
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 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): October 29, 2019

DELCATH SYSTEMS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-16133
(Commission
File Number)

06-1245881
(IRS Employer
Identification No.)

1633 Broadway, Suite 22C, New York, New York 10019
(Address of principal executive offices) (Zip Code)

(212) 489-2100
(Registrant's telephone number, including area code)

Not Applicable
(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:

- 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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, \$.01 par value	DCTH	OTC QB

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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 October 29, 2019, Delcath Systems, Inc. (the “Company”) and holders of a majority of the Company’s Series E and Series E-1 Convertible Preferred Stock and related warrants entered into a third amendment (the “Third Amendment”) to those certain registration rights agreements, dated as of July 11, 2019 (effective as of July 15, 2019) and August 15, 2019, in each case as previously amended on September 30, 2019 and October 18, 2019, between the Company and the holders signatory thereto (collectively, the “Registration Rights Agreements”). The Third Amendment clarifies that the liquidated damages specified in Section 2(d) of the Registration Rights Agreements shall not be payable to any holder whose Registrable Securities, as defined in the Registration Rights Agreements, are fully registered on an effective registration statement on the Effectiveness Date, as defined in the Registration Rights Agreements.

Also on October 29, 2019, the Company entered into a Waiver and Forbearance Agreement (“Waiver”) with Rosalind Master Fund LP and Rosalind Opportunities Fund I LP, holders of its Series E and Series E-1 Convertible Preferred Stock and related warrants (together, “Rosalind”), pursuant to which Rosalind has agreed, among other things, to waive compliance with certain specified terms and conditions under the Registration Rights Agreements and forbear from exercising certain of their rights and remedies related to certain defaults thereunder for the time periods indicated therein.

The foregoing description of the Third Amendment and the Waiver does not purport to be complete and is qualified in its entirety by reference to: (i) the Third Amendment included as Exhibit 10.1 to this Current Report on Form 8-K, (ii) the Waiver included as Exhibit 10.2 to this Current Report on Form 8-K, (iii) the form of Registration Rights Agreement between the Company and each other party signatory thereto included as Exhibit 4.2 to the Current Report on Form 8-K filed with the SEC on July 11, 2019, (iv) the form of Registration Rights Agreement between the Company and each other party signatory thereto included as Exhibit 4.2 to the Current Report on Form 8-K filed with the SEC on August 16, 2019, (v) the Amendment to the Registration Rights Agreements, dated as of September 30, 2019, included as Exhibit 10.1 to the Current Report on Form 8-K filed with the SEC on October 1, 2019 and (vi) the Second Amendment to the Registration Rights Agreements, dated as of October 18, 2019, included as Exhibit 10.1 to the Current Report on Form 8-K filed with the SEC on October 23, 2019.

Item 9.01 **Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit</u>	<u>Description</u>
10.1	<u>Third Amendment to Registration Rights Agreements, dated as of October 29, 2019, by and among the Company and holders of a majority of the Company’s Series E and Series E-1 Convertible Preferred Stock and related warrants.</u>
10.2	<u>Waiver and Forbearance Agreement, dated as of October 29, 2019, by and among the Company and Rosalind Master Fund LP and Rosalind Opportunities Fund I LP.</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 thereunto duly authorized.

Date: November 1, 2019

DELCATH SYSTEMS, INC.

By: /s/ Barbra Keck

Name: Barbra Keck

Title: Chief Financial Officer

THIRD AMENDMENT TO REGISTRATION RIGHTS AGREEMENTS

This Third Amendment (this “Third Amendment”), dated as of October 29, 2019, is made to those certain Registration Rights Agreements (the “Registration Rights Agreements”), dated as of July 11, 2019 (effective as of July 15, 2019), and August 15, 2019, and as amended on September 30, 2019 and on October 18, 2019, between Delcath Systems, Inc. (the “Company”) and the purchasers signatories thereto. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Registration Rights Agreements.

WHEREAS, pursuant to Section 2(d)(iv) of the Registration Rights Agreements, the Company will incur certain penalties if “a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the Commission by the Effectiveness Date of the Initial Registration Statement;” and

WHEREAS, due to the inability of the Company to obtain clearance from the Financial Industry Regulatory Authority for its planned reverse stock split, the Company will be unable to register all of the Registrable Securities on an effective registration statement by that date, and therefore would otherwise be liable to pay to all Holders the liquidated damages specified in Section 2(d); and

WHEREAS, certain Holders (the “Withholding Holders”) have agreed to withhold from registration at this time a portion of their Registrable Securities in order to enable the Company to register the Registrable Securities of all other Holders in full; and

WHEREAS, as a result of such arrangement, the Registrable Securities held by each of the Holders other than the Withholding Holders can now be fully registered on an effective Registration Statement; and

WHEREAS, pursuant to Section 6(f) of the Registration Rights Agreements, the Registration Rights Agreements may be amended by the written consent of the Company and Holders of at least a majority in interest of the Registrable Securities; and

WHEREAS, the Company and Holders of at least a majority in interest of the Registrable Securities desire to amend the Registration Rights Agreements to clarify that the liquidated damages specified in Section 2(d) are not payable to any Holder whose own Registrable Securities have been fully registered on an effective Registration Statement which remains continuously effective in accordance with the requirements of the Registration Rights Agreements.

NOW, THEREFORE, in consideration of the premises set forth above, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree to add the following new sentence at the end of Section 2(d):

“Notwithstanding anything to the contrary contained herein, the liquidated damages set forth in this Section 2(d) shall not be payable to any Holder whose own Registrable Securities have been fully registered on an effective registration statement on the Effectiveness Date which remains continuously effective in accordance with the requirements of this Agreement.”

This Third Amendment to the Registration Rights Agreements set forth herein shall take effect upon receipt of fully executed copies of this Third Amendment by Holders representing a majority in interest of the then outstanding Registrable Securities.

Except as expressly set forth above, all of the terms and conditions of the Registration Rights Agreements shall continue in full force and effect after the execution of this agreement and shall not be in any way changed, modified or superseded by the terms set forth herein.

This Third Amendment may be executed in two or more counterparts and by facsimile or “.pdf” signature or otherwise, and each of such counterparts shall be deemed an original and all of such counterparts together shall constitute one and the same agreement.

[signature pages follows]

This Amendment is effective as of the date hereof.

DELCATH SYSTEMS, INC.

By: /s/ Jennifer K. Simpson

Name: Jennifer K. Simpson

Title: President & CEO

[Holder signature pages follow]

HOLDER: Bigger Capital Fund L.P.

By: /s/ Michael Bigger
Name: Michael Bigger
Title: Managing Member of GP

HOLDER: District 2 Capital Fund L.P.

By: /s/ Michael Bigger
Name: Michael Bigger
Title: Managing Member of GP

[Signature Page to DCTH Third Amendment]

HOLDER: Rosalind Master Fund LP (“RMF”)

By: /s/ Steven Salamon

Name: Steven Salamon

Title: President, Rosalind Advisors, Inc. (advisor to RMF)

[Signature Page to DCTH Third Amendment]

HOLDER: Rosalind Opportunities Fund I LP ("ROFI")

By: /s/ Steven Salamon

Name: Steven Salamon

Title: President, Rosalind Advisors, Inc. (advisor to ROFI)

[Signature Page to DCTH Third Amendment]

DELCATH SYSTEMS, INC.

WAIVER AND FORBEARANCE AGREEMENT

October 29, 2019

Reference is hereby made to those certain Registration Rights Agreements (the "Registration Rights Agreements"), dated as of July 11, 2019 (effective as of July 15, 2019), and August 15, 2019, as amended on September 30, 2019 and on October 18, 2019, and as being further amended on and as of the date hereof, between Delcath Systems, Inc. (the "Company") and the Holders who are signatories thereto (including, without limitation, the Holders signing below). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Registration Rights Agreements.

The undersigned Holders, acting pursuant to the provisions of Section 6(f) (titled "Amendments and Waivers") of the Registration Rights Agreements, and subject to the time periods and other limitations set forth below, hereby waive until the earlier of (x) the date that is 60 days following the date hereof (the "Extension Date"), and (y) the date that any of the other Holders become entitled to receive liquidated damages pursuant to Section 2(d) as a result of the failure by the Company to register the Registrable Securities (the "Default Date"), the undersigned Holders' rights (i) to have 321,408,352 of their Registrable Securities (the "Forbearance Shares") registered pursuant to a Registration Statement, pursuant to Section 2(a) through (c) (titled "Shelf Registration"), and (ii) to receive the liquidated damages otherwise payable by the Company to the undersigned pursuant to Section 2(d) as a result of its failure to register the Forbearance Shares. It is understood and agreed that the undersigned Holders shall determine in their sole discretion whether and to what extent the Forbearance Shares shall consist of Conversion Shares, Warrant Shares or a combination of the two.

The Company covenants and agrees to take all necessary action, in consultation with the undersigned Holders, to cause the Forbearance Shares to become authorized and unissued shares of capital stock of the Company by not later than the first to occur of (x) the date that the Forbearance Shares are registered for resale pursuant to an effective Registration Statement, or (y) the Extension Date. Without limiting the generality of the foregoing, in the event that the Forbearance Shares have not become authorized and unissued shares of capital stock of the Company by the Extension Date, then the waiver and forbearance provisions set forth above shall cease to be effective, and the undersigned Holders shall thereafter have the right to receive liquidated damages pursuant to Section 2(d) calculated in accordance with that Section (i.e., as a percentage of such Holder's Subscription Amount) from and after the Extension Date until such date that the Forbearance Shares have become authorized and unissued shares of capital stock of the Company which are either registered for resale pursuant to an effective Registration Statement or eligible for resale pursuant to Rule 144.

This Waiver and Forbearance Agreement is executed this 29th day of October, 2019.

HOLDER: Rosalind Master Fund LP (“RMF”)

By: /s/ Steven Salamon
Name: Steven Salamon
Title: President, Rosalind Advisors, Inc. (advisor to RMF)

HOLDER: Rosalind Opportunities Fund I LP (“ROFI”)

By: /s/ Steven Salamon
Name: Steven Salamon
Title: President, Rosalind Advisors, Inc. (advisor to ROFI)

The term and conditions of this Waiver and Forbearance Agreement are hereby acknowledged and agreed to:

DELCATH SYSTEMS, INC.

By: /s/ Jennifer K. Simpson
Name: Jennifer K. Simpson
Title: President & CEO