

EMISPHERE TECHNOLOGIES INC

Form 4

May 18, 2006

**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

OMB  
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2005  
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response... 0.5

(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)  
05/16/2006

☒ 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	2. Conversion	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if	4. Transaction	5. Number of Derivative Securities Acquired (A) or	6. Date Exercisable and Expiration Date	7. T
							Und

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Security (Instr. 3)	or Exercise Price of Derivative Security	any (Month/Day/Year)	Code (Instr. 8)	Disposed of (D) (Instr. 3, 4, and 5)	(Month/Day/Year)	(Ins
			Code V	(A)	(D)	Title
Exchange- able Secured Loan (1)	\$ 3.78	05/16/2006	D	\$ 3,036,203	01/30/2006 09/26/2012	Co S
Exchange-able Secured Loan (1)	\$ 3.78	05/16/2006	D	\$ 415,208	01/30/2006 09/26/2012	Co S
Exchange- able Secured Loan (1)	\$ 3.78	05/16/2006	D	\$ 3,303,638	01/30/2006 09/26/2012	Co S
Exchange-able Secured Loan (1)	\$ 3.78	05/16/2006	D	\$ 8,322,868	01/30/2006 09/26/2012	Co S
Convertible Note (1)	\$ 3.78	05/16/2006	C	\$ 3,062,968	05/16/2006 09/26/2012	Co S
Convertible Note (1)	\$ 3.78	05/16/2006	C	\$ 418,868	05/16/2006 09/26/2012	Co S
Convertible Note (1)	\$ 3.78	05/16/2006	C	\$ 3,332,761	05/16/2006 09/26/2012	Co S
Convertible Note (1)	\$ 3.78	05/16/2006	C	\$ 8,396,237	05/16/2006 09/26/2012	Co S

## 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 ADVISORS LLC 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

MHR Institutional Advisors 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

## Signatures

Mark H.  
Rachesky, MD

05/18/2006

\*\*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) Commencing on January 30, 2006, the Reporting Persons became entitled to exchange a secured loan made to the Issuer into convertible notes of the Issuer on a dollar-for-dollar basis. This Form 4 is being filed to report the exchange of the secured loan for such convertible notes, which are convertible into shares of the Issuer's common stock. Due to the conversion provision with respect to the secured loan, accrued and unpaid interest on the secured loan was converted into additional principal on the Convertible Note. Accordingly, additional shares of the Issuer's common stock are issuable upon the conversion of the convertible notes into shares of the Issuer's common stock.

(2) These securities are, or were, as applicable, 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. Mark H. Rachesky, M.D. ("Dr. Rachesky") is the managing member of Advisors. In such capacity, Dr. Rachesky may be deemed to be the beneficial owner of the securities held for the account of Master Account. MHR Fund Management LLC ("Fund Management") is a Delaware limited liability company that 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 Securities and, accordingly, Fund Management may be deemed to beneficially own the Securities held for the account of Master Account.

(3) These securities are, or were, as applicable, 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). Dr. Rachesky is the managing member of Advisors. In such capacity, Dr. Rachesky may be deemed to be the beneficial owner of the securities held for the account of Capital Partners (100). 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 and, accordingly, Fund Management may be deemed to beneficially own the Securities held for the account of Capital Partners (100).

(4) These securities are, or were, as applicable, 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. Dr. Rachesky is the managing member of Institutional Advisors 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. 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 and, accordingly, Fund Management may be deemed to beneficially own the Securities held for the account of Institutional Partners II.

(5) These securities are, or were, as applicable, 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. Dr. Rachesky is the managing member of Institutional Advisors 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. 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 and, accordingly,

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Fund Management may be deemed to beneficially own the Securities held for the account fo Institutional Partnes IIA.

### Remarks:

Remarks:

The filing of this statement shall not be deemed an admission that any of the Reporting Persons is the beneficial owner of any

### Exhibit List:

Exhibit 99- Joint Filer Information

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

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