

Cardiogenesis Corp /CA
Form DEFM14A
May 05, 2011

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

SCHEDULE 14A

PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES
EXCHANGE ACT OF 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Under Rule 14a-12

Cardiogenesis Corporation

(Name of Registrant as Specified in its Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11

- (1) Title of each class of securities to which transaction applies:
Cardiogenesis Corporation common shares, no par value (**Common Shares**)
- (2) Aggregate number of securities to which transaction applies:
52,425,784 Common Shares
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
The proposed maximum aggregate value of the transaction for purposes of calculating the filing fee is \$12,003,250.33. The filing fee was based upon (A) 26,265,318 shares of our common stock (including shares of unvested restricted stock) owned by persons other than CryoLife, Inc. or CL Falcon, Inc. and outstanding on May 4, 2011, multiplied by \$0.457 per share, plus (B) 2,142,440 options to acquire common stock with an exercise price below \$0.457 multiplied by \$0.457 per share minus such exercise price (which amount equals \$434,199.88) (the **Total Consideration**). The filing fee equals the product of 0.0001161 multiplied by the Total Consideration.

(4) Proposed maximum aggregate value of transaction:
\$12,437,450.21

(5) Total fee paid:
\$1,443.99

o Fee paid previously with preliminary materials.

p Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount Previously Paid: \$2,891.15

(2) Form, Schedule or Registration proxy No: Schedule TO

(3) Filing party: CryoLife, Inc. and CL Falcon, Inc.

(4) Date Filed: April 5, 2011

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CARDIOGENESIS CORPORATION

**11 Musick
Irvine, CA 92618
(949) 420-1800**

May 6, 2011

Dear Shareholders:

You are cordially invited to attend a special meeting of shareholders (the **Special Meeting**) of Cardiogenesis Corporation, a California corporation (**Cardiogenesis, we, us or our**) to be held on Monday, May 16, 2011 at 8:30 a.m., Pacific Time, at Cardiogenesis principal offices, 11 Musick, Irvine, California 92618.

On March 28, 2011, we entered into an Agreement and Plan of Merger with CryoLife, Inc. (**CryoLife**) and CL Falcon, Inc. (**Merger Sub**), a wholly-owned subsidiary of CryoLife, which we subsequently amended and restated on April 14, 2011, (as amended and restated, the **Merger Agreement**). At the Special Meeting, we will ask you to approve and adopt the Merger Agreement. The Merger is the second and final step of the acquisition of Cardiogenesis by CryoLife. The first step was a tender offer by Merger Sub for 49.9% of the outstanding common shares of Cardiogenesis at a price of \$0.457 per share, which was completed on May 2, 2011. The second, and final, step of CryoLife's acquisition of us consists of the merger of Merger Sub with and into Cardiogenesis pursuant to the Merger Agreement (the **Merger**). As a result of the Merger, Cardiogenesis will become a wholly-owned subsidiary of CryoLife.

If the Merger is completed, you will be entitled to receive \$0.457 in cash, without interest thereon and less any required withholding taxes, for each share of Cardiogenesis common stock you own.

Our board of directors unanimously approved the Merger Agreement and the Merger and related transactions and unanimously determined that the Merger is advisable and fair to, and in the best interests of Cardiogenesis shareholders. **Our board of directors unanimously recommends that you vote FOR the proposal to approve and adopt the Merger Agreement.**

The Merger cannot be completed unless shareholders holding at least a majority of the outstanding common shares on the record date approve and adopt the Merger Agreement. **Your vote is very important.** Whether or not you plan to attend the Special Meeting, please complete, date, sign and return, as promptly as possible, the enclosed proxy card in the accompanying prepaid reply envelope. If you attend the Special Meeting and vote in person, your vote by ballot will revoke any proxy previously submitted. **The failure to vote your shares of our common stock will have the same effect as a vote AGAINST approval of the proposal to adopt the Merger Agreement.**

If your shares of our common stock are held in street name by your bank, brokerage firm or other nominee, your bank, brokerage firm or other nominee will be unable to vote your shares of our common stock without instructions from you. You should instruct your bank, brokerage firm or other nominee to vote your shares of our common stock in accordance with the procedures provided by your bank, brokerage firm or other nominee. **The failure to instruct your bank, brokerage firm or other nominee to vote your shares of our common stock FOR approval of the proposal to adopt the Merger Agreement will have the same effect as voting AGAINST the proposal to adopt the Merger Agreement.**

The accompanying proxy statement provides you with detailed information about the Special Meeting, the Merger Agreement and the Merger. A copy of the Merger Agreement is attached as **Annex A** to the proxy statement. We encourage you to read the accompanying proxy statement in its entirety because it explains the proposed Merger, the documents related to the Merger and other related matters.

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Whether or not you plan to attend the Special Meeting, please take the time to submit a proxy by following the instructions on your proxy card as soon as possible. If your shares of our common stock are held in an account at a broker, dealer, commercial bank, trust company or other nominee, you should instruct your broker, dealer, commercial bank, trust company or other nominee how to vote in accordance with the voting instruction form furnished by your broker, dealer, commercial bank, trust company or other nominee.

On behalf of our board of directors and management of Cardiogenesis, we thank you for your support.

Best Regards,

Paul McCormick
Executive Chairman

This transaction has not been approved or disapproved by the Securities and Exchange Commission or any state securities commission. Neither the Securities and Exchange Commission nor any state securities commission has passed upon the merits or fairness of this transaction or upon the adequacy or accuracy of the information contained in this proxy statement. Any representation to the contrary is a criminal offense.

The accompanying proxy statement is dated May 5, 2011 and is first being mailed to shareholders on or about May 6, 2011.

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CARDIOGENESIS CORPORATION
11 Musick
Irvine, CA 92618
(949) 420-1800

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS
To Be Held May 16, 2011

NOTICE IS HEREBY GIVEN that the Special Meeting of Shareholders (the **Special Meeting**) of Cardiogenesis Corporation, a California corporation, will be held on Monday, May 16, 2011 at 8:30 a.m. Pacific Time at our principal executive offices, located at 11 Musick, Irvine, California, 92618 for the following purposes:

- (1) To approve and adopt the Agreement and Plan of Merger, dated as of March 28, 2011, and as amended and restated on April 14, 2011 (as amended and restated, the **Merger Agreement**) by and among Cardiogenesis Corporation, a California corporation (**Cardiogenesis, we, us or our**), CryoLife, Inc., a Florida corporation (**CryoLife**), and CL Falcon, Inc., a Florida corporation and a wholly-owned subsidiary of CryoLife (**Merger Sub**).
- (2) To consider and vote on a proposal to adjourn the Special Meeting, if necessary or appropriate, to do so.
- (3) To transact any other business as may properly come before the Special Meeting or any reconvened meeting after any adjournment or postponement of the Special Meeting.

For more information about the Merger and the other transactions contemplated by the Merger Agreement, please review the accompanying proxy statement and the Merger Agreement attached as **Annex A**.

Our board of directors has fixed the close of business of May 4, 2011 as the record date for the determination of shareholders entitled to notice of and to vote and this Special Meeting and at any adjournment or postponement thereof. For ten days prior to the Special Meeting, a complete list of shareholders entitled to vote at the Special Meeting will be available for examination by any shareholder, for any purpose relating to the Special Meeting, during ordinary business hours at our principal offices located at 11 Musick, Irvine, California, 92618.

Please submit your proxy or voting instructions as soon as possible to make sure that your shares are represented and voted at the Special Meeting, whether or not you plan to attend the Special Meeting. Whether you attend the Special Meeting or not, you may revoke a proxy at any time before it is voted by filing with our corporate secretary a duly executed revocation of proxy, by properly submitting a proxy by mail with a later date or by appearing at the Special Meeting and voting in person. You may revoke a proxy by any of these methods, regardless of the method used to deliver your previous proxy. Attendance at the Special Meeting without voting will not itself revoke a proxy. If your shares are held in an account at a broker, dealer, commercial bank, trust company or other nominee, you must contact your broker, dealer, commercial bank, trust company or other nominee to revoke your proxy.

Cardiogenesis shareholders who do not vote in favor of approval and adoption of the Merger Agreement will have the right to seek appraisal and the fair value of their shares but only if they perfect their dissenters' rights by complying with the required procedures under California law. See **Approval of the Merger Agreement Dissenters' Rights** beginning on page 42 of the accompanying proxy statement.

After careful consideration, our board of directors has unanimously determined that the Merger is advisable, fair to and in the best interests of the shareholders of Cardiogenesis, and approved the Merger Agreement, the Merger and

other transaction contemplated by the Merger Agreement. **Accordingly, Cardiogenesis board of**

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directors recommends that you vote FOR approval of the proposal to adopt the Merger Agreement and FOR approval of the proposal to adjourn the Special Meeting, if necessary.

All shareholders are cordially invited to attend the Special Meeting.

YOUR VOTE IS VERY IMPORTANT TO US WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING IN PERSON. SHAREHOLDERS ARE URGED TO VOTE THEIR SHARES PROMPTLY BY MAIL, INTERNET, OR TELEPHONE AS INSTRUCTED ON THE ENCLOSED PROXY CARD OR VOTING INSTRUCTION CARD. PROXIES FORWARDED BY OR FOR BROKERS OR FIDUCIARIES SHOULD BE RETURNED AS REQUESTED BY THEM.

By Order of Our Board of Directors,

Paul McCormick
Executive Chairman

Irvine, California
May 5, 2011

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SUMMARY VOTING INSTRUCTIONS

Ensure that your shares of Cardiogenesis common stock can be voted at the Special Meeting by submitting your proxy or contacting your broker, dealer, commercial bank, trust company or other nominee.

If your shares of Cardiogenesis common stock are registered in the name of a broker, dealer, commercial bank, trust company or other nominee: check the voting instruction card forwarded by your broker, dealer, commercial bank, trust company or other nominee to see which voting options are available or contact your broker, dealer, commercial bank, trust company or other nominee in order to obtain directions as to how to ensure that your shares of our common stock are voted in favor of the proposals at the Special Meeting.

If your shares of Cardiogenesis common stock are registered in your name: submit your proxy as soon as possible by telephone, via the Internet, or signing, dating and returning the enclosed proxy card in the enclosed postage-paid envelope, so that your shares of our common stock can be voted in favor of the proposals at the Special Meeting.

Instructions regarding telephone and Internet voting are included on the proxy card.

For additional questions about the Merger, assistance in submitting proxies or voting shares of Cardiogenesis common stock, or to request additional copies of the proxy statement or the enclosed proxy card, please contact William R. Abbott, our Chief Financial Officer, at 11 Musick, Irvine, California, 92618, or via telephone at (949) 420-1800.

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CARDIOGENESIS CORPORATION

**11 Musick
Irvine, CA 92618
(949) 420-1800**

PROXY STATEMENT

This proxy statement contains information related to a Special Meeting of shareholders of Cardiogenesis Corporation, a California corporation, or Cardiogenesis, we, us or our, to be held on Monday, May 16, 2011, at 8:30 a.m., Pacific Time, at Cardiogenesis' principal executive offices, 11 Musick, Irvine, CA 92618 and at any adjournments or postponements thereof. We are furnishing this proxy statement to shareholders of Cardiogenesis as part of the solicitation of proxies by Cardiogenesis' board of directors for use at the Special Meeting. This proxy statement is dated May 5, 2011 and is first being mailed to shareholders on or about May 6, 2011.

SUMMARY TERM SHEET

This summary highlights selected information in this proxy statement and may not contain all the information about the Merger that is important to you. We have included page references in parentheses to direct you to more complete descriptions of the topics presented in this summary term sheet. You should carefully read this proxy statement in its entirety, including the annexes and the other documents to which we have referred you, for a more complete understanding of the matters being considered at the Special Meeting.

Parties to the Merger

Cardiogenesis Corporation

11 Musick,
Irvine, CA 92618
(949) 420-1800

We are a California corporation and we develop and market surgical products for the treatment of refractory angina in patients with chronic cardiac ischemia caused by coronary artery disease, or CAD, which remains a leading cause of death for persons over the age of 65. Our products are used to create transmural laser channels into the myocardium, commonly referred to as transmyocardial revascularization, or TMR, which has proven effective in reducing symptoms in patients with refractory angina compared to optimal medical management. We are also currently developing proprietary catheter-based systems for the delivery of biologics, such as stem cells, as an adjunctive therapy. Our PHOENIX Combination Delivery System™, for which we have received an Investigational Device Exemption, or IDE, is the first device developed for this purpose.

CryoLife, Inc.

1655 Roberts Boulevard, NW
Kennesaw, GA 30144

Incorporated in Florida in 1984, CryoLife, Inc., which we refer to as CryoLife, is a leader in the processing and distribution of implantable living human tissues for use in cardiac and vascular surgeries throughout the U.S. and Canada. CryoLife's CryoValv® SG pulmonary heart valve, processed using CryoLife's proprietary SynerGraft®

technology, has FDA 510(k) clearance for the replacement of diseased, damaged, malformed, or malfunctioning native or prosthetic pulmonary valves. CryoLife's CryoPatch[®] SG pulmonary cardiac patch has FDA 510(k) clearance for the repair or reconstruction of the right ventricular outflow tract (RVOT), which is a surgery commonly performed in children with congenital heart defects, such as Tetralogy of Fallot, Truncus Arteriosus, and Pulmonary Atresia. CryoPatch SG is distributed in three anatomic configurations: pulmonary hemi-artery, pulmonary trunk, and pulmonary branch. CryoLife's BioGlu[®] Surgical Adhesive is FDA approved as an adjunct to

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sutures and staples for use in adult patients in open surgical repair of large vessels. BioGlue is also CE marked in the European Community and approved in Canada and Australia for use in soft tissue repair and was recently approved in Japan for use in the repair of aortic dissections. CryoLife's BioFoam Surgical Matrix is CE marked in the European Community for use as an adjunct in the sealing of abdominal parenchymal tissues (liver and spleen) when cessation of bleeding by ligature or other conventional methods is ineffective or impractical. CryoLife also distributes PerClot®, an absorbable powder hemostat that has CE Mark designation allowing commercial distribution into the European Community. PerClot is also distributed in other countries outside of the European Community.

CL Falcon, Inc.

1655 Roberts Boulevard, NW
Kennesaw, GA 30144

CL Falcon, Inc., which we refer to as Merger Sub, is a Florida corporation and a wholly-owned subsidiary of CryoLife that was formed by CryoLife solely for the purpose of facilitating the acquisition of Cardiogenesis. To date, Merger Sub has not carried on any activities other than those related to its formation and completing the transaction contemplated by the Merger Agreement. Merger Sub currently owns 23,221,166 shares of our common stock, representing approximately 49.9% of our outstanding shares of common stock. Upon consummation of the proposed Merger, Merger Sub will merge with and into Cardiogenesis and will cease to exist with Cardiogenesis continuing as the surviving corporation and a wholly-owned subsidiary of CryoLife.

Overview of the Transaction

(page 14)

Cardiogenesis, CryoLife and Merger Sub entered into the Merger Agreement on March 28, 2011, and subsequently amended and restated the Merger Agreement on April 14, 2011. In the Merger Agreement, CryoLife agreed to acquire Cardiogenesis through a two-step process. The first step was a tender offer by Merger Sub for 49.9% of the outstanding shares of our common stock at a price of \$0.457 per share, net to the seller in cash without interest thereon and less any applicable withholding tax, which was completed on May 2, 2011 and resulted in Merger Sub acquiring 49.9% of the outstanding shares of our common stock. The second step is a merger of Merger Sub with and into Cardiogenesis, with Cardiogenesis surviving as a wholly-owned subsidiary of CryoLife. The following will occur in connection with the Merger:

each outstanding common share issued and outstanding immediately prior to the effective time of the Merger (other than shares of our common stock held by us, CryoLife, or Merger Sub, or by any direct or indirect wholly-owned subsidiary of CryoLife, Merger Sub or Cardiogenesis or held by shareholders who are entitled to demand and properly demand and perfect appraisal of such shares of our common stock pursuant to, and who comply in all material respects with, Sections 1300-1313 of the California General Corporation Law (which shall be treated as described under Dissenters' Rights beginning on page 41)) will by virtue of the Merger, and without action by the holder thereof, be canceled and converted into the right to receive \$0.457 per common share;

all shares of our common stock so converted will, by virtue of the Merger, be canceled, and each holder of a certificate representing any shares of Cardiogenesis common stock will cease to have any rights with respect thereto, except the right to receive the \$0.457 per share upon surrender of such certificate;

all shares of our common stock held in the treasury of Cardiogenesis or owned, directly or indirectly, by CryoLife, Merger Sub or any wholly-owned Subsidiary of Cardiogenesis immediately prior to the effective time shall be canceled and shall cease to exist, and no consideration shall be delivered in exchange

therefore; and

each outstanding common share of Merger Sub will be converted into one fully paid and non-assessable share of common stock, no par value, of the surviving corporation.

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Following and as a result of the Merger:

Cardiogenesis shareholders (other than CryoLife and its affiliates) will no longer have any interest in, and no longer be shareholders of, Cardiogenesis, and will not participate in any future earnings or growth;

our shares of common stock will no longer be quoted on the OTCQB; and

the registration of shares of our common stock under the Securities Exchange Act of 1934, as amended, will be terminated.

**The Special Meeting
(page 11)**

The Special Meeting will be held on Monday, May 16, 2011 at 8:30 a.m. Pacific Time at Cardiogenesis principal executive offices, 11 Musick, Irvine, California 92618. At the Special Meeting, you will be asked to, among other things, approve and adopt the Merger Agreement. Please see the section of this proxy statement captioned Questions and Answers About the Special Meeting and the Merger beginning on page 7 for additional information on the Special Meeting, including how to vote your shares of our common stock.

**Shareholders Entitled to Vote
(page 11)**

You may vote at the Special Meeting if you owned shares of our common stock at the close of business on May 4, 2011, the record date for the Special Meeting. On that date, there were 46,564,910 shares of our common stock outstanding and entitled to vote. Approval and adoption of the Merger Agreement requires the affirmative vote of the holders of at least a majority of the shares of our common stock outstanding and entitled to vote at the Special Meeting. Merger Sub owns 49.9% of the shares of our common stock as a result of the tender offer made pursuant to the Merger Agreement and will vote such shares in favor of approving and adopting the Merger Agreement.

**Vote Required to Approve and Adopt the Merger Agreement
(page 12)**

You may vote at the special meeting if you owned shares of our common stock at the close of business on May 4, 2011, the record date for the special meeting. On that date, there were 46,564,910 shares of our common stock outstanding and entitled to vote. You may cast one vote for each Cardiogenesis common share that you owned on that date. Approval and adoption of the Merger Agreement requires the affirmative vote of the holders of at least a majority of the shares of our common stock outstanding and entitled to vote at the special meeting. CryoLife, either directly or indirectly through Merger Sub, owns 49.9% of the shares of our common stock as a result of the tender offer made pursuant to the Merger Agreement and will vote such shares in favor of approving and adopting the Merger Agreement. These shares, together with shares held by the parties to the Support Agreement constitute a majority of the shares of Cardiogenesis common stock outstanding; as a result, we believe that approval of the Merger by Cardiogenesis shareholders is assured. See Support Agreement at page 60.

**Payment for Common Shares
(page 50)**

Computershare Inc. has been appointed as the Paying Agent to coordinate the payment of the Merger consideration to our shareholders. The Paying Agent will send written instructions for surrendering your Cardiogenesis common share

certificates, if your shares of our common stock are certificated, and obtaining the Merger consideration after we have completed the Merger. Do not return your stock certificates with your proxy card and do not forward your stock certificates to the Paying Agent prior to receipt of the written instructions. If you hold uncertificated shares of our common stock (i.e., you hold your shares in book entry form), you will receive your cash consideration once you send in your letter of transmittal and any other documents requested in the Paying Agent's instructions.

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Our Share Price

(page 64)

The shares of our common stock are currently quoted on the OTCQB under the symbol CGCP.PK. On March 28, 2011, the trading day prior to announcement of the signing of the Merger Agreement, the last sale price per common share was \$0.32. The \$0.457 per share to be paid for each Cardiogenesis common share in the Merger represents a premium of approximately 43% to the closing price on March 28, 2011. On May 5, 2011, the last trading day before the mailing of this proxy statement, the closing price per share was \$0.45.

Recommendation of Our Board of Directors; Reasons for Recommending the Approval and Adoption of the Merger Agreement

(page 20)

On March 22, 2011, our board of directors (all of whom were unaffiliated with CryoLife at the time) unanimously determined that the Merger Agreement and the transactions contemplated thereby, including the tender offer and the Merger, are advisable and in the best interests of and are fair to Cardiogenesis and its shareholders and approved the Merger Agreement and the transactions contemplated thereby, including the tender offer and the Merger. Accordingly, our board of directors recommends that our shareholders vote **FOR** approval and adoption of the Merger Agreement.

In adopting the Merger Agreement and making the determination to recommend that the Merger Agreement be approved and adopted, Cardiogenesis board of directors consulted with Cardiogenesis management, as well as its financial and legal advisors, and considered a number of factors that the board members believed supported their decision. In particular, Cardiogenesis board of directors reviewed the possible alternatives to an acquisition by CryoLife and perceived risks of those alternatives, the range of potential benefits to shareholders of these alternatives and the timing and the likelihood of accomplishing the goals of such alternatives, and concluded that none of these alternatives were reasonably likely to present superior opportunities for Cardiogenesis to create greater value for shareholders, taking into account risks to the successful completion of a transaction as well as business, competitive, industry and market risks.

Background of the Merger

(pages 14 and 20)

For a description of the events leading to the adoption of the Merger Agreement by our board of directors, you should refer to Approval of the Merger Agreement Background of the Merger and Recommendation of Our Board of Directors; Reasons for Recommending the Approval of the Merger Agreement.

Opinion of Our Financial Advisor

(page 24)

B. Riley & Co., LLC, or B. Riley, on March 22, 2011 as updated and confirmed in writing on March 28, 2011, rendered its oral opinion to our board of directors to the effect that, as of such dates, the \$0.457 per share to be received by Cardiogenesis shareholders pursuant to the Merger Agreement was fair, from a financial point of view, to such shareholders.

The full text of the written opinion of B. Riley is attached to this proxy statement as **Annex B**. We encourage you to read this opinion carefully in its entirety for a complete description of the procedures followed, assumptions made, matters considered, qualifications and limitations on review undertaken and other matters considered by B. Riley in

preparing its opinion. The opinion is directed to our board of directors and only addresses the fairness from a financial point of view of the per share consideration to be received by shareholders pursuant to the Merger and does not address any other aspect or implication of the transactions or any other agreement, arrangement or understanding entered into in connection with the Merger Agreement, including, without limitation, the support agreement, which we refer to as the **Support Agreement**.

B. Riley acted as a financial advisor to Cardiogenesis in connection with the tender offer and the Merger and will receive an estimated fee of approximately \$192,000 from Cardiogenesis, of which approximately \$146,000 is

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contingent upon the consummation of the tender offer and the Merger. B. Riley also received a fee of \$100,000 for rendering its written opinion. The written opinion fee was not contingent upon the consummation of the tender offer and the Merger or the conclusions reached in B. Riley's written opinion. Cardiogenesis has also agreed to indemnify B. Riley against certain liabilities and reimburse B. Riley for certain expenses in connection with its services. The written opinion has been approved by the Fairness Opinion Committee of B. Riley. In the ordinary course of its business, B. Riley and its affiliates may actively trade securities of Cardiogenesis and CryoLife for its own account or the account of its customers and, accordingly, may at any time hold a long or short position in such securities. B. Riley may also, in the future, provide investment banking and financial advisory services to Cardiogenesis or CryoLife or entities that are affiliated with Cardiogenesis or CryoLife, for which B. Riley would expect to receive compensation.

**Financing of the Tender Offer and the Merger
(page 33)**

Consummation of the Merger and the other transactions contemplated by the Merger Agreement are not conditioned upon CryoLife or Merger Sub obtaining any financing. As of the date of this proxy statement, CryoLife has sufficient funds to complete the Merger.

**Interests of Cardiogenesis Directors and Executive Officers in the Merger
(page 34)**

Members of our board of directors and our executive officers may have interests in the transactions contemplated by the Merger Agreement that differ from, or are in addition to, those of our other shareholders. For example:

as of March 25, 2011, Cardiogenesis' directors and executive officers owned in the aggregate 911,561 shares of our common stock (excluding shares of our common stock issuable upon the exercise of options to purchase shares of our common stock and unvested shares of restricted stock);

as of March 25, 2011, Cardiogenesis' directors and executive officers held options to purchase 1,939,384 shares of our common stock in the aggregate, with exercise prices ranging from \$0.13 to \$2.57 per share. At the effective time of the Merger, each holder of an option will be entitled to receive an amount equal to the excess, if any, of \$0.457, without interest, over the exercise price per share of such option, less any required withholding taxes. Cardiogenesis' directors and executive officers will receive an aggregate of approximately \$289,599 as a result of the option payments;

as of March 25, 2011, Cardiogenesis' executive officers held 365,318 shares of restricted stock subject to vesting. Pursuant to the terms of the Merger agreement, each share of restricted stock held by Cardiogenesis' executive officers vested in full immediately prior to the date of the successful completion of the tender offer, which we refer to as the Acceptance Date. Thereafter, immediately prior to the effective time of the Merger, such shares of our common stock will convert into the right to receive \$0.457 per share;

if the Merger is consummated, our current officers may receive severance payments up to the following amounts: Mr. Lanigan, \$241,875; Mr. McCormick, \$37,272; and Mr. Abbott, \$215,000, as described in the section Summary of Aggregate Proceeds that May be Received by Cardiogenesis' Directors and Executive Officers beginning on page 41;

our current and former directors and officers will continue to be indemnified and will have the benefit of liability insurance until six years after the effective time of the Merger;

in connection with the execution of the Merger Agreement, our directors and executive officers entered into the Support Agreement, pursuant to which such directors and executive officers agreed to tender their 911,561 shares of our common stock and 365,318 shares of restricted stock, for a total of 1,276,879 shares, into the tender offer at the request of CryoLife and to vote such shares, if any remain, in favor of the Merger;

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if the Merger is consummated, any shareholder derivative claims that are currently pending or that could be brought against the directors and officers of Cardiogenesis by current shareholders would likely be extinguished; and

CryoLife has agreed to a two-year employment agreement with Richard Lanigan. Certain of our other officers may receive employment agreements from CryoLife for employment, on an as-needed basis, after the consummation of the Merger.

**Conditions to the Merger
(page 59)**

We are working to complete the Merger as soon as possible. The Merger is subject to the satisfaction of several conditions, including the conditions described immediately below. As such, we cannot predict the exact time of the Merger's completion.

The completion of the Merger depends on satisfaction of the conditions below:

the Merger Agreement must have been approved and adopted by the affirmative vote of at least a majority of the votes entitled to be cast by the holders of the outstanding shares of our common stock; and

no judgment, ruling, order, writ, injunction or decree issued by a court of competent jurisdiction or any statute, law, ordinance, rule or regulation or other legal restraint or prohibition of any governmental authority shall be in effect that would make the Merger illegal or otherwise prevent the consummation thereof provided that the party seeking to assert this condition shall have used those efforts required under the Merger Agreement to resist, lift or resolve such judgment, ruling, order, writ, injunction or decree, statute, law, ordinance, rule or regulation or other legal restraint or prohibition.

Where legally permissible, a party may waive a condition to its obligation to complete the Merger even though that condition has not been satisfied, although the shareholder approval condition cannot be waived. None of Cardiogenesis, CryoLife or Merger Sub, however, has any intention to waive any condition as of the date of this proxy statement.

**Dissenters' Rights
(pages 42 and C-1)**

If the Merger is consummated, persons who are then shareholders will have certain rights under California law to dissent and demand appraisal of, and payment in cash of the fair value of, their shares of our common stock. Any shares of our common stock held by a person who demands appraisal of such shares and who complies with the applicable provisions of California law shall not be converted into the right to receive Merger consideration. Such dissenters' rights, if the statutory procedures were complied with, will lead to a judicial determination of the fair value (excluding any element of value arising from the accomplishment or expectation of the Merger) required to be paid in cash to such dissenting shareholders for their shares of our common stock. The value so determined could be more or less than, or the same as, the purchase price per share pursuant to the tender offer or the consideration per share to be paid in the Merger.

You should read "Approval of the Merger Agreement - Dissenters' Rights" beginning on page 42 for a more complete discussion of the dissenters' rights in relation to the Merger as well as **Annex C** which contains a full text of the

applicable California statutes.

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QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

Q: What matters will be voted on at the Special Meeting?

A: You will be voting on the following:

To consider and vote on a proposal to approve and adopt the Merger Agreement. The Merger is the second and final step of the acquisition of Cardiogenesis by CryoLife. The first step was a tender offer by Merger Sub for 49.9% of the outstanding shares of our common stock at a price of \$0.457 per share, net to the seller in cash without interest thereon and less any withholding taxes, which was completed on May 2, 2011 and resulted in Merger Sub acquiring 49.9% of our outstanding common stock.

To consider and vote on a proposal to adjourn the Special Meeting, if necessary or appropriate, to do so.

Q: As a shareholder, what will I receive in the Merger?

A: You will be entitled to receive \$0.457 in cash, without interest thereon and less any applicable withholding tax, for each Cardiogenesis common share that you own immediately prior to the effective time of the Merger as described in the Merger Agreement. For example, if you own 100 shares of Cardiogenesis common stock, you will receive \$45.70 in cash in exchange for your shares of common stock, without interest and less any applicable withholding taxes. You will not own any shares of the capital stock in the surviving corporation.

Q: When and where is the Special Meeting of our shareholders?

A: The Special Meeting of shareholders will be held on Monday, May 16, 2011, at 8:30 a.m., Pacific Time, at Cardiogenesis principal executive offices, 11 Musick, Irvine, California 92618.

Q: What vote of our shareholders is required to approve and adopt the Merger Agreement?

A: For us to complete the Merger, shareholders holding at least a majority of the shares of our common stock outstanding at the close of business on the record date must vote **FOR** the proposal to approve and adopt the Merger Agreement. As a result of the tender offer, CryoLife beneficially owns a total of approximately 49.9% of the outstanding shares of our common stock as a result of the tender offer made pursuant to the Merger Agreement and will cause Merger Sub to vote all such shares in favor of approving and adopting the Merger Agreement. The shares held by CryoLife, together with the shares subject to the Support Agreement, represent a majority of our outstanding shares, so we believe that shareholder approval is assured.

Q: Who can attend and vote at the Special Meeting?

A: All shareholders of record as of the close of business on May 4, 2011, the record date for the Special Meeting, are entitled to receive notice of and to attend and vote at the Special Meeting, or any postponement or adjournment thereof. If you wish to attend the Special Meeting and your shares are held in an account at a broker, dealer, commercial bank, trust company or other nominee (i.e., in street name), you will need to bring a copy of your voting instruction card or statement reflecting your share ownership as of the record date. Street name holders who wish to vote at the Special Meeting will need to obtain a proxy from the broker, dealer, commercial bank, trust company or other nominee that holds their shares of our common stock. Seating will be limited at the Special Meeting. Shareholders of record will be verified against an official list available in the registration area at the meeting. We reserve the right to deny admittance to anyone who cannot adequately show proof of share ownership as of the record date.

Q: When will the shareholders list be available for examination?

A: A complete list of the shareholders of record as of the record date will be available for examination by shareholders of record beginning on May 6, 2011 at the Company's headquarters and will continue to be available through and during the Special Meeting.

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Q: How does our board of directors recommend that I vote?

A: Our board of directors unanimously recommends that our shareholders vote **FOR** the proposal to approve and adopt the Merger Agreement.

Q: Am I entitled to exercise dissenters' rights instead of receiving the Merger consideration for my shares?

A: Yes. Cardiogenesis shareholders who do not vote in favor of approval and adoption of the Merger Agreement will have the right to seek appraisal and the fair value of their shares if the Merger closes but only if they perfect their dissenters' rights by complying with the required procedures under the California General Corporation Law, or CGCL. See *Approval of the Merger Agreement - Dissenters' Rights* beginning on page 42 of the accompanying proxy statement. For the full text of Sections 1300-1313 of the CGCL, please see **Annex C** hereto.

Q: How do I cast my vote if I am a holder of record?

A: If you were a holder of record on May 4, 2011, you may vote in person at the Special Meeting or by submitting a proxy for the Special Meeting. You can submit your proxy by completing, signing, dating and returning the enclosed proxy card in the accompanying pre-addressed, postage paid envelope. Holders of record may also vote by telephone or the Internet by following the instructions on the proxy card.

*If you properly transmit your proxy, but do not indicate how you want to vote, your proxy will be voted **FOR** the approval and adoption of the Merger Agreement.*

Q: How do I cast my vote if my Cardiogenesis shares are held in street name by my broker, dealer, commercial bank, trust company or other nominee?

A: &#