CYTRX CORP
Form 10-Q/A
May 22, 2006

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q/A
Amendment No. 1

þ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2005

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE 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	**58-1642740**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
11726 San Vicente Blvd. Suite 650 Los Angeles, CA	**90049**
(Address of principal executive offices)	(Zip Code)

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

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 (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes þ No o

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12(b)-2 of the Exchange Act).

Yes o No þ

Number of shares of CytRx Corporation Common Stock, $.001 par value, issued and outstanding as of May 13, 2005: 57,540,721.

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EXPLANATORY NOTE

CytRx Corporation (the Company) is amending in certain respects its Quarterly Report on Form 10-Q for the quarter year ended March 31, 2005. The purpose of this amendment is to restate our condensed consolidated financial statements for the quarter ended March 31, 2005 as described below.

The restatement of our condensed consolidated financial statements is related to the pro forma amounts disclosed in accordance with Statement of Financial Accounting Standards (SFAS) No. 123, *Accounting for Stock-Based Compensation*, which were calculated incorrectly as set forth in the stock-based compensation footnote contained our original Form 10-Q. The restatement also includes a correction in the accounting for antidilution features in certain of our outstanding warrants.

On May 20, 2006, the Audit Committee of our Board of Directors approved management s recommendation to restate our condensed consolidated financial statements for the quarter ended March 31, 2005 to reflect the corrected disclosures in our stock-based compensation footnote and the correction in the accounting for antidilution features in certain of our outstanding warrants.

The following Items and Exhibits of our original Form 10-Q are amended by this amendment:

Part I Item 1. Financial Statements (unaudited)

Part I Item 4. Controls and Procedures

Part II Item 6. Exhibits

Exhibit 31.1 Certification of Chief Executive Officer

Exhibit 31.2 Certification of Chief Financial Officer

Except for the foregoing Items and Exhibits, this amendment does not modify any disclosures contained in our original Form 10-Q. Additionally, this amendment, except for the restatement information, speaks as of the filing date of the original Form 10-Q and does not attempt to update the disclosures in our original Form 10-Q 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-Q 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-Q and this amendment.

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Part I FINANCIAL INFORMATION

Item 1. Financial Statements

CYTRX CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)

	March 31, 2005 (restated)	December 31, 2004
ASSETS		
Current assets:		
Cash and short-term investments	$ 19,522,394	$ 2,999,409
Prepaid and other current assets	630,480	956,146
Total current assets	20,152,874	3,955,555
Property and equipment, net	441,815	447,579
Molecular Library, net	440,108	447,567
Prepaid insurance and other assets	270,449	198,055
Total assets	$ 21,305,246	$ 5,048,756
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 746,046	$ 1,661,104
Accrued expenses and other current liabilities	1,710,925	1,074,146
Total current liabilities	2,456,971	2,735,250
Accrued loss on facility abandonment	180,433	206,833
Deferred gain on sale of building	58,929	65,910
Deferred revenue	275,000	275,000
Total liabilities	2,971,333	3,282,993
Minority interest in subsidiary	131,973	170,671
Commitments and contingencies		
Stockholders equity:		
Preferred Stock, $.01 par value, 5,000,000 shares authorized, including 5,000 shares of Series A Junior Participating Preferred Stock; no shares issued and outstanding		
Common stock, $.001 par value, 100,000,000 shares authorized; 58,047,000 and 40,190,000 shares issued at March 31, 2005 and December 31, 2004, respectively	58,047	40,190
Additional paid-in capital	131,219,377	110,028,327
Treasury stock, at cost (633,816 shares held at March 31, 2005 and December 31, 2004)	(2,279,238)	(2,279,238)
Accumulated deficit	(110,796,246)	(106,194,187)
Total stockholders equity	18,201,940	1,595,092

Total liabilities and stockholders equity	$ 21,305,246	$ 5,048,756

The accompanying notes are an integral part of these condensed consolidated financial statements.

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CYTRX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months Ended March 31, 2005	Three Months Ended March 31, 2004
Revenues:		
License fees	$ 1,500	$ 100,000
Expenses:		
Research and development (includes $52,000 and $1,104,000 of non-cash stock-based expense for the three month periods ended March 31, 2005 and March 31, 2004, respectively)	1,914,020	2,261,948
Depreciation and amortization	38,124	16,330
Common stock, stock options and warrants issued for general and administrative services	239,052	453,832
Selling, general and administrative	1,418,160	1,199,795
	3,609,356	3,931,905
Loss before other income (expense)	(3,607,856)	(3,831,905)
Other income (expense):		
Interest income	42,666	23,306
Minority interest in losses of subsidiary	38,698	34,928
Net loss	$ (3,526,492)	$ (3,773,671)
Basic and diluted:		
Loss per common share	$ (0.07)	$ (0.11)
Weighted average shares outstanding	53,325,092	34,215,007

The accompanying notes are an integral part of these condensed consolidated financial statements.

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CYTRX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Three Months Ended March 31,	
	2005	**2004**
Cash flows from operating activities:		
Net loss	$ (3,526,492)	$ (3,773,671)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	38,124	16,330
Minority interest in losses of subsidiary	(38,698)	(34,928)
Common stock, stock options and warrants issued for services	291,275	1,557,582
Net change in operating assets and liabilities	(58,388)	153,054
Total adjustments	232,213	1,692,038
Net cash used in operating activities	(3,294,179)	(2,081,633)
Cash flows from investing activities		
Purchases of property and equipment	(24,901)	(95,103)
Net cash (used in) provided by investing activities	(24,901)	(95,103)
Cash flows from financing activities:		
Net proceeds from exercise of stock options and warrants	251,619	353,590
Net proceeds from issuances of common stock	19,590,446	184,000
Net cash provided by financing activities	19,842,065	537,590
Net increase (decrease) in cash and cash equivalents	16,522,985	(1,639,146)
Cash and short-term investments at beginning of period	2,999,409	11,644,446
Cash and short-term investments at end of period	$ 19,522,394	$ 10,005,300

Non-cash financing activities:

In connection with the Company s adjustment to terms of certain outstanding warrants on January 20, 2005, the Company recorded a deemed dividend of $1,075,568, which was recorded as a charge to retained earnings with a corresponding credit to additional paid-in-capital.

The accompanying notes are an integral part of these condensed consolidated financial statements.

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CYTRX CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
March 31, 2005
(Unaudited)

1. Description of Company and Basis of Presentation

CytRx Corporation (CytRx or the Company) is a biopharmaceutical research and development company, based in Los Angeles, California, with a development-stage subsidiary, CytRx Laboratories, Inc. (the Subsidiary), based in Worcester, Massachusetts (see Note 11 to our financial statements for the year ended December 31, 2004). The Company s small molecule therapeutics efforts include the clinical development of three, oral drug candidates that it acquired in October 2004, as well as a drug discovery operation conducted by the Subsidiary. The Company owns the rights to a portfolio of technologies, including ribonueleic acid interference (RNAi or gene silencing) technology in the treatment of specified diseases, including those within the areas of amyotrophic lateral sclerosis (ALS or Lou Gehrig s disease), obesity and type 2 diabetes and human cytomegalovirus (CMV), as well as a DNA-based HIV vaccine technology. In addition, the Company has entered into strategic alliances with third parties to develop several of the Company s other products.

On October 4, 2004, CytRx acquired all of the clinical and pharmaceutical and related intellectual property assets of Biorex Research & Development, RT, or Biorex, a Hungary-based company focused on the development of novel small molecules with broad therapeutic applications in neurology, diabetes and cardiology. The acquired assets include three oral, clinical stage drug candidates and a library of 500 small molecule drug candidates. The acquisition positions CytRx as a clinical-stage drug development company with a Phase II trial for ALS with one of its new compounds, arimoclomol, expected to be initiated in the second quarter of 2005.

To date, the Company has relied primarily upon selling equity securities and, to a lesser extent, upon payments from its strategic partners and licensees to generate the funds needed to finance its operations. Management believes the Company s cash and cash equivalents balances at March 31, 2005 will be sufficient to meet projected cash requirements into the second quarter of 2006. The Company will be required to obtain additional funding in order to execute its long-term business plans, although it does not currently have commitments from any third parties to provide it with capital. The Company cannot assure that additional funding will be available on favorable terms, or at all. If the Company fails to obtain significant additional funding when needed, it may not be able to execute its business plans and its business may suffer, which would have a material adverse effect on its financial position, results of operations and cash flows.

The accompanying condensed consolidated financial statements at March 31, 2005 and for the three month periods ended March 31, 2005 and 2004 are unaudited, but include all adjustments, consisting of normal recurring entries, which the Company s management believes to be necessary for a fair presentation of the periods presented. Interim results are not necessarily indicative of results for a full year. Balance sheet amounts as of December 31, 2004 have been derived from our audited financial statements as of that date, but do not include all of the footnote disclosures required by generally accepted accounting principles for a complete presentation of our financial statements. Certain prior year amounts have been reclassified to conform to the 2005 financial statement presentation. The financial statements should be read in conjunction with the Company s audited financial statements in its Form 10-K for the year ended December 31, 2004. Our operating results will fluctuate for the foreseeable future. Therefore, period-to-period comparisons should not be relied upon as predictive of the results in future periods.

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2. Adoption of Recently Issued Accounting Standards

In December 2004, the Financial Accounting Standards Board (FASB) revised and issued SFAS 123, Share-Based Payment (SFAS 123(R)). SFAS 123(R) eliminates the alternative of using the APB 25 intrinsic value method of accounting for stock options. This revised statement will require recognition of the cost of employee services received in exchange for awards of equity instruments based on the fair value of the award at the grant date. This cost is required to be recognized over the vesting period of the award. The stock-based compensation table in Note 4 to our financial statements illustrates the effect on net income and earnings per share if we had applied the fair value recognition provisions of SFAS 123 to stock-based employee compensation. SFAS 123(R) is effective as of the beginning of the first annual reporting period that begins after June 15, 2005. The Company is currently determining what impact the proposed statement would have on its results of operations or financial position.

3. Loss Per Share

Basic and diluted loss per common share are computed based on the weighted average number of common shares outstanding. Common share equivalents (which may consist of options and warrants) are excluded from the computation of diluted loss per share since the effect would be anti-dilutive. Common share equivalents which potentially could dilute basic earnings per share in the future, and which were excluded from the computation of diluted loss per share, totaled approximately 24,286,000 and 11,278,000 shares at March 31, 2005 and 2004, respectively.

4. Stock Based Compensation

The Company uses the intrinsic value method of APB Opinion No. 25, *Accounting for Stock Issued to Employees* (APB 25), in accounting for its employee stock options, and presents disclosure of pro forma information required under Statement of Financial Accounting Standards No. 123, *Accounting for Stock-based Compensation* (SFAS 123), as amended by Statement of Financial Accounting Standards No. 148, *Accounting for Stock-Based Compensation Transition and Disclosure* (SFAS 148).

The following table illustrates the effect on net loss and loss per share if the Company had applied the fair value recognition provisions of SFAS 123 to stock-based employee compensation (amounts in thousands except per share data):

	(restated) **Three Months Ended March 31,**	
	2005	**2004**
Net loss, as reported	$ (3,526)	$ (3,774)
Add: Stock-based employee compensation expense included in reported net loss		
Deduct: Total stock-based employee compensation expense determined under fair-value based method for all awards	(308)	(329)
Pro forma net loss	$ (3,834)	$ (4,103)
Loss per share, as reported (basic and diluted)	$ (0.07)	$ (0.11)
Loss per share, pro forma (basic and diluted)	$ (0.07)	$ (0.12)

5. Liquidity and Capital Resources

Based on the Company s currently planned level of expenditures, it believes that it will have adequate working capital to allow it to operate at its currently planned levels into the second quarter of 2006. The Company is pursuing several sources of potential capital, although it does not currently have commitments from any third parties to provide us with capital. The Company will be required to obtain significant additional funding in order to execute its business plans.

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6. Commitments and Contingencies

As a result of the Company s late filing of its Annual Report on Form 10-K for the year ended December 31, 2003, it was ineligible to register its common stock for resale by investors on Form S-3 until the end of March 2005. The Company s ineligibility to register resales on Form S-3 through March 2005 may have created liability under certain of its registration rights agreements if the Company is not deemed to have reinstated certain existing registrations in a reasonable period of time so as to permit the holders to again be able to sell their shares under those registrations. The Company registered these resales in April 2005.

7. Equity Transactions

On January 20, 2005, the Company completed a $21.3 million private equity financing in which it issued 17,334,494 shares of our common stock and warrants to purchase an additional 8,667,247 shares of its common stock at an exercise price of $2.00 per share. Net of investment banking commissions, legal, accounting and other fees related to the transaction, the Company received proceeds of approximately $19.4 million. In connection with the financing, the Company adjusted the price and number of underlying shares of warrants to purchase approximately 2.8 million shares that had been issued in prior equity financings in May and September 2003. The adjustment was made as a result of antidilution provisions in those warrants that were triggered by the Company s issuance of common stock in that financing at a price below the closing market price on the date of the transaction. Consistent with Emerging Issues Task Force Issue (EITF) No. 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios*, and EITF 00-27, *Application of 98-5 to Certain Convertible Instruments*, the Company accounted for the antidilution adjustments as deemed dividends, which were recorded as an approximately $1.1 million charge to retained earnings and a corresponding credit to additional paid-in capital.

In addition, during the three-month period ended March 31, 2005, the Company received $252,000 upon the exercise of stock options and warrants and approximately $158,000 upon the sale of shares of its common stock.

Item 4 Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, performed an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Securities Exchange Act Rule 13a-15(e)) as of March 31, 2005, the end of the period covered by our original Form 10-Q. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer previously concluded that our disclosure controls and procedures were effective as of March 31, 2005 to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission s rules and forms.

There was no change in our internal control over financial reporting that occurred during the quarter ended March 31, 2005 that materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Subsequently, in conjunction with the preparation of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2006, our management, with the participation of our Chief Executive Officer and Chief Financial Officer, identified deficiencies, discussed below, that it considered to be material weaknesses in the effectiveness of our internal controls over footnote disclosures of stock-based compensation and accounting for certain antidilution adjustments to our outstanding warrants. Pursuant to standards established by the Public Company Accounting Oversight Board, a material weakness is a significant deficiency or combination of significant deficiencies that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be presented or detected.

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In calculating pro forma amounts relating to our stock-based compensation for inclusion in our stock-based compensation footnote, we inadvertently utilized data relating to stock options granted to non-employees, rather than employee stock option data as called for by SFAS No. 123, *Accounting for Stock-Based Compensation*. In March 2006, we purchased new, more sophisticated software for accounting for stock options, which we first implemented in connection with the preparation of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2006. With the help of the new software, we were able to discover required adjustments in our historical calculations of these pro forma amounts.

Certain of our outstanding warrants to purchase common stock contain provisions for antidilution adjustments based upon sales of our common stock or common stock equivalents at an effective price per share below the prevailing market price of our common stock at the time of the sale. In January 2005 and recently in March 2006, we completed private placement transactions which triggered these antidilution adjustments to the warrants in question.

We accounted for these antidilution adjustments in accordance with SFAS No. 150, *Accounting for Certain Financial Instruments With Characteristics of Both Liabilities and Equity*. In connection with the preparation of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2006, management reevaluated our historical accounting for these antidilution adjustments. Based upon our reevaluation, management determined that these antidilution adjustments should be accounted for by analogy to the guidance provided by Emerging Issues Task Force (EITF) 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios*, and EITF 00-27, *Application of 98-5 to Certain Convertible Instruments*, rather than under SFAS No. 150. Under the guidance provided in EITF 98-5 and EITF 00-27, these adjustments are treated as a deemed dividend and recorded as a decrease in retained earnings (i.e., an increase in our retained deficit) and a corresponding increase in additional paid-in capital.

As required by Exchange Act Rule 13a-15(b), as of the end of March 31, 2006, the period covered by our Quarterly Report on Form 10-Q, management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures. Based on this evaluation, and solely because of the corrections referred to above, our Chief Executive Officer and Chief Financial Officer concluded in retrospect that our disclosure controls and procedures over the disclosure of stock-based compensation in accordance with SFAS No. 123 and accounting for antidilution adjustments to our outstanding warrants were not effective as of December 31, 2005 and as of the end of each quarter since the first quarter of 2005.

We are in the process of reviewing and strengthening our internal control procedures, and intend to pursue actions to ensure the effectiveness of all aspects of our controls related to the recording and disclosure of stock-based compensation and antidilution adjustment to outstanding warrants and other securities. Such actions include, but are not necessarily limited to, the following:

1. Fully implement our new software for accounting for stock options;
2. Re-assign certain duties related to the input and maintenance of stock options records; and
3. Enhanced internal review of all stock-based compensation awards and other equity transactions.

We are continuing our efforts to improve and strengthen our control processes and procedures to fully remedy this material deficiency and to ensure that all of our controls and procedures are adequate and effective. Any failure to implement and maintain improvements in the controls over our financial reporting could cause us to fail to meet our reporting obligations under the Securities and Exchange Commission s rules and regulations. Any failure to improve our internal controls to address the weakness we have identified could also cause investors to lose confidence in our reported financial information, which could have a negative impact on the trading price of our common stock.

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PART II OTHER INFORMATION

Item 6. Exhibits

The exhibits listed in the accompanying Index to Exhibits are filed as part of this Quarterly Report on Form 10-Q.

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SIGNATURES

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

CYTRX CORPORATION
(Registrant)

Date: May 19, 2006

By: /s/ MATTHEW NATALIZIO
Matthew Natalizio
Chief Financial Officer
(Principal Financial Officer)

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INDEX TO EXHIBITS

Exhibit Number	Description
10.1x	Employment Agreement dated April 29, 2005 between CytRx Corporation and Dr. Scott Wieland
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 y	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 y	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

x Incorporated by reference to the Company s Current Report on Form 8-K filed on May 4, 2005.

y Previously filed.