

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K/A

(Amendment No. 1)

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 2, 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. ☐

EXPLANATORY NOTE

This Current Report on Form 8-K/A (this “**Amendment No. 1**”) amends the Current Report on Form 8-K (the “**Original Form 8-K**”) filed by Ault Alliance, Inc. (the “**Company**”) filed with the Securities and Exchange Commission on March 30, 2023.

This Amendment No. 1 is filed solely for the purpose of providing the legal opinion of Olshan Frome Wolosky LLP, counsel to the Company, relating to the legality of the issuance and sale of the Conversion Shares, as such term is defined below.

Items included in the Original Form 8-K, including exhibits, that are not included herein are not amended and remain in effect as of the date of filing of the Original Form 8-K.

ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

On March 28, 2023, Ault Alliance, Inc. (the “**Company**”) entered into a securities purchase agreement (the “**Purchase Agreement**”) with two institutional investors (the “**Investors**”), pursuant to which the Company agreed to issue and sell, in a private placement, an aggregate of 100,000 shares of its preferred stock, with each such share having a stated value of \$100.00 and consisting of (i) 83,000 shares of Series E Convertible Preferred Stock (the “**Series E Preferred Stock**”), (ii) 1,000 shares of Series F Convertible Preferred Stock (the “**Series F Preferred Stock**”) and (iii) 16,000 shares of Series G Convertible Preferred Stock (the “**Series G Preferred Stock**” and collectively, the “**Preferred Stock**”). The shares of Preferred Stock are convertible into Conversion Shares (as defined below) at the option of the Investors and, in certain circumstances, by the Company.

Each share of Preferred Stock is convertible into shares (the “**Conversion Shares**”) of the Company’s Class A common stock (the “**Common Stock**”) at a conversion price equal to the stated value of such share, or \$100.00, divided by 85% of the closing sale price of our Common Stock on the trading day prior to the date of conversion, subject to a floor price of \$0.10. The Company held a special meeting of stockholders on May 15, 2023 to consider an amendment to its certificate of incorporation to authorize a reverse split of the Common Stock, which was approved. The Company subsequently approved a reverse split ratio of 1 for 300.

Consequently, each share of preferred stock is convertible into up to approximately 3.33 Conversion Shares, and all the 100,000 shares of preferred stock collectively are convertible into an aggregate of up to 333,333 Conversion Shares (in each case, disregarding the floor price of \$0.10, which is not affected by the reverse stock split). However, pursuant to the rules of the NYSE American, where the Common Stock is listed, the Company may not issue more than a maximum of 19.99% of its shares of Common Stock issued and outstanding on the date of the execution date of the Purchase Agreement with the Investors absent stockholder approval, which has not been obtained. As a result, the maximum number of Conversion Shares the Company may issue to the Investors is 275,779.

On May 17, 2023, the Company filed a prospectus supplement with the Securities and Exchange Commission (“**SEC**”) relating to the offer and sale of the Conversion Shares. The offer and sale of the Conversion Shares will be made pursuant to the Company’s effective “shelf” registration statement on Form S-3 and an accompanying base prospectus contained therein (Registration Statement No. 333-260618) filed with the SEC on October 29, 2021 and declared effective by the SEC on November 12, 2021.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of any offer to buy the Conversion Shares, nor shall there be any offer, solicitation or sale of the Conversion 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 Purchase Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference to, the Purchase Agreement which was included as **Exhibit 10.1** on the Original Form 8-K 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 the Conversion Shares, is filed as **Exhibit 5.1** hereto.

ITEM 9.01 EXHIBITS

(d) Exhibits

Exhibit No.	Description
5.1	Opinion of Olshan Frome Wolosky LLP.
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 within the Inline XBRL document and included in Exhibit 101).

SIGNATURE

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 hereunto duly authorized.

AULT ALLIANCE, INC.

Dated: May 17, 2023

/s/ Henry Nisser

Henry Nisser

President and General Counsel

May 17, 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 served as counsel to Ault Alliance, Inc., a Delaware corporation (the “Company”), in connection with certain matters arising out of the registration by the Company of up to 275,779 shares of the Company’s common stock, par value \$0.001 per share, upon the conversion of the Company’s Series E Convertible Preferred Stock, Series F Convertible Preferred Stock and Series G Convertible Preferred Stock (the “Shares”) covered by the above-referenced Registration Statement (the “Registration Statement”), filed by the Company with the U.S. Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”). The Shares were issued pursuant to a Securities Purchase Agreement, dated as of March 28, 2023 (the “Purchase Agreement”), by and among the Company and certain institutional investors. We are rendering this opinion pursuant to the requirements of the Securities Act in connection with the prospectus supplement (the “Prospectus Supplement”) dated as of the date hereof. The Prospectus Supplement relates to the sale by the Investors referred to in the Prospectus Supplement of the Shares.

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined and relied upon originals, or copies certified or otherwise identified to our satisfaction, of the following documents (collectively, the “Documents”):

1. The Registration Statement and all amendments thereto, and the related form of prospectus included therein, in the form in which it was transmitted to the Commission under the Securities Act;
2. The Prospectus Supplement;
3. The Purchase Agreement;
4. The Certificate of Incorporation of the Company, as amended to date;
5. The Bylaws of the Company, as amended to date;
6. A certificate of the Secretary of State of the State of Delaware as to the good standing of the Company, dated as of a recent date;
7. Resolutions adopted by the Board of Directors of the Company relating to the issuance of the Shares; and
8. Such other documents, records, certificates, memoranda, other instruments and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

As to factual matters material to the opinion expressed herein which were not independently established or verified, we have relied, to the extent we have deemed reasonably appropriate, upon statements and representations of officers or directors of the Company.

In expressing the opinion set forth below, we have assumed (but not verified) the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.
2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.
3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and the obligations of each party set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.
4. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that the Shares have been duly authorized and upon conversion, will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the corporate laws of the State of Delaware as in effect on the date hereof and we do not express any opinion herein concerning any other law. We express no opinion and provide no assurance as to the applicability or effect of any federal or state securities laws, rules or regulations, or as to federal or state laws regarding fraudulent transfers. To the extent that any matter as to which our opinion is expressed herein would be governed by any laws other than the corporate laws of the State of Delaware as in effect on the date hereof, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of judicial decisions which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

This opinion is rendered solely in connection with the registration of the Shares for resale by the selling stockholders under the Registration Statement pursuant to the Prospectus Supplement. The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the Shares (the "Current Report"). We hereby consent to the filing of this opinion as an exhibit to the Current Report and to the use of the name of our firm therein and under the caption "Legal Matters" in the Prospectus Supplement. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act, or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Olshan Frome Wolosky LLP
OLSHAN FROME WOLOSKY LLP
