

HEMISPHERX BIOPHARMA INC

Form 8-K

May 28, 2010

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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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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):  
May 28, 2010

HEMISPHERX BIOPHARMA, INC.  
(Exact Name of Registrant as Specified in Charter)

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| Delaware<br>(State or Other Jurisdiction<br>of Incorporation) | 0-27072<br>(Commission<br>File Number) | 52-0845822<br>(IRS Employer<br>Identification No.) |
|---|--|--|

1617 JFK Boulevard, Philadelphia, Pennsylvania, 19103  
(Address of Principal Executive Offices, including Zip Code)

Registrant's telephone number, including area code: (215) 988-0080

Not Applicable  
(Former Name or Former Address, if Changed Since Last Report)

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))



Item 1.01 Entry into a Material Definitive Agreement.

On May 28, 2010, Hemispherx Biopharma, Inc. (the “Company”) entered into an Equity Distribution Agreement with Maxim Group LLC (the “Agreement”) to create an at-the-market equity program under which it may sell up to 32,000,000 shares of its common stock (the “Shares”) from time to time through Maxim Group LLC, as sales agent (the “Agent”). Under the Agreement, the Agent will be entitled to a commission at a fixed commission rate of 4.0% of the gross sales price per Share sold, up to aggregate gross proceeds of \$10,000,000, and, thereafter, at a fixed commission rate of 3.0% of the gross sales price per Share sold.

Sales of the Shares, if any, under the Agreement may be made in transactions that are deemed to be “at-the-market” offerings as defined in Rule 415 under the Securities Act of 1933, as amended, including sales made by means of ordinary brokers’ transactions, including on the NYSE Amex, at market prices or as otherwise agreed with the Agent. The Company has no obligation to sell any of the Shares, and may at any time suspend offers under the Agreement or terminate the Agreement.

The Shares will be issued pursuant to the Company’s previously filed and effective Registration Statement on Form S-3 (File No. 333-159856). On June 22, 2009, the Company filed a base Prospectus and on May 28, 2010, filed a Prospectus Supplement relating to the offering with the Securities and Exchange Commission. This Report shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Shares in any state in which such offer, solicitation or sale would be unlawful prior to registration of qualification under the securities laws of any such state.

The Agreement is filed as Exhibit 10.1 to this Report. The description of the Agreement does not purport to be complete and is qualified in its entirety by reference to the Agreement filed herewith as an exhibit to this Report.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

| Exhibit No. | Description  |
|-------------|--|
| 10.1        | Equity Distribution Agreement, dated May 28, 2010. |

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Signatures

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

Date: May 28, 2010

HEMISPHERX BIOPHARMA, INC.

/s/ William A. Carter  
William A. Carter, M.D.  
Chief Executive Officer

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