

HEMISPHERX BIOPHARMA INC  
Form PRER14A  
June 09, 2016

**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. 1)

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.
- ☐ 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:
  - 2) Aggregate number of securities to which transaction applies:
  - 3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11:
  - 4) Proposed maximum aggregate value of transaction:
  - 5) Total fee paid:

☐ Fee paid previously with preliminary materials.

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) Form, Schedule or Registration Statement No.:
- (3) Filing Party:
- (4) Date Filed:



June \_\_, 2016

Dear Fellow Stockholders,

You are cordially invited to attend Hemispherx Biopharma, Inc.'s Annual Meeting of Stockholders at the Embassy Suites Hotel, 1776 Benjamin Franklin Parkway, Philadelphia Pennsylvania 19103, on Wednesday, August 17, 2016 at 10:00 a.m. (local time).

It is an honor to be writing my first letter to our stockholders as Hemispherx's President and Chief Executive Officer. As steward of your Company, my primary focus is to achieve long-term company growth through prudent execution of strong and effective business strategies. My plans for Hemispherx when I became CEO in February were to 1) aggressively seek out-licensing opportunities and/or senior co-development partnerships for our product candidates in the disease indications which have been in early to late stage in-vivo testing and to maximize their overall value, 2) use licensing fees to advance development of prioritized unlicensed indications, 3) monetize underutilized assets and 4) strict adherence to the newly adopted financial austerity measures. Since February, we have aggressively been executing this plan.

In executing this new business strategy, we have been reexamining our fundamental priorities in terms of direction, corporate culture and our ability to fund operations. As a result, there have been significant changes at the Company in the past few months. We have made several changes to the Company's executive management team to provide effective and competent leadership that, management believes, will properly position the Company to achieve its commercial goals and increase stockholder value. Recent actions include listing for sale underutilized assets, aggressively pursuing international sales of clinical grade materials, and implementing a strong financial austerity plan. We are committed to a focused business plan oriented toward out-licensing opportunities and/or finding senior co-development partners with the capital and expertise needed to commercialize the many potential therapeutic aspects of our experimental drug Ampligen® and our approved drug Alferon®. Hemispherx's new management's primary objectives are to create stockholder value and deliver much needed therapies to patients.

On March 15, 2016, we received written notice from the NYC MKT LLC that we are not in compliance with the continued listing standards because our Common Stock has been selling for a low price per share for a substantial period of time. The Company has until September 15, 2016 to demonstrate compliance. The Board of Directors has determined that, absent a substantial increase in the price of our common stock, our common stock likely will be delisted from NYSE MKT.

**Our Board of Directors believes that, continued listing on the NYSE MKT is crucial to our ability to finally succeed now that we have made significant management and business changes.**

**To permit Hemispherx to execute on our initiatives, I am asking in this proxy for stockholders to authorize, at the board's discretion if necessary, a reverse stock split. As you know, our common stock is currently listed on NYSE MKT.**

We believe that the delisting of our common stock would adversely affect Hemispherx and its stockholders. Among other things, we believe that delisting may negatively impact the liquidity, marketability and trading price of our common stock and adversely affect new management's ability to execute on their business plan to unlock the value of our assets. The Board of Directors believes that a reverse stock split, if needed, would help regain compliance with NYSE MKT's minimum bid price requirement and potentially provide a number of other benefits to Hemispherx and its existing stockholders, including, but not limited to

increasing interest by brokers and institutional investors and decreasing transaction costs.

For these reasons and as described in greater detail in the enclosed proxy statement, the Board of Directors is seeking your approval to authorize the Board to effect a reverse stock split and to set the exact ratio of any reverse split within a range of 8-to-1 to 12-to-1 as determined by the Board in its sole discretion.

**Please remember that, as a stockholder, your vote is extremely important to the Company no matter how many shares you own. For certain very important resolutions, failure to vote or specifically direct your broker to vote, would be considered the same as a “NO” vote.**

So, whether or not you plan to attend the Annual Meeting, please take a few moments to vote. You can vote by completing, signing, dating and promptly returning the enclosed proxy card. Alternatively, you may vote through the Internet or by telephone as directed on your proxy card. Many of our stockholders will receive the proxy notification electronically via email from their bank or broker. Please check your email, including spam filter, for notification or by logging into your bank/brokerage account and checking your message center. If you receive more than one proxy card because you own shares that are registered differently, please vote all of the shares shown on all of your proxy cards.

**To our European stockholders:** Most of you do not receive notice of the meeting or the materials to vote your shares from your bank or brokerage firm, however, as stockholders in a US company, it is imperative that you participate in this process and vote your shares. Please contact your bank or broker immediately and request a document of ownership for the number of shares owned of Hemispherx on the record date of June 20, 2016. Your bank/broker does not need to freeze your shares in order to vote. Hemispherx will pay the cost for the issuance of the letter of ownership. Simply return this document issued by your bank/broker along with a signed and dated proxy card found on the company's website at [http://ir.hemispherx.net/Annual Shareholder Meeting](http://ir.hemispherx.net/Annual_Shareholder_Meeting) to [ir@hemispherx.net](mailto:ir@hemispherx.net). If you have any questions, please contact Dianne Will at the contact information below.

If you have any questions or need assistance voting your shares, please call our proxy solicitor, Morrow and Co toll free at 855-251-9340 or non-US callers can call 203-658-9400 or Dianne Will, Corporate Affairs for Hemispherx at 518-398-6222 or [ir@hemispherx.net](mailto:ir@hemispherx.net). Collect calls will be accepted.

I thank each of you for your support, and we look forward to unlocking the value of our assets.

Sincerely,  
/s/ Thomas K. Equels  
Thomas K. Equels, Esq.  
Chief Executive Officer

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS

FOR THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON August 17, 2016

This proxy statement and our 2015 Annual Report on Form 10-K and our March 31, 2016 Quarterly Report on Form 10-Q are available at <http://www.hemispherx.net/content/investor/annualmeeting.asp>.

**HEMISPHERX BIOPHARMA, INC**  
**1617 JFK Blvd., Suite 500**  
**Philadelphia, PA 19013**  
**(215) 988-0080**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON AUGUST 17, 2016**

Date: August 17, 2016

Time: 10:00 a.m., Eastern Daylight Savings Time.

Place: Embassy Suites Hotel, 1776 Benjamin Franklin Parkway, Philadelphia Pennsylvania 19103.

Purposes:

1. To elect four 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 RSM US LLP, independent registered public accountants, to audit the financial statements of Hemispherx for the year ending December 31, 2016;

3. To authorize Hemispherx's Board of Directors to amend Hemispherx's Certificate of Incorporation to effect, at its sole discretion, a reverse stock split of outstanding shares of Hemispherx's Common Stock by a ratio in the range of 8-to-1 to 12-to-1 (the "Reverse Stock Split"), with the Board having the discretion as to whether or not the Reverse Stock Split is to be effected, and with the exact ratio to be set within the above range, as determined by the Board in its discretion;

4. To approve, by non-binding vote, executive compensation;

5. To transact such other matters as may properly come before the meeting or any adjournment thereof.

Who Can Vote: Stockholders of record at the close of business on Monday, June 20, 2016.



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How Can You Vote: You may cast your vote via mail, telephone or the Internet. You may also vote in person at the annual meeting.

Who May Attend: All stockholders are cordially invited to attend the annual meeting.

By Order of the Board of Directors

\s\ Thomas K. Equels  
Thomas K. Equels  
Secretary and Executive Vice Chairman of the Board

Philadelphia, Pennsylvania

June \_\_, 2016

**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.

**We encourage you to take advantage of Internet or telephone voting.**

**Both are available 24 hours a day, 7 days a week**

**QUICKÇÇEASYÇÇIMMEDIATE**

## ***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 August 17, 2016, and at any adjournments (the “Annual Meeting”). 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. This proxy statement and the accompanying proxy are being distributed to stockholders beginning on or about June 27, 2016. The principal executive offices of Hemispherx are located at 1617 JFK Boulevard, Suite 500, Philadelphia, Pennsylvania 19103, telephone (215) 988-0080.

### **Important Notice Regarding the Availability of Proxy Materials for the 2016 Annual Meeting of Stockholders to Be Held on August 17, 2016**

This proxy statement, our 2015 Annual Report on Form 10-K and our March 31, 2016 Quarterly Report on Form 10-Q are available electronically at <http://www.hemispherx.net/content/investor/annualmeeting.asp>.

Rules adopted by the Securities and Exchange Commission (“SEC”) allow companies to send stockholders a notice of Internet availability of proxy materials, rather than mail them full sets of proxy materials. This year, we chose to mail full packages of materials to stockholders. However, in the future we may take advantage of the Internet distribution option. If, in the future, we choose to send such notices, they would contain instructions on how stockholders can access our notice of annual meeting and proxy statement via the Internet. It would also contain instructions on how stockholders could request to receive their materials electronically or in printed form on a one-time or ongoing basis.

## **PROXY SOLICITATION AND COSTS**

Hemispherx has borne the cost of preparing, assembling and mailing this proxy solicitation material along with related communication with stockholders. 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. The total estimated cost of this solicitation is approximately \$75,000.

## **QUESTIONS AND ANSWERS ABOUT THE ANNUAL MEETING AND VOTING**

### **Why am I receiving these proxy materials?**

You received these proxy materials because you are a Stockholder of the Company. The Board is providing these proxy materials to you in connection with the Company's Annual Meeting to be held on August 17, 2016. As a Stockholder of the Company, you are entitled to vote on the important proposals described in this proxy statement. Since it is not practical for all Stockholders to attend the Annual Meeting and vote in person, the Board is seeking your proxy to vote on these matters.

### **What is a proxy?**

A proxy is your legal designation of another person ("proxy") to vote the common shares you own at the Annual Meeting. By completing and returning the proxy card(s), which identifies the individuals or trustees authorized to act as your proxy, you are giving each of those individual's authority to vote your common shares as you have instructed. By voting via proxy, each Stockholder is able to cast his or her vote without having to attend the Annual Meeting in person.

### **Why did I receive more than one proxy card?**

You will receive multiple proxy cards if you hold your common shares in different ways (e.g., different names, trusts, custodial accounts, joint tenancy, etc.) or in multiple accounts. If your common shares are held by a broker or bank (i.e., in "Street Name"), you will receive your proxy card and other voting information directly from your brokerage firm, bank, trust, or other nominee. It is important that you complete, sign, date and return each proxy card you receive, or vote using the telephone, or by using the Internet as described in the instructions included with your proxy card(s).

### **Do I have to attend the meeting to vote?**

No. If you want to have your vote count at the meeting, but not actually attend the meeting in person, you may vote by granting a proxy or, for shares held in street name, by submitting voting instructions to your broker or nominee. In

most instances, you will be able to do this over the Internet, by telephone or by mail.

In the United States if you are not in possession of your voting proxy or instruction form, please contact your broker or bank for assistance in obtaining a duplicate control number.

**Do Europeans holding Company Common Stock have to vote a different way?**

Yes. Europeans must contact their custodian bank or broker directly as European banks and brokerage houses do not necessarily forward the Proxy materials to stockholders. As we are a Delaware corporation, there is no need for your bank or brokerage house to block your shares. Banks and brokerage houses simply need to certify the number of shares owned by their clients on June 20, 2016, the record date, and cast votes on your behalf by August 16, 2016 (7 p.m. US EDT).

The proxy materials are available at: <http://www.hemispherx.net/content/investor/annualmeeting.asp>.

**What is the record date and what does it mean?**

The Board established June 20, 2016 as the record date for the Annual Meeting of Stockholders to be held on August 17, 2016. Stockholders who own common shares of the Company at the close of business on the record date are entitled to notice of and to vote at the Annual Meeting.

**What is the difference between a “Registered Stockholder” and a “Street Name Stockholder”?**

These terms describe how your common shares are held. If your common shares are registered directly in your name with Continental Stock Transfer & Trust Company (“CST”), the Company’s transfer agent, you are a “Registered Stockholder”. If your common shares are held in the name of a brokerage, bank, trust, or other nominee as a custodian, you are a “Street Name Stockholder”.

**How many common shares are entitled to vote at the Annual Meeting?**

As of June 7, 2016, there were approximately 248,199,086 shares of common stock, par value \$0.001 per share outstanding and entitled to vote at the Annual Meeting. Each share is entitled to one vote on all matters.

**How many votes must be present to hold the Annual Meeting?**

For the 2016 Annual Meeting, the required quorum for the transaction of business at the annual meeting is 40% of the shares of common stock entitled to vote at the annual meeting, in person or by proxy. The reduced quorum for this meeting is required by the stipulation and agreement of settlement of the lawsuit filed in the Delaware Court of Chancery, captioned *Kastis v. Carter, et al.* No. 8657 (Del. Ch.).

For purposes of determining whether a quorum is present, each common share is deemed to entitle the holder to one vote per share. Properly signed proxies that are marked “abstain” are known as “abstentions.” Common shares that are held in street name and not voted on one or more of the items before the Annual Meeting, but are otherwise voted on at least one item, are known as “broker non-votes”. Proposals No. 2 and 3 are the only routine matter that may be voted on by brokers on this year’s ballot.

Both abstentions and broker non-votes are counted as shares present for the purpose of determining the presence of a quorum. Abstentions are also counted as shares present and entitled to be voted. Broker non-votes, however, are not counted as shares entitled to be voted with respect to the matter on which the broker has expressly not voted.

**Who will count the votes?**

An attorney from the office of Silverman Shin & Byrne PLLC, our securities counsel, or its designee, will determine if a quorum is present and will tabulate the votes and serve as the Company's inspector of election at the Annual Meeting.



**What vote is required to approve each proposal?**

Each share of common stock is entitled to one vote on all matters. Abstentions, broker non-votes, and shares not in attendance and not voted at the Annual Meeting will not be counted as votes cast “for” or “against” a candidate and will have no effect with regard to the election of Directors in Proposal 1. However, because Proposals No. 2, 3 and 4, are based on the affirmative vote of at least a majority of the shares represented and voting at the Annual Meeting at which a quorum is present, abstentions will have the same effect as votes against such proposals.

The four nominees in Proposal No. 1 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 and 4.

Approval of Proposal No. 3 requires the affirmative vote of the holders of a majority of the issued and outstanding shares of our common stock.

Although the advisory votes on Proposal No. 4 is non-binding, as provided by law, our Compensation Committee will review the results of the vote and consider this sentiment when determining future executive compensation.

**Where will I be able to find voting results of the Annual Meeting?**

The Company intends to announce preliminary voting results at the Annual Meeting and will publish final voting results in a Current Report on Form 8-K to be filed with the SEC within four business days after the Annual Meeting.

**How do I vote my common shares?**

If you are a Stockholder as of the record date, you can vote your shares in one of the following manners:

- by completing, signing, dating, and returning the enclosed proxy card(s); or
- by telephone or internet by following the instructions shown on the enclosed proxy card or voting form.

Registered Stockholders may vote in person by attending the Annual Meeting. If you are a street name Stockholder and you wish to vote at the Annual Meeting, you may do so by obtaining a “legal proxy” from your Broker. Accordingly, you would need to bring this legal proxy to the meeting in order to vote in person at the meeting.

Please refer to the specific instructions set forth on the proxy materials you received.

**Can I change my vote after I have mailed in my proxy card(s) or submitted my vote using the Internet or telephone?**

Yes, if you are a registered Stockholder, you can change your vote in any one of the following ways:

• sending a written notice to the Corporate Secretary of the Company that is received prior to the Annual Meeting and stating that you revoke your proxy;

- signing and dating a new proxy card(s) and submitting the proxy card(s) to the Company's Corporate Secretary or CST so that it is received prior to the Annual Meeting;

• voting by telephone or by using the Internet prior to the Annual Meeting in accordance with the instructions provided with the proxy card(s); or

- attending the Annual Meeting and voting in person.

• Your mere presence at the Annual Meeting will not revoke your proxy. You must take affirmative action at the Annual Meeting in order to revoke your proxy.

If you are a Street Name Stockholder, you must contact your broker, bank, trust, or other nominee in order to revoke your proxy. If you wish to vote in person at the Annual Meeting, you must contact your broker and request a document called a "legal proxy". You must bring this legal proxy obtained from your broker, bank, trust, or other nominee to the Annual Meeting in order to vote in person.

**How will my proxy be voted?**

If you complete, sign, date, and return your proxy card(s) or vote by telephone or by using the Internet, your proxy will be voted in accordance with your instructions. If you sign and date your proxy card(s) but do not indicate how you want to vote, your common shares will be voted as the Board recommends for each of the proposals.

**What if my common shares are held in “Street Name” by my broker?**

You should instruct your broker how you would like to vote your shares by using the written instruction form and envelope provided by your broker. If you do not provide your broker with instructions, under the rules of the New York Stock Exchange (“NYSE”), your broker may, but is not required to, vote your common shares with respect to certain “routine” matters. However, on other matters, when the broker has not received voting instructions from its customers, the broker cannot vote the shares on the matter and a “broker non-vote” occurs. Proposals No. 2 and 3 are the only routine matter to be voted on by the Stockholders on this year’s ballot. Proposals No. 1 and 4 are not considered routine matters under the NYSE rules. This means that brokers may not vote your common shares on such proposals if you have not given your broker specific instructions as to how to vote. Please be sure to give specific voting instructions to your broker so that your vote can be counted. If you hold your common shares in your broker’s name and wish to vote in person at the Annual Meeting, you must contact your broker and request a document called a “legal proxy.” You must bring this legal proxy to the Annual Meeting in order to vote in person.

**What are the Board’s recommendations on how I should vote my common shares?**

The Board recommends that you vote your common shares as follows:

1. FOR the election of each of the four Director nominees (see Proposal 1);
2. FOR the ratification of RSM US LLC as our independent registered public accounting firm for fiscal 2016 (see Proposal 2);
3. Authorizing the Board of Directors to amend Hemispherx’s Certificate of Incorporation to effect, at its sole discretion, a reverse stock split of outstanding shares of Hemispherx’s Common Stock by a ratio in the range of 8-to-1 to 12-to-1 (the “Reverse Stock Split”), with the Board having the discretion as to whether or not the Reverse Stock Split is to be effected, and with the exact ratio to be set within the above range, as determined by the Board in its discretion;
4. FOR the advisory resolution approving the compensation of our Named Executive Officers as described in this Proxy Statement (see Proposal 4)

**Does the Company have cumulative voting?**

No.

**Who may attend the Annual Meeting?**

All Stockholders are eligible to attend the Annual Meeting. However, only those Stockholders of record at the close of business on June 20, 2016 are entitled to vote at the Annual Meeting.

**Do I need an admission ticket to attend the Annual Meeting?**

Admission tickets are not required to attend the Annual Meeting. If you are a Registered Stockholder, properly mark your proxy to indicate that you will be attending the Annual Meeting. If you hold your common shares through a nominee or you are a Street Name Stockholder, you are required to bring evidence of share ownership to the Annual Meeting (e.g., account statement, broker verification).

### Who can answer my questions?

If you have any questions regarding any of the proposals or how to vote your shares, or if you need additional copies of the proxy materials please contact:

Dianne Will, Corporate Affairs for Hemispherx, **518-398-6222** (collect calls will be accepted) or via email at [ir@hemispherx.net](mailto:ir@hemispherx.net); or

Morrow & Co., LLC, Hemispherx's proxy solicitor for the Annual Meeting, in the U.S. toll free at **(800) 662-5200** or non-U.S. voters can call **203-658-9400**.

### DEADLINE FOR RECEIPT OF STOCKHOLDER PROPOSALS

Proposals of stockholders to be considered for inclusion in the Proxy Statement and proxy card for the 2017 Annual Meeting of Stockholders must be received by the Company's Secretary, at Hemispherx Biopharma, Inc., 1617 JFK Boulevard, Suite 500, Philadelphia, PA 19103 no later than April 19, 2017, with an anticipated meeting date in August 2017.

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 advisers 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 other members of Senior Management, experts and other advisers. Members of the Board are expected to attend Board meetings in person, unless the meeting is held by teleconference. The Board held six meetings in 2015 and executed eight unanimous consents. All Directors were in attendance for the meetings.

In 2015, the non-employee (independent) members of the Board of Directors met two times with no employee Directors or management personnel present. The Interested persons who wish to contact the Lead Independent 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 500, 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.

## **CONDUCT OF THE MEETING**

The Chairman of our Board (or any person designated by our Board) has broad authority to conduct the annual meeting of stockholders in an orderly manner. This authority includes establishing rules of conduct for stockholders who wish to address the meeting, including limiting questions to the order of business and to a certain amount of time. Copies of these rules will be available at the meeting. To ensure that the meeting is conducted in a manner that is fair to all stockholders, the Chairman (or such person designated by our Board) also may exercise broad discretion in recognizing stockholders who wish to speak, in determining the extent of discussion on each item of business and in managing disruptions or disorderly conduct.

## **CORPORATE GOVERNANCE**



Our Board has adopted corporate governance guidelines. These guidelines address items such as the standards, qualifications and responsibilities of our directors and director candidates and corporate governance policies and standards applicable to us in general. In addition, we have a code of conduct that applies to all our employees, including our executive officers and our directors. Both the guidelines and the code of conduct are posted under “Corporate Governance” in the Investors section of our website at [http://www.hemispherx.net/content/investor/corp\\_governance.htm](http://www.hemispherx.net/content/investor/corp_governance.htm). We will disclose under “Corporate Governance” in the Investors section of our website any amendments to, or any waivers under, the code of conduct that are required to be disclosed by the rules of the SEC. The charters of each of the Board’s Audit, Compensation, Disclosure Controls, Corporate Governance and Nominating Committees also are posted on our website. Detailed information on our Board and its committees can be found within the attached document.

## **INFORMATION CONCERNING COMMITTEES OF THE BOARD**

The Board of Directors maintains the following committees:

### **Executive Committee**

In February 2016, our Board formed the Executive Committee. The Executive Committee reports to the Board and its purpose is to aid the Board in handling matters which, in the opinion of the Chairman of the Board, should not be postponed until the next scheduled meeting of the Board. Mr. Equels, our Chief Executive Officer is the chairman of the Committee, along with two of our independent directors, Mr. Rodino and Dr. Mitchell.

### **Compensation Committee**

In 2015, the Compensation Committee formally met five times and all committee members were in attendance for the meetings. Our General Counsel and Chief Financial Officer and Director of Human Resources support the Compensation Committee in its work. The Compensation Committee is currently composed of Committee Chair, Dr. William M. Mitchell, Director, and Peter W. Rodino III, Esq., Director.

For detailed information on the Compensation Committee and its responsibilities, please see “Compensation Discussion and Analysis” in “COMPENSATION OF EXECUTIVE OFFICERS” below. The Compensation Committee consists of directors, each of whom is “independent” under applicable NYSE MKT rules. The full text of the Compensation Committee Charter, as approved by the Corporate Governance and Nomination Committee, is available on our website: [http://www.hemispherx.net/content/investor/corp\\_governance.htm](http://www.hemispherx.net/content/investor/corp_governance.htm).

### **Corporate Governance and Nomination Committee**

In 2015, the Corporate Governance and Nomination Committee formally met one time. All committee members were in attendance for the meeting. The Corporate Governance and Nomination Committee consists of Dr. William M. Mitchell, Director and Committee Chair and Mr. Peter W. Rodino III, Esq., Director.

All of the members of the Committee meet the independence standards contained within the NYSE MKT 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, are available on our website: [http://www.hemispherx.net/content/investor/corp\\_governance.htm](http://www.hemispherx.net/content/investor/corp_governance.htm).

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 500, 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.

### **Disclosure Controls Committee**

In August 2011, our Board formed the Disclosure Controls Committee ("DCC"). The DCC reports to the Audit Committee and is responsible for procedures and guidelines on managing disclosure information. The full text of the DCC's Charter, as approved by the Audit Committee, as well as the Corporate Governance and Nomination Committee Charter, is available on our website: <http://ir.hemispherx.net/Governance>. In accordance with its Charter, the DCC provides the Audit Committee with a quarterly and year-end process review, presented the results of its activities and made recommendations to improve functionality.

The purpose of the DCC is to make certain that information required to be publicly disclosed is properly accumulated, recorded, summarized and communicated to the Board, Management and the public. This process is intended to allow for timely decisions regarding communications and disclosures and to help ensure that we comply with related SEC rules and regulations. Wayne S. Springate, Senior Vice President of Operations acts as the DCC's Investor Relations Coordinator and Chairperson. The other members of the DCC are Thomas K. Equels as General Counsel; Adam Pascale as Chief Financial Officer; David R. Strayer as Chief Scientific Officer, and William M. Mitchell as Independent Director. Ann Marie Coverly, Director of Administration, Human Resources and Investor Relations

Manager, serves as the DCC's Deputy Investor Relations Coordinator since June 2014. During 2015, the DCC met 65 times either telephonically, or electronically. During 2015, the Committee reviewed 53 separate disclosure items on which each was voted upon by a quorum of two-third DCC members. Quorum was reached for all items voted upon in 2015.

### **Audit Committee and Audit Committee Expert**

The Audit Committee of our Board of Directors consists of Peter Rodino III, Committee Chairman, William Mitchell, M.D. and Iraj E. Kiani, N.D., Ph.D. Mr. Rodino, Dr. Mitchell, and Dr. Kiani are all determined by the Board of Directors to be Independent Directors as required under Section 803(2) of the NYSE: MKT Company Guide and Rule 10A-3 under the Exchange Act. The Board has determined that Mr. Rodino qualifies as an “audit committee financial expert” as that term is defined by Section 803B(2) of the NYSE: MKT Company Guide and the rules and regulations of the SEC.

We believe Mr. Rodino, 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 MKT 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.

The Audit Committee engaged the services of a consultant in 2015 who meets the SEC criteria of a Financial Expert to enhance the current structure and expertise of the Committee. In 2011, after an extensive search, the Audit Committee selected Stewart L. Appelrouth, a Florida and North Carolina licensed Certified Public Accountant to directly support the efforts of the Audit Committee on an as-needed basis. Mr. Appelrouth is a Certified Valuation Analyst, Accredited in Business Valuation and a Diplomate of the American Board of Forensic Accounting. Mr. Appelrouth has a Masters’ Degree in Finance from Florida International University and an undergraduate degree in Business Administration from Florida State University. He is one of the founding partners of Appelrouth Farah & Co., which serves Southern Florida as a full service accounting and international business advisory firm specializing in auditing, domestic and international taxation, litigation support, forensic accounting, fraud examination and business valuation. The Firm is affiliated with MGI, a worldwide association of independent auditing and accounting firms. The Audit Committee is currently reviewing other candidates to facilitate the current structure and expertise of the Committee in 2016.

### **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;

- To facilitate and maintain an open avenue of communication among the Board of Directors, Management and the Company's independent registered public accountants; and

- To provide oversight of the DCC to monitor their successful implementation of that Committee's Charter, policies and procedures.

During 2015, the Audit Committee was 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 MKT Company Guide. This Committee formally met nine times in 2015 with all committee members in attendance for the meetings. Our General Counsel and Chief Financial Officer support the Audit Committee in its work. The full text of the Audit Committee Charter, as approved by the Corporate Governance and Nomination Committee, is available on our website: [http://www.hemispherx.net/content/investor/corp\\_governance.htm](http://www.hemispherx.net/content/investor/corp_governance.htm).

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, RSM US LLP ("RSM"), the overall scope and process for its audit. The Committee regularly meets with RSM, 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 all required discussions with RSM during the 2015 fiscal year of 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 RSM the written and oral disclosures and the letter required by applicable requirements of the Public Company Accounting Oversight Board regarding RSM's communications with the Audit Committee concerning independence and discussed with RSM 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, 2015, 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, 2015.

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

Peter W. Rodino, III, Committee Chairman

Dr. William M. Mitchell

Dr. Iraj E. Kiani

### **Special Litigation Committee**

On July 23, 2013, pursuant to its authority under its Amended and Restated Bylaws and the Delaware General Corporation Law, the Board created a Special Litigation Committee of the Board of Directors for which Peter Rodino, III, Esq. and Dr. Iraj E. Kiani were appointed as Members. The Board delegated to the Special Litigation Committee the power and authority to investigate the allegations made in a shareholder derivative lawsuit filed in the Delaware Court of Chancery, captioned *Kastis v. Carter, et al.* No. 8657 (Del. Ch.) (the "Lawsuit") on June 18, 2013, including any allegations made in any subsequent legal action, and to take appropriate action in light of the allegations and the results of the Committee's review, analysis and investigation. Pursuant to Section 141(c) of the Delaware General Corporation Law, the Board delegated to the Special Litigation Committee, to the fullest extent permitted by law, the exclusive power and authority of the Board to take any and all actions it deems necessary or appropriate to accomplish its functions without limitation, including:

to retain, at the expense of Company (or of the Company's D&O insurance carrier(s) to the extent such expenses are covered under the applicable policy) legal counsel, financial advisers, accountants, or other consultants and advisers

a. as the Special Litigation Committee may deem to be necessary or appropriate on such terms as the Committee may approve and to direct such counsel and advisers to take any action that they may consider necessary or appropriate to assist the Committee in carrying out its responsibilities;

b. to conduct interviews with any current or former employee, Officer, Director, agent or adviser of the Company, or any other person, as it may deem to be useful or appropriate;

c. to have access to all information of the Company which the Special Litigation Committee believes necessary or appropriate to assist it in its work;

d. to determine whether it is in the best interests of the Company that the Lawsuit continue or that the Lawsuit be dismissed, and, if the Special Litigation Committee determines that it is in the best interests of the Company that the Lawsuit be dismissed, to seek the Court's approval for dismissal of the Lawsuit;

e. Committee Members are authorized and empowered to determine its own procedures, to hold meetings (including telephonic meetings) at such locations as it determines to be appropriate, to act by unanimous written consent of its

Members in lieu of a meeting and to appoint a Chair of the Committee, all to the fullest extent permitted by the Delaware General Corporation Law and the Company's Amended and Restated Bylaws; and

Committee Members are authorized, empowered and directed, for and on behalf of the Company, to take and cause to be taken such actions, and to make, sign, execute, acknowledge and deliver and cause to be made, signed, f. executed, acknowledged and delivered such agreements, certificates, orders, directions, requests, receipts and other instruments, as the Committee may deem to be necessary or appropriate.

This Committee did not formally meet in 2015.

## **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 and Company made significant changes to its board leadership and role in risk oversight in 2015.

On September 16, 2015, our Board appointed Mr. Peter Rodino as Lead Director. In addition, Mr. Rodino and William Mitchell, M.D., Ph.D. were each appointed to the Compensation Committee and Corporate Governance and Nominating Committee. Mr. Rodino, Dr. Mitchell and Iraj E. Kiani were each appointed to the Audit Committee.

On February 17, 2016, our Board, by majority vote, terminated the employment of Dr. Carter, our Chairman of the Board, Chief Executive Officer and Chief Scientific Officer. As a result, Dr. Carter also is no longer a director. Dr. Mitchell, one of our independent directors, was appointed Chairman of the Board. In recent months, we have been reexamining our fundamental priorities in terms of direction, corporate culture and our ability to fund operations.

On February 19, 2016, our Board of Directors also made several changes to our executive management team in light of the termination of Dr. Carter, to provide effective and competent leadership that will properly position us to achieve our commercial goals and increase stockholder value. In this regard, Adam Pascale was named Chief Financial Officer in addition to his current responsibilities as Chief Accounting Officer. Mr. Pascale has been employed us for 18 years, with more than two decades of public accounting experience and prior public company experience. He earned a Bachelor of Arts degree in Accounting and Finance from Rutgers University. Mr. Pascale served for several years as a CPA prior to joining the Company, and is a member of both the American and the Pennsylvania Institutes of Certified Public Accountants. Mr. Equels, our President, resigned as Chief Financial Officer to make way for Mr. Pascale.

On February 25, 2016, our Board appointed Thomas K. Equels, our current President, as our Chief Executive Officer. In that capacity, he is the principal executive officer of the Company. The Board believes that these changes fosters clear accountability, effective decision-making and consistency in strategy.

**Lead Independent Director.** In 2015, the Board established a strong, independent, clearly-defined Lead Independent Director and on September 16, 2015, our Board appointed Mr. Peter Rodino as Lead Independent Director for the remainder of this term.

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. The role of the Lead Independent Director includes the following duties:

1. determining the appropriate schedule of Board meetings after consultation with the CEO, Chairman of the Board and other Board members, as necessary;
2. determining the appropriate schedule of Board meetings after consultation with the CEO, Chairman of the Board and other Board members, as necessary;
3. consulting with the CEO, Chairman of the Board and other Board members on the agenda for the Board along with oversee the preparation of the agenda;
4. assessing the quality, quantity and timeliness of the flow of information from the Company's Management to the Independent Directors to ensure that it is sufficient for the Independent Directors to satisfy their duties; and
5. directing Management to include in the materials prepared for the Board any materials that the Lead Independent Director deems important.

In addition, and on an as needed basis, the Board of Directors holds executive sessions of the Independent Directors to assure effective independent oversight. In 2015, the 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 ("Code"), 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 [http://www.hemispherx.net/content/investor/corp\\_governance.htm](http://www.hemispherx.net/content/investor/corp_governance.htm). or by written request to our Office Administrator at 1617 JFK Boulevard, Suite 500, Philadelphia, PA 19103. Our Board of Directors is required to approve any waivers of the Code 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: [http://www.hemispherx.net/content/investor/corp\\_governance.htm](http://www.hemispherx.net/content/investor/corp_governance.htm)