

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

DELCATH SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

06-1245881
(I.R.S. Employer
Identification No.)

566 Queensbury Avenue
Queensbury, NY 12804
(Address of Principal Executive Offices) (Zip Code)

Delcath Systems, Inc. Omnibus 2020 Equity Incentive Plan
(Full title of the plan)

Gerard Michel
Chief Executive Officer
Delcath Systems, Inc.
566 Queensbury Avenue
Queensbury, NY 12804
(Name, address, including zip code, and telephone number, including area code, of agent for service)

(212) 489-2100
(Telephone number, including area code, of agent for service)

Copies to:

David Hoffman
General Counsel
Delcath Systems, Inc.
566 Queensbury Avenue
Queensbury, NY 12804

Ryan Sansom
Christina Roupas
Cooley LLP
500 Boylston Street
Boston, MA 02116-3736
(617) 937 2335

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

- | | | | |
|-------------------------|-------------------------------------|---------------------------|-------------------------------------|
| Large accelerated filer | <input type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input checked="" type="checkbox"/> | Smaller reporting company | <input checked="" type="checkbox"/> |
| | | Emerging growth company | <input type="checkbox"/> |

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 7(a)(2)(B) of the Securities Act.

INTRODUCTION

This Registration Statement on Form S-8 is being filed by Delcath Systems, Inc. (the “Registrant” or the “Company”) to register the 2,000,000 shares (the “Shares”) of the common stock, par value \$0.01 per share (the “Common Stock”), of the Company reserved for issuance under the Delcath Systems, Inc. Omnibus 2020 Equity Incentive Plan, as amended (the “Plan” and as amended to include the Shares, the “Plan Amendment”), The Plan Amendment was adopted by the Company’s Board of Directors on March 19, 2024, subject to stockholder approval, which was obtained at the Annual Meeting of Stockholders held on May 23, 2024.

The Shares being registered are in addition to the shares of Common Stock registered on (i) the Registrant’s [Form S-8](#) filed with the Commission on December 16, 2020 (File No. 333-251385), (ii) the Registrant’s [Form S-8](#) filed with the Commission on January 5, 2022 (File No. 333-262022), (iii) the Registrant’s [Form S-8](#) filed with the Commission on May 25, 2022 (File No. 333-265202) and (iv) the Registrant’s [Form S-8](#) filed with the Commission on December 15, 2023 (File No. 333- 276090) (collectively, the “Prior Registration Statements”).

This Registration Statement relates to securities of the same class as that to which the Prior Registration Statements relate, and is submitted in accordance with General Instruction E to Form S-8 regarding Registration of Additional Securities. Pursuant to General Instruction E of Form S-8, the contents of the Prior Registration Statements, to the extent relating to the registration of Common Stock issuable under the Plan, are incorporated herein by reference and made part of this Registration Statement, except as amended hereby.

PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3 Incorporation of Documents by Reference.

The following documents filed with the Commission by the Registrant, pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are incorporated herein by reference:

- (1) the Registrant’s Annual Report on Form 10-K for the fiscal year ended [December 31, 2023](#) filed with the Commission on March 26, 2024;
- (2) the Registrant’s Quarterly Report on Form 10-Q for the quarterly period ended [March 31, 2024](#) filed with the Commission on May 14, 2024;
- (3) the Registrant’s Current Reports on Form 8-K filed with the Commission on [January 31, 2024](#), [February 14, 2024](#), [March 19, 2024](#), [April 26, 2024](#) and [May 29, 2024](#);
- (4) the information specifically incorporated by reference into the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2023 from the Registrant’s Definitive Proxy Statement on Schedule 14A filed with the Commission on [April 12, 2024](#);
- (5) the description of the Common Stock of the Registrant set forth in the Registrant’s registration statements pursuant to Section 12 of the Exchange Act, and any amendment or report filed for the purpose of updating such description, including Exhibit 4.12 to the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2023.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or

supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 8 Exhibits.

The following exhibits are furnished with this Registration Statement:

Exhibit No.	Description of Exhibits
4.1	<u>Amended and Restated Certificate of Incorporation of Delcath Systems, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-1/A filed with the Commission on September 25, 2019)</u>
4.2	<u>Amendment to the Amended and Restated Certificate of Incorporation of Delcath Systems, Inc. dated October 17, 2019 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on October 23, 2019)</u>
4.3	<u>Certificate of Correction to Amendment to the Amended and Restated Certificate of Incorporation of Delcath Systems, Inc. dated October 22, 2019 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed with the Commission on October 23, 2019)</u>
4.4	<u>Amendment to the Amended and Restated Certificate of Incorporation of Delcath Systems, Inc., effective December 24, 2019 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on December 30, 2019)</u>
4.5	<u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Delcath Systems, Inc. dated November 23, 2020 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on November 24, 2020)</u>
4.8	<u>Amended and Restated By-Laws of Delcath Systems, Inc. (incorporated by reference to Exhibit 3.2 to Amendment No. 1 to the Company's Registration Statement on Form SB-2 filed with the Commission on August 23, 2000)</u>
4.9	<u>Delcath Systems, Inc. 2020 Omnibus Equity Incentive Plan, as amended (incorporated by reference to Exhibit 4.9 to the Company's Registration Statement on Form S-8 filed with the Commission on January 5, 2022)</u>
5.1*	<u>Opinion of Cooley, LLP</u>
23.1*	<u>Consent of Cooley, LLP (included in Exhibit 5.1)</u>
23.2*	<u>Consent of Marcum, LLP</u>
24.1*	<u>Power of Attorney (included on signature page of this Registration Statement)</u>
107*	<u>Calculation of Filing Fee Table</u>

* Filed Herewith

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Queensbury, State of New York on the 28th day of June, 2024.

DELCATH SYSTEMS, INC.

By: /s/ Gerard Michel
Gerard Michel
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENT, that each individual whose signature appears below hereby constitutes and appoints each of Gerard Michel and David Hoffman as such person's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such person in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Commission granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that any said attorney-in-fact and agent, or any substitute or substitutes of any of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
<u>/s/ Gerard Michel</u> Gerard Michel	Chief Executive Officer and Director (Principal Executive Officer)	June 28, 2024
<u>/s/ Sandra Pennell</u> Sandra Pennell	Senior Vice President of Finance (Principal Financial and Accounting Officer)	June 28, 2024
<u>/s/ John R. Sylvester</u> John R. Sylvester	Chairman of the Board	June 28, 2024
<u>/s/ Gilad Aharon</u> Gilad Aharon	Director	June 28, 2024
<u>/s/ Elizabeth Czerepak</u> Elizabeth Czerepak	Director	June 28, 2024
<u>/s/ Steven Salamon</u> Steven Salamon	Director	June 28, 2024
<u>/s/ Bridget Martell</u> Bridget Martell	Director	June 28, 2024

Calculation of Filing Fee Table**FORM S-8**
(Form Type)**DELCATH SYSTEMS, INC.**
(Exact Name of Registrant as Specified in its Charter)**Table 1: Newly Registered Securities**

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Unit(2)	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.01 per share	457(a)	2,000,000	\$7.99	\$15,980,000	0.0001476	\$2,358.65

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of Common Stock which become issuable under the above-named plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of shares of our outstanding Common Stock.
- (2) The proposed maximum offering price per share is based on the average of the high and low price of the Registrant’s Common Stock on June 21, 2024 (rounded up to the nearest cent) as reported on The Nasdaq Capital Market, used solely for the purpose of calculating the registration fee in accordance with paragraphs (c) and (h)(1) of Rule 457 under the Securities Act of 1933, as amended.



Exhibit 5.1

June 28, 2024

Delcath Systems, Inc.
566 Queensbury Avenue
Queensbury, New York 12804

Re: Delcath Systems, Inc. – Registration on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Delcath Systems, Inc., a Delaware corporation (the “**Company**”), in connection with the filing by the Company of a Registration Statement on Form S-8 (the “**Registration Statement**”) with the Securities and Exchange Commission (the “**Commission**”) covering the offering of up to 2,000,000 shares (the “**Shares**”) of the Company’s common stock, par value \$0.01 per share, pursuant to the Company’s Omnibus 2020 Equity Incentive Plan (the “**Plan**”).

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and related prospectus, (b) the Plan, (c) the Company’s certificate of incorporation and bylaws, each as currently in effect and (d) such other records, documents, opinions, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials, and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when issued in accordance with the Plan, the Registration Statement and the related prospectus, will be validly issued, fully paid and nonassessable (except as to shares issued pursuant to deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

This opinion is limited to the matters expressly set forth in this letter, and no opinion should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof and we have no obligation or responsibility to update or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission thereunder.



June 28, 2024
Page 2

Very truly yours,

Cooley LLP

By: /s/ Ryan Sansom
Ryan Sansom

Cooley LLP 500 Boylston Street, 14th Floor, Boston, MA (t) 617 937 2300 (f) 617 937 2400 cooley.com

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Delcath Systems, Inc. and Subsidiaries on Form S-8 of our report dated March 26, 2024, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audits of the consolidated financial statements of Delcath Systems, Inc. and Subsidiaries as of December 31, 2023 and 2022 and for the years ended December 31, 2023 and 2022 appearing in the Annual Report on Form 10-K of Delcath Systems, Inc. for the year ended December 31, 2023.

/s/ Marcum LLP
Marcum LLP
New York, NY
June 28, 2024