

DELCATH SYSTEMS INC
Form 8-K
December 29, 2011

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): December 29, 2011

DELCATH SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

001-16133
(Commission

File Number)

06-1245881
(IRS Employer

Identification Number)

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810 Seventh Avenue, 35th Floor, New York, New York, 10019

(Address of principal executive offices, including zip code)

(212) 489-2100

(Registrant's telephone number, including area code)

NONE

(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))

Item 1.01 Entry into a Material Definitive Agreement.

On December 29, 2011, Delcath Systems, Inc. (the Company), entered into a Sales Agreement (the Sales Agreement) with Cowen and Company, LLC to sell shares (the Securities) of the Company's common stock, par value \$.01 per share, having aggregate sales proceeds of \$39,750,000, from time to time, through an at the market equity offering program under which Cowen and Company, LLC will act as sales agent (the Sales Agent).

Under the Sales Agreement, the Company will set the parameters in accordance with which it desires the Securities to be sold, including the number of shares of Securities to be issued, the time period during which sales are requested to be made, limitation on the number of shares of Securities that may be sold in any one trading day and any minimum price below which sales may not be made. Subject to the terms and conditions of the Sales Agreement, the Sales Agent may sell the Securities by methods deemed to be an at the market offering as defined in Rule 415 promulgated under the Securities Act of 1933, as amended, including sales made directly on The NASDAQ Capital Market, on any other existing trading market for the common stock or to or through a market maker. In addition, with the Company's prior written approval, the Sales Agent may also sell the Securities by any other method permitted by law, including in privately negotiated transactions. The Sales Agent will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of The NASDAQ Stock Market, Inc. The Sales Agreement may be terminated by the Company or the Sales Agent at any time upon 10 days notice to the other party, or by the Sales Agent at any time in certain circumstances, including but not limited to the occurrence of a material adverse change in the Company.

Under the terms of the Sales Agreement, the Company may also sell Securities to the Sales Agent as principal for its own accounts at prices agreed upon at the time of sale. If the Company sells Securities to the Sales Agent as principal, it will enter into a separate terms agreement with the Sales Agent.

The Sales Agreement provides that the Sales Agent will be entitled to compensation for its services that will not exceed, but may be lower than, 3.0% of the gross sales price per share of all Securities sold through it as Sales Agent under the Sales Agreement. The Company has no obligation to sell any of the Securities under the Sales Agreement, and may at any time suspend solicitation and offers under the Sales Agreement.

The Securities will be issued pursuant to the Company's shelf registration statement on Form S-3 (File No. 333-165677). The Company filed a prospectus supplement (the Prospectus Supplement), dated December 29, 2011, with the Securities and Exchange Commission in connection with the offer and sale of the Securities.

The foregoing description of the Sales Agreement is not complete and is qualified in its entirety by reference to the full text of such agreement, a copy of which is filed herewith as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any security nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

Item 9.01. Financial Statements and Exhibits.

The following exhibit is filed herewith:

(d) Exhibits.

| Exhibit No. | Description |
|------------------------|--|
| 1.1 | Sales Agreement, dated December 29, 2011, between Delcath Systems, Inc. and Cowen and Company, LLC |

SIGNATURES

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.

DELCATH SYSTEMS, INC.

Dated: December 29, 2011

By: /s/ Peter J. Graham
Name: Peter J. Graham
Title: Executive Vice President,
General Counsel

EXHIBIT INDEX

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