

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

Filing Date: **2007-12-04** | Period of Report: **2007-11-29**
SEC Accession No. **0001144204-07-065758**

([HTML Version](#) on secdatabase.com)

FILER

DIOMED HOLDINGS INC

CIK: **1074874** | IRS No.: **841480636** | State of Incorporation: **NV** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **001-31250** | Film No.: **071284541**
SIC: **3841** Surgical & medical instruments & apparatus

Business Address
1 DUNDEE PARK
ANDOVER MA 01810
978-475-7771

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**

November 29, 2007

Diomed Holdings, Inc.

Delaware

(State or other jurisdiction of incorporation)

000-32045

(Commission File Number)

84-1480636

(IRS Employer Identification No.)

1 Dundee Park

Andover, MA

(Address of Principal Executive Offices)

01810

(Zip Code)

Registrant's telephone number, including area code: **(978-475-7771)**

ITEM 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

Following oral notice given to Diomed Holdings, Inc. (the “Company”) on November 29, 2007 by the American Stock Exchange (“AMEX”), on December 3, 2007, the Company received a written notice (the “Notice”) from the AMEX advising the Company that it has failed to comply with Sections 1003(a)(ii) and (a)(iii) of the AMEX Company Guide’s standards for continued listing. The basis for the Notice is that the stockholder’s equity of the Company, as reported in the Company’s Quarterly Report on 10-QSB for the quarter ended September 30, 2007, is less than the \$4,000,000 minimum required by Section 1003(a)(ii), with respect to an issuer with losses from continuing operations and/or net losses in three out its four most recent fiscal years, and is less than the \$6,000,000 minimum required by Section 1003(a)(iii), with respect to an issuer with losses from continuing operations and/or net losses in its five most recent fiscal years. The Company’s stockholders’ equity as of September 30, 2007 was approximately \$5,666,000.

In the Notice, the AMEX invites the Company to submit to the AMEX by January 3, 2008 a plan setting forth the action that the Company has taken, or will take, that would bring the Company into compliance with this continued listing standard by February 3, 2009. The Company intends to submit such a plan to the AMEX as soon as practicable. According to the Notice, the AMEX will review the plan to determine whether the Company has made a reasonable demonstration of an ability to regain compliance with the continued listing standards within the specified timeframe, in which case the AMEX will accept the plan. If the AMEX accepts the plan, the Company expects to continue its listing on the AMEX and to regain compliance with all AMEX continued listing criteria. If the AMEX does not accept the Company’s plan, or if the Company does not make progress consistent with the plan or regain compliance with the continued listing standards within the applicable time period, then the AMEX may initiate proceedings to delist the Company’s common stock from the AMEX.

A copy of the Notice is attached hereto as Exhibit 99.1, and a copy of the Company’s press release regarding receipt of the Notice is attached hereto as Exhibit 99.2.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

- 99.1 Letter from AMEX to Diomed Holdings, Inc. dated December 3, 2007
- 99.2 Press Release by Diomed Holdings, Inc. dated December 4, 2007

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.

Diomed Holdings, Inc.
(Registrant)

Date: December 4, 2007

By: /s/ DAVID B. SWANK

Name: David B. Swank

Title: Chief Financial Officer

List of Exhibits:

- 99.1 Letter from AMEX to Diomed Holdings, Inc. dated December 3, 2007
- 99.2 Press Release by Diomed Holdings, Inc. dated December 4, 2007



American Stock Exchange
88 Trinity Place
New York, NY 10008-1872

James P. Mollen
Managing Director - Listing Qualifications
T 212 306 2391
F 212 306 5359
james.mollen@amex.com

Via Facsimile and Federal Express

December 3, 2007

Mr. David B. Swank
Chief Financial Officer
Diomed Holdings, Inc.
1 Dundee Park
Andover, MA 01810

Dear Mr. Swank:

The American Stock Exchange LLC (the "Amex" or "Exchange"), as a self-regulatory organization, has the responsibility to provide a fair and orderly marketplace to issuers and to the investing public. Included in these responsibilities is the obligation to take appropriate steps to ensure that companies listed on the Amex market comply with applicable continued listing standards. Investors in companies listed on the Amex have a reasonable expectation that those companies comply with such listing standards or, at a minimum, have a plan in place to return to compliance within a specified time.

A review of Diomed Holdings, Inc.'s (the "Company" or "Diomed") Form 10-Q for the period ended September 30, 2007, as well as conversations with the Company, indicates that Diomed is not in compliance with certain of the Exchange's continued listing standards as set forth in Part 10 of the Amex Company Guide (the "Company Guide"),¹ and the Company has therefore become subject to the procedures and requirements of Section 1009 of the Company Guide.

Specifically, the Company is not in compliance with Section 1003(a)(ii) of the Company Guide with shareholders' equity of less than \$4,000,000 and losses from continuing operations and/or net losses in three out of its four most recent fiscal years and Section 1003(a)(iii) of the Company Guide with shareholders' equity of less than \$6,000,000 and losses from continuing operations and/or net losses in its five most recent fiscal years.

As a result of the foregoing, Diomed has become subject to the procedures and requirements of Section 1009 of the Company Guide. Accordingly, the Company must contact me at the telephone number above or Matt McSweeney at (212)306-2442 by December 10, 2007 to confirm receipt of this letter, discuss any new developments of which the Exchange staff may be unaware, and indicate whether or not it intends to submit a plan of compliance as discussed below.

¹ The Amex Company Guide may be accessed at www.amex.com.

Mr. David B. Swank
December 3, 2007
Page 2

In order to maintain its Amex listing, the Company must submit a plan by January 3, 2007, advising the Exchange of action it has taken, or will take, that would bring it into compliance with all the continued listing standards of the Company Guide by February 3, 2009 (the "Plan").²

The Plan should include specific milestones, quarterly financial projections, and details related to any strategic initiatives the Company plans to complete.³ The Listings Qualifications Department management will evaluate the Plan, including any supporting documentation, and make a determination as to whether the Company has made a reasonable demonstration of an ability to regain compliance with the continued listing standards within the specified timeframes, in which case the Plan will be accepted. If the Plan is accepted, the Company may be able to continue its listing during the plan period, during which time it will be subject to periodic reviews to determine whether it is making progress consistent with the Plan.⁴

Please be advised that, if the Company does not submit a Plan, or if the Plan is not accepted, it will be subject to delisting proceedings. Furthermore, if the Plan is accepted but the Company is not in compliance with all the continued listing standards of the Company Guide by February 3, 2009, or if the Company does not make progress consistent with the Plan during the plan period, the Exchange staff will initiate delisting proceedings as appropriate. The Company may appeal a staff determination to initiate delisting proceedings in accordance with Section 1010 and Part 12 of the Company Guide.

This letter constitutes notice of a failure to satisfy certain of the Exchange's continued listing standards. The Company is therefore required to file a current report on Form 8-K pursuant to Item 3.01 of that Form within the requisite time periods. The Company must also issue a press release, pursuant to Section 402 of the Company Guide, contemporaneously with the filing of the Form 8-K that discloses receipt of this letter and the fact that it is not in compliance with the specified provisions of the Amex continued listing standards.⁵ Please note, however, that satisfying these filing and publication requirements does not relieve the Company of its obligation to assess the materiality of this letter on an ongoing basis under the federal securities laws nor does it provide a safe harbor under the federal securities laws or otherwise. Accordingly, the Company should consult with securities counsel regarding disclosure and other obligations mandated by law.

As an additional consequence of falling below continued listing standards, please be advised that within five days of the date of this letter, Diomed will be included in a list of issuers that are not in compliance with the Exchange's continued listing standards. This list is posted daily on www.amex.com and includes

² The Company was previously cited for non-compliance via correspondence dated June 1, 2006 and remained out of compliance for four months, or until September 30, 2007.

³ For your convenience, a suggested format for plan responses is attached. Please note that the information outlined in the suggested format is for information purposes only and is not intended to provide specific plan requirements. However, your plan must demonstrate an ongoing continuous effort to regain compliance through specific goals and initiatives, which can reasonably be expected to be completed within the plan period.

⁴ Please be advised that if the Exchange accepts Diomed's plan of compliance, the Company must issue a press release disclosing the fact that it has fallen below the continued listing standards of the Amex and that its listing is being continued pursuant to an extension. The press release must be issued within five (5) business days from notification that the plan has been accepted.

⁵ This notice should be provided to the Amex StockWatch Department (telephone: 212-306-8383; facsimile: 212-306-1488) and the Listing Qualifications Department (telephone: (212) 306-1331 facsimile: 212-306-5359).

Mr. David B. Swank
December 3, 2007
Page 3

the specific listing standard(s) with which a company does not comply. Furthermore, the Exchange is utilizing the financial status indicator fields in the Consolidate Tape Association's Consolidated Tape System ("CTS") and Consolidated Quote Systems ("CQS") Low Speed and High Speed Tapes to identify companies that are noncompliant with the Exchange's continued listing standards and/or are delinquent with respect to a required federal securities law periodic filing. Therefore, the Company will become subject to the indicator .BC to denote its noncompliance.⁶ The indicator will not change the Company's trading symbol itself, but will be disseminated as an extension of the Company's symbol on the CTS and CQS whenever the Company's trading symbol is transmitted with a quotation or trade. Both the website posting and indicator will remain in effect until such time as the Company has regained compliance with all applicable continued listing standards.

This letter and any response may constitute non-public information in accordance with federal securities laws, and you may wish to consult with your legal counsel about the Company's obligations in this regard. The only designated representatives at the Exchange with which this matter should be discussed are staff members of the Listing Qualifications and StockWatch Departments. Further, as I am sure you are aware, pursuant to Section 910 of the Company Guide, Amex Specialists must be treated as members of the public and, accordingly, no non-public information should be discussed with or otherwise disclosed to the Company's Specialist.

The Amex remains hopeful that the Company will be able to maintain its listing. If you are in need of any assistance in this matter, please do not hesitate to contact me at the telephone number above or Matt McSweeney at (212) 306-2442.

Sincerely,

A handwritten signature in black ink that reads "James Moller". The signature is written in a cursive style with a large, looping initial "J" that extends downwards and to the left.

⁶ Please note that companies that become delinquent with respect to a required federal securities law periodic filing will become subject to the website posting and indicator .LF.

Suggested Format for Plan Responses
(For Informational Purposes Only)

1. Corporate Background Information
2. Facts and circumstances that led to the Company falling out of compliance with the continued listing standards
3. Current condition of the Company
4. A strategic outline including goals and initiatives which the Company has a reasonable expectation of completing. Such goals and initiatives should be summarized by quarter, and should demonstrate the manner in which the Company anticipates returning to compliance with the standards. The Plan could include one or more of the following:
 - (i) New equity raising activities
 - (ii) Debt/capitalization restructuring
 - (iii) Merger/acquisition/disposition activity
 - (iv) Pre-tax, net income, EBITDA, etc goals
 - (v) Gross margin and/or operating
 - (vi) Quarterly income statement, cash flow and balance sheet projections assuming successful completion of the Company's intended goals and initiatives
5. Should certain critical accomplishments not be met in any one quarter, the Company may be subject to suspension and delisting. With that in mind, the plan could also include strategic alternatives or contingencies assuming that a critical goal was not met.
6. The Plan could also include documentation evidencing the feasibility of the Plan being completed. This documentation may include:
 - (i) Board of Director resolutions authorizing management to commence, move forward or complete a given action
 - (ii) Correspondence from the Company's investment advisors/bankers/potential investors/accountants/attorney's regarding a planned capital raising activities, merger/acquisition/disposition transaction, etc.
 - (iii) Pending SEC filings such as S-4's, Proxy vote, etc

**Contact:**

Christopher J. Geberth
Vice President Finance
Diomed Holdings, Inc.
(877) 434-6633 or (978) 824-1816
investor-relations@diomedinc.com

Carney Noensie
Investor Relations
Burns McClellan
(212) 213-0006
cnoensie@burnsmc.com

DIOMED HOLDINGS REPORTS NOTICE REGARDING AMEX LISTING STANDARDS

ANDOVER, MA, December 4, 2007, --- Diomed Holdings, Inc. (AMEX: DIO - News), a leading developer and marketer of minimally invasive medical technologies, including its patented EVLT® laser treatment for varicose veins, today announced that it has received notice from the American Stock Exchange advising the Company that, based on the Company's balance sheet included in its most recent quarterly report on Form 10QSB, it did not satisfy Sections 1003(a)(ii) and (iii) of the AMEX Company Guide's standards for continued listing on the Exchange. The standards require that a company maintain at least \$4 million in stockholders' equity if the company has sustained losses from continuing operations in three of its four most recent fiscal years and at least \$6 million in stockholders' equity if the company has sustained losses from continuing operations in its five most recent fiscal years.

According to the notice, the Company must submit a Plan by January 3, 2008 advising the Exchange what plans it has taken or will take to bring it into compliance with the continued listing standards by February 3, 2009. Though there can be no guarantee that the Plan will be accepted by the AMEX, the Company believes it will be able to file a Plan acceptable to the Exchange and expects to do so by January 3, 2008.

The Company will file a Current Report on Form 8-K with the Securities and Exchange Commission regarding this matter which will include further details regarding the notice.

About Diomed

Diomed develops and commercializes minimal and micro-invasive medical procedures that use its proprietary laser technologies and disposable products. Diomed's EVLT® laser vein ablation procedure is used in varicose vein treatments. Diomed also provides photodynamic therapy (PDT) for use in cancer treatments, and dental and general surgical applications. The EVLT® procedure and the Company's related products were cleared by the United States FDA in January of 2002. Along with lasers and single-use procedure kits for its EVLT® laser vein treatment, the Company provides its customers with state of the art physician training and practice development support. Additional information is available on the Company's website: www.evlt.com.

EVLT® is a registered trademark of Diomed Inc., Andover, MA.

Safe Harbor

Safe Harbor statements under the Private Securities Litigation Reform Act of 1995: Statements in this news release looking forward in time involve risks and uncertainties, including the risks associated with trends in the products markets, reliance on third party distributors in various countries outside the United States, reoccurring orders under OEM contracts, market acceptance risks, technical development risks and other risk factors. These statements relate to our future plans, objectives, expectations and intentions. These statements may be identified by the use of words such as "may," "will," "should," "potential," "expects," "anticipates," "intends," "plans," "believes" and similar expressions. These statements are based on our current beliefs, expectations and assumptions and are subject to a number of risks and uncertainties. Our actual results could differ materially from those discussed in these statements. Our 2006 Annual Report on Form SEC 10-KSB (the "Annual Report") contains a discussion of certain of the risks and uncertainties that affect our business. We refer you to the "Risk Factors" on pages 19 through 34 of the Annual Report for a discussion of certain risks, including those relating to our business as a medical device company without a significant operating record and with operating losses, our risks relating to our commercialization of our current and future products and applications and risks relating to our common stock and its market value. Diomed disclaims any obligation or duty to update or correct any of its forward-looking statements.