

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 84994 / January 29, 2019**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4015 / January 29, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18969**

**In the Matter of**

**CYTODYN INC.**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against CytoDyn, Inc. (“Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-And-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-And-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that

#### Summary

These proceedings involve violations of the federal securities laws in connection with the Respondent's Internal Control over Financial Reporting ("ICFR"). Respondent failed to create and implement effective ICFR for nine consecutive annual reporting periods from 2008 through 2016.

#### Respondent

1. CytoDyn is a clinical stage biotechnology company based in Vancouver, Washington. Respondent is focused on the clinical development and commercialization of humanized monoclonal antibodies to treat Human Immunodeficiency Virus ("HIV") infection. Respondent's securities trade on the OTC market under the symbol CYDY. At all relevant times, Respondent filed periodic reports with the Commission, including Forms 10-K and 10-Q, pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

#### Background

2. Respondent disclosed material weaknesses in each of its Forms 10-K over a period of nine years, from 2008 through 2016. Respondent's disclosed material weaknesses often repeated year after year, relating primarily to segregation of duties and the review, recording and financial reporting of transactions.

3. Respondent included in its public filings the same disclosure of material weaknesses for nine years straight. From 2008 through 2016, CytoDyn's boilerplate disclosure indicated the company had "[s]everal material weaknesses... because of inadequate segregation of duties over authorization, review and recording of transactions, as well as the financial reporting of such transactions." The general and sweeping description provided no information as to the specific material weaknesses observed.

4. From 2012 through 2015, Respondent reported no material changes in its internal controls, but did take certain steps to improve controls. These remediation steps included doubling its accounting staff by hiring a CPA; instituting certain controls around wire transfers, cash disbursements, financial statement reconciliations, and quarterly financial statements; and outsourcing certain of its information technology needs. After being contacted by Commission staff, Respondent retained, for the first time, a SOX consultant. Respondent has remediated its material weaknesses and determined that ICFR was effective as of May 31, 2017.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. As a result of the conduct described above, Respondent violated Rule 13a-15(a) of the Exchange Act, which require issuers with classes of securities registered pursuant to Section 12 to maintain ICFR.

6. As a result of the conduct described above, Respondent violated Section 13(b)(2)(B) of the Exchange Act, which requires Section 12 registrants to devise and maintain a system of sufficient internal accounting controls.

#### **CytoDyn's Remedial Efforts**

7. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 13(b)(2)(B) of the Exchange Act and Rule 13a-15(a), thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$35,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Respondent as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Melissa Hodgman, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields  
Secretary