

**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): March 26, 2024

**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 and restates the Current Report on Form 8-K (the “**Original Form 8-K**”) filed by Ault Alliance, Inc., a Delaware corporation (the “**Company**”) with the Securities and Exchange Commission on November 7, 2023.

This Amendment No. 1 is filed solely for the purpose of disclosing an Amendment dated March 25, 2024 (the “**Amendment**”) to (i) the Securities Purchase Agreement dated November 6, 2023 (the “**Agreement**” and as amended, the “**Amended Agreement**”), entered into by and between the Company and Ault & Company, Inc., a Delaware corporation (the “**Purchaser**”), (ii) the Certificate of Designation of Preferences, Rights and Limitations of the Series C Convertible Preferred Stock (the “**COD**”) and (iii) the number of warrants (the “**Series C Warrants**”), to provide for (A) an increase in the Financing (as defined below) from \$50,000,000.00 to \$75,000,000.00 and (B) an extension of the date to closing the final tranche of the Financing.

Other than the foregoing, this Amendment No. 1 speaks as of the original date of the Original Form 8-K and does not reflect events that may have occurred subsequent to the date of the Original Form 8-K, except for (i) the reverse stock split of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”), which was effective as of January as of January 16, 2024, (ii) closings of the Financing that occurred since the Execution Date (as defined below), (iii) adjustment to the Conversion Price (as defined below) upon an issuance of Common Stock at a price per share lower than the Conversion Price then in effect and (iv) removal of Item 7.01 and the referenced press release of the Original Form 8-K.

### **Item 1.01 Entry into a Material Definitive Agreement.**

On November 6, 2023 (the “**Execution Date**”), the Company entered into the Agreement with the Purchaser, pursuant to which the Company agreed to sell to the Purchaser up to 50,000 shares of Series C convertible preferred stock (the “**Series C Convertible Preferred Stock**”), and Series C Warrants to purchase shares of Common Stock, in one or more closings, for a total purchase price of up to \$50,000,000.00 (the “**Financing**”).

On March 25, 2024, the Company and the Purchaser entered into the Amendment, pursuant to which the total amount of the Financing was increased to \$75,000,000.00, with the COD and the Series C Warrants being amended accordingly. As of March 25, 2024, the Purchaser had purchased an aggregate of 43,500 shares of Series C Convertible Preferred Stock and Series C Warrants to purchase an aggregate of 12,860,312 Warrant Shares (as defined below), for an aggregate purchase price of \$43.5 million.

The Purchaser is an affiliate of the Company.

The consummation of the transactions contemplated by the Amended Agreement, specifically the conversion of the Series C Convertible Preferred Stock and the exercise of the Series C Warrants in an aggregate number in excess of 19.99% on the execution date of the Agreement, are subject to various customary closing conditions as well as regulatory and Stockholder Approval (as hereinafter defined). In addition to customary closing conditions, additional closings of the Financing are also conditioned upon the receipt by the Purchaser of financing to consummate the such additional closings.

The Amended Agreement contains customary termination provisions for the Purchaser under certain circumstances, and the Amended Agreement shall automatically terminate if the final closing has not occurred prior to June 30, 2024, though such date may be extended by the Purchaser as set forth in the Amendment.

The material terms of the Amended Agreement, Series C Convertible Preferred Stock and the Series C Warrants are summarized below.

#### *Description of the Series C Convertible Preferred Stock*

##### Conversion Rights

Each share of Series C Convertible Preferred Stock has a stated value of \$1,000.00 and is convertible into shares of Common Stock at a conversion price equal to the greater of (i) \$0.10 per share (the “**Floor Price**”), and (ii) the lesser of (A) \$0.35 or (B) 105% of the volume weighted average price of the Common Stock during the ten trading days immediately prior to the date of conversion (the “**Conversion Price**”). The Conversion Price is subject to adjustment in the event of an issuance of Common Stock at a price per share lower than the Conversion Price then in effect, as well as upon customary stock splits, stock dividends, combinations or similar events. The Floor Price, however, shall not be adjusted for stock dividends, stock splits, stock combinations or other similar transactions.

### Voting Rights

The holders of the Series C Convertible Preferred Stock are entitled to vote with the Common Stock as a single class on an as-converted basis, subject to applicable law provisions of the Delaware General Company Law (the “**DGCL**”) and the NYSE American (the “**Exchange**”), provided however, that for purposes of complying with Exchange regulations, the conversion price, for purposes of determining the number of votes the holder of Series C Convertible Preferred Stock is entitled to cast, shall not be lower than \$3.075 (the “**Voting Floor Price**”), which represents the closing sale price of the Common Stock on the trading day immediately prior to the Execution Date. The Voting Floor Price shall be adjusted for stock dividends, stock splits, stock combinations and other similar transactions.

In addition, after Stockholder Approval (as hereinafter defined) has been obtained, the Purchaser will be entitled to elect such number of directors to the Company’s Board of Directors as shall be equal to a percentage determined by dividing (i) the number of shares of Common Stock issuable upon conversion of the Series C Convertible Preferred Stock then owned by the Purchaser (the “**Conversion Shares**”), by (ii) the sum of the number of shares of Common Stock then outstanding plus the number of Conversion Shares.

### Dividend Rights

The holders of Series C Convertible Preferred Stock are entitled to cumulative cash dividends at an annual rate of 9.5%, or \$95.00 per share, based on the stated value per share. Dividends shall accrue from the date of the first closing of the Agreement (the “**Closing Date**”), until the 10-year anniversary of the Closing Date and are payable quarterly in arrears. For the first two years, the Company may elect to pay the dividend amount in Common Stock rather than cash, with the number of shares of Common Stock issued at the Conversion Price at the date that the dividend payment is due. Dividends will accrue regardless of the Company’s earnings or funds availability and will not exceed the full cumulative dividends. If dividends are in arrears for one or more periods where dividends are to be paid and the Purchaser is contractually required to pay any penalties or damages as a result of the failure of the Company to pay such dividend, the dividend rate will increase to 12% per annum (equivalent to \$120.00 per annum per share) and will be paid either in cash or additional shares of Series C Convertible Preferred Stock (if the Common Stock is then listed on a national securities exchange) or if not, freely tradeable Common Stock.

### Liquidation Rights

In the event of liquidation, dissolution, or winding up of the Company, the holders of Series C Convertible Preferred Stock have a preferential right to receive an amount equal to the stated value per share of Series C Convertible Preferred Stock before any distribution to other classes of capital stock. If the assets are insufficient, the distribution will be prorated among the holders of Series C Convertible Preferred Stock. The remaining assets will be distributed pro rata to the holders of outstanding Common Stock and all holders of Series C Convertible Preferred Stock as if they had converted their Series C Convertible Preferred Stock into Common Stock. The Series C Convertible Preferred Stock rank senior over other classes of preferred stock, including the Series A, B and D Preferred Stock. Additionally, any transaction that constitutes a change of control transaction shall be deemed to be a liquidation under the COD.

### *Description of the Series C Warrants*

At each closing, the Company will issue the Purchaser the Series C Warrants, which grant the Purchaser the right to purchase a specified number of Common Stock (the “**Warrant Shares**”). The exercise price of the Warrants is \$3.3825 (the “**Exercise Price**”) and the number of Warrant Shares is determined by dividing the actual investment amount by the Exercise Price. The Exercise Price is subject to adjustment in the event of customary stock splits, stock dividends, combinations or similar events.

The Series C Warrants have a five-year term, expiring on the fifth anniversary of the Closing Date, and become exercisable on the first business day after the six-month anniversary of the Closing Date.

### *Description of the Amended Agreement*

### Protective Provisions and Restrictive Covenants

Holders of Series C Convertible Preferred Stock are entitled to written notice of stockholder meetings or written consents, along with related materials and information, in accordance with the Company's Bylaws and the DGCL.

Additionally, until the earlier of (i) four years from the Closing Date, or (ii) the date when Purchaser holds fewer than 6,250 shares of Series C Convertible Preferred Stock, the Company is prohibited from (A) entering into any financing, whether debt or equity, other than conventional loans from a commercial bank, at a price per share less than the Conversion Price or (B) entering into a variable rate financing transaction.

Further, so long as the Purchaser holds at least 6,250 shares of Series C Convertible Preferred Stock, the Purchaser shall have a right to participate in any subsequent financing (a “**Subsequent Financing**”) allowing the Purchaser to purchase such number of securities in the Subsequent Financing to allow the Purchaser to maintain its percentage beneficial ownership of the Company the Purchaser held immediately prior to the Subsequent Financing.

In addition, the Company must establish a reserve account to be funded with no less than 12.5% of the gross proceeds received from the sale of the Series C Convertible Preferred Stock, which shall be maintained for a period of at least nine months from the Closing Date.

#### Exchange Cap Limitation and Stockholder Approval

The Company may not issue Conversion Shares and/or Warrant Shares to the extent such issuances would result in an aggregate number of shares of Common Stock exceeding 19.99% of the total shares of Common Stock issued and outstanding as of the Execution Date, in accordance with the rules and regulations of the Exchange unless the Company first obtains stockholder approval (the “**Stockholder Approval**”). Pursuant to the Agreement and as required by the Exchange, the Company agreed to file a proxy statement to obtain the Stockholder Approval.

The foregoing descriptions of the COD, the Agreement, the Series C Warrants and the Amendment as well as the transactions contemplated thereby do not purport to be complete and are qualified in their entirety by reference to the Agreement, form of the Series C Warrants and Amendment filed hereto as **Exhibits 10.1, 10.2 and 10.3**, respectively, and the form of the COD, a copy of which is filed as **Exhibit 3.1** to this Current Report on Form 8-K and are incorporated herein by reference.

#### **Item 9.01 Financial Statements and Exhibits.**

##### **(d) Exhibits:**

<b>Exhibit No.</b>	<b>Description</b>
3.1	<a href="#"><u>Form of Certificate of Designations of Preferences, Rights and Limitations of Series C Convertible Preferred Stock. Incorporated by reference by Exhibit 4.1 to the Current Report on Form 8-K, as filed with the SEC on November 7, 2023.</u></a>
10.1	<a href="#"><u>Securities Purchase Agreement, dated November 6, 2023. Incorporated by reference by Exhibit 10.1 to the Current Report on Form 8-K, as filed with the SEC on November 7, 2023.</u></a>
10.2	<a href="#"><u>Form of Warrant. Incorporated by reference by Exhibit 10.2 to the Current Report on Form 8-K, as filed with the SEC on November 7, 2023.</u></a>
10.3	<a href="#"><u>Amendment to the Securities Purchase Agreement, Certificate of Designation and Series C Warrants, dated March 25, 2024.</u></a>
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: March 26, 2024

/s/ Henry Nisser  
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Henry Nisser  
President and General Counsel

**AMENDMENT TO  
THE SECURITIES PURCHASE AGREEMENT  
DATED NOVEMBER 6, 2023  
and  
THE CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS  
of  
THE SERIES C CONVERTIBLE PREFERRED STOCK**

This amendment (the “**Amendment**”) to (i) the Securities Purchase Agreement dated November 6, 2023 (the “**Agreement**”), entered into by and between Ault Alliance, Inc., a Delaware corporation (the “**Company**”), and Ault & Company, Inc., a Delaware corporation (the “**Purchaser**”), (ii) the Certificate of Designation of Preferences, Rights and Limitations of the Series C Convertible Preferred Stock filed with the Secretary of State of Delaware on November 15, 2023 (the “**COD**”) and (iii) the number of warrants (the “**Series C Warrants**”), is dated March 25, 2024. All capitalized terms in this Amendment and not defined herein shall have the meanings ascribed to such terms in the Agreement, the COD and/or the Series C Warrants, as applicable.

**WHEREAS**, the Company and the Purchaser desire to amend the Agreement, the COD and the Series C Warrants.

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

1. The definition of “Subscription Amount” in the SPA is hereby deleted and replaced in its entirety by the following:

“**Subscription Amount**” means up to \$75,000,000 some of which may consist of the surrender for cancellation of the Note.

2. Section 2.1 of the SPA is hereby deleted and replaced in its entirety by the following:

“**2.1 Closing.** On each Closing Date, upon the terms and subject to the conditions set forth herein, the Company agrees to sell, and the Purchaser agrees to purchase, the Securities for the Subscription Amount (such purchase and sale being a “**Closing**”). Contemporaneously with or promptly following a Closing, the Purchaser shall deliver to the Company the Purchaser’s Subscription Amount as set forth on the signature page hereto executed by the Purchaser by a wire transfer of immediately available funds and the Company shall, on the Closing Date, deliver to the Purchaser a certificate representing the number of Preferred Shares and the Warrant purchased by the Purchaser at the particular Closing as determined pursuant to Section 2.2(a). The Company and the Purchaser shall also deliver the other items set forth in Section 2.2 deliverable at the particular Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3 and receipt of the Subscription Amount by the Company, the Closing shall occur at the principal offices of the Company or such other location as the parties shall mutually agree. Notwithstanding anything herein to the contrary, each Closing Date shall occur on or before June 30, 2024, provided, however, that the Purchaser may extend such the Closing Date for an additional ninety (90) days, by notice to the Company (such outside date, the “**Termination Date**”).”

3. Section 2 of the COD is hereby deleted and replaced in its entirety by the following:

**Designation, Amount and Par Value.** The series of preferred stock shall be designated as “Series C Convertible Preferred Stock” (the “**Series C Preferred Stock**”) and the number of shares of such series shall be 75,000 (which shall not be subject to increase without the written consent of the holder (each, a “**Holder**” and collectively, the “**Holders**”) of a majority of the then outstanding shares of the Series C Preferred Stock). Each share of Series C Preferred Stock shall have a par value of \$0.001 per share and a stated value equal to \$1,000.00 (the “**Stated Value**”).

4. The terms of the Series C Warrants are hereby modified in their entirety to reflect the increase in the Subscription Amount.
  5. This Amendment shall be binding on the Company and the Purchaser and all of their respective successors, heirs, personal representatives and assigns and permitted transferees.
  6. Except as amended hereby, the Agreement shall remain unmodified and is hereby ratified in all respects.
  7. 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.
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Agreed this 25<sup>th</sup> day of March, 2024.

AULT ALLIANCE, INC.

By: /s/ Henry Nisser  
Henry Nisser  
President

AULT & COMPANY, INC.

By: Milton C. Ault, III  
Milton C. Ault, III  
Chief Executive Officer

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