

CYTRX CORP
Form 10-K/A
July 16, 2010

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

FORM 10-K/A
(Amendment No. 1)

(Mark One)

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

For the fiscal year ended December 31, 2009
or

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

For the transition period from
to

Commission file number 0-15327

CytRx Corporation
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

58-1642740
(I.R.S. Employer
Identification No.)

11726 San Vicente Blvd, Suite 650,
Los Angeles, California
(Address of principal executive offices)

90049
(Zip Code)

Registrant's telephone number, including area code: (310) 826-5648

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

| Title of each class | Name of exchange on which registered |
|---------------------|---|
| Common Stock, | The NASDAQ |

Edgar Filing: CYTRX CORP - Form 10-K/A

\$0.001 par value per share
Capital Market
Series A Junior
Participating
Preferred Stock
Purchase Rights

Securities Registered Pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the Registrant is a well-known seasoned issuer (as defined in Securities Act Rule 405). Yes No R

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934. Yes No R

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 and (2) has been subject to such filing requirements for the past 90 days. Yes R No £

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) 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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. R

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 R 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 2b-2 of the Act). Yes £ No R

Based on the closing price as reported on The Nasdaq Capital Market, the aggregate market value of the Registrant's common stock held by non-affiliates on June 30, 2009 (the last business day of the Registrant's most recently completed second fiscal quarter) was approximately \$102.0 million. Shares of common stock held by directors and executive officers and their respective affiliates have been excluded from this calculation, because such stockholders may be deemed to be "affiliates" of the Registrant. This is not necessarily determinative of affiliate status for other purposes. The number of outstanding shares of the Registrant's common stock as of March 12, 2010 was 108,908,105, exclusive of treasury shares.

EXPLANATORY NOTES

CytRx Corporation (“CytRx,” “we,” “our,” “us” and the “Company”) is amending our Annual Report on Form 10-K for the fiscal year ended December 31, 2009, which we sometimes refer to in this amendment as our “original Form 10-K,” for the sole purpose of amending the signature page to the original Form 10-K to include the signatures required by General Instruction D of Form 10-K.

Except for the foregoing, this amendment does not modify any disclosures contained in our original Form 10-K. Additionally, the text of this amendment, except for the information in the foregoing, speaks as of the filing date of the original Form 10-K and does not attempt to update the disclosures in our original Form 10-K or to discuss any developments subsequent to the date of the original filing. In accordance with the rules and regulations of the Securities and Exchange Commission, the information contained in the original Form 10-K and this amendment is subject to updated or supplemental information contained in reports filed by us with the Securities and Exchange Commission subsequent to the filing dates of the original Form 10-K and this amendment.

SIGNATURES

In accordance with Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CYTRX CORPORATION

Date: July 16, 2010

By: /s/ STEVEN A. KRIEGSMAN
 Steven A. Kriegsman
 President and Chief Executive
 Officer

In accordance with the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|---|---------------|
| /s/ STEVEN A. KRIEGSMAN Steven A. Kriegsman | Director, President and Chief Executive Officer (Principal Executive Officer) | July 16, 2010 |
| /s/ JOHN Y. CALOZ John Y. Caloz | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | July 16, 2010 |
| /s/ MAX LINK Max Link, Ph.D. | Chairman of the Board | July 16, 2010 |
| /s/ MARVIN R. SELTER Marvin R. Selter | Vice-Chairman of the Board | July 16, 2010 |
| /s/ LOUIS IGNARRO Louis Ignarro, Ph.D. | Director | July 16, 2010 |
| /s/ JOSEPH RUBINFELD Joseph Rubinfeld, Ph.D. | Director | July 16, 2010 |
| /s/ RICHARD L. WENNEKAMP Richard L. Wennekamp | Director | July 16, 2010 |

INDEX TO EXHIBITS

| Exhibit Number | Description |
|----------------|---|
| 31.1 | Certification of Chief Executive Officer Pursuant to 15 U.S.C. Section 7241, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 31.2 | Certification of Chief Financial Officer Pursuant to 15 U.S.C. Section 7241, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 32.1 | Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 32.2 | Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |