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NEOMEDIA TECHNOLOGIES INC  
 Form S-4/A  
 June 06, 2005

As filed with the Securities and Exchange Commission on June 6, 2005

SEC Registration No. 333-123848

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
 Washington, D.C. 20549  
 AMENDMENT NO. 1 TO  
 FORM S-4  
 REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

DELAWARE	NEOMEDIA TECHNOLOGIES, INC.	36-3680347
(State or other jurisdiction of incorporation or organization)	(Name of issuer in its charter)	(I.R.S. Employer Identification No.)
2201 SECOND STREET, SUITE 402 FORT MYERS, FLORIDA 33901 (239) 337-3434 (Address and telephone number of Registrant's principal executive offices)	7373 (Primary Standard Industrial Classification Code Number) (239) 337-3434	CHARLES T. JENSEN 2201 SECOND STREET, SUITE 4 FORT MYERS, FLORIDA 33901-3 TELECOPIER NO.: (239) 337-3 (Name, address, and telephone of agent for service)

With copies to:

Clayton E. Parker, Esq. Kirkpatrick & Lockhart LLP 201 S. Biscayne Blvd., Suite 2000 Miami, FL 33131 Telephone No.: (305) 539-3305 Telecopier No.: (305) 358-7095	Christopher J. DeLise, Esq. Kirkpatrick & Lockhart LLP 201 S. Biscayne Blvd., Suite Miami, FL 33131 Telephone No.: (305) 539-3 Telecopier No.: (305) 358-7
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Approximate date of commencement of proposed sale to the public: Upon consummation of the merger described herein.

If any of the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

CALCULATION OF REGISTRATION FEE

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED (1)	PROPOSED MAXIMUM OFFERING PRICE PER SHARE (2)	PLUS ESTIMATED CASH CONSIDERATION (2)	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE (2)
Common Stock, par value \$0.01 per share	20,000,000	\$0.546	\$5.00	\$10,920,005

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- (1) Represents the maximum number of NeoMedia shares issuable in the merger, assuming no adjustment to the exchange ratio of 1.00 share of BSD common stock exchanged for NeoMedia common stock equivalent to .07 divided by the volume-weighted average price of NeoMedia stock for the five business days preceding the effective date of the merger.
- (2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(f)(1), based on 20,000,000 shares of NeoMedia common stock being exchanged for 100% of BSD's common shares, using the average of the closing bid and ask prices of NeoMedia's common stock of \$0.535 per share as reported in the Over-the-Counter Bulletin Board on June 1, 2005, which is a date within five business days of the date of this filing. Cash consideration is estimated at \$0.05 per shareholder, times an estimated 100 shareholders.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

SUBJECT TO COMPLETION OR AMENDMENT.

DATED \_\_\_\_\_, 2005

20,000,000 SHARES

NEOMEDIA TECHNOLOGIES, INC.

EXCHANGE OF COMMON STOCK

=====

20,000,000 SHARES OF COMMON STOCK OF NEOMEDIA TECHNOLOGIES, INC.  
ARE BEING EXCHANGED FOR ALL OF THE OUTSTANDING COMMON STOCK OF  
BSD SOFTWARE, INC.

=====

The common stock of NeoMedia Technologies, Inc. ("NeoMedia") is traded on the Over-the-Counter Bulletin Board under the symbol "NEOM". The common stock of BSD Software, Inc. ("BSD") is quoted on the Over-the-Counter Bulletin Board under the symbol "BSDS". After consummation of the merger described in this information statement/prospectus, shares of NeoMedia will continue to be traded on the Over-the-Counter Bulletin Board; however, shares of BSD's common stock will no longer be traded or listed on any exchange.

AS OF JUNE 1, 2005, BASED ON 31,810,897 SHARES OF BSD COMMON STOCK OUTSTANDING, A VOLUME-WEIGHTED 5-DAY AVERAGE CLOSING PRICE OF NEOMEDIA STOCK OF \$0.563, AND THE SHARE EXCHANGE RATE OUTLINED IN THE MERGER AGREEMENT, BSD SHAREHOLDERS WOULD RECEIVE 0.1243 SHARES OF NEOMEDIA STOCK FOR EACH SHARE OF BSD COMMON STOCK THAT THEY CURRENTLY HOLD. THIS CALCULATION IS GIVEN FOR REFERENCE ONLY. IT IS IMPORTANT TO NOTE THAT BSD SHAREHOLDERS WILL NOT KNOW THE ACTUAL NUMBER OF SHARES THEY WILL RECEIVE UNTIL THE EFFECTIVE DATE OF THE MERGER. BSD SHAREHOLDERS WHO WISH TO INQUIRE ABOUT THE NUMBER OF SHARES THEY WILL RECEIVE IN THE MERGER CAN CALL TOLL-FREE (877) 813-2419.

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BSD SHAREHOLDERS WISHING TO EXERCISE THEIR DISSENTERS' RIGHTS MUST DELIVER TO BSD WITHIN 20 DAYS AFTER RECEIVING NOTICE FROM BSD THAT SUCH APPRAISAL RIGHTS ARE AVAILABLE, A WRITTEN NOTICE OF INTENT TO DEMAND PAYMENT. A DISSENTING SHAREHOLDER THEN CANNOT VOTE IN FAVOR OF THE PROPOSED ACTION.

PLEASE PAY CAREFUL ATTENTION TO ALL OF THE INFORMATION IN THIS INFORMATION STATEMENT/PROSPECTUS. IN PARTICULAR, YOU SHOULD CAREFULLY CONSIDER THE DISCUSSION IN THE SECTION ENTITLED "RISK FACTORS" BEGINNING ON PAGE 8 OF THIS INFORMATION STATEMENT/PROSPECTUS.

NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES REGULATOR HAS APPROVED OR DISAPPROVED OF THE SECURITIES TO BE DISTRIBUTED UNDER THIS INFORMATION STATEMENT /PROSPECTUS OR DETERMINED IF THIS INFORMATION STATEMENT/PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

This prospectus is dated \_\_\_\_\_, 2005, and is first being mailed to stockholders of NeoMedia and BSD on or about \_\_\_\_\_, 2005.

The information in this information statement/prospectus is not complete and may be changed. NeoMedia may not distribute these securities until the registration statement filed with the United States Securities and Exchange Commission is declared effective. The information statement/prospectus is not and shall not constitute an offer to sell and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

This information statement/prospectus incorporates important business information about NeoMedia and BSD that is not included in or delivered with the information statement/prospectus. NeoMedia will provide you with copies of this information statement/prospectus, as well as exhibits filed with the information statement/prospectus, upon written or oral request to:

IF A NEOMEDIA STOCKHOLDER:

IF A BSD SHAREHOLDER:

NeoMedia Technologies, Inc.  
2201 Second Street, Suite 402  
Ft. Myers, Florida 33901  
(239) 337-3434

BSD Software, Inc.  
5824 Second Street SW, Suite 300  
Calgary, Alberta, Canada, T2H-0H2  
(403) 257-7090

IF YOU WOULD LIKE TO REQUEST ANY DOCUMENTS FROM NEOMEDIA, PLEASE DO SO BY \_\_\_\_\_, 2005.

NEOMEDIA TECHNOLOGIES, INC.  
2201 SECOND STREET, SUITE 402  
FORT MYERS, FLORIDA 33901

\_\_\_\_\_, 2005

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Dear BSD Shareholders:

As you may be aware, BSD Software, Inc. has entered into an agreement and plan of merger with NeoMedia Technologies, Inc. which provides for NeoMedia to acquire from you and the other BSD shareholders 100% of BSD's common stock. When the merger is completed, BSD will become a wholly-owned subsidiary of NeoMedia.

Upon completion of the merger, BSD's shareholders will receive, for each share of BSD stock owned, NeoMedia stock equivalent to .07 divided by the volume-weighted average price of NeoMedia stock for the five days prior to the effective time of the merger. NeoMedia common stock is publicly traded on the Over-the-Counter Bulletin Board exchange under the symbol "NEOM". On June 1, 2005, the closing price of NeoMedia common stock was \$0.549. In 2004, NeoMedia's common stock traded between a low of \$0.05 and a high of \$0.299. Since April 5, 2005, the approximate date that NeoMedia filed its initial information statement/prospectus relative to its acquisition of and merger with BSD, NeoMedia's stock has been subject to dramatic price volatility. Between April 5, 2005 and June 1, 2005, NeoMedia's stock has traded as low as \$0.21 per share and as high as \$0.72 per share. BSD shareholders who wish to inquire about the number of shares they will receive in the merger can call toll-free (877) 813-2419.

Following the merger, based on 31,810,897 outstanding shares of BSD common stock and 451,120,889 outstanding shares of NeoMedia common stock as of June 1, 2005, and assuming a NeoMedia stock price of \$0.563 (the volume-weighted average stock price for the five days preceding June 1, 2005), BSD shareholders would hold approximately 1% of the outstanding shares of NeoMedia and existing NeoMedia shareholders would hold the remaining 99% of NeoMedia's outstanding shares. The actual exchange ratio will vary due to changes in NeoMedia's stock price and any additional issuances of common stock by BSD prior to the effective time of the merger, and will not be known until such effective time of the merger.

Shareholders holding approximately 62.7% of the outstanding shares of BSD common stock have each entered into an agreement with NeoMedia to vote to approve and adopt the Merger Agreement and the merger. BSD's Board of Directors has also approved the Merger Agreement.

On behalf of the BSD Board of Directors, I thank you for your support.

Sincerely,

/s/ Guy Fietz  
President  
BSD SOFTWARE, INC.

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### QUESTIONS AND ANSWERS ABOUT THE MERGER

THE FOLLOWING ARE SOME QUESTIONS THAT YOU, AS A STOCKHOLDER OF BSD OR NEOMEDIA, MAY HAVE REGARDING THE MERGER. BSD AND NEOMEDIA URGE YOU TO READ CAREFULLY THE REMAINDER OF THIS INFORMATION STATEMENT/PROSPECTUS BECAUSE THE INFORMATION IN THIS SECTION DOES NOT PROVIDE ALL OF THE INFORMATION THAT MIGHT BE IMPORTANT TO YOU WITH RESPECT TO THE MERGER. ADDITIONALLY, IMPORTANT INFORMATION IS ALSO CONTAINED IN THE ANNEXES TO, AND THE DOCUMENTS INCORPORATED BY REFERENCE INTO, THIS INFORMATION STATEMENT/PROSPECTUS.

Q: WHAT IS THE PROPOSED TRANSACTION?

A: The Board of Directors of BSD, as well as a majority of BSD shareholders, have voted to adopt an agreement and plan of merger among NeoMedia Technologies, Inc., NeoMedia Telecom Services, Inc., and BSD Software, Inc., and the merger contemplated thereby. In this information statement/prospectus, we refer to the agreement and plan of merger as the "Merger Agreement." In the merger, BSD will be merged into NeoMedia Telecom Services, Inc., a newly formed, wholly-owned subsidiary of NeoMedia Technologies. After the merger, NeoMedia Telecom Services will be the "Surviving Corporation" and will remain a wholly-owned subsidiary of NeoMedia Technologies.

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Q: WHY ARE NEOMEDIA AND BSD PROPOSING TO MERGE?

A: NeoMedia and BSD are merging because they believe the resulting combination will create a stronger, more competitive company capable of achieving greater financial strength, administrative efficiencies, growth potential, and shareholder value than either company would have on its own.

Q: WHAT WILL I RECEIVE IN EXCHANGE FOR MY BSD STOCK IN THE MERGER?

A: In the merger, each share of your BSD common stock will be exchanged for NeoMedia stock equivalent to .07 divided by the volume-weighted average price of NeoMedia stock for the five days prior to the effective time of the merger. In this prospectus, we refer to the ratio of NeoMedia common stock to be issued for each share of BSD common stock as the "exchange ratio." The ratio of .07 divided by the volume-weighted average price of NeoMedia stock for the five days prior to the effective time of the merger that you will receive for each BSD share will not change. However, the number of NeoMedia shares you will receive at closing will change depending on NeoMedia's stock price at the time of closing. NeoMedia's shares will be valued using a 5-day volume-weighted average closing price for the five days prior to closing. You will not receive any fractional shares of NeoMedia common stock. Instead of any fractional shares, you will be paid cash for such fraction at a rate of \$0.07 per share. The following table illustrates how many shares of NeoMedia you would receive at different price levels of NeoMedia stock at the time of closing:

Shares of BSD owned	1,000	1,000	1,000	1,000
NeoMedia volume-weighted average prices	\$0.07	\$0.20	\$0.30	\$0.50
NEOMEDIA SHARES ISSUED IN MERGER	1,000	350	233	140
ADDITIONAL CASH CONSIDERATION RECEIVED IN LIEU OF RECEIPT OF FRACTIONAL SHARES	\$0.00	\$0.00	\$0.02	\$0.00

It is important to note that BSD shareholders will not know the actual number of shares they will receive until the effective date of the merger. BSD SHAREHOLDERS WHO WISH TO INQUIRE ABOUT THE NUMBER OF SHARES THEY WILL RECEIVE IN THE MERGER CAN CALL TOLL-FREE (877) 813-2419.

Q: WHAT WILL BE THE EFFECT OF THE MERGER ON THE STOCKHOLDERS OF NEOMEDIA AND BSD?

A: Based on the number of NeoMedia and BSD shares outstanding as of June 1, 2005, and the closing stock price of NeoMedia stock of \$0.549 on June 1, 2005, upon completion of the merger the current stockholders of NeoMedia would own approximately 99% of NeoMedia and the former stockholders of BSD would own approximately 1% of NeoMedia. Actual ownership percentages could change between the date of this information statements/prospectus and closing due to any additional issuances of shares by NeoMedia and/or BSD, or fluctuations in the price of NeoMedia stock. NeoMedia and BSD currently estimate that they each will incur costs of approximately \$50,000 (\$100,000 in total) related to the merger.

Q: WHAT ARE THE FEDERAL INCOME TAX CONSEQUENCES OF THE MERGER TO BSD SHAREHOLDERS?

A: Assuming that the merger is completed as currently contemplated, (i) you will not recognize any gain or loss for United States federal income tax



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purposes except to the extent you receive cash in exchange for your BSD common stock (including any cash received in lieu of a fractional share of Neomedia common stock) and (ii) you will not recognize and gain or loss for Canadian federal income tax purposes. You should consult your tax advisor for a full understanding of the tax consequences of the merger to you.

Q: AM I ENTITLED TO DISSENTERS' RIGHTS?

A: Under Florida law, holders of BSD common stock outstanding immediately prior to the effective time of the merger who have not voted in favor of the merger have the right to exercise their dissenters' rights and obtain payment in cash for the fair value of their shares of common stock, rather than receive shares of NeoMedia common stock as described in this information statement/prospectus and the attached Merger Agreement. To exercise dissenters' rights, BSD stockholders must strictly follow the procedures described under Section 607.1301 et seq. of the Florida Business Corporation Act. These procedures are summarized under the section of this information statement/prospectus entitled "The Merger-Dissenters' Rights" beginning on page 29. In addition, the text of the applicable provisions of Florida Business Corporation Act, together with BSD's initial notice to potential dissenters, and a Dissenters' Demand Notice Form is attached as Annex A to this information statement/prospectus.

Q: WHEN DO YOU EXPECT THE MERGER TO BE COMPLETED?

A: We expect to complete the merger promptly after we receive all necessary regulatory approvals. We currently expect this to occur during the first-half of 2005. Satisfying some of the conditions to closing the merger, such as receiving certain governmental clearances or approvals, is not entirely within our control. If all the conditions to completion of the merger are not satisfied during the first-half of 2005, we expect to complete the merger as soon as practicable once the conditions are satisfied.

Q: WILL I BE ABLE TO SELL THE SHARES OF NEOMEDIA COMMON STOCK I RECEIVE IN THE MERGER?

A: Yes. All of the shares of NeoMedia common stock received by BSD stockholders in connection with the merger will be freely transferable unless the holder is considered an affiliate of either BSD or NeoMedia under the Securities Act of 1933, as amended. Shares of NeoMedia acquired in the merger by BSD affiliates may only be sold pursuant to a registration statement or an exemption from the registration requirements of the Securities Act. The price at which the NeoMedia common stock will trade after the merger is unknown.

Q: WHAT DO I NEED TO DO NOW?

A: After the merger is completed, you will receive written instructions for exchanging your stock certificates.

Q: WILL BSD CONTINUE AS A PUBLIC COMPANY?

A: No. If the merger occurs, BSD will no longer be publicly owned.

Q: WHO CAN HELP ANSWER MY QUESTIONS?

A: If you have any questions about the merger, or need additional copies of this prospectus, you should contact BSD Software, Inc. at (403) 257-7090, if you are a stockholder of BSD; or NeoMedia at (239) 337-3434 if you are stockholder of NeoMedia. BSD shareholders who wish to inquire about the number of shares they will receive in the merger can call toll-free (877) 813-2419.

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SUMMARY OF INFORMATION STATEMENT/PROSPECTUS

The following is a summary that highlights certain information contained in this information statement/prospectus. This summary may not contain all of the information that may be important to you. For a more complete description of the MERGER AGREEMENT and the merger contemplated by the MERGER AGREEMENT, we encourage you to read carefully this entire information statement/prospectus, including the attached exhibits and annexes hereto. In addition, we encourage you to ready the information incorporated by reference into this information statement/prospectus, which includes important business and financial information about BSD and NeoMedia that has been filed with the United States Securities and Exchange Commission. You may obtain the information incorporated by reference into this information statement/prospectus by following the instructions in the section of this information statement/prospectus entitled "Additional Information Where You Can Find More Information" beginning on page 105.

The Companies

NEOMEDIA TECHNOLOGIES, INC.  
2201 Second Street, Suite 402  
Ft. Myers, FL 33901  
(239) 337-3434

NeoMedia develops proprietary technologies that link physical information and objects to the Internet marketed under its PaperClick™ brand name.

NeoMedia is structured as three business units: NeoMedia Internet Software Service ("NISS"), NeoMedia Consulting and Integration Services ("NCIS"), and NeoMedia Micro Paint Repair ("NMPR").

NISS is the core business and is based in the United States, with development and operating facilities in Fort Myers, Florida. NISS develops and supports our physical world to Internet core technology, including our linking "switch" and NeoMedia's application platforms. NISS also manages our intellectual property portfolio, including the identification and execution of licensing opportunities surrounding the patents.

NCIS is the original business line upon which NeoMedia was organized. This unit resells client-server equipment and related software, and general and specialized consulting services. Systems integration services also identifies prospects for custom applications based on our products and services. These operations are based in Lisle, Illinois.

NMPR is the business unit encompassing the recently-acquired CSI International chemical line. NMPR is attempting to commercialize its micro-paint repair offerings and solutions.

NEOMEDIA TELECOM SERVICES, INC.  
2201 Second Street, Suite 402  
Ft. Myers, FL 33901  
(239) 337-3434

NeoMedia Telecom Services, Inc. is a Nevada corporation and a wholly-owned subsidiary of NeoMedia Technologies. NeoMedia Telecom Services was incorporated during October 2004 solely for the purposes of effecting the merger with BSD. It has not carried on any activities other than in connection with the Merger Agreement. Following the merger, NeoMedia Telecom Services, Inc. will continue

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the business of BSD.

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BSD SOFTWARE, INC.  
5824 Second Street SW, Suite 300  
Calgary, Alberta, Canada, T2H-0H2  
(403) 257-7090

BSD was incorporated in Florida on February 7, 1989 under the name "Park Avenue Marketing, Inc." On February 2, 1998, as a result of its acquisition of 100% of the common stock of two commonly controlled entities, Respiratory Care Services, Inc. ("RCS") and RCS Subacute, Inc. ("RCSS"), that were engaged in the healthcare industry, the name was changed from "Park Avenue Marketing, Inc." to "BSD Healthcare Industries, Inc." Prior to these acquisitions, BSD did not conduct any operations.

BSD acquired RCS and RCSS because BSD perceived increasing demand for respiratory care services in long-term healthcare facilities. On July 1, 1999, principally as a result of a change in Medicare reimbursement rates for respiratory services, BSD sold RCS and RCSS. On December 17, 2001 BSD changed its name to "BSD Software, Inc."

As a result of the sale of RCS and RCSS, BSD had no operations until its acquisition of 90% of Triton Global Business Services Inc. ("TGBSI") on November 4, 2002. TGBSI is the 100% owner of Triton Global Communications Inc. ("Triton") through which it conducts its business operations. The details of the acquisition are contained in Note 4 to the attached Financial Statements.

Triton was incorporated in April 1998 as a next generation Internet protocol ("IP") enabled provider of live and automated operator calling services, e-business support, billing and clearinghouse functions and information management services to telecommunications, Internet and e-business service providers.

Triton focuses on helping its clients improve profitability by enabling them to quickly deploy new services, streamline operations and make quicker, more informed business decisions. Triton is a customer service oriented organization providing service to direct customers and service providers, both within North America and internationally.

Triton was the first fully implemented alternate billing agent within the Local Exchange Carriers ("LECs") billing system in Canada. Triton's vision is to continue expanding its live and automated operator service capability focusing on making emerging web-based information and transaction services easier to access and pay for.

BSD's management and staff are trained to assist and provide clients with solutions for their business. Triton is currently operating with eight employees.

### THE MERGER

The Board of Directors of BSD, as well as a majority of BSD shareholders, have voted to adopt an agreement and plan of merger among NeoMedia Technologies, Inc., NeoMedia Telecom Services, Inc., and BSD Software, Inc., and the merger contemplated thereby. In the merger, BSD will be merged into NeoMedia Telecom Services, Inc., a newly formed, wholly-owned subsidiary of NeoMedia

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Technologies. After the merger, NeoMedia Telecom Services will be the "Surviving Corporation" and will remain a wholly-owned subsidiary of NeoMedia Technologies.

NeoMedia and BSD are merging because they believe the resulting combination will create a stronger, more competitive company capable of achieving greater financial strength, administrative efficiencies, growth potential, and shareholder value than either company would have on its own.

### WHAT YOU WILL RECEIVE IN THE MERGER; MERGER CONSIDERATION; FRACTIONAL SHARES

In the merger, each share of BSD common stock will be exchanged for NeoMedia stock equivalent to .07 divided by the volume-weighted average price of NeoMedia stock for the five days prior to the effective time of the merger. You will not receive any fractional shares of NeoMedia common stock. Instead of any fractional shares, you will be paid cash for such fraction at a rate of \$0.07 per share. It is important to note that BSD shareholders will not know the actual number of shares they will receive until the effective date of the merger. BSD SHAREHOLDERS WHO WISH TO INQUIRE ABOUT THE NUMBER OF SHARES THEY WILL RECEIVE IN THE MERGER CAN CALL TOLL-FREE (877) 813-2419.

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### NEOMEDIA'S BOARD OF DIRECTORS AFTER THE MERGER

NeoMedia's Board of Directors will not change due to the acquisition of BSD.

### BSD Approval Of The Merger

BSD's Board of Directors approved the merger by written consent on November 29, 2004. In addition, holders of 62.7% of BSD's outstanding shares approved the merger by signing a Voting Rights Agreement on or before signing the Merger Agreement.

### BSD's Reasons for the Merger; Recommendation of BSD