

CytoDyn Inc.
Form S-3
September 29, 2016
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As filed with the Securities and Exchange Commission on September 29, 2016

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

CYTODYN INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

75-3056237
(I.R.S. Employer
Identification Number)

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1111 Main Street, Suite 660

Vancouver, Washington 98660

(360) 980-8524

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Nader Pourhassan, Ph.D.

President and Chief Executive Officer

CytoDyn Inc.

1111 Main Street, Suite 660

Vancouver, Washington 98660

Telephone: (360) 980-8524

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

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

Michael J. Lerner, Esq.

Steven M. Skolnick, Esq.

Lowenstein Sandler LLP

1251 Avenue of the Americas

New York, New York 10020

Tel: (212) 262-6700

Approximate date of commencement of proposed sale to the public: From time to time after this registration statement becomes effective.

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, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box: x

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.D. or a post-effective amendment thereto that shall become effective upon 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.D. 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 a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller ..

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reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer:

Accelerated filer:

Non-accelerated filer: (Do not check if smaller reporting company)

Smaller reporting company:

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| Title of each class of securities to be registered(1) | Amount to be registered | Proposed maximum offering price per share | Proposed maximum aggregate offering price | Amount of registration fee) |
|--|--------------------------------|--|--|------------------------------------|
| Common Stock, par value \$0.001 per share | 51,135,068 (1) (2) | \$0.72 (3) | \$36,722,942 (3)(4) | \$22 (4) |

- (1) As described in greater detail in the prospectus contained in this registration statement, the shares of common stock to be offered for resale by selling stockholders include (a) 292,407 shares of common stock that are newly registered hereunder and (b) an aggregate of 50,842,661 shares of common stock that were previously registered and currently remain unsold as follows: (i) an aggregate of 20,385,194 shares previously subject of the Registration Statement on Form S-1 (File No. 333-209350) declared effective on February 17, 2016 (the February 2016 Registration Statement), (ii) an aggregate of 6,514,921 shares previously subject of the Registration Statement on Form S-1 (File No. 333-206896) declared effective on October 6, 2015 (the October 2015 Registration Statement), and (iii) an aggregate of 23,942,546 shares previously subject of the Registration Statement on Form S-1 (File No. 333-204802) declared effective on September 2, 2015 (the September 2015 Registration Statement and, collectively with the February 2016 Registration Statement and the October 2015 Registration Statement, the Prior Registration Statements).
- (2) Pursuant to Rule 416 under the Securities Act, this registration statement (like the Prior Registration Statements) covers an indeterminate number of shares that may be issued upon stock splits, stock dividends or similar transactions.
- (3) Estimated in accordance with Rule 457(c) under the Securities Act of 1933, as amended, solely for the purpose of calculating the registration fee, based on the average of the high and low prices of shares of the registrant's common stock reported on the OTCQB of OTC Markets Group, Inc. on September 23, 2016.
- (4) No registration fee is payable in connection with the aggregate of 50,842,661 shares of common stock that were previously registered under the Prior Registration Statements, because such shares are being carried forward from the Prior Registration Statements pursuant to Rule 429 under the Securities Act. A registration fee is only payable in connection with the aggregate of 292,407 shares of common stock that were not previously registered under the Prior Registration Statements, with a proposed maximum aggregate offering price of \$210,534. See Statement Pursuant to Rule 429 below.

STATEMENT PURSUANT TO RULE 429

The registrant is filing a single prospectus in this registration statement, pursuant to Rule 429 under the Securities Act. The prospectus is a combined prospectus relating to (i) an aggregate of 50,842,661 shares of common stock that are currently registered and remain unsold under the Prior Registration Statements and (ii) 292,407 shares of common stock, resales of which are being newly registered hereunder, in each case as described in Note 1 to the fee table presented above. Pursuant to Rule 429, this registration statement constitutes a post-effective amendment to each of the Prior Registration Statements with respect to the offerings of such unsold shares thereunder, which are not currently being terminated by the Company. Such post-effective amendments will become effective concurrently with

the effectiveness of this registration statement in accordance with Section 8(a) of the Securities Act.

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 this registration statement shall become effective on such date as the Commission acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold until the registration statement is effective. This prospectus is not an offer to sell these securities and does not solicit an offer to buy these securities in any state or other jurisdiction where the offer or sale is not permitted.

Subject to completion, preliminary prospectus dated September 29, 2016

51,135,068 Shares of Common Stock

This prospectus relates to the offer and sale by the selling stockholders identified in this prospectus of up to 51,135,068 shares of our common stock, par value \$0.001 per share, issuable upon exercise of warrants. The shares of common stock being offered include:

- 1) 16,419,393 shares previously issued or issuable upon exercise, at an exercise price of \$0.75 per share, of warrants issued to investors in certain private placements of common stock and warrants occurring between October 2015 and January 2016 (the January 2016 Placement) (including 26,666 shares previously issued upon exercise thereof as of the date of this prospectus);
- 2) 3,525,801 shares issuable upon exercise, at an exercise price of \$0.75 per share, of warrants issued to our placement agent and its employees in the January 2016 Placement;
- 3) 440,000 shares issuable upon exercise, at an exercise price of \$1.02 or \$0.92 per share, as the case may be, of warrants issued to a third-party consultant as consideration for certain services provided;
- 4) 449,999 shares issuable upon exercise, at an exercise price of \$0.75 per share, of warrants issued to investors in certain private placements of common stock and warrants occurring in August 2015 (the August 2015 Placement);
- 5) 4,792,791 shares issuable upon exercise, at an exercise price of \$0.75 per share, of warrants issued to investors in certain private placements of common stock and warrants occurring between June 2015 and July 2015 (the July 2015 Placement);

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- 6) 1,272,131 shares issuable upon exercise, at an exercise price of \$0.75 per share, of warrants issued to our placement agent and its employees in the July 2015 Placement;
- 7) 1,061,586 shares issuable upon exercise, at an exercise price of \$0.75 per share, of warrants (the May 2015 Investor Warrants) issued to investors in certain private placements of convertible notes and warrants occurring between April 2015 and May 2015 (the May 2015 Convertible Notes Placement);
- 8) 530,802 shares issuable upon exercise, at an exercise price of \$0.75 per share, of warrants issued to our placement agent and its employees in the May 2015 Convertible Notes Placement;
- 9) 10,941,078 shares previously issued or issuable upon exercise, at an exercise price of \$0.75 per share, of warrants issued to investors in certain private placements of units comprising common stock and warrants occurring between September 2013 and October 2013 (the October 2013 Units Placement) (including 56,811 shares previously issued upon exercise thereof as of the date of this prospectus);

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- 10) 4,483,122 shares issuable upon exercise, at an exercise price of \$0.75 per share, of warrants issued to our placement agent and its employees in the October 2013 Units Placement;
- 11) 615,381 shares previously issued upon exercise, at an exercise price of \$0.50 per share, of warrants issued to investors in a privately placed bridged financing transaction occurring in July 2013 (the July 2013 Bridge Notes Financing); and
- 12) 6,602,984 shares issuable upon exercise, at an exercise price of \$1.00 per share, of warrants issued to investors in connection with certain private placements of unsecured convertible promissory notes occurring between October 2012 and May 2013 (the Convertible Notes Financing).

The selling stockholders may sell all or a portion of these shares from time to time, in amounts, at prices and on terms determined at the time of sale. The shares may be sold by any means described in the section of this prospectus entitled Plan of Distribution beginning on page 21 of this prospectus.

We will not receive any proceeds from the sale of these shares. We will, however, receive cash proceeds equal to the total exercise price of warrants that are exercised for cash.

Our common stock is quoted on the OTCQB of OTC Markets Group, Inc. under the symbol CYDY. On September 28, 2016, the closing price of our common stock was \$0.70 per share.

Investing in our securities involves risk. You should carefully consider the risks that we have described under the section captioned Risk Factors in this prospectus on page 6 before buying our Securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2016

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CytoDyn Inc. and its consolidated subsidiaries are referred to herein as CytoDyn, the Company, we, us and our, the context indicates otherwise.

You may only rely on the information contained in this prospectus or that we have referred you to. We have not authorized anyone to provide you with different information. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities other than the securities offered by this prospectus. This prospectus and any future prospectus supplement do not constitute an offer to sell or a solicitation of an offer to buy any securities in any circumstances in which such offer or solicitation is unlawful. Neither the delivery of this prospectus or any prospectus supplement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in our affairs since the date of this prospectus or such prospectus supplement or that the information contained by reference to this prospectus or any prospectus supplement is correct as of any time after its date.

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FORWARD-LOOKING STATEMENTS

This prospectus contains certain forward-looking statements that involve risks, uncertainties and assumptions that are difficult to predict. Words and expressions reflecting optimism, satisfaction or disappointment with current prospects, as well as words such as believes, hopes, intends, estimates, expects, projects, plans, anticipates and va or the use of future tense, identify forward-looking statements, but their absence does not mean that a statement is not forward-looking. Our forward-looking statements are not guarantees of performance and actual results could differ materially from those contained in or expressed by such statements. In evaluating all such statements we urge you to specifically consider various risk factors identified in this prospectus, including the matters set forth under the heading Risk Factors, any of which could cause actual results to differ materially from those indicated by our forward-looking statements.

Our forward-looking statements reflect our current views with respect to future events and are based on currently available financial, economic, scientific, and competitive data and information on current business plans. You should not place undue reliance on our forward-looking statements, which are subject to risks and uncertainties relating to, among other things: (i) the sufficiency of our cash position, (ii) design, implementation and conduct of clinical trials, (iii) the results of our clinical trials, including the possibility of unfavorable clinical trial results, (iv) the market for, and marketability of, any product that is approved, (v) the existence or development of vaccines, drugs, or other treatments for infection with the Human Immunodeficiency Virus that are viewed by medical professionals or patients as superior to our products, (vi) regulatory initiatives, compliance with governmental regulations and the regulatory approval process, (vii) general economic and business conditions, (viii) changes in foreign, political, and social conditions, (ix) the specific risk factors discussed under the heading Risk Factors below, and (x) various other matters, many of which are beyond our control. Should one or more of these risks or uncertainties develop, or should underlying assumptions prove to be incorrect, actual results may vary materially and adversely from those anticipated, believed, estimated, or otherwise indicated by our forward-looking statements.

We intend that all forward-looking statements made in this prospectus will be subject to the safe harbor protection of the federal securities laws pursuant to Section 27A of the Securities Act, to the extent applicable. Except as required by law, we do not undertake any responsibility to update these forward-looking statements to take into account events or circumstances that occur after the date of this prospectus. Additionally, we do not undertake any responsibility to update you on the occurrence of any unanticipated events which may cause actual results to differ from those expressed or implied by these forward-looking statements.

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PROSPECTUS SUMMARY

The following summary highlights some information from this prospectus. It is not complete and does not contain all of the information that you should consider before making an investment decision. You should read this entire prospectus, including the Risk Factors section on page 3, the financial statements and related notes and the other more detailed information appearing elsewhere or incorporated by reference into this prospectus.

About Us

We are a clinical-stage biotechnology company focused on the clinical development and potential commercialization of humanized monoclonal antibodies to treat Human Immunodeficiency Virus (HIV) infection. Our lead product candidate, PRO 140, belongs to a class of HIV therapies known as entry inhibitors that block HIV from entering into and infecting certain cells. We believe that monoclonal antibodies are a new emerging class of therapeutics for the treatment of HIV to address unmet medical needs in the area of HIV and graft versus host disease.

We believe the PRO 140 antibody shows promise as a powerful anti-viral agent while not being a chemically synthesized drug and has fewer side effects, lower toxicity and less frequent dosing requirements, as compared to daily drug therapies currently in use for the treatment of HIV. The PRO 140 antibody belongs to a class of HIV therapies known as entry inhibitors that block HIV from entering into and infecting certain cells. PRO 140 blocks HIV from entering a cell by binding to a molecule called the C-C chemokine receptor type 5 (CCR5), a normal cell surface co-receptor protein to which certain strains of HIV, referred to as R5 strains, attach as part of HIV s entry into a cell.

PRO 140 is an antibody, and through several short-term clinical trials, it has demonstrated efficacy without issues relating to toxicity, side effects or drug resistance. Moreover, these trials suggest that PRO 140 does not affect the normal function of the CCR5 co-receptor for HIV. Instead, PRO 140 binds to a precise site on CCR5 that R5 strains of HIV use to enter the cell and, in doing so, inhibits the ability of these strains of HIV to infect the cell without affecting the cell s normal function. The R5 strains of HIV currently represent approximately 67% of all HIV infections in the U.S. As a result, we believe PRO 140 represents a distinct class of CCR5 inhibitors with advantageous virological and immunological properties and may provide a unique tool to treat HIV infected patients.

We believe PRO 140 is uniquely positioned to address a growing HIV market as an alternative or in addition to current therapies, which are failing primarily due to drug resistance or lack of patient compliance often due to side effects of oral HIV medications. In seven clinical trials previously conducted, PRO 140 was generally well tolerated, and no drug-related serious adverse events or dose-proportional adverse events related to PRO 140 were reported. In addition, there were no dose-limiting toxicities or patterns of drug-related toxicities observed during these trials. The results of these studies established that PRO 140 s antiviral activity was potent, rapid, prolonged, dose-dependent, and statistically significant following a single dose. Because PRO 140 s mechanism of action (for a monoclonal antibody use in HIV) is a relatively new therapeutic approach, it provides a very useful method of suppressing the virus in treatment-experienced patients who have failed a prior HIV regimen and need new treatment options.

Corporate Information

CytoDyn Inc. is a Delaware corporation with its principal business office at 1111 Main Street, Suite 660, Vancouver, Washington 98660. Our website can be found at www.cytodyn.com. We do not intend to incorporate any contents from our website into this prospectus. Effective August 27, 2015, we completed a reincorporation from Colorado to Delaware.

Private Placements

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The shares of our common stock being offered for resale by selling stockholders named herein pursuant to this prospectus were issued or are issuable in connection with private placement transactions described below.

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January 2016 Placement

Between October 6, 2015 and January 29, 2016, we issued in private placements to accredited investors (the January 2016 Placement) an aggregate of 33,338,884 shares of our common stock, together with warrants (the January 2016 Investor Warrants) to purchase an aggregate of 16,669,391 shares of our common stock at an exercise price of \$0.75 per share. We paid Paulson Investment Company, LLC, as the placement agent for certain of the transactions in the January 2016 Placement, in addition to certain cash fees, warrants (the January 2016 Placement Agent Warrants) to purchase an aggregate of 3,525,801 shares of our common stock at an exercise price of \$0.75 per share. The January 2016 Investor Warrants and the January 2016 Placement Agent Warrants all have a five-year expiration term and are immediately exercisable from the date of issuance. Shares of common stock issued or issuable upon exercise of January 2016 Investor Warrants and January 2016 Placement Agent Warrants are being offered for resale by the selling stockholders identified in this prospectus.

August 2015 Placement

Between August 7, 2015 and August 12, 2015, we issued in private placements to accredited investors (which we refer to as the August 2015 Placement) an aggregate of 899,999 shares of our common stock, together with warrants to purchase an aggregate of 449,999 shares of our common stock (the August 2015 Investor Warrants) at an exercise price of \$0.75 per share. The August 2015 Investor Warrants all have a five-year expiration term and are immediately exercisable from the date of issuance. Shares of common stock issuable upon exercise of August 2015 Investor Warrants are being offered for resale by the selling stockholders identified in this prospectus.

July 2015 Placement

Between June 30, 2015 and July 31, 2015, we completed a private placement to accredited investors (which we refer to as the July 2015 Placement) of an aggregate of 9,785,621 shares of our common stock, together with warrants (the July 2015 Investor Warrants) to purchase an aggregate of 4,892,791 shares of our common stock at an exercise price of \$0.75 per share. We paid Paulson Investment Company, LLC, as the placement agent in the July 2015 Placement, in addition to certain cash fees, warrants (the July 2015 Placement Agent Warrants) to purchase an aggregate of 1,272,131 shares of our common stock at an exercise price of \$0.75 per share. The July 2015 Investor Warrants and the July 2015 Placement Agent Warrants all have a five-year expiration term and are immediately exercisable from the date of issuance. Shares of common stock issuable upon exercise of July 2015 Investor Warrants and July 2015 Placement Agent Warrants are being offered for resale by the selling stockholders identified in this prospectus.

May 2015 Convertible Notes Placement

Between April 30, 2015 and May 15, 2015, we completed a private placement to accredited investors (the May 2015 Convertible Notes Placement) of convertible promissory notes in the aggregate principal of \$3,981,050 (the May 2015 Notes), together with warrants (the May 2015 Investor Warrants) to purchase an aggregate of 1,061,586 shares of our common stock at an exercise price of \$0.75 per share. The May 2015 Notes have all subsequently been repaid or converted into or exchanged for other securities in separate transactions. We paid Paulson Investment Company, LLC, as the placement agent in the May 2015 Convertible Notes Placement, in addition to certain cash fees, warrants (the May 2015 Placement Agent Warrants) to purchase an aggregate of 530,802 shares of our common stock at an exercise price of \$0.75 per share. The May 2015 Investor Warrants and May 2015 Placement Agent Warrants all have a five-year expiration term and are immediately exercisable from the date of issuance. Shares of common stock issuable upon exercise of May 2015 Investor Warrants and May 2015 Placement Agent Warrants are being offered for resale by the selling stockholders identified in this prospectus.

October 2013 Units Placement

Between September 25, 2013 and October 23, 2013, we completed a private placement to accredited investors (the October 2013 Units Placement) of 11,154,221 units, with each unit comprising two shares of common stock and a warrant to purchase one share of common stock at an exercise price of \$0.75 per share, expiring five years from the date of issuance. A total of 22,308,466 shares of common stock were issued, together with warrants (the October 2013 Investor Warrants) to purchase a total of 11,154,221 additional shares of our common stock. We paid

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Paulson Investment Company, LLC, as the placement agent in the October 2013 Units Placement, in addition to certain cash fees, warrants (the October 2013 Placement Agent Warrants) to purchase an aggregate of 4,860,092 shares of our common stock at an exercise price of \$0.75 per share, expiring seven years from the date of issuance. The October 2013 Investor Warrants and the October 2013 Placement Agent Warrants are immediately exercisable from the date of issuance. Shares of common stock issued or issuable upon exercise of October 2013 Investor Warrants and October 2013 Placement Agent Warrants are being offered for resale by the selling stockholders identified in this prospectus.

The January 2016 Investor Warrants, the August 2015 Investor Warrants, the July 2015 Investor Warrants, the May 2015 Investor Warrants and the October 2013 Investor Warrants are referred to collectively in this prospectus as the Investor Warrants. The January 2016 Placement Agent Warrants, the July 2015 Placement Agent Warrants, the May 2015 Placement Agent Warrants and the October 2013 Placement Agent Warrants are referred to collectively in this prospectus as the Placement Agent Warrants.

Bridge Note Warrant Shares

On July 31, 2013, we issued in a private placement to accredited investors (the July 2013 Bridge Notes Financing) a total of \$1.2 million in unsecured convertible promissory notes (the Bridge Notes), bearing interest at a rate of 5% per year and convertible into shares of our common stock at a price of \$0.65 per share. The July 2013 Bridge Notes have all subsequently been repaid or converted into or exchanged for other securities in separate transactions.

As part of the July 2013 Bridge Notes Financing, at the time of the original issuances of the Bridge Notes, we also issued to investors warrants (the Bridge Note Warrants) to purchase a total of 923,072 shares of common stock at an exercise price of \$0.50 per share, expiring on July 31, 2016. All of the Bridge Note Warrants were exercised for common stock (the Bridge Note Warrant Shares) prior to July 31, 2016. Certain Bridge Note Warrant Shares are being offered for resale by the selling stockholders identified in this prospectus.

Convertible Note Warrants

Between October 1, 2012 and May 31, 2013, we issued in private placements to accredited investors (the Convertible Notes Financing) approximately \$6.6 million in aggregate principal amount of unsecured convertible promissory notes (the Convertible Notes). The Convertible Notes bore interest at annual rates ranging from 5% to 10%, payable semi-annually, had maturity dates ranging from six months to three years from the date of issuance, and were convertible into shares of common stock at prices ranging from \$0.65 per share to \$0.75 per share. The Convertible Notes have all subsequently been repaid or converted into or exchanged for other securities in separate transactions, in certain cases pursuant to the inducement offers described below.

As part of the Convertible Notes Financing, at the time of the original issuances of the Convertible Notes, we also issued to investors warrants (the Convertible Note Warrants) to purchase an aggregate of 8,527,984 shares of common stock, which initially had a two-year expiration term and exercise prices ranging from \$0.75 to \$2.00 per share. On various occasions between October 1, 2013 and March 23, 2015, as an inducement to convert the related Convertible Notes, we periodically offered (i) to extend the expiration term of Convertible Note Warrants, (ii) to issue additional Convertible Note Warrants, in certain cases in replacement of previously expired Convertible Note Warrants, and/or (iii) to reduce the exercise price of the Convertible Note Warrants, in certain cases conditioned upon the immediate exercise thereof. In October 2015 and October 2016, we also subsequently extended expiration terms of unexercised Convertible Note Warrants to align more closely with the longer expiration terms of warrants issued in subsequent private placements.

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As a result of the foregoing, and accounting for certain prior exercises and expirations of Convertible Notes Warrants, as of the date of this prospectus, Convertible Note Warrants covering an aggregate of 6,602,984 shares of common stock remain outstanding, at an exercise price of \$1.00 per share, with expiration dates ranging from to October 1, 2017 to January 15, 2018 Shares of common stock issuable upon exercise of such Convertible Notes Warrants are being offered for resale by the selling stockholders identified in this prospectus.

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Consultant Warrants

We have also issued to Paul J. Maddon, M.D., Ph.D., two warrants (the Consultant Warrants) to purchase an aggregate of 440,000 shares of our common stock, as consideration for services provided as a third-party consultant. The first Consultant Warrant covers 200,000 shares, was issued July 13, 2015, has an exercise price of \$1.02 per share and a 10-year expiration term, and vests in two equal annual installments commencing on January 1, 2016. The second Consultant Warrant covers 240,000 shares, was issued January 4, 2016, has an exercise price of \$0.92 per share and a 10-year expiration term, and vests in four equal quarterly installments commencing on January 4, 2016. Shares of common stock issuable upon exercise of Consultant Warrants are being offered for resale by the selling stockholders identified in this prospectus.

The Investor Warrants, the Placement Agent Warrants, the Convertible Note Warrants and the Consultant Warrants are referred to collectively in this prospectus as the Warrants.

This Offering

We are registering for resale by the selling stockholders named herein an aggregate of 51,135,068 shares of our common stock as described below.

| | |
|---------------------------|--|
| Securities being offered: | Up to 51,135,068 shares of our common stock, including (i) 33,664,847 shares previously issued or issuable upon exercise of Investor Warrants (including 83,477 shares previously issued which are currently outstanding), (ii) 9,811,856 shares issuable upon exercise of Placement Agent Warrants, (iii) 615,381 Bridge Note Warrant Shares, (iv) 6,602,984 shares issuable upon exercise of Convertible Note Warrants, and (vi) 440,000 shares issuable upon exercise of Consultant Warrants. |
| Use of proceeds: | We will not receive any of the proceeds from the sale or other disposition of shares of our common stock by the selling stockholders. We may receive proceeds upon any exercise for cash of the Warrants, in which case such proceeds will be used for general working capital purposes. The Placement Agent Warrants and the Consultant Warrants include a cashless exercise feature, while the Investor Warrants and the Convertible Notes Warrants do not. |
| Market for common stock: | Our common stock is quoted on the OTCQB of the OTC Markets under the symbol CYDY. On September 28, 2016, the closing price of our common stock was \$0.70 per share. |
| Risk factors: | See Risk Factors beginning on page 6 for risks you should consider before investing in our shares. |

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RISK FACTORS

Investing in our securities involves risks. You should carefully consider the risks, uncertainties and other factors described in our most recent Annual Report on Form 10-K, as supplemented and updated by subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K that we have filed or will file with the SEC, and in other documents which are incorporated by reference into this prospectus, as well as the risk factors and other information contained in or incorporated by reference into any accompanying prospectus supplement before investing in any of our securities. Our financial condition, results of operations or cash flows could be materially adversely affected by any of these risks. The risks and uncertainties described in the documents incorporated by reference herein are not the only risks and uncertainties that you may face.

For more information about our SEC filings, please see [Where You Can Find More Information](#) and [Incorporation of Certain Information by Reference](#).

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USE OF PROCEEDS

We will receive no proceeds from the sale of shares of common stock by the selling stockholders.

A portion of the shares of common stock covered by this prospectus are issuable upon exercise of Warrants issued to the selling stockholders. The exercise price of the Investor Warrants and the Placement Agent Warrants is \$0.75 per share; the exercise price of the Convertible Note Warrants is \$1.00 per share; and the exercise prices of the Consultant Warrants is \$1.02 or \$0.92 per share, as the case may be. The exercise price and number of shares of common stock issuable upon exercise of the Warrants may be adjusted in certain circumstances, including stock splits or dividends, mergers, or reclassifications or similar events. Upon any exercise of Warrants for cash, the selling stockholders will pay us the exercise price. The Placement Agent Warrants and the Consultant Warrants include a cashless exercise feature, while the Investor Warrants and the Convertible Notes Warrants do not.

To the extent we receive proceeds from the cash exercise of outstanding warrants, we intend to use the proceeds for working capital and other general corporate purposes.

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SELLING STOCKHOLDERS

The table below sets forth information concerning the resale of our shares by the selling stockholders. The selling stockholders acquired our securities in private placement transactions. The total number of common shares sold under this prospectus may be adjusted to reflect adjustments due to stock dividends, stock distributions, splits, combinations or recapitalizations with regard to the common stock and warrants. Unless otherwise stated below in the footnotes, to our knowledge, no selling stockholder, nor any affiliate of such stockholder: (i) has held any position or office with us during the three years prior to the date of this prospectus; or (ii) is a broker-dealer, or an affiliate of a broker-dealer.

The selling stockholders may exercise their warrants at any time in their sole discretion. Set forth below is the name of each selling stockholder and the amount and percentage of common stock owned by each (including shares which a stockholder has the right to acquire within 60 days, including upon exercise of options or warrants) prior to the offering, the shares to be sold in the offering, and the amount and percentage of common stock to be owned by each (including shares which a stockholder has the right to acquire within 60 days, including upon exercise of options or warrants) after the offering assuming all shares are sold. The footnotes provide information about persons who have voting and dispositive power with respect to shares held by the selling stockholders.

We have registered up to 51,135,068 shares of our common stock, including (i) 33,664,847 shares previously issued or issuable upon exercise of Investor Warrants (including 83,477 shares previously issued which are currently outstanding), (ii) 9,811,856 shares issuable upon exercise of Placement Agent Warrants, (iii) 615,381 Bridge Note Warrant Shares, (iv) 6,602,984 shares issuable upon exercise of Convertible Note Warrants, and (vi) 440,000 shares issuable upon exercise of Consultant Warrants. See Prospectus Summary above.

The following table is based on information provided to us by the selling stockholders and is as of August 31, 2016. The selling stockholders may sell all or some of the shares of common stock they are offering, and may sell unless indicated otherwise in the footnotes below shares of our common stock otherwise than pursuant to this prospectus. The tables below assume that each selling stockholder sells all of the shares offered by it in offerings pursuant to this prospectus, and does not acquire any additional shares. We are unable to determine the exact number of shares that will actually be sold or when or if these sales will occur.

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| Name of Selling | Shares | % | Shares | Number | % of |
|--|---------------------|---------------------|-------------------|-----------------|---------------------|
| | Beneficially | Owned | Offered | of | Shares |
| Stockholder | Owned | Pre- | to | Shares | Post- |
| | Pre- | Offering (1) | This | Post- | Offering (2) |
| | Offering (1) | Offering (2) | Prospectus | Offering | Offering (2) |
| 3530 Partnership | 6,666 | * | 6,666 | | * |
| 3NT Management LLC (3)(54) | 3,349,999 | 2.6% | 1,666,666 | 1,683,333 | 1.3% |
| AAR Account Family Limited Partnership (4) | 84,055 | * | 84,055 | | * |
| Abby Dalton | 34,683 | * | 34,683 | | * |
| Adolfo and Donna Carmona Jt Ten | 468,111 | * | 268,111 | 200,000 | * |
| Ajay Kalra | 66,333 | * | 33,333 | 33,000 | * |
| Alan and Susan Cohen | 34,055 | * | 34,055 | | * |
| Alan Jacqueline Reed Family Trust B (5) | 17,028 | * | 17,028 | | * |
| Albert H. Konetzni Jr. | 199,998 | * | 66,666 | 133,332 | * |
| Albert Starr | 150,000 | * | 50,000 | 100,000 | * |
| Alexander Vergopoulos (6) | 68,090 | * | 34,045 | 34,045 | * |
| Allan Rothstein | 66,666 | * | 66,666 | | * |
| Allen Gabriel | 604,849 | * | 166,665 | 438,184 | * |
| Alon Cohen | 79,999 | * | 26,666 | 53,333 | * |
| Alpha Venture Capital Partners, LP (7) | 9,943,832 | 7.96% | 1,047,850 | 8,895,982 | 7.1% |
| Alva Terry Staples (8) | 99,998 | * | 33,332 | 66,666 | * |
| Amer H. Haider | 168,109 | * | 101,443 | 66,666 | * |
| Anand Chakraborty | 99,999 | * | 33,333 | 66,666 | * |
| Anders Lindholm | 166,666 | * | 166,666 | | * |
| Andrej Schon | 6,666 | * | 6,666 | | * |
| Andrew Brill | 100,000 | * | 100,000 | | * |
| Andrew Lechter | 488,332 | * | 163,332 | 325,000 | * |
| Andrzej Roth | 150,000 | * | 50,000 | 100,000 | * |
| Anthony Farello | 99,999 | * | 33,333 | 66,666 | * |
| Anthony M. Stolarski | 23,612 | * | 23,612 | | * |
| Aronow Capital, LLC | 394,000 | * | 91,000 | 303,000 | * |
| Art Sadin | 684,051 | * | 317,386 | 366,665 | * |
| Arthur B. Baer | 99,999 | * | 33,333 | 66,666 | * |
| Ashok and Harshida Patel | 77,088 | * | 43,755 | 33,333 | * |
| Ashok Patel | 49,999 | * | 16,666 | 33,333 | * |
| Atlantic Realty Group, Inc. | 999,996 | * | 333,331 | 666,665 | * |
| Austin 1997 Trust | 49,999 | * | 16,666 | 33,333 | * |
| Austin Mansur | 42,028 | * | 42,028 | | * |
| Babu Jain | 51,000 | * | 17,000 | 34,000 | * |
| Barbara Clark | 601,513 | * | 601,513 | | * |
| Barbara Lile-Duzsik | 40,866 | * | 13,622 | 27,244 | * |
| Barry Saxe | 1,609,995 | * | 536,665 | 1,073,330 | * |
| Bell Family Trust dtd 2/2/1995 | 399,999 | * | 133,333 | 266,666 | * |
| Benjamin Heller | 102,000 | * | 34,000 | 68,000 | * |
| Bill Hunt | 100,832 | * | 29,999 | 70,833 | * |
| Binit J Shah | 99,999 | * | 33,333 | 66,666 | * |

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| | | | | | |
|--|-----------|------|-----------|-----------|------|
| Blaine Garst | 2,400,000 | 1.9% | 800,000 | 1,600,000 | 1.3% |
| Blue Ocean Equity LLC Retirement Plan Trust | 33,333 | * | 33,333 | | * |
| Bobby E. Benton | 199,999 | * | 66,666 | 133,333 | * |
| Bradford Paskewitz | 102,165 | * | 102,165 | | * |
| Bradley C. and Belinda Karp Tenants in Common (9) | 1,044,691 | * | 253,331 | 1,175,157 | * |
| Bradley Resources Company, LLC | 51,000 | * | 17,000 | 34,000 | * |
| Brenna Tanzosh | 57,693 | * | 19,231 | 38,462 | * |
| Brett Korsgaard | 13,098 | * | 13,098 | | * |
| Brian A. Halpern | 44,627 | * | 6,666 | 37,961 | * |
| Brian J. and Cheryl A Fenske JTWROS | 99,999 | * | 33,333 | 66,666 | * |
| Brian Sterling | 20,433 | * | 6,811 | 13,622 | * |
| Bruce D. Goethe and Laura K. Goethe Jt Ten | 240,000 | * | 80,000 | 160,000 | * |
| Bruce H. Seyburn | 204,330 | * | 68,110 | 136,220 | * |
| Bruce P. and Nancy M. Inglis JTWROS | 70,000 | * | 30,000 | 40,000 | * |
| Bruce Seyburn | 399,999 | * | 133,333 | 266,666 | * |
| Burt Stangarone | 175,000 | * | 100,000 | 75,000 | * |
| C Joseph VanHaverbeke Trust 1 dated 2/15/95 | 49,999 | * | 16,666 | 33,333 | * |
| C. David and Lisa Callaham (10) | 2,225,512 | 1.8% | 1,660,726 | 999,786 | * |
| C. James & Karen A. Prieur JTWROS | 578,718 | * | 159,998 | 418,720 | * |
| Caisson Breakwater Fund Ltd. | 299,999 | * | 299,999 | | * |
| Caisson Breakwater Fund, LP | 166,666 | * | 166,666 | | * |
| Caisson Breakwater Global Opportunity Fund, LP | 513,332 | * | 513,332 | | * |
| Calcott Family Trust | 61,306 | * | 23,332 | 37,974 | * |
| Callaham & Callaham (11) | 216,667 | * | 216,667 | | * |
| Callaham Revocable Trust (12) | 475,000 | * | 125,000 | 350,000 | * |
| Candy D Azevedo Trust under Pauline Howard Trust 01/02/1998 | 44,732 | * | 6,666 | 38,066 | * |
| Capacity Commercial Group, LLC | 199,999 | * | 66,666 | 133,333 | * |
| Cedric A and Margaret E Veum Living Trust (13) | 309,930 | * | 103,310 | 206,620 | * |
| Chad Krull | 33,333 | * | 33,333 | | * |

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| Name of Selling Stockholder | Shares Beneficially Owned Pre- Offering (1) | % Owned Pre- Offering (2) | Shares Offered Pursuant to This Prospectus | Number of Shares Post- Offering | % of Shares Post- Offering (2) |
|--|--|--|---|--|---|
| Charles E. Mader | 94,731 | * | 23,332 | 71,399 | * |
| Charles M. Johnson Jr. | 378,506 | * | 93,332 | 285,174 | * |
| Charterhouse Capital Corporation | 1,999,998 | 1.6% | 666,666 | 1,333,332 | 1.1% |
| Chitayat Holdings, LLC (14) | 999,999 | * | 333,333 | 666,666 | * |
| Chris H. Miller | 40,866 | * | 13,622 | 27,244 | * |
| Christian Kurmann | 600,000 | * | 200,000 | 400,000 | * |
| Christopher P. Gutek | 39,998 | * | 39,998 | | * |
| Christopher R. Hermann | 78,588 | * | 26,196 | 52,392 | * |
| Clayton A. Struve (15) | 790,000 | * | 290,000 | 500,000 | * |
| Craig Bordon (16) | 3,885,166 | 3.1% | 2,031,833 | 1,853,333 | 1.5% |
| Currie Family Trust | 30,000 | * | 10,000 | 20,000 | * |
| Curt A. Christeson | 10,478 | * | 10,478 | | * |
| Czar Ventures, LLC | 46,666 | * | 46,666 | | * |
| Dale G. Ragan (17) | 965,583 | * | 698,917 | 266,666 | * |
| Dale Jones | 24,999 | * | 8,333 | 16,666 | * |
| Daniel Nowlin | 430,000 | * | 20,000 | 410,000 | * |
| Daniel X. Wray | 183,922 | * | 36,666 | 147,256 | * |
| Darob Zokaei | 13,622 | * | 13,622 | | * |
| Darrell K. Stone II | 115,384 | * | 38,462 | 76,922 | * |
| Darren Scott | 124,998 | * | 41,666 | 83,332 | * |
| David A. Dent | 264,330 | * | 88,110 | 176,220 | * |
| David A. Ufheil | 333,333 | * | 133,333 | 200,000 | * |
| David Burnidge | 5,239 | * | 5,239 | | * |
| David I. Schneider | 10,505 | * | 10,505 | | * |
| David P. and Carole A. Scheid | 70,218 | * | 23,406 | 46,812 | * |
| Dear Invest AB (18) | 249,939 | * | 83,313 | 166,626 | * |
| Debra Kanelstein | 147,027 | * | 97,027 | 50,000 | * |
| Dennis Tasler | 152,392 | * | 85,726 | 66,666 | * |
| DiBenedetto Holdings LLC | 99,999 | * | 33,333 | 66,666 | * |
| Dominick Maiorano | 19,231 | * | 19,231 | | * |
| Donald Kornfeld | 69,998 | * | 23,332 | 46,666 | * |
| Donald M. Cooper | 408,663 | * | 136,221 | 272,442 | * |
| Double Add Investments LLC (19) | 23,076 | * | 7,692 | 15,384 | * |
| Douglas E. Jasek | 30,000 | * | 10,000 | 20,000 | * |
| Dr. Ralph N. Wharton | 224,228 | * | 79,229 | 144,999 | * |
| Dr. Sanjay Gupta | 75,000 | * | 75,000 | | * |
| Drew Bledsoe | 17,028 | * | 17,028 | | * |
| Due Mondι Investments, LTD (20) | 57,691 | * | 19,231 | 38,460 | * |
| Dyke Rogers | 624,999 | * | 166,666 | 458,333 | * |
| Dyke Rogers 2011 Children s Trust | 362,498 | * | 99,999 | 262,499 | * |
| Dynamite Investment LLC (21) | 251,484 | * | 251,484 | | * |

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|---|---------|---|---------|---------|---|
| EBA Capital Inc. | 99,998 | * | 33,332 | 66,666 | * |
| EKM Capital, LLC (22) | 629,262 | * | 13,500 | 779,094 | * |
| Elden R. Gosney | 207,587 | * | 59,529 | 148,058 | * |
| Emmanuel and Cheryl Menayas | 6,666 | * | 6,666 | | * |
| Emanuel Selya | 13,098 | * | 13,098 | | * |
| Emerson Thomas Springer Jr. | 41,169 | * | 6,666 | 34,503 | * |
| Emily W. Sunstein Residuary Marital Trust U/D dtd 1/1/96 as amended and restated on 12/15/01 & further amended (23) | 770,000 | * | 390,000 | 380,000 | * |
| Eran Cohen | 170,528 | * | 58,028 | 112,500 | * |
| Ernie Kreitenberg | 99,999 | * | 33,333 | 66,666 | * |
| First Premier Bank, Custodian of Marilyn R. Huether IRA (24) | 19,231 | * | 19,231 | | * |
| Firstfire Global Opportunities Fund, LLC | 66,666 | * | 66,666 | | * |
| Florence K. Simons Family Trust (25) | 17,028 | * | 17,028 | | * |
| Fourfathom Capital, LLC | 199,999 | * | 66,666 | 133,333 | * |
| Francis G Russo | 200,000 | * | 200,000 | | * |
| Francis Lymburner | 718,966 | * | 568,966 | 150,000 | * |
| Frank Koza | 16,666 | * | 16,666 | | * |
| Frank Magdlen | 23,100 | * | 7,700 | 15,400 | * |
| Frank Petrosino | 185,000 | * | 20,000 | 165,000 | * |
| Fred & Betty Bialek Revocable Trust dtd 12/20/04 (26) | 323,750 | * | 98,023 | 225,727 | * |
| G & D Conniff, LLC | 278,661 | * | 59,999 | 218,662 | * |
| Gary Braga | 99,999 | * | 33,333 | 66,666 | * |
| Gary W. Levine | 144,638 | * | 39,998 | 104,640 | * |
| George and Karin A. Elefther JTWROS | 102,000 | * | 34,000 | 68,000 | * |
| George Callaham (27) | 209,333 | * | 183,333 | 26,000 | * |
| George M. Wilson | 126,084 | * | 42,028 | 84,056 | * |
| Gerald A. Tomsic 1995 Trust | 99,999 | * | 33,333 | 66,666 | * |
| Gerald McBride | 68,110 | * | 68,110 | | * |

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| Name of Selling Stockholder | Shares Beneficially Owned Pre- Offering (1) | % Owned Pre- Offering (2) | Shares Offered Pursuant to This Prospectus | Number of Shares Post- Offering | % of Shares Post- Offering (2) |
|------------------------------------|--|----------------------------------|---|--|---------------------------------------|
| Gil Bakal | 80,433 | * | 26,811 | 53,622 | * |
| Gil Solomon | 99,999 | * | 33,333 | 66,666 | * |
| Glen Stein | 165,382 | * | 55,127 | 110,255 | * |
| Goff VC Fund CD LLC (28) | 93,783 | * | 93,783 | | * |
| Gordon and Marie Beers Sjodin | 204,330 | * | 68,110 | 136,220 | * |
| Gordon D. and Jeanne K. King | 77,000 | * | 38,500 | 38,500 | * |
| Gordon J. Weiss | 16,666 | * | 16,666 | | * |
| Gordon Nichols (29) | 67,378 | * | 33,333 | 34,045 | * |
| Guy Ponticiello | 25,404 | * | 25,404 | | * |
| Haden Capital LLC (30) | 349,999 | * | 116,666 | 233,333 | * |
| Harkishan Parekh | 49,999 | * | 16,666 | 33,333 | * |
| Harrison Caplan | 64,998 | * | 24,999 | 39,999 | * |
| Heather Wiswall | 57,691 | * | 19,231 | 38,460 | * |
| Hideo Takada | 200,000 | * | 200,000 | | * |
| Howard C. Hutt | 712,162 | * | 438,830 | 273,332 | * |
| Howard Richmond | 26,942 | * | 26,942 | | * |
| Hunse Investments, LP (31) | 122,731 | * | 65,999 | 56,732 | * |