

SPHERIX INC  
Form 8-K  
January 30, 2013

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) January 1, 2013

SPHERIX® INCORPORATED  
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	0-5576  6430 Rockledge Drive, Suite 503 Bethesda, Maryland (Address of principal executive offices)	(Commission File Number)	52-0849320  20817 (I.R.S. Employer Identification No.)  (Zip Code)
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Registrant's telephone number, including area code 301-897-2540

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement

Please refer to the disclosure provided under Item 3.03 of this Current Report on Form 8-K.

Item 3.03 Material Modification to Rights of Security Holders

Effective January 1, 2013, the Board of Directors of Spherix Incorporated (the "Company") authorized the issuance of one preferred share purchase right (a "Right") for each outstanding share of common stock, par value \$0.0001 per share (the "Common Shares"), of the Company. The distribution is payable to stockholders of record at the close of business on January 1, 2013 (the "Record Date"), and with respect to all Common Shares that become outstanding after the Record Date and prior to the earliest of the Distribution Date (as defined below), the redemption of the Rights, the exchange of the Rights, and the expiration of the Rights (and, in certain cases, following the Distribution Date).

The Board adopted the Rights Agreement (as herein defined) to protect stockholders from coercive or otherwise unfair takeover tactics. In general terms, it works by imposing a significant penalty under any person or group that acquires 10% or more of the Common Shares without the approval of the Board. As a result, the overall effect of the Rights Agreement and the issuance of the Rights may be to render more difficult or discourage a merger, tender or exchange offer or other business combination involving the Company that is not approved by the Board. However, neither the Rights Agreement nor the Rights should interfere with any merger, tender or exchange offer or other business combination approved by the Board.

Each Right entitles the registered holder to purchase from the Company one one-hundredth of a share of Series A Participating Preferred Stock, no par value per share, of the Company (the "Preferred Shares") at a price of \$7.46 per one one-hundredth of a Preferred Share (the "Purchase Price"), subject to adjustment. The description and terms of the Rights are set forth in a Rights Agreement (the "Rights Agreement") between the Company and Equity Stock Transfer, LLC as Rights Agent (the "Rights Agent").

The Rights have certain anti-takeover effects. The Rights may cause substantial dilution to a person or group that attempts to acquire the Company on terms not approved by the Board of Directors, except pursuant to an offer conditioned on a substantial number of Rights being acquired. The Rights should not interfere with any merger or other business combination approved by the Board of Directors because of the Board of Directors ability to redeem the Rights, as discussed below.

RIGHTS ATTACH TO COMMON SHARES INITIALLY

Initially and until a Distribution Date (as defined below) occurs, the Rights are attached to all Common Shares and no separate Rights certificates will be issued. During this initial period:

- The Rights are not exercisable;
- Holders, as such, have no voting rights;
- The Rights are transferred with the Common Shares and are not transferable separately from the Common Shares;
  - No dividends are paid on the Rights;
- New Common Share certificates or book entry shares issued will contain a notation incorporating the Rights Agreement by reference;
  - The transfer of any Common Shares will also constitute the transfer of the Rights.

The Rights expire December 31, 2017 (the "Expiration Date") unless earlier redeemed or exchange by the Company as described below.



## DISTRIBUTION OF RIGHTS

Separate certificates evidencing the Rights will be mailed to holders of record of the Common Shares on the "Distribution Date." The Distribution Date is the earlier to occur of the following two events:

- The tenth (10th) day after a public announcement that a person or group of affiliated or associated persons has acquired or obtained the right to acquire 10% or more of the outstanding Common Shares; or
- The tenth (10th) business day after the commencement or public disclosure of an intention to commence a tender offer or exchange offer by a person if, upon consummation of the offer, such person could acquire beneficial ownership of 10% or more of the outstanding of Common Shares.

## RIGHT TO PURCHASE BIOSPHERICS STOCK

If a person or group acquires or obtains the right to acquire 10% or more of the outstanding Common Shares (thereby becoming an "Acquiring Person") each holder of a Right (except those held by the Acquiring Person and its affiliates and associates) will have the right to purchase, upon exercise, Common Shares (or, in certain circumstances, Preferred Shares, Common Share equivalents or cash) having a value equal to two times the exercise price of the Right. In other words, the Rights holders other than the Acquiring Person may purchase Common Shares at a 50 % discount.

For example, at the exercise price of \$7.46 per Right, each Right not owned by an Acquiring Person would entitle its holder to purchase \$14.92 worth of Common Shares (or other consideration, as noted above) for \$7.46. Assuming a market value of \$3.73 per Common Share at such time, the holder of each valid Right would be entitled to purchase four (4) Common Shares for \$14.92.

## RIGHTS TO PURCHASE ACQUIRING PERSON STOCK

In the event that, at the time or after a person becomes an Acquiring Person, the Company is involved in a merger or other business combination in which (i) the Company is not the surviving corporation, (ii) Common Stock is changed or exchanged, or (iii) 50 % or more of the Company's consolidated assets or earning power are sold, then each Right (other than Rights that are or were owned by the Acquiring Person and certain related persons and transferees, which will thereafter be void) shall thereafter be exercisable for a number of shares of common stock of the acquiring company having a market value of two times the exercise price of the Right. In other words, a Rights holder may purchase the acquiring company's common stock at a 50 % discount.

## EXCHANGE OF SPHERIX STOCK FOR RIGHTS

At any time after any person or group becomes an Acquiring Person and before the Acquiring Person acquires 50 % or more of the outstanding Common Shares, the Board of Directors may exchange the Rights (other than Rights owned by the Acquiring Person which will have become void), in whole or in part, at an exchange ratio of one Common Share, or one one-hundredth of a Preferred Share (or a Common Share equivalent), per Right (subject to adjustment).

## REDEMPTION

The Rights are redeemable by the Company, at the direction of its Board of Directors, in whole but not in part at a price of \$.001 per Right at any time prior to the time that a person or a group has become an Acquiring Person. Immediately upon redemption, the right to exercise will terminate and the only right of holders will be to receive the redemption price.

AMENDMENTS

As long as the Rights are redeemable, the terms of the Rights may be amended by the Board of Directors in its discretion without the consent of the Rights holders. After that time, no amendment may adversely affect the interests of the Rights Holder (other than the Acquiring Person).

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## TERMS OF PREFERRED SHARES

The Preferred Shares purchasable upon exercise of the Rights will not be redeemable. Each Preferred Share will be entitled to a minimum preferential quarterly dividend payment equal to the greater of \$0.005 per share and 100 times the dividend declared per Common Share. In the event of liquidation, the holders of the Preferred Shares will be entitled to a minimum preferential liquidation payment equal to the greater of \$.0001 per share and 100 times the payment made per Common Share. Each Preferred Share will have 100 votes per share, voting together with the Common Shares. In the event of any merger, consolidation or other transaction in which Common Shares are exchanged, each Preferred Share will be entitled to receive 100 times the amount received per Common Share.

## MISCELLANEOUS

The Purchase Price payable, and the number and kind of securities, cash or other property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend or distribution on, or a subdivision or combination of, the Common Shares, (ii) upon the grant to holders of the Common Shares of rights, options or warrants to subscribe for Common Shares or securities convertible into Common Shares at less than the current market price, (iii) upon the distribution to holders of the Common Shares of securities, cash, evidences of indebtedness or assets (excluding regular periodic cash dividends out of earnings or retained earnings) and (iv) in connection with recapitalizations of the Company or reclassifications of the Common Shares.

No fractional Common Shares or Preferred Shares will be required to be issued (other than fractions of Preferred Shares which are integral multiples of one one-hundredth of a Preferred Share, which may, at the election of the Company, be evidenced by depositary receipts) and in lieu thereof, an adjustment in cash will be made based on the market price of Common Shares or Preferred Shares on the last trading date prior to the date of exercise.

Because of the nature of the Preferred Shares' dividend, liquidation and voting rights, the value of the one one-hundredth interest in a Preferred Share that may be purchased upon exercise of each Right should approximate the value of one Common Share.

A copy of the Rights Agreement is attached as Exhibit 4.1 to this Current Report on Form 8-K. The foregoing description of the Rights Agreement does not purport to be complete and is qualified in its entirety by reference to such exhibits.

Item 9.01

Financial Statements and Exhibits

(c) Exhibits

Attached as exhibits to this form are the documents listed below:

Exhibit

Document

4.1

Rights Agreement, dated as of January 1, 2013

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.

SPHERIX INCORPORATED

By: /s/ Robert L. Clayton  
Robert L. Clayton,  
Chief Financial Officer, Treasurer, and  
Corporate Secretary

Date: January 30, 2013