

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

DYADIC INTERNATIONAL INC

Form: 8-K

Date Filed: 2008-01-08

Corporate Issuer CIK: 1213809

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): **January 2, 2008**

Dyadic International, Inc.

(Exact name of registrant as specified in its charter)



Delaware

(State or other jurisdiction of incorporation)

333-102629

(Commission File Number)

45-0486747

(IRS Employer Identification No.)

140 Intracoastal Pointe Drive, Suite 404

Jupiter, Florida 33477

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(561) 743-8333**

(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))
-

Item 2.04. Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement.

On January 2, 2008, Dyadic International (USA), Inc. ("Dyadic Florida"), a wholly-owned subsidiary of Dyadic International, Inc. (the "Company"), received a purported declaration of default (the "2008 Default Notice") from the Mark A. Emalfarb Trust under agreement dated October 1, 1987 ("Emalfarb Trust") relating to Dyadic Florida's Revolving Note in favor of the Emalfarb Trust dated as of May 29, 2003 with a maturity date of January 1, 2009 (as amended to date, the "Note"). Principal under the Note bears interest at the rate of 8% per annum (14% following a default under the Note); the Note has a principal balance of approximately \$2.4 million and is secured by certain of Dyadic Florida's assets. The Emalfarb Trust has as its trustee and beneficiary Mark A. Emalfarb, a director of the Company and the former Chief Executive Officer and President of the Company. According to a Schedule 13D filing (filed on November 13, 2007) (the "13D Filing"), Mark Emalfarb, through the Emalfarb Trust, owned 5,822,125 shares (or approximately 19.4%) of the Company's outstanding shares of common stock as of November 9, 2007. In addition, according to the 13D filing, the Francisco Trust under agreement dated February 28, 1996, whose beneficiaries are the spouse and descendants of Mark Emalfarb, owned 4,844,578 shares (or approximately 15.9%) of the Company's outstanding shares of common stock as of November 9, 2007.

As previously disclosed in the Company's Current Report on Form 8-K (filed on October 24, 2007) (the "October 24 8-K"), on October 3, 2007, Dyadic Florida received a purported written notice of default (the "2007 Default Notice") from the Emalfarb Trust pursuant to the Note and the Security Agreement dated as of May 29, 2003, as amended by the first amendment thereto dated as of August 19, 2004 (the "Security Agreement"). The 2007 Default Notice alleged that, with reference to certain events identified in the 2007 Default Notice and reported in the Company's Current Reports on Form 8-K filed prior to the date of the 2007 Default Notice (the "Events"), Dyadic Florida may be in default under the Note and Security Agreement. The 2008 Default Notice asserts that the Events (as referred to in the 2007 Default Notice, with no new or different events identified) have continued for more than 90 days and purports to declare Dyadic Florida in Default (as defined in the Note) under the Note and that all amounts evidenced under the Note are immediately due and payable to the Emalfarb Trust. The 2008 Default Notice demands payment of all unpaid principal and accrued interest due on the Note, plus approximately \$11,000 in legal fees.

As the Company previously reported in the October 24 8-K (with regard to the 2007 Default Notice) and reaffirms here, the Company does not believe that it is in default under the Note. The Company does not believe that any of the Events constitutes a default under the Note. The Company has made all payments required by the terms of the Note. Although no assurances can be given as to the ultimate outcome of this matter, the Company disagrees with the claims in the 2007 Default Notice and the 2008 Default Notice that a default has occurred under the Note and intends to vigorously contest these claims.

The 2008 Default Notice and the Company's response thereto are attached hereto as Exhibits 99.1 and 99.2, respectively, and are incorporated by reference herein.

Item 8.01. Other Events.

As previously disclosed in the Company's Current Report on Form 8-K (filed on December 28, 2007), the six putative class action lawsuits filed against the Company and certain current and former officers and directors of the Company in the United States District Court for the Southern District of Florida were consolidated, and the Court selected a lead plaintiff who is tasked with litigating the claims against the Company on behalf of all putative class members. On December 28, 2007, the Court ordered that the lead plaintiff must file an amended and consolidated complaint by February 25, 2008 and that the Company must respond to such complaint by March 28, 2008. The Company intends to vigorously contest and defend the allegations under the amended and consolidated putative class action complaint, but no assurance can be given as to the timing, costs to defend or the ultimate outcome of this matter.

On January 8, 2008, the Company issued a press release regarding the matters described in this Current Report on Form 8-K. The complete text of the press release is attached hereto as Exhibit 99.3.

Item 9.01. Financial Statements and Exhibits.

(c) The following exhibits are filed with this report:

Exhibit Number	Description of Exhibit
99.1	Letter (2008 Default Notice) dated January 2, 2008 from counsel to the Mark A. Emalfarb Trust under agreement dated October 1, 1987
99.2	Dyadic International (USA), Inc.'s letter response dated January 8, 2008 to among other things, the 2008 Default Notice
99.3	Press Release of Dyadic International, Inc. dated January 8, 2008

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.

DYADIC INTERNATIONAL, INC.

Date: January 8, 2008

By: /s/ Lisa De La Pointe

Name: Lisa De La Pointe

Title: Executive Vice President and Chief Financial Officer

Index to Exhibits

Exhibit Number	Description of Exhibit
99.1	Letter (2008 Default Notice) dated January 2, 2008 from counsel to the Mark A. Emalfarb Trust under agreement dated October 1, 1987
99.2	Dyadic International (USA), Inc.'s letter response dated January 8, 2008 to among other things, the 2008 Default Notice
99.3	Press Release of Dyadic International, Inc. dated January 8, 2008

LEVIN GINSBURG

80 North LaSalle Street w Suite 3200
Attorneys at Law
Chicago, Illinois 60601-2800
312.368.0100

January 2, 2008

Via Overnight Courier, Email and Telefax No. 561-743-8343

Dyadic International (USA), Inc.
Formerly known as Dyadic International, Inc.
140 Intracoastal Pointe Drive, Suite 404
Jupiter, Florida 33477
Attention: Wayne Moor, Chief Executive Officer, President and Board Member

RE: Default under Revolving Note (\$3,000,000.00)
Our File No. 337438

Dear Mr. Moor:

As you may recall, we are counsel to the Mark A. Emalfarb Trust under agreement dated October 1, 1987 ("Lender").

By our letter to you dated October 3, 2007 ("Notice"), Lender put Dyadic International (USA), Inc., formerly known as Dyadic International, Inc., ("Borrower") on notice of certain of events which could give rise to Borrower's default ("Events") pursuant to Section 5 of that certain Revolving Note dated as of May 29, 2003 ("Bridge Note"). The balance due under the Bridge Note is the principal sum of \$2,378,832.00, plus all interest accrued from and after October 1, 2007, and legal fees incurred by Lender of \$11,163.75.

The Events have continued for more than ninety (90) days after the Notice and, therefore, Borrower is in "Default" (as that term is defined in the Bridge Note). Lender will not extend the maturity date under the Bridge Note.

Lender hereby declares the Bridge Note to be in Default, and all amounts evidenced thereby to be immediately due and payable to Lender. All amounts due under the Note must be wired or otherwise paid by Borrower to Lender so they are received by Lender not later than 4:30 p.m., EST, on January 2, 2008. Lender's wire instructions are as follows:

JP Morgan Chase Bank, N.A.
ABA #
Goldman, Sachs & Co.
A/C #
For credit to Mark A. Emalfarb Trust
FAO:

Should Borrower fail to pay all amounts due as demanded herein, Lender will exercise its rights and remedies.

LEVIN & GINSBURG LTD. W WWW.LGATTORNEYS.COM W FAX 312.368.0111

Mr. Wayne Moor

Dyadic International (USA), Inc.

Formerly known as Dyadic International, Inc.

Our File No. 337438

January 2, 2008

Upon your receipt of this notice, please immediately confirm with me in writing that Borrower will pay all amounts due as demanded herein and, if the amounts due are wired to Lender, please provide me with the wire transfer confirmation number as soon as it becomes available.

Sincerely,

/s/ Jonathan M. Weis

JONATHAN M. WEIS

jweis@lgattorneys.com

JMW/pdk

cc: Mr. Harry Z. Rosengart, Dyadic Chairman of the Board

(via email and telefax no. 561-743- 8343)

Mr. Richard Berman, Dyadic Board Member

(via email and telefax no. 561-743-8343)

Mr. Stephen J. Warner, Dyadic Board Member

(via email and telefax no. 561-743-8343)

Ms. Lisa M. De La Pointe, Executive Vice President and Chief Financial Officer

(via email and telefax no. 561-743-8343)

Mr. David W. Trench

(via email and telefax no. 561-743-8343)

Mr. Robert S. Levin

David W. Trench, Esq
Direct Dial: (305) 350-2359
Direct Fax: (305) 351-2261
E-Mail: dtrench@bilzin.com

January 8, 2008

VIA EMAIL, FACSIMILE AND REGULAR MAIL

Jonathan M. Weis, Esquire
Levin Ginsburg
180 North LaSalle Street
Suite 3200
Chicago, Illinois 60601

RE: Alleged Default under Revolving Note
Your File No. 337438

Dear Mr. Weis:

Your letter of January 2, 2008 to Mr. Wayne Moor has been sent to us for response.

Reference is made to the revolving note dated as of May 29, 2003 (as amended, the "Note") executed by Dyadic International, Inc. (now known as Dyadic International (USA), Inc.), a Florida Corporation (the "Company"), and the security agreement dated as of May 29, 2003, as amended by the first amendment to the security agreement dated as of August 19, 2004 (the "Security Agreement") by and between the Company and the Mark A. Emalfarb Trust under agreement dated October 1, 1987 (the "Lender").

Your letter asserts that the Note is in Default (as defined in the Note) because the Events (as defined in that letter) recited in the purported Notice (as defined in that letter) have continued for more than ninety (90) days after the purported Notice. We disagree. None of the Events constitutes a Default under the Note and no event has occurred and continued for more than ninety (90) days that would constitute a Default under the Note.

The Note is current, with all payments required by the terms of the Note having been paid and the Company has sufficient assets to make all principal and interest payments under the Note when they become due and payable. Accordingly, the Note is not in Default, and your demand is improper.

We have also received and reviewed your letter to Wayne Moor dated January 7, 2008. Since the Note is not in Default, the Lender's demands in that letter are likewise improper. This includes the Lender's demand that the Company notify all of the Company's account debtors of the Security Agreement and direct such account debtors to pay directly to the Lender all amounts due or to become due to the Company. The Company will do no such thing, nor will it send to your attention a list of its account debtors. In addition, the Company will continue to use, consume or sell its inventory as it has in the past.

Both the Security Agreement and Note are governed by Florida law. Any effort by the Lender to interfere with the Company's contracts or advantageous business relationships with its account debtors will be treated as a tortious event and the Company will seek damages to the extent harm is suffered as a result of any such action. In addition, while both the Security Agreement and the Note provide that the Company is obligated to pay the Lender's attorney's fees in connection with the enforcement of the Lender's rights under the Loan Documents (as defined in the Note), under Florida law, such a provision is interpreted to allow a borrower to collect its attorney's fees in litigation in which a borrower prevails.

In the event the Lender takes any action to enforce the Note or the Security Agreement on the basis of the purported Notice and the January 2, 2008 letter, the Company will defend against such action and seek to recover its attorney's fees and costs in doing so.

Sincerely,

David W. Trench

DWT/asm

cc: Dyadic International, Inc.

Dyadic Announces Receipt of Purported Declaration of Default from Mark A. Emalfarb Trust and Other Events

JUPITER, Fla – January 8, 2008 – Dyadic International, Inc. (AMEX: DIL) announced today that on January 2, 2008, Dyadic International (USA), Inc. ("Dyadic Florida"), a wholly-owned subsidiary of Dyadic International, Inc. (the "Company"), received a purported declaration of default (the "2008 Default Notice") from the Mark A. Emalfarb Trust under agreement dated October 1, 1987 ("Emalfarb Trust") relating to Dyadic Florida's Revolving Note in favor of the Emalfarb Trust dated as of May 29, 2003 with a maturity date of January 1, 2009 (as amended to date, the "Note"). Principal under the Note bears interest at the rate of 8% per annum (14% following a default under the Note); the Note has a principal balance of approximately \$2.4 million and is secured by certain of Dyadic Florida's assets. The Emalfarb Trust has as its trustee and beneficiary Mark A. Emalfarb, a director of the Company and the former Chief Executive Officer and President of the Company. According to a Schedule 13D filing (filed on November 13, 2007) (the "13D Filing"), Mark Emalfarb, through the Emalfarb Trust, owned 5,822,125 shares (or approximately 19.4%) of the Company's outstanding shares of common stock as of November 9, 2007. In addition, according to the 13D filing, the Francisco Trust under agreement dated February 28, 1996, whose beneficiaries are the spouse and descendants of Mark Emalfarb, owned 4,844,578 shares (or approximately 15.9%) of the Company's outstanding shares of common stock as of November 9, 2007.

As previously disclosed in the Company's Current Report on Form 8-K (filed on October 24, 2007) (the "October 24 8-K"), on October 3, 2007, Dyadic Florida received a purported written notice of default (the "2007 Default Notice") from the Emalfarb Trust pursuant to the Note and the Security Agreement dated as of May 29, 2003, as amended by the first amendment thereto dated as of August 19, 2004 (the "Security Agreement"). The 2007 Default Notice alleged that, with reference to certain events identified in the 2007 Default Notice and reported in the Company's Current Reports on Form 8-K filed prior to the date of the 2007 Default Notice (the "Events"), Dyadic Florida may be in default under the Note and Security Agreement. The 2008 Default Notice asserts that the Events (as referred to in the 2007 Default Notice, with no new or different events identified) have continued for more than 90 days and purports to declare Dyadic Florida in Default (as defined in the Note) under the Note and that all amounts evidenced under the Note are immediately due and payable to the Emalfarb Trust. The 2008 Default Notice demands payment of all unpaid principal and accrued interest due on the Note, plus approximately \$11,000 in legal fees.

As the Company previously reported in the October 24 8-K (with regard to the 2007 Default Notice) and reaffirms here, the Company does not believe that it is in default under the Note. The Company does not believe that any of the Events constitutes a default under the Note. The Company has made all payments required by the terms of the Note. Although no assurances can be given as to the ultimate outcome of this matter, the Company disagrees with the claims in the 2007 Default Notice and the 2008 Default Notice that a default has occurred under the Note and intends to vigorously contest these claims.

As previously disclosed in the Company's Current Report on Form 8-K (filed on December 28, 2007), the six putative class action lawsuits filed against the Company and certain current and former officers and directors of the Company in the United States District Court for the Southern District of Florida were consolidated, and the Court selected a lead plaintiff who is tasked with litigating the claims against the Company on behalf of all putative class members. On December 28, 2007, the Court ordered that the lead plaintiff must file an amended and consolidated complaint by February 25, 2008, and that the Company must respond to such complaint by March 28, 2008. The Company intends to vigorously contest and defend the allegations under the amended and consolidated putative class action complaint, but no assurance can be given as to the timing, costs to defend or the ultimate outcome of this matter.

On January 8, 2008, the Company filed with the Securities and Exchange Commission a Current Report on Form 8-K, which includes discussion of the above-mentioned items.

About Dyadic

Dyadic International, Inc. is a biotechnology company that uses its patented and proprietary technologies to conduct research and development activities for the discovery, development, and manufacture of products and enabling solutions to the bioenergy, industrial enzyme and pharmaceutical industries.

Cautionary Statement for Forward-Looking Statements

Certain statements made in this press release may be considered "forward-looking statements." These forward-looking statements are based upon current expectations and involve a number of assumptions, risks and uncertainties that could cause our actual results, performance or achievements to be materially different from such forward-looking statements. In view of such risks and uncertainties, investors and stockholders should not place undue reliance on our forward-looking statements. Such statements speak only as of the date of this release, and we undertake no obligation to update any forward looking statements made herein. For a discussion of assumptions, risks and uncertainties identified by the Company, please see our filings from time to time with the Securities and Exchange Commission, which are available free of charge on the SEC's web site at <http://www.sec.gov>, including our Annual Report on Form 10-KSB for the year ended December 31, 2006, and our subsequent filings with the SEC.

Contact:

Berkman Associates
Investor Relations Counsel to Dyadic International, Inc.
Neil Berkman, 310-826-5051
info@berkmanassociates.com

