

DELCATH SYSTEMS INC
Form DEF 14A
April 22, 2013
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

**Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only

(as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to § 240.14a-12

Delcath Systems, Inc.

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

Edgar Filing: DELCATH SYSTEMS INC - Form DEF 14A

x No fee required.

.. Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

- (1) Title of each class of securities to which transaction applies:

- (2) Aggregate number of securities to which transaction applies:

- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

- (4) Proposed maximum aggregate value of transaction:

- (5) Total fee paid:

.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

- (1) Amount Previously Paid:

- (2) Form, Schedule or Registration Statement No.:

- (3) Filing Party:

- (4) Date Filed:

Table of Contents

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON MAY 16, 2013

Notice is hereby given that the 2013 Annual Meeting of Stockholders of Delcath Systems, Inc. will be held on Thursday, May 16, 2013, at 10:00 a.m., local time, at The Michelangelo Hotel, 152 West 51st Street, New York, New York for the following purposes:

- (1) To vote on the election of Harold S. Koplewicz, Laura A. Brege and Tasos G. Konidaris as Class I directors, each to serve until the 2015 annual meeting of stockholders and until his or her successor is duly elected and qualified.
- (2) To cast a non-binding, advisory vote on the compensation of our named executive officers (say-on-pay).
- (3) To ratify the appointment by our Audit Committee of Ernst & Young LLP as Delcath s independent registered public accounting firm for the fiscal year ending December 31, 2013.
- (4) To transact such other business as may properly come before the meeting or any adjournment or postponement of the meeting. We are not aware of any other business to come before the meeting.

These items of business are more fully described in the Proxy Statement which accompanies this Notice of Annual Meeting.

The Board of Directors has fixed the close of business on Thursday, April 18, 2013 as the record date for the Annual Meeting. Only stockholders of record of Delcath common stock at the close of business on that date are entitled to notice of and to vote at the Annual Meeting and at any adjournment or postponement of the meeting.

Your vote is important. Whether or not you plan to attend the Annual Meeting, please complete, sign, date and return the accompanying proxy card in the enclosed postage-paid envelope. Returning the proxy card does NOT deprive you of your right to attend the meeting and to vote your shares in person. The Proxy Statement explains proxy voting and the matters to be voted on in more detail. Please read the Proxy Statement carefully.

By Order of the Board of Directors

New York, New York
April 19, 2013

Eamonn P. Hobbs
President and Chief Executive Officer

Table of Contents

DELCATH SYSTEMS, INC.

PROXY STATEMENT

FOR

2013 ANNUAL MEETING OF STOCKHOLDERS

TABLE OF CONTENTS

	Page
<u>INFORMATION ABOUT THE ANNUAL MEETING AND VOTING</u>	1
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>	5
<u>CORPORATE GOVERNANCE</u>	7
<u>Board of Directors</u>	7
<u>Board Independence</u>	7
<u>Attendance</u>	7
<u>Board Leadership Structure</u>	7
<u>Board's Role in Risk Oversight</u>	7
<u>Risk Assessment of Compensation Programs</u>	7
<u>Director Continuing Education</u>	8
<u>Board Committees</u>	8
<u>Recommendations by Stockholders of Director Nominees</u>	9
<u>Stockholder Communications with the Board of Directors</u>	9
<u>Compensation Committee Interlocks and Insider Participation</u>	9
<u>Transactions with Related Persons</u>	10
<u>PROPOSAL 1: ELECTION OF DIRECTORS</u>	11
<u>Information About Directors and Director Nominees</u>	11
<u>Board Nominees - Class I Directors</u>	11
<u>Continuing Directors</u>	13
<u>Director Compensation - 2012</u>	15
<u>INFORMATION ABOUT OUR EXECUTIVE OFFICERS</u>	17
<u>EXECUTIVE COMPENSATION</u>	20
<u>Compensation Discussion and Analysis</u>	20
<u>Other Components or Features of 2012 Executive Compensation</u>	32
<u>Compensation and Stock Option Committee Report</u>	33
<u>Discussion of Summary Compensation Table and Grants of Plan-Based Awards Table</u>	36
<u>Outstanding Equity Awards at Fiscal Year-End Table - 2012</u>	37
<u>PROPOSAL 2: EXECUTIVE COMPENSATION (SAY-ON-PAY)</u>	42
<u>PROPOSAL 3: RATIFICATION OF THE APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u>	43
<u>Fees Paid to Independent Registered Public Accounting Firms</u>	43
<u>Pre-approval Policies: Audit and Non-Audit Services</u>	43
<u>REPORT OF THE AUDIT COMMITTEE</u>	44
<u>SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE</u>	44
<u>EQUITY COMPENSATION PLAN INFORMATION</u>	45
<u>STOCKHOLDER PROPOSALS FOR THE 2013 ANNUAL MEETING</u>	46
<u>ANNUAL REPORT</u>	46

Table of Contents

810 Seventh Avenue, 35th Floor

New York, New York 10019

PROXY STATEMENT

For the 2013 Annual Meeting of Stockholders to be held on May 16, 2013

The enclosed proxy is solicited by the Board of Directors of Delcath Systems, Inc. (Delcath, we, our, us or the Company) to be voted at our Annual Meeting of Stockholders (the Annual Meeting) to be held on Thursday, May 16, 2013 at 10:00 a.m., local time, and at any adjournment or postponement of the meeting. The Annual Meeting will be held at The Michelangelo Hotel, 152 West 51st Street, New York, New York. This Proxy Statement and the accompanying Notice of Annual Meeting of Stockholders, proxy card and Delcath's Annual Report on Form 10-K for the fiscal year ended December 31, 2012 (the Form 10-K), were first mailed on or about April 22, 2013, to our stockholders entitled to vote at the meeting.

Important Notice Regarding the Availability of Proxy Materials for

the Stockholder Meeting to be Held on Thursday, May 16, 2013.

A copy of this Proxy Statement, the proxy card and our Annual Report on Form 10-K are available at:
<https://materials.proxyvote.com/24661P>

INFORMATION ABOUT THE ANNUAL MEETING AND VOTING

Purpose of the Annual Meeting.

At the Annual Meeting, stockholders will consider and vote on the following proposals:

the election of Harold S. Koplewicz, Laura A. Brege and Tasos G. Konidaris as Class I directors, each to serve until the 2016 annual meeting of stockholders and until his or her successor is duly elected and qualified (Proposal 1);

a non-binding, advisory vote on the compensation of our named executive officers (say-on-pay) (Proposal 2);

the ratification of the appointment by our Audit Committee of Ernst & Young LLP as Delcath's independent registered public accounting firm for the fiscal year ending December 31, 2013 (Proposal 3); and

such other business as may properly come before the meeting or any adjournment or postponement of the meeting.

Stockholders Entitled to Vote.

Stockholders of record at the close of business on Thursday, April 18, 2013 (the Record Date) of our common stock, \$0.01 par value per share, are entitled to notice of and to vote at the Annual Meeting and at any adjournment or postponement of the meeting. At the close of business on the Record Date, there were 96,723,993 shares of Delcath common stock issued, outstanding and entitled to vote.

Table of Contents

Number of Votes.	You have one vote for each share of Delcath common stock held by you on the Record Date.
Voting.	<p>You may vote your shares in person or by proxy.</p> <p><i>Stockholders of Record.</i> If you hold your shares in your own name as a holder of record, you can vote your common stock by:</p> <ul style="list-style-type: none">completing the enclosed proxy card and returning it signed and dated in the enclosed postage-paid envelope. The persons named in the proxy card (the proxies or proxy holders) will vote your shares in accordance with your instructions in your completed and returned proxy card; orattending the Annual Meeting and delivering your completed proxy card in person or by completing a ballot at the meeting. Ballots will be available at the meeting. <p><i>Beneficial Owners.</i> If your shares are held in the name of a bank, broker or other holder of record, you will receive instructions from the holder of record on how to vote your shares. You must follow the instructions of your broker or other nominee in order for your shares to be voted. If your shares are not registered in your name and you plan to vote your shares in person at the meeting, you must obtain and bring with you to the meeting a legal proxy from the broker or other nominee holding your shares that confirms your beneficial ownership of the shares and gives you the right to vote your shares at the meeting.</p>
Quorum.	A majority of our outstanding shares of common stock present in person or by proxy and entitled to be voted at the Annual Meeting constitutes a quorum. For purposes of determining the presence of a quorum for transacting business at the Annual Meeting, abstentions and broker non-votes (proxies from brokers or other nominees indicating that they have not received instructions from the beneficial owner(s) on a particular proposal(s) with respect to which the brokers or nominees do not have discretionary voting authority) will be treated as shares that are present for purposes of determining the presence of a quorum.
Non-Routine Proposals; Broker Non-Votes.	<p>Your broker or nominee will have discretionary authority to vote your shares with respect to routine proposals, but not with respect to non-routine proposals.</p> <p><i>Non-routine proposal.</i> Proposal 1 (election of directors) and Proposal 2 (say-on-pay) are non-routine proposals.</p> <p><i>Routine proposal.</i> Proposal 3 (ratification of the appointment of our independent registered public accounting firm) is a routine proposal.</p>
Vote Required; Treatment of Abstentions and Broker Non-Votes.	Proposal 1 , the election of Class I directors the nominees receiving the highest number of affirmative votes of the shares present or represented by proxy and entitled to vote on such matter at the Annual Meeting shall be elected as directors.

Table of Contents

Proposal 2, a non-binding, advisory resolution on the compensation of our named executive officers (say-on-pay) an affirmative vote of a majority of the shares present in person or represented by proxy and voting on such matter is required for approval of the advisory resolution.

Proposal 3, the ratification of the appointment of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2013 an affirmative vote of a majority of the shares present in person or represented by proxy and voting on such matter is required for approval.

Abstentions are included in the number of shares present or represented and voting on each matter. Broker non-votes are not considered voted for the particular matter and have the effect of reducing the number of affirmative votes required to achieve a majority for such matter by reducing the total number of shares from which the majority is calculated.

Voting of Proxies.

Our Board of Directors recommends a vote **FOR** all director nominees listed in Proposal 1, **FOR** Proposal 2 and **FOR** Proposal 3. Your shares of common stock will be voted in accordance with the instructions contained in your signed proxy card. **If you return a signed proxy card without giving specific voting instructions with respect to a particular Proposal or Proposals to be acted upon at the meeting, proxies will be voted in favor of the Board of Directors' recommendations with respect to that particular Proposal or those Proposals as set forth in this Proxy Statement.**

Other Matters.

We are not aware of any matters to be presented at the Annual Meeting other than those described in this Proxy Statement. If any matters not described in this Proxy Statement are properly presented at the meeting, the proxy holders will use their own judgment to determine how to vote your shares. If the meeting is adjourned or postponed, the proxy holders can vote your shares on the new meeting date as well, unless you have subsequently revoked your proxy.

Revoking your Proxy.

Stockholders of Record. You can revoke your proxy at any time before it is voted at the Annual Meeting by doing any one of the following things:

giving our Corporate Secretary a written notice of revocation before (addressed to Gregory J. Champion, Esq., Corporate Secretary, Delcath Systems, Inc., 810 Seventh Avenue, 35th Floor, New York, New York 10019) or at the meeting; or

delivering a properly executed, later dated proxy card; or

attending the Annual Meeting and voting in person at the meeting. **Your attendance at the meeting in and of itself will not be sufficient to revoke your proxy.**

Beneficial Owners. If you instructed your broker or nominee to vote your shares, you can change your vote only by following your broker or nominee's instructions for doing so.

Table of Contents

Expenses and Solicitation.

The costs of solicitation of proxies, including printing and mailing costs, will be borne by Delcath. In addition to the solicitation of proxies by mail, proxies may also be solicited personally by directors, officers and employees of Delcath, without additional compensation to these individuals. Delcath may request banks, brokers and other firms holding shares in their names which are beneficially owned by others to send proxy materials and obtain proxies from such beneficial owners, and will reimburse such banks, brokers and other firms for their reasonable out-of-pocket costs.

Table of Contents**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table contains information regarding the beneficial ownership of our common stock as of April 10, 2013, held by: (i) each of our directors and nominees for director; (ii) each of our named executive officers in the Summary Compensation Table; and (iii) all of our directors and executive officers as a group.

Name of Beneficial Owner:	Shares Beneficially Owned ⁽¹⁾	
	Number	Percent
Eamonn P. Hobbs ⁽²⁾	1,290,333	1.32%
Graham Miao ⁽³⁾	100,666	*
Agustin V. Gago ⁽⁴⁾⁽⁵⁾	295,888	*
Peter J. Graham ⁽⁶⁾	101,999	*
Krishna Kandarpa, M.D., Ph.D. ⁽⁷⁾	322,333	*
David A. McDonald ⁽⁵⁾⁽⁸⁾	298,872	*
Harold S. Koplewicz, M.D.	197,541	*
Laura A. Philips, Ph.D., MBA ⁽⁹⁾	163,534	*
Roger G. Stoll, Ph.D. ⁽¹⁰⁾	234,534	*
Douglas G. Watson ⁽¹¹⁾	127,382	*
Gabriel Leung ⁽¹²⁾	58,531	*
Laura A. Brege ⁽¹³⁾	0	*
Tasos G. Konidaris ⁽¹³⁾	0	*
All directors and executive officers as a group (17 people)⁽¹⁴⁾:	3,587,494	3.61%

* Less than 1%

- (1) Except as indicated in these footnotes, the persons named in this table have sole voting and investment power with respect to all shares of common stock beneficially owned. The number of shares beneficially owned by each person as of April 10, 2013 includes any vested and unvested shares of restricted stock and any shares of common stock that such person or group has the right to acquire within 60 days of April 10, 2013 upon the exercise of stock options. For each individual included in the table, percentage ownership is calculated by dividing the number of shares beneficially owned by such person by the sum of the 96,723,993 shares of common stock outstanding on April 10, 2013 plus the number of shares of common stock that such person or group has the right to acquire within 60 days of April 10, 2013.
- (2) Includes 1,128,333 shares of common stock which Mr. Hobbs has the right to acquire upon exercise of outstanding options exercisable within 60 days of April 10, 2013.
- (3) Includes 46,666 shares of common stock which Mr. Miao has the right to acquire upon exercise of outstanding options exercisable within 60 days of April 10, 2013.
- (4) Includes 231,999 shares of common stock which Mr. Gago has the right to acquire upon exercise of outstanding options exercisable within 60 days of April 10, 2013.
- (5) As of April 8, 2013, Mr. Gago and Mr. McDonald are no longer employed by the Company.
- (6) Includes 86,999 shares of common stock which Mr. Graham has the right to acquire upon exercise of outstanding options exercisable within 60 days of April 10, 2013.
- (7) Includes 163,333 shares of common stock which Dr. Kandarpa has the right to acquire upon exercise of outstanding options exercisable within 60 days of April 10, 2013.
- (8) Includes 283,333 shares of common stock which Mr. McDonald has the right to acquire upon exercise of outstanding options exercisable within 60 days of April 10, 2013, and 8,206 shares of common stock pledged as security.
- (9) Includes 12,000 shares of common stock owned of record by Dr. Philips' spouse with respect to which Dr. Philips disclaims beneficial ownership, and 20,000 shares of common stock jointly owned by Dr. Philips and her spouse.
- (10) Includes 150,000 shares of common stock which Mr. Stoll has the right to acquire upon exercise of outstanding options exercisable within 60 days of April 10, 2013.

Table of Contents

- (11) Includes 33,333 shares of common stock which Mr. Watson has the right to acquire upon exercise of outstanding options exercisable within 60 days of April 10, 2013.
- (12) Includes 10,004 shares of common stock which Mr. Leung has the right to acquire upon exercise of outstanding options exercisable within 60 days of April 10, 2013.
- (13) Ms. Brege and Mr. Konidaris each commenced their service as a director on July 5, 2012.
- (14) Includes 2,472,331 shares of common stock which certain directors and executive officers have the right to acquire upon exercise of outstanding options exercisable within 60 days of April 10, 2013.

Table of Contents

CORPORATE GOVERNANCE

Board of Directors. The Board of Directors oversees the business affairs of the Company and monitors the performance of management. In accordance with our corporate governance principles, our Board does not involve itself in day-to-day operations. The directors keep themselves informed through discussions with our Chief Executive Officer, or CEO, and Chief Financial Officer, or CFO, and other key executives and by reading the reports and other materials that management sends them and by participating in Board and committee meetings. Our directors hold office until their successors have been elected and qualified unless the director resigns or is removed or by reason of death or other cause is unable to serve in the capacity of director.

Board Independence. The Board has determined that a majority of our incumbent directors, namely, Laura A. Brege, Tasos G. Konidaris, Harold S. Koplewicz, M.D., Gabriel Leung, Laura A. Philips, Roger G. Stoll and Douglas G. Watson are independent directors within the meaning of the NASDAQ listing rules.

Attendance. The Board of Directors met 11 times in 2012 (including regularly scheduled and special meetings). During 2012, each director attended at least 75% of the aggregate of: (i) the total number of meetings of the Board (held during the period for which he or she served as a director) and (ii) the total number of meetings held by all committees of the Board of Directors on which he or she served (held during the period that he or she served¹). It is Delcath's policy that, absent unusual or unforeseen circumstances, all directors are expected to attend annual meetings of stockholders, and all attended our 2012 Annual Meeting.

Board Leadership Structure. Our current leadership structure is comprised of an independent director serving as Chairman of the Board (Dr. Koplewicz), a Delcath employee serving as Chief Executive Officer and President (Mr. Hobbs) and strong, active independent directors serving on our Board committees. We believe that this structure is appropriate for Delcath because it allows one person, our CEO and President, to concentrate on Delcath's day-to-day operations and to speak for and lead Delcath, while providing for effective oversight by an independent Chairman and Board. The Chairman is responsible for the strategic operations of the Board and sets the agenda for and presides over Board Meetings. For a company like Delcath, that is focused on the development, approval and commercialization of a specialized product in an extremely technical, highly regulated and intensely competitive industry, we believe our CEO and President is in the best position to lead our management team and to respond to the current pressures and needs of a company at the stage of growth and development of Delcath. Our Chairman, on the other hand, is in the best position to focus the Board's attention on the broader issues of corporate governance. We believe that splitting the roles of Chairman and CEO (and President) minimizes any potential conflicts that may result from combining the roles of CEO and Chairman, and maximizes the effectiveness of our management and governance processes to the benefit of our stockholders.

Board's Role in Risk Oversight. The Board as a whole is responsible for risk oversight, with reviews in certain areas being conducted by the relevant Board committees. Each of the Board's committees oversees the management of risks associated with their respective areas of responsibility. In performing this oversight function, the committees are assisted by management which provides visibility about the identification, assessment and monitoring of potential risks and management's strategy to mitigate such risks. Key members of management responsible for a particular area report directly to the Board committee charged with oversight of the associated function and, if the circumstances require, the whole Board. The Board committees review various risk exposures with the full Board and otherwise keep the full Board abreast of the committees' risk oversight activities throughout the year, as necessary or appropriate.

Risk Assessment of Compensation Programs. Our Compensation and Stock Option Committee considered whether our compensation programs encourage excessive risk taking by employees at the expense of long-term Company value. Based upon its assessment, the Compensation Committee does not believe that our compensation programs encourage excessive or inappropriate risk-taking, motivate imprudent risk-taking or create risks that are reasonably likely to have a material adverse effect on the Company.

¹ Except Mr. Konidaris missed one Audit Committee meeting since his appointment which resulted in a 66% attendance rate. Mr. Konidaris joined the Board on July 5, 2012.

Table of Contents

Director Continuing Education. Our directors are encouraged to attend educational programs provided by various universities, stock exchanges and other regulatory agencies to assist our directors in maintaining or enhancing their skills and abilities as directors and to update their knowledge and understanding of the pharmaceutical, medical device and biopharma industries and the regulatory environment in which Delcath operates and to which it is subject.

Board Committees. Our Board has three standing committees: an Audit Committee, a Compensation and Stock Option Committee and a Nominating and Corporate Governance Committee.

Audit Committee. The Audit Committee provides assistance to the Board in fulfilling its oversight responsibilities with respect to the Company's financial statements, the Company's system of internal accounting and financial controls and the independent audit of the Company's financial statements. Functions of the Audit Committee include:

the selection, evaluation and, where appropriate, replacement of our outside auditors;

an annual review and evaluation of the qualifications, performance and independence of our outside auditors;

the approval of all auditing services and permitted non-audit services provided by our outside auditors;

the review of the adequacy and effectiveness of our accounting and internal controls over financial reporting; and

the review and discussion with management and with our outside auditors of the Company's financial statements to be filed with the Securities and Exchange Commission.

The current members of the Audit Committee are: Laura A. Philips (Chair), Douglas G. Watson, Tasos G. Konidaris and Gabriel Leung, each of whom is independent within the meaning of the NASDAQ listing rules and otherwise meet the financial statement proficiency requirements of the NASDAQ listing rules. The Board has determined that Laura A. Philips, Douglas G. Watson, Gabriel Leung and Tasos G. Konidaris each qualify as an audit committee financial expert as defined in the rules of Securities and Exchange Commission. During 2012, the Audit Committee met eight times. The Audit Committee has a written charter, which is available on our website; go to www.delcath.com, click on Investors, then Corporate Governance.

Compensation and Stock Option Committee. The Compensation and Stock Option Committee, or Compensation Committee, assists the Board of Directors in the discharge of the Board's responsibilities with respect to the compensation of Delcath's directors, executive officers, and other key employees and consultants. As further described in the Executive Compensation Compensation Discussion and Analysis section of this Proxy Statement, the Compensation Committee establishes our overall compensation philosophy and is authorized to approve the compensation payable to our executive officers, including our named executive officers, and other key employees, including all perquisites, equity incentive awards, cash bonuses, and severance packages. The Compensation Committee also administers certain of our employee benefit plans, including its equity incentive plans.

The current members of the Compensation and Stock Option Committee are Roger G. Stoll (Chair), Laura A. Brege and Gabriel Leung, each of whom is independent within the meaning of the NASDAQ listing rules. During 2012, the Compensation and Stock Option Committee met 12 times. The Compensation and Stock Option Committee has a written charter, which is available on our website; go to www.delcath.com, click on Investors, then Corporate Governance.

Nominating and Corporate Governance Committee. The Nominating and Corporate Governance Committee, or Nominating Committee, is responsible for identifying individuals qualified to become Board members, and recommends to the Board the director nominees to be proposed by the Board for election by the stockholders (as well as any director nominees to be appointed by the Board to fill interim vacancies). The Nominating Committee also recommends the directors to be selected for membership on each Board committee.

Table of Contents

The Nominating and Corporate Governance Committee is also responsible for developing and recommending to the Board appropriate corporate governance guidelines and policies, and for leading the Board in its annual review of the Board's performance.

The current members of the Nominating and Corporate Governance Committee are Douglas G. Watson (Chair), Laura A. Philips and Roger G. Stoll, each of whom is independent, within the meaning of the NASDAQ listing rules. During 2012, the Nominating and Corporate Governance Committee met two times. The Nominating and Corporate Governance Committee has a written charter, which is available on our website; go to www.delcath.com, click on Investors, then Corporate Governance.

The Nominating Committee, with the assistance of a third-party search firm when it deems necessary, identifies candidates for director nominees. In considering candidates for the Board, the Nominating Committee considers each candidate's credentials as a whole, including, but not necessarily limited to, outstanding achievement in a candidate's personal career, broad and relevant experience, integrity, sound and independent judgment, experience and knowledge of the business environment and markets in which the Company operates, business acumen, and willingness and ability to devote adequate time to Board duties. The Nominating and Corporate Governance Committee considers the diversity of its members in the context of the Board as a whole, including the personal characteristics, experience and background of directors and nominees to facilitate Board deliberations that reflect a broad range of perspectives.

Recommendations by Stockholders of Director Nominees. The Nominating Committee will consider any recommendation by a stockholder of a candidate for nomination as a director. If a stockholder wants to recommend a director candidate for consideration by the Nominating Committee, the stockholder should submit the name of the proposed nominee, together with the reasons why the stockholder believes the election of the candidate would be beneficial to the Company and its stockholders and the information about the nominee that would be required in a proxy statement requesting proxies to vote in favor of the candidate. The stockholder's submission must be accompanied by the written consent of the proposed nominee to being nominated by the Board and the candidate's agreement to serve if nominated and elected. Any such submission should be directed to the Nominating and Corporate Governance Committee at Delcath's principal office, 810 Seventh Avenue, 35th Floor, New York, New York 10019. If a stockholder intends to nominate a person for election to the Board of Directors at an annual meeting, the stockholder must provide Delcath with written notice of his or her intention no later than the deadline for receiving a stockholder proposal for inclusion in Delcath's proxy statement for such meeting (as described below under the heading "Stockholder Proposals For the 2014 Annual Meeting"), and must otherwise comply with our amended and restated certificate of incorporation. Copies of any recommendation received in accordance with these procedures will be distributed to each member of the Nominating and Corporate Governance Committee. One or more members of the Nominating and Corporate Governance Committee may contact the proposed candidate to request additional information.

Stockholder Communications with the Board of Directors. Any stockholder wishing to communicate with the Board or with any specified director should address his or her communication to the Board of Directors or to the particular director(s) in care of the Corporate Secretary, Delcath Systems, Inc., 810 Seventh Avenue, 35th Floor, New York, New York 10019. All such written communication, other than items determined by our legal counsel to be inappropriate for submission to the intended recipient(s), will be submitted to the Board or to the particular director(s). Any stockholder communication not so delivered, will be made available upon request to any director. Examples of stockholder communications that would be considered inappropriate for submission include, without limitation, customer complaints, business solicitations, product promotions, job inquiries, junk mail and mass mailings, as well as material that is unduly hostile, threatening, illegal or similarly unsuitable.

Compensation Committee Interlocks and Insider Participation. During 2012, Roger G. Stoll (Chair), Laura A. Brege and Gabriel Leung served as members of our Compensation and Stock Option Committee. None of the members of the Compensation and Stock Option Committee is a current or former officer or employee of Delcath, nor did any Compensation and Stock Option Committee member engage in any related person transaction that

Table of Contents

would be required to be disclosed under Item 404 of Regulation S-K. During 2012, none of Delcath's executive officers served on the compensation committee (or equivalent) or on the board of directors of another entity whose executive officers served on the Compensation and Stock Option Committee or our Board of Directors.

Transactions with Related Persons. We have adopted a written policy for the review and approval or ratification of transactions between Delcath and Related Parties. Under the policy, our Nominating and Corporate Governance Committee will review the material facts of proposed transactions involving Delcath in which a Related Party will have a direct or indirect material interest. The Nominating and Corporate Governance Committee will either approve or disapprove Delcath's entry into the transaction or, if advance approval is not feasible, will consider whether to ratify the transaction. The Nominating and Corporate Governance Committee may establish guidelines for ongoing transactions with a Related Party, and will review such transactions at least annually. If the aggregate amount of the transaction is expected to be less than \$200,000, such approval or ratification may be made by the Chair of the Committee. In determining whether to approve or ratify a transaction with a Related Party, the Nominating and Corporate Governance Committee (or Chair) will consider, among other factors, whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third-party and the extent of the Related Party's interest in the transaction.

Certain transactions are deemed pre-approved under the policy, including compensation of executive officers and directors (except that employment of an immediate family member of an executive officer requires specific approval), and transactions with a company at which the Related Party's only relationship is as a non-officer employee, director, or less than 10% owner if the aggregate amount involved does not exceed 2% of the company's total annual revenues (or, in the case of charitable contributions by Delcath, 2% of the charity's total annual receipts). Pre-approval is not required if the amount involved in the transaction is not expected to exceed \$120,000 in any calendar year.

For purposes of the policy, a Related Party is generally anyone who since the beginning of the last full fiscal year is or was an executive officer, director or director nominee, owner of more than 5% of the Common Stock, or immediate family member of any of such persons.

No related person transactions occurred during 2012.

Table of Contents**PROPOSAL 1: ELECTION OF DIRECTORS**

Our Board of Directors currently consists of eight directors divided into three approximately equal classes. Directors hold office for staggered terms of three years (and until their successors are elected and qualified). One of the three classes is elected each year to succeed the directors whose terms are expiring. At the Annual Meeting, three Class I directors will be elected to the Board. Harold S. Koplewicz, Laura A. Brege and Tasos G. Konidaris are currently serving as Class I directors, and each has been nominated for re-election to the Board, by our Board of Directors upon the recommendation of the Nominating and Corporate Governance Committee. Each nominee has consented to be named as a nominee and to serve if elected. Should any of the nominees become unable to serve as a director (which the Board does not expect), the Board may designate a substitute nominee. In that case, the persons named as proxies will vote for the substitute nominee designated by the Board. Proxies cannot be voted for a greater number of persons than the number of nominees named in this Proxy Statement.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE ELECTION OF HAROLD S. KOPLEWICZ, LAURA A. BREGE AND TASOS G. KONIDARIS.

Information About Directors and Director Nominees. The following table sets forth certain information about our directors standing for re-election and about our directors whose terms will continue after the Annual Meeting.

Name	Age	Position(s) with Delcath	Director Since
<i>Class I Directors Nominees to serve as Class I Directors for terms expiring at the 2016 Annual Meeting</i>			
Harold S. Koplewicz	60	Chairman of the Board	2006
Laura A. Brege	55	Director	2012 ⁽¹⁾