

NEOMEDIA TECHNOLOGIES INC
Form 8-K
August 19, 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): August 13, 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))

Item 1.01. Entry Into a Material Definitive Agreement

Agreement and Debenture Closing, August, 2010

On August 13, 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 \$550,000 (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 August 13, 2010. In addition to the Debenture, the Company also issued a warrant to the Buyer to purchase 1,000,000 shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), for an exercise price of \$0.20 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 \$0.20 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 Second Ratification Agreement dated August 13, 2010 (the “Second 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 Second Ratification Agreement is incorporated by reference herein and attached as Exhibit 10.7 hereto. Pursuant to the Second Ratification Agreement, the Company affirmend the cross-collateralization of all its obligations to the Buyer. In connection with the Second Ratification Agreement, on August 13, 2010 the Company’s wholly-owned subsidiary NeoMedia Europe AG, (“NEOMAG”) entered into an Agreement on the Pledge of Intellectual Property Rights as Collateral (the “IP Pledge”). A copy of the IP Pledge is incorporated by reference herein and attached hereto as Exhibit 10.6. Also on August 13, 2010, NEOMAG and the Buyer entered into a Security Transfer of Moveable Assets (the “Security Transfer”) pursuant to which NEOMAG granted to the Buyer a security interest in the form of a security assignment over its movable assets. A copy of the Security Transfer is incorporated herein by reference and attached hereto as Exhibit 10.9. As a result of the execution of the IP Pledge and the Security Transfer, NEOMAG has become a guarantor of the Company’s obligations to the Buyer.

In connection with the Agreement, the Company also entered into those certain Irrevocable Transfer Agent Instructions with the Buyer, the 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 10.8 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, IP Pledge, Second Ratification Agreement, ITAI and Security Transfer 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, 10.7, 10.8 and 10.9 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 9.01. FINANCIAL STATEMENTS AND EXHIBITS

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) Exhibit No. Description:

| EXHIBIT | DESCRIPTION | LOCATION |
|--------------|--|---|
| Exhibit 10.1 | Agreement, dated August 13, 2010, by and between the Company and YA Global Investments, L.P. | Provided Herewith |
| Exhibit 10.2 | Secured Convertible Debenture, No. NEOM-10-2, dated August 13, 2010, issued by the Company to YA Global Investments, L.P. | Provided Herewith |
| Exhibit 10.3 | Warrant, No. NEOM-0810, dated August 13, 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 | Agreement on the Pledge of Intellectual Property Rights as Collateral, dated August 13, 2010, by and between the Company's wholly-owned subsidiary NeoMedia Europe AG, and YA Global Investments, L.P. | Provided Herewith |
| Exhibit 10.7 | Second Ratification Agreement, dated August 13, 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 10.8 | Irrevocable Transfer Agent Instructions, dated August 13, 2010, by and among the Company, the Buyer, David Gonzalez, Esq. | Provided Herewith |

and WorldWide Stock Transfer, LLC

Exhibit 10.9 Security Transfer of Moveable Assets, dated August 13, 2010, Provided Herewith
by and between the Company's wholly-owned subsidiary
NeoMedia Europe AG, and YA Global Investments, L.P.

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: August 19, 2010

NEOMEDIA TECHNOLOGIES, INC.

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