

Celsion CORP  
Form 8-K  
February 01, 2013

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**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): February 1, 2013**

**CELSION CORPORATION**

**(Exact Name of Registrant as Specified in Charter)**

**Delaware**

**(State or Other Jurisdiction**

**of Incorporation)**

**001-15911**

**(Commission File Number)**

**52-1256615**

**(IRS**

**Employer**

**Identification  
No.)**

**997 Lenox Drive, Suite 100, Lawrenceville, New Jersey 08648-2311**  
**(Address of Principal Executive Offices) (Zip Code)**

**(609) 896-9100**

**(Registrant's telephone number, including area code)**

N/A

**(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))

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**Item 1.01 Entry into a Material Definitive Agreement.**

On February 1, 2013, Celsion Corporation ( Celsion ) entered into a Controlled Equity Offering Sales Agreement (the Agreement ) with Cantor Fitzgerald & Co., as sales agent ( Cantor ), pursuant to which Celsion may offer and sell, from time to time, through Cantor shares of common stock, par value \$0.01 per share, of Celsion having an aggregate offering price of up to \$25.0 million (the Shares ). Celsion intends to use the net proceeds from the offering, if any, for general corporate purposes, including research and development activities, capital expenditures and working capital. Pending the application of the net proceeds, Celsion intends to invest the net proceeds in short-term, investment grade, interest-bearing securities.

Celsion is not obligated to sell any Shares under the Agreement. Subject to the terms and conditions of the Agreement, Cantor will use commercially reasonable efforts, consistent with its normal trading and sales practices and applicable state and federal law, rules and regulations and the rules of The NASDAQ Capital Market, to sell Shares from time to time based upon Celsion's instructions, including any price, time or size limits or other customary parameters or conditions Celsion may impose.

Under the Agreement, Cantor may sell Shares by any method deemed to be an at-the-market offering as defined in Rule 415 promulgated under the Securities Act of 1933, as amended, including sales made directly on The NASDAQ Capital Market, on any other existing trading market for the Shares or to or through a market maker. In addition, pursuant to the terms and conditions of the Agreement and subject to the instructions of Celsion, Cantor may sell Shares by any other method permitted by law, including in privately negotiated transactions.

The Agreement will terminate upon the earlier of (i) the sale of Shares under the Agreement having an aggregate offering price of \$25.0 million and (ii) the termination of the Agreement by Cantor or Celsion. The Agreement may be terminated by Cantor or Celsion at any time upon 10 days' notice to the other party, or by Cantor at any time in certain circumstances, including the occurrence of a material adverse change in Celsion.

Celsion will pay Cantor a commission of 3.0% of the aggregate gross proceeds from each sale of Shares and has agreed to provide Cantor with customary indemnification and contribution rights. Celsion has also agreed to reimburse Cantor for legal fees and disbursements, not to exceed \$50,000 in the aggregate, in connection with entering into the Agreement.

The foregoing summary of the Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Agreement, a copy of which is attached as Exhibit 10.1 hereto and incorporated herein by reference.

The opinion of Celsion's counsel regarding the validity of the Shares that will be issued pursuant to the Agreement is also filed herewith as Exhibit 5.1.

The Shares will be issued pursuant to Celsion's previously filed and effective Registration Statement on Form S-3 (File No. 333-183286), the base prospectus dated September 14, 2012, filed as part of such Registration Statement, and the prospectus supplement dated February 1, 2013, filed by Celsion with the Securities and Exchange Commission. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy Shares, nor shall there be any sale of the Shares in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

### **Safe Harbor Statement**

This Current Report on Form 8-K contains forward-looking statements. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of risks and uncertainties, including, without limitation, unforeseen changes in the course of Celsion's research and development activities and clinical trials; termination of the Agreement; any increase in Celsion's cash needs; uncertainty regarding the number of Shares, if any, to be sold by Celsion; possible actions by customers, suppliers, competitors or regulatory authorities; and other risks detailed from time to time in Celsion's periodic reports filed with the Securities and Exchange Commission. Celsion undertakes no obligation to update any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future developments or otherwise.

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**Item 9.01 Financial Statements, Pro Forma Financial Information and Exhibits.**

(d) Exhibits

<b><u>Exhibit Number</u></b>	<b>Description</b>
5.1	Opinion of O'Melveny & Myers LLP.
10.1	Controlled Equity Offering <sup>SM</sup> Sales Agreement, dated February 1, 2013, by and between Celsion Corporation and Cantor Fitzgerald & Co.
23.1	Consent of O'Melveny & Myers LLP (included in Exhibit 5.1).

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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.

CELSION CORPORATION

Dated: February 1, 2013

By: */s/ Gregory Weaver*  
Gregory Weaver  
Senior Vice President and Chief  
Financial Officer

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EXHIBIT INDEX

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