

DELCATH SYSTEMS INC
Form 8-K
January 13, 2012

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 13, 2012

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) |
|---|---------------------------------------|---|

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 8.01. Other Events.

Pursuant to a sales agreement (the “Sales Agreement”) entered into between Delcath Systems, Inc. (the “Company”) and Cowen and Company, LLC, the Company may sell shares of its common stock, par value \$.01 per share, having aggregate sales proceeds of \$39,750,000 (the “Securities”), from time to time, through an “at the market” equity offering program. 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”) and the Sales Agreement with the Securities and Exchange Commission on December 29, 2011 in connection with the offer and sale of the Securities.

Attached hereto, and incorporated by reference into the Prospectus Supplement is the opinion of Skadden, Arps, Slate, Meagher & Flom LLP relating to the legality of the Securities.

Item 9.01. Financial Statements and Exhibits.

The following exhibit is filed herewith:

(d) Exhibits.

| Exhibit No. | Description |
|-------------|---|
| 5.1 | Opinion of Skadden, Arps, Slate, Meagher & Flom LLP |
| 23.1 | Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1) |

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: January 13, 2012

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

EXHIBIT INDEX

| Exhibit No. | Description |
|----------------|---|
| 5.1 | Opinion of Skadden, Arps, Slate, Meagher & Flom LLP |
| 23.1 | Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1) |