

HEMISPHERX BIOPHARMA INC
Form DEF 14A
February 04, 2011

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

SCHEDULE 14A
(Rule 14a-101)
INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a)
of the Securities Exchange Act of 1934
(Amendment No.)

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
- Solicitation Material Pursuant to Rule 14a-11(c) or rule 14a-12

Hemispherx Biopharma, Inc.
(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
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HEMISPHERX BIOPHARMA, INC.
1617 JFK Boulevard
Philadelphia, Pennsylvania 19103
NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON MARCH 17, 2011

To the Stockholders of Hemispherx Biopharma, Inc.:

You are cordially invited to attend the Annual Meeting of Stockholders of Hemispherx Biopharma, Inc. ("Hemispherx"), a Delaware corporation, to be held at the Embassy Suites Hotel, 1776 Benjamin Franklin Parkway, Philadelphia Pennsylvania 19103, on Thursday, March 17, 2011, at 10:00 a.m. (EST), for the following purposes:

1. To elect five members to the Board of Directors of Hemispherx to serve until their respective successors are elected and qualified;
2. To ratify the selection by Hemispherx's Audit Committee of McGladrey & Pullen, LLP, independent registered public accountants, to audit the financial statements of Hemispherx for the year ending December 31, 2010;
3. To approve, by non-binding vote, executive compensation;
4. To recommend, by non-binding vote, the frequency of executive compensation votes;
5. To transact such other matters as may properly come before the meeting or any adjournment thereof.

Only stockholders of record at the close of business on January 31, 2011 are entitled to notice of and to vote at the meeting.

A proxy statement and proxy are enclosed. If you are unable to attend the meeting in person you are urged to sign, date and return the enclosed proxy promptly in the self addressed stamped envelope provided. If you attend the meeting in person, you may withdraw your proxy and vote your shares. We also have enclosed our annual report on Form 10-K, as amended and restated on Form 10-K/A-2 for the fiscal year ended December 31, 2009 and our quarterly report on Form 10-Q as amended and restated on Form 10-Q/A for the period ended September 30, 2010.

By Order of the Board of Directors

\s\ Thomas K. Equels, Secretary

Philadelphia, Pennsylvania
February 14, 2011

YOUR VOTE IS IMPORTANT

We urge you to promptly vote your shares by completing, signing, dating and returning your proxy card in the enclosed envelope, or voting by Internet or telephone.

PROXY STATEMENT

HEMISPHERX BIOPHARMA, INC.
1617 JFK Boulevard
Philadelphia, Pennsylvania 19103

INTRODUCTION

This proxy statement is furnished in connection with the solicitation of proxies for use at the annual meeting of stockholders of Hemispherx Biopharma, Inc. (“Hemispherx”, “we” or “us”) to be held on Thursday, March 17, 2011, and at any adjournments. The accompanying proxy is solicited by the Board of Directors of Hemispherx and is revocable by the stockholder by notifying Hemispherx’s Corporate Secretary at any time before it is voted, or by voting in person at the annual meeting. It is anticipated that this proxy statement and accompanying proxy are being distributed to stockholders beginning on or about February 14, 2011. The principal executive offices of Hemispherx are located at 1617 JFK Boulevard, Suite 660, Philadelphia, Pennsylvania 19103, telephone (215) 988-0080.

Important Notice Regarding the Availability of Proxy Materials for
the 2010 Annual Meeting of Stockholders To Be Held on March 17, 2011

This proxy statement, our 2009 Annual Report on Form 10-K as amended and restated on Form 10-K/A-2 and our September 30, 2010 Quarterly Report on Form 10-Q as amended and restated on Form 10-Q/A are available electronically at <http://hemispherx.net/content/investor/annualmeeting.asp>.

OUTSTANDING SHARES AND VOTING RIGHTS

RECORD DATE; OUTSTANDING SHARES

Only stockholders of record at the close of business on January 31, 2011, the record date, are entitled to receive notice of, and vote at the annual meeting. As of the record date, the number and class of stock outstanding and entitled to vote at the meeting was 135,241,609 shares of common stock, par value \$.001 per share. Each share of common stock is entitled to one vote on all matters. No other class of securities will be entitled to vote at the meeting. There are no cumulative voting rights.

The five nominees receiving the highest number of votes cast by the holders of common stock represented and voting at the meeting will be elected as Hemispherx’s Directors and constitute the entire Board of Directors of Hemispherx. The affirmative vote of at least a majority of the shares represented and voting at the annual meeting at which a quorum is present is necessary for approval of Proposals No. 2, 3 and 4.

The frequency of the advisory vote on executive compensation (Proposal 4) receiving the greatest number of votes (every one, two or three years) will be considered the frequency recommended by stockholders.

Although the advisory votes on Proposals 3 and 4 are non-binding, as provided by law, our Compensation Committee will review the results of the votes and will take them into account in making a determination concerning executive compensation and the frequency of such advisory votes.

ADMISSION TO THE MEETING

Stockholders (or their authorized representatives) and our invited guests may attend the meeting. Verification of stock ownership will be required. If you own shares in your name or hold them through a broker (and can provide

documentation showing ownership as of the end of day on January 31, 2011, the Record Date), you will be permitted to attend. Stockholders will be admitted to the meeting beginning at 9:30 a.m. EST on March 17, 2011. Seating is limited.

REVOCABILITY OF PROXIES

If you attend the meeting, you may vote in person, regardless of whether you have submitted a proxy. Any person giving a proxy in the form accompanying this proxy statement has the power to revoke it at any time before it is voted. It may be revoked by filing, with the corporate Secretary of Hemispherx at its principal offices, 1617 JFK Boulevard, Suite 660, Philadelphia, PA 19103, a written notice of revocation or a duly executed proxy bearing a later date, or it may be revoked by attending the meeting and voting in person.

VOTING AND SOLICITATION

Every stockholder of record is entitled, for each share held, to one vote on each proposal or item that comes before the meeting. There are no cumulative voting rights. By submitting your proxy, you authorize William A. Carter and Thomas K. Equels and each of them to represent you and vote your shares at the meeting in accordance with your instructions. Messrs. Carter and Equels and each of them may also vote your shares to adjourn the meeting from time to time and will be authorized to vote your shares at any adjournment or postponement of the meeting.

Hemispherx has borne the cost of preparing, assembling and mailing this proxy solicitation material along with related communication with stockholders. The total cost estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of stockholders is approximately \$100,000. Hemispherx may reimburse brokerage firms and other persons representing beneficial owners of shares for their expenses in forwarding solicitation materials to beneficial owners. Proxies may be solicited by certain of Hemispherx's Directors, Officers and employees, without additional compensation, personally, by telephone or by facsimile.

We have hired the firm of Morrow & Company LLC to assist in the solicitation of proxies on behalf of the Board of Directors. Morrow & Company LLC has agreed to perform this service for a proposed fee of \$9,000 plus out-of-pocket expenses.

Internet and Telephone Voting

If you have Internet access, you may submit your proxy from any location in the world by following the Internet voting instructions on the proxy card or voting instructions card sent to you. If you submit your proxy via the Internet, you should not return your proxy card.

You may submit your proxy by following the telephone voting instructions on the proxy card or voting instruction card sent to you. If you submit your proxy by telephone, you should not return your proxy card.

ADJOURNED MEETING

The Chair of the meeting may adjourn the meeting from time to time to reconvene at the same or some other time, date and place. Notice need not be given of any such adjournment meeting if the time, date and place thereof are announced at the meeting at which the adjournment is taken. If the time, date and place of the adjournment meeting are not announced at the meeting which the adjournment is taken, then the Secretary of the Company shall give written notice of the time, date and place of the adjournment meeting not less than ten (10) days prior to the date of the adjournment meeting. Notice of the adjournment meeting also shall be given if the meeting is adjourned in a single adjournment to a date more than 30 days or in successive adjournments to a date more than 120 days after the original date fixed for the meeting.

TABULATION OF VOTES

The votes will be tabulated and certified by Continental Stock Transfer & Trust Company, our transfer agent.

VOTING BY STREET NAME HOLDERS

If you are the beneficial owner of shares held in "street name" by a broker, the broker, as the record holder of the shares, is required to vote those shares in accordance with your instructions. If you do not give instructions to the broker, the broker will nevertheless be entitled to vote the shares with respect to "discretionary" items but will not be permitted to vote the shares with respect to "non-discretionary" items (in which case, the shares will be treated as "broker non-votes").

Pursuant to the New York Stock Exchange Amex ("NYSE Amex") Rule 452, brokers may not vote uninstructed shares if the matter to be voted on relates to the election of directors.

QUORUM; ABSTENTIONS; BROKER NON-VOTES

The required quorum for the transaction of business at the annual meeting normally is a majority of the shares of common stock entitled to vote at the annual meeting, in person or by proxy. However, with a majority of our shares being held by persons or organizations in Europe, we had to repeatedly reschedule our 2008 Annual Meeting in an attempt to attain a quorum of voters. Finally, the Board amended our By-Laws to reduce the quorum for that meeting to 44% in voting power of the outstanding shares of stock and the meeting was held. Facing the same issue for the 2009 Annual Meeting, our Board of Directors again amended our By-Laws to reduce the quorum, solely for the 2009 Annual Meeting, from a majority to 40% in voting power of the outstanding shares of stock entitled to vote. Our Board of Directors again amended our By-Laws to reduce the quorum, solely for the 2010 Annual Meeting, from a majority to 33 1/3% in voting power of the outstanding shares of stock entitled to vote. Shares that are voted "FOR," "AGAINST" or "WITHHELD FROM" a matter are treated as being present at the meeting for purposes of establishing a quorum and are also treated as shares represented and voting the votes cast at the annual meeting with respect to such matter.

While there is no definitive statutory or case law authority in Delaware as to the proper treatment of abstentions, Hemispherx believes that abstentions should be counted for purposes of determining both: (i) the presence or absence of a quorum for the transaction of business; and (ii) the total number of votes cast with respect to a proposal (other than the election of Directors). In the absence of controlling precedent to the contrary, Hemispherx intends to treat abstentions in this manner. Accordingly, abstentions will have the same effect as a vote against the proposal (other than the election of Directors).

Under current Delaware case law, broker non-votes should not be counted for purposes of determining the number of votes cast with respect to the particular proposal on which the broker has expressly not voted. Hemispherx intends to treat broker non-votes in this manner. Thus, a broker non-vote will not affect the outcome of the voting on a proposal, except where passage requires at least a majority of the outstanding shares entitled to vote at the annual meeting. In such event, a broker non-vote is the same as a vote against.

DEADLINE FOR RECEIPT OF STOCKHOLDER PROPOSALS

Proposals of stockholders to be considered for inclusion in the Proxy Statement and proxy card for the 2011 Annual Meeting of Stockholders must be received by the Company's Secretary, at Hemispherx Biopharma, Inc., 1617 JFK Boulevard, Suite 660, Philadelphia, PA 19103 no later than April 30, 2011 with an anticipated meeting date in September 2011.

Pursuant to the Company's Restated and Amended Bylaws, all stockholder proposals may be brought before an annual meeting of stockholders only upon timely notice thereof, in writing, to the Secretary of the Company. To be timely, a stockholder's notice, for all stockholder proposals other than the nomination of candidates for director, shall be delivered to the Secretary at the principal executive offices of the Company not less than sixty (60) nor more than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, the stockholder's notice in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever first occurs. To be timely, a stockholder's notice, with respect to a stockholder proposal for nomination of candidates for director, shall be delivered to the Secretary at the principal executive offices of the Company not less than ninety (90) nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, the stockholder's notice in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever first occurs. Provided, however, in the event that the stockholder proposal relates to the nomination of candidates for director and the number of Directors to be elected to the Board of Directors of the Company at an annual meeting is increased and there is no public announcement by the Company naming all of the nominees for director or specifying the size of the increased Board of Directors at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Company not later than the close of business on the tenth day following the day on which such public announcement is first made by the Company. All stockholder proposals must contain all of the information required under the Company's Bylaws, a copy of which is available upon written request, at no charge, from the Secretary. The Company reserves the right to reject, rule out of order, or take other appropriate action with respect to any proposal that does not comply with these and other applicable requirements.

INFORMATION CONCERNING BOARD MEETINGS

The Board of Directors is responsible for the management and direction of Hemispherx and for establishing broad corporate policies. A primary responsibility of the Board is to provide effective governance over the Company's affairs for the benefit of its stockholders. In all actions taken by the Board, the Directors are expected to exercise their business judgment in what they reasonably believe to be the best interests of the Company. In discharging that obligation, Directors may rely on the honesty and integrity of the Company's senior Executives and its outside advisors and auditors.

The Board of Directors and various committees of the Board meet periodically throughout the year to receive and discuss operating and financial reports presented by the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO") as well as reports by experts and other advisors. Corporate review sessions are also offered to Directors to help familiarize them with Hemispherx's technology and operations. Members of the Board are encouraged to attend Board meetings in person, unless the meeting is held by teleconference. The Board held three meetings in 2009 and executed nineteen unanimous consents. All Directors attended these meetings.

In 2009, the non-employee members of the Board of Directors met one time in executive session with no employee Directors or management personnel present. William Mitchell is the Director who presided over the meeting. Interested persons who wish to contact the Lead Director or other non-employee Directors can do so by sending written comments through the Office of the Secretary of the Company at Hemispherx Biopharma, Inc., 1617 JFK Boulevard, Suite 660, Philadelphia, PA 19103. The Office will either forward the original materials as

addressed, or provide Directors with summaries of the correspondence, with the originals available for review at the Directors' request.

INFORMATION CONCERNING COMMITTEES OF THE BOARD

The Board of Directors maintains the following committees:

Executive Committee.

The Executive Committee is composed of Dr. William A. Carter, Chief Executive Officer and Chairman of the Board, Dr. William M. Mitchell, Director, and Thomas K. Equels, Executive Vice Chairman of the Board, Secretary and General Counsel. The Executive Committee had three informal meetings in 2009. All committee members attended these meetings. The Committee assists the Board by making recommendations to management regarding general business matters of Hemispherx.

Compensation Committee.

The Compensation Committee is composed of Dr. Iraj Eqhbal Kiani, Director and Committee Chair, Dr. William M. Mitchell, Director, and Richard C. Piani, Director. For detailed information on the Compensation Committee and its responsibilities, please see “Compensation Discussion and Analysis” in “Compensation of Executive Officers” below.

Corporate Governance and Nomination Committee.

In 2009, the Corporate Governance and Nomination Committee had one formal and two informal meetings and all members were present. The Corporate Governance and Nomination Committee consists of Dr. William M. Mitchell, Director and Committee Chair, Richard C. Piani, Director, and Dr. Iraj Eqhbal Kiani, Director. All of the members of the Committee meet the independence standards contained within the NYSE Amex Company Guide and the Hemispherx Corporate Governance Guidelines. The full text of the Corporate Governance and Nomination Committee Charter as well as the Corporate Governance Guidelines, as approved by the Board, are available on our website: www.hemispherx.net.

As discussed below, the Committee is responsible for recommending candidates to be nominated by the Board for election by the stockholders or to be appointed by the Board of Directors to fill vacancies consistent with the criteria approved by the Board. It also is responsible for periodically assessing Hemispherx’s Corporate Governance Guidelines and making recommendations to the Board for amendments, recommending to the Board the compensation of Directors, taking a leadership role in shaping corporate governance, and overseeing an annual evaluation of the Board.

The Corporate Governance and Nomination Committee is responsible for identifying candidates who are eligible under the qualification standards set forth in Hemispherx’s Corporate Governance Guidelines to serve as members of the Board. The Committee is authorized to retain search firms and other consultants to assist it in identifying candidates and fulfilling its other duties. The Committee is not limited to any specific process in identifying candidates and will consider candidates suggested by stockholders. In recommending Board candidates, the Committee considers a candidate’s: (1) general understanding of elements relevant to the success of a publicly traded company in the current business environment, (2) understanding of Hemispherx’s business, and (3) diversity in educational and professional background. The Committee also gives consideration to a candidate’s judgment, competence, dedication and anticipated participation in Board activities, experience, geographic location and special talents or personal attributes. Stockholders who wish to suggest qualified candidates should write to the Corporate Secretary, Hemispherx Biopharma, Inc., 1617 JKF Blvd., Suite 660, Philadelphia, PA 19103, stating in detail the qualifications of such persons for consideration by the Committee.

The Company aspires to the highest standards of ethical conduct; reporting results with accuracy and transparency; and maintaining full compliance with the laws, rules and regulations that govern the Company’s business. Hemispherx’s Corporate Governance Guidelines embody many of our policies and procedures which are the foundation of our commitment to best practices. The guidelines are reviewed annually, and revised if deemed necessary, to continue to reflect best practices.

Audit Committee and Audit Committee Expert.

The Audit Committee of our Board of Directors consists of Richard Piani, Committee Chairman, William Mitchell, M.D. and Iraj Eqbal Kiani, N.D., Ph.D. Mr. Piani, Dr. Mitchell, and Mr. Kiani are all determined by the Board of Directors to be independent directors as required under Section 121B(2)(a) of the NYSE Amex Company Guide. We do not have a financial expert as defined in the SEC rules on the committee in the true sense of the description because we believe that Richard Piani, an existing director, has sufficient experience. Mr. Piani has 40 years experience in business and has served in senior level and leadership positions for international businesses. His working experience includes reviewing and analyzing financial statements and dealing with financial institutions. We believe Mr. Piani, Dr. Mitchell, and Dr. Kiani to be independent of Management and free of any relationship that would interfere with their exercise of independent judgment as members of this committee. The principal functions of the Audit Committee are to (i) assist the Board in fulfilling its oversight responsibility relating to the annual independent audit of our consolidated financial statements and internal control over financial reporting, the engagement of the independent registered public accounting firm and the evaluation of the independent registered public accounting firm's qualifications, independence and performance; (ii) prepare the reports or statements as may be required by NYSE Amex or the securities laws; (iii) assist the Board in fulfilling its oversight responsibility relating to the integrity of our financial statements and financial reporting process and our system of internal accounting and financial controls; (iv) discuss the financial statements and reports with Management, including any significant adjustments, management judgments and estimates, new accounting policies and disagreements with Management; and (v) review disclosures by our independent registered public accounting firm concerning relationships with us and the performance of our independent accountants.

Audit Committee Report.

The primary responsibility of the Audit Committee (the "Committee") is to assist the Board of Directors in discharging its oversight responsibilities with respect to financial matters and compliance with laws and regulations. The primary methods used by the Committee to fulfill its responsibility with respect to financial matters are:

- To appoint, evaluate, and as the Committee may deem appropriate, terminate and replace the Company's independent registered public accountants;
 - To monitor the independence of the Company's independent registered public accountants;
 - To determine the compensation of the Company's independent registered public accountants;
- To pre-approve any audit services, and any non-audit services permitted under applicable law, to be performed by the Company's independent registered public accountants;
- To review the Company's risk exposures, the adequacy of related controls and policies with respect to risk assessment and risk management;
- To monitor the integrity of the Company's financial reporting processes and systems of control regarding finance, accounting, legal compliance and information systems; and
- To facilitate and maintain an open avenue of communication among the Board of Directors, Management and the Company's independent registered public accountants.

The Audit Committee is composed of three Directors, and the Board has determined that each of those Directors is independent as that term is defined in Sections 121(B)(2)(a) of the NYSE Amex Company Guide.

The Committee met three times in 2009 and participated in four teleconferences. All Committee members were present for the meetings.

In discharging its responsibilities relating to internal controls, accounting and financial reporting policies and auditing practices, the Committee discussed with the Company's independent registered public accountants, McGladrey & Pullen, LLP, the overall scope and process for its audit. The Committee regularly meets with McGladrey & Pullen, LLP, with and without Management present, to discuss the results of its examinations, the evaluations of our internal controls and the overall quality of the Company's financial reporting.

The Committee also undertook discussions with McGladrey & Pullen, LLP during the 2009 fiscal year such matters required to be discussed by Statement on Auditing Standards No. 61 (Communication with Audit Committees), as amended, and other standards of the Public Company Accounting Oversight Board, rules of the SEC and other applicable regulations. The Committee received from McGladrey & Pullen, LLP the written disclosures and the letter required by applicable requirements of the Public Company Accounting Oversight Board regarding McGladrey & Pullen, LLP's communications with the Audit Committee concerning independence and discussed with McGladrey & Pullen, LLP the independence of their firm.

The Committee has met and held discussions with Management. The Committee has reviewed and discussed with Management Hemispherx's audited consolidated financial statements as of and for the fiscal year ended December 31, 2009, as well as the internal control requirements of the Sarbanes-Oxley Act of 2002.

Based on the reviews and discussions referred to above, the Committee recommended to the Board of Directors that the audited financial statements referred to above be included in the Company's Annual Report for the year ended December 31, 2009.

This report is respectfully submitted by the members of the Audit Committee of the Board of Directors.

Richard C. Piani, Chairman

Dr. William M. Mitchell

Dr. Iraj Eqhbal Kiani

Strategic Planning Committee.

The Strategic Planning Committee is composed of Dr. William A. Carter, Dr. William M. Mitchell, and Thomas K. Equels. The Committee met informally three times in 2009 and all committee members were in attendance. The Strategic Planning Committee makes recommendations to the Board of Directors of priorities in the application of Hemispherx's financial assets and human resources in the fields of research, marketing and manufacturing.

Board Leadership Structure and Role in Risk Oversight

The Board evaluates its leadership structure and role in risk oversight on a periodic basis. The Board determines what leadership structure it deems appropriate based on factors such as the experience of the applicable individuals, the current business environment of our Company and other relevant factors. As further discussed below, after considering these factors, the Board determined that continuing to combine the positions of Chairman of the Board and Chief Executive Officer ("CEO") is the appropriate leadership structure at this time.

The Board currently combines the role of Chairman of the Board with the role of CEO, coupled with a Lead Independent Director position to further strengthen the governance structure. The Board believes this provides an efficient and effective leadership model for our Company and leverages Dr. Carter's long tenure with us with his bio-pharmaceutical knowledge. The Board believes that combining the Chairman and CEO roles fosters clear accountability, effective decision-making and consistency in strategy.

Lead Independent Director. To mitigate the consolidation of these two leadership positions in one individual, the Board has established a strong, independent, clearly-defined Lead Independent Director role. Richard C. Piani is the Lead Independent Director. Mr. Piani has been a Director of the Company since 1995. The Lead Independent Director presides at all meetings of the Board at which the Chairman is not present and serves as liaison between the Chairman and the Independent Directors; is involved in establishing the agendas for meetings of the Board of Directors, including the nature of information presented at such meetings, and has the authority to call meetings of the Independent Directors. In addition on a needed basis, the Board of Directors holds executive sessions of the Independent Directors to assure effective independent oversight. In 2009, the three Independent Directors met in sessions related to the Audit, Compensation and Corporate Governance and Nomination Committees.

The Board is also responsible for oversight of our risk management practices while Management is responsible for the day-to-day risk management processes. Our Executive Management team evaluates enterprise risks and shares their assessment of such risks with the Audit Committee or the full Board for oversight. In addition, financial risks and our internal control environment are overseen by the Audit Committee and the Compensation Committee considers how risks taken by Management could impact the value of executive compensation.

Code of Ethics and Business Conduct

Hemispherx's Board of Directors adopted a code of ethics and business conduct for Officers, Directors and employees that went into effect on May 19, 2003 and was amended on October 15, 2009. This code has been presented and reviewed by each Officer, Director, employee, agent and key consultant. You may obtain a copy of this code by visiting our web site at www.hemispherx.net or by written request to our Office Administrator at 1617 JFK Boulevard, Suite 660, Philadelphia, PA 19103. Our Board of Directors is required to approve any waivers of the code of ethics and business conduct for Directors or executive Officers and we are required to disclose any such waiver in a Current Report on Form 8-K within four business days.

Stock Ownership Guidelines

In April 2005, the Board of Directors adopted a set of stock ownership guidelines for Directors and Officers. The Board believes that Directors and Officers more effectively represent the interest of Hemispherx's stockholders if they are stockholders themselves. At this time, all of our Directors and Officers are stockholders and this guideline was adopted to assure that the present Directors and Officers continue to participate as well as future Directors and Officers. The full text of the Stock Ownership Guidelines, as approved by the Board, is available on our website: www.hemispherx.net.

Communication with the Board of Directors

Interested parties wishing to contact the Board of Directors of the Company may do so by writing to the following address: Board of Directors, c/o Thomas K. Equels, Corporate Secretary, 2601 S. Bayshore Dr., Suite #600, Miami, FL 33133. All letters received will be categorized and processed by the Corporate Counsel or Secretary, and then forwarded to the Company's Board of Directors.

Director Attendance at Annual Meetings of Stockholders

Directors are encouraged, but not required, to attend the Annual Meeting absent unusual circumstances, although we have no formal policy on the matter. In 2009, with the minimum quorum to conduct the meeting achieved the day prior, only the Chairman of the Board was able to attend the meeting.

INFORMATION CONCERNING EXECUTIVE OFFICERS

The following sets forth biographical information about Hemispherx's executive Officers and key personnel:

Name	Age	Position
William A. Carter, M.D.	72	Chairman of the Board and Chief Executive Officer
Thomas K. Equels	58	Executive Vice Chairman of the Board (effective June 1, 2010), Secretary and General Counsel
Charles T. Bernhardt, CPA	49	Chief Financial Officer and Chief Accounting Officer
David R. Strayer, M.D.	65	Medical Director, Regulatory Affairs
Robert Dickey IV	55	Senior Vice President
Wayne Springate	39	Vice President of Operations
Russel Lander, Ph.D.	60	Vice President of Process and Quality Assurance
Ralph C. Cavalli, Ph.D.	53	Vice President of Quality Control (effective April 15, 2010)

For biographical information about William A. Carter, M.D and Thomas K. Equels, please see the discussion under the heading "Proposal No. 1 Election of Directors".

CHARLES T. BERNHARDT is a Certified Public Accountant who has served as our Chief Financial Officer and Chief Accounting Officer since January 1, 2009. He attained an undergraduate in Accountancy from Villanova University and received a Masters Degree in Business Administration from West Chester University of Pennsylvania. Mr. Bernhardt was formally the Director of Accounting for Healthcare Division of Thomson Reuters, where he was responsible for their accounting operations including the Physicians' Desk Reference business and shared financial services for the Healthcare and Scientific Divisions from 2006 to 2008. He was also the Regional Controller for Comcast Cable during 1999 to 2002, Director of Finance for TelAmerica Media from 2003 to 2006 and, earlier in his career, a member of the Internal Audit management teams American Stores Corporation and ICI Americas/Zeneca (currently AstraZeneca Pharmaceuticals). In 1986, he became a C.P.A. licensed in Pennsylvania and New Jersey while with public accounting's "Big Four" firm of KPMG.

DAVID R. STRAYER, M.D. has acted as our Medical Director since 1986. He has served as Professor of Medicine at the Medical College of Pennsylvania and Hahnemann University from 1987 to 1998. Dr. Strayer is Board Certified in Medical Oncology and Internal Medicine with research interests in the fields of cancer and immune system disorders. He has served as principal investigator in studies funded by the Leukemia Society of America, the American Cancer Society, and the National Institutes of Health. Dr. Strayer attended the School of Medicine at the University of California at Los Angeles where he received his M.D. in 1972.

ROBERT DICKEY IV has served as Senior Vice President since June 2009. He has approximately 15 years of experience in biotech management as a CFO, COO and CEO following a career as an investment banker. His experience spans startups to revenue stage companies involved in cancer and CNS drug development, transplantation and computational drug design. Mr. Dickey has specific expertise in fund raising, business development, project management, restructuring and international operations. Previously he spent 18 years as an investment banker, 14 of

those at Lehman Brothers, with his background evenly split between M&A and capital markets transactions across a variety of industries. He has an undergraduate degree from Princeton University and an MBA from The Wharton School, University of Pennsylvania.

WAYNE S. SPRINGATE is Vice President of Operations and joined Hemispherx in 2002 as Vice President of Business Development. Mr. Springate came on board when Hemispherx acquired Alferon N Injection® and its New Brunswick, NJ manufacturing facilities. He led the consolidation of our Rockville facility to our New Brunswick location as well as coordinated the relocation of manufacturing polymers from South Africa to our production facility in New Brunswick. He was also responsible for preparing and having a successful Preapproval Inspection by the FDA for our New Brunswick manufacturing plant in connection with the filing of our Ampligen® NDA. Currently he is managing a capital improvement budget to enhance our Alferon® facility in accordance with current Good Manufacturing Practice (“cGMP”). Previously, Mr. Springate served as President for World Fashion Concepts in New York and oversaw operations at several locations throughout the United States and overseas. Mr. Springate assists the CEO in details of operations on a daily basis and is involved in all aspects of manufacturing, warehouse management, distribution and logistics.

RUSSEL J. LANDER, Ph.D. is Vice President Process and Quality Assurance. Dr. Lander joined Hemispherx in 2005, assuming responsibility for Chemistry, Manufacturing and Control writing for the NDA filing of Ampligen®. He subsequently served as Director of Quality Control and provided guidance to the efforts to improve and validate the manufacturing process for the synthesis of Ampligen® polynucleotide raw materials, Poly I and Poly C12U. He is currently directing research and development activities in New Brunswick. Dr. Lander was formerly employed at Merck and Co., Inc. in the process development groups for drug development (1977-1991) and vaccines (1991-2005). Dr. Lander received his Ph.D. in Chemical/Biochemical Engineering from the University of Pennsylvania. He has authored numerous scientific publications and invention disclosures.

RALPH CHRISTOPHER CAVALLI, Ph.D. was named Vice President of Quality Control effective April 15, 2010. Dr. Cavalli most recently served as Director of Quality Control at the Company’s New Brunswick, NJ manufacturing facility. He is currently responsible for manufacturing Alferon® Purified Drug Concentrate and active pharmaceutical ingredients for Ampligen® along with overseeing our Quality Control (“QC”) Department to continue our Good Laboratory Practices and Good Manufacturing Practices. Prior to joining Hemispherx, Dr. Cavalli served as Senio