MADISON GAS & ELECTRIC CO
Form S-3
June 28, 2006

As Filed with the Securities and Exchange Commission on June 28, 2006

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D. C. 20549

FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Madison Gas and Electric Company
(Exact name of registrant as specified in its charter)

Wisconsin	**39-0444025**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

133 South Blair Street
Madison, Wisconsin 53703

(608) 252-7000

(Address, including zip code, and telephone number, including area code,

of registrant s principal executive offices)

Terry A. Hanson, Vice President and Chief Financial Officer

Jeffrey C. Newman, Vice President and Treasurer

Madison Gas and Electric Company

133 South Blair Street
Madison, Wisconsin 53703

(608) 252-7000

(Name, address, including zip code, and telephone number, including area code, of agents for service)

Copy To:

Richard W. Astle, Esq.

Sidley Austin LLP

One South Dearborn Street

Chicago, Illinois 60603

Approximate date of commencement of proposed sale to the public: From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ý

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. _____

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, checking the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, checking the following box.

Calculation of Registration Fee

Title of Each Class of Securities to Be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Unit (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Medium-Term Notes (3)	$100,000,000	100%	$100,000,000	$10,700

(1)

Such indeterminate amount of medium-term notes as may from time to time be issued at indeterminate prices. The amount registered is in U.S. dollars or the equivalent thereof in foreign currency or currency units.

(2)

Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457 under the Securities Act. The aggregate public offering price of the securities registered hereby will not exceed $100,000,000 in U.S. dollars or the equivalent thereof in foreign currency or currency units.

(3)

Medium-term notes may be issued at an original issue discount.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, Dated June 28, 2006

Prospectus

Madison Gas and Electric Company

Medium-Term Notes

We intend to offer from time to time, at prices and on terms to be determined at or prior to the time of sale, our unsecured notes having an aggregate initial offering price not to exceed $100,000,000.

We will describe the specific terms of the notes, together with the terms of the offering of notes, the initial offering price and our net proceeds from their sale, in supplements to this prospectus. You should read this prospectus, the applicable prospectus supplement and any applicable pricing supplement carefully before you invest.

Investing in the notes involves risks. See Risk Factors under Item 1A of our most recently filed Annual Report on Form 10-K and under Part II, Item 1A in any of our subsequently filed Quarterly Reports on Form 10-Q.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

We may sell the notes directly to purchasers, through agents we may designate from time to time or to or through underwriters. If any agents or underwriters are involved in the sale of notes, we will specify the names of those agents or underwriters and any applicable commission or discount in the applicable prospectus supplement or any applicable pricing supplement. Our net proceeds from the sale of notes will be the initial public offering price of those notes less the applicable discount, in the case of an offering through an underwriter, or the purchase price of those notes less the applicable commission, in the case of an offering through an agent, and, in each case, less other expenses payable by

us in connection with the issuance and distribution of those notes.

The date of this prospectus is , 2006.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, utilizing a shelf registration process. Under this shelf registration process, we may, from time to time, sell the notes described in this prospectus in one or more offerings with a total offering price not to exceed $100,000,000. This prospectus provides you with a general description of the notes. Each time we sell notes, we will describe the specific terms of the notes being sold in that offering in a prospectus supplement to this prospectus, which may also be further supplemented by a pricing supplement. The applicable prospectus supplement and any applicable pricing supplement may also add, update or change information in this prospectus. Please carefully read this prospectus, the applicable prospectus supplement and any applicable pricing supplement, together with the additional information referred to in Where You Can Find More Information, before investing in the notes. For purposes of this prospectus, any reference to a prospectus supplement may also refer to a pricing supplement, unless the context otherwise requires.

We are not offering the notes in any state where the offer is not permitted.

You should rely only on the information contained or incorporated by reference in this prospectus, the applicable prospectus supplement and any applicable pricing supplement. We have not authorized anyone else to provide you with different information. You should not assume that the information in this prospectus, the applicable prospectus supplement or any applicable pricing supplement is accurate as of any date other than the date of that document.

Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to MGE, our company, we, us, our or similar references mean Madison Gas and Electric Company.

FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated or deemed incorporated by reference as described under the heading Where You Can Find More Information contain forward-looking statements that reflect management's current assumptions and estimates regarding future performance and economic conditions especially as they relate to future load growth, revenues, expenses, capital expenditures, financial resources, regulatory matters, and the scope and expense associated with future environmental regulation. These forward-looking statements are made pursuant to the provisions of the Private Securities Litigation Reform Act of 1995. Words such as believes, anticipates, expects, intends, plans, predicts and estimates and similar expressions are intended to identify forward-looking statements b are not the only means to identify those statements. These forward-looking statements are subject to known and unknown risks and uncertainties that may cause actual results to differ materially from those projected, expressed or implied. The factors that could cause actual results to differ materially from the forward-looking statements made by us include (a) those factors discussed in the following sections of our 2005 Annual Report on Form 10-K: ITEM 1A. Risk Factors, and ITEM 7. Management s Discussion and Analysis of Financial Condition and Results of Operations; and (b) other factors discussed in our other filings with the SEC.

Readers are cautioned not to place undue reliance on these forward-looking statements, which apply only as of the date of this prospectus or, as the case may be, as of the date on which we make any subsequent forward-looking statement that is deemed incorporated by reference. We undertake no obligation to publicly release any revision to these forward-looking statements to reflect events or circumstances after the date as of which any such forward-looking statement is made.

MADISON GAS AND ELECTRIC COMPANY

We conduct regulated electric utility and gas utility operations. We generate, purchase and distribute electricity to nearly 136,000 customers throughout 250 square miles of Dane County, Wisconsin. We also purchase, transport and distribute natural gas to nearly 137,000 customers in 1,350 square miles of service territory in seven Wisconsin counties. We have served the Madison, Wisconsin area since 1896.

We are the principal subsidiary of MGE Energy, Inc., or MGE Energy. We became a subsidiary of MGE Energy on August 12, 2002, when our shareholders exchanged their shares of our common stock for shares of MGE Energy s common stock. We were organized as a Wisconsin corporation in 1896. Our principal executive offices are located at 133 South Blair Street, Madison, Wisconsin 53703, and our telephone number is (608) 252-7000.

MGE ENERGY, INC.

MGE Energy operates in the following business segments:

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electric utility operations generating, purchasing, and distributing electricity through MGE;

- gas utility operations purchasing and distributing natural gas through MGE;

- nonregulated energy operations constructing, owning, and leasing new electric generating capacity through its wholly owned subsidiaries, MGE Power LLC, MGE Power Elm Road, LLC and MGE Power West Campus, LLC;

- transmission investments investing in companies in the business of providing electric transmission services, such as American Transmission Company, LLC, or ATC. During the fourth quarter of 2005, the investment in ATC was transferred from the electric utility to MGE Transco Investment LLC; and

- all other investing in companies and property which relate to the regulated operations, financing the regulated operations, or providing construction services to the other subsidiaries through MGE Energy and through its wholly owned subsidiaries, MGE Construct LLC, MAGAEL, LLC and Central Wisconsin Development Corporation.

MGE s utility operations represent a substantial portion of the assets, liabilities, revenues, expenses, and operations of MGE Energy.

MGE Energy was organized as a Wisconsin corporation in 2001. MGE Energy s principal offices are located at 133 South Blair Street, Madison, Wisconsin 53703, and its telephone number is (608) 252-7000.

USE OF PROCEEDS

Unless we indicate otherwise in the applicable prospectus supplement or any applicable pricing supplement, we expect to use the net proceeds from the sale of the notes for general corporate purposes, including repaying our outstanding long-term debt at maturity or upon early redemption. We will describe in the applicable prospectus supplement or any applicable pricing supplement any specific allocation of the proceeds to a particular purpose that we have made at the date of such document. We will temporarily invest any net proceeds that we do not immediately use in marketable securities.

RATIOS OF EARNINGS TO FIXED CHARGES

The ratios of our earnings to fixed charges for each of the periods indicated are as follows:

	Year Ended December 31,					Three Months Ended March 31,	
	2001	2002	2003	2004	2005	2005	2006
Ratios of earnings to fixed charges	3.76x	4.42x	4.65x	4.34x	4.15x	4.38x	4.92x

For the purpose of computing the ratios of earnings to fixed charges, (i) earnings consist of net income before deducting current and deferred federal and state income taxes, investment tax credits deferred and restored charged (credited) to operations and fixed charges and (ii) fixed charges consist of interest on debt, amortization of debt discount, premium and expense, capitalized interest and the estimated interest component of rentals.

DESCRIPTION OF NOTES

We will issue the notes under an Indenture dated as of September 1, 1998, as supplemented from time to time, between us and J.P. Morgan Trust Company, N.A. (as successor to Bank One, N.A.), as Trustee. The Indenture is subject to and governed by the Trust Indenture Act of 1939, as amended. We have summarized selected provisions of the Indenture below. However, because this summary is not complete, it is subject to and is qualified in its entirety by reference to the Indenture, a copy of which we have incorporated by reference as an exhibit to the registration statement of which this prospectus is a part. Unless otherwise noted, section references below are to the Indenture. Unless otherwise specified in the applicable prospectus supplement or any applicable pricing supplement, the notes will have the terms described below.

General

We may issue notes from time to time under the Indenture in one or more series. The notes will be denominated in U.S. dollars, and payments of principal of, and any premium and interest on, the notes will be made in U.S. dollars. We may issue the notes from time to time, at varying interest rates and maturities and on other variable terms. (Section 2.05) See Terms Specified in Prospectus Supplement or Pricing Supplement below.

The Indenture does not limit the aggregate amount of notes that we may issue. It does not limit our ability to incur additional indebtedness, and it does not afford holders of the notes protection in the event of a highly leveraged or similar transaction involving our company. However, the Indenture provides that neither we nor any of our subsidiaries may subject specified property or assets to any mortgage or other encumbrance unless the notes are secured on an equal or ratable basis with or prior to that other secured indebtedness. See –Restrictions on Secured Debt below. Reference is made to the applicable prospectus supplement and any applicable pricing supplement for information with respect to any additions to, or modifications or deletions of, the events of default or covenants described below.

Each note will be represented by either a global security registered in the name of a nominee of a securities depositary, or depositary, or a paper certificate issued in definitive form, as specified in the applicable prospectus supplement or any applicable pricing supplement. In this prospectus, we refer to notes represented by a global security as book-entry notes. Ownership interests in book-entry notes will be shown on, and transfers thereof will be effected only through, records maintained by the depositary and its participants. Owners of book-entry notes will be entitled to physical delivery of notes represented by paper certificates only under the limited circumstances described below. We expect that payments of principal, premium, if any, and interest to owners of book-entry notes will be made in accordance with the procedures of the depositary and its participants in effect from time to time. See –Book-Entry System below.

Unless otherwise specified in the applicable prospectus supplement or any applicable pricing supplement, we will pay the principal of, and any premium and accrued interest on, any certificated notes as follows:

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Payments due at maturity will be made in immediately available funds upon presentation and surrender of those notes at the Corporate Trust Office of the Trustee, provided that the holder presents the note in time for the Trustee to make such payments in those funds in accordance with its normal procedures; and

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Payments, other than payments due at maturity, will be made by a clearinghouse funds check mailed on the interest payment date; however, a holder of $10,000,000 or more in aggregate principal amount of notes may be entitled to receive those payments by wire transfer of immediately available funds to a bank located within the continental United States or by direct deposit into the holder s account maintained with the Trustee, if requested in writing to the Trustee on or before the applicable record date for the interest payment date.

(Section 2.11) Certificated notes may be presented for payment and for registration of transfer or exchange at the Corporate Trust Office of the Trustee, currently c/o J.P. Morgan Trust Company, N.A., 227 W. Monroe Street, Suite 2600, Chicago, Illinois 60606. (Section 6.02)

As used in this prospectus, unless otherwise specified in the applicable prospectus supplement or any applicable pricing supplement, business day means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a day on which banking institutions in the City of New York are authorized or obligated by law, regulation or executive order to close. (Section 1.03)

Terms Specified in Prospectus Supplement or Pricing Supplement

The applicable prospectus supplement or any applicable pricing supplement relating to any offered notes will describe the following terms:

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the aggregate principal amount, purchase price and denomination;

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the date on which the note will be issued, which we refer to as the original issue date;

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the date of maturity, whether we or a holder may extend that date and, if so, the extension periods and the final maturity date;

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the interest rate or rates or the method by which a calculation agent will determine the interest rate or rates, and whether the interest rate or rates, or the method of determining the interest rate or rates, may be changed by us prior to the date of maturity;

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the interest payment dates, if any;

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the record date or dates for determining the person entitled to receive payments of principal, premium and interest, if any, if other than as set forth below;

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any repayment, redemption, prepayment or sinking fund provisions, including any redemption notice provisions;

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whether the note will be issued initially as a book-entry note or a note represented by a paper certificate; and

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whether the note is an original discount note, as described below under Original Issue Discount Notes, and, if so, the yield to maturity;

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whether the note is an amortizing note, as described below under Amortizing Note, and, if so, the basis or formula for the amortization of principal and/or interest and the payment dates for the periodic principal payments;

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any applicable United States federal income tax consequences; and

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any other specific terms of the notes, including any additions, modifications or deletions in the events of default or covenants, and any terms required by or advisable under applicable laws or regulations.

Ranking

The notes will be our general unsecured and unsubordinated obligations and will rank on a parity with our other unsecured and unsubordinated indebtedness, but will rank junior to our first mortgage bonds issued under the Indenture of Mortgage and Deed of Trust, dated as of January 1, 1946, between us and First Wisconsin Trust Company (now known as Firstar Bank, N.A.), as Trustee, and indentures supplemental thereto. We refer to this Indenture of Mortgage and Deed of Trust as the Bond Indenture.

The Bond Indenture constitutes a direct first mortgage lien upon our permits, licenses and substantially all of our fixed property, including subsequently acquired permits, licenses and fixed property, subject to permissible encumbrances (as defined in the Bond Indenture) and to liens existing or placed upon that property at the time of our acquisition thereof.

Restrictions on Secured Debt

While any of the notes are outstanding, we may not:

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issue any additional first mortgage bonds under the Bond Indenture, or

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subject to the lien of the Bond Indenture any property that is exempt from that lien,

unless we concurrently issue to the Trustee first mortgage bonds in the same aggregate principal amount and having the same interest rates, maturity dates, redemption provisions and other terms as the notes then outstanding, thereby giving to the holders of all outstanding notes the benefit of the security of the first mortgage bonds. (Section 4.01) At any time when the Trustee is the only holder of first mortgage bonds outstanding under the Bond Indenture, the Trustee will surrender the first mortgage bonds to us for cancellation and the Bond Indenture will be discharged and defeased. (Section 4.07).

In addition, neither we nor any of our Subsidiaries may create or assume, except in favor of us or any of our direct or indirect wholly owned subsidiaries, any mortgage, pledge, or other lien or encumbrance upon any Principal Facility, any stock of any Regulated Subsidiary or any indebtedness of our Subsidiaries to us or any other Subsidiary, whether now owned or hereafter acquired, without equally and ratably securing the outstanding notes. This limitation does not apply to the lien of the Bond Indenture or the permitted encumbrances described in the Indenture, including:

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purchase money mortgages entered into within specified time limits;

- liens extending, renewing or refunding those permitted purchase money mortgages;

- liens existing on acquired property;

- specified tax, materialmen s, mechanics and judgment liens, liens arising by operation of law and other similar liens;

- specified mortgages, pledges, liens or encumbrances in favor of any state or local government or governmental agency in connection with tax-exempt financings;

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liens to secure the cost of construction or improvement of any property entered into within specified time limits; and

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mortgages, pledges, liens and encumbrances not otherwise permitted if the sum of the indebtedness secured thereby does not exceed the greater of $20,000,000 or 10% of Common Shareholders Equity.

(Section 6.06)

Common Shareholders Equity, at any time, means the our total common shareholders equity, determined on a consolidated basis in accordance with generally accepted accounting principles, as of the end of our most recently completed fiscal quarter for which financial information is then available.

Principal Facility means the real property, fixtures, machinery and equipment relating to any facility owned by us or any of our Subsidiaries (which may include a network of electric or gas distribution facilities or a network of electric or gas transmission facilities), except any facility that, in the opinion of our board of directors, is not of material importance to the business conducted by us and our Subsidiaries, taken as a whole.

Regulated Subsidiary means any Subsidiary which owns or operates facilities used for the generation, transmission or distribution of electric energy and is subject to the jurisdiction of any governmental authority of the United States or any state or political subdivision thereof, as to any of its rates, services, accounts, issuances of securities, affiliate transactions, or construction, acquisition or sale of any such facilities, except that any exempt wholesale generator, qualifying facility, foreign utility company and power marketer, each as defined in the Indenture, shall not be a Regulated Subsidiary.

Subsidiary means any corporation of which at least a majority of the outstanding stock having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation, irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency, is at the time, directly or indirectly, owned or controlled by us or by one or more of our Subsidiaries, or by us and one or more of our Subsidiaries.

Interest and Interest Rates

Each note will bear interest at a fixed rate, which we refer to as a fixed rate note, or a variable rate, which we refer to as a floating rate note. The fixed rate may be zero, and we refer to a fixed rate note bearing zero interest as a zero coupon note. The variable rate may be determined by reference to several interest rate formulae, which we will describe in the applicable prospectus supplement or any applicable pricing supplement for any specific offering of floating rate notes.

Unless otherwise specified in the applicable prospectus supplement or any applicable pricing supplement:

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Each note that is not a zero coupon note will bear interest from and including the date it is originally issued, or from and including the most recent date to which interest on that note has been paid or duly provided for, to, but excluding,

the next succeeding interest payment date or maturity until the principal of the note is paid or made available for payment.

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Interest will be payable on each interest payment date and at maturity. Interest will be payable generally to the person in whose name a note is registered at the close of business on

the regular record date next preceding an interest payment date. However, the first payment of interest on any note originally issued between a regular record date and the next interest payment date will be made on the interest payment date following the next succeeding regular record date to the person in whose name the note is registered on that next succeeding regular record date. Interest payable at maturity, including, if applicable, upon redemption, will be payable to the person to whom principal is payable.

We may, from time to time, change the interest rates, interest rate formulae and other variable terms of the notes, but those changes will not affect any note already issued or as to which we have accepted an offer to purchase.

The interest rate payable on the notes for any interest period cannot be greater than the maximum interest rate, if any, or less than the minimum interest rate, if any, specified in the applicable prospectus supplement or any applicable pricing supplement. The interest rate on the notes also cannot exceed the maximum rate permitted by New York or other applicable law, as it may be modified by United States law of general application. Under present New York law, the maximum rate of interest, subject to some exceptions, for any loan in an amount less than $250,000 is 16% and for any loan in the amount of $250,000 or more but less than $2,500,000 is 25% per annum on a simple interest basis. These limits do not apply to loans of $2,500,000 or more.

Fixed Rate Notes

Fixed rate notes will bear one or more annual fixed rates of interest during the periods or under the circumstances specified in the note and set forth in the applicable prospectus supplement or any applicable pricing supplement.

Unless otherwise specified in the applicable prospectus supplement or any applicable pricing supplement, interest on fixed rate notes will be computed and paid on the basis of a 360-day year of twelve 30-day months.

Unless otherwise specified in the applicable prospectus supplement or any applicable pricing supplement, interest will be paid on fixed rate notes, including amortizing notes that are fixed rate notes, on January 15 and July 15 of each year and at maturity, and the regular record dates for determining the holders entitled to those payments will be the preceding January 1 and July 1, respectively, of each year (whether or not a business day) and the stated maturity. If any day for the payment of interest on a fixed rate note falls on a day that is not a business day, the payments to be made on that day with respect to that note will be made on the next succeeding business day with the same legal effect as if made on the due date, and no additional interest will be payable on the date of payment for the period from and after the due date as a result of the delayed payment.

Floating Rate Notes

Floating rate notes will bear interest at a floating rate calculated by reference to an interest rate or interest rate formula, which we refer to as the base rate and which will be specified in the applicable prospectus supplement or any applicable pricing supplement. The interest rate on each floating rate note will be calculated by reference to:

- the specified base rate based on the index maturity;
- plus or minus the spread, if any; and/or

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multiplied by the spread multiplier, if any.

For any floating rate note, *index maturity* means the period to maturity of the instrument or obligation from which the base rate is calculated and will be specified in the applicable prospectus supplement or any applicable pricing supplement. The *spread* is the number of basis points (one one-hundredth of a percentage point) specified in the applicable prospectus supplement or pricing supplement to be added to or subtracted from the base rate for a floating rate note. The *spread multiplier* is the percentage specified in the applicable prospectus supplement or pricing supplement to be applied to the base rate for a floating rate note.

In addition, the applicable prospectus supplement or any applicable pricing supplement will define, describe or specify for each floating rate note the following terms, to the extent applicable to the particular issue of notes:

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the calculation agent, if other than the Trustee;

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the applicable base rate, index maturity, spread, if any, and spread multiplier, if any;

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the original issue date and the interest rate in effect for the period from the original issue date to the specified first interest reset date;

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the interest determination dates;

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the interest payment dates and regular record dates; and

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the interest reset dates.

The interest payment dates for floating rate notes will be as specified in the applicable prospectus supplement or any applicable pricing supplement, and unless otherwise specified in the applicable prospectus supplement or any applicable pricing supplement, each record date for a floating rate note will be the 15th day (whether or not a business day) preceding each interest payment date.

All percentages resulting from any calculation of the interest rate on any floating rate note will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point rounded upward (e.g., 9.876545% (or .09876545) would be rounded to 9.87655% (or .0987655)), and all dollar

amounts used in or resulting from such calculation will be rounded to the nearest cent with one-half cent being rounded upward. (Section 2.04)

Original Issue Discount Notes

We may issue notes that are original issue discount notes. Original issue discount notes are:

- notes that have a stated redemption price at maturity that exceeds their issue price (as those terms are defined for U.S. federal income tax purposes) by at least 0.25% of their stated redemption price at maturity, multiplied by the number of complete years from their original issue date to their stated maturity (or, in the case of notes that provide for payment of any amount other than the qualified stated interest (as defined for U.S. federal income tax purpose) prior to maturity, their weighted average maturity) and

- any other note that we designate as issued with original issue discount for U.S. federal income tax purposes.

The applicable prospectus supplement or any applicable pricing supplement may provide that holders of original issue discount notes will not receive periodic payments of interest. For purposes of determining whether holders of the requisite principal amount of notes outstanding under the Indenture have made a demand or given a notice or waiver or taken any other action, the outstanding principal amount of original issue discount notes will be deemed to be the amount of the principal that would be due and payable upon declaration of acceleration of the stated maturity of those notes as of the date of such determination.

Unless otherwise specified in the applicable prospectus supplement or any applicable pricing supplement, the amount payable on an original issue discount note, upon acceleration of maturity as described below under −Events of Default or upon redemption or repayment prior to its stated maturity, in lieu of the principal amount due at the stated maturity of that note, will be the amortized face amount of that note as of the date of declaration, redemption or repayment, as the case may be. The amortized face amount of an original issue discount note will be equal to

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the principal amount of that note multiplied by the issue price (expressed as a percentage of its principal amount) specified in the applicable prospectus supplement or any applicable pricing supplement, *plus*

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the portion of the difference between the dollar amount determined pursuant to the preceding bulleted phrase and the principal amount of that note that has accreted at the yield to maturity specified in the applicable prospectus supplement or any applicable pricing supplement (computed in accordance with generally accepted U.S. bond yield computation principles) to the date of declaration, redemption or repayment, as the case may be.

In no event, however, will the amortized face amount of an original issue discount note exceed the principal amount stated in that note. (Section 1.03)

Amortizing Notes

We may issue notes that we refer to as amortizing notes. Payments of principal and interest on amortizing notes are made in installments over the life of the note. Interest on each amortizing note will be computed as specified in the applicable prospectus supplement or any applicable pricing supplement. Unless otherwise specified in the applicable prospectus supplement or any applicable pricing supplement, payments with respect to an amortizing note will be applied first to interest due and payable thereon and then to the reduction of the unpaid principal amount thereof. A table setting forth repayment information with respect to each amortizing note will be included in the note and the applicable prospectus supplement or any applicable pricing supplement and will be available, upon request, to subsequent holders.

Extension of Maturity

The applicable prospectus supplement or any applicable pricing supplement will indicate whether we have the option to extend the stated maturity of any note for one or more periods of one to five whole years up to, but not beyond, the final maturity date specified in the applicable prospectus supplement or any applicable pricing supplement.

If we have that option with respect to a note, we may exercise it by written notice to the Trustee. That notice must be given at least 45 but not more than 60 days prior to the pre-exercise stated maturity date, which is the initial stated

maturity of the note or then applicable extension thereof. Not more than 40 days prior to the pre-exercise stated maturity date, the Trustee will send to the holder of the note, by

telegram, telex, facsimile transmission, hand delivery or first class, postage prepaid letter, a extension notice setting forth:

- our election to extend the stated maturity of that note;
- the new stated maturity;
- in the case of a fixed rate note, the interest rate applicable during the extension period or, in the case of a floating rate note, the spread and/or spread multiplier applicable during the extension period; and
- the provisions, if any, for redemption of that note during the extension period, including the date or dates on which or the period or periods during which, and the price or prices at which, redemption may occur during the extension period.

Upon the sending by the Trustee of an extension notice to the holder of a note, the stated maturity of that note will be extended automatically, and, except as modified by the extension notice and as described in the next two paragraphs, the note will have the same terms as prior to the sending of that extension notice. (Sections 3.05(a) and (b))

Not later than 20 days prior to the pre-exercise stated maturity date for a note, we may, at our option, revoke the interest rate or the spread and/or spread multiplier, as the case may be, provided for in the extension notice and establish a higher interest rate, in the case of a fixed rate note, or a spread and/or spread multiplier resulting in a higher interest rate, in the case of a floating rate note, for the extension period, by causing the Trustee to send to the holder of that note, by telegram, telex, facsimile transmission, hand delivery or first class, postage prepaid letter, notice of that higher interest rate or the spread and/or spread multiplier resulting in a higher interest rate, as the case may be, which notice will be irrevocable. All notes with respect to which the stated maturity is extended will bear that higher interest rate or spread and/or spread multiplier resulting in a higher interest rate, as the case may be, for the extension period, whether or not those notes are tendered for repayment as provided in the next paragraph. (Section 3.05(c))

If we elect to extend the stated maturity of a note, the holder of that note will have the option to elect repayment of the note, in whole but not in part, by us on the pre-exercise stated maturity date (including the last day of the then current extension period) at a price equal to the principal amount thereof plus accrued and unpaid interest to, but excluding, that pre-exercise stated maturity date. In order for a note to be repaid on that date, its holder must follow the procedures for optional repayment set forth below under −Redemption and Repayment, except that the period for delivery of the note or the notification to the Trustee will be at least 25 but not more than 35 days prior to the pre-exercise maturity date. A holder who has tendered a note for repayment following receipt of an extension notice may revoke that tender by written notice to the Trustee received prior to 5:00 P.M., New York City time, on the tenth day prior to the pre-exercise stated maturity date. (Section 3.05(d))

Redemption and Repayment

Unless otherwise specified in the applicable prospectus supplement or any applicable pricing supplement, the notes will not be subject to any sinking fund.

If one or more redemption dates is specified in the applicable prospectus supplement or any applicable pricing supplement, the notes will be subject to redemption at our option, in whole or in part, prior to their stated maturity on the date or dates so specified, upon not less than 30 but not more than 60

days notice, at the redemption prices specified in such supplement. (Section 3.02(b)) If less than the entire principal amount of a note is to be redeemed, that note will be canceled and a new note or notes representing the unredeemed portion of the original note will be issued in the name of the holder thereof. (Section 3.03(d)) If less than all notes are to be redeemed prior to their stated maturity, we will, in our sole discretion, select the notes or portions thereof to be so redeemed. (Section 3.02(a))

If specified in the applicable prospectus supplement or any applicable pricing supplement, a note will be repayable, in whole or in part (provided that the principal amount of the note remaining outstanding after such repayment is an authorized denomination), prior to its stated maturity at the option of the holder on the date or dates and at the price or prices specified in such supplement, plus accrued and unpaid interest to, but excluding, the date of repayment. In order for a note to be so repaid prior to its stated maturity, the Trustee must receive at least 30 but not more than 45 calendar days prior to the repayment date, either (1) the note with the form entitled Option to Elect Repayment on the reverse of the note duly completed or (2) a telegram, telex, facsimile transmission, hand delivery or letter (first class, postage prepaid) from a member of a national securities exchange or the National Association of Securities Dealers, Inc. or a commercial bank or trust company in the United States setting forth:

•

the name of the holder of the note;

•

the principal amount of the note and, if less than all, the portion of the principal amount to be repaid;

•

the certificate number or a description of the tenor and terms of the note;

•

a statement that the option to elect repayment is being exercised thereby; and

•

a guarantee that the note to be repaid with the form entitled Option to Elect Repayment on the reverse of the note duly completed will be received by the Trustee not later than five business days after the date of such telegram, telex, facsimile transmission, hand delivery or letter.

In the case of clause (2) above, the note and form duly completed must be received by the Trustee by such fifth business day. Exercise of the repayment option by a holder will be irrevocable, except that a holder who has tendered a note for repayment may revoke that tender by written notice to the Trustee received by 5:00 P.M., New York City time, on the tenth calendar day prior to the repayment date. If less than the entire principal amount of a note is to be repaid, that note will be canceled and a new note or notes representing the remaining principal amount of the original note will be issued in the name of the holder thereof. (Section 3.04)

While any book-entry note is represented by one or more global securities held by or on behalf of the depositary and registered in the name of the depositary or its nominee, the option to elect repayment may be exercised by the

applicable participant (as defined below under −Book-Entry System) that has an account with the depositary, on behalf of an owner of a beneficial interest in the book-entry note, by delivering to the Trustee at its Corporate Trust Office (or such other address of which we may, from time to time, notify holders), not less than 30 but not more than 60 days prior to the date of repayment, a written notice substantially similar to the form entitled Option to Elect Repayment duly completed. Any such notice of election from a participant shall be executed by a duly authorized officer thereof (with signatures guaranteed) and must be received by the Trustee by 5:00 P.M., New York City time, on the last day for giving that notice. In order to ensure that a notice is received by the Trustee on a particular day, the owner of the beneficial interest in a book-entry note must so direct the applicable participant prior to the participant s deadline for accepting instructions for that day. Different firms may have different

deadlines for accepting instructions from their customers. Accordingly, owners of beneficial interests in book-entry notes should consult the participants through which they own their interests for the respective deadlines for those participants. In addition, owners of beneficial interests in book-entry notes shall effect delivery at the time such notices of election are given to the depositary by causing the applicable participant to transfer the owner s beneficial interest in the book-entry notes on the depositary s records to the Trustee. See −Book-Entry System below. (Section 3.04)

If applicable, we will comply with the requirements of Rule 14e-1 under the Securities Exchange Act of 1934, as amended, and any other securities laws or regulations in connection with any repayment of a note.

Repurchase

We may, at any time and from time to time, purchase notes at any price or prices in the open market or otherwise. Any notes so purchased may be held by us, resold or, at our discretion, surrendered to the Trustee for cancellation.

Other Provisions

Any provisions with respect to the determination of an interest rate basis, the specifications of an interest rate basis, calculation of the interest rate applicable to, or the principal payable at maturity on, any note, its interest payment dates or any other matter relating thereto may be modified by the terms as specified on the face of that note, or in an annex relating thereto, and will be described in the applicable prospectus supplement or any applicable pricing supplement for that note.

Book-Entry System

Unless otherwise indicated in the applicable prospectus supplement, each series of notes will initially be issued in the form of one or more global securities, in registered form, without coupons (as applicable). The global security will be deposited with, or on behalf of, a depository, and registered in the name of that depository or a nominee of that depository. Unless otherwise indicated in the applicable prospectus supplement, the depository for any global securities will be The Depository Trust Company, New York, New York, or DTC.

The global securities will be issued as fully-registered securities registered in the name of Cede & Co., DTC s partnership nominee. One fully-registered global security certificate will be issued for each issue of the global securities, each in the aggregate principal amount of that issue and will be deposited with DTC. If however, the aggregate principal amount of any issue of a series of bonds or notes exceeds $500 million, one global certificate will be issued with respect to each $500 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of that series. So long as the depository, or its nominee, is the registered owner of a global security, that depository or such nominee, as the case may be, will be considered the owner of that global security for all purposes under the Senior Indenture or the Mortgage, as applicable, including for any notices and voting. Except as otherwise provided below, the owners of beneficial interests in a global security will not be entitled to have securities registered in their names, will not receive or be entitled to receive physical delivery of any such securities and will not be considered the registered holder thereof under the Senior Indenture or the Mortgage, as applicable. Accordingly, each person holding a beneficial interest in a global security must rely on the procedures of the depository and, if that person is not a direct participant, on procedures of the direct participant through which that person holds its interest, to exercise any of the rights of a registered owner of such security.

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A global security may not be transferred as a whole except by DTC to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the global securities shall be transferred and exchanged through the facilities of DTC. Beneficial interests in the global securities may not be exchanged for securities in certificated form except in the circumstances described in the following paragraph.

Unless otherwise specified in the applicable prospectus supplement, we will be obligated to exchange global securities in whole for certificated securities only if:

•

the depository notifies us that it is unwilling or unable to continue as depository for the global securities or the depository has ceased to be a clearing agency registered under applicable law and, in either case, we thereupon fail to appoint a successor depository within 90 days;

•

we, at our option, notify the applicable trustee in writing that we elect to cause the issuance of certificated securities; or

•

there shall have occurred and be continuing an event of default with respect to the applicable securities of any series.

In all cases, certificated securities delivered in exchange for any global security or beneficial interest therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the depository (in accordance with customary procedures).

The descriptions of operations and procedures of DTC that follow are provided solely as a matter of convenience. These operations and procedures are solely within DTC s control and are subject to changes by DTC from time to time. We take no responsibility for these operations and procedures and urge you to contact DTC or its participants directly to discuss these matters. DTC has advised us as follows:

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DTC is a limited-purpose trust company organized under the New York Banking Law, a banking organization within the meaning of the New York Banking Law, a member of the Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code, and a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934.

•

DTC holds securities that its direct participants deposit with DTC. DTC also facilitates the post-trade settlement among direct participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry transfers and pledges in direct participants accounts, thereby eliminating the need for physical movement of securities certificates.

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Direct participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations.

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DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation, or DTCC. DTCC, in turn, is owned by a number of direct participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc.

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Access to the DTC system is also available to others such as securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly, which are referred to as indirect participants and, together with the direct participants, the participants.

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The rules applicable to DTC and its participants are on file with the SEC.

Purchases of global securities under the DTC system must be made by or through direct participants, who will receive a credit for such purchases of global securities on DTC s records. The ownership interest of each actual purchaser of each global security, or beneficial owner, is in turn to be recorded on the direct and indirect participants records. Beneficial owners will not receive written confirmation from DTC of their purchase, but beneficial owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the direct or indirect participant through which the beneficial owner entered into the transaction. Transfers of ownership interests in the global securities are to be accomplished by entries made on the books of participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interests in the global securities, except in the event that use of the book-entry system for the global securities is discontinued.

To facilitate subsequent transfers, all global securities deposited by direct participants with DTC are registered in the name of DTC s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of global securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee effect no change in beneficial ownership. DTC has no knowledge of the actual beneficial owners of the global securities; DTC s records reflect only the identity of the direct participants to whose accounts such global securities are credited which may or may not be the beneficial owners. The participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to direct participants, by direct participants to indirect participants, and by direct participants and indirect participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial owners of global securities may wish to take certain steps to augment transmission to them of notices of significant events with respect to the global securities, such as redemptions, tenders, defaults, and proposed amendments to the security documents. For example, beneficial owners of global securities may wish to ascertain that the nominee holding the global securities for their benefit has agreed to obtain and transmit notices to beneficial owners; in the alternative, beneficial owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

If the global securities are redeemable, redemption notices shall be sent to Cede & Co. If less than all of the global securities are being redeemed, DTC s practice is to determine by lot the amount of the interest of each direct participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the global securities unless authorized by a direct participant in accordance with DTC s procedures. Under its usual procedures, DTC mails an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede & Co. s consenting or voting rights to those direct participants whose accounts the global securities are credited on the record date, identified in a listing attached to the omnibus proxy.

Principal, interest and premium payments, if any, on the global securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC s practice is to credit direct participants accounts upon DTC s receipt of funds and corresponding detail information from us or the trustee for such securities, on the payable date in accordance with the respective holdings shown on DTC s records. Payments by participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in street name, and will be the responsibility of that participant and not of DTC, the trustee for those securities, or us, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, interest and premium, if any, on any of the aforementioned securities represented by global securities to DTC is the responsibility of the appropriate trustee and us. Disbursement of those payments to direct participants shall be the responsibility of DTC, and disbursement of those payments to the beneficial owners shall be the responsibility of the participants.

DTC may discontinue providing its services as securities depositary with respect to the global securities at any time by giving us reasonable notice. Although DTC has agreed to the foregoing procedures in order to facilitate transfers of beneficial ownership interests in the global securities among participants, it is under no obligation to perform or continue to perform those procedures, and those procedures may be discontinued at any time.

The underwriters, dealers or agents of any of the securities may be direct participants of DTC.

None of the trustee, us or any agent for payment on or registration of transfer or exchange of any global security will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial interests in that global security or for maintaining, supervising or reviewing any records relating to those beneficial interests. (Section 2.12)

Exchange, Registration and Transfer

Notes will be exchangeable for registered notes of like aggregate principal amount, having a like stated maturity and with like terms and conditions. Upon surrender for registration of transfer of any note at our office or agency maintained for such purpose, we will execute, and the Trustee will authenticate and deliver, in the name of the designated transferee, one or more new registered notes of like aggregate principal amount of authorized denominations, having a like stated maturity and with like terms and conditions. We may not require payment of any service charge for any transfer or exchange of notes, other than payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. (Section 2.06)

We will not be required to register, transfer or exchange any notes during a period from the opening of business on the 15th day prior to the day we or the Trustee send a notice of redemption of notes having a like stated maturity and with like terms and conditions to the close of business on the day of such transmission, or to register, transfer or exchange any note so selected for redemption in whole or in part, except the unredeemed portion of any note being redeemed in part. (Section 2.06)

Events of Default

The occurrence of any of the following events will constitute an event of default under the Indenture:

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default in the payment of any interest upon any note when it becomes due and payable, and continuance of such default for a period of 30 days;

•

default in the payment of the principal of (and premium, if any, on) any note at its maturity;

•

default, with respect to any of our or our Subsidiaries Indebtedness (other than notes) aggregating more than $10,000,000 in principal amount, (i) in the payment of any principal of or interest on that Indebtedness when due after giving effect to any applicable grace period or (ii) in the performance of any other term or provision of that Indebtedness that results in such Indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable, and such acceleration shall not have been rescinded or annulled, or that Indebtedness shall not have been discharged, within a period of 15 days after written notice:

–

to us from the Trustee, or

–

to us and the Trustee from the holders of at least 25% in aggregate principal amount of the notes then outstanding;

•

the entry of one or more judgments, decrees or orders against us or one of our Subsidiaries by a court having jurisdiction in the premises from which no appeal may be or is taken for the payment of money, either individually or in the aggregate, in excess of $10,000,000, and such judgment, decree or order remains unsatisfied and in effect for any period of 45 consecutive days after the amount thereof is due without a stay of execution and there has been given written notice thereof:

–

to us from the Trustee, or

–

to us and the Trustee from the holders of at least 25% in aggregate principal amount of the notes then outstanding;

•

the entry of a decree or order in bankruptcy, receivership or similar proceedings initiated against us, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days;

•

our institution of, or our consent to the institution of, bankruptcy, insolvency or similar proceedings against us; or

•

default in the performance or breach of any other of our covenants or warranties contained in the Indenture, and continuance of such default or breach for a period of 60 days after written notice:

–

to us from the Trustee, or

–

to us and the Trustee from the holders of at least 25% in aggregate principal amount of the notes then outstanding.

Additional events of default with respect to a particular series of notes may be specified in the documents creating that series, and we will describe any of those additional events of default in the applicable prospectus supplement or any applicable pricing supplement for that series. (Section 8.01)

Indebtedness, with respect to any person, means:

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any liability of that person

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for borrowed money, or

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evidenced by a bond, note, debenture or similar instrument (including purchase money obligations, but excluding trade payables), or

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for the payment of money relating to a lease that is required to be classified as a capitalized lease obligation in accordance with generally accepted accounting principles;

•

any liability of others described in the preceding bullet point that such person has guaranteed, that is recourse to such person or that is otherwise its legal liability; and

•

any amendment, supplement, modification, deferral, renewal, extension or refunding of any liability of the types referred to in the first two bullet points above.

We must file annually with the Trustee an officer s certificate as to our compliance with all conditions and covenants under the Indenture. (Section 6.04)

Rights Upon Default

If an event of default with respect to any notes occurs and is continuing, then the Trustee or the holders of at least 25% in aggregate principal amount of the notes then outstanding, by written notice to us (and to the Trustee if given by the holders), may declare the principal amount (or, in the case of original issue discount notes, the amortized face amount) of all those notes to be immediately due and payable. The Trustee may withhold notice to holders of any event of default (other than the failure to make any payment of principal of or interest on any note) if it determines that such withholding is in the interest of the holders. (Section 8.12) Except as otherwise provided in the Indenture or the applicable prospectus supplement or any applicable pricing supplement, upon payment of that amount in U.S. dollars, all of our obligations in respect of the payment of principal of the notes will terminate. (Section 8.02)

In general, if an event of default with respect to any notes occurs and is continuing, the Trustee will not be obligated to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders of the notes unless the holders first offer to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with that request or direction. (Section 9.03) The holders of a majority in principal amount of the outstanding notes will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee under the Indenture, or exercising any trust or power conferred on the Trustee with respect to the notes, unless the Trustee determines that the proceeding or action so directed may not lawfully be taken, would subject the Trustee to personal liability or would be unduly prejudicial to other holders of notes. (Section 8.11)

At any time after the Trustee or the holders have declared acceleration of the notes and before a judgment or decree for payment of the money due has been obtained, the holders of a majority in aggregate principal amount of the notes then outstanding, by written notice to us and the Trustee, may rescind and annul that declaration and its consequences if:

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we have paid or deposited with the Trustee a sum in U.S. dollars sufficient to pay (1) all overdue installments of interest on all notes, (2) the principal of (and premium, if any, on) any notes which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in those notes, (3) to the extent that

payment of such interest is lawful, interest upon overdue installments of interest on each note at the rate borne by such note, and (4) all sums paid or advanced by the Trustee and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

•

all events of default with respect to the notes, other than the nonpayment of the principal of the notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in the Indenture.

No such rescission and waiver will affect any subsequent default or impair any right consequent thereon. (Section 8.02)

Merger or Consolidation

We may not consolidate with or merge into any other corporation or convey, transfer or lease our properties and assets substantially as an entirety to any person, unless:

•

the resulting or surviving corporation, or the person which acquires or leases our properties and assets, is a corporation organized and existing under the laws of the United States or any State or the District of Columbia and expressly assumes by a supplemental indenture all of our obligations under the Indenture;

•

immediately after giving effect to such transaction, no event of default, and no event which, after notice or lapse of time, or both, would become an event of default, shall have occurred and be continuing;

•

if, as a result of any such transaction, our properties or assets would become subject to a mortgage, pledge, lien, security interest or other encumbrance not otherwise permitted by the Indenture without equally and ratably securing the notes then outstanding, we or the resulting or successor corporation or the person which acquires our properties and assets, as the case may be, takes such steps as will be necessary to effectively secure such notes; and

•

we deliver to the Trustee an officers certificate and an opinion of counsel each stating that the transaction and supplemental indenture comply with the provisions of the Indenture and that all conditions precedent therein provided for relating to the transaction have been complied with.

(Section 12.01)

Modification or Waiver

Modification Without Consent of Holders. We and the Trustee may, at any time and from time to time, amend the Indenture without the consent of any holders of notes then outstanding for any of the following purposes:

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to correct any mistakes, defects or inconsistencies, or to cure any ambiguity, in the Indenture, but only if such action does not adversely affect the interests of holders of outstanding notes in any material respect;

- to change or eliminate any of the provisions of the Indenture, but only if such change or elimination becomes effective when there is no outstanding note which is entitled to the benefit of that provision;

- to secure the notes;

- to establish the form or terms of notes as permitted by the Indenture;

- to evidence and effect the assumption by a successor corporation of our obligations under the Indenture and the notes;

- to grant to or confer upon the Trustee for the benefit of the holders any additional rights, remedies, powers or authority;

- to permit the Trustee to comply with any duties imposed upon it by law;

- to specify further the duties and responsibilities of, and to define further the relationships among, the Trustee, any authenticating agent and any paying agent; and

- to impose additional covenants or events of default for the benefit of the holders of all or any notes (and if such covenants or events of default are to be for the benefit of less than all notes, stating that such covenants or events of default are expressly being included solely for the benefit of such notes), or to surrender a right or power conferred on us in the Indenture.

(Section 13.01)

Modification With Consent of Holders. We and the Trustee may modify the Indenture with the consent of the holders of at least a majority in principal amount of the notes then outstanding that would be affected by the modification to add, change or eliminate any provision of, or to modify the rights of holders of those notes. But we may not take any of the following actions without the consent of each holder of outstanding notes affected thereby:

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change the stated maturity of the principal of, or any installment of interest on, any note, reduce the principal amount thereof, the rate of interest thereon or any premium payable upon redemption thereof, change the method of calculating interest, or any term used in the calculation of interest or the period for which interest is payable, on any floating rate note, change the currency or currencies in which the principal, premium or interest is denominated or payable or reduce the amount of principal payable upon acceleration of maturity of an original issue discount note;

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32,000,000 Shares
HEMISPHERX BIOPHARMA, INC.
Common Stock

PROSPECTUS SUPPLEMENT

Maxim Group LLC
May 28, 2010

$150,000,000

HEMISPHERX BIOPHARMA, INC.

Common Stock
Preferred Stock
Warrants
Debt Securities

This prospectus relates to common stock, preferred stock, debt securities and warrants to purchase common stock, preferred stock or debt securities, either individually or in units, as well as common stock or preferred stock upon conversion of debt securities, common stock upon conversion of preferred stock, or common stock or preferred stock upon the exercise of warrants that we may sell from time to time in one or more offerings up to a total public offering price of $150,000,000 on terms to be determined at the time of sale. We will provide specific terms of these securities in supplements to this prospectus. If there is any inconsistency between the information in this prospectus and a prospectus supplement, you should rely on the information in that prospectus supplement. You should read this prospectus and any supplement carefully before you invest.

This prospectus may not be used to offer and sell securities unless accompanied by a prospectus supplement for those securities.

See “Risk Factors” beginning on page 4 for a discussion of material risks that you should consider before you invest in our securities being sold with this prospectus.

Our common stock is traded on the NYSE Amex under the symbol “HEB.” On June 8, 2009, the last reported sale price for our common stock on the NYSE Amex was $3.05 per share.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is June 22, 2009.

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PROSPECTUS SUMMARY

Important Notice about the Information Presented in this Prospectus

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, utilizing a “shelf” registration process. Under this shelf process, we may from time to time sell any combination of securities described in this prospectus in one or more offerings. The aggregate amount of securities that we may offer under the registration statement is $150,000,000.

This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of the securities being offered. That prospectus supplement may include a discussion of any risk factors or other special consideration that apply to those securities. The prospectus supplement may also add, update or change information contained in this prospectus. If there is any inconsistency between the information in this prospectus and a prospectus supplement, you should rely on the information in that prospectus supplement. You should read both this prospectus and any applicable prospectus supplement together with additional information described under the heading “Where You Can Find More Information.”

When acquiring any securities discussed in this prospectus, you should rely on the information provided in this prospectus and the prospectus supplement, including the information incorporated by reference. Neither we, nor any underwriters or agents, have authorized anyone to provide you with different information. We are not offering the securities in any state where such an offer is prohibited. You should not assume that the information in this prospectus, any prospectus supplement, or any document incorporated by reference, is truthful or complete at any date other than the date mentioned on the cover page of those documents. You should also carefully review the section entitled “Risk Factors,” which highlights certain risks associated with an investment in our securities, to determine whether an investment in our securities is appropriate for you.

References in this prospectus to “Hemispherx,” the “Company,” “we,” “us” and “our” are to Hemispherx Biopharma, Inc.

About Hemispherx

We are a specialty pharmaceutical company engaged in the clinical development, manufacture, marketing and distribution of new drug therapies based on natural immune system enhancing technologies for the treatment of viral and immune based chronic disorders. We were founded in the early 1970s doing contract research for the National Institutes of Health. Since that time, we have established a strong foundation of laboratory, pre-clinical, and clinical data with respect to the development of nucleic acids to enhance the natural antiviral defense system of the human body and to aid the development of therapeutic products for the treatment of certain chronic diseases.

Our current strategic focus is derived from four applications of our two core pharmaceutical technology platforms Ampligen® and Alferon N Injection®. The commercial focus for Ampligen includes application as a treatment for Chronic Fatigue Syndrome ("CFS") and as a vaccine enhancer (adjuvant) for both therapeutic and preventative vaccine development. Alferon N Injection® is an FDA approved product with an indication for refractory or recurring genital warts. Alferon LDO (Low Dose Oral) is an application currently under early stage development targeting influenza and viral diseases both as an adjuvant as well as a single entity anti-viral.

Ampligen® is an experimental drug currently undergoing clinical development for the treatment of CFS. In August 2004, we completed a Phase III clinical trial ("AMP 515") treating CFS patients with Ampligen® and we are presently in the registration process for a new drug application ("NDA") with the Food and Drug Administration ("FDA"). In July 2008, the FDA accepted for review our NDA for Ampligen® to treat CFS. On February 18, 2009, we were notified by the FDA that the originally scheduled Prescription Drug User Fee Act ("PDUFA") date of February 25, 2009 has been extended to May 25, 2009. On May 22, 2009, we were notified by the FDA that it may require up to one to two additional weeks to take action beyond the scheduled PDUFA action date of May 25, 2009.

We own and operate a 43,000 sq. ft. FDA approved facility in New Brunswick, New Jersey primarily designed to produce Alferon N Injection®. In 2006, we completed the installation of a polymer production line to produce Ampligen® raw materials on a more reliable and consistent basis.

Our principal executive offices are located at One Penn Center, 1617 JFK Boulevard, Philadelphia, Pennsylvania 19103, and our telephone number is 215-988-0080. We maintain a website at "http://www.hemispherx.net." Information contained on our website is not considered to be a part of, nor incorporated by reference in, this prospectus.

RISK FACTORS

The following cautionary statements identify important factors that could cause our actual results to differ materially from those projected in the forward-looking statements made in this prospectus. Among the key factors that have a direct bearing on our results of operations are:

Risks Associated With Our Business

No assurance of successful product development.

Ampligen® and related products. The development of Ampligen® and our other related products is subject to a number of significant risks. Ampligen® may be found to be ineffective or to have adverse side effects, fail to receive necessary regulatory clearances, be difficult to manufacture on a commercial scale, be uneconomical to market or be precluded from commercialization by proprietary right of third parties. Our products are in various stages of clinical and pre-clinical development and require further clinical studies and appropriate regulatory approval processes before any such products can be marketed. We do not know when, if ever, Ampligen® or our other products will be generally available for commercial sale for any indication. Generally, only a small percentage of potential therapeutic products are eventually approved by the FDA for commercial sale. Please see the next risk factor.

Alferon N Injection®. Although Alferon N Injection® is approved for marketing in the United States for the intra-lesional treatment of refractory or recurring external genital warts in patients 18 years of age or older, to date it has not been approved for other indications. We face many of the risks discussed above, with regard to developing this product for use to treat other ailments.

Our drugs and related technologies are investigational and subject to regulatory approval. If we are unable to obtain regulatory approval, our operations will be significantly adversely affected.

All of our drugs and associated technologies, other than Alferon N Injection®, are investigational and must receive prior regulatory approval by appropriate regulatory authorities for general use and are currently legally available only through clinical trials with specified disorders. At present, Alferon N Injection® is only approved for the intra-lesional treatment of refractory or recurring external genital warts in patients 18 years of age or older. Use of Alferon N Injection® for other indications will require regulatory approval.

Our products, including Ampligen®, are subject to extensive regulation by numerous governmental authorities in the U.S. and other countries, including, but not limited to, the FDA in the U.S., the Health Protection Branch ("HPB") of Canada, and the Agency for the Evaluation of Medicinal Products ("EMEA") in Europe. Obtaining regulatory approvals is a rigorous and lengthy process and requires the expenditure of substantial resources. In order to obtain final regulatory approval of a new drug, we must demonstrate to the satisfaction of the regulatory agency that the product is safe and effective for its intended uses and that we are capable of manufacturing the product to the applicable regulatory standards. We require regulatory approval in order to market Ampligen® or any other proposed product and receive product revenues or royalties. We cannot assure you that Ampligen® will ultimately be demonstrated to be safe or efficacious. In addition, while Ampligen® is authorized for use in clinical trials including a cost recovery program in the United States and Europe, we cannot assure you that additional clinical trial approvals will be authorized in the United States or in other countries, in a timely fashion or at all, or that we will complete these clinical trials.

We filed an NDA with the FDA for treatment of CFS on October 10, 2007. On December 5, 2007 we received a Refusal to File letter from the FDA as our NDA filing was deemed "not substantially complete". We responded to the FDA's concerns by filing amendments to our NDA on April 25, 2008. These amendments should allow the FDA reviewers to better evaluate independently the statistical efficacy/safety conclusions of our NDA for the use of Ampligen® in treating CFS. On July 7, 2008, the FDA accepted our NDA filing for review. However, there are no assurances that upon review of the NDA that it will be approved by the FDA. On February 18, 2009, we were notified by the FDA that the originally scheduled PDUFA date of February 25, 2009 has been extended to May 25, 2009. On May 22, 2009, we were notified by the FDA that it may require up to one to two additional weeks to take action beyond the scheduled PDUFA action date of May 25, 2009.

If Ampligen® or one of our other products does not receive regulatory approval in the U.S. or elsewhere, our operations most likely will be materially adversely affected.

Alferon® LDO is undergoing pre-clinical testing for possible prophylaxis against avian flu. Additional studies are anticipated for swine H1N1. While the studies to date have been encouraging. Preliminary testing in the laboratory and animals is not necessarily predictive of successful results in clinical testing or human treatment. No assurance can be given that similar results will be observed in clinical trials. Use of Alferon® as a possible treatment of avian flu requires prior regulatory approval. Only the FDA can determine whether a drug is safe, effective or promising for treating a specific application. As discussed in the prior risk factor, obtaining regulatory approvals is a rigorous and lengthy process.

We may continue to incur substantial losses and our future profitability is uncertain.

We began operations in 1966 and last reported net profit from 1985 through 1987. Since 1987, we have incurred substantial operating losses, as we pursued our clinical trial effort to get our experimental drug, Ampligen®, approved. As of March 31, 2009, our accumulated deficit was approximately $200,496,000. We have not yet generated significant revenues from our products and may incur substantial and increased losses in the future. We cannot assure that we will ever achieve significant revenues from product sales or become profitable. We require, and will continue to require, the commitment of substantial resources to develop our products. We cannot assure that our product development efforts will be successfully completed or that required regulatory approvals will be obtained or that any products will be manufactured and marketed successfully, or be profitable.

We may require additional financing which may not be available.

The development of our products will require the commitment of substantial resources to conduct the time-consuming research, preclinical development, and clinical trials that are necessary to bring pharmaceutical products to market. As of March 31, 2009, we had approximately $5,541,000 in cash and cash equivalents and short-term investments. Since then, while we have continued to spend cash on operations, through June 8, 2009, we received approximately $1,440,000 of equity funding from Fusion Capital Fund II, LLC during April and May 2009 and approximately $28,250,000 from recent placements of shares and warrants and $5,782,450, from the exercise of warrants issued in those placements. Given the harsh economic conditions, we have reviewed every aspect of our operations for cost and spending reductions to assure our long term survival while maintaining the resources necessary to achieve our primary objectives of commercializing Alferon N, obtaining NDA approval of Ampligen® and securing a strategic partner. Based on these actions and our recent financings, we do not anticipate that we will need additional financing in order to continue operations for the near future.

Aside from the sale of securities under this prospectus, we have in place one potential sources of financing - the Common Stock Purchase Agreement (the "Fusion Purchase Agreement") with Fusion Capital Fund II, LLC (“Fusion Capital”) pursuant to which we have the right to sell shares of our Common Stock to Fusion Capital.

If we are unable to commercialize and sell Ampligen®, Alferon N Injection® or other products, we eventually will need to secure other sources of funding through additional equity or debt financing or from other sources in order to satisfy our working capital needs and to complete the necessary clinical trials and the regulatory approval processes including the commercializing of Ampligen® products. We anticipate, but cannot assure, that, should we need to raise additional funds, we will be able to do so from the sale of securities under this prospectus and/or the sale of shares under the Fusion Purchase Agreement. Pursuant to the Purchase Agreement, we only have the right to receive $120,000 every two business days unless our stock price equals or exceeds $0.80, in which case we can sell greater amounts to Fusion Capital as the price of our common stock increases. Fusion Capital does not have the right nor the obligation to purchase any shares of our common stock on any business day that the market price of our common stock is less than $0.40.

In addition, as of June 8, 2009, we had approximately 42,000,000 shares authorized but unissued and unreserved. At our annual stockholders' meeting to be held in June 2009, we are seeking approval of an amendment to our Certificate of Incorporation to increase the number of authorized shares of Common Stock from 200,000,000 to 350,000,000. If that approval is not obtained, the amount of proceeds we may receive from the sale of our Common Stock will be limited.

We are unable to estimate the amount, timing or nature of future sales of outstanding common stock or instruments convertible into or exercisable for our common stock. Should we require additional financing and such financing is unavailable or prohibitively expensive, our ability to develop our products or continue our operations could be materially adversely affected.

Our Alferon N Injection® Commercial Sales have halted due to lack of finished goods inventory.

Our finished goods inventory of Alferon N Injection® reached it's expiration date in March 2008. As a result, we have no product to sell at this time. The FDA declined to respond to our requests for an extension of the expiration date, therefore we consider the request to be denied. Since our testing of the product indicates that it is not impaired and could be safely utilized, the finished goods inventory of 2,745 Alferon N Injection® 5ml vials may be used to produce approximately 11,000,000 sachets of Low Dose Oral Alferon (LDO) for future clinical trials.

Production of Alferon N Injection® from our work-in-progress inventory, which has an approximate expiration date of 2012, has been put on hold at this time due to the resources needed to prepare our New Brunswick facility for the FDA preapproval inspection with respect to our Ampligen® NDA. Work on the Alferon N Injection® is expected to resume in mid-2009, which means that we may not have any Alferon N Injection® product commercially available until 2010. However, if there is a significant absence of the product from the market place, no assurance can be given that sales will return to prior levels.

Although preliminary in vitro testing indicates that Ampligen® enhances the effectiveness of different drug combinations on avian influenza, preliminary testing in the laboratory is not necessarily predictive of successful results in clinical testing or human treatment.

Ampligen® is currently being tested as a vaccine adjuvant for H5N1, a pathogenic avian influenza virus ("HPAIV") in Japan, where the preclinical data has shown activity in preventing lethal challenge with the original virus used for vaccination as well as the other related, but not identical, isolates of H5N1 virus (i.e., cross-reactivity). The clinical testing phase of Ampligen® in Japan is expected to begin in late 2009 or early 2010. The results of laboratory testing with seasonal influenza virus vaccine in Australia for the effect of Ampligen® as an adjuvant is pending. No assurance can be given that similar results will be observed in clinical trials. Use of Ampligen® in the treatment of flu requires prior regulatory approval. Only the FDA can determine whether a drug is safe, effective or promising for treating a specific application. As discussed above, obtaining regulatory approvals is a rigorous and lengthy process (see "Our drugs and related technologies are investigational and subject to regulatory approval. If we are unable to obtain regulatory approval, our operations will be significantly adversely affected" above).

We may not be profitable unless we can protect our patents and/or receive approval for additional pending patents.

We need to preserve and acquire enforceable patents covering the use of Ampligen® for a particular disease in order to obtain exclusive rights for the commercial sale of Ampligen® for such disease. We obtained all rights to Alferon N Injection®, and we plan to preserve and acquire enforceable patents covering its use for existing and potentially new diseases. Our success depends, in large part, on our ability to preserve and obtain patent protection for our products and to obtain and preserve our trade secrets and expertise. Certain of our know-how and technology is not patentable, particularly the procedures for the manufacture of our experimental drug, Ampligen®, which is carried out according to standard operating procedure manuals. We also have been issued patents on the use of Ampligen® in combination with certain other drugs for the treatment of chronic Hepatitis B virus, chronic Hepatitis C virus, and a patent which affords protection on the use of Ampligen® in patients with Chronic Fatigue Syndrome. We have not yet been issued any patents in the United States for the use of Ampligen® as a sole treatment for any of the cancers, which we have sought to target. With regard to Alferon N Injection®, we have acquired from ISI its patents for natural alpha interferon produced from human peripheral blood leukocytes and its production process and we have filed a patent application for the use of Alferon® LDO in treating viral diseases including avian influenza. We cannot assure that our competitors will not seek and obtain patents regarding the use of similar products in combination with various other agents, for a particular target indication prior to our doing such. If we cannot protect our patents covering the use of our products for a particular disease, or obtain additional patents, we may not be able to successfully market our products.

The patent position of biotechnology and pharmaceutical firms is highly uncertain and involves complex legal and factual questions.

To date, no consistent policy has emerged regarding the breadth of protection afforded by pharmaceutical and biotechnology patents. There can be no assurance that new patent applications relating to our products or technology will result in patents being issued or that, if issued, such patents will afford meaningful protection against competitors with similar technology. It is generally anticipated that there may be significant litigation in the industry regarding patent and intellectual property rights. Such litigation could require substantial resources from us and we may not have the financial resources necessary to enforce the patent rights that we hold. No assurance can be made that our patents will provide competitive advantages for our products or will not be successfully challenged by competitors. No assurance can be given that patents do not exist or could not be filed which would have a materially adverse effect on our ability to develop or market our products or to obtain or maintain any competitive position that we may achieve with respect to our products. Our patents also may not prevent others from developing competitive products using related technology.

There can be no assurance that we will be able to obtain necessary licenses if we cannot enforce patent rights we may hold. In addition, the failure of third parties from whom we currently license certain proprietary information or from whom we may be required to obtain such licenses in the future, to adequately enforce their rights to such proprietary information, could adversely affect the value of such licenses to us.

If we cannot enforce the patent rights we currently hold we may be required to obtain licenses from others to develop, manufacture or market our products. There can be no assurance that we would be able to obtain any such licenses on commercially reasonable terms, if at all. We currently license certain proprietary information from third parties, some of which may have been developed with government grants under circumstances where the government maintained certain rights with respect to the proprietary information developed. No assurances can be given that such third parties will adequately enforce any rights they may have or that the rights, if any, retained by the government will not adversely affect the value of our license.

There is no guarantee that our trade secrets will not be disclosed or known by our competitors.

To protect our rights, we require certain employees and consultants to enter into confidentiality agreements with us. There can be no assurance that these agreements will not be breached, that we would have adequate and enforceable remedies for any breach, or that any trade secrets of ours will not otherwise become known or be independently developed by competitors.

We have limited marketing and sales capability. If we are unable to obtain additional distributors and our current and future distributors do not market our products successfully, we may not generate significant revenues or become profitable.

We have limited marketing and sales capability. We are dependent upon existing and, possibly future, marketing agreements and third party distribution agreements for our products in order to generate significant revenues and become profitable. As a result, any revenues received by us will be dependent in large part on the efforts of third parties, and there is no assurance that these efforts will be successful.

Our commercialization strategy for Ampligen®-CFS may include licensing/co-marketing agreements utilizing the resources and capacities of a strategic partner(s). We are currently seeking worldwide marketing partner(s), with the goal of having a relationship in place before approval is obtained. In parallel to partnering discussions, appropriate pre-marketing activities will be undertaken. We intend to control manufacturing of Ampligen on a world-wide basis.

We cannot assure that our U.S. or foreign marketing strategy will be successful or that we will be able to establish future marketing or third party distribution agreements on terms acceptable to us, or that the cost of establishing these arrangements will not exceed any product revenues. Our inability to establish viable marketing and sales capabilities would most likely have a materially adverse effect on us.

There are no long-term agreements with suppliers of required materials. If we are unable to obtain the required raw materials, we may be required to scale back our operations or stop manufacturing Alferon N Injection® and/or Ampligen®.

A number of essential materials are used in the production of Alferon N Injection®, including human white blood cells. We do not have long-term agreements for the supply of any of such materials. There can be no assurance we can enter into long-term supply agreements covering essential materials on commercially reasonable terms, if at all.

There are a limited number of manufacturers in the United States available to provide the polymers for use in manufacturing Ampligen®. At present, we do not have any agreements with third parties for the supply of any of these polymers. We have established relevant manufacturing operations within our New Brunswick, New Jersey facility for the production of Ampligen® polymers from raw materials in order to obtain polymers on a more consistent manufacturing basis.

If we are unable to obtain or manufacture the required polymers, we may be required to scale back our operations or stop manufacturing. The costs and availability of products and materials we need for the production of Ampligen® and the commercial production of Alferon N Injection® and other products which we may commercially produce are subject to fluctuation depending on a variety of factors beyond our control, including competitive factors, changes in technology, and FDA and other governmental regulations and there can be no assurance that we will be able to obtain such products and materials on terms acceptable to us or at all.

There is no assurance that successful manufacture of a drug on a limited scale basis for investigational use will lead to a successful transition to commercial, large-scale production.

Small changes in methods of manufacturing, including commercial scale-up, may affect the chemical structure of Ampligen® and other RNA drugs, as well as their safety and efficacy, and can, among other things, require new clinical studies and affect orphan drug status, particularly, market exclusivity rights, if any, under the Orphan Drug Act. The transition from limited production of pre-clinical and clinical research quantities to production of commercial quantities of our products will involve distinct management and technical challenges and will require additional management and technical personnel and capital to the extent such manufacturing is not handled by third parties. There can be no assurance that our manufacturing will be successful or that any given product will be determined to be safe and effective, capable of being manufactured economically in commercial quantities or successfully marketed.

We have limited manufacturing experience.

Ampligen® has been produced to date only in limited quantities for use in our clinical trials and we are dependent upon a third party supplier for the manufacturing and bottling process. The failure to continue these arrangements or to achieve other such arrangements on satisfactory terms could have a material adverse affect on us. Also to be successful, our products must be manufactured in commercial quantities in compliance with regulatory requirements and at acceptable costs. To the extent we are involved in the production process, our current facilities are not adequate for the production of our proposed products for large-scale commercialization, and we currently do not have adequate personnel to conduct large-scale manufacturing. We intend to utilize third-party facilities if and when the need arises or, if we are unable to do so, to build or acquire commercial-scale manufacturing facilities. We will need to comply with regulatory requirements for such facilities, including those of the FDA pertaining to current Good Manufacturing Practices (“cGMP”) regulations. There can be no assurance that such facilities can be used, built, or acquired on commercially acceptable terms, or that such facilities, if used, built, or acquired, will be adequate for our long-term needs.

We may not be profitable unless we can produce Ampligen® or other products in commercial quantities at costs acceptable to us.

We have never produced Ampligen® or any other products in large commercial quantities. We must manufacture our products in compliance with regulatory requirements in large commercial quantities and at acceptable costs in order for us to be profitable. We intend to utilize third-party manufacturers and/or facilities if and when the need arises or, if we are unable to do so, to build or acquire commercial-scale manufacturing facilities. If we cannot manufacture commercial quantities of Ampligen® or enter into third party agreements for its manufacture at costs acceptable to us, our operations will be significantly affected. Also, each production lot of Alferon N Injection® is subject to FDA review and approval prior to releasing the lots to be sold. This review and approval process could take considerable time, which would delay our having product in inventory to sell.

Rapid technological change may render our products obsolete or non-competitive.

The pharmaceutical and biotechnology industries are subject to rapid and substantial technological change. Technological competition from pharmaceutical and biotechnology companies, universities, governmental entities and others diversifying into the field is intense and is expected to increase. Most of these entities have significantly greater research and development capabilities than us, as well as substantial marketing, financial and managerial resources, and represent significant competition for us. There can be no assurance that developments by others will not render our products or technologies obsolete or noncompetitive or that we will be able to keep pace with technological developments.

Our products may be subject to substantial competition.

Ampligen®. Competitors may be developing technologies that are, or in the future may be, the basis for competitive products. Some of these potential products may have an entirely different approach or means of accomplishing similar therapeutic effects to products being developed by us. These competing products may be more effective and less costly than our products. In addition, conventional drug therapy, surgery and other more familiar treatments may offer competition to our products. Furthermore, many of our competitors have significantly greater experience than us in pre-clinical testing and human clinical trials of pharmaceutical products and in obtaining FDA, HPB and other regulatory approvals of products. Accordingly, our competitors may succeed in obtaining FDA, HPB or other regulatory product approvals more rapidly than us. There are no drugs approved for commercial sale with respect to treating ME/CFS in the United States. The dominant competitors with drugs to treat disease indications in which we plan to address include Gilead Pharmaceutical, Pfizer, Bristol-Myers, Abbott Labs, GlaxoSmithKline, Merck and Schering-Plough Corp. These potential competitors are among the largest pharmaceutical companies in the world, are well known to the public and the medical community, and have substantially greater financial resources, product development, and manufacturing and marketing capabilities than we have. Although we believe our principal advantage is the unique mechanism of action of Ampligen® on the immune system, we cannot assure that we will be able to compete.

ALFERON N Injection®. Our competitors are among the largest pharmaceutical companies in the world, are well known to the public and the medical community, and have substantially greater financial resources, product development, and manufacturing and marketing capabilities than we have. Alferon N Injection® currently competes with Schering's injectable recombinant alpha interferon product (INTRON® A) for the treatment of genital warts. 3M Pharmaceuticals also offer competition from its immune-response modifier, Aldara®, a self-administered topical cream, for the treatment of external genital and perianal warts. In addition, Medigene has FDA approval for a self-administered ointment, VeregenTM, which is indicated for the topical treatment of external genital and perianal warts. Alferon N Injection® also competes with surgical, chemical, and other methods of treating genital warts. We cannot assess the impact products developed by our competitors, or advances in other methods of the treatment of genital warts, will have on the commercial viability of Alferon N Injection®. If and when we obtain additional approvals of uses of this product, we expect to compete primarily on the basis of product performance. Our competitors have developed or may develop products (containing either alpha or beta interferon or other therapeutic compounds) or other treatment modalities for those uses. There can be no assurance that, if we are able to obtain regulatory approval of Alferon N Injection® for the treatment of new indications, we will be able to achieve any significant penetration into those markets. In addition, because certain competitive products are not dependent on a source of human blood cells, such products may be able to be produced in greater volume and at a lower cost than Alferon N Injection®. Currently, our wholesale price on a per unit basis of Alferon N Injection® is higher than that of the competitive recombinant alpha and beta interferon products.

General. Other companies may succeed in developing products earlier than we do, obtaining approvals for such products from the FDA more rapidly than we do, or developing products that are more effective than those we may develop. While we will attempt to expand our technological capabilities in order to remain competitive, there can be no assurance that research and development by others or other medical advances will not render our technology or products obsolete or non-competitive or result in treatments or cures superior to any therapy we develop.

Possible side effects from the use of Ampligen® or Alferon N Injection® could adversely affect potential revenues and physician/patient acceptability of our product.

Ampligen®. We believe that Ampligen® has been generally well tolerated with a low incidence of clinical toxicity, particularly given the severely debilitating or life threatening diseases that have been treated. A mild flushing reaction has been observed in approximately 15-20% of patients treated in our various studies. This reaction is occasionally accompanied by a rapid heart beat, a tightness of the chest, urticaria (swelling of the skin), anxiety, shortness of breath, subjective reports of "feeling hot", sweating and nausea. The reaction is usually infusion-rate related and can generally be controlled by reducing the rate of infusion. Other adverse side effects include liver enzyme level elevations, diarrhea, itching, asthma, low blood pressure, photophobia, rash, transient visual disturbances, slow or irregular heart rate, decreases in platelets and white blood cell counts, anemia, dizziness, confusion, elevation of kidney function tests, occasional temporary hair loss and various flu-like symptoms, including fever, chills, fatigue, muscular aches, joint pains, headaches, nausea and vomiting. These flu-like side effects typically subside within several months. One or more of the potential side effects might deter usage of Ampligen® in certain clinical situations and therefore, could adversely affect potential revenues and physician/patient acceptability of our product.

Alferon N Injection®. At present, Alferon N Injection® is only approved for the intra-lesional (within the lesion) treatment of refractory or recurring external genital warts in adults. In clinical trials conducted for the treatment of genital warts with Alferon N Injection®, patients did not experience serious side effects; however, there can be no assurance that unexpected or unacceptable side effects will not be found in the future for this use or other potential uses of Alferon N Injection® which could threaten or limit such product's usefulness.

We may be subject to product liability claims from the use of Ampligen®, Alferon N Injection®, or other of our products which could negatively affect our future operations. We have temporarily discontinued product liability insurance.

We face an inherent business risk of exposure to product liability claims in the event that the use of Ampligen® or other of our products results in adverse effects. This liability might result from claims made directly by patients, hospitals, clinics or other consumers, or by pharmaceutical companies or others manufacturing these products on our behalf. Our future operations may be negatively affected from the litigation costs, settlement expenses and lost product sales inherent to these claims. While we will continue to attempt to take appropriate precautions, we cannot assure that we will avoid significant product liability exposure.

On November 28, 2008, we suspended product liability insurance for Alferon® N and Ampligen® until we receive regulatory clearance for Ampligen®. We now require third parties to indemnify us in conjunction with all overseas emergency sales of Ampligen® and Alferon® LDO. We concluded that years of successfully addressing the limited number of product liability claims filed against Ampligen® and Alferon® LDO, combined with the mandatory patient waivers completed as an element of clinical trials and lack of any commercial sales since April 2008, that temporarily discontinuing the liability insurance was an acceptable risk given our financial condition and need to conserve cash.

Currently, without product liability coverage for Ampligen® and Alferon® LDO, a claim against the products could have a materially adverse effect on our business and financial condition.

The loss of services of key personnel including Dr. William A. Carter could hurt our chances for success.

Our success is dependent on the continued efforts of our staff, especially certain doctors and researchers along with the continued efforts of Dr. William A. Carter because of his position as a pioneer in the field of nucleic acid drugs, his being the co-inventor of Ampligen®, and his knowledge of our overall activities, including patents and clinical trials. The loss of the services of personnel key to our operations or Dr. Carter could have a material adverse effect on our operations and chances for success. As a cash conservation measure, we have elected to discontinue the Key Man life insurance in the amount of $2,000,000 on the life of Dr. Carter until we receive regulatory clearance for Ampligen®. An employment agreement continues to exist with Dr. Carter that, as amended, runs until December 31, 2010. However, Dr. Carter has the right to terminate his employment upon not less than 30 days prior written notice. The loss of Dr. Carter or other personnel or the failure to recruit additional personnel as needed could have a materially adverse effect on our ability to achieve our objectives.

Uncertainty of health care reimbursement for our products.

Our ability to successfully commercialize our products will depend, in part, on the extent to which reimbursement for the cost of such products and related treatment will be available from government health administration authorities, private health coverage insurers and other organizations. Significant uncertainty exists as to the reimbursement status of newly approved health care products, and from time to time legislation is proposed, which, if adopted, could further restrict the prices charged by and/or amounts reimbursable to manufacturers of pharmaceutical products. We cannot predict what, if any, legislation will ultimately be adopted or the impact of such legislation on us. There can be no assurance that third party insurance companies will allow us to charge and receive payments for products sufficient to realize an appropriate return on our investment in product development.

There are risks of liabilities associated with handling and disposing of hazardous materials.

Our business involves the controlled use of hazardous materials, carcinogenic chemicals, flammable solvents and various radioactive compounds. Although we believe that our safety procedures for handling and disposing of such materials comply in all material respects with the standards prescribed by applicable regulations, the risk of accidental contamination or injury from these materials cannot be completely eliminated. In the event of such an accident or the failure to comply with applicable regulations, we could be held liable for any damages that result, and any such liability could be significant. We do not maintain insurance coverage against such liabilities.

Risks Associated With an Investment in Our Common Stock

The market price of our stock may be adversely affected by market volatility.

The market price of our common stock has been and is likely to be volatile. This is especially true given the current significant instability in the financial markets. In addition to general economic, political and market conditions, the price and trading volume of our stock could fluctuate widely in response to many factors, including:

- announcements of the results of clinical trials by us or our competitors;
- adverse reactions to products;
- governmental approvals, delays in expected governmental approvals or withdrawals of any prior governmental approvals or public or regulatory agency concerns regarding the safety or effectiveness of our products;
- changes in U.S. or foreign regulatory policy during the period of product development;
- developments in patent or other proprietary rights, including any third party challenges of our intellectual property rights;
- announcements of technological innovations by us or our competitors;
- announcements of new products or new contracts by us or our competitors;
- actual or anticipated variations in our operating results due to the level of development expenses and other factors;
- changes in financial estimates by securities analysts and whether our earnings meet or exceed the estimates;
- conditions and trends in the pharmaceutical and other industries;
- new accounting standards;
- overall investment market fluctuation; and
- occurrence of any of the risks described in these "Risk Factors."

Our common stock is listed for quotation on the NYSE Amex. For the 12-month period ended April 30, 2009, the closing price of our common stock has ranged from $0.25 to $1.20 per share. As of June 8, 2009, the last reported sale price for our common stock on the NYSE Amex was $3.05 per share. We expect the price of our common stock to remain volatile. The average daily trading volume of our common stock varies significantly.

In the past, following periods of volatility in the market price of the securities of companies in our industry, securities class action litigation has often been instituted against companies in our industry. If we face securities litigation in the future, even if without merit or unsuccessful, it would result in substantial costs and a diversion of management attention and resources, which would negatively impact our business.

Our stock price may be adversely affected if a significant amount of shares are sold in the public market.

We have registered $150,000,000 of securities for public sale pursuant to this prospectus. In May 2009 we issued an aggregate of 25,543,339 shares and warrants to purchase an additional 14,708,687 shares under a prior universal shelf registration statement. In connection with entering into the Purchase Agreement with Fusion Capital, we registered 21,300,000 shares in the aggregate, consisting of 20,000,000 shares which we may sell to Fusion Capital and 1,300,000 shares we have issued or may issue to Fusion Capital as a commitment fee. As of June 8, 2009, 2009, we have sold an aggregate of 6,642,632 shares to Fusion Capital under the Purchase Agreement, leaving 14,657,368 shares. The sale of a substantial number of shares of our common stock under this prospectus or by Fusion Capital, or anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales. However, we have the right to control the timing and amount of any sales of our shares to Fusion Capital and the agreement may be terminated by us at any time at our discretion without any cost to us.

We also previously registered 35% of 3,615,514 shares issuable upon exercise of warrants related to our former convertible debentures and 14,442,294 shares issuable upon exercise of certain other warrants. To the extent the exercise price of our outstanding warrants is less than the market price of the common stock, the holders of the warrants are likely to exercise them and sell the underlying shares of common stock and to the extent that the exercise price of certain of these warrants are adjusted pursuant to anti-dilution protection, the warrants could be exercisable or convertible for even more shares of common stock. We also may issue shares pursuant to this prospectus or otherwise to be used to meet our capital requirements or use shares to compensate employees, consultants and/or directors. We are unable to estimate the amount, timing or nature of future sales of outstanding common stock or instruments convertible into or exercisable for our common stock.

Sales of substantial amounts of our common stock in the public market, including our sale of securities under this Prospectus or pursuant to the Purchase Agreement with Fusion Capital, could cause the market price for our common stock to decrease. Furthermore, a decline in the price of our common stock would likely impede our ability to raise capital through the issuance of additional shares of common stock or other equity securities.

Provisions of our Certificate of Incorporation and Delaware law could defer a change of our management which could discourage or delay offers to acquire us.

Provisions of our Certificate of Incorporation and Delaware law may make it more difficult for someone to acquire control of us or for our stockholders to remove existing management, and might discourage a third party from offering to acquire us, even if a change in control or in management would be beneficial to our stockholders. For example, our Certificate of Incorporation allows us to issue shares of preferred stock without any vote or further action by our stockholders. Our Board of Directors has the authority to fix and determine the relative rights and preferences of preferred stock. Our Board of Directors also has the authority to issue preferred stock without further stockholder approval. As a result, our Board of Directors could authorize the issuance of a series of preferred stock that would grant to holders the preferred right to our assets upon liquidation, the right to receive dividend payments before dividends are distributed to the holders of common stock and the right to the redemption of the shares, together with a premium, prior to the redemption of our common stock. In this regard, in November 2002, we adopted a stockholder rights plan and, under the Plan, our Board of Directors declared a dividend distribution of one Right for each outstanding share of Common Stock to stockholders of record at the close of business on November 29, 2002. Each Right initially entitles holders to buy one unit of preferred stock for $30.00. The Rights generally are not transferable apart from the common stock and will not be exercisable unless and until a person or group acquires or commences a tender or exchange offer to acquire, beneficial ownership of 15% or more of our common stock. However, for Dr. Carter, our Chief Executive Officer, who already beneficially owns 6.05% of our common stock, the Plan’s threshold will be 20%, instead of 15%. The Rights will expire on November 19, 2012, and may be redeemed prior thereto at $.01 per Right under certain circumstances.

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Because the risk factors referred to above could cause actual results or outcomes to differ materially from those expressed in any forward-looking statements made by us, you should not place undue reliance on any such forward-looking statements. Further, any forward-looking statement speaks only as of the date on which it is made and we undertake no obligation to update any forward-looking statement or statements to reflect events or circumstances after the date on which such statement is made or reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Our research in clinical efforts may continue for the next several years and we may continue to incur losses due to clinical costs incurred in the development of Ampligen® for commercial application. Possible losses may fluctuate from quarter to quarter as a result of differences in the timing of significant expenses incurred and receipt of licensing fees and/or cost recovery treatment revenue.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements in this prospectus constitute “forwarding-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1995 (collectively, the “Reform Act”). Certain, but not necessarily all, of such forward-looking statements can be identified by the use of forward-looking terminology such as “believes,” “expects,” “may,” “will,” “should,” or “anticipates” or the negative thereof or other variations thereon or comparable terminology, or by discussions of strategy that involve risks and uncertainties. All statements other than statements of historical fact, included in this prospectus regarding our financial position, business strategy and plans or objectives for future operations are forward-looking statements. Without limiting the broader description of forward-looking statements above, we specifically note that statements regarding potential drugs, their potential therapeutic effect, the possibility of obtaining regulatory approval, our ability to manufacture and sell any products, market acceptance or our ability to earn a profit from sales or licenses of any drugs or our ability to discover new drugs in the future are all forward-looking in nature.

Such forward-looking statements involve known and unknown risks, uncertainties and other factors, including but not limited to, the risk factors discussed above, which may cause the actual results, performance or achievements of Hemispherx and its subsidiaries to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements and other factors referenced in this prospectus. We do not undertake and specifically decline any obligation to publicly release the results of any revisions which may be made to any forward-looking statement to reflect events or circumstances after the date of such statements or to reflect the occurrence of anticipated or unanticipated events.

RATIO OF EARNINGS TO FIXED CHARGES

We have incurred $10.4 million in fixed charges in the past five years. Fixed charges mainly represent interest expensed as well as amortized discounts related to indebtedness. We have incurred losses totaling $20.9 million, $12.4 million, $19.4 million, $18.1 million and $12.2 million for the years ended December 31, 2004, 2005, 2006, 2007 and 2008, respectively. Until we achieve profitability, we will not be able to cover our fixed charges from earnings.

USE OF PROCEEDS

Except as otherwise provided in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities offered by this prospectus to fund commercialization of Alferon® and Ampligen® along with general corporate purposes, which may include working capital, capital expenditures, research and development expenditures, regulatory affairs expenditures, clinical trial expenditures, acquisitions of new technologies and investments, and the repayment, refinancing, redemption or repurchase of future indebtedness or capital stock. Additional information on the use of net proceeds from the sale of securities offered by this prospectus may be set forth in the prospectus supplement relating to that offering.

DESCRIPTION OF CAPITAL STOCK

Our authorized capital stock currently consists of 200,000,000 shares of common stock, par value $0.001 per share, and 5,000,000 shares of preferred stock, $0.01 par value per share. At our annual stockholders’ meeting to be held in June 2009, we are seeking approval of an amendment to our Certificate of Incorporation to increase the number of authorized shares of Common Stock from 200,000,000 to 350,000,000. No assurance can be given that stockholders will approve the increase.

The following summary of certain provisions of our common and preferred stock does not purport to be complete. You should refer to our Amended and Restated Certificate of Incorporation, amendments thereto, and our By laws, as amended, all of which are filed with the SEC. The summary below is also qualified by provisions of applicable law.

Common Stock

Holders of common stock are entitled to one vote per share on matters on which our stockholders vote. There are no cumulative voting rights. Holders of common stock are entitled to receive dividends, if declared by our board of directors, out of funds that we may legally use to pay dividends. If we liquidate or dissolve, holders of common stock are entitled to share ratably in our assets once our debts and any liquidation preference owed to any then-outstanding preferred stockholders are paid. All shares of common stock that are outstanding as of the date of this prospectus are fully-paid and non-assessable.

Preferred Stock

We are currently authorized to issue 5,000,000 shares of preferred stock, none of which are currently outstanding.

Our board of directors has the authority to designate any or all shares of preferred stock in one or more series and to fix the rights of each series. Prior to issuance of shares of each series, our Board of Directors will adopt resolutions and file a certificate of designation fixing for each series the designations, powers, preferences, conversion and other rights, voting powers, qualifications, limitations as to dividends, restrictions and terms and conditions of redemption. The preferred stock will, when issued, be fully paid and nonassessable and will not have, or be subject to, any preemptive or similar rights.

If we sell preferred stock, the prospectus supplement relating to the series of preferred stock offered by that supplement will describe the specific terms of those securities, including:

1. the title and stated value of that preferred stock;

2. the number of shares of that preferred stock offered, the liquidation preference per share and the offering price of that preferred stock;

3. the dividend rate(s), period(s) and/or payment date(s) or method(s) of calculation thereof applicable to that preferred stock;

4. whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends on that preferred stock will accumulate;

5. the voting rights applicable to that preferred stock;

6. the procedures for any auction and remarketing, if any, for that preferred stock;

7. the provisions for a sinking fund, if any, for that preferred stock;

8. the provisions for redemption, if applicable, of that preferred stock;

9. any listing of that preferred stock on any securities exchange;

10. the terms and conditions, if applicable, upon which that preferred stock will be convertible into shares of the Common Stock, including the conversion price (or manner of calculation of the conversion price) and conversion period;

11. a discussion of federal income tax considerations applicable to that preferred stock;

12. any limitations on issuance of any series of preferred stock ranking senior to or on a parity with that series of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs; and

13. any other specific terms, preferences, rights, limitations or restrictions of that preferred stock.

We believe the power to issue preferred stock will provide our board of directors with flexibility in connection with certain possible corporate transactions. The issuance of preferred stock, however, could adversely affect the voting power of holders of our common stock, restrict their rights to receive payment upon liquidation, and have the effect of delaying, deferring, or preventing a change in control.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Continental Stock Transfer & Trust Company.

DESCRIPTION OF WARRANTS

The following description of our warrants for the purchase of our common stock, preferred stock and/or debt securities in this prospectus contains the general terms and provisions of the warrants. The particular terms of any offering of warrants will be described in a prospectus supplement relating to such offering. The statements below describing the warrants are subject to and qualified by the applicable provisions of our certificate of incorporation, bylaws and the relevant provisions of the laws of the State of Delaware.

General

We may issue warrants for the purchase of our common stock, preferred stock and/or debt securities. We may issue warrants independently or together with any of our securities, and warrants also may be attached to our securities or independent of them. We may issue series of warrants under a separate warrant agreement between us and a specified warrant agent described in the prospectus supplement. The warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

Terms

A prospectus supplement will describe the specific terms of any warrants that we issue or offer, including:

- the title of the warrants;
- the aggregate number of warrants;
- the price or prices at which the warrants will be issued;
- the currencies in which the price or prices of the warrants may be payable;
- the designation, amount and terms of our capital stock or debt securities purchasable upon exercise of the warrants;
- the designation and terms of our other securities, if any, that may be issued in connection with the warrants, and the number of warrants issued with each corresponding security;
- if applicable, the date that the warrants and the securities purchasable upon exercise of the warrants will be separately transferable;
- the prices and currencies for which the securities purchasable upon exercise of the warrants may be purchased;
- the date that the warrants may first be exercised;
- the date that the warrants expire;
- the minimum or maximum amount of warrants that may be exercised at any one time;
- information with respect to book-entry procedures, if any;
- a discussion of certain federal income tax considerations; and
- any other material terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

Exercise of Warrants

Each warrant will entitle the holder to purchase for cash the principal amount of debt securities or shares of preferred stock or common stock at the applicable exercise price set forth in, or determined as described in, the applicable prospectus supplement. Warrants may be exercised at any time up to the close of business on the expiration date set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void.

Warrants may be exercised by delivering to the corporation trust office of the warrant agent or any other officer indicated in the applicable prospectus supplement (a) the warrant certificate properly completed and duly executed and (b) payment of the amount due upon exercise. As soon as practicable following exercise, we will forward the debt securities or shares of preferred stock or common stock purchasable upon exercise. If less than all of the warrants represented by a warrant certificate are exercised, a new warrant certificate will be issued for the remaining warrants.

DESCRIPTION OF DEBT SECURITIES

We anticipate that any debt securities which we offer by this prospectus will be issued under an indenture between us and a trustee to be identified in the prospectus supplement. If a proposed debt transaction is not exempt under the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), the terms of the debt securities will include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act, as in effect on the date of the indenture. If a proposed transaction is exempt under the Trust Indenture Act, we may not use an indenture (and, thus a trustee) or, if we use an indenture, it may not fully comply with the requirements of the Trust Indenture Act. The following description summarizes only the material provisions of the indenture. Accordingly, you should read the form of indenture, a copy of which has been filed as an exhibit to the registration statement of which this prospectus forms a part, because it, and not this description, defines your rights as holders of our debt securities. The following description also provides general information that will be contained in any debt instrument we may use if we do not use an indenture. You should also read the applicable prospectus supplement for additional information and the specific terms of the debt securities.

General

We may, at our option, issue debt securities in one or more series from time to time. “Debt securities” may include senior debt, senior subordinated debt or subordinated debt. The particular terms of the debt securities offered by any prospectus supplement, and the extent, if any, to which such general provisions do not apply to the debt securities will be described in the prospectus supplement relating to such debt securities. The following summaries set forth certain general terms and provisions of the indenture and the debt securities. The prospectus supplement relating to a series of debt securities being offered will contain the following terms, if applicable:

- the title and ranking;
- the aggregate principal amount and any limit on such amount;
- the price at which such debt securities will be issued;
- the date on which the debt securities mature;
- the fixed or variable rate at which the debt securities will bear interest, or the method by which such rate shall be determined;
- the timing, place and manner of making principal, interest and any premium payments on the debt securities, and, if applicable, where such debt securities may be surrendered for registration of transfer or exchange;
- the date or dates, if any, after which the debt securities may be converted or exchanged into or for shares of our common stock, preferred stock or another company's securities or properties or cash and the terms of any such conversion or exchange;
- any redemption or early repayment provisions;
- any sinking fund or similar provisions;
- the authorized denominations;
- any applicable subordination provisions;
- any guarantees of such securities by our subsidiaries or others;
- the currency in which we will pay the principal, interest and any premium payments on such debt securities;
- whether the amount of payments of principal of (and premium, if any) or interest, if any, on the debt securities may be determined with reference to an index, formula or other method and the manner in which such amounts shall be determined;
- the time period within which, the manner in which and the terms and conditions upon which the purchaser of the securities can select the payment currency;
- the provisions, if any, granting special rights to the holders of debt securities upon certain events;
- any additions to or changes in the events of default or covenants of Hemispherx with respect to the debt securities and any change in the right of the trustee or the holders to declare the principal, premium and interest with respect to such securities to be due and payable;
- whether and under what circumstances we will pay any additional amounts on such debt securities for any tax, assessment or governmental charge and, if so, whether we will have the option to redeem such debt securities instead of paying such amounts;

- the form (registered and/or bearer securities), any restrictions applicable to the offer, sale or delivery of bearer securities and the terms, if any, upon which bearer securities may be exchanged for registered securities and vice versa;
- the date of any bearer securities or any global security, if other than the date of original issuance of the first security of the series to be issued;
- the person to whom and manner in which any interest shall be payable;
- whether such securities will be issued in whole or in part in the form of one or more global securities;
- the identity of the depositary for global securities;
- whether a temporary security is to be issued with respect to such series and whether any interest payable prior to the issuance of definitive securities of the series will be credited to the account of the persons entitled thereto;
- the terms upon which beneficial interests in a temporary global security may be exchanged in whole or in part for beneficial interests in a definitive global security or for individual definitive securities and the terms upon which such exchanges may be made;
- the securities exchange(s), if any, on which the securities will be listed;
- whether any underwriter(s) will act as market maker(s) for the securities;
- the form (certificated or book-entry);
- the form and/or terms of certificates, documents or conditions which may be necessary, if any, for the debt securities to be issuable in final form; and
- additional terms not inconsistent with the provisions of the indenture.

One or more series of debt securities may be sold at a substantial discount below their stated principal amount bearing no interest or interest at a rate below the market rate at the time of issuance. One or more series of debt securities may be variable rate debt securities that may be exchanged for fixed rate debt securities. In such cases, all material United States federal income tax and other considerations applicable to any such series will be described in the applicable prospectus supplement. You should consult with your own tax advisor before making a decision to purchase any debt security.

We will comply with Section 14(e) under the Exchange Act, to the extent applicable, and any other tender offer rules under the Exchange Act, which may then be applicable, in connection with any obligation of Hemispherx to purchase debt securities at the option of the holders thereof. Any such obligation applicable to a series of debt securities will be described in the applicable prospectus supplement.

Exchange, Registration, Transfer and Payment

We expect payment of principal, premium, if any, and any interest on the debt securities to be payable, and the exchange and the transfer of debt securities will be registrable, at the office of the trustee or at any other office or agency we maintain for such purpose. We expect to issue debt securities in denominations of U.S. $1,000 or integral multiples thereof. No service charge will be made for any registration of transfer or exchange of the debt securities, but we may require a payment to cover any tax or other governmental charges payable in connection therewith.

Global Debt Securities

Unless we indicate otherwise in the applicable prospectus supplement, the following provisions will apply to all debt securities.

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with a depositary that we will identify in a prospectus supplement. Each global security will be deposited with the depositary and will bear a legend regarding any related restrictions or other matters as may be provided for pursuant to the applicable indenture.

Unless a prospectus supplement states otherwise, no global security may be transferred to, or registered or exchanged for debt securities registered in the name of, any person or entity other than the depositary, unless:

- the depositary has notified us that it is unwilling or unable or is no longer qualified to continue as depositary;
- we order the trustee that such global security shall be so transferable, registrable and exchangeable, and such transfers shall be registrable; or
- other circumstances, if any, as may be described in the applicable prospectus supplement.

All debt securities issued in exchange for a global security or any portion thereof will be registered in such names as the depositary may direct. The specific terms of the depositary arrangement with respect to any portion of a series of debt securities to be represented by a global security will be described in the applicable prospectus supplement.

Debt securities which are to be represented by a global security to be deposited with or on behalf of a depositary will be represented by a global security registered in the name of such depositary or its nominee. Upon the issuance of such global security, and the deposit of such global security with the depositary, the depositary will credit, on its book-entry registration and transfer system, the respective principal amounts of the debt securities represented by such global security to the accounts of institutions that have accounts with such depositary or its nominee (the “Participants”). The accounts to be credited will be designated by the underwriters or agents of such debt securities or by us, if such debt securities are offered and sold directly by us.

Ownership of beneficial interests in such global security will be limited to Participants or persons that may hold interests through Participants. Ownership of beneficial interests in such global security will be shown on, and the transfer of that ownership interest will be effected only through, records maintained by the depositary or its nominee for such global security or by Participants or persons that hold through Participants.

The laws of some jurisdictions require that certain purchasers of securities take physical delivery of such securities in certificated form. The foregoing limitations and such laws may impair the ability to transfer beneficial interests in such global securities.

So long as the depositary, or its nominee, is the registered owner of such global security, such depositary or such nominee, as the case may be, will be considered the sole owner or holder of the debt securities represented by such global security for all purposes under the indenture. Payment of principal of, and premium and interest, if any, on debt securities will be made to the depositary or its nominee as the registered owner or bearer as the case may be of the global security representing such debt securities. Each person owning a beneficial interest in such global security must rely on the procedures of the depositary and, if such person is not a Participant, on the procedures of the Participant through which such person owns its interest, to exercise any rights of a holder under the indenture. If we request any action of holders or if an owner of a beneficial interest in such global security desires to give any notice or take any action a holder is entitled to give or take under the indenture, the depositary will authorize the Participants to give such notice or take such action, and Participants would authorize beneficial owners owning through such Participants to give such notice or take such action or would otherwise act upon the instructions of beneficial owners owning through them.

The rights of any holder of a debt security to receive payment of principal and premium of, if any, and interest on such debt security, on or after the respective due dates expressed or provided for in such debt security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of the holders.

Neither we, the trustee, any paying agent nor the security registrar for such debt securities will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of the global security for such debt securities or for maintaining, supervising or receiving any records relating to such beneficial ownership interests.

We expect that the depositary or its nominee, upon receipt of any payment of principal, premium or interest, will credit immediately Participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of the global security for such debt securities as shown on the records of such depositary or its nominee. We also expect that payments by Participants to owners of beneficial interests in such global security held through such Participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participants.

If the depositary for a global security representing debt securities of a particular series is at any time unwilling or unable to continue as depositary and we do not appoint a successor depositary within 90 days, we will issue debt securities of such series in definitive form in exchange for such global security. In addition, we may at any time and in our sole discretion determine not to have the debt securities of a particular series represented by one or more global securities and, in such event, will issue debt securities of such series in definitive form in exchange for all of the global securities representing debt securities of such series.

Covenants

Except as permitted under "Consolidation, Merger and Sale of Assets," the indenture will require us to do or cause to be done all things necessary to preserve and keep in full force and effect our existence and rights (declaration and statutory); provided, however, that we shall not be required to preserve any right if we determine that the preservation thereof is no longer desirable in the conduct of our business and that the loss thereof is not disadvantageous in any material respect to the holders of the debt securities.

The indenture will require us to pay or discharge or cause to be paid or discharged, before the same shall become delinquent, all taxes, assessments and governmental charges levied or imposed upon us except any tax, assessment, charge or claim whose amount or applicability is being contested in good faith.

Reference is made to the indenture and applicable prospectus supplement for information with respect to any additional covenants specific to a particular series of debt securities.

Consolidation, Merger and Sale of Assets

Except as set forth in the applicable prospectus supplement, the indenture will provide that we shall not consolidate with, or sell, assign, transfer, lease or convey all or substantially all of our assets, or merge into, to any person unless:

- we are the surviving entity or, in the event that we are not the surviving entity, the entity formed by the transaction (in a consolidation) or the entity which received the transfer of assets is a corporation organized under the laws of any state of the United States or the District of Columbia;
- such entity assumes all of our obligations under the debt securities and the indenture; and

- immediately after giving effect to the transaction, no event of default, as defined in the indenture, shall have occurred and be continuing.

Notwithstanding the foregoing, we may merge with another person or acquire by purchase or otherwise all or any part of the property or assets of any other corporation or person in a transaction in which we are the surviving entity.

Events of Default

Unless otherwise specified in the applicable prospectus supplement, the following are events of default with respect to any series of debt securities issued under the indenture:

- failure to pay principal of any debt security of that series when due and payable at maturity, upon acceleration, redemption or otherwise;
- failure to pay any interest on any debt security of that series when due, and the default continues for 30 days;
- failure to comply with any covenant or warranty contained in the indenture, other than covenants or warranties contained in the indenture solely for the benefit of other series of debt securities, and the default continues for 30 days after notice from the trustee or the holders of at least 25% in principal amount of the then outstanding debt securities of that series;
- certain events of bankruptcy, insolvency or reorganization; and
- any other event of default provided with respect to that particular series of debt securities.

If an event of default occurs and continues, then upon written notice to us the trustee or the holders of at least 25% in principal amount of the outstanding debt securities of that series may declare the unpaid principal amount of, and any accrued and unpaid interest on, all debt securities of that series to be due and payable immediately. However, at any time after a declaration of acceleration with respect to debt securities of any series has been made, the holders of a majority in principal amount of the outstanding debt securities of that series may rescind and annul such acceleration:

- if all events of default other than the nonpayment of principal of or interest on the debt securities of that series which have become due solely because of the acceleration have been waived or cured; and
- the rescission would not conflict with any judgment or decree of a court of competent jurisdiction. For information as to waiver of defaults, see “Amendment, Supplement and Waiver” below.

The indenture will provide that, subject to the duty of the trustee during an event of default to act with the required standard of care, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any of the holders, unless such holders shall have offered to the trustee reasonable security or indemnity. Subject to certain provisions, including those requiring security or indemnification of the trustee, the holders of a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust or power conferred on the trustee, with respect to the debt securities of that series.

We will be required to furnish to the trustee under the indenture annually a statement as to the performance by us of our obligations under that indenture and as to any default in such performance.

Discharge of Indenture and Defeasance

Except as otherwise set forth in the applicable prospectus supplement, we may terminate our obligations under the debt securities of any series, and the corresponding obligations under the indenture when:

- we have paid or deposited with the trustee funds or United States government obligations in an amount sufficient to pay at maturity all outstanding debt securities of such series, including interest other than destroyed, lost or stolen debt securities of such series which have not been replaced or paid;
- all outstanding debt securities of such series have been delivered (other than destroyed, lost or stolen debt securities of such series which have not been replaced or paid) to the trustee for cancellation; or
- all outstanding debt securities of any series have become due and payable; and
- we have paid all other sums payable under the indenture.

In addition, we may terminate substantially all our obligations under the debt securities of any series and the corresponding obligations under the indenture if:

- we have paid or deposited with the trustee, in trust an amount of cash or United States government obligations sufficient to pay all outstanding principal of and interest on the then outstanding debt securities of such series at maturity or upon their redemption, as the case may be;
- such deposit will not result in a breach of, or constitute a default under, the indenture;
- no default or event of default shall have occurred and continue on the date of deposit and no event of default as a result of a bankruptcy or event which with the giving of notice or the lapse of time would become a bankruptcy event of default shall have occurred and be continuing on the 91st day after such date;

- we deliver to the trustee a legal opinion that we have received from, or there has been published by, the United States Internal Revenue Service a ruling, or there has been a change in tax law, in either case to the effect that the holders of the debt securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of our exercise of such option and shall be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such option had not been exercised; and
- certain other conditions are met.

We shall be released from our obligations with respect to the covenants to deliver reports required to be filed with the SEC and an annual compliance certificate, and to make timely payments of taxes (including covenants described in a prospectus supplement) and any event of default occurring because of a default with respect to such covenants as they related to any series of debt securities if:

- we deposit or cause to be deposited with the trustee in trust an amount of cash or United States government obligations sufficient to pay and discharge when due the entire unpaid principal of and interest on all outstanding debt securities of any series;
- such deposit will not result in a breach of, or constitute a default under, the indenture;
- no default or event of default shall have occurred and be continuing on the date of deposit and no event of default as a result of a bankruptcy or event which with the giving of notice or the lapse of time would become a bankruptcy event of default shall have occurred and be continuing on the 91st day after such date;
- we deliver to the trustee a legal opinion that the holders of the debt securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of our exercise of such option and shall be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such option had not been exercised; and
- certain other conditions are met.

Upon satisfaction of such conditions, our obligations under the indenture with respect to the debt securities of such series, other than with respect to the covenants and events of default referred to above, shall remain in full force and effect.

Notwithstanding the foregoing, no discharge or defeasance described above shall affect the following obligations to or rights of the holders of any series of debt securities:

- rights of registration of transfer and exchange of debt securities of such series;
- rights of substitution of mutilated, defaced, destroyed, lost or stolen debt securities of such series;
- rights of holders of debt securities of such series to receive payments of principal thereof and premium, if any, and interest thereon when due;
- rights, obligations, duties and immunities of the trustee;

- rights of holders of debt securities of such series as beneficiaries with respect to property deposited with the trustee and payable to all or any of them; and
- our obligations to maintain an office or agency in respect of the debt securities of such series.

Transfer and Exchange

A holder of debt securities may transfer or exchange such debt securities in accordance with the indenture. The registrar for the debt securities may require a holder, among other things, to furnish appropriate endorsements and transfer documents, and to pay any taxes and fees required by law or permitted by the indenture. The registrar is not required to transfer or exchange any debt security selected for redemption or any debt security for a period of 15 days before a selection of debt security to be redeemed.

The registered holder of a debt security may be treated as the owner of such security for all purposes.

Amendment, Supplement and Waiver

Subject to certain exceptions, the terms of the indenture or the debt securities may be amended or supplemented by us and the trustee with the written consent of the holders of at least a majority in principal amount of the outstanding debt securities of each series affected by the amendment with each series voting as a separate class. Without the consent of any holder of the debt securities, we and the trustee may amend the terms of the indenture or the debt securities to:

- cure any ambiguity, defect or inconsistency;
- provide for the assumption of our obligations to holders of the debt securities by a successor corporation;
- provide for uncertificated debt securities in addition to certificated debt securities;
- make any change that does not adversely affect the rights of any holder of the debt securities in any material respect;
- add to, change or eliminate any other provisions of the indenture in respect of one or more series of debt securities if such change would not (i) apply to any security of any series created prior to the execution of a supplemental indenture and entitled to the benefit of such provision and (ii) modify the rights of the holder of any such security with respect to such provision or become effective only when there is no outstanding security of any series created prior to the execution of such supplemental indenture and entitled to such benefits;
- establish any additional series of debt securities; or
- comply with any requirement of the SEC in connection with the qualification of the indenture under the Trust Indenture Act.

However, holders of each series of debt securities affected by a modification must consent to modifications that have the following effect:

- reduce the principal amount of debt securities the holders of which must consent to an amendment, supplement or waiver of any provision of the indenture;
- reduce the rate or change the time for payment of interest on any debt security;
- reduce the principal of or change the fixed maturity of any debt securities;
- change the date on which any debt security may be subject to redemption or repurchase, or reduce the redemption or repurchase price therefor;
- make any debt security payable in currency other than that stated in the debt security;
- waive any existing default or event of default and the consequences with respect to that series;
- modify the right of any holder to receive payment of principal or interest on any debt security on or after the respective due dates expressed or provided for in the debt security;
- impair the right of any holder to institute suit for the enforcement of any payment in or with respect to any such debt security; or
- make any change in the foregoing amendment provisions which require each holder's consent.

Any existing default may be waived with the consent of the holders of at least a majority in principal amount of the then outstanding debt securities of the series affected thereby.

The consent of the holders of debt securities is not necessary to approve the particular form of any proposed amendment to any indenture. It is sufficient if any consent approves the substance of the proposed amendment.

Replacement Securities

Any mutilated certificate representing a debt security or a certificate representing a debt security with a mutilated coupon will be replaced by us at the expense of the holder upon surrender of such certificate to the trustee. Certificates representing debt securities or coupons that become destroyed, stolen or lost will be replaced by us at the expense of the holder upon delivery to us and the trustee of evidence of any destruction, loss or theft satisfactory to us and the trustee, provided that neither we nor the trustee has been notified that such certificate or coupon has been acquired by a bona fide purchaser. In the case of any coupon which becomes destroyed, stolen or lost, such coupon will be replaced by issuance of a new certificate representing the debt security in exchange for the certificate representing the debt security to which such coupon appertains. In the case of a destroyed, lost or stolen certificate representing the debt security or coupon, an indemnity bond satisfactory to the trustee and us may be required at the expense of the holder of such debt security before a replacement certificate will be issued.

Regarding the Trustee

We will identify in the prospectus supplement relating to any series of debt securities the trustee with respect to such series. The indenture and provisions of the Trust Indenture Act incorporated by reference therein contain certain limitations on the rights of the trustee, should it become a creditor of Hemispherx, to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim, as security or otherwise. The trustee and its affiliates may engage in, and will be permitted to continue to engage in, other transactions with us and our affiliates; provided, however, that if it acquires any conflicting interest, as defined in the Trust Indenture Act, it must eliminate such conflict or resign.

The holders of a majority in principal amount of the then outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee. The Trust Indenture Act and the indenture provide that in case an event of default shall occur, and be continuing, the trustee will be required, in the exercise of its rights and powers, to use the degree of care and skill of a prudent man in the conduct of his own affairs. Subject to such provision, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any of the holders of the debt securities issued thereunder, unless they have offered to the trustee indemnity satisfactory to it.

Governing Law

The debt securities will be governed by and construed in accordance with the laws of the State of New York.

PLAN OF DISTRIBUTION

We may sell the securities registered under this prospectus:

- through underwriting syndicates represented by one or more managing underwriters;
- to or through underwriters or dealers;
- through agents;
- directly to one or more purchasers;
- through a block trade in which the broker or dealer engaged to handle the block trade will attempt to sell the securities as agent, but may position and resell a portion of the block as principal to facilitate the transaction; or
- through a combination of any of these methods of sale.

We may, from time to time, authorize underwriters acting as our agents to offer and sell the securities upon the terms and conditions as are set forth in the applicable prospectus supplement. We will describe the name or names of any underwriters and the purchase price of the securities in a prospectus supplement relating to the securities. Any underwritten offering may be on a best efforts or a firm commitment basis. The obligations, if any, of the underwriter to purchase any securities will be subject to certain conditions.

If a dealer is used in an offering of securities, we may sell the securities to the dealer as principal. We will describe the name or names of any dealers and the purchase price of the securities in a prospectus supplement relating to the securities. The dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of sale. Any public offering price and any discounts or concessions allowed, re-allowed, or paid to dealers may be changed from time to time and will be described in a prospectus supplement relating to the securities.

We, or any underwriter, dealer or agent, may distribute the securities from time to time in one or more transactions at:

- a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to prevailing market prices; or
- at negotiated prices.

Any of these prices may represent a discount from the prevailing market prices.

To the extent permitted by and in accordance with Regulation M under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in connection with an offering an underwriter may engage in over-allotments, stabilizing transactions, short covering transactions and penalty bids. Over-allotments involve sales in excess of the offering size, which creates a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. Short covering transactions involve purchases of the securities in the open market after the distribution is completed to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would be otherwise. If commenced, the underwriters may discontinue any of these activities at any time. We will describe any of these activities in the prospectus supplement.

We may authorize underwriters, dealers or agents to solicit offers by certain institutions to purchase our securities at the public offering price under delayed delivery contracts. If we use delayed delivery contracts, we will disclose that we are using them in the prospectus supplement and will tell you when we will demand payment and delivery of the securities under the delayed delivery contracts. These delayed delivery contracts will be subject only to the conditions that we set forth in the prospectus supplement. We will indicate in our prospectus supplement the commission that underwriters and agents soliciting purchases of our securities under delayed delivery contracts will be entitled to receive.

In connection with the sale of the securities and as further set forth in an applicable prospectus supplement, underwriters may receive compensation from us or from purchasers of the securities for whom they may act as agents, in the form of discounts, concessions or commissions. Underwriters may sell the securities to or through dealers, and these dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Underwriters, dealers and agents that participate in the distribution of the securities may be deemed to be underwriters, and any discounts or commissions they receive from us, and any profit on the resale of the securities they realize, may be deemed to be underwriting discounts and commissions under the Securities Act of 1933, as amended (the "Securities Act"). The prospectus supplement will identify any underwriter or agent and will describe any compensation they receive from us.

Unless otherwise specified in the prospectus supplement, each series of the securities will be a new issue with no established trading market, other than our common stock, which is currently listed on the NYSE Amex. We will apply to the NYSE Amex to list any additional shares of common stock that we offer and sell pursuant to a prospectus supplement. To the extent permitted by and in accordance with Regulation M under the Exchange Act, any underwriters who are qualified market makers on the NYSE Amex may engage in passive market making transactions in the securities on the NYSE Amex during the business day prior to the pricing of an offering, before the commencement of offers or sales of the securities. Passive market makers must comply with applicable volume and price limitations and must be identified as passive market makers. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive market maker's bid, however, the passive market maker's bid must then be lowered when certain purchase limits are exceeded. It is possible that one or more underwriters may make a market in our securities, but underwriters will not be obligated to do so and may discontinue any market making at any time without notice. Therefore, we can give no assurance about the liquidity of our securities that may be sold pursuant to this prospectus.

Under agreements we may enter into, we may indemnify underwriters, dealers and agents who participate in the distribution of the securities against certain liabilities, including liabilities under the Securities Act.

Certain of the underwriters, dealers and agents and their affiliates may be customers of, engage in transactions with, and perform services for us and our subsidiaries from time to time in the ordinary course of business. Any such relationships will be disclosed in an applicable prospectus supplement.

If indicated in the prospectus supplement, we will authorize underwriters or other persons acting as our agents to solicit offers by institutions to purchase securities from us pursuant to contracts providing for payment and delivery on a future date. Institutions with which we may make these contracts include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and others. The obligations of any purchaser under any such contract will be subject to the condition that the purchase of the securities shall not at the time of delivery be prohibited under the laws of the jurisdiction to which the purchaser is subject. The underwriters and other agents will not have any responsibility with regard to the validity or performance of these contracts.

LEGAL MATTERS

The validity of the securities offered in this prospectus will be passed upon for us by Silverman Sclar Shin & Byrne PLLC, New York, New York.

EXPERTS

The financial statements, the related financial statement schedule, and the effectiveness of internal control over financial reporting incorporated by reference in this Prospectus and Registration Statement have been audited by McGladrey & Pullen, LLP, an independent registered public accounting firm, as stated in their report incorporated herein by reference, and are incorporated in reliance upon such report and upon the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

This prospectus is part of a registration statement on Form S-3 that we filed with the SEC. This prospectus does not contain all of the information included in the registration statement. For further information about us and our securities, you should refer to the registration statement and the exhibits filed with the registration statement.

We are subject to the information requirements of the Securities Exchange Act of 1934 and file annual, quarterly and current reports, proxy statements and other information with the SEC. You can read our SEC filings, including the registration statement, over the Internet at the SEC's website at www.sec.gov or through our website at www.hemispherx.net. Information contained on our website is not considered to be a part of, nor incorporated by reference in, this prospectus. You may also read and copy any document we file with the SEC at its Public Reference Room at 100 F Street, NE, Washington, D.C. 20549.

You may also obtain copies of the documents at prescribed rates by writing to the Public Reference Room of the SEC at 100 F Street, NE, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room.

INFORMATION INCORPORATED BY REFERENCE

The SEC allows us to "incorporate by reference" the information that we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be an important part of this prospectus, and later information that we file with the SEC will automatically update and supersede this information. We incorporate by reference the following documents and any future filing made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 prior to the termination of the offering:

(a) Our annual report on Form 10-K for our fiscal year ended December 31, 2008, SEC File No. 1-13441.

(b) Our quarterly report on Form 10-Q for the period ended March 31, 2009, SEC File No. 1-13441.

(c) Our current reports on Form 8-K, SEC File No. 1-13441 filed with the SEC on June 17, 2009, May 27, 2009, May 26, 2009, May 19, 2009 and February 19, 2009.

(d) Our proxy statement on schedule 14A for our 2009 annual meeting, SEC File No. 1-13441.

You may request a copy of these filings, at no cost, by writing or telephoning us at the following address: Hemispherx Biopharma, Inc., 1617 JFK Boulevard, Philadelphia, Pennsylvania 19103, telephone number 215-988-0080.

You should rely only on the information incorporated by reference or provided in this prospectus or any supplement. We have not authorized anyone else to provide you with different information. We will not make offers to sell these shares in any state where the offer is not permitted. You should not assume that the information in this prospectus or any supplement is accurate as of any date other that the date on the front of those documents.

HEMISPHERX BIOPHARMA, INC.

$150,000,000

Common Stock
Preferred Stock
Warrants
Debt Securities

PROSPECTUS

June 22, 2009