Registered Offerings—Post JOBS Act

William D. Waddill

SVP and CFO, Calithera Biosciences

SEC Government-Business Forum on Small Business Capital Formation

November 19, 2015

Biotechnology Industry Organization

Impact of Regulatory Burdens on Emerging Company Capital Formation

- **Investors in early-stage companies provide start-up/growth capital to small businesses**
  - **Investment dollars directly support company operations, often in the absence of revenue**
  - **Investors want their capital to support company progress, eventually generating returns**
- **Unnecessary and costly regulatory burdens divert capital away from company growth**
  - **Many requirements do not provide valuable information for investors yet are costly for small businesses**

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Impact of Regulatory Burdens on Biotech Capital Formation

- Overregulation can reduce investor appetite for investment in early-stage entrepreneurial businesses
- This problem is particularly acute in the biotech industry
  - Most emerging companies have no product revenue to pay for costly requirements
  - Investors are much more concerned with clinical trial progress and FDA outlook
  - Unnecessary regulations represent a diversion of investor capital from science to compliance
- Appropriately tailored policies can incentivize capital formation
  - JOBS Act has led to 180+ biotech IPOs

Bio

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Right-Sized Regulations vs. One-Size-Fits-All

What regulatory burdens can be scaled/eliminated for small companies while still protecting investors?

- SEC and Congress have determined that the costs of certain requirements outweigh the benefits for smaller companies
- Investors are better served by companies dedicating their capital and time to growth
- Policymakers have recognized that the cost and time burdens of certain requirements are particularly onerous for growing businesses
- <u>Smaller reporting companies (SRCs) and non-accelerated filers benefit from certain regulatory allowances, thus enhancing their attractiveness to investors</u>

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SRCs & Non-Accelerated Filers

SRC & Non-Accelerated Filer Definition
Public float < $75M*

- **SRCs & non-accelerated filers, and their investors, benefit from scaled compliance requirements**

SOX 404(b)
Non-accelerated filers are exempt from the external auditor attestation of internal controls mandated by Sarbanes-Oxley (SOX) Section 404(b)

Filing Deadlines by 12b-2 Filing Status		
	10-K	**10-Q**
Non-Accelerated Filers/SRCs *Public Float < $75M*	90 days	45 days
Accelerated Filers *$75M < Public Float < $700M*	75 days	40 days
Large Accelerated Filers *Public Float > $700M*	60 days	40 days

** If unable to calculate public float, companies can be designated SRCs if their annual revenues are below $50M.*

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SRCs & Non-Accelerated Filers

Regulation S-K Scaled Disclosure for SRCs	
Item 101	Description of business
Item 201	Market price of and dividends on registrant's common equity and related stockholder matters
Item 301	Selected financial data
Item 302	Supplementary financial information
Item 303	MD&A of financial condition and results of operations
Item 305	Quantitative and qualitative disclosures about market risk
Item 402	Executive compensation
Item 404	Transactions with related persons, promoters and certain control persons
Item 407	Corporate governance
Item 503	Prospectus summary, risk factors, and ratio of earnings to fixed charges
Item 504	Use of proceeds
Item 601	Exhibits

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SRC & Non-Accelerated Filer Definition

- The SRC & non-accelerated filer definitions inaccurately classify companies, increasing compliance costs for many small businesses outside the current narrow definitional scope
  - Overreliance on public float obscures true size of small but highly valued companies
    - Compliance costs remain high for these emerging businesses
  - SRCs/non-accelerated filers currently represent just 0.2% of total public company market value
  - $75M public float ceiling was indexed to inflation in 2008 but has never been increased

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SRC & Non-Accelerated Filer Reform

- In 2005, the Advisory Committee on Small & Emerging Companies endorsed scaled regulation for companies representing up to 6% of public company market value – the equivalent of a $787M market cap ceiling in 2005

Company market cap (2015)	% of total public company market value
<$75M	0.2%
<$250M	0.7%
<$700M	1.6%
<$1B	3.1%
<$1.88B	6.0%

- <u>A slight change in the % of market value captured by the SRC/non-accelerated filer definition could support company growth and capital formation for a significant number of small businesses</u>

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SRC & Non-Accelerated Filer Reform

Numerous stakeholders have proposed reform of the SRC & non-accelerated filer definitions:

SEC Government-Business Forum on Small Business Capital Formation	2014 2013 2012	Public float <$250M or Annual revenues <$100M*
	2011 2010 2009	Public float <$250M
SEC Advisory Committee on Small & Emerging Companies	2013	Public float <$250; if public float cannot be calculated, annual revenues <$100M
	2005	Committee charter defines "smaller public companies" as market cap <$250M
House Committee on Financial Services	2014	Public float <$250M or Annual revenues <$100M*
House Subcommittee on Capital Markets & GSEs	2012	Public float <$250M or Annual revenues <$100M*

** Companies qualifying under the revenue test would be capped at a public float of $700M (large accelerated filers)*

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SRC & Non-Accelerated Filer Reform

Proposed SRC/Non-Accelerated Filer Definition	
A company would have to meet ONE of the following criteria:	
<$250M public float	There is strong consensus that the $75M cap should be raised to more accurately reflect the state of small businesses on the market
<$100M annual revenues*	Adding a revenue test would allow truly small companies that may be highly valued to be properly classified
** Companies qualifying under the revenue test would be capped at a public float of $700M (large accelerated filers)*	

- **Exposing small businesses to burdensome regulations – from which they would be exempt under more accurate company classifications – slows company growth and harms their capital formation potential**
- **<u>Slight changes to the existing definitions would provide regulatory relief to growing companies and support early-stage capital formation</u>**

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