

Neonode, Inc  
Form PRER14A  
March 03, 2009

AMENDMENT 3 TO SCHEDULE 14A  
(RULE 14a-101)  
INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION  
Proxy Statement Pursuant to Section 14(a)  
of the Securities Exchange Act of 1934

Filed by the Registrant ☒

Filed by a Party other than the Registrant ☐

Check the appropriate box:

- ☒ Preliminary Proxy Statement
- ☐ Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- ☐ Definitive Proxy Statement
- ☐ Definitive Additional Materials
- ☒ Soliciting Material Under Rule 14a-12

Neonode Inc.  
(Name of Registrant as Specified In Its Charter)

Not applicable  
(Name of Person(s) Filing Proxy Statement, if Other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies: Common Stock,  
par value \$0.001 per share, of the Registrant (the "Common Stock").

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to  
Exchange Act Rule 0-11:

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

☐ Fee paid previously with preliminary materials.

☐

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Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

- (1) Amount previously paid: N/A
  - (2) Form, Schedule or Registration Statement No.: N/A
  - (3) Filing Party: N/A
  - (4) Date Filed: N/A
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Neonode Inc.

March [ ], 2009

Dear Stockholder:

You are cordially invited to attend the Special Meeting of Stockholders of Neonode Inc. (the "Company") to be held on March 31, 2009 at the offices of our Swedish subsidiary, AB Cypressen nr 9683, located at Linnegatan 89, Stockholm, Sweden, 11523. The meeting will begin promptly at 9:00 a.m. local time.

At this Special Meeting, you will be asked to consider and vote upon a number of important matters that relate to our recently completed refinancing (the "December 2008 Refinancing").

The items of business to be considered at the special meeting are listed in the following Notice of Special Meeting and are more fully addressed in the Proxy Statement included with this letter. The items you will be asked to approve at the special meeting are as follows:

an amendment to the Company's certificate of incorporation to increase the number of authorized shares from  
(i) 77,000,000 to 700,000,000 and to increase the number of authorized shares of common stock from 75,000,000 to 698,000,000;

an amendment to the Company's Certificate of Incorporation to increase the conversion rate of the Series A  
(ii) Preferred Stock such that each share of Series A Preferred Stock, which is currently convertible into 1 share of common stock, shall be convertible into 480.63 shares of common stock; and

an amendment to the Company's Certificate of Incorporation to increase the conversion rate of the Series B  
(iii) Preferred Stock such that each share of Series B Preferred Stock, which is currently convertible into 1 share of common stock, shall be convertible into 132.07 shares of common stock

As discussed in the Proxy Statement, the failure of stockholders to approve the aforementioned proposals could adversely affect the goals of the December 2008 Refinancing, and could make future financings more difficult and complicated.

The Company's Board of Directors believes that a favorable vote for the matters described in the attached Notice of Special Meeting and Proxy Statement is in the best interest of the Company and its stockholders and recommends a vote "For" such matters. Accordingly, we urge you to review the accompanying material carefully and to return the enclosed proxy promptly.

Whether or not you plan to attend the special meeting in person, it is important that your shares be represented and voted at the meeting. Please date, sign, and return your proxy card promptly in the enclosed envelope to ensure that your shares will be represented and voted at the special meeting, even if you cannot attend. If you attend the special meeting and are the stockholder of record, you may vote your shares in person even though you have previously signed and returned your proxy.

On behalf of your Board of Directors, thank you for your investment in and continued support of Neonode Inc.

Sincerely,

/s/ Per Bystedt

Per Bystedt  
Chief Executive  
Officer

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NEONODE INC.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS  
To Be Held On March 31, 2009

To the Stockholders of Neonode Inc.:

You are cordially invited to attend the Special Meeting of Stockholders of Neonode Inc, a Delaware corporation (the "Company"). The special meeting will be held at the offices of our Swedish subsidiary, AB Cypressen nr 9683, located at Linnegatan 89, Stockholm, Sweden, 11523. The meeting will begin promptly at 9:00 a.m. local time. At the meeting, stockholders will be asked:

- (1) To approve an amendment to our Certificate of Incorporation (a) to increase the number of authorized shares from 77,000,000 to 700,000,000, (b) to increase the number of authorized shares of common stock from 75,000,000 to 698,000,000, and (c) to incorporate the changes effected by our previously filed certificates of designations of our preferred stock;
- (2) To approve an amendment to our Certificate of Incorporation to increase the conversion rate of the Series A Preferred Stock such that each share of Series A Preferred Stock, which is currently convertible into 1 share of common stock, shall be convertible into 480.63 shares of common stock; and
- (3) To approve an amendment to our Certificate of Incorporation to increase the conversion rate of the Series B Preferred Stock such that each share of Series B Preferred Stock, which is currently convertible into 1 share of common stock, shall be convertible into 132.07 shares of common stock
- (4) To transact such other business as may properly come before the special meeting or any adjournment thereof.

These items of business are more fully described in the Proxy Statement accompanying this Notice.

The record date for the special meeting is February 6, 2009. Only stockholders of record at the close of business on that date may vote at the meeting or any adjournment thereof.

By Order of the Board of Directors,

/s/ David Brunton  
David Brunton  
Chief Financial Officer and Secretary

Lafayette, California  
March [\_\_\_], 2009

Whether or not you expect to attend the Special Meeting, please complete, sign, and date the enclosed proxy and return it promptly in the enclosed envelope, which does not require any postage if mailed in the United States, to ensure your representation at the Special Meeting. Even if you have voted by proxy, you may still vote in person if you attend the meeting. Please note, however, that if your shares are held of record by a broker, bank, or other nominee and you wish to vote at the meeting, you must obtain a proxy issued in your name from that record holder to vote in person.

Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting

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to Be Held on March 31, 2009:

The Proxy Statement is available at [www.neonode.com](http://www.neonode.com).

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NEONODE INC.

PROXY STATEMENT

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Except as otherwise specifically noted, “Neonode,” the “Company,” “we,” “our,” “us” and similar words in this proxy statement refer to Neonode Inc., formerly known as SBE, Inc., and its subsidiaries.

#### FORWARD-LOOKING STATEMENTS

The information in this proxy statement contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Statements that are not historical in nature, including statements about beliefs and expectations, are forward-looking statements. Words such as “may,” “will,” “should,” “estimates,” “predicts,” “believes,” “anticipates,” “plans,” “expects,” “intends,” and similar expressions are intended to identify these forward-looking statements, but are not the exclusive means of identifying such statements. Such statements are based on currently available operating, financial and competitive information and are subject to various risks and uncertainties. You are cautioned that these forward-looking statements reflect management’s estimates only as of the date hereof, and we assume no obligation to update these statements, even if new information becomes available or other events occur in the future. Actual future results, events and trends may differ materially from those expressed in or implied by such statements depending on a variety of factors, including, but not limited to those set forth in our filings with the Securities and Exchange Commission (the SEC).

#### WHERE YOU CAN FIND MORE INFORMATION

We are a reporting company and file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any reports, proxy statements or other information that we file at the SEC’s public reference room at 100 F Street N.E., Room 1580, Washington D.C., 20549. You can also request copies of these documents by writing to the SEC and paying a fee for the copying costs. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room. Our public filings with the SEC are also available on the web site maintained by the SEC at <http://www.sec.gov>.

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NEONODE INC.  
651 Byrdee Way Lafayette, California 94549

PROXY STATEMENT  
FOR THE SPECIAL MEETING OF STOCKHOLDERS  
To Be Held On March 31, 2009

The Special Meeting of Stockholders of Neonode Inc. will be held on March 31, 2009, at the offices of our Swedish subsidiary, AB Cypressen nr 9683, located at Linnegatan 89, Stockholm, Sweden, 11523, beginning promptly at 9:00 a.m., local time. The enclosed proxy is solicited by our Board of Directors. It is anticipated that this proxy statement and the accompanying proxy card will be first mailed to holders of our outstanding common and preferred stock on or about March [ ], 2009.

QUESTIONS AND ANSWERS ABOUT THE PROPOSALS

Why am I receiving this proxy statement and proxy card?

You are receiving a proxy statement and proxy card because you own shares of our common stock or preferred stock. This proxy statement describes the issues on which we would like you, as a stockholder, to vote. It also gives you information on these issues so that you can make an informed decision.

Who can vote at the special meeting?

Only stockholders of record at the close of business on February 6, 2009 will be entitled to vote at the special meeting. On this record date, there were 37,009,589 shares of common stock outstanding and entitled to vote, 874,079.96 shares of Series A Preferred Stock outstanding and entitled to vote, and 92,795.23 shares of Series B Preferred Stock outstanding and entitled to vote.

Stockholder of Record: Shares Registered in Your Name

If on February 6, 2009 your shares were registered directly in your name with our transfer agent, American Stock Transfer & Trust, then you are a stockholder of record. As a stockholder of record, you may vote in person at the meeting or vote by proxy. Whether or not you plan to attend the meeting, we urge you to fill out and return the enclosed proxy card to ensure your vote is counted.

Beneficial Owner: Shares Registered in the Name of a Broker or Bank

If on February 6, 2009 your shares were held, not in your name, but rather in an account at a brokerage firm, bank, dealer, or other similar organization, then you are the beneficial owner of shares held in "street name" and these proxy materials are being forwarded to you by that organization. The organization holding your account is considered to be the stockholder of record for purposes of voting at the special meeting. As a beneficial owner, you have the right to direct your broker or other agent on how to vote the shares in your account. You are also invited to attend the special meeting. However, since you are not the stockholder of record, you may not vote your shares in person at the meeting unless you request and obtain a valid proxy from your broker or other agent.

What is being voted on?

You are being asked to vote on the following four proposals:

Proposal 1 — To approve an amendment of our amended and restated Certificate of Incorporation (a) to increase the number of authorized shares from 77,000,000 to 700,000,000, (b) to increase in the number of authorized shares of common stock from 75,000,000 to 698,000,000, and (c) to incorporate the changes effected by our previously filed certificates of designations of our preferred stock;

Proposal 2 — To approve an amendment of our amended and restated Certificate of Incorporation to increase the conversion rate of the Series A Preferred Stock such that each share of Series A Preferred Stock, which is currently convertible into 1 share of common stock, shall be convertible into 480.63 shares of common stock;

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Proposal 3 — To approve an amendment of our amended and restated Certificate of Incorporation to increase the conversion rate of the Series B Preferred Stock such that each share of Series B Preferred Stock, which is currently convertible into 1 share of common stock, shall be convertible into 132.07 shares of common stock.

How do I vote?

For each of the matters to be voted on, you may vote “For” or “Against” or abstain from voting. The procedures for voting are fairly simple:

Stockholder of Record: Shares Registered in Your Name

If you are a stockholder of record, you may vote in person at the special meeting or vote by proxy using the enclosed proxy card. To vote using the proxy card, simply complete, sign, and date the enclosed proxy card and return it promptly in the envelope provided. If you return your signed proxy card to us before the special meeting, we will vote your shares as you direct. Whether or not you plan to attend the meeting, we urge you to vote by proxy to ensure your vote is counted. You may still attend the meeting and vote in person if you have already voted by proxy. If you would like to vote in person, come to the special meeting and we will give you a ballot when you arrive.

Beneficial Owner: Shares Registered in the Name of Broker or Bank

If you are a beneficial owner of shares registered in the name of your broker, bank, or other agent, you should have received a proxy card and voting instructions with these proxy materials from that organization rather than from us. Simply complete and mail the proxy card to ensure that your vote is counted. To vote in person at the special meeting, you must obtain a valid proxy from your broker, bank, or other agent. Follow the instructions from your broker or bank included with these proxy materials, or contact your broker or bank to request a proxy form.

How many votes do I have?

On each matter to be voted upon, you have one vote for each share of common stock and/or preferred stock you own as of February 6, 2009.

How are votes counted?

Votes will be counted by the inspector of election appointed for the meeting, who will separately count “For” and “Against” votes, abstentions, and broker non-votes. Abstentions and broker non-votes will have the same effect as votes “Against” for all Proposals.

If your shares are held by your broker as your nominee (that is, in “street name”), you will need to obtain a proxy form from the institution that holds your shares and follow the instructions included on that form regarding how to instruct your broker to vote your shares. If you do not give instructions to your broker, the shares will be treated as broker non-votes.

How many votes are needed to approve each proposal?

To be approved, all Proposals must receive a “For” vote from the holders of a majority of the outstanding stock entitled to vote thereon. In addition, the votes in favor of Proposal 1 must include a majority of the outstanding shares of common stock. If you do not vote or abstain from voting on any of these proposals, it will have the same effect as an “Against” vote. Broker non-votes will have the same effect as “Against” votes for all Proposals. If those present do not vote, or abstain from voting, it will have the same effect as an “Against” vote.

What is the quorum requirement?

A quorum is necessary to hold a valid meeting. A quorum will be present if a majority of the outstanding shares are represented in person or by proxy at the special meeting. On the record date, there were 37,009,589 shares of the Company's common stock outstanding and entitled to vote, 874,079.96 shares of the Company's Series A Preferred Stock outstanding and entitled to vote, and 92,795.23 shares of the Company's Series B Preferred Stock outstanding and entitled to vote, for total of 37,976,464.19 shares of stock outstanding and entitled to vote. Thus, at least 18,989,733 shares must be represented in person or by proxy at the special meeting in order to have a quorum.

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Your shares will be counted towards the quorum only if you submit a valid proxy (or one is submitted on your behalf by your broker, bank or other nominee) or if you vote in person at the meeting. Abstentions and broker non-votes will be counted towards the quorum requirement. If there is no quorum, a majority of the votes present at the special meeting may adjourn the special meeting to another date.

What if I return a proxy card but do not make specific choices?

If you return a signed and dated proxy card without marking any voting selections, your shares will be treated as broker non-votes and will have the same effect as "Against" votes.

Who is paying for this proxy solicitation?

We will pay for the entire cost of soliciting proxies. In addition to these mailed proxy materials, our Directors and employees may also solicit proxies in person, by telephone or by other means of communication. Directors and employees will not be paid any additional compensation for soliciting proxies. We may also reimburse brokerage firms, banks and other agents for the cost of forwarding proxy materials to beneficial owners.

What does it mean if I receive more than one proxy card?

If you receive more than one proxy card, it means that your shares are registered in more than one name or are registered in different accounts. Please complete, sign, and return each proxy card to ensure that all of your shares are voted.

Can I change my vote after submitting my proxy?

Yes. You can revoke your proxy at any time before the final vote at the meeting. If you are the record holder of your shares, you may revoke your proxy in any one of three ways:

- You may submit another properly completed proxy card with a later date;
- You may send a written notice that you are revoking your proxy to our Chief Financial Officer at 651 Byrdee Way, Lafayette, California 94549;  
or
- You may attend the special meeting and vote in person. However, simply attending the special meeting will not, by itself, revoke your proxy.

If your shares are held by your broker or bank as a nominee or agent, you should follow the instructions provided by your broker or bank.

Does the Board of Directors recommend approval of the proposals at the special meeting?

Yes. After careful consideration, our Board of Directors recommends that our stockholders vote "For" each of the proposals.

Who can help answer my questions about the proposals?

If you have additional questions about these proposals, you should contact David Brunton, our Chief Financial Officer, at (925) 229-2125.

How can I find out the results of the voting at the special meeting?

Preliminary voting results may be announced at the special meeting. Final voting results will be published in our quarterly report on Form 10-Q for the quarter in which the special meeting occurs.

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## SUMMARY OF INFORMATION RELATED TO THE PROPOSALS

The section, together with the previous question and answer section, provides background information related to the proposals discussed in this proxy statement and to be voted on at the special meeting. The proposals to be voted on are described in greater detail elsewhere in this proxy statement. This section may not contain all of the information that is important to you. To understand the proposals fully, and for a more complete description of the terms of each proposal, you should carefully read this entire proxy statement and the attached exhibit in their entirety.

### Business Overview

We develop user interface touch screen solutions that enable people to interact more easily and intuitively with a wide variety of mobile computing, communications, entertainment and other electronic devices. We currently target the market for digital lifestyle products, including portable digital music and video players, digital cameras, mobile phones and other select electronic device markets with our customized touch screen user interface solutions. The cornerstone of our technology is our innovative optical infrared touch screen solutions. We believe that keyboards and keypads with moving parts will become obsolete and that our touch screen solutions will be at the forefront of a new wave of finger based input technologies that will enable the user to interact and operate everything from small mobile devices to large industrial applications using a combination of touches, swipes and hand gestures.

For a description of our financial condition, please see our 2007 Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 15, 2008, and our Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 19, 2008, which are incorporated herein by reference.

### Background of the December 2008 Refinancing

Prior to the December 2008 Refinancing, our capital structure included several types of convertible notes, promissory notes, and warrants that had been issued by us in 2007 and 2008 as part of, or as a consequence of, prior financing rounds. The following is a brief description of these issuances and the resulting impact on our capital structure:

#### August 2007 Financing.

On August 8, 2007, we made an offering of convertible notes (the “August Bridge Notes”) pursuant to a Note Purchase Agreement, dated as of July 31, 2007, which agreement was subsequently amended on August 1, 2007, September 26, 2007 and March 24, 2008. We originally received \$3,250,000 from the August 2007 offering. The August Bridge Notes originally matured on December 31, 2007; however the maturity was extended to December 31, 2008. The August Bridge Notes, due December 31, 2008, bore 8% per annum interest and were convertible into purchase units that were made up of a combination of shares of our common stock, convertible debt and warrants.

On September 26, 2007, the August Bridge Note holders that had not converted their debt were given three year warrants to purchase up to 219,074 shares (1st Extension Warrants) of our common stock at a price of \$3.92 per share in exchange for an agreement to extend the term of their notes from the original date of December 31, 2007 until June 30, 2008.

On May 21, 2008, the August Bridge Note holders that had not converted their debt were given additional three year warrants (2nd Extension Warrants) to purchase up to 510,294 shares of our common stock at a price of \$1.45 per share in exchange for an agreement to extend the term of their notes from June 30, 2008 until December 31, 2008.

#### September 2007 Financing.

On September 26, 2007, we sold \$5.7 million of securities in a private placement, comprised of (i) \$2.9 million of three-year promissory notes bearing the higher of LIBOR plus 3% or 8% interest per annum, convertible into shares of our common stock at a conversion price of \$3.50 per share, (ii) 952,499 shares of our common stock, and (iii) 5 year warrants to purchase 1,326,837 shares of our common stock at a price of \$3.92 per share, which was subsequently reduced to \$1.27 per share pursuant to certain anti-dilution provisions.

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In addition, on September 26, 2007, certain holders of the August Bridge Notes converted an aggregate of \$454,900 of debt and accrued interest into units offered in the September 26, 2007 financing. The holders of the August Bridge Notes who converted their notes received (i) \$227,450 three-year promissory notes bearing the higher of LIBOR plus 3% or 8% interest per annum, convertible into shares of our common stock at a conversion price of \$3.50 per share, (ii) 75,817 shares of our common stock, and (iii) 5-year warrants to purchase 105,612 shares of our common stock at a price of \$3.92 per share.

#### May 2008 Financing.

On May 21, 2008, we completed a \$5.1 million financing, with net cash proceeds to us of \$4.1 million, primarily to prior security holders, Directors, affiliates of management and institutional investors. We issued 4,004,793 shares of our common stock and two new common stock purchase warrants, with an exercise price of \$1.45, for each outstanding warrant exercised. A total of 8,009,586 new common stock purchase warrants were issued to investors who surrendered or purchased shares under the warrant exchange offer. We also extended the maturity date of \$2.85 million of convertible debt that was due on June 30, 2008 until December 31, 2008 by issuing to the note holders 510,293 common stock purchase warrants, with an exercise price of \$1.45.

In sum, immediately prior to the December 2008 Refinancing, there were 27 note holders holding convertible notes and promissory notes in the aggregate amount of \$6,341,611, and 129 warrant holders holding warrants for the issuance of up to 14,365,434 shares of common stock.

#### Reasons for and Description of December 2008 Refinancing

In December 2008, our Board of Directors approved a number of measures designed to raise new working capital, refinance the Company and retain key employees to enable it to continue the development and marketing of its touch screen technologies. In addition, the approved measures were designed to enable the Company to satisfy the maintenance requirements for continued listing on the NASDAQ Stock Market. Specifically, on December 27, 2008, our Board of Directors approved our entry into refinancing and stock subscription agreements (together, the "Refinancing Agreements") relating to the unregistered sale of up to an aggregate amount of 1,007,931 shares of our Series A Preferred Stock and Series B Preferred Stock, par value \$0.001 per share.

#### Series A and Series B Preferred Stock

The rights, preferences, privileges, and restrictions of the Series A Preferred Stock and of the Series B Preferred Stock are as described in the Certificate of Designations filed by us with the Delaware Secretary of State on December 30, 2008. Out of the Company's 2 million shares of blank check preferred stock, the Certificate of Designations designated 899,081 shares as Series A Preferred Stock and 100,934 shares as Series B Preferred Stock. On January 13, 2009, we filed with the Delaware Secretary of State a Certificate of Increase of Designation which increased the amount of designated Series B Preferred Stock from 100,934 to 102,690. On January 29, 2009, we filed with the Delaware Secretary of State a second Certificate of Increase of Designation which increased the amount of designated Series B Preferred Stock from 102,690 to 108,850.

The Certificate of Designations provides as follows:

Dividends and Distributions.

- Series A Preferred Stock: The holders of shares of Series A Preferred Stock are entitled to participate with the holders of the Company's common stock with respect to any dividends declared on the common stock in proportion to the number of shares of common stock issuable upon conversion of the shares of Series A Preferred Stock held by them.
- Series B Preferred Stock: The holders of shares of Series B Preferred Stock are entitled to participate with the holders of the Company's common stock with respect to any dividends declared on the common stock in proportion to the number of shares of common stock issuable upon conversion of the shares of Series B Preferred Stock held by them

Liquidation Preference.

- Series A Preferred Stock: In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary, subject to the rights of any other series of Preferred Stock to be established by the Board of Directors (the "Senior Preferred Stock"), the holders of Series A Preferred Stock shall be entitled to receive, after any distribution to the holders of Senior Preferred Stock and prior to and in preference to any distribution to the holders of common stock, \$0.001 for each share of Series A Preferred Stock then outstanding.
- Series B Preferred Stock: In the event of any liquidation, dissolution, or winding up of the Company, either voluntary or involuntary, subject to the rights of the Series A Preferred Stock and any other series of Preferred Stock to be established by the Board of Directors (collectively, the "Senior Preferred Stock"), the holders of Series B Preferred Stock shall be entitled to receive, after any distribution to the holders of Senior Preferred Stock and prior to and in preference to any distribution to the holders of common stock, \$0.001 for each share of Series B Preferred Stock then outstanding.

Voting.

The holders of shares of Series A Preferred Stock and Series B Preferred shall have one vote for each share of Series A Preferred Stock and Series B Preferred Stock held by them.

Conversion.

Initially, each share of Preferred A Stock and each share of Preferred B Stock is convertible into one share of our common stock. Any modification to the conversion rate requires shareholder approval.

Refinancing Agreements

On December 29, 2008, we commenced entering into Note Conversion Agreements with the holders of convertible notes and promissory notes of the Company in the aggregate amount of up to \$6,341,611, for the issuance of up to 250,000 shares of Series A Preferred Stock in exchange for the surrender of the notes by the note holders. We determined that, based on the capitalization of the Company, the value of the notes held by the note holders entitled the note holders to shares representing approximately twenty-five percent of the Company. However, since we did

not have a sufficient number of unissued shares of common stock to convert all of the outstanding notes into shares of common stock as well as enter into the other Refinancing Agreements, we decided to exchange the existing notes for shares of Series A Preferred Stock at a ratio such that assuming an increase in the Company's authorized share capital and an increase in the conversion rate, the note holders would own in the aggregate an amount of shares equal to approximately 25% of the Company after completion of our refinancing and capital raising activities. Nevertheless, pursuant to the Note Conversion Agreements, we did not guarantee that either the Company's authorized share capital would be increased or that the conversion rate would be increased. As of February 6, 2009, we have entered into Note Conversion Agreements with 24 out of 27 note holders for the surrender of notes in the aggregate amount of \$6,195,805 in consideration for the issuance of 233,225.96 shares of Series A Preferred Stock. Upon the surrender of these notes, the underlying debt in the aggregate amount of \$6,195,805 was retired.

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On December 29, 2008, we commenced entering into Warrant Conversion Agreements with the holders of warrants for the purchase of shares, notes and/or additional warrants of the Company for the issuance of up to 108,850 shares of Series B Preferred Stock in exchange for the surrender of the warrants by the warrant holders. If all of the existing warrants were to have been converted into shares of common stock of the Company, the Company would have had to issue 14,365,434 shares of common stock. Since we did not have a sufficient number of unissued shares of common stock to convert all of the outstanding warrants into shares of common stock as well as enter into the other Refinancing Agreements, we decided to exchange the existing warrants for shares of Series B Preferred Stock at a ratio such that assuming an increase in the Company's authorized share capital and an increase in the conversion rate, the warrant holders would own in the aggregate 14,365,434 shares of common stock after completion of our refinancing and capital raising activities. Nevertheless, pursuant to the Warrant Conversion Agreements, we did not guarantee that either the Company's authorized share capital would be increased or that the conversion rate would be increased. As of February 6, 2009, we have entered into Warrant Conversion Agreements with 92 out of 129 warrant holders in return for the issuance of 92,795.23 shares of Series B Preferred Stock.

On December 30, 2008, we commenced entering into Subscription Agreements with certain subscribers (the "Subscribers"), for the issuance of up to 150,000 shares of Series A Preferred Stock to the Subscribers, at a price equal to \$10 per share, for an aggregate purchase price of up to \$1,500,000. As of February 6, 2009, we have entered into Subscription Agreements with twelve investors for an investment in the Company of \$1,417,856 in exchange for the issuance of 141,786 shares of Series A Preferred Stock.

#### Retention of Key Employees

On December 30, 2008, we entered into a Share Exchange Agreement with AB Cypressen nr 9683, a Swedish engineering company which is doing business as Neonode Technology AB ("Neonode Tech"), and the stockholders of Neonode Tech: Iwojima Sarl, Wirelesstoy AB, and Athemis Ltd. (the "Neonode Tech Stockholders"), pursuant to which we agreed to acquire all of the issued and outstanding shares of Neonode Tech in exchange for the issuance of 495,000 shares of Series A Preferred Stock to the Neonode Tech Stockholders. Neonode Tech was formed on December 29, 2008 following the bankruptcy filing on December 9, 2008 of Neonode AB, a wholly-owned subsidiary of the Company, and is comprised principally of engineers formerly employed by Neonode AB. Based on Swedish tax considerations, we determined that it would be more efficient to form a new company which would be acquired by Neonode rather than to re-hire each of the former employees of Neonode AB on an individual basis. Furthermore, we determined that based on the importance to the Company of retaining the technology and business expertise of the beneficial owners of the Neonode Tech Stockholders and of ensuring our ability to continue to develop our technology, in exchange for complete ownership of Neonode Tech, we were prepared to issue to the Neonode Tech Stockholders shares representing approximately 49.5% of the Company. However, since we did not have a sufficient number of unissued shares of common stock to issue shares of common stock representing 49.5% of the Company as well as enter into the other Refinancing Agreements, we decided that in exchange for all of the shares of Neonode Tech we would issue shares of Series A Preferred Stock at a ratio such that assuming an increase in the Company's authorized share capital and an increase in the conversion rate, the Neonode Tech Stockholders would own in the aggregate an amount of shares equal to approximately 49.5% of the Company after completion of our refinancing and capital raising activities. Nevertheless, pursuant to the Share Exchange Agreement, we did not guarantee that either the Company's authorized share capital would be increased or that the conversion rate would be increased.

The beneficial owners of the Neonode Tech Stockholders who acquired the Series A Preferred Stock all signed employment agreements with Neonode Tech whereby they agreed to remain employees of NewCo for a period of 18 months. In addition, each of the beneficial owners of the Neonode Tech Stockholders signed a repurchase agreement with the Company granting the Company a lapsing repurchase right to purchase the Series A Preferred Stock held by such Neonode Tech Stockholder in the event the beneficial owner's employment with Neonode Tech is terminated other than for cause prior to the expiration of 18 months from December 29, 2008. Each month, 1/18 of the Series A

Preferred Shares held by the Neonode Tech Stockholders is released from the lapsing repurchase right. Pursuant to the terms of the Share Exchange Agreement, upon the closing of the transaction Neonode Tech became a wholly-owned subsidiary of the Company.

In addition, as part of the December 2008 Refinancing, we issued 4,068 shares of Series A Preferred Stock to Ellis International LP as full consideration for certain brokerage services supplied by Ellis International LP to the Company.

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Pursuant to the terms of the Refinancing Agreements and the Certificate of Designations, any modification of the conversion rate for the conversion of the shares of preferred stock into shares of common stock is subject to stockholder approval. In addition, at the time the Refinancing Agreements were entered into, we were listed on the NASDAQ Stock Market and subject to the NASDAQ rules. In accordance with the NASDAQ rules, stockholder approval is a prerequisite to any increase in the conversion rate and subsequent issuance of common stock securities at a price below the book value or market value of the common stock, where the amount of stock being issued is equal to 20% or more of the issuer's common stock outstanding before such issuance. Thus, the Company undertook that no shares of the preferred stock issued in these transactions would be converted into common stock, other than on a one-to-one basis, until the required stockholder approval is obtained.

Pursuant to the Refinancing Agreements, we undertook to solicit each stockholder's affirmative vote at a stockholder meeting to approve resolutions (i) increasing the authorized share capital of the Company so as to authorize a sufficient amount of authorized share capital to enable the issuance of shares of common stock upon conversion of the preferred stock issued pursuant to the Refinancing Agreements, and (ii) increasing the conversion rate of our Series A Preferred Stock such that each share of Series A Preferred Stock shall be convertible into 480.63 shares of common stock and the conversion rate of our Series B Preferred Stock such that each share of Series B Preferred Stock shall be convertible into 132.07 shares of common stock.

The forms of the Note Conversion Agreement, Warrant Conversion Agreement, Subscription Agreement and the Share Exchange Agreement, as well as the December 30, 2008 Certificate of Designations for the Series A Preferred Stock and the Series B Preferred Stock, were filed as exhibits to the Company's Form 8-K filed on December 31, 2008, and are incorporated herein by reference.

Information about AB Cypressen nr 9683 d/b/a/ Neonode Technologies AB

#### Description of Business

AB Cypressen nr 9683 was incorporated in Sweden on December 29, 2008 and does business as Neonode Technology. The mailing address of Neonode Tech's principal executive offices is Linnegatan 89, 11523 Stockholm, Sweden, and its telephone number is +46 7 09558443. At the time of Neonode's acquisition of Neonode Tech, Neonode Tech had no operations and was in essence a shell company. Neonode Tech has nine employees, all of whom had been employees of Neonode AB who lost their jobs as a consequence of the bankruptcy of Neonode AB. Neonode intends to have Neonode Tech serve as Neonode's research and development subsidiary to develop hand held optical touch screen solutions based on Neonode's proprietary technology.

Neonode's technology design goal is to deliver a user experience that is cheaper, faster, easier and more enjoyable than other touch screen solutions. To achieve that goal, we plan to have Neonode Tech implement our technology roadmap and develop products that will enhance the experience between the user and device by creating the following:

- Durable, precise and fast touch screen technology;
- Fast, fun and easy user interface;
- Multi-touch finger applications for dragging and dropping
- Simplified user interaction with complex devices

We believe that for both professionals and consumers the hand held mobile device is positioned to become the center of an evolving digital lifestyle by integrating with and enhancing the utility of advanced digital devices such as phone, voice and text mail, digital music, digital video and still cameras, television, personal digital assistants, web browsing and other digital devices, into a single mobile handheld computing and communication device. The attributes of the

mobile device that enable this functionality include a high-quality user interface, easy access to relatively inexpensive data storage, the ability to run complex applications, and the ability to connect easily to a wide variety of other digital devices and to the Internet. We intend, through Neonode Tech, to provide the functionality and ease of integration with mobile devices, along with a uniquely differentiated touch screen user interface, that will position us to offer innovative integrated digital lifestyle solutions.

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Our business model focuses on the licensing of our touch screen solutions to other companies who develop lifestyle oriented mobile devices. We plan to supply standard and custom designed touch screen user interface solutions to our original equipment manufacturer (OEM) customers directly and through their contract manufacturers, who will license our solutions and pay us directly for them. Our overall strategy for Neonode Tech is to have Neonode Tech develop these innovative touch screen hardware and software solutions based on our proprietary technology

We believe that our innovative and intuitive touch screen user interfaces can be engineered to accommodate many diverse platforms, and that our expertise in simplified user interaction can be utilized to improve the features and functionality of our solutions. Our extensive arrays of technology include software, mechanical and electrical designs, and pattern recognition and touch sensing technologies. We plan to have Neonode Tech develop optical infrared touch screen interface technologies that will enrich the user's experience in interacting with the user's mobile computing, communications and entertainment devices.

#### Board Consideration and Approval

Neonode's Board structured the December 2008 Refinancing as it did due to a combination of factors. First, Neonode was in financial difficulties and needed a quick infusion of cash. Second, Neonode's subsidiary, Neonode AB, had declared bankruptcy and Neonode had to act quickly to ensure that the key employees of Neonode AB continued to work for Neonode. Third, NASDAQ imposed a deadline of December 29, 2008 by which date Neonode had to satisfy NASDAQ's continued listing standards, including a minimum stockholders' equity of \$2,500,000. Neonode's Board determined that the most efficient way to address all of the pressing concerns in a timely manner was to enter into the December 2008 Refinancing transactions before the end of 2008. The Board determined that the consideration to be paid to the Neonode Tech Stockholders for the acquisition of Neonode Tech was reasonable, and that the acquisition of Neonode Tech, and the resulting retention of key employees, was in the best interests of Neonode's stockholders.

Following the Board's December 27, 2008 approval, the following transactions were consummated:

- We entered into a Share Exchange Agreement with the Neonode Tech Stockholders pursuant to which we agreed to acquire all of the issued and outstanding shares of Neonode Tech in exchange for the issuance of 495,000 shares of Series A Preferred Stock to the Neonode Tech Stockholders. The key employees of Neonode AB decided to remain with Neonode and are now employees of Neonode Tech.
- We entered into Note Conversion Agreements with 24 out of 27 note holders for the surrender of notes in the aggregate amount of \$6,195,805 in consideration for the issuance of 233,225.96 shares of Series A Preferred Stock. Upon the surrender of these notes, the underlying debt in the aggregate amount of \$6,195,805 was retired.
- We entered into Warrant Conversion Agreements with 92 out of 129 warrant holders for the surrender of warrants in return for the issuance of 92,795.23 shares of Series B Preferred Stock. Upon the surrender of the warrants, we cleaned up our balance sheet.
- We entered into Subscription Agreements with twelve investors for an investment in the Company of \$1,417,856 in exchange for the issuance of 141,786 shares of Series A Preferred Stock. We now have working capital to finance our operations.

#### Accounting Treatment

The acquisition of Neonode Tech was accounted for as a purchase of a wholly owned subsidiary. Neonode Tech had total assets on its balance sheet of \$12,000 in cash. Neonode recorded an investment in its new subsidiary, Neonode Tech, as \$12,000 which equaled the total fair value of the assets held by Neonode Tech on the date purchased,



December 30, 2008. The consolidated financial statements of Neonode Inc are prepared in accordance with generally accepted accounting principles accepted in the United States of America and include the accounts of Neonode Inc. and its subsidiary based in Sweden, Neonode Tech. All inter-company accounts and transactions have been eliminated in consolidation.

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The purchase of Neonode Tech was deemed to be a related party transaction and as such the estimated value of the shares of Series A Preferred Stock in excess of the assets of Neonode Tech that were issued to the shareholders of Cypresen was recorded as deferred compensation and will be amortized to compensation expense over the 18 month vesting period of the Series A Preferred Stock at the rate of approximately \$48,000 per month. The deferred compensation was valued at \$868,000 which is equal to 49.5% of the market valuation of the Company based on the closing price of our stock on the Nasdaq Capital Market multiplied by number of shares of common stock outstanding at December 31, 2008, the date of the acquisition of Cypresen by us.

#### Certain U.S. Federal Income Tax Consequences

Neither Neonode nor the current holders of its common stock should recognize gain or loss as a result of the purchase of Neonode Tech for U.S. federal income tax purposes.

#### Regulatory Matters

Neonode's acquisition of Neonode Tech has already taken place. There are no federal or state regulatory requirements that must be complied with or approvals that must be obtained in connection with Neonode's purchase of Neonode Tech.

#### Selected Unaudited Pro Forma Financial Information

The unaudited pro forma condensed combined balance sheet as of September 30, 2008 is presented as if Neonode's acquisition of Neonode Tech had occurred on the date of the balance sheet presented. The unaudited pro forma condensed combined statements of operations for the year ended December 31, 2007 are presented as if the proposed transaction with Neonode had occurred at the beginning of their fiscal years.

Furthermore, the unaudited pro forma condensed combined balance sheets as of September 30, 2008 and the unaudited pro forma condensed combined statements of operations for the year ended December 31, 2007 are based on the historical financial statements of Neonode Tech and Neonode. The pro forma condensed combined financial statements give effect to Neonode's acquisition of Neonode Tech as a purchase of Neonode Tech by Neonode using the purchase method of accounting and applying the assumptions and adjustments described in the accompanying notes to the unaudited pro forma condensed combined financial statements.

For accounting purposes, Neonode is acquiring Neonode Tech in this transaction. Accordingly, the purchase price is allocated among the fair values of the assets and liabilities of Neonode Tech. Neonode Tech was a "shell" company incorporated in Sweden and had limited assets, cash, and no operations. The transaction will be accounted for under the purchase method of accounting in accordance with Statement of Financial Accounting Standards (SFAS) No. 141, Business Combinations. Under the purchase method of accounting, the total estimated purchase price, calculated as described in the Notes to the unaudited pro forma condensed consolidated balance sheet for Neonode and Neonode Tech, is allocated to Neonode Tech's net tangible and intangible assets acquired and liabilities assumed in connection with the transaction, based on their estimated fair values as of the completion of the transaction. This preliminary valuation and purchase price allocation is done on the basis of the estimates of fair value reflected in these unaudited pro forma condensed consolidated financial statements. The excess of the value of the stock issued to the shareholders' of Neonode Tech over the fair value of the assets of Neonode Tech acquired is allocated to deferred compensation and will be amortized to compensation expense over the 18 month vesting period of the stock paid to the individual shareholders' of Neonode Tech.

As noted above, the merger is being accounted for using the purchase method of accounting. Accordingly, the pro forma adjustments are based on certain assumptions and estimates regarding the fair value of assets acquired

and liabilities assumed and the amount of deferred compensation that will arise from the acquisition. The amount of deferred compensation to be recorded as of the acquisition date represents the best estimate of the fair value of Neonode on the date the acquisition was consummated, adjusted for the fair value of assets acquired and liabilities assumed based on information available to management as of the date hereof, including all acquisition and related costs. The actual deferred compensation arising from the acquisition will be based on the difference between the cost and the fair value of the assets acquired and liabilities assumed on the date the acquisition was consummated as adjusted for all charges pertaining to the acquisition. No assurance can be given that actual deferred compensation will not be more or less than the estimated amount reflected in the pro forma financial statements.

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The unaudited pro forma condensed combined financial information is based on various other assumptions and estimates, and is subject to a number of uncertainties relating to the acquisition and other related matters, including, among other things, estimates, assumptions and uncertainties regarding: (1) the amount of accruals for direct acquisition costs and the amount of expenses and other costs relating to the acquisition; (2) as noted above, the actual amount of deferred compensation that will result from the acquisition; and (3) the fair values of certain assets acquired and liabilities assumed, which are sensitive to assumptions and market conditions. Accordingly, the unaudited pro forma condensed combined financial information does not purport to be indicative of the actual results of operations or financial condition that would have been achieved had the acquisition in fact occurred on the dates indicated; nor does it purport to be indicative of the results of operations or financial condition that may be achieved in the future.

Set forth below is the following unaudited pro forma financial statements:

- the unaudited pro forma condensed combined balance sheet as of September 30, 2008, assuming Neonode's acquisition of Neonode Tech occurred as of the balance sheet date presented; and
- the unaudited pro forma condensed combined statement of operations for the fiscal year ended December 31, 2007 assuming Neonode's acquisition of Neonode Tech occurred as of January 1, 2007.

The unaudited pro forma condensed combined financial statements are presented for informational purposes only, are based on certain assumptions that we believe to be reasonable, and do not purport to represent the combined company's financial condition nor its results of operations had the acquisition occurred as of the dates noted above or to project results for any future date or period. In the opinion of management, all adjustments have been made that are needed to present fairly the unaudited pro forma condensed combined financial information.

The unaudited pro forma condensed combined financial information should be read in conjunction with the historical financial statements and related attached notes included elsewhere in this filing.

Unaudited Pro Forma Condensed Combined Balance Sheet  
of Neonode and Neonode Tech as of September 30, 2008  
(in thousands)

The Unaudited Pro Forma Condensed Combined Balance Sheet of Neonode and Neonode Tech set forth below is presented as if Neonode's acquisition of Neonode Tech occurred on September 30, 2008. The amounts presented for Neonode are from the historical Neonode consolidated balance sheet as of September 30, 2008 and the amounts for Neonode Tech are from the historical Neonode Tech condensed balance sheet as of December 31, 2008.

	Neonode	Neonode Tech	Adjustments	Pro Forma
<b>ASSETS</b>				
Current Assets				
Cash and cash equivalents	\$ 203	\$ 12		\$ 215
Accounts receivable, net	8	—		8
Inventories, net	1,413	—		1,413
Prepaid expenses and other current assets	496	—		496
Total current assets	2,120	12		2,132
Property and equipment, net	387	—		387
Intangible assets, net	41	—		41
Goodwill	141	—		141
Total assets	\$ 2,689	\$ 12	\$	\$ 2,701
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
Current Liabilities				
Current portion of long-term debt	\$ 1,291	\$ —	\$	\$ 1,291
Accounts payable	9,182	—		9,182
Deferred revenue	891	—		891
Embedded derivatives of convertible debt	18,472	—		18,472
Other accrued liabilities	1,314	—		1,314
Total current liabilities	31,150			