

DELCATH SYSTEMS, INC.
Form DEFA14A
August 28, 2017

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): August 28, 2017

DELCATH SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction

of incorporation)

001-16133
(Commission

File Number)

1633 Broadway, Suite 22C, New York, New York

06-1245881
(IRS Employer

Identification No.)

(Address of principal executive offices)

10019

(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))
Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

On August 28, 2017, we (sometimes also referred to as the Company) entered into a Restructuring Agreement (the Agreement) with one of the institutional investors (the Investor) who was a party to that certain Securities Purchase Agreement, dated June 6, 2016, by and among us, the Investor and certain other buyers signatory thereto (the Securities Purchase Agreement), pursuant to which the Investor and such other buyers acquired (i) certain senior secured convertible notes (the Notes), convertible into shares of our common stock, par value \$0.01 per share (the Common Stock) and (ii) warrants to acquire shares of the Common Stock. As of the date hereof the Investor holds \$11,444,637 aggregate principal amount of Notes of which there is \$10,092,857 aggregate Restricted Principal, (as defined in the Notes) of Notes (the Restricted Notes), secured by such aggregate cash amount held in a collateral account of the Company in the same amount (the Restricted Cash) and (y) \$1,351,780 principal of Notes (the Unrestricted Notes), (ii) 4,200 shares of Series A Convertible Preferred Stock issued by us to the Investor (the Series A Preferred Shares) and (iii) 2,006 shares of Series B Convertible Preferred Stock issued by us to the Investor (the Series B Preferred Shares). All terms used and not defined herein are used as defined in the Securities Purchase Agreement.

Pursuant to the Agreement, (a) on the date hereof we and the Investor are taking the following actions (the Initial Restructuring): (i) the Investor shall release restrictions on \$1,650,000 of Restricted Cash (the Initial Release), (ii) the Investor shall consent to the use of additional Restricted Cash to effect redemptions of the Series A Preferred Shares and the Series B Preferred Shares, (iii) the Investor shall cancel \$1,200,000 aggregate principal of the Notes (such portion of the Notes, the Cancellation Note),

(iv) we shall redeem all the Series A Preferred Shares outstanding for a cash payment to the Investor of \$4.20 (the Series A Redemption Price) and (v) we shall redeem the Series B Preferred Shares for a cash payment to the Investor of \$2,006,000 (the Series B Redemption Price) and (b) upon the consummation of a reverse stock split of our Common Stock of at least twenty to one (the Reverse Stock Split Event , and such date, the Reverse Stock Split Date), we and the Investor shall take the following actions (the Additional Restructuring , and together with the Initial Restructuring, the Restructuring): (i) the Investor shall consent to the use of Restricted Cash to effect redemptions of \$4,000,000 aggregate Restricted Principal of the Restricted Notes (such portion of the Restricted Notes, the Redemption Notes), (ii) we shall redeem the Redemption Notes for a redemption price of \$6,436,852.80 (the Redemption Price) and (iii) the Company shall exchange (the Exchange), pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended, \$2,436,852.80 aggregate Restricted Principal of the Restricted Notes (such portion of the Restricted Notes, the Exchange Notes , and together with the Redemption Notes, the Restructured Notes) for new warrants to purchase 40,000,000 shares of our Common Stock (the New Warrants , as exercised, the New Warrant Shares). The New Warrants expire on the 42 month anniversary of the date of issuance and bear an exercise price of \$0.35 per share (which shall be adjusted to the new lower purchase price per share if there is a subsequent down round financing). The Investor, in lieu of an exercise of the New Warrants pursuant to a cash payment of the aggregate exercise price of the number of New Warrants being exercised, may exercise the New Warrants, in whole or in part, by electing instead to receive upon such exercise two shares and one hundred and twenty-five thousandths of a share of our Common Stock for each Warrant Share exercised pursuant to this provision.

The transactions set forth herein are being made in reliance upon the exemption from registration provided by Rule 4(a)(2) of the Securities Act of 1933, as amended (the 1933 Act) and Rule 144(d)(3)(ii) of the 1933 Act.

The representations, warranties and covenants contained in the Agreement were made solely for the benefit of the parties to the Agreement. In addition, such representations, warranties and covenants (i) are intended as a way of allocating the risk between the parties to the Agreement and not as statements of fact, and (ii) may apply standards of materiality in a way that is different from what may be viewed as material by stockholders of, or other investors in, the Company. Accordingly, the Agreement is included with this filing only to provide investors with information regarding the terms of transaction, and not to provide investors with any other factual information regarding the Company. Stockholders should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Agreement, which subsequent information may or may not be fully reflected in public disclosures. The forms of the Agreement and the Warrant are filed as Exhibits 10.1 and 4.1, respectively, to this Current Report on Form 8-K. The foregoing summaries of the terms of these documents are subject to, and qualified in their entirety by, such documents, which are incorporated herein by reference.

Item 3.02. Unregistered Sale of Equity Securities.

See Item 1.01 above.

Item 8.01 Other Items

On the date hereof, we issued a press release regarding the above referenced transactions, which is attached hereto as Exhibit 99.1.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit

No.	Description
4.1	Form of Warrant
10.1	Form of Restructuring Agreement
99.1	Press Release dated August 28, 2017

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.

DELCATH SYSTEMS, INC.

Date: August 28, 2017

By: /s/ Jennifer Simpson

Name: Jennifer Simpson

Title: President and Chief Executive Officer

EXHIBIT INDEX

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