

Edgar Filing: EMISPHERE TECHNOLOGIES INC - Form S-8 POS

EMISPHERE TECHNOLOGIES INC
Form S-8 POS
June 25, 2003

Registration Nos. 333-29981
33-88598

As filed with the Securities and Exchange Commission on June 25, 2003.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

POST EFFECTIVE AMENDMENT NO. 1 TO FORMS S-8
REGISTRATION STATEMENTS UNDER THE SECURITIES ACT OF 1933
EMISPHERE TECHNOLOGIES, INC.
(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation or organization)

13-3306985
(IRS Employer Identification No.)

765 Old Saw Mill River Road
Tarrytown, New York 10591
(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)

Emisphere Technologies, Inc. 1997 Stock Option Plan for Outside Directors
Emisphere Technologies, Inc. Non-Qualified Employee Stock Purchase Plan
(Full title of plans)

Michael M. Goldberg, M.D.
Chairman of the Board, President and Chief Executive Officer
c/o Emisphere Technologies, Inc.
765 Old Saw Mill River Road
Tarrytown, New York 10591
(Name and address of agent for service)

(914) 347-2220
(Telephone number, including area code, of agent for service)

COPY TO:
Edwin S. Maynard, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

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CALCULATION OF REGISTRATION FEE

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| Title of Securities to be Registered | Amount to be Registered | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offer Price |
|--|-------------------------|---|--|
| Common Stock, par value \$0.01 per share | 300,000 shares (1) (2) | \$ 4.08 (1) | \$1,224,000 |

- (1) Represents (a) 100,000 shares issuable upon exercise of options granted pursuant to the Emisphere Technologies, Inc. Non-Qualified Stock Purchase Plan and (b) 200,000 shares issuable upon exercise of options to be granted pursuant to the Emisphere Technologies, Inc. 1997 Stock Option Plan for Outside Directors an offering price, calculated in accordance with Rule 457(h)(1) under the Securities Act as amended, equal to \$4.08, the average of the high and low prices reported on the Nasdaq National Market on June 20, 2003.
- (2) This Registration Statement shall, in accordance with Rule 416 under the Securities Act of 1933, as amended, be deemed to cover such additional shares as may be issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.

INCORPORATION BY REFERENCE
OF
REGISTRATION STATEMENTS ON FORM S-8 (FILE NOS. 333-29981 AND 33-88598)

We are filing this registration statement for the purpose of registering, in accordance with General Instruction E of Form S-8, an additional 300,000 shares of Common Stock, par value \$.01 per share, representing (i) 200,000 shares to be issued under the Emisphere Technologies, Inc. 1997 Stock Option Plan for Outside Directors ("Outside Director Shares") and (ii) 100,000 shares to be issued under the Emisphere Technologies, Inc. Non-Qualified Stock Purchase Plan (the "ESPP Shares"). With respect to the Outside Director Shares, we incorporate by reference into this registration statement on Form S-8 our previously filed registration statement on Form S-8 (File No. 333-29981, filed on June 25, 1997) in its entirety, including the exhibits to it. With respect to the ESPP Shares, we incorporate by reference into this registration statement on Form S-8 our previously filed registration statement on Form S-8 (File No. 33-88598, filed on January 18, 1995) in its entirety, including the exhibits to it.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 8. EXHIBITS

| EXHIBIT | DESCRIPTION |
|---------|---|
| 5.1 | Opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to the Emisphere, regarding the legality of the common stock being registered. |
| 10.1 | Amendment to the Emisphere Technologies, Inc. 1997 Stock Option Plan for Outside Directors. |

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- 10.2 Amendment to the Emisphere Technologies, Inc. Non-Qualified Employee Stock Purchase Plan.
- 23.1 Consent of Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to the Emisphere (contained in Exhibit 5.1).
- 23.2 Consent of PricewaterhouseCoopers LLP.
- 24.1 Powers of Attorney (previously filed).

2

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on June 25, 2003.

EMISPHERE TECHNOLOGIES, INC.

By: /s/ Michael M. Goldberg, M.D.

 Michael M. Goldberg, M.D.
 Chairman of the Board and Chief
 Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

| SIGNATURE ----- | TITLE ----- | DATE ---- |
|---|--|---------------|
| /s/ Michael M. Goldberg, M.D. ----- Michael M. Goldberg, M.D. | Chairman of the Board and Chief Executive Officer | June 25, 2003 |
| * ----- Howard M. Pack | Director | June 25, 2003 |

3

| SIGNATURE ----- | TITLE ----- | DATE ---- |
|--------------------|----------------|---------------|
| * ----- | Director | June 25, 2003 |

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Jere E. Goyan, Ph.D.

*

Director

June 25, 2003

Mark I. Greene, M.D., Ph.D.

Director

Joseph R. Robinson, Ph.D.

*

Director

June 25, 2003

Robert J. Levenson

/s/ Fredrick D. Cobb

(Principal Accounting
Officer)

June 25, 2003

Fredrick D. Cobb

* executed pursuant to power-
of-attorney filed previously.

4

EXHIBIT INDEX

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II-1