

CYTODYN INC  
Form SC TO-I  
August 24, 2015  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**SCHEDULE TO**  
**(Rule 14d-100)**  
**TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)**  
**OF THE SECURITIES EXCHANGE ACT OF 1934**

**CYTODYN INC.**

**(Name of Subject Company (Issuer))**

**CYTODYN INC.**

**(Name of Filing Persons (Issuer))**

**Convertible Promissory Notes issued April 30, 2015    May 15, 2015**

**(Title of Class of Securities)**

**N/A**

**(CUSIP Number of Class of Securities)**

**Michael D. Mulholland**

**Chief Financial Officer**

**CytoDyn Inc.**

**1111 Main Street, Suite 660**

**Vancouver, Washington 98660**

**Phone: (360) 980-8524**

**(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)**

*With copies to:*

**Michael J. Lerner, Esq.**

**Steven M. Skolnick, Esq.**

**Lowenstein Sandler LLP**

**1251 Avenue of the Americas**

**New York, New York 10020**

**Phone: (212) 262-6700**

**CALCULATION OF FILING FEE**

**Transaction Valuation\***  
\$4,045,464

**Amount of Filing Fee**  
\$470.09

\* The transaction value is estimated solely for purposes of calculating the amount of the filing fee, pursuant to Rule 0-11 under the Securities and Exchange Act of 1934. The calculation is based upon the value of the Eligible Notes to be received by the Company in the Offer. Because there is no market for the Eligible Notes, the value is based upon the book value of the Eligible Notes, computed as of July 31, 2015, in accordance with Rule 0-11(a)4).

\*\* Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid:  
Form or Registration No.:

Filing Party:  
Date Filed:

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Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1.

issuer tender offer subject to Rule 13e-4.

going-private transaction subject to Rule 13e-3.

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

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This Tender Offer Statement on Schedule TO relates to the offer by CytoDyn Inc., a Colorado corporation (the Company or CytoDyn ), to exchange certain of its outstanding convertible promissory notes (the Eligible Notes ) for (i) the issuance of restricted shares of its common stock, no par value per share (the Common Stock ) for the settlement of the balance of the Eligible Notes (including principal and interest) at \$0.675 per share (the Offer Price ) and (ii) the amendment of the related warrants to purchase common stock (the Eligible Warrants ) to reduce the exercise price of the Eligible Warrants to the Offer Price of \$0.675 per share, in each case upon the terms and subject to the conditions set forth in the Offer to Exchange (the Offering Memorandum ), and the Election Form (the Election Form ), which together, as each may be amended and supplemented from time to time, constitute the Offer (the Offer ). The Offer Price represents a 10.0% discount to \$0.75, which is the current conversion price of the Eligible Notes and current exercise price of the Eligible Warrants. This Schedule TO is intended to satisfy the reporting requirements of Rule 13e-4(c) of the Securities Exchange Act of 1934, as amended (the Exchange Act ). The information contained in the Offering Memorandum and the Election Form, copies of which are attached to this Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively, is incorporated herein by reference in response to all of the items of this Schedule TO as more particularly described below.

### **Item 1. Summary Term Sheet.**

The information set forth in the Offering Memorandum under the caption Summary of Terms is incorporated herein by reference.

### **Item 2. Subject Company Information.**

(a) *Name and Address.* The name of the subject company is CytoDyn Inc. The address of the principal executive offices of CytoDyn is 1111 Main Street, Suite 660, Vancouver, Washington, 98660. The telephone number of the principal executive offices of CytoDyn is (360) 980-8524.

(b) *Securities.* The information set forth in Section 10 of the Offering Memorandum under the caption Description of Convertible Promissory Notes and Warrants to Purchase Common Stock; Source and Amount of Consideration is incorporated herein by reference.

(c) *Trading Market and Price.* The Eligible Notes and the Eligible Warrant do not trade on any market. The information set forth in Section 10 of the Offering Memorandum under the caption Market for our Common Stock is incorporated herein by reference.

### **Item 3. Identity and Background of Filing Person.**

This is an issuer tender offer. CytoDyn, the subject company, is the filing person. CytoDyn's address and telephone number are set forth in Item 2 above.

Pursuant to General Instruction C to Schedule TO, the information set forth in Section 12 of the Offering Memorandum under the caption Interests of Directors and Executive Officers; Transactions and Arrangements is incorporated herein by reference.

**Item 4. Terms of the Transaction.**

(a) *Material Terms.* The following sections of the Offering Memorandum contain information regarding the material terms of the transaction and are incorporated herein by reference.

Summary of Terms;

Risks of Participating in the Offer;

Section 1. Background and Purpose of the Offer;

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Section 2. Eligibility;

Section 3. Exchange of Eligible Notes;

Section 4. Procedures for Tendering Eligible Notes;

Section 5. Acceptance of Eligible Notes; Issuance of Common Stock and Amendment of Eligible Warrants;

Section 6. Extension of the Offer; Termination; Amendment;

Section 7. Withdrawal Rights;

Section 8. Conditions of the Offer;

Section 10. Description of Convertible Promissory Notes and Warrants to Purchase Common Stock; Source and Amount of Consideration;

Section 11. Information Regarding CytoDyn;

Section 12. Interests of Directors and Executive Officers; Transactions and Arrangements;

Section 13. Accounting Consequences of the Offer;

Section 14. Legal Matters; Regulatory Approvals;

Section 15. Certain United States Federal Income Tax Considerations;

Section 16. Fees and Expenses; and

Section 17. Additional Information.

(b) *Purchases*. The information set forth in Section 12 of the Offering Memorandum under the caption Interests of Directors and Executive Officers; Transactions and Arrangements is incorporated herein by reference.

**Item 5. Past Contacts, Transactions, Negotiations and Agreements.**

The information set forth in Section 12 of the Offering Memorandum under the caption Interests of Directors and Executive Officers; Transactions and Arrangements is incorporated herein by reference.

**Item 6. Purposes of the Transaction and Plans or Proposals.**

(a) and (b) *Purposes; Use of Securities Acquired*. The following sections of the Offering Memorandum, which contain information regarding the purposes of the transaction and use of securities acquired, are incorporated herein by reference:

Summary of Terms; and

Section 1: Background and Purpose of the Offer.

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(c) *Plans.* Except as disclosed in the Offering Memorandum, the Company currently has no plans, proposals or negotiations that relate to or would result in:

any extraordinary transaction, such as a merger, reorganization or liquidation, involving CytoDyn or any of its subsidiaries;

any purchase, sale or transfer of a material amount of assets of CytoDyn or any of its subsidiaries;

any material change in the present dividend rate or policy, or indebtedness or capitalization of CytoDyn;

any change in the present Board of Directors or management of CytoDyn, including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the Board or to change any material term of the employment contract of any executive officer;

any other material change in CytoDyn's corporate structure or business;

any class of equity securities of CytoDyn to be delisted from a national securities exchange or cease to be authorized to be quoted in an automated quotation system operated by a national securities exchange;

any class of equity securities of CytoDyn becoming eligible for termination of registration under Section 12(g)(4) of the Exchange Act;

the suspension of CytoDyn's obligation to file reports under Section 15(d) of the Exchange Act;

the acquisition by any person of additional securities of CytoDyn, or the disposition of securities of CytoDyn; or

any changes in the CytoDyn's charter, bylaws or other governing instruments or other actions that could impede the acquisition of control of CytoDyn.

**Item 7. Source and Amount of Funds or Other Consideration.**

(a), (b) and (d) *Source of Funds; Conditions; Borrowed Funds.* The information set forth in Section 10 of the Offering Memorandum under the caption "Description of Convertible Promissory Notes and Common Stock Purchase Warrants; Source and Amount of Consideration" is incorporated herein by reference.

**Item 8. Interest in Securities of the Subject Company.**

(a) and (b) *Securities Ownership; Securities Transactions*. The information set forth in Section 12 of the Offering Memorandum under the caption *Interests of Directors and Executive Officers; Transactions and Arrangements* is incorporated herein by reference.

**Item 9. Persons/Assets Retained, Employed, Compensated or Used.**

The information set forth in Section 16 of the Offering Memorandum under the caption *Fees and Expenses* is incorporated herein by reference.

**Item 10. Financial Statements.**

(a) and (b) *Financial Information; Pro Forma Information*. The financial information set forth in Item 8 Financial Statements in the Company's Annual Report on Form 10-K for the year ended May 31, 2015, filed with the SEC on July 10, 2015, and the financial information set forth in Section 11 of the Offering Memorandum under the caption *Information Regarding CytoDyn*, Section 13 of the Offering Memorandum under the caption *Accounting Consequences of the Merger* and Section 17 of the Offering Memorandum under the caption *Additional Information* is incorporated herein by reference.

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**Item 11. Additional Information.**

(a) *Agreements, Regulatory Requirements and Legal Proceedings.* The information set forth in the following sections of the Offering Memorandum is hereby incorporated by reference:

Section 11. Information Regarding CytoDyn;

Section 12. Interests of Directors and Executive Officers; Transactions and Arrangements;

Section 14. Legal Matters; Regulatory Approvals; and

Section 15. Certain United States Federal Income Tax Considerations.

(c) *Other Material Information.* The information set forth in the Offering Memorandum and the Election Form, copies of which are filed with this Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively, as each may be amended or supplemented from time to time, is incorporated herein by reference.

**Item 12. Exhibits.**

- (a)(1)(A) Offer to Exchange Convertible Promissory Notes and Amend Warrants to Purchase Common Stock Issued Between April 30, 2015- May 15, 2015, dated August 24, 2015
- (a)(1)(B) Election Form
- (a)(1)(C) Withdrawal Form
- (a)(1)(D) Letter from Michael D. Mulholland, Chief Financial Officer of the Company, to holders of Eligible Notes dated August 24, 2015

**Item 13. Information Required by Schedule 13E-3.**

Not applicable.

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**SIGNATURE**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: August 24, 2015

**CytoDyn Inc.**

By: /s/ Michael D. Mulholland

Name: Michael D. Mulholland

Title: Chief Financial Officer

*[Signature Page to Schedule TO]*

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**EXHIBIT INDEX**

Exhibit No.	Description
(a)(1)(A)	Offer to Exchange Convertible Promissory Notes and Amend Warrants to Purchase Common Stock Issued Between April 30, 2015- May 15, 2015, dated August 24, 2015
(a)(1)(B)	Election Form
(a)(1)(C)	Withdrawal Form
(a)(1)(D)	Letter from Michael D. Mulholland, Chief Financial Officer of the Company, to holders of Eligible Notes dated August 24, 2015