

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): March 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	NYSEAmerican
13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, par value \$0.001 per share	AULT PRD	NYSEAmerican

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 2.01 Completion of Acquisition or Disposition of Assets

As previously reported in the Current Report on Form 8-K filed by Ault Alliance, Inc. (the “**Company**”) on February 10, 2023, the Company entered into a Share Exchange Agreement (the “**Agreement**”) with Ecoark Holdings, Inc. (“**Ecoark**”) pursuant to which the Company agreed to sell to Ecoark all of the outstanding shares of capital stock of the Company’s subsidiary, BitNile.com, Inc. (“**BitNile.com**”), of which approximately 86% was owned by the Company, and the remaining 14% was owned by minority shareholders (the “**Minority Shareholders**”), as well as the securities of Earnity, Inc. (“**Earnity**”) beneficially owned by BitNile.com, which represented approximately 19.9% of the outstanding equity securities of Earnity as of the date of the Agreement (the “**Transaction**”).

On March 6, 2023, the Transaction closed and Ecoark acquired BitNile.com and its ownership in Earnity. As consideration for the acquisition, Ecoark issued 8,637.5 shares of newly designated Series B Convertible Preferred Stock of Ecoark to the Company (the “**Series B Preferred**”) and 1,362.5 shares of newly designated Series C Convertible Preferred Stock of Ecoark to the Minority Shareholders (the “**Series C Preferred**,” and together with the Series B Preferred, the “**Preferred Stock**”). The Series B Preferred and the Series C Preferred each have a stated value of \$10,000 per share (the “**Stated Value**”), for a combined stated value of the Preferred Stock issued by Ecoark of \$100,000,000, and subject to adjustment, are convertible into an aggregate of 400,000,000 shares of common stock of Ecoark (the “**Common Stock**”), which pursuant to the Agreement, represents approximately 92.4% of Ecoark’s outstanding Common Stock on a fully-diluted basis. However, pending approval of the transaction by Ecoark’s shareholders, the Preferred Stock combined are subject to a 19.9% beneficial ownership limitation (together with other securities beneficially owned). The Agreement provides that Ecoark will seek shareholder approval (the “**Shareholder Approval**”) following the closing.

Pursuant to the Certificates of Designations of the Rights, Preferences and Limitations of the Series B Preferred and the Series C Preferred (collectively, the “**Preferred Stock Certificates**”), each share of Preferred Stock is convertible into a number of shares of Common Stock determined by dividing the Stated Value by \$0.25 (the “**Conversion Price**”), or 40,000 shares of Common Stock. The Conversion Price will be subject to certain adjustments, including potential downward adjustment if Ecoark closes a qualified financing resulting in at least \$25,000,000 in gross proceeds at a price per share that is lower than the Conversion Price then in effect. The holders of Preferred Stock will be entitled to receive dividends at a rate of 5% of the Stated Value per annum from issuance until the 10-year anniversary of issuance (the “**Dividend Term**”). During the first two years of the Dividend Term, dividends will be payable in additional shares of Preferred Stock rather than cash, and thereafter dividends will be payable in either additional shares of Preferred Stock or cash as each holder may elect. If Ecoark fails to make a dividend payment as required by the Preferred Stock Certificates, the dividend rate will be increased to 12% for as long as such default remains ongoing and uncured. Each share of Preferred Stock will also have an \$11,000 liquidation preference in the event of a liquidation, change of control event, dissolution or winding up of Ecoark, and will rank senior to all other capital stock of Ecoark with respect thereto, except that the Series B Preferred and Series C Preferred shall rank pari passu. Each share of Preferred Stock will be entitled to vote with the Common Stock as set forth in the Preferred Stock Certificates, provided, however, that until Shareholder Approval, the Preferred Stock combined voting power is subject to a 19.9% limitation (together with other securities beneficially owned). Other than certain rights granted to the Company relating to amendments or waiver of various negative covenants, the terms, rights, preferences and limitations of the Preferred Stock Certificates are essentially identical.

The Company is entitled to appoint three members to the board of directors of Ecoark (the “**Board**”), and following Shareholder Approval, a majority of the Board. The Agreement also provides the holders of Preferred Stock with most favored nations rights in the event Ecoark offers securities with more favorable terms than the Preferred Stock for as long as the Preferred Stock remains outstanding.

Item 7.01 Regulation FD Disclosure

On March 7, 2023, the Company issued a press release announcing the closing of the Transaction. A copy of this 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.

The Securities and Exchange Commission encourages registrants to disclose forward-looking information so that investors can better understand the future prospects of a registrant and make informed investment decisions. This Current Report on Form 8-K and exhibits may contain these types of statements, which are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, and which involve risks, uncertainties and reflect the Registrant’s judgment as of the date of this Current Report on Form 8-K. Forward-looking statements may relate to, among other things, operating results and are indicated by words or phrases such as “expects,” “should,” “will,” and similar words or phrases. These statements are subject to inherent uncertainties and risks that could cause actual results to differ materially from those anticipated at the date of this Current Report on Form 8-K. Investors are cautioned not to rely unduly on forward-looking statements when evaluating the information presented within.

Item 9.01 Financial Statements and Exhibits

(a) Financial Statements of Business Acquired:

The financial information required by Item 9.01(a) of this Current Report on Form 8-K has not been included with this filing and will be filed by amendment to this Current Report on Form 8-K not later than seventy-one (71) calendar days after the date that this Current Report on Form 8-K must be filed.

(b) Pro Forma Financials:

The financial information required by Item 9.01(b) of this Current Report on Form 8-K has not been included with this filing and will be filed by amendment to this Current Report on Form 8-K not later than seventy-one (71) calendar days after the date that this Current Report on Form 8-K must be filed.

(d) Exhibits:

Exhibit No.	Description
99.1	Press release regarding the closing of the Transaction, issued by the Company on March 7, 2023
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 7, 2023

/s/ Henry Nisser

Henry Nisser

President and General Counsel



Ault Alliance and Ecoark Holdings Complete \$100 Million Share Exchange Agreement for BITNILE.COM Metaverse Platform

Ault Alliance and Ecoark Holdings join forces to capture market share in booming metaverse industry

LAS VEGAS--(BUSINESS WIRE) – March 7, 2023 – Ault Alliance, Inc. (NYSE American: AULT), a diversified holding company (“**Ault Alliance**”) and Ecoark Holdings, Inc. (“**Ecoark**”) (NASDAQ: ZEST) announced today that they have completed the previously announced share exchange agreement (the “**Agreement**”), whereby Ault Alliance and other founders sold BitNile.com, Inc., including the BITNILE.COM metaverse platform (the “**Platform**”), to Ecoark for \$100 million in stated value of preferred stock. The Platform, which went live to the public on March 1, 2023, allows users to engage with a new social networking community and purchase both digital and physical products while playing 3D immersive games. The Platform is expected to have a tiered rewards system, which incentivizes behavior, while advertising models will target specific users. The Platform is early access and not all experiences are immediately available.

Once Ecoark has obtained shareholder approval for the issuance of all the shares underlying the Ecoark preferred stock (the “**Preferred Stock**”) called for by the Agreement in compliance with the rules and regulations of Nasdaq, Ault Alliance will beneficially own a significant majority of Ecoark. Going forward, it is expected that Ecoark’s financial results will be consolidated into Ault Alliance’s financial statements. This acquisition is expected to bring synergies and opportunities for growth for both companies, as they work towards their shared goals in the metaverse market.

The Preferred Stock has a stated value of \$100 million, is convertible into shares of Ecoark common stock at \$0.25 per share subject to Ecoark obtaining shareholder approval, accrue dividends of 5% per annum for 10 years, and the holders are entitled to certain other rights as set forth in the certificate of designation for the Preferred Stock. Subject to shareholder approval, Ault Alliance can vote and convert the majority of the Preferred Stock at its discretion. Until it obtains that approval, Ault Alliance is subject to a 19.9% limitation on an as converted basis in accordance with the Rules of the Nasdaq Stock Market, which percentage includes other Ecoark securities it presently holds.

Milton “Todd” Ault, III, Ault Alliance’s Executive Chairman, stated, “The BITNILE.COM platform boasts cutting-edge capabilities and advanced technology, and we are confident that the Platform will be strategically positioned to capitalize on new business opportunities and expand its offerings. As the race to establish a dominant position in the metaverse market heats up, we believe BITNILE.COM has the potential to emerge as a major player with its ready-to-launch suite of immersive and innovative user experiences, accessible across all devices and browsers. We are thrilled to partner with the Ecoark team to create a world-class destination platform in the metaverse, and we are confident that together we will create something truly remarkable.”

Ecoark’s Founder, Chairman and CEO, Randy May, stated, “Ecoark’s acquisition of BitNile.com, Inc. is an exciting opportunity for us to expand our presence in the rapidly growing metaverse market. We are thrilled to continue our partnership with Todd Ault, whose expertise and background have been invaluable. We see tremendous potential in the Platform’s unique metaverse offering, and we are confident that this strategic acquisition will allow us to forge new partnerships, accelerate customer acquisition, and create premier content to drive revenue and profitability growth. We are committed to delivering exceptional value to our shareholders, and we believe that this strategic acquisition is a key step toward achieving that goal.”



About Ault Alliance, Inc.

Ault Alliance, 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, Ault Alliance owns and operates a data center at which it mines Bitcoin and provides mission-critical products that support a diverse range of industries, including a metaverse platform, oil exploration, crane services, defense/aerospace, industrial, automotive, medical/biopharma, consumer electronics, hotel operations and textiles. In addition, Ault Alliance extends credit to select entrepreneurial businesses through a licensed lending subsidiary. Ault Alliance’s headquarters are located at 11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141; www.Ault.com.

About Ecoark Holdings, Inc.

Founded in 2011, Ecoark is a diversified holding company. Ecoark owns three principal subsidiaries either directly or indirectly: approximately 66% of Wolf Energy Services Inc. (OTCQB: WOEN) (“Wolf”) indirectly, 100% of Zest Labs, Inc. (“Zest Labs”) directly, and approximately 89% of Agora Digital Holdings Inc. (“Agora”) directly. Ecoark also owns approximately 70% of White River Energy Corp (OTCQB: FRTM) (“White River”). Wolf provides trucking and other oilfield services through its Banner Midstream business. White River owns White River Holdings Corp., an oil and gas drilling, exploration, and production company. Zest Labs, offers the Zest Fresh™ solution, a breakthrough approach to quality management of fresh food, is specifically designed to help substantially reduce the \$161 billion amount of food loss the U.S. experiences each year. Agora engaged in the mining of Bitcoin prior to the industry sell-off through its subsidiary, Bitstream Mining LLC, and is now transitioning to a hosting company. ZEST FRESH™ and Zest Labs™ are trademarks of Zest Labs, Inc.

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 neither Ault Alliance nor Ecoark undertake any obligation to update any of these statements 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. In addition to risks relating to the continuation of high oil prices, the acceptance of the Platform by individuals, competition with much larger companies operating metaverses, Ecoark’s ability to raise capital, and state regulation of bitcoin mining, investors should review risk factors, that could affect either or both of the Ault Alliance’s and Ecoark’s respective businesses and financial results which are included in Ault Alliance’s and Ecoark’s respective filings with the U.S. Securities and Exchange Commission, including, but not limited to, their respective Forms 10-K, 10-Q and 8-K. All such filings are available at www.sec.gov and on the companies’ websites at www.Ault.com and www.ecoarkusa.com, respectively.

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