

HEMISPHERX BIOPHARMA INC
Form 10-Q/A
February 14, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q/A

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

For the Quarterly Period Ended March 31, 2010

Commission File Number: 1-13441

HEMISPHERX BIOPHARMA, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

52-0845822
(I.R.S. Employer
Identification No.)

1617 JFK Boulevard, Suite 660, Philadelphia, PA 19103
(Address of principal executive offices) (Zip Code)

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

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
 Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or such shorter period that the registrant was required to submit and post such files).
 Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):
 Large accelerated filer Accelerated filer
 Non-accelerated filer Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
 Yes No

132,876,924 shares of common stock were issued and outstanding as of May 05, 2010.

EXPLANATORY NOTE

Hemispherx Biopharma, Inc. (“Hemispherx”, the “Company”, “we”, “our” or “us”) is filing this amendment to its Quarterly Report on Form 10-Q (“Form 10-Q/A”) to restate its Consolidated Condensed Financial Statements as of and for the three months ended March 31, 2010 as described in Note 11, Restatement, of the Notes to the Consolidated Condensed Financial Statements included herein. As previously disclosed in the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on December 28, 2010, the Company received a comment letter from the SEC concerning its review of the Company’s annual report on Form 10-K, as amended, for the year ended December 31, 2009. During the process of resolving the SEC’s comments, the SEC Staff alerted the Company that they did not agree with the Company’s method of computing the fair value of certain Warrants. As a result, on December 22, 2010, after discussion with the Company’s independent registered public accounting firm, the Company’s Audit Committee determined that the previously issued financial statements included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2009 and in its Forms 10-Q for the periods ended March 31, 2010, June 30, 2010 and September 30, 2010 and in its Forms 10-Q for the periods ended June 30, 2009 and September 30, 2009, should not be relied upon. The Company simultaneously herewith is filing amendments to its Annual Report on Form 10-K for the year ended December 31, 2009 and Quarterly Reports on Form 10-Q for the quarters ended June 30, 2010 and September 30, 2010 to reflect this restatement.

For the convenience of the reader, this Form 10-Q/A sets forth the Company’s original Form 10-Q for the quarter ended March 30, 2010 (the “Original 10-Q”) in its entirety, as amended by, and to reflect, the restatement. No attempt has been made in this Form 10-Q/A to update other disclosures presented in the Original 10-Q, except as required to reflect the effects of the restatement. This Form 10-Q/A does not reflect events occurring after the filing of the Original 10-Q or modify or update those disclosures, including the exhibits to the Original 10-Q affected by subsequent events.

The following sections of this Form 10-Q/A have been amended to reflect the restatement:

Part I – Item 1 – Financial Statements; and

Part I – Item 2 – Management’s Discussion and Analysis of Financial Condition and Results of Operations.

This Form 10-Q/A has been signed as of a current date and, as required by Rule 12b-15 of the Securities Exchange Act of 1934, all certifications of the Company’s Chief Executive Officer and our Chief Financial and Accounting Officer are given as of a current date. Accordingly, this Form 10-Q/A should be read in conjunction with our filings made with the SEC subsequent to the filing of the Original 10-Q, including any amendments to those filings.

PART I - FINANCIAL INFORMATION

ITEM 1: Financial Statements

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES

Consolidated Balance Sheets

(in thousands, except for share and per share amounts)

	December 31, 2009 (restated)	March 31, 2010 (Unaudited) (restated)
ASSETS		
Current assets:		
Cash and cash equivalents (Note 12)	\$ 58,072	\$ 50,723
Inventories (Note 4)	-	-
Marketable securities maturing in less than one year (Note 5)	-	3,053
Prepaid expenses and other current assets	332	216
Total current assets	58,404	53,992
Property and equipment, net	4,704	4,738
Patent and trademark rights, net	830	838
Investment	35	35
Construction in progress (Note 8)	135	389
Other assets (Note 4)	886	892
Total assets	\$ 64,994	\$ 60,884
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 1,294	\$ 1,808
Accrued expenses (Note 6)	1,321	615
Current portion of capital lease (Note 7)	-	35
Total current liabilities	2,615	2,458
Long-term liabilities		
Long-term portion of capital lease (Note 7)	-	30
Redeemable warrants (Note 11)	3,684	5,020
Total liabilities	6,299	7,508
Commitments and contingencies		
Stockholders' equity (Note 9):		
Preferred stock, par value \$0.01 per share, authorized 5,000,000; issued and outstanding; none	-	-
Common stock, par value \$0.001 per share, authorized 200,000,000 shares; issued and outstanding 132,787,447 and 132,860,602, respectively	133	133
Additional paid-in capital	263,151	263,232
Accumulated other comprehensive loss	-	(20)

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Accumulated deficit	(204,589)	(209,969)
Total stockholders' equity	58,695	53,376
Total liabilities and stockholders' equity	\$ 64,994	\$ 60,884

See accompanying notes to consolidated financial statements.

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
 Consolidated Statements of Operations
 (in thousands, except share and per share data)
 (Unaudited)

	Three months ended March 31,	
	2009	2010 (restated)
Revenues:		
Clinical treatment programs	\$ 29	\$ 32
Total revenues	29	32
Costs and expenses:		
Production/cost of goods sold	121	140
Research and development	1,595	1,996
General and administrative	1,166	1,969
Total costs and expenses	2,882	4,105
Operating loss	(2,853)	(4,073)
Financing costs	(241)	-
Interest and other income	7	29
Redeemable warrants valuation adjustment (Note 11)	-	(1,336)
Net loss	\$ (3,087)	\$ (5,380)
Basic and diluted loss per share (Note 2)	\$ (.04)	\$ (.04)
Weighted average shares outstanding, basic and diluted	79,836,247	132,818,036

See accompanying notes to consolidated financial statements.

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
Consolidated Statements of Changes in Stockholders' Equity and Comprehensive Loss
(in thousands except share data)
(Unaudited)

	Common Stock Shares	Common Stock \$.001 Par Value	Additional Paid-In Capital (restated)	Accumulated Other Compre-hensive Loss	Accumulated Deficit (restated)	Total Stockholders' Equity (restated)	Compre- hensive Loss (restated)
Balance at December 31, 2009	132,787,447	\$ 133	\$ 263,151	\$ -	\$ (204,589)	\$ 58,695	\$ -
Stock issued for settlement of accounts payable	73,155	-	45	-	-	45	-
Equity based compensation	-	-	36	-	-	36	-
Unrealized loss in investment securities	-	-	-	(20)	-	(20)	(20)
Net loss - restated	-	-	-	-	(5,380)	(5,380)	(5,380)
Balance at March 31, 2010 - restated	132,860,602	\$ 133	\$ 263,232	\$ (20)	\$ (209,969)	\$ 53,376	\$ (5,400)

See accompanying notes to consolidated financial statements.

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows

For the Three Months Ended March 31, 2009 and 2010

(in thousands)

(Unaudited)

	2009	2010 (restated)
Cash flows from operating activities:		
Net loss - restated	\$ (3,087)	\$ (5,380)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of property and equipment	90	94
Amortization of patent and trademark rights, and royalty interest	119	20
Financing cost related to Standby Financing	241	-
Redeemable warrants valuation adjustment	-	1,336
Equity based compensation	18	36
Change in assets and liabilities:		
Prepaid expenses and other current assets	56	116
Accounts payable	547	559
Accrued expenses	592	(706)
Net cash used in operating activities	\$ (1,424)	\$ (3,925)
Cash flows from investing activities:		
Purchase of property plant and equipment	\$ (6)	\$ (312)
Additions to patent and trademark rights	(17)	(28)
Capital lease deposit	-	(6)
Purchase of short-term investments	(1,920)	(3,073)
Net cash used in investing activities	\$ (1,943)	\$ (3,419)

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows (Continued)
For the Three Months Ended March 31, 2009 and 2010

(in thousands)

(Unaudited)

	2009	2010 (restated)
Cash flows from financing activities:		
Payments on capital lease	\$ -	\$ (5)
Proceeds from sale of stock, net of issuance costs	869	-
Net cash provided by (used in) financing activities	\$ 869	\$ (5)
Net decrease in cash and cash equivalents	(2,498)	(7,349)
Cash and cash equivalents at beginning of period	6,119	58,072
Cash and cash equivalents at end of period	\$ 3,621	\$ 50,723
Supplemental disclosures of non-cash investing and financing cash flow information:		
Issuance of common stock for accounts payable and accrued expenses	\$ 360	\$ 45
Equipment acquired by capital lease	\$ -	\$ 70
Unrealized loss on investments	\$ -	\$ (20)
Redeemable warrants valuation adjustment	\$ -	\$ 1,336

See accompanying notes to consolidated financial statements.

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1: Basis Of Presentation

The consolidated financial statements include the financial statements of Hemispherx Biopharma, Inc. and its wholly-owned subsidiaries. The Company has three domestic subsidiaries BioPro Corp., BioAegean Corp. and Core Biotech Corp., all of which are incorporated in Delaware and are dormant. The Company's foreign subsidiary, Hemispherx Biopharma Europe N.V./S.A., established in Belgium in 1998, has limited or no activity. All significant intercompany balances and transactions have been eliminated in consolidation.

In the opinion of Management, all adjustments necessary for a fair presentation of such consolidated financial statements have been included. Such adjustments consist of normal recurring items and the impact of a restatement on the December 31, 2009 Balance Sheet and Income Statement for the year then ended. Interim results are not necessarily indicative of results for a full year.

The interim consolidated financial statements and notes thereto are presented as permitted by the Securities and Exchange Commission ("SEC"), and do not contain certain information which will be included in our annual consolidated financial statements and notes thereto.

These consolidated financial statements should be read in conjunction with our consolidated financial statements for the year ended December 31, 2009 included in our amended and restated annual report on Form 10-K/A-2, filed on February 11, 2011.

Note 2: Net Loss Per Share

Basic and diluted net loss per share is computed using the weighted average number of shares of common stock outstanding during the period. Equivalent common shares, consisting of stock options and warrants including the Company's convertible debentures, which amounted to 35,737,069 and 21,236,453 shares, are excluded from the calculation of diluted net loss per share for the three months ended March 31, 2009 and 2010, respectively, since their effect is antidilutive.

Note 3: Equity Based Compensation

The fair value of each option award is estimated on the date of grant using a Black-Scholes option valuation model. Expected volatility is based on the historical volatility of the price of the Company's stock. The risk-free interest rate is based on U.S. Treasury issues with a term equal to the expected life of the option. The Company uses historical data to estimate expected dividend yield, expected life and forfeiture rates. The fair values of the options granted, were estimated based on the following weighted average assumptions:

	Three Months Ended March 31,	
	2009	2010
Risk-free interest rate	1.76%	1.02%
Expected dividend yield	-	-
Expected lives	5.0 years	5.0 years
Expected volatility	86.78%	109.81%
Weighted average grant date fair value of options and warrants issued	\$ 7,800	\$ 11,300

Stock option activity for 2009 and during the three months ended March 31, 2010, is as follows:

Stock option activity for employees:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding December 31, 2008	6,258,608	\$ 2.60	7.92	\$ -
Options granted	-	-	-	-
Options forfeited	(29,856)	2.24	5.75	-
Outstanding December 31, 2009	6,228,752	\$ 2.60	6.95	-
Options granted	-	-	-	-
Options forfeited	-	-	-	-
Outstanding March 31, 2010	6,228,752	\$ 2.60	6.70	\$ -
Exercisable March 31, 2010	6,190,419	\$ 2.60	6.71	\$ -

The weighted-average grant-date fair value of options granted during the three months ended March 31, 2009 and 2010 was \$-0- and \$-0-, respectively.

Unvested stock option activity for employees:

	Number of Options	Weighted Average Exercise Price	Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding December 31, 2008	76,944	\$ 1.41	8.89	\$ -
Options granted	-	-	-	-
Options vested	(38,611)	1.28	7.92	-
Options forfeited	-	-	-	-
Outstanding December 31, 2009	38,333	\$ 1.54	8.00	-
Options granted	-	-	-	-
Options vested	-	-	-	-
Options forfeited	-	-	-	-
Outstanding March 31, 2010	38,333	\$ 1.54	7.75	\$ -

Stock option activity for non-employees:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding December 31, 2008	2,417,482	\$ 2.35	6.98	-
Options granted	361,250			