

CYTRX CORP  
Form 8-K  
March 03, 2006

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 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): March 2, 2006**

**CYTRX CORPORATION**

**(Exact Name of Registrant as Specified in its Charter)**

**Delaware**

**(State or Other Jurisdiction of Incorporation)**

**000-15327**

**(Commission File Number)**

**58-1642740**

**(I.R.S. Employer Identification No.)**

**11726 San Vicente Boulevard, Suite 650**

**Los Angeles, California**

**(Address of Principal Executive Offices)**

**90049**

**(Zip Code)**

**(310) 826-5648**

**(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 (See General Instruction A.2 below):

- 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))
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**ITEM 1.01 Entry into a Material Definitive Agreement.**

See the discussion under Item 3.02, below, which is incorporated herein by reference.

**ITEM 3.02 Unregistered Sales of Equity Securities.**

On March 2, 2006, CytRx Corporation ( CytRx ) entered into a Securities Purchase Agreement with approximately 23 institutional and individual investors (the Investors ), pursuant to which CytRx agreed, subject to certain customary closing conditions, to sell to the Investors, for an aggregate purchase price of approximately \$13.4 million, 10,650,794 shares of its common stock and warrants to purchase 5,325,397 shares of common stock of CytRx. The warrants will be exercisable for five years, beginning six months after the closing under the Securities Purchase Agreement, at an initial exercise price of \$1.54 per share. As of March 2, 2006, CytRx had outstanding approximately 58.7 million shares of common stock.

The initial exercise price of the warrants is subject to adjustment in the event of a future stock split, reverse stock split, merger or reorganization, and similar changes affecting holders of CytRx common stock generally. As used in this report, references to the exercise price mean the initial exercise price of the warrants as it may be adjusted pursuant to these antidilution adjustments. The warrants contain no market-price or exercise-price type antidilution adjustments that could result in the warrant holders receiving any additional shares of common stock without further consideration based on the prices at which CytRx might issue shares of common stock or common stock equivalents in the future.

The closing of the sale of the shares and warrants is subject to delivery of certain closing items and the satisfaction of other customary closing conditions. The Securities Purchase Agreement will be terminable by the Investors if the Closing fails to occur for any reason on or before March 7, 2006.

*Conversion Cap*

The warrants contain a conversion cap provision that precludes CytRx from issuing any shares of common stock upon exercise of a warrant if, as a result of such issuance, the holder would own beneficially more than 4.99% (9.99% under certain circumstances) of CytRx's outstanding common stock.

*Registration Rights*

In connection with the sale and issuance of the shares and warrants, CytRx and the Investors entered into a Registration Rights Agreement, dated March 2, 2006, pursuant to which CytRx agreed to prepare and file, on or before 45 days from the closing date of the sale of the shares and warrants a registration statement with the SEC covering the resale of all of the shares of common stock issued or issuable in the transaction. CytRx is required to have such registration statement declared effective by the SEC on the 90<sup>th</sup> day from the closing date (if the registration statement is not reviewed by the SEC) or by the 120<sup>th</sup> day from the closing (if the registration statement is reviewed by the SEC), or be subject to the payment of specified liquidated damages to Investors. CytRx may also be required, under certain circumstances, to pay the Investors specified liquidated damages if it is unable to maintain the effectiveness of the registration statement.

*Certain Covenants*

CytRx agrees in the Securities Purchase Agreement that it will refrain from engaging in any further equity financing during the period ending 90 days following the effective date of the registration statement to be filed by CytRx as referred to above.

In connection with the Securities Purchase Agreement, Stephen A. Kriegsman, our President and Chief Executive Officer, entered into a Lock-Up Agreement with CytRx and the Investors in which he agrees, subject to certain exceptions, not to sell or dispose of shares of our common stock owned by him for a 12-month period following the effective date of the registration statement to be filed by CytRx as described under Registration Rights, above.

*Placement Agent's Fees*

CytRx has agreed to pay T.R. Winston & Company LLC a cash placement fee at the closing equal to 7% of the gross proceeds from the sale of the shares and warrants to Investors introduced by T. R. Winston & Company LLC. CytRx also will pay \$25,000 in reimbursement of legal expenses, and grant T. R. Winston & Company LLC warrants to purchase a number of shares of common stock equal to 7% of the total number of shares sold at an exercise price of \$1.54 per share, and otherwise on the same terms as the warrants sold to the Investors.

CytRx may pay similar fees and expenses, and may grant similar warrants, to other broker-dealers who have introduced Investors to CytRx.

*Other*

The shares and warrants will not be registered under the Securities Act of 1933, as amended (the Act), and will be issued and sold in reliance upon the exemption from registration contained in Section 4(2) of the Act and Regulation D promulgated thereunder. The shares and the warrants, as well as the shares underlying the warrants, may not be reoffered or sold in the United States by the holders in the absence of an effective registration statement, or exemption from the registration requirements, under the Act.

Copies of the definitive agreements relating to the sale and issuance of the shares and the warrants are filed herewith as an exhibit to this report. The summary of matters set forth above is qualified by reference to such exhibits.

On March 3, 2006, CytRx issued a press release announcing the execution of the Securities Purchase Agreement. A copy of the press release is filed herewith as Exhibit 99.1.

**ITEM 9.01 Financial Statements and Exhibits**

(c) Exhibits.

There are filed as part of this report the exhibits listed on the accompanying Index to Exhibits, which is incorporated herein by reference.

**SIGNATURES**

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 hereunto duly authorized.

CYTRX CORPORATION

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

Dated: March 3, 2006

4

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**Index to Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
4.1	Form of Common Stock Purchase Warrant.
10.1	Securities Purchase Agreement, dated as of March 2, 2006, by and among CytRx Corporation and the purchasers named therein.
10.2	Registration Rights Agreement, dated as of March 2, 2006, by and among CytRx Corporation and the purchasers named therein.
10.3	Lock-Up Agreement, dated as of March 2, 2006, by and among CytRx Corporation, Steven A. Kriegsman and American Stock Transfer & Trust Company.
10.4	Investment Banking Agreement dated February ____, 2006 between CytRx Corporation and T.R. Winston & Company LLC.
99.1	Press Release issued by CytRx Corporation on March 3, 2006.