

MHR ADVISORS LLC

Form 4

May 09, 2013

**FORM 4****UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

Check this box  
if no longer  
subject to  
Section 16.  
Form 4 or  
Form 5  
obligations  
may continue.  
See Instruction  
1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF  
SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934,  
Section 17(a) of the Public Utility Holding Company Act of 1935 or Section  
30(h) of the Investment Company Act of 1940

## OMB APPROVAL

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(Print or Type Responses)

1. Name and Address of Reporting Person \*  
RACHESKY MARK H MD

2. Issuer Name and Ticker or Trading  
Symbol  
EMISPHERE TECHNOLOGIES  
INC [EMIS]

5. Relationship of Reporting Person(s) to  
Issuer

(Check all applicable)

(Last) (First) (Middle)  
40 WEST 57TH STREET, 24TH  
FLOOR

3. Date of Earliest Transaction  
(Month/Day/Year)  
05/07/2013

☒ Director ☒ 10% Owner  
☐ Officer (give title below) ☐ Other (specify below)

(Street)  
NEW YORK, NY 10019

4. If Amendment, Date Original  
Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check  
Applicable Line)  
☐ Form filed by One Reporting Person  
☒ Form filed by More than One Reporting  
Person

(City) (State) (Zip)

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V Amount (D) Price			

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

**Persons who respond to the collection of  
information contained in this form are not  
required to respond unless the form  
displays a currently valid OMB control  
number.**

SEC 1474  
(9-02)

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned  
(e.g., puts, calls, warrants, options, convertible securities)**

1. Title of Derivative Security	2. Conversion	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if	4. Transaction	5. Number of Derivative	6. Date Exercisable and Expiration Date	7. Title and Underlying
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(Instr. 3)	or Exercise Price of Derivative Security	any (Month/Day/Year)	Code (Instr. 8)	Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	(Month/Day/Year)		(Instr. 3 and 4)		
			Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title
Warrants (right to buy) <u>(9)</u>	\$ 0.5	05/07/2013	J <u>(9)</u>		2,810,746		05/07/2013	07/08/2019	Common Stock
Warrants (right to buy) <u>(9)</u>	\$ 0.5	05/07/2013	J <u>(9)</u>		347,551		05/07/2013	07/08/2019	Common Stock
Warrants (right to buy) <u>(9)</u>	\$ 0.5	05/07/2013	J <u>(9)</u>		1,944,050		05/07/2013	07/08/2019	Common Stock
Warrants (right to buy) <u>(9)</u>	\$ 0.5	05/07/2013	J <u>(9)</u>		4,897,653		05/07/2013	07/08/2019	Common Stock
Convertible Reimbursement Notes <u>(10)</u>	\$ 0.5	05/07/2013	J <u>(10)</u>		\$ 128,070.5		05/07/2013	04/26/2014	Common Stock
Convertible Reimbursement Notes <u>(10)</u>	\$ 0.5	05/07/2013	J <u>(10)</u>		\$ 17,840.67		05/07/2013	04/26/2014	Common Stock
Convertible Reimbursement Notes <u>(10)</u>	\$ 0.5	05/07/2013	J <u>(10)</u>		\$ 139,539.5		05/07/2013	04/26/2014	Common Stock
Convertible Reimbursement Notes <u>(10)</u>	\$ 0.5	05/07/2013	J <u>(10)</u>		\$ 351,716		05/07/2013	04/26/2014	Common Stock
Convertible Bridge Notes <u>(11)</u>	\$ 0.5	05/07/2013	J <u>(11)</u>		\$ 390,664.21		05/07/2013	09/26/2017	Common Stock
Convertible Bridge Notes <u>(11)</u>	\$ 0.5	05/07/2013	J <u>(11)</u>		\$ 51,968.1		05/07/2013	09/26/2017	Common Stock
Convertible Bridge Notes <u>(11)</u>	\$ 0.5	05/07/2013	J <u>(11)</u>		\$ 298,537.67		05/07/2013	09/26/2017	Common Stock
Convertible Bridge Notes <u>(11)</u>	\$ 0.5	05/07/2013	J <u>(11)</u>		\$ 752,105.02		05/07/2013	09/26/2017	Common Stock

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
RACHESKY MARK H MD 40 WEST 57TH STREET 24TH FLOOR NEW YORK, NY 10019	X	X		
MHR Capital Partners Master Account LP 40 WEST 57TH STREET 24TH FLOOR NEW YORK, NY 10019		X		
MHR ADVISORS LLC 40 WEST 57TH STREET 24TH FLOOR NEW YORK, NY 10019		X		
MHR Institutional Partners II LP 40 WEST 57TH STREET 24TH FLOOR NEW YORK, NY 10019		X		
MHR Institutional Partners IIA LP 40 WEST 57TH STREET 24TH FLOOR NEW YORK, NY 10019		X		
MHR Institutional Advisors II LLC 40 WEST 57TH STREET 24TH FLOOR NEW YORK, NY 10019		X		
MHRC LLC 40 WEST 57TH STREET 24TH FLOOR NEW YORK, NY 10019		X		
MHRC II LLC 40 WEST 57TH STREET 24TH FLOOR NEW YORK, NY 10019		X		
MHR FUND MANAGEMENT LLC 40 WEST 57TH STREET 24TH FLOOR NEW YORK, NY 10019		X		
MHR Holdings LLC 40 WEST 57TH STREET 24TH FLOOR NEW YORK, NY 10019		X		

# Signatures

/s/ Janet Yeung, Attorney  
in Fact

05/09/2013

\_\_Signature of Reporting Person

Date

## Explanation of Responses:

\* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

\*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) These securities are held for the account of MHR Capital Partners Master Account LP, an Anguilla, British West Indies limited partnership ("Master Account"). MHR Advisors LLC, a Delaware limited liability company ("Advisors"), is the general partner of Master Account. MHRC LLC, a Delaware limited liability company ("MHRC"), is the managing member of Advisors and in such capacity may be deemed to be the beneficial owner of the securities held for the account of Master Account. Mark H. Rachesky, M.D. ("Dr. Rachesky") is the managing member of MHRC. In such capacity, Dr. Rachesky may be deemed to be the beneficial owner of the securities held for the account of Master Account. (Continued to Footnote 2)

(2) (Continued from Footnote 1) MHR Fund Management LLC, a Delaware limited liability company ("Fund Management"), has an investment management agreement with Master Account pursuant to which it has the power to vote or direct the vote and to dispose or to direct the disposition of the shares held for the account of Master Account and, accordingly, Fund Management may be deemed to beneficially own the securities held for the account of Master Account. MHR Holdings LLC, a Delaware limited liability company ("MHR Holdings"), is the managing member of Fund Management and, in such capacity, may be deemed to beneficially own any shares that are deemed to be beneficially owned by Fund Management. Accordingly, MHR Holdings may be deemed to beneficially own the shares held for the account of Master Account.

(3) These securities are held for the account of MHR Capital Partners (100) LP, a Delaware limited partnership ("Capital Partners (100)"). Advisors is the general partner of Capital Partners (100). MHRC is the managing member of Advisors and in such capacity may be deemed to be the beneficial owner of the securities held for the account of Capital Partners (100). Dr. Rachesky is the managing member of MHRC. In such capacity, Dr. Rachesky may be deemed to be the beneficial owner of the securities held for the account of Capital Partners (100). (Continued to Footnote 4)

(4) (Continued from Footnote 3) Fund Management has an investment management agreement with Capital Partners (100) pursuant to which it has the power to vote or direct the vote and to dispose or to direct the disposition of the securities held for the account of Capital Partners (100) and, accordingly, Fund Management may be deemed to beneficially own the securities held for the account of Capital Partners (100). MHR Holdings is the managing member of Fund Management and, in such capacity, may be deemed to beneficially own any shares that are deemed to be beneficially owned by Fund Management. Accordingly, MHR Holdings may be deemed to beneficially own the shares held for the account of Capital Partners (100).

(5) These securities are held for the account of MHR Institutional Partners II LP, a Delaware limited partnership ("Institutional Partners II"). MHR Institutional Advisors II LLC, a Delaware limited liability company ("Institutional Advisors II"), is the general partner of Institutional Partners II. MHRC II LLC, a Delaware limited liability company ("MHRC II"), is the managing member of Institutional Advisors II and in such capacity may be deemed to be the beneficial owner of the securities held for the account of Institutional Partners II. Dr. Rachesky is the managing member of MHRC II. In such capacity, Dr. Rachesky may be deemed to be the beneficial owner of the securities held for the account of Institutional Partners II. (Continued to Footnote 6)

(6) (Continued from Footnote 5) Fund Management has an investment management agreement with Institutional Partners II pursuant to which it has the power to vote or direct the vote and to dispose or to direct the disposition of the securities held for the account of Institutional Partners II and, accordingly, Fund Management may be deemed to beneficially own the securities held for the account of Institutional Partners II. MHR Holdings is the managing member of Fund Management and, in such capacity, may be deemed to beneficially own any shares that are deemed to be beneficially owned by Fund Management.

(7) These securities are held for the account of MHR Institutional Partners IIA LP, a Delaware limited partnership ("Institutional Partners IIA"). Institutional Advisors II is the general partner of Institutional Partners IIA. MHRC II is the managing member of Institutional Advisors II and in such capacity may be deemed to be the beneficial owner of the securities held for the account of Institutional Partners IIA. Dr. Rachesky is the managing member of MHRC II. In such capacity, Dr. Rachesky may be deemed to be the beneficial owner of the securities held for the account of Institutional Partners IIA. (Continued to Footnote 8)

(8) (Continued from Footnote 7) Fund Management has an investment management agreement with Institutional Partners IIA pursuant to which it has the power to vote or direct the vote and to dispose or to direct the disposition of the securities held for the account of Institutional Partners IIA and, accordingly, Fund Management may be deemed to beneficially own the securities held for the account of Institutional Partners IIA. MHR Holdings is the managing member of Fund Management and, in such capacity, may be deemed to beneficially own any shares that are deemed to be beneficially owned by Fund Management. Accordingly, MHR Holdings may be deemed to beneficially own the shares held for the account of Institutional Partners IIA.

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- (9) The securities reported as having been acquired herein were issued pursuant to that certain Restructuring Agreement, dated April 26, 2013 by and among Master Account, Capital Partners (100), Institutional Partners II, Institutional Partners IIA and the Issuer (the "Restructuring Agreement"), as further described in that certain Schedule 13D/A filed by the Reporting Persons on April 30, 2013 (the "Schedule 13D/A").
- (10) Since June 4, 2010, the Reporting Persons have held Promissory Notes of the Issuer (the "Reimbursement Notes"). Pursuant to the Restructuring Agreement, as further described in the Schedule 13D/A, the Reimbursement Notes have been amended and restated to provide, among other things, for such Reimbursement Notes to be convertible to shares of common stock of the Issuer.
- (11) Since October 17, 2012, the Reporting Persons have held 13% Senior Secured Promissory Notes of the Issuer (the "Bridge Notes"). Pursuant to the Restructuring Agreement, as further described in the Schedule 13D/A, the Bridge Notes have been amended and restated to provide, among other things, for such Bridge Notes to be convertible to shares of common stock of the Issuer (the "Amended and Restated Reimbursement Notes"). Interest on the Amended and Restated Bridge Notes is payable in kind, semiannually, in additional Amended and Restated Bridge Notes.

### Remarks:

This Form 4 is one of four Form 4s filed by the Reporting Persons on May 9, 2013 for transactions effected by the Reporting Persons.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

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