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HEMISPHERX BIOPHARMA INC

Form 8-K/A

August 13, 2003

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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FORM 8-K/A  
Amendment No. 1

CURRENT REPORT

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

Date of Report - March 12, 2003 (March 11, 2003)  
(Date of earliest event reported)

Hemispherx Biopharma, Inc.  
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	0-27072 (Commission File Number)	52-0845822 (IRS Employer Identification Number)
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1617 JFK Boulevard (Address of principal executive offices)	19103 (Zip Code)
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Area Code (215) 988-0080  
(Registrant's telephone number)

Item 7. Financial Statements and Exhibits.

Seth forth below are the required Financial Statements and Pro Forma Financial Information related to the Registrant's acquisition of certain assets of Interferon Sciences, Inc. on March 11, 2003.

(a) Financial Statements.

The financial statements of Interferon Sciences, Inc. ("ISI") as of December 31, 2002 and 2001, and for the three years ended December 31, 2002 are included as

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EXHIBIT 99.1 to this Form 8-K/A and are incorporated herein by reference.

(b) Unaudited Pro forma Financial Information.

Consolidated Statements of Operations for the year ended December 31, 2002 and for the three months ended March 31, 2003.

Consolidated Balance Sheet as of March 31, 2003.

### UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS

On March 11, 2003, we executed two agreements with Interferon Sciences, Inc. ("ISI") to purchase certain of its assets.

In the first agreement with ISI, the Company acquired ISI's inventory of ALFERON N Injection(R), and a limited license for the production, manufacture use, marketing and sale of this product. For these assets, the Company:

- i) Issued 487,028 shares of its common stock, and
- ii) Agreed to pay ISI 6% of the net sales of the Product.

The Company also is required to pay ISI a service fee and pay certain of ISI's obligation related to the product.

In the second agreement with ISI, ISI has agreed to sell to the Company all of ISI's rights to the product and other assets related to the product including, but not limited to, real estate and machinery. For these assets, the Company will: i) Issue an additional 487,028 shares of its common stock; and ii) Continue to pay ISI 6% of the net sales of the product

In addition, the Company was required to satisfy three obligations of ISI. The Company satisfied two of these obligations, pursuant to forbearance agreements with The American National Red Cross and GP Strategies Corporation, two of ISI's creditors, by issuing an aggregate of 581,761 shares of common stock to these creditors. The third obligation is approximately \$521,000 and was secured by a lien on the property.

The second agreement with ISI is contingent on the Company receiving appropriate governmental approval for the real estate transaction and ISI stockholders approving the transactions contemplated by the second agreement.

We will account for these transactions as a Business Combination under Statement of Financial Accounting Standards ("SFAS") No. 141 Accounting for Business Combinations.

On March 12, 2003, we issued an aggregate of \$5,426,000 in principal amount of 6% Senior Convertible Debentures due January 31, 2005 and an aggregate of 743,288 Warrants to two investors in a private placement for aggregate anticipated gross proceeds of \$4,650,000. Pursuant to the terms of the Debentures, \$1,550,000 of the proceeds from the sale of the Debentures were held back and were to be released to us if, and only if we acquire, within a set time frame, ISI's facility, which is currently contingent upon receiving the appropriate governmental and ISI stockholder approval. The Debenture Holders waived this requirement and, on June 12, 2003, we received the \$1,550,000. The Debentures mature on January 31, 2005 and bear interest at 6% per annum, payable quarterly in cash or, subject to satisfaction of certain conditions, common stock. Any shares of common stock issued to the investors as payment of interest

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shall be valued at 95% of the average closing price of the common stock during the five consecutive business days ending on the third business day immediately preceding the applicable interest payment date. Pursuant to the terms and conditions of the Senior Convertible Debentures, we have pledged all of our assets other than intellectual property, as collateral and are subject to comply with certain financial and negative covenants, which include but are not limited to the repayment of principal balances upon achieving certain revenue milestone.

The Debentures are convertible at the option of the investors at any time through January 31, 2005 into shares of our common stock. The conversion price under the Debentures is fixed at \$1.46 per share, subject to adjustment for anti-dilution protection for issuance of common stock or securities convertible or exchangeable into common stock at a price less than the conversion price then in effect.

The investors also received Warrants to acquire at any time through March 12, 2008 an aggregate of 743,288 shares of common stock at a price of \$1.68 per share. On March 12, 2004, the exercise price of the Warrants will reset to the lesser of the exercise price then in effect or a price equal to the average of the daily price of the common stock between March 13, 2003 and March 11, 2004 (but in no event less than \$1.176 per share). The exercise price (and the reset price) under the Warrants also is subject to similar adjustments for anti-dilution protection. All of these warrants were exercised on June 25, 2003.

On June 25, 2003 the investors received additional warrants to acquire an aggregate of 1,000,000 shares of common stock. The warrants are exercisable at \$2.40 per share within five years from the date of issuance. On June 25, 2004, the exercise price of the Warrants will reset to the lesser of the exercise price then in effect or a price equal to the average of the daily price of the common stock between June 26, 2003 and June 23, 2004 (but in no event less than \$1.68 per share). The exercise price (and the reset price) under the Warrants also is subject to similar adjustments for anti-dilution protection.

The following unaudited Pro Forma consolidated statement of operations for the year ended December 31, 2002 and the three months ended March 31, 2003 have been prepared giving effect to the acquisition of certain assets of ISI and the related funding of the transaction, by the Company's senior convertible debentures, as if they occurred on January 1, 2002.

The following unaudited Pro Forma consolidated balance sheet has been prepared as if the second portion of the acquisition of certain assets of ISI and the related funding of the transaction, by the Company's senior convertible debentures, had occurred on March 31, 2003.

The unaudited pro-forma adjustments give effect to the second agreement with ISI irrespective of the fact that the second acquisition remains unconsummated and is contingent on the Company receiving the appropriate governmental approval for the real estate to be acquired and ISI stockholders approving the transaction.

The unaudited Pro Forma consolidated financial statements should be read in conjunction with the notes hereto and the following:

- o The Company's historical consolidated financial statements and notes thereto for the year ended December 31, 2002 included

- in the Company's Annual Report on Form 10-K/A
- o The Company's historical consolidated financial statements and notes thereto for the three months ended March 31, 2003 included in the Company's Report on Form 10-Q.
- o The historical financial statements and notes thereto of ISI included as Exhibit 99.1 to this Current Report of Form 8-K/A.

The following unaudited Pro Forma consolidated financial statements are preliminary and subject to change based on finalization of the other applicable

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post-closing adjustments including the finalization of the fair values assigned to acquired assets and assumed obligations. Results are not intended to indicate what operations would have been if transactions would have been consummated on these dates or a reflection of future operations.

Hemispherx Biopharma, Inc. and  
Subsidiaries  
Unaudited Pro Forma Consolidated Statement of Operations  
Year ended December 31, 2002  
(in thousands, except per share data)

	(1) HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES	(2) INTERFERON SCIENCES, INC. AND SUBSIDIARY	(3) PRO FORMA ADJUSTMENTS FOR FIRST ASSET ACQUISITION	PRO FORMA AS ADJUSTED FOR FIRST ASSET ACQUISITION
	2002	2002		
<b>Revenues:</b>				
Sales of product	\$ -	\$ 1,926	\$	\$ 1,926
Clinical treatment programs	341			341
License fee income	563			563
	-----	-----	-----	-----
	904	1,926	-	2,830
	-----	-----	-----	-----
<b>Costs and expenses:</b>				
Costs of goods sold/idle Production costs	-	1,482	(37) (a)	1,445
Research and development	4,946	1,514	(39) (a)	6,421
General and administrative	2,015	1,818	(34) (a) 116 (c)	3,915
	-----	-----	-----	-----
Total cost and expenses	6,961	4,814	6	11,781
	-----	-----	-----	-----
Interest and other income	103	7	(7) (a)	103
Interest and related expenses		(386)	386 (a) (1,551) (b)	(1,551)
Investments in unconsolidated affiliates	(1,470)			(1,470)

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Gain on sale of state net operating loss carryovers	528	(528) (a)	-
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Net loss	\$ (7,424)	\$ (2,739)	\$ (1,706)	\$ (11,869)	\$
Basic and diluted loss per share	\$ (0.23)			\$ (0.36)	
Basic and diluted weighted Average common shares outstanding	32,086		487	32,573	

See accompanying notes to consolidated statement of operations

NOTES TO UNAUDITED PROFORMA  
CONSOLIDATED STATEMENT OF OPERATIONS

The following notes describe the column headings in the unaudited pro forma consolidated statement of operations and the pro forma adjustments that have been made to this statement:

(1) Reflects the audited consolidated historical statement of operations of Hemispherx Biopharma, Inc. and subsidiaries for the year ended December 31, 2002.

(2) Reflects the audited consolidated historical statement of operations for ISI for the year ended December 31, 2002.

(3) Reflects pro forma adjustments relating to the first acquisition of certain assets of ISI and the related funding as follows:

(a) Adjustments to reflect the recording of costs related to sales of product by ISI where values were reduced to zero in years prior to 2002, the elimination of ISI's net interest expense, the elimination of ISI's depreciation, and the elimination of a gain on the sale of a tax loss by ISI as follows:

Inventory	\$ (287)
Interest expense-net	379
Depreciation	397
Sale of state net operating loss carryover	(528)
Total	\$ ( 39)

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(b) Increase in interest expense resulting from the issuance of \$3.1 million of 6% senior convertible debentures. Interest expense is inclusive of deferred interest charges resulting from the Company recording debt discounts of \$2.1 million in recognition of fair values of detachable warrants, contingent conversion features, original issued discount and settlement costs recorded in connection with the debenture offering.

(c) Increase in general and administrative costs of resulting from the recognition of 6% royalty charges on the net sales of the acquired ALFERON N injection product.

(4) Reflects pro forma adjustments relating to the second acquisition of certain asset of ISI and the related funding as follows:

(d) Increase in interest expense resulting from the issuance of an additional \$1.6 million 6% senior convertible debentures and additional detachable warrants to purchase 1,000,000 shares of common stock at \$2.40 per share . Interest expense is inclusive of deferred interest charges resulting from the Company recording of additional debt discounts of approximately \$ 2.8 million in recognition of fair values of additional detachable warrants, contingent conversion features, original issued discount and additional settlement costs recorded in connection with the debenture offering.

(e) Adjustments reflect depreciation expense relating to the acquired building as result of the second acquisition of certain assets of ISI.

Hemispherx Biopharma, Inc. and Subsidiaries  
 Unaudited Pro Forma Consolidated Statement of Operations  
 Three Months ended March 31, 2003  
 (in thousands, except per share data)

	(1)	(2)	(3)	PRO FORMA	PRO FORMA	PRO
	HEMISPHERX	INTERFERON	PRO FORMA	AS ADJUSTED	AS ADJUSTED	FU
	BIOPHARMA, INC.	SCIENCES, INC.	ADJUSTMENTS	FOR FIRST	FOR FIRST	ADJU
	AND SUBSIDIARIES	AND SUBSIDIARY	FOR FIRST	ASSET	ASSET	FOR
			ASSET	ACQUISITION	ACQUISITION	ACQU
			ACQUISITION			
	2003	2003				
	----	----				
Revenues:						
Sales of product	\$19	\$ 242	\$	\$ 261	\$	\$
Clinical treatment programs	47			47		
	-----	-----	-----	-----	-----	-----
	66	242		308		
	-----	-----	-----	-----	-----	-----
Costs and expenses:						
Costs of goods sold/idle						
Production costs	118	267	47 (a)	432		
Research and development	873	190	(7) (a)	1,056		

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General and administrative	667	266	(7) (a) 15 (c)	941
Total cost and expenses	1,658	723	48	2,429
Interest and other income	50			50
Interest and related expenses	(75)	(33)	33 (a) (311) (b)	(386)
Service fee income		115	(115) (a)	
Other income		6	(6) (a)	
Bulk sale of Alferon inventory		1,164	(1,164) (a)	
Net loss	\$ (1,617)	\$ 771	\$ (1,611)	\$ (2,457)
Basic and diluted loss per share	\$ (.05)			\$ (.07)
Basic and diluted weighted Average common shares outstanding	32,394		487	32,881

See accompanying notes to consolidated statement of operations

NOTES TO UNAUDITED PROFORMA  
CONSOLIDATED STATEMENT OF OPERATIONS

The following notes describe the column headings in the unaudited pro forma consolidated statement of operations and the pro forma adjustments that have been made to this statement:

(1) Reflects the unaudited consolidated historical statement of operations of Hemispherx Biopharma, Inc. and subsidiaries for the three months ended March 31, 2003.

(2) Reflects the unaudited consolidated historical statement of operations for ISI for the period ended March 11, 2003.

(3) Reflects pro forma adjustments relating to the first acquisition of certain assets of ISI and the related funding as follows:

(a) Adjustments to reflect the recording of costs related to sales of product by ISI where values were reduced to zero in years prior to 2002, the elimination of ISI's net interest expense, the elimination of ISI's depreciation, and the elimination of a gain and service fee income in connection with the sale of the Alferon business as follows:

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Inventory	\$ (109)
Interest expense	33
Depreciation	76
Service fee income	(115)
Other income	(6)
Bulk sale of Alferon inventory	(1,164)
	-----
Total	\$ (1,285)
	-----

(b) Increase in interest expense resulting from the issuance of \$3.1 million of 6% senior convertible debentures. Interest expense is inclusive of deferred interest charges resulting from the Company recording debt discounts of \$2.1 million in recognition of fair values of detachable warrants, contingent conversion features and original issued discount and settlement costs recorded in connection with the debenture offering.

(c) Increase in general and administrative costs resulting from the recognition of 6% royalty charges on the net sales of the acquired ALFERON N injection product.

(4) Reflects pro forma adjustments relating to the second acquisition of certain asset of ISI and the related funding as follows:

(d) Increase in interest expense resulting from the issuance of an additional \$1.6 million 6% senior convertible debentures and additional warrants to purchase 1,000,000 shares of common stock at \$2.40 per share. Interest expense is inclusive of deferred interest charges resulting from the Company recording of additional debt discounts of approximately \$2.8 million in recognition of fair values of additional detachable warrants, contingent conversion features, original issued discount and additional settlement costs recorded in connection with the debenture offering.

(e) Adjustments reflect depreciation expense relating to the acquired building as result of the second acquisition of certain assets of ISI.

Hemispherx Biopharma, Inc. and Subsidiaries		PRO FORMA	
Unaudited Pro Forma Consolidated Balance Sheet	(1)	(2)	AS
March 31, 2003	HEMISPHERX	PRO FORMA	ADJUSTED
(in thousands)	BIOPHARMA,	ADJUSTMENTS	FOR
	INC. AND	FOR SECOND	SECOND
	SUBSIDIARIES	ASSET	ASSET
	-----	ACQUISITION	ACQUISITION
		-----	-----
ASSETS			
Current Assets:			
Cash and cash equivalents	\$ 3,409	\$ 1,471	\$4,880
Other receivables	1,519		1,519
Inventories net of reserves	1,829		1,829
Prepaid and other current assets	142		142
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Total current assets	6,899	1,471	8,370
Property, plant and equipment, net	133	2,189	2,322
Patent and trademark rights, net	978		978
Investments in unconsolidated affiliates	408		408
Deferred financing costs	260	79	339
Other assets	51		51
Total assets	\$8,729	\$3,739	\$12,468
LIABILITIES			
Current liabilities:			
Accounts payable	\$1,588	\$ 522	\$2,110
Accrued expenses	668		668
Current portion of long term debt	570	(570)	-
Total current liabilities	2,826	(48)	2,778
Long term debt-net of current portion	638	(638)	-
Redeemable common stock	675	675	1,350
Stockholders' equity :			
Common stock	33	1	34
Additional paid-in capital	108,964	3,749	112,713
Accumulated deficit	(100,691)		(100,691)
Treasury stock	(3,716)		(3,716)
Total stockholders' equity	4,590	3,750	8,340
Total liabilities and stockholders' equity	\$ 8,729	\$ 3,739	\$12,468

See accompanying notes to consolidated balance sheet

NOTES TO UNAUDITED PROFORMA  
CONSOLIDATED BALANCE SHEET

The following notes describe the column headings in the unaudited pro-forma consolidated balance sheet and the pro forma adjustments that have been made to this balance sheet:

(1) Reflects the unaudited consolidated historic balance sheet of Hemispherx Biopharma Inc. and subsidiaries as of March 31, 2003.

(2) Reflects pro forma adjustments for the second acquisition of certain assets of ISI of approximately \$2.2 million, the assumption of certain obligations, and the related financing, inclusive of the proceeds received totaling approximately \$1.5 million, from the issuance of an additional \$1.6 million of 6% Senior Convertible Debentures, additional warrants to acquire an aggregate of 1,000,000 shares of common stock, the recording of additional debt

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discounts of approximately \$2.8 million in recognition of fair values of additional detachable warrants, contingent conversion features, original issued discount and settlement costs recorded in connection with the debenture offering, resulting in a net adjustment of approximately \$1.2 million, which effectively reduced the carrying value of the debt to zero and increased additional paid in capital by approximately \$3.8 million. Portions of the common shares, totaling approximately \$.7 million issued to ISI were redeemable in nature and are reflected as such.

As a result of the agreements, the following table summarizes the estimated fair values of the assets and liabilities assumed at the acquisition date.  
(AMOUNTS IN THOUSANDS)

Second Acquisition  
-----

Building	\$2,189
Fair Value of liabilities Assumed	(522)
	-----
Fair Value of Common Shares Issued	\$1,667
	=====

(a) Exhibits

Exhibit No.	Exhibit
99.1	The financials statements of Interferon Sciences, Inc. as of December 31, 2002 and 2001 and for the three years ended December 31, 2002.

SIGNATURE

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

Hemispherx Biopharma, Inc.

By:  
/s/ William A. Carter

August 13 , 2003

William A. Carter, M.D., President

