

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): December 21, 2022

BITNILE HOLDINGS, 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	NILE	NYSE American
13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, par value \$0.001 per share	NILE 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

Effective January 3, 2023, BitNile Holdings, Inc., a Delaware corporation (the “**Company**”) will change its corporate name from BitNile Holdings, Inc., to Ault Alliance, Inc. (the “**Name Change**”). The Name Change will be effected through a parent/subsidiary short form merger pursuant to an Agreement and Plan of Merger dated December 20, 2022 but effective January 3, 2023 (the “**Merger Agreement**”). In accordance with the Merger Agreement, the Company’s wholly owned subsidiary, Ault Alliance, Inc., a Delaware corporation (“**Merger Sub**”) merged with and into the Company (the “**Merger**”) pursuant to Section 253 of the General Corporate Law of the State of Delaware (the “**DGCL**”). The Company is the surviving corporation and pursuant to the Certificate of Merger (as defined below), will change its name to Ault Alliance, Inc. as of the effective date and time.

To effectuate the Merger, the Company filed a Certificate of Ownership and Merger (the “**Certificate of Merger**”) with the Secretary of State of the State of Delaware on December 20, 2022, which is effective as of January 3, 2023. In accordance with Section 253 of the DGCL, approval of the Company’s stockholders for the Merger was not required.

The Merger and resulting Name Change do not affect the rights of security holders of the Company. The Company’s common stock will continue to be quoted on the NYSE American, but under the new symbol “AULT”. Following the Name Change, existing stock certificates, which reflect the Company’s prior corporate name, will continue to be valid. Certificates reflecting the new corporate name will be issued in due course as old stock certificates are tendered for exchange or transfer to the Company’s transfer agent.

The Merger will not affect any of the Company’s material contracts with any third parties, and the Company’s rights and obligations under such material contractual arrangements will continue to be rights and obligations of the Company after the Merger. The Merger will not result in any change in headquarters, business, jobs, management, location of any of the offices or facilities, number of employees, assets, liabilities or net worth of the Company. With the except of the Name Change, there will be no changes to the Company’s bylaws.

The foregoing descriptions of the Merger Agreement and the Certificate of Merger are qualified in their entirety by reference to the full text of the Merger Agreement and the Certificate of Merger, copies of which are filed as Exhibits 2.1 and 3.1, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

ITEM 5.03 AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGE IN FISCAL YEAR

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference to this Item 5.03.

ITEM 7.01 REGULATION FD DISCLOSURE

On December 21, 2022, BitNile Holdings, Inc., a Delaware corporation (the “**Company**”) issued a press release announcing a cash dividend to holders of the Series D Preferred Stock of \$0.2708333 per share. The record date for this dividend is December 31, 2022, and the payment date is January 10, 2023. A copy of the press release is furnished herewith as [Exhibit 99.1](#) and is incorporated by reference herein.

In accordance with General Instruction B.2 of Form 8-K, the information under this item shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such a filing. This report will not be deemed an admission as to the materiality of any information required to be disclosed solely to satisfy the requirements of Regulation FD.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
2.1	Agreement and Plan of Merger dated December 20, 2022.
3.1	Certificate of Ownership and Merger, as filed with the Secretary of State of the State of Delaware on December 20, 2022.
99.1	Press Release issued on December 21, 2022.
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.

BITNILE HOLDINGS, INC.

Dated: December 21, 2022

/s/ Henry Nisser _____
Henry Nisser
President and General Counsel

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “**Agreement**”) is made as of December 20, 2022, by and between BitNile Holdings, Inc., a Delaware corporation (the “**Parent Corporation**”), and Ault Alliance, Inc., a Delaware corporation (the “**Subsidiary Corporation**”). The Parent Corporation and the Subsidiary Corporation are collectively referred to as the “**Constituent Corporations.**”

RECITALS:

WHEREAS, each of the Constituent Corporations is a corporation duly organized and existing under the laws of the State of Delaware;

WHEREAS, twenty million (20,000,000) shares of Class A Common Stock, par value \$0.001 per share (the “**Class A Common Stock**”), ten million (10,000,000) shares of Class B Common Stock, par value \$0.001 per share (the “**Class B Common Stock**,” and together with the Class A Common Stock, the “**Common Stock**”), and five million (5,000,000) shares of Preferred Stock, par value \$0.001 per share, of which 1,000 shares of Common Stock are issued and outstanding, and no other shares of capital stock authorized;

WHEREAS, the Parent Corporation owns 100% of the outstanding shares of Common Stock;

WHEREAS, the Board of Directors of the Parent Corporation has determined that it is desirable and in the best interests of the Subsidiary Corporation to merge with and into the Parent Corporation (the “**Merger**”), pursuant to Section 253 of the General Corporate Law of the State of Delaware (the “**DGCL**”), on the terms and subject to the conditions set forth herein;

WHEREAS, upon the consummation of the Merger, the Parent Corporation will change its name to “Ault Alliance, Inc.” (the “**Name Change**”); and

WHEREAS, the Merger is intended to qualify as a reorganization pursuant to Section 368 of the Internal Revenue Code, as amended (the “**Code**”).

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

1.1 At the Effective Time (as defined below), Subsidiary Corporation shall be merged with and into Parent Corporation in the Merger. Upon effectiveness of the Merger, the separate existence of Subsidiary Corporation shall cease and Parent Corporation shall continue as the surviving corporation, unaffected and unimpaired by the Merger, with all the rights, privileges, immunities and powers and subject to all the duties and liabilities of a corporation organized under the DGCL.

1.2 The Merger shall become effective at 12:01 am Eastern Time on January 3, 2023 (the “**Effective Time**”), pursuant to the Certificate of Ownership and Merger in the form attached hereto as **Exhibit A** (the “**Merger Certificate**”), with the Secretary of State of the State of Delaware.

ARTICLE II

2.1 The Certificate of Incorporation of the Parent Corporation, as amended and in effect immediately prior to the Merger shall be and remain the Certificate of Incorporation of Parent Corporation, except that the Certificate of Incorporation of the Parent Corporation shall be amended solely to effect the Name Change, and paragraph 1 of the Certificate of Incorporation of the Parent Corporation shall be deleted in its entirety and replaced by substituting in lieu of said paragraph 1 the following new paragraph 1 as follows:

“The name of the corporation is Ault Alliance, Inc. (hereinafter, the “**Corporation**”).”

2.2 The Bylaws of the Parent Corporation in effect immediately prior to the Effective Time shall be and remain the Bylaws of Parent Corporation until the same shall be altered, amended or repealed.

2.3 The directors and officers of the Parent Corporation in office at the Effective Time shall continue in office and shall constitute the directors and officers of Parent Corporation for the term elected until their respective successors shall be elected or appointed and shall have qualified.

ARTICLE III

The terms and conditions of the Merger with respect to each issued and outstanding shares of capital stock of the Constituent Corporations shall be as follows:

3.1 Each issued and outstanding share of capital stock of the Parent Corporation immediately prior to the Effective Time shall remain the issued and outstanding shares of the Parent Corporation.

3.2 Each issued and outstanding share of capital stock of the Subsidiary Corporation held by the Parent Corporation immediately prior to the Effective Time shall be cancelled and extinguished without the payment of any consideration therefor.

ARTICLE IV

Each of the Constituent Corporations shall take or cause to be taken all actions or do or cause to be done all things necessary, proper or advisable under the laws of the State of Delaware to consummate and make effective the Merger.

ARTICLE V

This Agreement shall be binding upon and inure to the benefit of all of the parties hereto and their respective successors in interest.

ARTICLE VI

Notwithstanding anything herein to the contrary, this Agreement may be terminated and abandoned by the Board of Directors of the Parent Corporation at any time prior to the date of filing the Merger Certificate with the Secretary of State of the State of Delaware.

ARTICLE VII

The Board of Directors of the Parent Corporation may amend modify and supplement this Agreement in such a manner as it may determine at any time.

ARTICLE VIII

This Agreement may be executed by the parties hereto in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed counterparts to this Agreement delivered by facsimile, .pdf or other similar forms of electronic transmission shall be deemed effective as original signatures hereto.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement and Plan of Merger as of the date first written above.

PARENT CORPORATION:

BITNILE HOLDINGS, INC.

By: /s/ William B. Horne
Name: William B. Horne
Title: Chief Executive Officer

SUBSIDIARY CORPORATION:

AULT ALLIANCE, INC.

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

CERTIFICATE OF OWNERSHIP AND MERGER

merging

**AULT ALLIANCE, INC.,
a Delaware Corporation,**

with and into

**BITNILE HOLDINGS, INC.,
a Delaware corporation**

*(Pursuant to Section 253 of the
General Corporation Law of the State of Delaware)*

* * * * *

BitNile Holdings, Inc., a Delaware corporation (the “**Corporation**”), does hereby certify to the following facts relating to the merger (the “**Merger**”) of Ault Alliance, Inc., a Delaware corporation (the “**Subsidiary**”), with and into the Corporation, with the Corporation remaining as the surviving corporation under the name of Ault Alliance, Inc.:

FIRST: The Corporation is incorporated pursuant to the General Corporation Law of the State of Delaware (the “**DGCL**”). The Subsidiary is incorporated pursuant to the DGCL.

SECOND: The Corporation owns all of the outstanding shares of common stock, par value \$0.001 per share, of the Subsidiary.

THIRD: The Board of Directors of the Corporation, by resolutions duly adopted by the Board of Directors by written consent on December 13, 2022, determined to merge the Subsidiary with and into the Corporation pursuant to Section 253 of the DGCL, which resolutions are in the following words:

“**WHEREAS**, the Corporation owns all of the issued and outstanding capital stock of Ault Alliance, Inc., a Delaware corporation (the “**Subsidiary**”), and has determined it to be in the best interests of the Corporation and its stockholders to merge the Subsidiary with and into the Corporation in a statutory short form merger (the “**Name Change Merger**”) in connection with which the name of the Corporation shall be changed to “Ault Alliance, Inc.” pursuant to the Agreement and Plan of Merger (the “**Name Change Merger Agreement**”) and the related Certificate of Ownership and Merger (the “**Name Change Certificate of Merger**”) in accordance with the provisions of Section 253 of the Delaware General Corporation Law, in which the Corporation will be the surviving corporation of such Name Change Merger.

NOW, THEREFORE, BE IT RESOLVED, that the Name Change Merger is hereby adopted and approved in all respects, and it is further;

RESOLVED, that the terms and conditions, and the execution, delivery and performance, of the Name Change Merger Agreement and the Name Change Certificate of Merger be, and the same hereby are, adopted and approved in all respects, and the Name Change Merger, the Name Change Certificate of Merger, the other transactions contemplated by the Name Change Merger Agreement, and all other actions or matters necessary or appropriate to give effect to the foregoing be, and the same hereby are, adopted and approved in all respects; and that the Corporation’s Executive Chairman, Chief Executive Officer, and President (the “**Authorized Officers**”) be, and each of them acting singly hereby is, authorized, empowered and directed, for and on behalf of the Corporation and in its name, to execute, acknowledge and deliver the Name Change Merger Agreement and the Name Change Certificate of Merger, such execution and delivery to be conclusive evidence that such Name Change Merger Agreement and the Name Change Certificate of Merger so executed and delivered, and the transactions contemplated thereby, are authorized by this resolution, and it is further

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized to execute and deliver any and all other documents as may be required to carry out the resolutions herein, including, but not limited to, certificates, affidavits, application, notices, and any document (including exhibits or schedules) pursuant thereto or to be delivered therewith (collectively, with the Name Change Merger Agreement and the Name Change Certificate of Merger, the “**Name Change Merger Related Documents**”), such approvals to be conclusively evidenced by the execution, delivery or indication thereof, and it is further;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized to take or cause to be taken any and all other action, including, without limitation, the execution, acknowledgement, filing, amendment and delivery of any and all papers, agreements, documents, instruments and certificates, as such officer may deem necessary or advisable to carry out and perform the obligations of the Corporation in connection with the transactions contemplated by the Name Change Merger and the Name Change Merger Related Documents including, but not limited to, any actions required in coordination with any governmental entity, and to otherwise carry out the purposes and intent of the foregoing resolutions; the performance of any such acts and the execution, acknowledgement, filing and delivery by such officer of any such papers, agreements, documents, instruments and certificates shall conclusively evidence their authority therefor, and it is further;

RESOLVED, that that all actions, executions, and delivery of documents instruments and agreements taken by any officer of the Corporation prior to this date relating to the purpose and intent of the foregoing resolution be, and they hereby are, in all respects approved, ratified, confirmed and adopted as the official acts and deeds of the Corporation, and it is further;

RESOLVED, that this unanimous written consent may be executed in one or more counterparts may be delivered to the Corporation by facsimile or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, and it is further;

RESOLVED, that the Secretary or any Assistant Secretary or any other officer of this Corporation, be, and hereby is, authorized to certify as to the adoption of any or all of the foregoing resolutions.”

Such resolutions have not been modified or rescinded and are in full force and effect on the date hereof.

FOURTH: The Corporation shall be the surviving corporation.

FIFTH: The Certificate of Incorporation of the Corporation as in effect immediately prior to the effective time of the Merger shall be the Certificate of Incorporation of the surviving corporation, except that the text of paragraph 1 thereof shall be deleted in its entirety and replaced by substituting in lieu of said paragraph 1 the following new paragraph 1 as follows:

“1. The name of the corporation is Ault Alliance, Inc. (hereinafter, the “**Corporation**”).”

SIXTH: The Merger shall become effective at 12:01 am Eastern Time on January 3, 2023.

[Signature page follows.]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Ownership and Merger to be executed by its duly authorized officer this 20th day of December, 2022.

BITNILE HOLDINGS, INC.

By: /s/ William B. Horne
Name: William B. Horne
Title: Chief Executive Officer



BitNile Holdings Declares Monthly Cash Dividend of \$0.2708333 Per Share of 13.00% Series D Cumulative Redeemable Perpetual Preferred Stock

LAS VEGAS--(BUSINESS WIRE) – December 21, 2022 -- [BitNile Holdings, Inc.](#) (NYSE American: NILE), a diversified holding company (“**BitNile**” or the “**Company**”), today announced that its Board of Directors has declared a monthly cash dividend of \$0.2708333 per share of the Company’s outstanding 13.00% Series D Cumulative Redeemable Perpetual Preferred Stock. The record date for this dividend is December 31, 2022, and the payment date is January 10, 2023.

Link to NYSE quote for the Company’s 13.00% Series D Cumulative Redeemable Perpetual Preferred Stock: <https://www.nyse.com/quote/XASE:NILEpD>

For more information on BitNile and its subsidiaries, BitNile recommends that stockholders, investors, and any other interested parties read BitNile’s public filings and press releases available under the Investor Relations section at www.BitNile.com or available at www.sec.gov.

About BitNile Holdings, Inc.

BitNile Holdings, Inc. is a diversified holding company pursuing growth by acquiring undervalued businesses and disruptive technologies with a global impact. Through its wholly and majority-owned subsidiaries and strategic investments, BitNile owns and operates a data center at which it mines Bitcoin and provides mission-critical products that support a diverse range of industries, including oil exploration, crane services, defense/aerospace, industrial, automotive, medical/biopharma, consumer electronics, hotel operations and textiles. In addition, BitNile extends credit to select entrepreneurial businesses through a licensed lending subsidiary. BitNile’s headquarters are located at 11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141; www.BitNile.com.

Forward-Looking Statements

This press release 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. These forward-looking statements generally include statements that are predictive in nature and depend upon or refer to future events or conditions, and include words such as “believes,” “plans,” “anticipates,” “projects,” “estimates,” “expects,” “intends,” “strategy,” “future,” “opportunity,” “may,” “will,” “should,” “could,” “potential,” or similar expressions. Statements that are not historical facts are forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties.

Forward-looking statements speak only as of the date they are made, and the Company undertakes no obligation to update any of them publicly in light of new information or future events. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors. More information, including potential risk factors, that could affect the Company’s business and financial results are included in the Company’s filings with the U.S. Securities and Exchange Commission, including, but not limited to, the Company’s Forms 10-K, 10-Q and 8-K. All filings are available at www.sec.gov and on the Company’s website at www.BitNile.com.

BitNile Holdings Investor Contact:
IR@BitNile.com or 1-888-753-2235
