

NEOMEDIA TECHNOLOGIES INC
Form 8-K
December 21, 2010
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): December 15, 2010

NeoMedia Technologies, Inc.
(Exact Name of Registrant as Specified in Charter)

| | | |
|---|-------------------------------------|---|
| Delaware (State or other jurisdiction of incorporation) | 0-21743 (Commission File Number) | 36-3680347 (IRS Employer Identification No.) |
| Two Concourse Parkway, Suite 500, Atlanta, GA (Address of principal executive offices) | | 30328 (Zip code) |
| Registrant's telephone number, including area code: | | (678) 638-0460 |

Not Applicable
(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:

- 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

Agreement and Debenture Closing, December, 2010

On December 15, 2010, NeoMedia Technologies, Inc., a Delaware corporation (the “Company”), entered into an Agreement (the “Agreement”), a copy of which is attached hereto as Exhibit 10.1 and incorporated by reference herein, to issue and sell a secured convertible debenture to YA Global Investments, L.P. (the “Buyer”) in the principal amount of \$450,000 (the “Debenture”), a copy of which is attached hereto as Exhibit 10.2 and incorporated by reference herein. The closing of the transaction was held on December 15, 2010. In addition to the Debenture, the Company also issued a warrant to the Buyer to purchase 1,250,000 shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), for an exercise price of \$0.10 per share (the “Warrant”), a copy of which is incorporated by reference herein and attached hereto as Exhibit 10.3.

The Debenture shall mature on July 29, 2012 (the “Maturity Date”) and shall accrue interest at a rate equal to fourteen percent (14%) per annum and such interest shall be paid on the Maturity Date (or sooner as provided in the Debenture) in cash or, provided that certain Equity Conditions are satisfied (as such term is defined in the Debenture), in shares of Common Stock at the applicable Conversion Price (as defined in the Debenture). At any time, the Buyer shall be entitled to convert any portion of the outstanding and unpaid principal and accrued interest thereon into fully paid and non-assessable shares of Common Stock at a price equal to the lesser of \$0.10 and ninety-five percent (95%) of the lowest volume weighted average price of the Common Stock during the sixty (60) trading days immediately preceding each conversion date.

The Debenture is secured by certain pledges made with respect to the assets of the Company and its subsidiaries as set forth in the Fifth Ratification Agreement dated December 15, 2010 (the “Fifth Ratification Agreement”), and that certain Security Agreement (the “Security Agreement”) and Patent Security Agreement (the “Patent Security Agreement”) both dated July 29, 2008, by and among the Company, each of the Company’s subsidiaries made a party thereto, and the Buyer. Copies of the Security Agreement and the Patent Security Agreement are incorporated by reference herein and attached by reference hereto as Exhibits 10.4 and 10.5, respectively. The Fifth Ratification Agreement is incorporated by reference herein and attached as Exhibit 10.6 hereto.

In connection with the Agreement, the Company also entered into those certain Irrevocable Transfer Agent Instructions with the Buyer dated December 15, 2010 (the “ITAI”), an escrow agent and WorldWide Stock Transfer, LLC, the Company’s transfer agent, a copy of which is incorporated herein by reference and attached hereto as Exhibit 10.7 hereto.

The Company shall not affect any conversion, and the Buyer shall not have the right to convert any portion of the Debenture to the extent that after giving effect to such conversion, the Buyer (together with the Buyer’s affiliates) would beneficially own in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion, except for not less than sixty-five (65) days prior written notice from the Buyer.

The Company shall have the right to redeem a portion or all amounts outstanding (subject to certain conditions) in the Debenture via Optional Redemption (as defined in the Debenture) by paying the amount equal to the principal amount being redeemed plus a redemption premium equal to ten percent (10%) of the principal amount being redeemed, and accrued interest.

The foregoing descriptions of the Agreement, Debenture, Warrant, Security Agreement, Patent Security Agreement, Fifth Ratification Agreement and ITAI do not purport to be complete and are qualified in their entirety by reference to such documents, which are attached as Exhibits 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, and 10.7, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities

See Item 1.01 herein above.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

Amendment to the Bylaws of the Company

On December 16, 2010, the Board of Directors (the "Board") of the Company amended the Company's Bylaws to provide for: a change in the procedure to call for a special meeting of the Board by any member of the Board, and the rules for notice of meetings; a separation in the position of Chairperson of the Board from that of the Company's Chief Executive Officer; revisions to the duties and responsibilities of the officers of the Company; changes to the roles of committees of the Board and a requirement for the Board to approve committee recommendations to the Board; and the creation of, and the definition of the role of, an "Executive Committee" of the Board.

A complete copy of the Bylaws, as amended, is included as Exhibit 3.2 to this Current Report on Form 8-K and is incorporated herein by reference.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) Exhibit No. Description:

| EXHIBIT | DESCRIPTION | LOCATION |
|--------------|---|---|
| Exhibit 3.2 | Bylaws of Neomedia Technologies, Inc. adopted December 16, 2010 | Provided Herewith |
| Exhibit 10.1 | Agreement, dated December 15, 2010, by and between the Company and YA Global Investments, L.P. | Provided Herewith |
| Exhibit 10.2 | Secured Convertible Debenture, No. NEOM-10-5, dated December 15, 2010, issued by the Company to YA Global Investments, L.P. | Provided Herewith |
| Exhibit 10.3 | Warrant, No. NEOM-1210, dated December 15, 2010, issued by the Company to YA Global Investments, L.P. | Provided Herewith |
| Exhibit 10.4 | Security Agreement, dated July 29, 2008, by and among the Company, each of the Company's subsidiaries made a party thereto and YA Global Investments, L.P. | Incorporated by reference to Exhibit 10.3 in the Company's Current Report on Form 8-K as filed with the SEC on August 4, 2008 |
| Exhibit 10.5 | Patent Security Agreement, dated July 29, 2008, by and among the Company, each of the Company's subsidiaries made a party thereto and YA Global Investments, L.P. | Incorporated by reference to Exhibit 10.4 in the Company's Current Report on Form 8-K as filed with the SEC on August 4, 2008 |
| Exhibit 10.6 | Fifth Ratification Agreement, dated December 15, 2010, by and among the Company, each of the Company's subsidiaries made a party thereto, and YA Global Investments, L.P. | Provided Herewith |
| Exhibit 10.7 | Irrevocable Transfer Agent Instructions, dated December 15, 2010, by and among the Company, the Buyer, David Gonzalez, Esq. and WorldWide Stock Transfer, LLC | Provided Herewith |

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Company has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: December 21, 2010

NEOMEDIA TECHNOLOGIES, INC.

By: /s/ Michael Zima
Name: Michael Zima
Its: Chief Financial Officer
