
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

FORM 8-K

**Current Report
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): July 22, 2022 (July 18, 2022)

CytoDyn Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or
organization)

000-49908
(Commission File Number)

83-1887078
(I.R.S. Employer Identification No.)

**1111 Main Street, Suite 660
Vancouver, Washington 98660**
(Address of principal executive offices, including zip code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
None	None	None

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

On July 18, 2022, CytoDyn Inc. (the “Company”) entered into an amendment (the “Amendment”) to the Surety Bond Backstop Agreement (the “Backstop Agreement”) previously entered into by the Company with David Fairbank Welch, both individually and in his capacity as trustee of a revocable trust, LRFA, LLC, a Delaware limited liability company, and certain other related parties (collectively, the “Indemnitors”), effective February 14, 2022. As previously reported in the Company’s Current Report on Form 8-K filed on February 18, 2022, the Indemnitors agreed to assist the Company in obtaining a surety bond (the “Surety Bond”) for posting in connection with the Company’s ongoing litigation with Amarex Clinical Research, LLC, by, among other things, agreeing to indemnify the issuer of the Surety Bond with respect to the Company’s obligations under the Surety Bond. As consideration for the Indemnitors’ agreement to indemnify the Surety, the Backstop Agreement provided, among other things, that the Company would issue to 4-Good Ventures LLC, an affiliate of the Indemnitors (“4-Good”), (i) a warrant for the purchase of 15,000,000 shares of common stock as a backstop fee (the “Initial Warrant”) and (ii) a warrant for the purchase of an additional 15,000,000 shares, to be exercisable only if the Indemnitors were required to make a payment to the Surety (the “Make-Whole Warrant” and, together with the Initial Warrant, the “4-Good Warrants”).

Under the Amendment, (i) the obligation of the Indemnitors to indemnify the Surety was extended from August 13, 2022 to November 15, 2022, (ii) the exercise price of each of the 4-Good Warrants was reduced from \$0.30 to \$0.20 per share, (iii) the Make-Whole Warrant was amended to be fully exercisable immediately, (iv) the deadline for the Company to use its commercially reasonable efforts to file a Registration Statement on Form S-3 with the Securities and Exchange Commission to register for resale the shares underlying the 4-Good Warrants was extended to December 31, 2022, (v) the Indemnitors and 4-Good agreed to waive the requirement that the Company reserve for issuance the 15,000,000 shares subject to the Make-Whole Warrant until such time as the Company’s stockholders approve an increase in the Company’s authorized shares of common stock, and (vi) upon the exercise in full of the 4-Good Warrants, the Company agreed to take reasonable steps to cause the Indemnitors to be released from their indemnity obligations to the Surety, if any, by an amount equal to the exercise proceeds. Following the acceleration of the exercisability of the Make-Whole Warrant, Dr. Welch is deemed to beneficially own in excess of 5 percent of the Company’s outstanding shares of common stock. The foregoing description of the terms of the Amendment is qualified in its entirety by reference to the complete text of the Amendment, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	<u>Amendment dated July 18, 2022, to Surety Bond Backstop Agreement dated February 14, 2022, among the Company and certain parties named therein</u>
104	Cover Page Interactive Data File (formatted as inline XBRL)

SIGNATURE

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

CYTODYN INC.

Date: July 22, 2022

By /s/ Antonio Migliarese
Antonio Migliarese
Chief Financial Officer

AMENDMENT TO SURETY BOND BACKSTOP AGREEMENT

This AMENDMENT TO SURETY BOND BACKSTOP AGREEMENT (this “Amendment”) is entered into as of July 18, 2022 (the “**Effective Date**”), to the Surety Bond Backstop Agreement effective February 14, 2022 (the “**Agreement**”), entered into by and among CytoDyn Inc., a Delaware corporation (“**CytoDyn**”), David Fairbank Welch, both individually and in his capacity as trustee of the David F. and Heidi A. Welch Revocable Trust, Heidi A. Welch, both individually and in her capacity as trustee of the David F. and Heidi A. Welch Revocable Trust, and LRFA, LLC, a Delaware limited liability company (“**LRFA**” and, together with David F. Welch and Heidi A. Welch, each an “**Indemnitor**” and collectively the “**Indemnitors**”). 4-Good Ventures LLC (“**4-Good**”), is a party to this Amendment as it relates to Sections 3 and 4 below. CytoDyn, Indemnitors and 4-Good are collectively referred to herein as the “**Parties**” or each, individually, as a “**Party**”.

RECITALS

WHEREAS the Indemnitors and 4-Good previously entered into an Agreement and Waiver dated June 23, 2022, relating to the Make-Whole Warrant, on the express understanding that the Agreement would subsequently be amended to reflect the terms specified below; and

WHEREAS the Parties wish to amend the Agreement, as well as the Initial Warrant and the Make-Whole Warrant (together, the “**Warrants**”).

NOW, THEREFORE, in consideration of the consideration set forth in this Amendment and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement and the Warrants as specified below.

1. **Defined Terms.** Terms used in this Amendment without definition shall have the meanings ascribed to them in the Agreement or the Warrants, as applicable.
2. **Waiver of Reservation of Shares.** The Parties, other than CytoDyn, waive the requirement of Section 2 of the Make-Whole Warrant relating to the reservation of shares underlying the Make-Whole Warrant until such time as an amendment to CytoDyn’s Certificate of Incorporation increasing the number of shares of Common Stock authorized for issuance by 350,000,000 shares (the “**Certificate Amendment**”) has been accepted for filing by the Delaware Secretary of State; provided that CytoDyn submits the Certificate Amendment to a vote of its stockholders no later than October 14, 2022, and, if the Certificate of Amendment receives the requisite approval of its

stockholders, to submit the Certificate Amendment for filing with the Delaware Secretary of State promptly thereafter.

3. **Extension of Term of Surety Bond Indemnity.** The deadline for CytoDyn to post sufficient collateral to Surety in support of the Surety Bond and to obtain the release from Surety of the Surety Bond Indemnity shall be extended until November 15, 2022.
4. **Amendments to Warrants.** CytoDyn hereby amends the Warrants to provide as follows:
 - (a) The Exercise Price of all 30 million shares covered by the Warrants shall be \$0.20 per share and
 - (b) The Make-Whole Warrant covering 15 million shares will be exercisable in full beginning on the Effective Date through 5:00 p.m., Pacific Time, on the date that is five years following the date of the Make-Whole Warrant.
5. **Registration of Warrant Shares.** Section 2(b) of the Agreement is amended to read in full as follows:

“CytoDyn shall use its commercially reasonable efforts to file, no later than December 31, 2022, a Registration Statement on Form S-3 with the Securities and Exchange Commission (the “SEC”) that is intended to register for resale the shares underlying the Warrants; provided, however, that in the event that CytoDyn is prevented from filing a registration statement, as a result of outstanding comments from the SEC, or because in the good faith judgment of the Board of Directors it would be materially detrimental to CytoDyn and its stockholders for such registration statement to either become effective or remain effective, because such action would (i) require premature disclosure of material information that CytoDyn has a bona fide business purpose for preserving as confidential; or (ii) render CytoDyn unable to comply with requirements under the federal securities laws, then CytoDyn shall have the right to defer taking action with respect to such S-3 filing for a period of not more than 60 days.”
6. **Release of Surety Bond Indemnity.** Upon the exercise of the Warrants in full by 4-Good, CytoDyn will take all reasonable steps promptly thereafter to cause the Surety to reduce the amount of the Surety Bond Indemnity for which the Indemnitors are liable, if any, by an amount, and to release collateral, if any, posted by the Indemnitors with a value, equal to the proceeds of the exercise of the Warrants.
7. **General.**
 - (a) *Captions.* Any captions for the sections of this Amendment are for convenience only and do not control or affect the meaning or construction of any of the provisions of this Amendment.
 - (b) *Severability.* If any term, condition, or provision of this Amendment, or any other document or instrument referred to in this Amendment, is held invalid for any

reason, such offending term, condition, or provision shall be stricken therefrom, and the remainder of this Amendment shall not be affected thereby.

- (c) *Negotiated Agreement.* This Amendment is a negotiated agreement. In the event of any ambiguity in this Amendment, such ambiguity shall not be subject to a rule of contract interpretation that would cause the ambiguity to be construed against any of the parties to this Amendment.
- (d) *Entire Agreement.* Except as amended by this Amendment, all other provisions of the Agreement remain in full force and effect.
- (e) *Applicable Law.* This Amendment shall be governed by and construed under the laws of the State of Washington, without regard to principles of conflicts of law.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

CYTODYN:

By: Antonio Migliarese
Name: Antonio Migliarese
Title: CFO

4-Good Ventures, LLC, a Delaware
limited liability company

By: David F. Welch
Name: David F. Welch
Title: President

INDEMNITORS:

David Fairbank Welch
David Fairbank Welch, both individually and
in his capacity as trustee of the David F. and
Heidi A. Welch Revocable Trust,

Heidi Welch
Heidi A. Welch, both individually and in her
capacity as trustee of the David F. and Heidi
A. Welch Revocable Trust

LRFA LLC, a Delaware limited liability
company

By: David F. Welch
Name: David F. Welch
Title: President