

HEMISPHERX BIOPHARMA INC

Form 8-K

July 23, 2012

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934**

Date of report (Date of earliest event reported):

July 23, 2012

HEMISPHERX BIOPHARMA, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware

0-27072

52-0845822

(State or Other Jurisdiction
of Incorporation)

(Commission
File Number)

(IRS Employer
Identification No.)

1617 JFK Boulevard, Philadelphia, Pennsylvania, 19103

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(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 July 23, 2012, 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 \$75,000,000 worth of 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 of Shares sold under the Agreement, up to aggregate gross proceeds of \$10,000,000, and, thereafter, at a fixed commission rate of 3.0% of the gross sales price of Shares sold under the Agreement.

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 MKT, 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. 333-182216). On June 19, 2012, the Company filed a base Prospectus and on July 23, 2012, 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 July 23, 2012.

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: July 23, 2012

HEMISPHERX BIOPHARMA, INC.

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