

COVANTA HOLDING CORP  
Form 10-Q  
October 29, 2015  
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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT  
OF 1934

For the quarterly period ended September 30, 2015

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT  
OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-06732

COVANTA HOLDING CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction of  
Incorporation or Organization)

95-6021257

(I.R.S. Employer  
Identification Number)

445 South Street, Morristown, NJ  
(Address of Principal Executive Office)  
(862) 345-5000

07960

(Zip Code)

(Registrant's telephone number including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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 reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

Applicable Only to Corporate Issuers:

Indicate the number of shares of the registrant's Common Stock outstanding as of the latest practicable date.

Class  
Common Stock, \$0.10 par value

Outstanding at October 23, 2015  
133,169,737

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COVANTA HOLDING CORPORATION AND SUBSIDIARIES  
FORM 10-Q QUARTERLY REPORT  
For the Quarter Ended September 30, 2015

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements in this Quarterly Report on Form 10-Q may constitute “forward-looking” statements as defined in Section 27A of the Securities Act of 1933 (the “Securities Act”), Section 21E of the Securities Exchange Act of 1934 (the “Exchange Act”), the Private Securities Litigation Reform Act of 1995 (the “PSLRA”) or in releases made by the Securities and Exchange Commission (“SEC”), all as may be amended from time to time. Such forward-looking statements involve known and unknown risks, uncertainties and other important factors that could cause the actual results, performance or achievements of Covanta Holding Corporation and its subsidiaries (“Covanta”) or industry results, to differ materially from any future results, performance or achievements expressed or implied by such forward-looking statements. Statements that are not historical fact are forward-looking statements. Forward-looking statements can be identified by, among other things, the use of forward-looking language, such as the words “plan,” “believe,” “expect,” “anticipate,” “intend,” “estimate,” “project,” “may,” “will,” “would,” “could,” “should,” “seeks,” or “schedule,” or similar words, or the negative of these terms or other variations of these terms or comparable language, or by discussion of strategy or intentions. These cautionary statements are being made pursuant to the Securities Act, the Exchange Act and the PSLRA with the intention of obtaining the benefits of the “safe harbor” provisions of such laws. Covanta cautions investors that any forward-looking statements made by us are not guarantees or indicative of future performance. Important factors, risks and uncertainties that could cause actual results to differ materially from those forward-looking statements include, but are not limited to:

- seasonal or long-term fluctuations in the prices of energy, waste disposal, scrap metal and commodities;
- our ability to renew or replace expiring contracts at comparable prices and with other acceptable terms;
- adoption of new laws and regulations in the United States and abroad, including energy laws, environmental laws, labor laws and healthcare laws;
- our ability to utilize net operating loss carryforwards;
- failure to maintain historical performance levels at our facilities and our ability to retain the rights to operate facilities we do not own;
- our ability to avoid adverse publicity relating to our business;
- advances in technology;
- difficulties in the operation of our facilities, including fuel supply and energy delivery interruptions, failure to obtain regulatory approvals, equipment failures, labor disputes and work stoppages, and weather interference and catastrophic events;
- difficulties in the financing, development and construction of new projects and expansions, including increased construction costs and delays;
- limits of insurance coverage;
- our ability to avoid defaults under our long-term contracts;
- performance of third parties under our contracts and such third parties' observance of laws and regulations;
- concentration of suppliers and customers;
- geographic concentration of facilities;
- increased competitiveness in the energy and waste industries;
- changes in foreign currency exchange rates;
- limitations imposed by our existing indebtedness and our ability to perform our financial obligations and guarantees and to refinance our existing indebtedness;
- exposure to counterparty credit risk and instability of financial institutions in connection with financing transactions;
- the scalability of our business;
- restrictions in our certificate of incorporation and debt documents regarding strategic alternatives;
- failures of disclosure controls and procedures and internal controls over financial reporting;
- our ability to attract and retain talented people;
- general economic conditions in the United States and abroad, including the availability of credit and debt financing; and
- other risks and uncertainties affecting our businesses described in Item 1A. Risk Factors of Covanta's Annual Report on Form 10-K for the year ended December 31, 2014 and in other filings by Covanta with the SEC.

Although we believe that our plans, intentions and expectations reflected in or suggested by such forward-looking statements are reasonable, actual results could differ materially from a projection or assumption in any of our forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to change and inherent risks and uncertainties. The forward-looking statements contained in this Quarterly Report on Form 10-Q are made only as of the date hereof and we do not have, or undertake, any obligation to update or revise any forward-looking statements whether as a result of new information, subsequent events or otherwise, unless otherwise required by law.

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## PART I. FINANCIAL INFORMATION

## Item 1. FINANCIAL STATEMENTS

COVANTA HOLDING CORPORATION AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

	Three Months Ended September 30, 2015		2014		Nine Months Ended September 30, 2015		2014	
	(Unaudited)							
	(In millions, except per share amounts)							
<b>OPERATING REVENUE:</b>								
Waste and service revenue	\$283		\$252		\$805		\$760	
Recycled metals revenue	16		26		49		72	
Energy revenue	108		120		319		350	
Other operating revenue	15		16		40		65	
Total operating revenue	422		414		1,213		1,247	
<b>OPERATING EXPENSES:</b>								
Plant operating expenses	260		248		849		798	
Other operating expenses	18		19		55		66	
General and administrative expenses	20		26		71		73	
Depreciation and amortization expense	50		51		148		157	
Net interest expense on project debt	3		3		10		8	
Net write-offs	—		48		24		64	
Total operating expenses	351		395		1,157		1,166	
Operating income	71		19		56		81	
Other expenses:								
			*		66,666		133,333	*
Bradford Paskewitz	102,165				*		102,165	*
Bradley C. and Belinda Karp								
Tenants in Common (9)	1,044,692				*		253,331	791,361
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

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C Joseph VanHaverbeke Trust 1 dated 2/15/95	49,999	*	16,666	33,333	*
C. David and Lisa Callaham (10)	1,282,179	*	177,393	1,104,786	*
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 Revocable Trust (11)	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 (12)	309,930	*	103,310	206,620	*
Chad Krull	33,333	*	33,333		*



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<b>Name of Selling Stockholder</b>	<b>Shares Beneficially Owned Pre- Offering (1)</b>	<b>% Owned Pre- Offering (2)</b>	<b>Shares Offered Pursuant to This Prospectus</b>	<b>Number of Shares Post- Offering</b>	<b>% of Shares Post- Offering (2)</b>
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	1.4%	666,666	1,333,332	1.0%
Chitayat Holdings, LLC (13)	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 (14)	790,000	*	290,000	500,000	*
Craig Bordon (15)	2,818,499	2.0%	965,166	1,853,333	1.3%
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 (16)	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 (17)	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 (18)	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 Mondi Investments, LTD (19)	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 (20)	251,484	*	251,484		*

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EBA Capital Inc.	99,998	*	33,332	66,666	*
EKM Capital, LLC (21)	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 (22)	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 (23)	19,231	*	19,231		*
Firstfire Global Opportunities Fund, LLC	66,666	*	66,666		*
Florence K. Simons Family Trust (24)	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 (25)	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 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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<b>Name of Selling Stockholder</b>	<b>Shares Beneficially Owned Pre- Offering (1)</b>	<b>% Owned Pre- Offering (2)</b>	<b>Shares Offered Pursuant to This Prospectus</b>	<b>Number of Shares Post- Offering</b>	<b>% of Shares Post- Offering (2)</b>
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 (26)	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		*
Guy Ponticiello	25,404	*	25,404		*
Haden Capital LLC (27)	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 (28)	122,731	*	65,999	56,732	*
Ian J. Reynolds	99,999	*	33,333	66,666	*
IEB Associates LLC (29)	69,230	*	69,230		*
Intracoastal Capital, LLC (30)	166,667	*	166,667		*
Iroquois Master Fund Ltd.	33,333	*	33,333		*
Jack Chitayat (31)	1,499,996	1.1%	499,998	999,998	*
Jackson W. Stieb Jr.	23,577	*	23,577		*
Jacob M Gamble	499,999	*	166,666	333,333	*
Jacob Rosenberg	113,331	*	46,665	66,666	*
James F. Schwering	183,922	*	36,666	147,256	*
James N. Wierzba	345,300	*	127,920	217,380	*
Janyce Dean and Peter Speier TBE	150,000	*	50,000	100,000	*
Jason Chiriano	150,000	*	50,000	100,000	*
Jo Robin Davis	60,000	*	20,000	40,000	*
Joan R. Baer (32)	202,164	*	67,388	134,776	*
Joan Rich Baer Inc. Pension Plan & Trust (33)	102,165	*	34,055	68,110	*
Joe N. & Jamie W. Behrendt Revocable Trust (34)	124,055	*	84,055	40,000	*
Joel Frank Henning	99,998	*	33,332	66,666	*
Joel W. Haden (35)	499,999	*	166,666	333,333	*
John and Laura J. Maring	121,999	*	40,666	81,333	*
John B Payne	162,499	*	33,333	129,166	*
John C. Blazier and Fleur Christensen	16,766	*	16,766		*
John Comier	199,999	*	66,666	133,333	*
John Elliott	99,998	*	33,332	66,666	*

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John Hall	199,999	*	66,666	133,333	*
John J. & Lisa Connolly Hogan Family Trust dtd 10/04/2001	30,172	*	16,666	13,506	*
John T. Gulliford	49,999	*	16,666	33,333	*
John T. Walker Trust	154,677	*	51,559	103,118	*
John V. Wagner	239,279	*	63,332	175,947	*
Johnathan Peacock	375,000	*	125,000	250,000	*
Jon and Melanie Stagnitti	44,823	*	6,680	38,143	*
Joseph Chulick III Revocable Living Trust dtd 7/27/2011 (36)	88,461	*	55,128	33,333	*
Joseph O. Manzi	344,055	*	204,055	140,000	*
Joyce A. Hayward	23,333	*	23,333		*
Julie Stone	115,386	*	38,462	76,924	*
Julius H Gross	49,999	*	16,666	33,333	*
Justin Brevoort	84,999	*	33,333	51,666	*
Kadi Family Trust	399,999	*	133,333	266,666	*
KAM Capital, LLC (37)	629,262	*	176,832	452,430	*
Katherine B. McCoy	70,731	*	23,577	47,154	*
Kathleen Lockwood	17,028	*	17,028		*
Keith and Jeanne Fishback	221,856	*	45,896	175,960	*
Keith J. Gelles	577,494	*	158,000	419,494	*
Kellett Family Partners, L.P.(38)	300,000	*	100,000	200,000	*
Kellett Investment Corp (39)	499,999	*	166,666	333,333	*
Ken Stinnett	99,999	*	33,333	66,666	*
Kenneth E. Chyten (40)	259,496	*	16,666	242,830	*
Kenter Canyon Capital, LLC	99,998	*	33,332	66,666	*
Kevin Gabrik	60,000	*	20,000	40,000	*
Koff Living Trust (41)	15,384	*	15,384		*
Kupcake Associates, LLC (42)	199,999	*	66,666	133,333	*
Lanny Sachnowitz	13,622	*	13,622		*

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<b>Name of Selling Stockholder</b>	<b>Shares Beneficially Owned Pre-Offering (1)</b>	<b>% Owned Pre-Offering (2)</b>	<b>Shares Offered Pursuant to This Prospectus</b>	<b>Number of Shares Post-Offering</b>	<b>% of Shares Post-Offering (2)</b>
Law Offices of Kenneth E. Chyten Defined Benefit Pension Plan (43)	209,497	*	93,332	116,165	*
Lawrence E. Coffman Living Trust Dtd 1/9/92 (44)	77,646	*	25,882	51,764	*
Lee J. Seidler Revocable Trust dtd April 12, 2009	113,332	*	46,666	66,666	*
Lester Petracca	199,999	*	66,666	133,333	*
Lewis H. Dowdy	49,999	*	16,666	33,333	*
Liane K. Carter (45)	233,332	*	99,999	133,333	*
Longjean GMBH (46)	408,630	*	136,210	272,420	*
Louis B. Cushman	3,949,999	2.8%	1,316,666	2,633,333	1.9%
LRFA, LLC (47)	799,999	*	266,666	533,333	*
Luray Circus LLC	89,281	*	13,333	75,948	*
Lyle Reigel	116,380	*	116,380		*
Marc A. Cohen	233,232	*	77,744	155,488	*
Marjorie Hustead	57,693	*	19,231	38,462	*
Mark Minkin	314,201	*	162,528	151,673	*
Mark Suwyn	399,999	*	133,333	266,666	*
Mark W. Spates	225,000	*	75,000	150,000	*
Mark Zampella and David M Anders Jt Ten	99,998	*	33,332	66,666	*
Martin Kupferberg (48)	289,380	*	79,999	209,381	*
Marvin Greenberg	44,640	*	6,666	37,974	*
MLPF&S Custodian FPO Mary T. Bartley IRA	50,000	*	50,000		*
Matthew L. and Therese M. Salter	102,165	*	34,055	68,110	*
Mehrdad Mark Mofid Trust	83,334	*	83,334		*
Mehul Patel	499,999	*	166,666	333,333	*
Melanie Stagnitti	50,025	*	16,675	33,350	*
Michael Brotherton	30,000	*	10,000	20,000	*
Michael Dugas	138,499	*	71,833	66,666	*
Michael F. Bonazzola	20,433	*	6,811	13,622	*
Michael Fishman	60,000	*	20,000	40,000	*
Michael J. Anderson	100,500	*	33,500	67,000	*
Michael Klein	113,629	*	28,000	85,629	*
Michael G. Langsdorf	30,000	*	10,000	20,000	*
Michael McDevitt	450,000	*	150,000	300,000	*
Michael R. Armbrecht	149,998	*	49,999	99,999	*
Michael Zimmerman	34,055	*	34,055		*
Millenium IRA account FBO Christopher Hermann	199,999	*	66,666	133,333	*
Millennium Trust Co., CUST FBO John Saefke IRA	44,627	*	6,666	37,961	*

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Millennium Trust Company LLC Custodian FBO					
Nancy S. Niederman IRA (49)	115,383	*	38,461	76,922	*
MIS Equity Strategies, LP (50)	408,348	*	193,388	214,960	*
Mitchell J. Tracy	89,253	*	13,333	75,920	*
Mitchell Mandich	412,988	*	127,387	285,601	*
Monte D. Anglin & Janet S JTWROS	51,000	*	17,000	34,000	*
Morris Franklin	19,230	*	19,230		*
MP Pacchine Rev Living Trust	199,999	*	66,666	133,333	*
Myron F. Steves	51,000	*	17,000	34,000	*
Nancy Cowgill	152,121	*	46,666	105,455	*
Nasreen Haroon	49,999	*	16,666	33,333	*
Natan & Miryam Vishlitzky JTWROS	189,466	*	46,666	142,800	*
Navin Singh	20,000	*	20,000		*
Nick Hutmacher	99,999	*	33,333	66,666	*
Nickitas Panayotou (51)	3,279,999	2.4%	1,256,666	2,023,333	1.5%
Nirav S. & Kavita G. Parikh	6,666	*	6,666		*
Noah J. Anderson	1,078,931	*	326,664	752,267	*
Noma Hanlon	44,640	*	6,666	37,974	*
NuView IRA Custodian FBO Stefan F. Nowina	199,999	*	66,666	133,333	*
NuView IRA, Custodian for Mia Kwong	49,999	*	16,666	33,333	*
NuView IRA, Inc. Cust FBO Ross Pangere					
IRA (52)	99,999	*	33,333	66,666	*
Ordian Limited (53)	34,045	*	34,045		*
Osprey I, LLC	369,998	*	119,998	250,000	*
Pamela Gingold	51,084	*	17,028	34,056	*
Pat Welch (54)	99,998	*	33,332	66,666	*
Paul Benedict Peat Ropner	69,583	*	13,333	56,250	*
Paul Dragul	66,000	*	22,000	44,000	*
Paul Hamerton-Kelly	71,402	*	10,666	60,736	*
Paul J. Maddon, M.D., PhD. (55)	440,000	*	440,000		*
Paul Rosenbaum	150,000	*	50,000	100,000	*
Paul Russo	49,999	*	16,666	33,333	*
Paulson Investment Company, LLC (56)	2,053,429	1.5%	1,939,089	114,340	*
Adam Bledsoe (57)	1,508	*	1,508		*

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<b>Name of Selling Stockholder</b>	<b>Shares Beneficially Owned Pre- Offering (1)</b>	<b>% Owned Pre- Offering (2)</b>	<b>Shares Offered to This Prospectus</b>	<b>Number of Shares Post- Offering</b>	<b>% of Shares Post- Offering (2)</b>
Ahmed Gheith (57)	104,531	*	100,499	4,032	*
Albert Landstrom (57)	60,225	*	56,670	3,555	*
Alex Winks (57)	5,450	*	5,000	450	*
Basil Christakos (57)	22,950	*	22,500	450	*
Bill Corbett (57)	39,075	*	33,825	5,250	*
Bill Pedersen (57)	19,725	*	15,725	4,000	*
Brad Seyffer (57)	1,042	*	1,042		*
Brady Clark (57)	1,508	*	1,508		*
Bryan Hagen (57)	10,500	*	10,500		*
Byron Crowe (57)	177,401	*	174,023	3,018	*
Carrie Snyder (57)	12,175	*	7,500	4,675	*
Chris Clark (56)(57)(58)	1,761,162	1.3%	1,736,260	24,902	*
Chris DeGroat (57)	3,000	*	1,000	2,000	*
Christian Kiresborn (57)	1,500	*	1,500		*
Clint Smith (57)	2,855	*	2,855		*
Connie Schadewitz (57)	17,799	*	17,799		*
Dan Houston (57)	3,000	*	3,000		*
Dmitry Aksenov (57)	4,827	*	4,827		*
Don Wanek (57)	5,500	*	5,500		*
Don Wojnowski (57)	61,522	*	61,522		*
Edmund Harelik (57)	950	*	950		*
Gary Saccaro (57)	193,068	*	187,735	5,333	*
Harry Harelik (57)	950	*	950		*
Hazem Algendi (57)	5,000	*	4,875	125	*
Joe Hede (57)	687,423	*	681,985	5,438	*
Jon Nelson (57)	7,721	*	7,721		*
Kelly Althar (57)	2,125	*	2,125		*
Ken Tung (57)	1,748	*	1,748		*
Kevin Graetz (57)	687,503	*	682,065	5,438	*
Larry Cohen (57)	74,937	*	74,937		*
Lorraine Maxfield (57)	147,504	*	147,000	504	*
Morgan Janssen (57)	1,000	*	1,000		*
Peter Fogarty (57)	45,825	*	45,825		*
Robert Bostelman (57)	17,436	*	17,436		*
Robert Setteducati (56)(57)	1,760,037	1.3%	1,735,135	24,902	*
Starla Goff (57)	63,098	*	61,598	1,500	*
Tanya Durkee- Urbach (57)	62,277	*	59,709	2,568	*
Thomas Hoare (57)	500	*	500		*
Tim Touloukian (57)	24,100	*	19,100	5,000	*
Tom Parigian (56)(57)	1,760,037	1.3%	1,735,135	24,902	*
William Corbett (57)	49,000	*	49,000		*

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Peggy Hoag	119,230	*	52,564	66,666	*
Per Gustafsson	102,165	*	34,055	68,110	*
Perry M. Waughtal	49,999	*	16,666	33,333	*
Peter D. Bannister	102,165	*	34,055	68,110	*
Peter Gould	99,000	*	50,000	48,000	*
Peter H. Colettis	99,999	*	33,333	66,666	*
Phil Jentgen	49,999	*	16,666	33,333	*
Philip M. Cannella	69,732	*	31,666	38,066	*
Philippe DuMont and Celia Tavares	130,000	*	130,000		*
Pradeep Kaul	165,610	*	100,610	65,000	*
Rajae Family Trust dated 10/10/03 (59)	193,972	*	64,658	129,314	*
Rajae Family Trust Dtd 4/23/99 (60)	1,915,377	1.4%	541,236	1,374,141	1.0%
Rajnikant N. Patel	91,666	*	16,666	75,000	*
Ramjet Capital, LTD	99,999	*	33,333	66,666	*
Randall M. Thompson (61)	467,189	*	180,388	286,801	*
Randall Miller	102,000	*	34,000	68,000	*
Raymond Crespo	99,999	*	33,333	66,666	*
RBC Capital Markets LLC Cust FBO David S. Perry SEP IRA	112,499	*	33,333	79,166	*
RBC Capital Markets LLC Cust FBO Michael Klein IRA	239,279	*	63,332	175,947	*
RBC Capital Markets LLC Cust FBO Randall Thompson IRA	300,000	*	100,000	200,000	*
RBC Capital Markets LLC Cust FBO Robert Taicher ROTH IRA	49,999	*	16,666	33,333	*
RBC Capital Markets LLC Cust FBO Therese M. Salter SEP IRA	150,000	*	50,000	100,000	*
RBC Capital Markets, LLC Cust FBO Eugene L. Tinker IRA (62)	39,294	*	13,098	26,196	*
RBC Capital Markets, LLC Cust FBO William Paul Sterling IRA (63)	6,811	*	6,811		*
Rebekah Shaffer	6,666	*	6,666		*
Redwood Fund, LP	66,666	*	66,666		*
Renaissance Interests, LP (64)	477,130	*	93,333	383,797	*
Rex Randolph Smith	5,239	*	5,239		*



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<b>Name of Selling</b>	<b>Shares</b> <b>Beneficially</b> <b>Owned</b> <b>Pre-</b> <b>Offering (1)</b>	<b>%</b> <b>Owned</b> <b>Pre-</b> <b>Offering (2)</b>	<b>Shares</b> <b>Offered</b> <b>Pursuant</b> <b>to</b> <b>This</b> <b>Prospectus</b>	<b>Number</b> <b>of</b> <b>Shares</b> <b>Post-</b> <b>Offering</b>	<b>% of</b> <b>Shares</b> <b>Post-</b> <b>Offering (2)</b>
<b>Stockholder</b>					
Richard Cotton	99,999	*	33,333	66,666	*
Richard Leto	66,962	*	10,000	56,962	*
Richard Martin van Nostrand	151,881	*	13,333	138,548	*
Richard Smithline	33,333	*	33,333		*
Rick Lott	499,999	*	166,666	333,333	*
Rick N. Collins	49,999	*	16,666	33,333	*
Robert A. Frist, M.D.	1,999,999	1.4%	666,666	1,333,000	1.0%
Robert Adelson	40,000	*	40,000		*
Robert Alvine	134,054	*	67,388	66,666	*
Robert Caplan & Denise Petit-Caplan Jt Ten	199,999	*	66,666	133,333	*
Robert W. Corby	589,997	*	196,665	393,332	*
Robert Gulli	30,000	*	10,000	20,000	*
Robert Haider	33,333	*	33,333		*
Robert Kantor (65)	231,764	*	231,764		*
Robert Rathbone	39,999	*	13,333	26,666	*
Robert T. Martin	115,386	*	38,462	76,924	*
Robert Taicher	50,721	*	50,721		*
Roger A. Ramsey	139,467	*	63,333	76,134	*
Ross Pangere (66)	299,998	*	99,999	199,999	*
Russell K. Wallack	110,000	*	100,000	10,000	*
Ryan W. Shay	120,000	*	40,000	80,000	*
Sack Investment Holdings DAS LLC	199,999	*	66,666	133,333	*
Samir Patel	300,000	*	100,000	200,000	*
Samuel A. Fisher	49,999	*	16,666	33,333	*
Sandip I. Patel	200,004	*	66,668	133,336	*
Scott and Mary Beth Ross TBE	49,999	*	16,666	33,333	*
Shalom Family 2003 IRR Trust (67)	68,110	*	68,110		*
Shashikant V. Parikh	6,666	*	6,666		*
Sheldon L. Miller (68)	1,473,201	1.1%	913,202	559,999	*
Sidney E. Taylor	210,000	*	70,000	140,000	*
Sonia Beecher	49,999	*	16,666	33,333	*
Stanton J. Rowe	204,330	*	68,110	136,220	*
Staples Family Partnership, LLP (69)	19,999	*	6,666	13,333	*
Stephen C. and Nan G. Swid	600,000	*	200,000	400,000	*
Stephen Lesser	315,336	*	88,694	226,642	*
Stephen Mut	57,999	*	33,333	24,666	*
Stephen R. Shumpert	1,208,662	*	402,887	805,775	*
Steven Collins	150,000	*	50,000	100,000	*
Steven F. Hanson (70)	3,126,114	2.3%	574,973	2,551,141	1.8%
Steven Rothstein	126,597	*	56,598	69,999	*
Sunil Lekhi	49,999	*	16,666	33,333	*

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Tahir A. Khan	117,026	*	50,360	66,666	*
Terry D. and Amy Lynne Milam	10,479	*	10,479		*
The Anthony and Angela Reed Family Trust (71)	214,175	*	100,028	114,147	*
The Bennett Yanowitz Credit Shelter Trust (72)	68,110	*	68,110		*
The Catherine Shauklas Trust u/a dtd 3/29/2004	219,999	*	73,333	146,666	*
The Chitayat Family Gift Trust dated 12/19/2003 (73)	299,998	*	99,999	199,999	*
The Robert T. Freres Living Trust	49,999	*	16,666	33,333	*
The Scott and Mary Schroeder Living Trust, dated February 10, 2015	99,999	*	33,333	66,666	*
The Vassily I Dubenko and Vera Dubenko Family Trust (74)	57,691	*	19,231	38,460	*
The Vilmur Family Trust (75)	120,183	*	40,061	80,122	*
The Wallace Family Trust	49,999	*	16,666	33,333	*
Theodore C. Yoon	177,500	*	72,500	105,000	*
Theodore H. Husted (76)	76,923	*	38,461	38,462	*
Thomas A Gollott	1,039,999	*	346,666	693,333	*
Thomas A Pepin Revocable Trust	499,999	*	166,666	333,333	*
Thomas C. Koncsics and Thomas M Koncsics Jt Ten	199,998	*	66,666	133,332	*
Thomas E. Prasil Trust dated November 26, 2003	150,000	*	50,000	100,000	*
Thomas Eisenberg	214,345	*	71,448	142,897	*
Thomas Gensler	100,500	*	33,500	67,000	*
Thomas Gruber	556,002	*	185,334	370,668	*
Thomas Pidcock	33,333	*	33,333		*
Thomas T. Frederick	599,998	*	199,999	399,999	*
Timothy J. Walters	13,098	*	13,098		*
Tom Segó	637,420	*	289,396	348,024	*
Trent Agnew	60,000	*	20,000	40,000	*
Ullman Family Investments, LLC	26,666	*	26,666		*
Velcro, LLC (77)	588,762	*	163,332	425,430	*
Veronica Marano and Thomas M. Volckening	808,923	*	245,000	563,923	*

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<b>Name of Selling Stockholder</b>	<b>Shares Beneficially Owned Pre-Offering (1)</b>	<b>% Owned Pre-Offering (2)</b>	<b>Shares Offered Pursuant to This Prospectus</b>	<b>Number of Shares Post-Offering</b>	<b>% of Shares Post-Offering (2)</b>
Vincent Gulli	55,000	*	25,000	30,000	*
Vista Capital Investments, LLC	33,333	*	33,333		*
Vladimir Bogin	313,331	*	113,332	199,999	*
Vladimir Zaharchook-Williams	199,999	*	66,666	133,333	*
Wall Drug Store, Inc. 401K Profit Sharing Plan F/B/O Ted Husted	99,999	*	33,333	66,666	*
Wayne Sapper	119,645	*	39,881	79,764	*
Wayne Westerman	133,056	*	44,352	88,704	*
Willem De Geer (78)	499,878	*	166,626	333,252	*
William Bolt	125,134	*	18,666	106,468	*
William Bumgarner	204,330	*	68,110	136,220	*
William Costigan	103,845	*	34,615	69,230	*
William Esson	120,000	*	40,000	80,000	*
William M. Stocker III	150,006	*	50,002	100,004	*
William Rawson	300,000	*	100,000	200,000	*
William Sykes	87,500	*	52,500	35,000	*
William W. Espy	2,499,999	1.8%	833,334	1,666,665	1.2%
Wray Family Revocable Trust	150,000	*	50,000	100,000	*
Yogesh C. Farswani	51,084	*	17,028	34,056	*

\* Represents less than 1%

- (1) Beneficial ownership includes shares of common stock as to which a person or group has sole or shared voting power or dispositive power. Shares of common stock registered hereunder, as well as shares of common stock subject to options, warrants or convertible preferred stock that are exercisable or convertible within 60 days of September 30, 2016, are deemed outstanding for purposes of computing the number of shares beneficially owned and percentage ownership of the person or group holding such shares of common stock, options, warrants or convertible securities, but are not deemed outstanding for computing the percentage of any other person.
- (2) Percentages are based on 138,221,981 shares of common stock outstanding as of September 30, 2016.
- (3) Craig Bordon and Nickitas Panayotou, as managing members of 3NT Management LLC, share voting and dispositive power over (i) 1,633,333 shares of common stock directly held by 3NT Management LLC and (ii) warrants covering 916,666 shares of common stock directly held by 3NT Management LLC. See notes 15 and 51.

- (4) Andrew Roth, as the general partner of AAR Accounts Family Limited Partnership, has voting and dispositive power over these warrant shares.

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- (5) Alan A. Reed, as trustee of the Alan Jacqueline Reed Family Trust B, has voting and dispositive power over these warrant shares.
- (6) Includes: (i) a warrant covering 34,045 shares of common stock directly held and (ii) a warrant covering 34,045 shares of common stock directly held by Ordian Limited, of which Mr. Vergopoulos is a beneficial owner. See note 53.
- (7) Includes: (i) 7,243,740 shares of common stock directly held by Alpha Venture Capital Partners, LP ( AVCP ), (ii) warrants covering 2,372,850 shares of common stock directly held by AVCP, (iii) 230,769 shares of common stock directly held by Alpha Venture Capital Fund, LP ( AVCF ) and (iv) options covering 96,473 shares of common stock directly held by Carl C. Dockery. Mr. Dockery is a member of our Board of Directors. As the managing member of the general partner of AVCP and AVCF, and as sole member of the investment advisor for AVCP and AVCF, Mr. Dockery has voting and dispositive power over the shares specified in clauses (i) through (iii) above.
- (8) Includes: (i) 53,333 shares of common stock directly held, (ii) a warrant covering 26,666 shares of common stock directly held, (iii) 13,333 shares of common stock directly held by Staples Family Partnership, LLP and (iv) a warrant covering 6,666 shares of common stock directly held by Staples Family Partnership, LLP. See note 69.
- (9) Includes: (i) 407,563 shares of common stock directly held, (ii) warrants covering 159,998 shares of common stock directly held, (iii) 383,797 shares of common stock directly held by Renaissance Interests LP, and (iv) warrants covering 93,333 shares of common stock directly held by Renaissance Interests LP. See note 64.
- (10) Includes: (i) 104,786 shares of common stock directly held by Mr. Callaham, (ii) 25,000 shares of common stock beneficially owned by Mr. Callaham's wife, (iii) 60,000 shares of Series B Preferred Stock directly held that are convertible into 600,000 shares of common stock, (iv) warrants directly held covering 77,393 shares of common stock, (v) 350,000 shares of common stock directly held by the Callaham Revocable Trust and (vi) warrants covering 125,000 shares of common stock directly held by the Callaham Revocable Trust. See note 11.
- (11) Mr. Callaham, as the trustee of this trust, has voting and dispositive power over these shares. See note 10.
- (12) Cedric A. Veum and Margaret E. Veum, as co-trustees of the Cedric A. and Margaret E. Veum Living Trust, share voting and dispositive power over these shares.
- (13) Jack Chitayat has voting and dispositive power over these shares. See note 31.
- (14) Clayton A. Struve may be deemed to be an affiliate of a broker-dealer. Mr. Struve acquired the shares being registered hereunder in the ordinary course of business, and at the time of the acquisition of the shares and

warrants described herein, Mr. Struve did not have any arrangements or understandings with any person to distribute such securities.

- (15) Includes: (i) 120,000 shares of common stock directly held, (ii) warrants covering 148,500 shares of common stock, (iii) 1,633,333 shares of common stock directly held by 3NT Management LLC and (iv) warrants covering 916,666 shares of common stock directly held by 3NT Management LLC. See note 3.
- (16) Includes: (i) 343,589 shares of common stock directly held by Dale G. Ragan, (ii) warrants covering 370,510 shares of common stock directly held by Dale G. Ragan and (iii) warrants covering 251,484 shares of common stock directly held by Dynamite Investment LLC. See note 20.
- (17) Willem De Geer, as Chairman of Dear Invest AB, has voting and dispositive power over these shares. See note 78.

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- (18) Adam Passaglia, as the manager of Double Add Investments LLC, has voting and dispositive power over these shares.
- (19) Robert Beadle has voting and dispositive power over these shares.
- (20) Dale G. Ragan, as the managing member of Dynamite Investment LLC, has voting and dispositive power over these shares. See note 16.
- (21) Includes: (i) 27,000 shares of common stock directly held by EKM Capital, LLC, (ii) a warrant covering 13,500 shares of common stock directly held by EKM Capital, LLC, (iii) 425,430 shares of common stock directly held by Velcro, LLC, and (iv) warrants covering 163,332 shares of common stock directly held by Velcro, LLC. EKM Capital, LLC and KAM Capital, LLC share voting and dispositive power over shares directly held by Velcro, LLC. See notes 37 and 77.
- (22) Leon C. Sunstein, Jr., as trustee of the Emily W. Sunstein Residuary Marital Trust U/D dtd 1/1/96 as amended and restated on 12/15/01 & further amended, has voting and dispositive power over these shares.
- (23) Mike Huether has voting and dispositive power over these shares.
- (24) Florence K. Simons has voting and dispositive power over these shares.
- (25) Fred B. Bialek, as the trustee of the Fred & Betty Bialek Revocable Trust dated 12/20/2004, has voting and dispositive power over these shares.
- (26) Caroline Bombardier, as the managing member of Goff VC Fund CD, LLC, has voting and dispositive power over these shares.
- (27) Joel W. Haden has voting and dispositive power over these shares. See note 35.
- (28) Tom and Denise Hunse share voting and dispositive power over these shares.
- (29) William Shalom has voting and dispositive power over these shares. See note 67.
- (30) Intracoastal Capital LLC may be deemed to be an affiliate of a broker-dealer. Intracoastal Capital LLC acquired the shares being registered hereunder in the ordinary course of business, and at the time of the acquisition of the shares and warrants described herein, Intracoastal Capital LLC did not have any arrangements or understandings

with any person to distribute such securities.

- (31) Includes: (i) 133,333 shares of common stock directly held by Jack Chitayat, (ii) a warrant covering 66,666 shares of common directly held by Jack Chitayat, (iii) 666,666 shares of common stock directly held by Chitayat Holdings, LLC, (iv) a warrant covering 333,333 shares of common stock directly held by Chitayat Holdings, LLC, (v) 199,999 shares of common stock directly held by The Chitayat Family Gift Trust dated 12/19/2003 and (vi) a warrant covering 99,999 shares of common stock directly held by the Chitayat Family Gift Trust. See notes 13 and 73.
- (32) Includes: (i) 66,666 shares of common stock directly held, (ii) a warrant covering 33,333 shares of common stock directly held, (iii) 68,110 shares of common stock held by the Joan Rich Baer, Inc. Pension Plan & Trust, and (iv) a warrant covering 34,055 shares of common stock held by the Joan Rich Baer, Inc. Pension Plan & Trust. See note 33.



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- (33) Arthur B. Baer and Joan Rich Baer, as co-trustees of the Joan Rich Baer, Inc. Pension Plan & Trust share voting and dispositive power over these shares. See note 32.
- (34) Joe N. Behrendt, as the trustee of the Joe N. & Jamie W. Behrendt Revocable Trust, has voting and dispositive power over these shares.
- (35) Includes: (i) 100,000 shares of common stock directly held by Joel W. Haden, (ii) a warrant covering 50,000 shares of common stock directly held, (iii) 233,333 shares of common stock directly held by Haden Capital LLC, over which Mr. Haden has voting and dispositive power and (iv) a warrant covering 116,666 shares of common stock directly held by Haden Capital LLC. See note 27.
- (36) Joseph Chulick III, as the trustee of the Joseph Chulick Revocable Living Trust u/a 7/27/2010, has voting and dispositive power over these shares.
- (37) Includes: (i) 27,000 shares of common stock directly held by KAM Capital, LLC, (ii) a warrant covering 13,500 shares of common stock directly held by KAM Capital, LLC, (iii) 425,430 shares of common stock directly held by Velcro, LLC and (iv) warrants covering 163,332 shares of common stock directly held by Velcro, LLC. KAM Capital, LLC and EKM Capital, LLC share voting and dispositive power over shares directly held by Velcro, LLC. See notes 21 and 77.
- (38) Kellett Investment Corp. has voting and dispositive power over these shares. See note 39.
- (39) Includes: (i) 133,333 shares of common stock directly held by Kellett Investment Corp., (ii) a warrant covering 66,666 shares of common stock directly held by Kellett Investment Corp., (iii) 200,000 shares of common stock directly held by Kellett Family Partners, L.P., and (iv) a warrant covering 100,000 shares of common stock directly held by Kellett Family Partners, L.P. See note 38.
- (40) Includes: (i) 33,333 shares of common stock directly held by Kenneth Chyten, (ii) a warrant covering 16,666 shares of common stock directly held by Kenneth Chyten, (iii) 116,165 shares of common stock directly held by Law Offices of Kenneth E. Chyten Defined Benefit Pension Plan, of which Mr. Chyten has dispositive and voting power and (iv) a warrant covering 93,332 shares of common stock directly held by Law Offices of Kenneth E. Chyten Defined Benefit Pension Plan. See note 43.
- (41) Howard M. Koff, as the trustee of the Koff Living Trust, has voting and dispositive power over these shares. Howard M. Koff is an affiliate of M. Holdings Securities, Inc., a broker-dealer.
- (42) Martin Kupferberg and Liane K. Carter, as managers of Kupcake Associates, LLC have voting and dispositive power over these shares. See notes 45 and 48.

- (43) Kenneth E. Chyten, as trustee for Law Offices of Kenneth E. Chyten Defined Benefit Pension Plan, has voting and dispositive power over these shares. See note 40.
  
- (44) Lawrence E. Coffman, as trustee of the Lawrence E. Coffman Living Trust Dtd 1/9/92, has voting and dispositive power over these shares.
  
- (45) Includes: (i) a warrant covering 33,333 shares of common stock directly held by Liane K. Carter, (ii) 133,333 shares of common stock directly held by Kupcake Associates, LLC and (iii) warrant shares covering 66,666 shares of common stock directly held by Kupcake Associates, LLC. See note 42.
  
- (46) Francis C. Calame Longjean, as the manager of Longjean GMBH, has voting and dispositive power over these shares.
  
- (47) David F. Welch, as President of LRFA, LLC, has voting and dispositive power over these shares.

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- (48) Includes: (i) 76,048 shares of common stock directly held by Martin Kupferberg, (ii) a warrant covering 13,333 shares of common stock directly held by Martin Kupferberg, (iii) 133,333 shares of common stock directly held by Kupcake Associates, LLC and (iv) a warrant covering 66,666 shares common stock directly held by Kupcake Associates, LLC. See note 42.
- (49) Nancy S. Niederman has voting and dispositive power over these shares.
- (50) Anthony Michael Reed, as the manager of the general partner of MIS Equity Strategies, L.P., has voting and dispositive power over these shares. See note 71.
- (51) Includes: (i) 180,000 shares of common stock directly held by Nickitas Panayotou, (ii) warrants covering 550,000 shares of common stock directly held by Nickitas Panayotou, (iii) 1,633,333 shares of common stock directly held by 3NT Management LLC and (iv) warrants covering 916,666 shares of common stock directly held by 3NT Management LLC. See note 3.
- (52) Ross Pangere has voting and dispositive power over these shares. See note 66 below.
- (53) Alexander Vergopoulos has voting and dispositive power over these shares. See note 6.
- (54) Pat Welch may be deemed to be an affiliate of a broker-dealer. Ms. Welch acquired the shares being registered hereunder in the ordinary course of business, and at the time of the acquisition of the shares and warrants described herein, Ms. Welch did not have any arrangements or understandings with any person to distribute such securities.
- (55) Assumes for purposes of this registration statement that the Consultant Warrants are fully vested.
- (56) The Executive Committee of Paulson Investment Company, LLC, a broker-dealer registered with the SEC and member of FINRA, has voting and dispositive power over these warrant shares. The Executive Committee is comprised of Messrs. Clark, Parigian and Setteducati. Paulson Investment Company, LLC was the placement agent with respect to the warrant shares offered pursuant to this prospectus.
- (57) Individual is an officer, employee, or consultant to Paulson Investment Company, LLC, and was assigned these warrant shares by Paulson as part of their compensation.
- (58) The shares beneficially owned by Chris Clark include 601,513 warrant shares owned by his wife, Barbara Clark.
- (59)

Behrouz Rajaei has voting and dispositive power over these shares. Mr. Rajaei also holds 66,114 shares in his personal IRA account.

- (60) Behrouz Rajaei has voting and dispositive power over these shares. Mr. Rajaei also holds 66,114 shares in his personal IRA account.
- (61) Randall M. Thompson is an affiliate of Lincoln Financial Advisers Corporation, a broker-dealer.
- (62) Eugene L. Tinker has voting and dispositive power over these shares.
- (63) William Paul Sterling has voting and dispositive power over these shares.
- (64) Bradley Karp, as President of Renaissance Interests LP, has voting and dispositive power over these shares. See note 9.
- (65) Robert Kantor is an affiliate of Time Equities Securities LLC, a broker-dealer.
- (66) Includes: (i) 133,333 shares of common stock directly held by Ross Pangere, (ii) a warrant covering 66,666 shares of common stock directly held, (iii) 66,666 shares of common stock held in an IRA and (iv) a warrant covering 33,333 shares of common stock held in an IRA. See note 52.

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- (67) William Shalom, as trustee of the Shalom Family 2003 IRR Trust, has voting and dispositive power over these shares. See note 29.
- (68) The shares beneficially owned by Sheldon L. Miller include 25,000 shares held in trusts for his grandchildren.
- (69) Alva Terry Staples, as general partner of Staples Family Partnership, LLP, has voting and dispositive power over these shares. See note 8.
- (70) Includes: (i) 1,774,270 shares of common stock directly held by Mr. Hanson, (ii) 145,500 shares of common stock held by Northwest Lending Partners, LLC to which Mr. Hanson is the sole member, (iii) 305,246 shares of common stock held in an IRA for Mr. Hanson, (iv) 275,000 shares of common stock held in an IRA for Mr. Hanson's wife and (v) warrants covering 626,098 shares of common stock directly held by Mr. Hanson.
- (71) Anthony Michael Reed, as the trustee of the Anthony & Angela Reed Family Trust, has voting and dispositive power over these shares. Anthony Michael Reed is an affiliate of Cova Capital, a broker-dealer. The Anthony and Angela Reed Family Trust may be deemed to be an affiliate of a broker-dealer. The Anthony and Angela Reed Family Trust acquired the shares being registered hereunder in the ordinary course of business, and at the time of the acquisition of the shares and warrants described herein, the Anthony and Angela Reed Family Trust did not have any arrangements or understandings with any person to distribute such securities. Anthony Michael Reed is also the manager of the general partner of MIS Equity Strategies, L.P., and has voting and dispositive power over the shares. See note 50.
- (72) Alan Yanowitz, as trustee of The Bennett Yanowitz Credit Shelter Trust, has voting and dispositive power over these shares.
- (73) Jack Chitayat, as trustee of the Chitayat Family Gift Trust dated 12/19/03, has voting and dispositive power over these shares. See note 31.
- (74) Vassily I. Dubenko and Sonia Beecher, as co-trustees of The Vassily I. Dubenko and Vera Dubenko Family Trust, share voting and dispositive power over these shares.
- (75) Roger M. Vilmur, as trustee of The Vilmur Family Trust, has voting and dispositive power over these shares.
- (76) The shares beneficially owned by Theodore H. Husted include 38,462 shares owned by Mr. Husted's wife.
- (77) EKM Capital, LLC and KAM Capital, LLC share voting and dispositive power over shares held by Velcro, LLC. See notes 21 and 37.

- (78) Includes: (i) 166,626 shares of common stock directly held by William De Geer, (ii) a warrant covering 83,313 shares of common stock directly held by William De Geer, (iii) 166,626 shares of common stock directly held by Dear and (iv) a warrant directly held by Dear covering 83,313 shares of common stock. See note 17.

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**PLAN OF DISTRIBUTION**

The selling stockholders, which for this purpose includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, dividend, distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded, or in private transactions. These sales or other dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when selling our shares or interests in our shares:

ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

block trades in which a broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;

purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

on any national securities exchange or quotation service on which the shares may be listed or quoted at the time of sale;

privately negotiated transactions;

short sales effected after the date the registration statement of which this prospectus is a part is declared effective by the SEC;

through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;

broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;

a combination of any such methods of sale; and

any other method permitted by applicable law.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of our shares owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders may also transfer our shares in other circumstances, in which case the transferees, pledgees or other successors will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common shares or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of our shares in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).



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The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from sales of shares by the selling stockholders.

The selling stockholders may also resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act, provided that they meet the criteria and conform to the requirements of that rule, or under Section 4(a)(1) of the Securities Act, if available, rather than by means of this prospectus.

In connection with the sale of shares of common stock covered by this prospectus, broker-dealers may receive commissions or other compensation from a selling stockholder in the form of commissions, discounts or concessions. Broker-dealers may also receive compensation from purchasers of the shares of common stock for whom they act as agents or to whom they sell as principals or both. Compensation as to a particular broker-dealer may be in excess of customary commissions or in amounts to be negotiated. In connection with any underwritten offering, underwriters may receive compensation in the form of discounts, concessions or commissions from a selling stockholder or from purchasers of the shares for whom they act as agents. Underwriters may sell the shares of common stock to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Any underwriters, broker-dealers, agents or other persons acting on behalf of a selling stockholder that participate in the distribution of the shares of common stock may be deemed to be underwriters within the meaning of the Securities Act, and any profit on the sale of the shares of common stock by them and any discounts, commissions or concessions received by any of those underwriters, broker-dealers, agents or other persons may be deemed to be underwriting discounts and commissions under the Securities Act. The aggregate amount of compensation in the form of underwriting discounts, concessions, commissions or fees and any profit on the resale of shares by the selling stockholders that may be deemed to be underwriting compensation pursuant to Financial Industry Regulatory Authority, Inc., rules and regulations will not exceed applicable limits.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be underwriters within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are underwriters within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act and may be subject to certain statutory liabilities, including but not limited to, Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Exchange Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agent, dealer or underwriter, and any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In

addition, to the extent applicable, we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act. All of the foregoing may affect the marketability of the common stock and the ability of any person or entity to engage in market-making activities with respect to our common stock.

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We will pay all expenses of the registration of the common stock for resale by the selling stockholders, including, without limitation, filing fees and expenses of compliance with state securities or blue sky laws; provided, however, that each selling stockholder will pay all underwriting discounts and selling commissions, if any, and any related legal expenses incurred by it.

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**DETERMINATION OF OFFERING PRICE**

The prices at which the shares of common stock covered by this prospectus may actually be sold will be determined by the prevailing public market price for shares of common stock, by negotiations between the selling stockholders and buyers of our common stock in private transactions or as otherwise described in Plan of Distribution.

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**DESCRIPTION OF COMMON STOCK**

**General**

We are authorized to issue up to 355,000,000 shares of capital stock, including 350,000,000 shares of common stock, par value \$0.001 per share, and 5,000,000 shares of preferred stock, par value \$0.001 per share. As of September 30, 2016, we had 138,221,981 shares of common stock and 95,100 shares of Series B Preferred Stock (as defined below) issued and outstanding.

Our stockholders approved a proposal to implement a reverse stock split at a ratio of any whole number between one-for-two and one-for-eight, as determined by our Board of Directors, at any time before August 24, 2017, if and as determined by our Board of Directors.

The additional shares of our authorized stock available for issuance may be issued at times and under circumstances so as to have a dilutive effect on earnings per share and on the equity ownership of the holders of our common stock. The ability of our board of directors to issue additional shares of stock could enhance the board's ability to negotiate on behalf of the stockholders in a takeover situation but could also be used by the board to make a change-in-control more difficult, thereby denying stockholders the potential to sell their shares at a premium and entrenching current management. The following description is a summary of the material provisions of our capital stock. You should refer to our certificate of incorporation, as amended and bylaws, both of which are on file with the SEC as exhibits to previous SEC filings, for additional information. The summary below is qualified by provisions of applicable law.

**Common Stock**

Each outstanding share of common stock entitles the holder to one vote, either in person or by proxy, on all matters submitted to a vote of stockholders, including the election of directors. There is no cumulative voting in the election of directors. All actions required or permitted to be taken by stockholders at an annual or special meeting of the stockholders must be effected at a duly called meeting, with a quorum present of a majority in voting power of the shares entitled to vote thereon. Special meetings of the stockholders may only be called by our Board of Directors acting pursuant to a resolution approved by the affirmative majority of the entire Board of Directors. Stockholders may not take action by written consent. As more fully described in our Certificate of Incorporation, holders of our common stock are not entitled to vote on certain Amendments to the Certificate of Incorporation related solely to our preferred stock.

Subject to preferences which may be applicable to any outstanding shares of preferred stock from time to time, holders of our common stock have equal ratable rights to such dividends as may be declared from time to time by our Board of Directors out of funds legally available therefor. In the event of any liquidation, dissolution or winding-up of our affairs, holders of common stock will be entitled to share ratably in our remaining assets after provision for payment of amounts owed to creditors and preferences applicable to any outstanding shares of preferred stock. All outstanding shares of common stock are fully paid and nonassessable. Holders of common stock do not have preemptive rights.

The rights, preferences and privileges of holders of common stock are subject to the rights of the holders of any outstanding shares of preferred stock.

**Preferred Stock**

Our Board of Directors is authorized to issue up to 5,000,000 shares of preferred stock, par value \$0.001 per share, in one or more series, 4,600,000 of which shares are unassigned.

Our Board of Directors has the authority, within the limitations and restrictions prescribed by law and without stockholder approval, to provide by resolution for the issuance of shares of preferred stock, and to fix the rights, preferences, privileges and restrictions thereof, including dividend rights, conversion rights, voting rights, terms of redemption, liquidation preference and the number of shares constituting any series of the designation of such series, by delivering an appropriate certificate of amendment to our certificate of incorporation to the Delaware Secretary of State pursuant to the Delaware General Corporation Law (the "DGCL"). The issuance of preferred stock could have the effect of decreasing the market price of the common stock, impeding or delaying a possible takeover and adversely affecting the voting and other rights of the holders of our common stock.

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If we offer a specific series of preferred stock under this prospectus, we will describe the terms of the preferred stock in the prospectus supplement for such offering and will file a copy of the certificate establishing the terms of the preferred stock with the SEC. To the extent required, this description will include:

the title and stated value;

the number of shares offered, the liquidation preference per share and the purchase price;

the dividend rate(s), period(s) and/or payment date(s), or method(s) of calculation for such dividends;

whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends will accumulate;

the procedures for any auction and remarketing, if any;

the provisions for a sinking fund, if any;

the provisions for redemption, if applicable;

any listing of the preferred stock on any securities exchange or market;

whether the preferred stock will be convertible into our common stock, and, if applicable, the conversion price (or how it will be calculated) and conversion period;

whether the preferred stock will be exchangeable into debt securities, and, if applicable, the exchange price (or how it will be calculated) and exchange period;

voting rights, if any, of the preferred stock;

a discussion of any material and/or special U.S. federal income tax considerations applicable to the preferred stock;

the relative ranking and preferences of the preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of the affairs of CytoDyn; and

any material limitations on issuance of any class or series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of CytoDyn.

Our Board of Directors previously established a series of preferred stock designated as Series B Convertible Preferred Stock ( Series B Preferred Stock ), comprising 400,000 shares of Preferred Stock, of which 95,100 shares remain outstanding as of September 30, 2016. Subject to superior rights of any other outstanding preferred stock from time to time, each outstanding share of Series B Preferred Stock is entitled to receive, in preference to the common stock, annual cumulative dividends equal to \$0.25 per share per annum from the date of issuance, which shall accrue, whether or not declared. At the time shares of Series B Preferred Stock are converted into common stock, accrued and unpaid dividends will be paid in cash or with shares of common stock. In the event we elect to pay dividends with shares of common stock, the shares issued will be valued at \$0.50 per share. Series B Preferred Stock does not have any voting rights. In the event of liquidation, each share of Series B Preferred Stock is entitled to receive, in preference to the common stock, a liquidation payment equal to \$5.00 per share plus any accrued and unpaid dividends. If there are insufficient funds to permit full payment, the assets legally available for distribution will be distributed pro rata among the holders of the Series B Preferred Stock.



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Each share of Series B Preferred Stock may be converted into ten fully paid shares of common stock at the option of a holder as long as we have sufficient authorized and unissued shares of common stock available. The conversion rate may be adjusted in the event of a reverse stock split, merger or reorganization.

### **Anti-takeover Effects of Delaware Law and our Certificate of Incorporation, as amended**

As described above, our Board of Directors is authorized to designate and issue shares of preferred stock in series and define all rights, preferences and privileges applicable to such series. This authority may be used to make it more difficult or less economically beneficial to acquire or seek to acquire us.

Special meetings of the stockholders may only be called by our Board of Directors acting pursuant to a resolution approved by the affirmative majority of the entire Board of Directors. Stockholders may not take action by written consent.

The stockholders may, at a special stockholders meeting called for the purpose of removing directors, remove the entire Board of Directors or any lesser number, but only with cause, by a majority vote of the shares entitled to vote at an election of directors.

### **Additional Warrants**

As of September 30, 2016, we had issued and outstanding warrants to purchase up to 62,984,839 shares of common stock, exercisable at prices ranging from \$0.50 per share to \$1.35 per share.

### **Stock Options**

As of September 30, 2016, we had issued and outstanding options to purchase up to 7,320,158 shares of common stock, exercisable at prices ranging from \$0.34 per share to \$2.90 per share.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock and preferred stock is Computershare. The transfer agent address is 211 Quality Circle, Suite 210, College Station, TX 77845, and its telephone number is 1-800-962-4284.

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**LEGAL MATTERS**

Unless otherwise indicated in the applicable prospectus supplement, the validity of the securities offered hereby will be passed upon for us by Lowenstein Sandler LLP, New York, New York. If the validity of the securities offered hereby in connection with offerings made pursuant to this prospectus are passed upon by counsel for the underwriters, dealers or agents, if any, such counsel will be named in the prospectus supplement relating to such offering.

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**EXPERTS**

The consolidated balance sheet of CytoDyn Inc. as of May 31, 2016, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for the year then ended have been audited by Warren Averett, LLC, an independent registered public accounting firm, as stated in their report which is incorporated herein. Such financial statements have been incorporated herein in reliance on the report of such firm given upon their authority as experts in accounting and auditing.

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**ADDITIONAL INFORMATION**

This prospectus is part of a Registration Statement on Form S-3 that we have filed with the SEC relating to the shares of our securities being offered hereby. This prospectus does not contain all of the information in the registration statement and its exhibits. The registration statement, its exhibits and the documents incorporated by reference in this prospectus and their exhibits, all contain information that is material to the offering of the Securities hereby.

Whenever a reference is made in this prospectus to any of our contracts or other documents, the reference may not be complete. You should refer to the exhibits that are a part of the registration statement in order to review a copy of the contract or documents. The registration statement and the exhibits are available at the SEC's Public Reference Room or through its Website.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You can read and copy any materials we file with the SEC at its Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549 and at its regional offices, a list of which is available on the Internet at <http://www.sec.gov/contact/addresses.htm>. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site at <http://www.sec.gov> that contains reports, proxy and information statements, and other information regarding issuers, such as us, that file electronically with the SEC. Additionally, you may access our filings with the SEC through our website at <http://www.cytodyn.com>. The information on our website is not part of this prospectus.

We will provide you without charge, upon your oral or written request, with a copy of any or all reports, proxy statements and other documents we file with the SEC, as well as any or all of the documents incorporated by reference in this prospectus or the registration statement (other than exhibits to such documents unless such exhibits are specifically incorporated by reference into such documents). Requests for such copies should be directed to:

1111 Main Street, Suite 660

Vancouver, Washington 98660

(360) 980-8524

You should rely only on the information in this prospectus and the additional information described above and under the heading "Incorporation of Certain Information by Reference" below. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely upon it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information in this prospectus was accurate on the date of the front cover of this prospectus only. Our business, financial condition, results of operations and prospects may have changed since that date.

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**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC allows us to incorporate by reference information that we file with it into this prospectus, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus. The information incorporated by reference is considered to be a part of this prospectus, and information that we file later with the SEC will automatically update and supersede information contained in this prospectus and any accompanying prospectus supplement.

We incorporate by reference the documents listed below that we have previously filed with the SEC:

our Annual Report on Form 10-K for the fiscal year ended May 31, 2016, filed with the SEC on July 19, 2016;

our Quarterly Report on Form 10-Q for the quarterly period ended August 31, 2016, filed with the SEC on October 12, 2016;

our Proxy Statement on Schedule 14A filed with the SEC on July 20, 2016;

our Current Reports on Form 8-K filed with the SEC on August 19, 2016, August 24, 2016 and September 12, 2016; and

the description of our common stock contained in our Registration Statement on Form 10-SB, filed on July 11, 2002, including any amendments thereto or reports filed for the purposes of updating this description (including the Form 8-K filed with the SEC on September 1, 2015, including Exhibit 99.1 thereto).

All reports and other documents that we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus but before the termination of the offering of the securities hereunder will also be considered to be incorporated by reference into this prospectus from the date of the filing of these reports and documents, and will supersede the information herein; provided, however, that all reports, exhibits and other information that we furnish to the SEC will not be considered incorporated by reference into this prospectus. We undertake to provide without charge to each person (including any beneficial owner) who receives a copy of this prospectus, upon written or oral request, a copy of all of the preceding documents that are incorporated by reference (other than exhibits, unless the exhibits are specifically incorporated by reference into these documents). You may request a copy of these materials in the manner set forth under the heading **Additional Information**, above.

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**44,786,050 Shares of Common Stock**

**PROSPECTUS**

**, 2016**

**Table of Contents****PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution**

The following table sets forth the costs and expenses payable in connection with the sale and distribution of the securities being registered. All amounts are estimates except the SEC registration fee (which has previously been paid).

SEC Registration Fee	\$ 22
Legal Fees and Expenses	25,000*
Accounting Fees and Expenses	3,000*
Printing	5,000*
Miscellaneous	1,978*
<b>Total:</b>	<b>\$ 35,000*</b>

\* Estimated.

**Item 15. Indemnification of Directors and Officers**

Section 145 of the DGCL authorizes a corporation to indemnify its directors, officers, employees and agents against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement reasonably incurred, provided they act in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe their conduct was unlawful, although in the case of proceedings brought by or on behalf of the corporation, such indemnification is limited to expenses and is not permitted if the individual is adjudged liable to the corporation (unless the Delaware Court of Chancery or the court in which such proceeding was brought determines otherwise in accordance with the DGCL).

Section 102 of the DGCL authorizes a corporation to limit or eliminate its directors' liability to the corporation or its stockholders for monetary damages for breaches of fiduciary duties, other than for (1) breaches of the duty of loyalty, (2) acts or omissions not in good faith or that involve intentional misconduct or knowing violations of law, (3) unlawful payments of dividends, stock purchases or redemptions or (4) transactions from which a director derives an improper personal benefit.

The registrant's certificate of incorporation and by-laws contains provisions protecting its directors and officers to the fullest extent permitted by Sections 102 and 145 of the DGCL.

Section 145 of the DGCL also authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation against certain liabilities asserted against and incurred by such person in any such capacity, or arising out of such person's status as such. The registrant maintains liability insurance covering its directors and officers for claims asserted against them or incurred by them in such capacity.

The registrant has entered into agreements to indemnify its directors and officers to the maximum extent allowed under Delaware law. These agreements, among other things, indemnify the registrant's directors and officers for certain expenses (including attorneys' fees), judgments, fines and settlement amounts reasonably incurred by such person in any action or proceeding, including any action by or in the registrant's right, on account of any services undertaken by such person on behalf of the registrant or that person's status as a member of the registrant's board or directors.

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The registrant also maintains insurance policies that indemnify its directors and officers against various liabilities arising under the Securities Act of 1933, as amended, and the Exchange Act of 1934, as amended, that might be incurred by any director or officer in his capacity as such.

**Item 16. Exhibits**

The Index to Exhibits listing the exhibits required by Item 601 of Regulation S-K is located on the page immediately following the signature page to this registration statement.

**Item 17. Undertakings**

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:
  - (a) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933,
  - (b) 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 a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement,
  - (c) 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 (1)(a), (1)(b) and (1)(c) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is 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 registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is 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) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
  - (a) If the registrant is relying on Rule 430B:
    - (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

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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.

- (b) If the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be a part of and included in the registration statement as of the date it is first used after effectiveness. *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 first use, 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 date of first use.
- (5) 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 registrant undertakes that in a primary offering of securities of the 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 registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
  - (a) Any preliminary prospectus or prospectus of the registrant relating to the offering required to be filed pursuant to Rule 424;
  - (b) Any free writing prospectus relating to the offering prepared by or on behalf of the registrant or used or referred to by the registrant;
  - (c) The portion of any other free writing prospectus relating to the offering containing material information about registrant or its securities provided by or on behalf of the registrant; and
  - (d) Any other communication that is an offer in the offering made by an registrant to the purchaser.

- (6) 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.
- (7) In connection with offerings of securities to existing security holders pursuant to warrant or rights where any securities not taken by security holders are to be reoffered to the public, to supplement the prospectus, after the expiration of the subscription period for a warrant or rights offering, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.

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- (8) In connection with offerings of securities at competitive bids: (a) to use its best efforts to distribute prior to the opening of bids, to prospective bidders, underwriters, and dealers, a reasonable number of copies of a prospectus which at that time meets the requirements of Section 10(a) of the Act, and relating to the securities offered at competitive bidding, as contained in the registration statement, together with any supplements thereto, and (b) to file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters to the extent required by the applicable form, not later than the first use, authorized by the issuer after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless no further public offering of such securities by the issuer and no reoffering of such securities by the purchasers is proposed to be made.
- (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 forgoing 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 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 Act and will be governed by the final adjudication of such issue.
- (10) That:
- (a) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
- (b) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus 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.
- (11) The undersigned hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Act.

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Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this amendment to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Vancouver, State of Washington, as of October 19, 2016.

**CYTODYN INC.**

By: /s/ Michael D. Mulholland  
Michael D. Mulholland  
Chief Financial Officer, Treasurer and

Corporate Secretary

Pursuant to the requirements of the Securities Act of 1933, this amendment to the registration statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
*	Chief Executive Officer and Director	October 19, 2016
Nader Z. Pourhassan, Ph.D.	(Principal Executive Officer)	
/s/ Michael D. Mulholland	Chief Financial Officer	October 19, 2016
Michael D. Mulholland	(Principal Financial and Accounting Officer)	
*	Director	October 19, 2016
Anthony D. Caracciolo		
*	Director	October 19, 2016
Denis R. Burger, Ph.D.		
*	Director	October 19, 2016
Carl C. Dockery		
*	Director	October 19, 2016
Gregory A. Gould		
*	Director	October 19, 2016

A. Bruce Montgomery, M.D.

\*

Director

October 19, 2016

Jordan G. Naydenov

\*By: /s/ Michael D. Mulholland  
Attorney-in-Fact

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<b>Exhibit No.</b>	<b>Description</b>
2.1	Agreement and Plan of Merger, dated as of July 6, 2015, between CytoDyn Inc. and CytoDyn Inc. (incorporated by reference to Exhibit 2.1 to our Current Report on Form 8-K12G3 filed with the SEC on September 1, 2015).
3.1	Certificate of Incorporation of CytoDyn Inc. (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K12G3 filed with the SEC on September 1, 2015).
3.2	Certificate of Amendment to Certificate of Incorporation of CytoDyn Inc. (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed with the SEC on March 21, 2016).
3.3	Certificate of Amendment to Certificate of Incorporation of CytoDyn Inc. (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed with the SEC on August 24, 2016).
3.4	By-Laws of CytoDyn Inc. (incorporated by reference to Exhibit 3.2 to our Current Report on Form 8-K12G3 filed with the SEC on September 1, 2015).
4.1	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K12G3 filed September 1, 2015).
4.2	Form of Investor Warrant (other than October 2013 Investor Warrant) (incorporated by reference to Exhibit 4.3 to the Registrant's Registration Statement on Form S-1 filed September 11, 2015).
4.3	Form of Placement Agent Warrant (other than October 2013 Placement Agent Warrant) (incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-1 filed September 11, 2015).
4.4	Form of October 2013 Investor Warrant and Inducement Warrant (incorporated by reference to Exhibit 4.3 to the Registrant's Amendment No. 2 to Form S-1 filed September 2, 2015).
4.5	Form of October 2013 Placement Agent Warrant (incorporated by reference to Exhibit 4.5 to the Registrant's Form S-1 filed November 15, 2013).
4.6	Form of Consultant Warrant (incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-1 filed February 3, 2016).
5.1	Legal opinion of Lowenstein Sandler.**
23.1	Consent of Warren Averett LLP.**
23.2	Consent of Lowenstein Sandler LLP (included in Exhibit 5.1).**
24.1	Power of Attorney (included on the signature page).*

\* Previously filed.

\*\* Filed herewith.