

CytoDyn Inc.
Form 8-K
March 20, 2019

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
Date of Report (Date of earliest event reported): March 20, 2019

CytoDyn Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction

of incorporation)

000-49908
(SEC

File Number)

83-1887078
(I.R.S. Employer

Identification No.)

1111 Main Street, Suite 660

Vancouver, Washington
(Address of principal executive offices)

98660
(Zip Code)

Registrant's telephone number, including area code: (360) 980-8524

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

On March 20, 2019, CytoDyn Inc. (the Company), issued in private placements to accredited investors an aggregate of 3,246 shares of its newly authorized Series C Convertible Preferred Stock, par value \$0.001 per share, with an initial stated value of \$1,000 per share (the Series C Preferred Stock), together with warrants to purchase an aggregate of up to 3,895,200 shares of its common stock, par value \$0.001 (Common Stock) per share, with an initial exercise price of \$0.50 per share (the Series C Warrants) for aggregate gross proceeds to the Company of approximately \$3.2 million (the Series C Offering).

The shares of Series C Preferred Stock are convertible into shares of Common Stock at an initial conversion price of \$0.50 per share (the Conversion Price) and will carry dividends at a rate of 10% per annum (subject to adjustment as provided in the Series C Certificate of Designation (as defined below)) and have the preferences, rights and limitations set forth in the Series C Certificate of Designation. The Series C Warrants have a five-year term and are immediately exercisable. Pursuant to the subscription agreements entered into with each of the investors (the Subscription Agreements), the Company has agreed to use commercially reasonable efforts to prepare and file with the United States Securities and Exchange Commission within 120 days following the closing of the Series C Offering, but not later than August 31, 2019, a registration statement under the Securities Act of 1933, as amended, covering the resale of all of the Common Stock received by the investors upon the conversion of the Series C Preferred Stock and the exercise of the Series C Warrants. In connection with the Series C Offering, the Company has issued and sold to certain lead investors additional warrants to purchase an aggregate of up to 1,000,000 shares of Common Stock, on identical terms to the other Series C Warrants issued to investors.

The representations, warranties and covenants contained in the Subscription Agreements were made solely for the benefit of the parties to the Subscription Agreements. In addition, such representations, warranties and covenants (i) are intended as a way of allocating the risk between the parties to the Subscription Agreements and not as statements of fact, and (ii) may apply standards of materiality in a way that is different from what may be viewed as material by stockholders of, or other investors in, the Company. Accordingly, the forms of the Subscription Agreements are included with this filing only to provide investors with information regarding the terms of transaction, and not to provide investors with any other factual information regarding the Company. Stockholders should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Subscription Agreements, which subsequent information may or may not be fully reflected in public disclosures.

The shares of Series C Preferred Stock and the Series C Warrants were offered and sold in reliance on an exemption from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended, and Rule 506 of Regulation D. Each investor has represented that it is an accredited investor, as defined in Regulation D, and has acquired the securities for investment purposes only and not with a view to, or for sale in connection with, any distribution thereof. The securities were not issued through any general solicitation or advertisement.

The forms of the Series C Warrant and the Subscription Agreement are attached hereto as Exhibit 4.1 and Exhibit 10.1, respectively. The foregoing summaries of the terms of these documents are subject to, and qualified in their entirety by, such documents, which are incorporated herein by reference.

As a fee to the placement agent in the Series C Offering, the Company has agreed to pay a cash fee equal to 5% of the gross proceeds received from the sale of the Series C Preferred Stock and the Series C Warrants, or \$162,300.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure in Item 1.01 with respect to the Series C Preferred Stock and the Series C Warrants is incorporated herein by reference.

Item 3.03 Material Modification to Rights of Security Holders.

The disclosure in Item 5.03 with respect to the Certificate of Designation is incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On March 20, 2019, the Company filed a Certificate of Designation of the Rights, Preferences, Privileges and Restrictions of the Series C Convertible Preferred Stock (the "Certificate of Designation") with the Secretary of State of the State of Delaware. The Certificate of Designation provides for the issuance of up to 5,000 shares of Series C Preferred Stock.

The Certificate of Designation provides, among other things, that holders of Series C Preferred Stock shall be entitled to receive, at the option of the holder, cumulative dividends at the rate of ten percent (10%) per share per annum of the stated value of the Series C Preferred Stock, to be paid per share of Series C Preferred Stock. Any dividends paid by the Company will first be paid to the holders of Series C Preferred Stock prior and in preference to any payment or distribution to holders of Common Stock. Dividends on the Series C Preferred Stock are mandatory and cumulative and there are no sinking fund provisions applicable to the Series C Preferred Stock. The Series C Preferred Stock does not have redemption rights. The stated value per share for the Series C Preferred Stock is \$1,000 (the "Stated Value").

In the event of any liquidation, dissolution or winding up of the Company, the Series C Preferred Stock will be paid, prior and in preference to any payment or distribution on any shares of Common Stock, currently outstanding series of preferred stock, or subsequent series of preferred stock, an amount per share equal to the Stated Value and the amount of any accrued and unpaid dividends. The holders of the Series C Preferred Stock will then receive distributions along with the holders of Common Stock on a pari passu basis according to the number of shares of Common Stock the Series C Preferred holders would be entitled if they converted their shares of Series C Preferred Stock at the time of such distribution.

If, at any time while the Series C Preferred Stock is outstanding, the Company effects any reorganization, merger or sale of the Company or substantially all of its assets (each a Fundamental Transaction), a holder of the Series C Preferred Stock will have the right to receive any shares of the acquiring corporation or other consideration it would have been entitled to receive if it had been a holder of the number of shares of Common Stock then issuable upon conversion in full of the Series C Preferred Stock immediately prior to the Fundamental Transaction.

Each share of Series C Preferred Stock is convertible at any time at the holder's option into that number of fully paid and nonassessable shares of Common Stock determined by dividing the Stated Value by the Conversion Price (subject to adjustment as set forth in the Certificate of Designation). No fractional shares will be issued upon the conversion of the Series C Preferred Stock.

Except as otherwise provided in the Certificate of Designation or as otherwise required by law, the Series C Preferred Stock has no voting rights.

The foregoing summary of the terms of Certificate of Designation is subject to, and qualified in its entirety by, such document, which is filed herewith as Exhibit 3.1 and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) **Exhibit
No.**

Description

3.1	<u>Certificate of Designation</u>
4.1	<u>Form of Series C Warrant Agreement</u>
10.1	<u>Form of Subscription Agreement</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CytoDyn Inc.

March 20, 2019

By: /s/ Michael D. Mulholland
Name: Michael D. Mulholland
Title: Chief Financial Officer

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