

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): September 7, 2023

AULT ALLIANCE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-12711
(Commission File Number)

94-1721931
(I.R.S. Employer Identification No.)

11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141
(Address of principal executive offices) (Zip Code)

(949) 444-5464
(Registrant's telephone number, including area code)

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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	AULT	NYSE American
13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, par value \$0.001 per share	AULT PRD	NYSE American

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

As previously reported, on June 9, 2023, Ault Alliance, Inc. (the “**Company**”) entered into an At-the-Market Issuance Sales Agreement, as amended on July 12, 2023 (the “**Sales Agreement**”) with Ascendant Capital Markets, LLC, as sales agent (the “**Agent**”) to sell shares of its common stock, par value \$0.001 (the “**Common Stock**”), from time to time, through an “at the market offering” (the “**ATM Offering**”) as defined in Rule 415 under the Securities Act of 1933, as amended (the “**Securities Act**”). On June 9, 2023, the Company filed a prospectus supplement with the Securities and Exchange Commission (“**SEC**”), which was supplemented by a prospectus supplement filed with the SEC on June 20, 2023, July 11, 2023 and July 13, 2023 (collectively, the “**Prospectus Supplement**”), relating to the offer and sale of up to \$20,000,000 of common stock in the ATM Offering.

The Company will file a supplement to the Prospectus Supplement (the “**Supplement**”) with the SEC to increase the amount of Common Stock that may be offered and sold in the ATM Offering under the Sales Agreement to up to \$50,000,000 in the aggregate. The Company is applying to list the shares of Common Stock that will be sold pursuant to the ATM Offering and while the Company believes such approval will be obtained, there can be no assurance as to whether and when such approval will be obtained.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of any offer to buy any shares under the Sales Agreement, nor shall there be any offer, solicitation or sale of such shares in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such state.

The foregoing description of the terms of the Sales Agreement, as amended by the Second Amendment to At-The-Market Issuance Sales Agreement, dated September 7, 2023 (the “**Amendment**”), does not purport to be complete and is subject to, and qualified in its entirety by reference to, the Amendment, which is filed herewith as **Exhibit 10.1** and is incorporated herein by reference.

The legal opinion of Olshan Frome Wolosky LLP, counsel to the Company, relating to the legality of the issuance and sale of shares of Common Stock being offered pursuant to the Sales Agreement, as amended by the Amendment, is filed as **Exhibit 5.1** hereto.

ITEM 9.01 EXHIBITS

(d) Exhibits

Exhibit No.	Description
5.1	Opinion of Olshan Frome Wolosky LLP.
10.1	Amendment to At-The-Market Issuance Sales Agreement, dated September 7, 2023, with Ascendant Capital Markets, LLC.
23.1	Consent of Olshan Frome Wolosky LLP (included in the opinion filed as Exhibit 5.1).
101	Pursuant to Rule 406 of Regulation S-T, the cover page is formatted in Inline XBRL (Inline eXtensible Business Reporting Language).
104	Cover Page Interactive Data File (embedded as Inline XBRL document and contained in Exhibit 101).

SIGNATURES

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

AULT ALLIANCE, INC.

Dated: September 8, 2023

By: /s/ Henry Nisser
Name: Henry Nisser
Title: President

September 8, 2023

Ault Alliance, Inc.
11411 Southern Highlands Parkway, Suite 240
Las Vegas, Nevada 89141

Re: Registration Statement on Form S-3 (Registration No. 333-260618).

Ladies and Gentlemen:

We have acted as counsel to Ault Alliance, Inc., a Delaware corporation (the “Company”), in connection with the issuance and sale of up to \$50 million of shares (the “Shares”) of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), all of which are authorized but heretofore unissued shares to be offered and sold by the Company, except for 6,170,258 Shares for gross proceeds of \$18,961,210 which were already offered and sold as of the date hereof for which we previously provided a due authorization opinion, pursuant to a Registration Statement on Form S-3 (File No. 333-260618) (the “Registration Statement”) filed with the U.S. Securities and Exchange Commission (the “SEC”) under the Securities Act of 1933, as amended (the “Act”), and declared effective by the SEC on November 12, 2021, and the related prospectus dated therein (the “Prospectus”), as supplemented by the prospectus supplement dated June 9, 2023, the prospectus supplement dated July 13, 2023 and the prospectus supplement dated September 8, 2023 pursuant to Rule 424(b) promulgated under the Act (the “Prospectus Supplement”).

For purposes of this opinion, we have examined such documents and reviewed such questions of law as we have considered necessary and appropriate for the purposes of our opinion set forth below. In rendering our opinion, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies. We have also assumed that the NYSE will approve the listing of the Shares, the legal capacity for all purposes relevant hereto of all natural persons and, with respect to all parties to agreements or instruments relevant hereto other than the Company, that such parties had the requisite power and authority (corporate or otherwise) to execute, deliver and perform such agreements or instruments, that such agreements or instruments have been duly authorized by all requisite action (corporate or otherwise), executed and delivered by such parties and that such agreements or instruments are the valid, binding and enforceable obligations of such parties. As to questions of fact material to our opinions, we have relied upon certificates of officers of the Company and of public officials.

Based upon and subject to the foregoing, we are of the opinion that the Shares have been duly authorized and, when issued and paid for as described in the Registration Statement, the Prospectus and the Prospectus Supplement, will be or are validly issued, fully paid and nonassessable.

The opinions set forth in this letter are limited to the General Corporation Law of the State of Delaware, as in effect on the date hereof.

We hereby consent to the filing of this opinion as an exhibit to the Company’s Current Report on Form 8-K filed with the SEC on September 8, 2023, which is incorporated by reference in the Registration Statement and the Prospectus, and to the reference to this firm under the heading “Legal Matters” in the Prospectus Supplement and the Prospectus. In giving such consent, we do not hereby concede that we are within the category of persons whose consent is required under Section 7 of the Act, or the rules and regulations of the SEC thereunder.

Very truly yours,

/s/ Olshan Frome Wolosky LLP
OLSHAN FROME WOLOSKY LLP

**SECOND AMENDMENT TO AT-THE-MARKET ISSUANCE SALES AGREEMENT
DATED JUNE 9, 2023**

This second amendment (the “**Amendment**”) to the At-The-Market Issuance Sales Agreement dated June 9, 2023, as amended on July 12, 2023 (the “**Agreement**”), entered into by and between Ault Alliance, Inc., a Delaware corporation (the “**Company**”), and Ascendant Capital Markets, LLC (the “**Agent**”) is dated September 7, 2023. All capitalized terms in this Amendment and not defined herein shall have the meanings ascribed to such terms in the Agreement.

WHEREAS, the Company and the Agent desire to amend the Agreement.

NOW, THEREFORE, in consideration of the foregoing and intending to be legally bound hereby, the parties hereto agree as follows:

1. The first paragraph of Section 1 is hereby deleted and replaced in its entirety by the following:

1. **Issuance and Sale of Shares.** The Company agrees to issue and sell through or to Ascendant, shares (the “**Placement Shares**”) of the Company’s Common Stock, par value \$0.001 per share (the “**Common Stock**”), from time to time during the term of this Agreement and on the terms set forth in this Agreement; provided however, that in no event will the Company issue or sell through Ascendant such dollar amount of Placement Shares that would exceed \$50,000,000 in the aggregate (the “**Maximum Amount**”). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitations set forth in this Section 1 on the amount of Placement Shares issued and sold under this Agreement will be the sole responsibility of the Company and that Ascendant will have no obligation in connection with such compliance, provided that Ascendant follows the lawful trading instructions provided by the Company pursuant to any Placement Notice in all material respects. The issuance and sale of Placement Shares through Ascendant will be effected pursuant to the Registration Statement (as defined below) filed by the Company and declared effective by the U.S. Securities and Exchange Commission (the “**SEC**”), although nothing in this Agreement will be construed as requiring the Company to use the Registration Statement to issue Common Stock. Certain capitalized terms used in this Agreement have the meanings ascribed to them in Section 25.

2. This Amendment shall be binding on the Company and the Agent and all of their respective successors, heirs, personal representatives and assigns and permitted transferees.

3. Except as amended hereby, the Agreement shall remain unmodified and is hereby ratified in all respects.

4. This Amendment may be executed and delivered (including by electronic or facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Agreed this 7th day of September, 2023.

AULT ALLIANCE, INC.

ASCENDANT CAPITAL MARKETS, LLC

By: /s/ Milton C. Ault, III
Milton C. Ault, III
Executive Chairman

By: /s/ Bradley J. Wilhite
Bradley J. Wilhite
Managing Partner
