

DELCATH SYSTEMS, INC.
Form 8-K
September 21, 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): September 21, 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)

06-1245881
(IRS Employer

Identification No.)

1633 Broadway, Suite 22C,

New York, New York
(Address of principal executive offices)

(212) 489-2100

10019
(Zip code)

(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 September 12, 2017, our Board authorized the establishment of a new series of preferred stock designated as Series C Preferred Stock, \$0.01 par value, the terms of which are set forth in the certificate of designations for such series of Preferred Stock (the Series C Certificate of Designations) which was filed with the State of Delaware on September 20, 2017 (together with any preferred shares issued in replacement thereof in accordance with the terms thereof, the Series C Preferred Stock). On September 21, 2017, we entered into a securities purchase agreement (the SPA) with two of our investors which had purchased certain senior secured convertible notes (the Notes), convertible into shares of our common stock pursuant to a certain June 6, 2016 securities purchase agreement, of \$0.5 million aggregate purchase price for 590 shares of Series C Preferred Stock (the Series C Preferred Shares). The purchase of the Series C Preferred Stock is being made in reliance upon the exemption from registration provided by Rule 4(a)(2) of the Securities Act of 1933, as amended. The Series C Preferred Shares shall be entitled to 519,421,250 votes and may only vote on approval of a reverse split of our outstanding common stock. The Series C Preferred Stock has no dividend, liquidation or other preferential rights to our common stock, and each share of Series C Preferred Stock shall be redeemable for the amount of \$1,000.00, payable in cash, per share at our written election, and must be redeemed by us no later than December 21, 2017.

Item 3.02. Unregistered Sales of Equity Securities.

See Item 1.01 above.

Item 5.03. Amendment to Certificate of Incorporation.

See Item 1.01 above.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit

| No. | Description |
|------|--|
| 3.1 | Certificate of Designation of Series C Preferred Stock |
| 10.1 | Form of Securities Purchase Agreement |

EXHIBIT INDEX

Exhibit

| No. | Description |
|------|---|
| 3.1 | <u>Certificate of Designation of Series C Preferred Stock</u> |
| 10.1 | <u>Form of Securities Purchase Agreement</u> |

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: September 21, 2017

By: /s/ Jennifer Simpson

Name: Jennifer Simpson

Title: President and Chief Executive Officer