

HEMISPHERX BIOPHARMA INC
Form 8-K
April 20, 2018

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)

April 20, 2018

HEMISPHERX BIOPHARMA, INC.

(Exact name of registrant as specified in its charter)

Delaware **0 - 27072** **52-0845822**
(state or other jurisdiction (Commission (I.R.S. Employer
of incorporation) File Number) (Identification No.)

860 N. Orange Avenue, Suite B, Orlando, FL 32801
(Address of principal executive offices) (Zip Code)

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

(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))

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

On April 20, 2018, Hemispherx, Biopharma, Inc. (the “Company”) entered into Securities Purchase Agreements (the “Purchase Agreements”) with certain investors (the “Investors”) for the sale by the Company of an aggregate of 6,600,000 shares (the “Common Shares”) of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), at a purchase price of \$0.39 per share. Concurrently with the sale of the Common Shares, pursuant to the Purchase Agreements the Company also sold 6,600,000 warrants, 50% of which are Class A Warrants and 50% of which are Class B Warrants (collectively, the “Warrants”). We will receive gross proceeds from the concurrent private placement transaction solely to the extent such Warrants are exercised for cash. Both classes of Warrants will not be exercisable until six months after issuance and will have an exercise price of \$0.39 per share, subject to adjustments as provided under the terms of the Warrants. The Class A Warrants and Class B Warrants will expire, respectively, two and five years after the date on which they are first exercisable. The closing of the sales of these securities under the Purchase Agreements is expected to take place on or about April 24, 2018, subject to the satisfaction of customary closing conditions.

The Company estimates that the net proceeds from the transactions will be approximately \$2,393,820 after deducting certain fees due to the placement agent and the Company’s estimated transaction expenses. The net proceeds received by the Company from the transactions will be used for the production of Ampligen, to improve operations, and for working capital and general corporate purposes.

The Common Shares were offered and sold by the Company pursuant to an effective shelf registration statement on Form S-3, which was initially filed with the Securities and Exchange Commission (the “SEC”) on June 25, 2015 and subsequently declared effective on August 4, 2015 (File No. 333-205228) (the “Registration Statement”), and the base prospectus dated as of August 4, 2015 contained therein. The Company will file a prospectus supplement with the SEC on April 20, 2018 in connection with the sale of the Common Shares.

The Warrants and the shares issuable upon exercise of the Warrants were sold without registration under the Securities Act of 1933 (the “Securities Act”) in reliance on the exemptions provided by Section 4(a)(2) of the Securities Act as transactions not involving a public offering and Rule 506 promulgated under the Securities Act as sales to accredited investors, and in reliance on similar exemptions under applicable state laws.

Pursuant to the Purchase Agreements, the Company has generally agreed that it will not issue or enter into any agreement to issue shares of Common Stock or Common Stock Equivalents for a period of 60 days after April 24, 2018. The representations, warranties and covenants contained in the Purchase Agreements were made solely for the benefit of the parties to the Purchase Agreements. The placement agent is a third party beneficiary of the representations and warranties in the Purchase Agreements. In addition, such representations, warranties and covenants (i) are intended as a way of allocating the risk between the parties to the Purchase Agreements and not as statements of fact, and (ii) may apply standards of materiality in a way that is different from what may be viewed as

material by stockholders of, or other investors in, the Company. Accordingly, the form of Purchase Agreement is included with this filing only to provide investors with information regarding the terms of transaction, and not to provide investors with any other factual information regarding the Company. Stockholders should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Purchase Agreements, which subsequent information may or may not be fully reflected in public disclosures.

The Company also entered into an engagement letter (the “Engagement Letter”) with Maxim Group LLC (“Maxim”), pursuant to which Maxim agreed to serve as exclusive placement agent for the issuance and sale of the Common Shares and Warrants. The Company has agreed to pay Maxim an aggregate fee equal to 7% of the gross proceeds received by the Company from the sale of the securities in the transactions. Pursuant to the Engagement Letter, the Company also agreed to reimburse Maxim its legal fees and other expenses in the amount not to exceed \$50,000.

The forms of the Purchase Agreement, the Warrant and the Engagement Letter are filed as Exhibits 10.1, 4.1 and 1.1, respectively, to this Current Report on Form 8-K. The foregoing summaries of the terms of these documents are subject to, and qualified in their entirety by, such documents, which are incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information contained above in Item 1.01 related to the Warrants and the Maxim Warrants is hereby incorporated by reference into this Item 3.02.

Item 7.01 Regulation FD Disclosure

On April 20, 2018, the Company issued a press release regarding the transactions described above under Item 1.01 of this Current Report on Form 8-K. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The information in this Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1 attached hereto, shall not be deemed “filed” for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
4.1	<u>Form of Class A Warrant</u>
4.2	<u>Form of Class B Warrant</u>
5.1	<u>Legal Opinion of Silverman Shin & Byrne PLLC</u>
10.1	<u>Form of Securities Purchase Agreement</u>
99.1	<u>Press Release dated April 20, 2018</u>
23.1	<u>Consent of Silverman Shin & Byrne PLLC (included in Exhibit 5.1)</u>

SIGNATURES

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

HEMISPHERX
BIOPHARMA, INC.

April 20, 2018 By: */s/ Thomas K. Equels*
Thomas K. Equels, CEO

