UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11222 / August 15, 2023

SECURITIES EXCHANGE ACT OF 1934
Release No. 98131 / August 15, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4440 / August 15, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21561

In the Matter of

Ault Alliance, Inc. (f/k/a BitNile Holdings, Inc., Ault Global Holdings, Inc., DPW Holdings, Inc., and Digital Power Corporation); Milton Charles ("Todd") Ault III; and William B. Horne, CPA;

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Ault Alliance, Inc. (f/k/a BitNile Holdings, Inc., Ault Global Holdings, Inc., DPW Holdings, Inc., and Digital Power Corporation) ("AAI"), Milton Charles ("Todd") Ault III ("Ault"), and William B. Horne ("Horne") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent

to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

SUMMARY

1. This matter involves material misstatements regarding certain businesses of AAI, the failure to disclose interests in related person transactions, improper recording of purported consulting services, erroneous accounting of investments, and the failure to maintain accounting and disclosure controls.

2. In 2018 and 2019, AAI, a holding company based in Las Vegas, Nevada, and its Executive Chairman and then-Chief Executive Officer ("CEO"), Ault, made materially false and misleading statements and omissions concerning the performance of a $50 million purchase order that AAI received from a related party, as well as the performance of AAI's new crypto asset mining business. AAI and Ault made these misstatements, which operated as a fraud on investors, in registration statements, various periodic and other reports filed with the Commission, in investor presentations, and in tweets by Ault.

3. In its Forms 10-K and proxy statements for fiscal years 2016 to 2021, AAI failed to disclose material interests that Ault and then-Chief Financial Officer ("CFO") Horne had in loans that AAI made to a related person, as required by Item 404 of Regulation S-K. Separately, in 2019, through Ault and Horne, AAI improperly recorded $75,000 paid to an individual as being for consulting services which, in fact, were not provided to AAI and benefitted Ault in extinguishing a personal debt owed to the individual.

4. In addition, from 2017 through the present, AAI has had reporting, books and records, and internal accounting control failures, and has failed to maintain Disclosure Controls and Procedures ("DCP") and Internal Control over Financial Reporting ("ICFR") due to repeated material weaknesses that AAI has repeatedly disclosed. AAI failed to maintain DCP and ICFR for 22 consecutive reporting periods from the period ended June 30, 2017, through the period ended September 30, 2022. These deficiencies continue through today and have not been remedied. AAI announced one restatement in 2017 resulting from its material weaknesses. And during its fiscal years ended December 31, 2018 through 2021, AAI improperly accounted for its investments in warrants of a related party. On April 14, 2023, AAI filed amended periodic reports to restate for this improper warrant accounting.

5. Based on the foregoing and the conduct described below, Respondents committed the following violations. AAI violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 14(a), and Exchange Act Rules 12b-20,

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

13a-1, 13a-11, 13a-13, 13a-15(a), 14a-3, and 14a-9. Ault violated and caused AAI's violations of Securities Act Sections 17(a)(2) and 17(a)(3), and Exchange Act Section 14(a) and Exchange Act Rules 14a-3 and 14a-9; violated Exchange Act Rule 13b2-1; and caused AAI's violations of Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B), and Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13. Horne violated Exchange Act Rule 13b2-1 and caused AAI's violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B).

RESPONDENTS AND RELEVANT ENTITY

6. **Ault Alliance, Inc.** is a Delaware corporation whose principal place of business is in Las Vegas, Nevada. AAI is a diversified holding company which, since 2016, has engaged in operating businesses that include, among others, power products and systems, digital asset mining of Bitcoin, the manufacture and sale of textile technology machinery, and commercial lending. During the relevant period, AAI has been known by several different names: AAI (since January 3, 2023); BitNile Holdings, Inc. (from December 13, 2021 to January 2, 2023); Ault Global Holdings, Inc. (January 19, 2021 to December 12, 2021); DPW Holdings, Inc. (September 19, 2017 to January 18, 2021); and Digital Power Corporation (prior to September 19, 2017). AAI's stock is registered under Section 12(b) of the Exchange Act, and its common stock trades on NYSE American. AAI has a December 31 fiscal year end. AAI offered and sold securities during the relevant period.

7. **Milton Charles ("Todd") Ault III**, age 52, resides in Las Vegas, Nevada. In late 2016, through an entity he controlled, Ault became AAI's largest shareholder and obtained the right to appoint a majority of directors to AAI's Board of Directors. On March 16, 2017, Ault became Executive Chairman of AAI's Board of Directors, a position he currently holds. In December 2017, Ault became AAI's CEO, a position he held until January 2021. Ault was suspended by the Financial Industry Regulatory Authority in May 2012 for two years for unauthorized trading in customer accounts and failing to deliver securities.

8. **William B. Horne**, age 53, resides in Sammamish, Washington. Horne has served as AAI's CEO since January 2021. He was AAI's CFO from January 2018 to August 2020 and AAI's President from August 2020 to January 2021. Horne has served as a director of AAI's Board of Directors since October 2016. Horne was licensed as a CPA in the state of Washington in 1996. His license lapsed in 2017.

9. **Avalanche International Corp. ("Avalanche" or "MTIX")**, a holding company, is a Nevada corporation with its principal place of business in Las Vegas, Nevada, which AAI has repeatedly disclosed as a "related party" since 2017. In 2014, Ault acquired control over Avalanche and has served as its Chairman since then. In June 2022, AAI acquired over 90% of Avalanche's stock and began consolidating its financial results. Horne has been a director and CFO of Avalanche since June 2016. Avalanche's common stock was publicly traded until September 2021. Avalanche has not filed any periodic reports with the Commission since its third fiscal quarter ended August 31, 2016. At Ault's urging, AAI invested over $17 million in Avalanche from 2016 to 2021 for Avalanche to acquire textile treatment technology from MTIX Ltd. and to contract with AAI to manufacture textile treatment machines. Avalanche does business under the name MTIX International.

FACTS

Misstatements Concerning New Business Operations[2]

10. Under Ault's leadership, starting in 2017, AAI expanded its core power supply business to include the manufacture of textile treatment systems and "cryptocurrency mining." As these operations grew, AAI, through Ault, made materially false and misleading statements and omissions about the businesses and their financial prospects.

Misstatements Concerning $50 million purchase order with MTIX

11. In late 2016, after Ault became controlling shareholder of AAI, Ault obtained approval from AAI's Board to loan Avalanche up to $1.5 million to acquire MTIX Ltd., an early-stage, UK-based company that had a textile treatment technology system which had not been commercially proven. Avalanche completed the acquisition of MTIX the following year.

12. On March 15, 2017, AAI issued a press release announcing that it had received a $50 million purchase order from MTIX Ltd. to manufacture, install and service textile treatment systems using MTIX's technology. The purchase order called for the manufacture and installation of 25 machines over approximately two and a half years: 2 machines by the end of 2017; 6 more machines by August 2018; and the remaining 17 machines by August 2019. The purchase order was material to AAI as it stood to double AAI's annual revenue, which had averaged about $8 million during the prior three fiscal years. AAI's stock price increased by over 175% immediately after the press release.

13. AAI and Ault made a series of misrepresentations about the MTIX purchase order over the next two years.

14. In 2018, AAI and Ault misrepresented to investors that AAI had completed and delivered the first machine under the MTIX contract. On May 21, 2018, Ault led an investor presentation concerning AAI's financial review for the quarter ended March 31, 2018. In the materials used for the presentation, which were furnished as an exhibit to a Form 8-K signed by Ault, Ault represented that AAI had delivered its first machine under the MTIX purchase order. Ault repeated this assertion in a June 6, 2018 investor presentation, which was also furnished as an exhibit to a Form 8-K signed by Ault, and added that the other machines were "on track to be delivered timely." In an earnings call on August 15, 2018, Ault represented that the first machine had been "completed."

[2] AAI offered and sold securities through registered offerings during the period of these misstatements (2018-2019). These included, among others, raising over $29 million through At-The-Market (ATM) offerings of its common stock under prospectus supplements to registration statements offering up to $80 million: (1) raised $18 million under a 2/27/2018 424B5 Prospectus Supplement offering up to $50 million, which was terminated 9/23/2018; (2) raised $6 million under a 10/16/2018 424B5 Prospectus Supplement offering up to $25 million, which was discontinued on 4/1/2019; and (3) raised $5.5 million through 12/31/2019 under a 8/6/2019 424B5 Prospectus Supplement offering up to $5.5 million, which incorporated by reference AAI's fiscal 2018 Form 10-K.

15. These statements were not true, as Ault knew or should have known. By early 2018, the first machine was largely complete and had been delivered to an AAI subcontractor for finalization. However, AAI was experiencing significant delays on the project primarily due to its failure to pay subcontractors to manufacture the machines, including significant payments to finalize completion of the first machine and to move forward manufacturing another machine. Though certain records reflect that Ault believed that funding had been paid for completion of the first machine, emails and texts prior to Ault's August 15, 2018 earnings call above, which included Ault, showed that AAI was experiencing delays completing the machines, including finalizing the first machine, due to lack of funds to pay certain vendors and subcontractors. In addition, although Ault claimed he received conflicting information from Avalanche and AAI executives whether delivery to the last subcontractor for finalization constituted delivery under the contract, the contract required delivery of the machines to MTIX or an MTIX customer, not an AAI subcontractor. In the months after Ault's August 15, 2018 earnings call, the delivery date of the first machine continued to slip and funding delays continued. Texts between Ault and the CEO of Avalanche in September 2018 estimated a revised delivery date for the first machine in April 2019 and identified numerous items remaining before delivery could occur. Emails involving Ault from October 2018 to April 2019 reflect that the finalization of the first machine was significantly behind schedule and had not yet been completed.

16. Despite these delays and financial setbacks, in numerous AAI filings made with the Commission from May 21, 2018 through May 20, 2019, most of which were signed by Ault, AAI expressed the belief that the MTIX purchase order would be a source of revenue and "generate significant cash flows."[3] AAI omitted any information regarding its inability to perform under the purchase order, including that it was unable to pay AAI vendors to complete the manufacture of machines.

17. It was not until December 27, 2019, in a Form S-3/A signed by Ault and filed just weeks after AAI received an investigative subpoena from the Commission staff, that AAI disclosed for the first time that it had "not yet delivered a MLSE plasma-laser system to MTIX.". According to an April 2022 MTIX press release, the first delivery of an MLSE machine by MTIX to a customer occurred in November 2021 and was expected to be installed during 2022.

Misstatements Concerning AAI's Crypto Mining Revenue and Operations

18. In January 2018, AAI announced the formation of a new subsidiary to operate a "cryptocurrency" business that would engage in the mining of crypto assets. Over the course of that year, AAI and Ault made misleading and false public statements that made the crypto business appear more successful than it was.

19. In May and June 2018, AAI and Ault made material misstatements regarding the company's crypto mining revenues, which were principally generated from mining Bitcoin. On May 9, 2018 and May 12, 2018, Ault stated on Twitter that AAI was mining over $400,000 a month in Bitcoin. On May 21, 2018, AAI issued a press release representing that it was "currently

[3] *See* Form 10-Q (5/21/2018); Form S-3 (6/11/2018); Form 10-Q (8/20/2018); Prospectus (9/14/2018); Form S-3/A (11/1/2018); Proxy Statement (11/19/2018); Form S-3 (12/7/2018); Prospectuses (filed from 2/12/2019 through 4/2/2019); Form 10-K for fiscal year 2018 (4/16/2019); Form 1-A (5/13/2019); Form 10-Q (5/20/2018).

mining $420,000 to $460,000 a month of cryptocurrencies or between $1,200,000 to $1,400,000 in value per quarter." A June 6, 2018 AAI investor presentation by Ault, which was also filed by AAI as an attachment to a Form 8-K, represented that AAI was "currently mining between $450,000 to $500,000 in [Bitcoin] monthly."

20. Ault knew or should have known that these statements significantly overstated the value of crypto assets that AAI was mining. For example, on May 12, 2018, the total value from AAI's crypto mining had reached $367,509, which represented all the mining it had done since January 2018—nowhere close to $400,000 per month stated in Ault's tweet. Even after AAI increased its number of active mining machines on May 16 to over 1700, AAI mined significantly less Bitcoin than any of its disclosed monthly mining amounts. Though the current mining amounts in the above misstatements were extrapolations from the information Ault was receiving from individuals more closely involved in the crypto mining operation, crypto executives regularly updated Ault orally with information about the number of active miners and the daily amount of Bitcoin being mined. Ault at times received weekly trend reports or emails showing the actual amount of daily crypto mined over the past month or longer, the market value of Bitcoin, and the total value of Bitcoin in AAI's digital wallet. Ault also knew that the fundamentals for mining digital assets were getting worse as the quarter progressed: the price of Bitcoin steadily decreased after its peak in early May, while the difficulty to mine Bitcoin increased. Despite this, AAI's "current" mining revenues according to Ault and AAI continued to improve throughout the quarter, even as its actual mining revenue declined, as ultimately disclosed in AAI's second quarter Form 10-Q, filed on August 20, 2018, which reported $719,000 in crypto mining revenues for the three months ended June 30, 2018.

21. In addition, Ault and AAI misrepresented the launch of a digital asset miner that AAI touted as a new ASIC Bitcoin miner designed to operate faster and more efficiently. In investor presentations on September 5, 2018, and October 2, 2018, both of which were attached to Forms 8-K furnished with the Commission, Ault represented that AAI had developed a "proprietary" crypto miner "in collaboration with Samsung" that had been introduced for sale in September 2018. However, Ault was aware that AAI had not collaborated with Samsung to develop a miner. Instead, AAI had a memorandum of understanding to purchase miners from another party and sell them as AAI miners under a white-label agreement. Further, at the time of these statements, AAI did not have a white-labelled miner available for sale.

22. These misstatements were material because investing in the crypto space was material to AAI's business plan in 2018 and was part of the company's publicly stated long-term investment strategy. The mining amounts reflected in AAI's and Ault's statements also grossly overstated "current" monthly and quarterly revenues. Even the lowest claimed current quarterly mining revenue of $1.2 million reflected in those statements overstated actual revenue for the quarter of $719,000 by 40%.

AAI's Failure to Properly Disclose Related Persons Ault and Horne's Interests in AAI's Investment in Avalanche

23. At Ault's urging and with the approval of AAI's board of directors, including Horne, from 2016 through 2021, AAI loaned approximately $17.8 million to Avalanche. During this period, Avalanche had little to no revenues, insufficient funds to pay its expenses, and relied on AAI's loans for its operating cash flows. Ault, in addition to his controlling interests in

Avalanche, served as the Chairman of Avalanche's board of directors, and Horne, starting in June 2016, served as the CFO of Avalanche and an uncompensated director.

24. Horne and Ault – related persons to AAI due to their senior positions at AAI – had an interest in the loans from Avalanche. Specifically, as a result of these loans, Avalanche was able to pay Horne's salary as CFO, to pay fees to Ault for serving as Chairman, to reimburse certain expenses to Horne and Ault, and to reimburse loans Ault had made to Avalanche through a company he controlled. In total during this period, Avalanche paid over $1.5 million of the loan proceeds from AAI to Ault and his company, and paid Horne over $300,000.

25. AAI failed to disclose Ault and Horne's interest in these loans in its annual reports on Forms 10-K or its proxy statements, as required. Form 10-K and Schedule 14A (to the extent the proposed action to be taken is the election of directors) require registrants to disclose, pursuant to Item 404 of Regulation S-K, any current or proposed transaction "in which the registrant was or is to be a participant and the amount involved exceeds $120,000, and in which any related person had or will have a direct or indirect material interest." A related person under Item 404 includes a director or executive officer of the registrant, such as Ault and Horne. Item 404 requires disclosure of, among other information, the name of the related person; the related person's interest in the transaction; the approximate dollar amount of the transaction; the approximate dollar value of the related person's interest in the transaction; and any other material information about the transaction.

26. AAI's Forms 10-K for the years ended December 31, 2016 through 2021, and its Schedules 14A soliciting elections of directors filed from 2017 through 2022, disclosed the amounts AAI loaned to Avalanche, which well exceeded $120,000 in each year. AAI also disclosed Ault and Horne's senior positions with Avalanche, and Ault's ownership interest in Avalanche. However, AAI did not disclose in these filings the approximate value of Ault and Horne's interest in those loans, which enabled Avalanche to pay Horne's salary and Ault's Board fees, and the loan and expense reimbursements noted above. Specifically, AAI failed to disclose that Ault received the following total related person payments: $179,550 in 2016; $750,350 in 2017; $279,137 in 2018; $130,894 in 2019; $251,425 in 2020; and $58,333 in 2021. Similarly, AAI failed to disclose that Horne received the following total related person payments: $10,671 in 2016; $100,404 in 2017; $57,911 in 2018; $46,166 in 2019; $44,647 in 2020; and $54,727 in 2021.

AAI, Through Ault and Horne, Inaccurately Recorded $75,000 as Consulting Fees in AAI's Books and Records, which Benefitted Ault in Extinguishing a Personal Debt[4]

27. In 2018, Ault wanted AAI to purchase shares that an individual ("Individual") owned in a private company ("M Corp") in which AAI had acquired a controlling interest. The Individual wanted to be paid his cost basis for his shares, $100,000, and Ault wanted to pay the Individual that amount, in part because the Individual was an important client of a broker who provided services to AAI and who had recommended the share purchase. Drafts of a share purchase agreement were exchanged between the parties but never finalized.

[4] AAI offered and sold securities through registered offerings during August 2019 and through December 31, 2019. *See* footnote 2, above. *See also* 10/2/2020 424B5 Prospectus Supplement and subsequent amendment offering up to $40 million, which incorporated AAI's fiscal 2019 Form 10-K and raised $39.9 million through 12/31/2020.

28. At the same time, Ault was in an ongoing dispute with the Individual over outstanding amounts owed to the Individual in connection with a loan the Individual made in 2015 to a political action committee ("PAC") of which Ault was the Chairman and for which Ault had pledged securities for repayment.

29. On or around July 25, 2018, AAI made a payment of $25,000 to the Individual to purchase his M Corp shares. The Individual thereafter signed a draft purchase agreement, which stated that AAI would pay $100,000 for the Individual's shares. AAI never signed the purchase agreement. In emails or texts to Ault over the following year, the Individual complained that he had not received the full $100,000 for his M Corp shares.

30. Almost a year later, on or around May 7, 2019, AAI paid another $10,000 to the Individual, which the Individual understood was a further payment towards the purchase of the Individual's shares.

31. Two months later, in July 2019, AAI provided the Individual two agreements, both signed by Ault. One agreement reflected that AAI paid $25,000 for the 16,677 shares of M Corp the Individual owned, contrary to the amount the Individual expected to be paid. Another agreement, for consulting services, which the parties had been discussing separately but never finalized, reflected that the $10,000 AAI paid to the Individual on May 7, 2019, was an initial payment for those services—again, contrary to the Individual's understanding that he was being paid for his M Corp shares.

32. By August 2019, despite numerous requests from the Individual, AAI had not paid $100,000 for his M Corp shares and Ault had not paid the amounts the Individual believed he was owed from the PAC loan, which by then exceeded $100,000. On August 21, 2019, the Individual sent a text message to Ault, stating: "One time offer. $65k wired to my account tomorrow. [PAC] obligation with your personal guarantee will be considered settled." Ault responded, "I think I oh (sic) more," to which the Individual replied, "65k by tomorrow end of day, and we're done. Needs to be considered [M Corp] purchase for enhanced tax treatment." Two days later, on August 23, 2019, AAI wired $65,000 to the Individual. As noted above, Ault had pledged securities to guarantee repayment of the Individual's loan to the PAC.

33. AAI's books and records falsely reflected that the $10,000 and $65,000 payments to the Individual (for a total of $75,000) were paid for consulting services. In fact, the Individual had provided minimal or no consulting services to AAI.

34. Horne, AAI's then-CFO, approved all three payments to the Individual and recorded the descriptions of the payments in AAI's books and records. Horne was not involved in the communications between Ault and the Individual. Horne was aware that AAI was acquiring the Individual's M Corp shares and that Ault wanted to pay the Individual $100,000 for those shares. However, Horne valued the shares at $25,000 based on previous prices AAI had paid other shareholders for M Corp stock, and he did not want to pay an inflated amount for the shares so as not to disadvantage AAI in future negotiations with other M Corp shareholders. Horne chose to record the two payments totaling $75,000 as consulting services. Horne understood from Ault that Ault and the Individual had been discussing a consulting arrangement and had exchanged draft consulting agreements. However, Horne did not know if the $75,000

was for actual consulting services. And Horne knew that the Individual had not submitted invoices to AAI for consulting services.

35. Ault was aware of and approved of the payments to the Individual. Although Horne was responsible for making the payments and recording them in AAI's books and records, Ault knew or should have known that $75,000 was recorded for consulting services, which was false and grossly overstated any consulting services the Individual arguably provided. As noted above, Ault signed agreements stating that AAI had purchased the Individual's M Corp shares for $25,000 and that the $10,000 paid to the Individual was an initial payment for purported consulting services. Ault should have known that Horne inaccurately recorded the remaining $65,000 as consulting services in the company's books. As a result of the two payments for unsupported consulting work, AAI paid $75,000 for services it did not receive. Instead, the payments benefitted Ault because the Individual received the cost basis for his M Corp shares and no longer held Ault personally responsible for the disputed PAC debt.

AAI's Erroneous Accounting and Failure to Maintain Disclosure Controls and Procedures and Internal Control over Financial Reporting

AAI's Improper Accounting of Avalanche Warrants

36. As part of AAI's loans to Avalanche, starting in September 2017, Avalanche issued warrants to purchase shares of Avalanche common stock. As of December 31, 2021, Avalanche had issued AAI warrants to purchase 35.6 million shares of Avalanche stock. AAI improperly accounted for these warrants during the fiscal years 2018 through 2021 by recording the changes in fair value of the warrants in other comprehensive income instead of in net income.

37. AAI failed to apply the Financial Accounting Standards Board Accounting Standards Codification ("ASC") Topic 321, *Investments – Equity Securities* ("ASC 321"), which was issued under Accounting Standards Update No. 2016-01, to the purchased warrants in Avalanche. ASC 321 became effective for fiscal years beginning after December 15, 2017. ASC 321 eliminated the ability to record changes in the fair value of certain investments in equity securities within other comprehensive income, and instead required such changes to be recorded immediately in net income/loss. Though ASC 321 became effective for AAI's fiscal year 2018 and AAI applied it to equity investments in a private company in its Form 10-K for the year ended December 31, 2018, it did not apply this standard to its Avalanche warrants.

38. In addition, beginning with AAI's fiscal year 2020, AAI began improperly classifying the Avalanche warrants as debt securities instead of equity securities. AAI applied ASC Topic 320, *Investments—Debt and Equity Securities*, which permits changes in fair value of debt securities to be recorded in other comprehensive income rather than net income. Even when AAI wrote off the value of these warrants at the end of fiscal year 2021, AAI's Form 10-K for fiscal 2021, filed on April 15, 2022, improperly characterized the write-off as "impairment of debt securities".

39. Though AAI's periodic reports disclosed the amounts of changes in fair value of the Avalanche warrants, they improperly recorded and disclosed the accounting for these changes. AAI's failure to record the change in fair value as part of net income materially under- or

overstated its reported net income or loss in its Forms 10-K and 10-Q during fiscal years 2018 through 2021. Examples of these impacts are in the following table (in US dollars):

	FY 2018	**FY 2019**	**FY 2020**	**Q1 2021**	**Q2 2021**	**Q3 2021**	**FY 2021**
Unrealized gain (loss) on warrants	(8,027,746)	(1,950,168)	3,312,094	2,969,170	(5,893,000)	(4,849,000)	(2,683,000)
Reported Net Income (Loss)	(32,982,201)	(32,945,828)	(32,728,629)	3,077,967	41,133,000	(42,774,000)	(23,971,000)
Net income (loss) if included	(41,009,947)	(34,895,996)	(29,416,535)	6,047,137	35,240,000	(47,623,000)	(26,654,000)
% Impact on Net Income (Loss)	**24.34%**	**5.92%**	**-10.12%**	**96.47%**	**-14.33%**	**11.34%**	**11.19%**

In addition, AAI improperly recorded and disclosed changes in fair value in its accounting for the Avalanche warrants in the balance sheets and the statements of changes in stockholders' equity in its Forms 10-K and 10-Q during fiscal years 2018 through 2021, as well as in related financial statement footnotes.

40. The impacts of this erroneous accounting continued to be reported in AAI's Forms 10-Q for the periods ended March 31, 2022, June 30, 2022, and September 30, 2022.

41. On April 14, 2023, AAI restated its financial statements to correct for its erroneous warrant accounting by filing an amended Form 10-K for the year ended December 31, 2021, and amended Forms 10-Q for the periods ended March 31, 2022, June 30, 2022, and September 30, 2022.

AAI's Material Weaknesses in DCP and ICFR

42. AAI has disclosed several material weaknesses in each of its Forms 10-K and 10-Q for over six fiscal years, from 2017 to 2022, continuing through its most recent Form 10-Q for the period ended March 31, 2023. Although AAI disclosed that it remediated two material weaknesses, one of those recurred and it and the other material weaknesses have not been remediated. Over six years, AAI has repeatedly concluded and disclosed that its DCP and ICFR were not effective due to these material weaknesses.

43. In its Form 10-Q/A for the period ended June 30, 2017, AAI disclosed that it lacked sufficient internal accounting resources regarding required disclosures and lacked "segregation of duties to ensure adequate review of financial statement preparation." AAI disclosed that it filed this amended 10-Q to restate the misclassification of certain payments that was caused by these material weaknesses in its ICFR and resulting ineffective DCP. In its Form 10-K for the period ended December 31, 2017, with respect to the first material weakness, AAI stated, "We do not have sufficient resources in our accounting function, which restricts our ability to gather, analyze and properly review information related to financial reporting in a timely manner." The Form 10-K also disclosed the "failure to have segregation of duties" and identified another material weakness, stating, "We have inadequate controls to ensure that information necessary to properly record transactions is adequately communicated on a timely basis from non-financial personnel to those responsible for financial reporting." As a result of these material weaknesses, AAI concluded that its DCP and ICFR were ineffective.

44. AAI repeated two of these material weaknesses—insufficient accounting resources and lack of segregation of duties—in each of its subsequent Forms 10-K and 10-Q through the present, as identified in its most recent Form 10-Q for the period ended March 31, 2023, for a total of 24 reporting periods. AAI also repeated the other material weakness—non-timely communication from non-financial personnel to financial reporting personnel—for over three years.

45. In its Forms 10-K for the years ended December 31, 2018 and 2019, AAI added an additional material weakness regarding its failure to "design or maintain effective general information technology ('IT') controls over certain information systems that are relevant to the mitigation of the risk pertaining to the misappropriation of assets." These included "[p]rogram change management controls" for certain "financial IT applications" and "digital currency" mining equipment, hardware wallets, and underlying accounting records, as well as "physical security controls" related to "digital currency" mining equipment and hardware wallets.

46. AAI took certain remedial steps concerning its material weaknesses starting particularly in 2018. These steps included hiring Horne as CFO in January 2018; hiring a Chief Accounting Officer ("CAO") in September 2018; hiring a Senior VP of Finance in January 2019; and hiring a General Counsel in May 2019, along with hiring three other accounting, finance, and legal employees. In addition, in December 2020, the company hired a consultant to review management's assessment of compliance with Section 404 of the Sarbanes-Oxley Act of 2002 and to identify internal control process improvements. In January 2021, the company hired a Director of Reporting.

47. In its fiscal year 2020 Form 10-K, AAI reported that it had remediated two of its material weaknesses—the inadequate communication from non-financial personnel and the IT controls, noted above. However, over the next two years, AAI reported a similar and expanded financial IT-related material weakness, including controls related to revenue recognition and its crypto assets. Specifically in its fiscal year 2021 Form 10-K, AAI stated, "Our primary user access controls (i.e. provisioning, de-provisioning, privileged access and user access reviews) to ensure appropriate authorization and segregation of duties that would adequately restrict user and privileged access to the financially relevant systems and data to appropriate personnel were not designed and/or implemented effectively. We did not design and/or implement sufficient controls for program change management to certain financially relevant systems affecting our processes." In its fiscal year 2022 Form 10-K, AAI further expanded this material weakness to its crypto assets and revenue recognition, stating: "The Company did not design and/or implement user access controls to ensure appropriate segregation of duties or program change management controls for certain financially relevant systems impacting the Company's processes around revenue recognition and digital assets to ensure that IT program and data changes affecting the Company's (i) financial IT applications, (ii) digital currency mining equipment, and (iii) underlying accounting records, are identified, tested, authorized and implemented appropriately to validate that data produced by its relevant IT system(s) were complete and accurate. Automated process-level controls and manual controls that are dependent upon the information derived from such financially relevant systems were also determined to be ineffective as a result of such deficiency. In addition, the Company has not effectively designed a manual key control to detect material misstatements in revenue."

48. In addition, in its fiscal year 2020, 2021 and 2022 Forms 10-K, AAI expanded its first material weakness to state that its insufficient accounting resources also restricted its ability to apply "complex accounting principles relating to consolidation accounting, fair value estimates and analysis of financial instruments for proper classification in the consolidated financial statements," in a timely manner for financial reporting. The company applies consolidation accounting and fair value estimates to its investments in various related parties, including Avalanche.

49. Despite AAI's remedial actions and other planned remedial actions, the company continues to report most of the same material weaknesses it originally identified six years ago, some of which have expanded, and has repeatedly concluded since 2017 that its DCP and ICFR are ineffective due to its disclosed material weaknesses.

VIOLATIONS[5]

Violations by AAI

50. As a result of the conduct described above, AAI violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in the offer or sale of securities.

51. In addition, AAI violated Section 14(a) of the Exchange Act and Rule 14a-3 thereunder, which, with respect to issuers with securities registered pursuant to Section 12 of the Exchange Act, prohibit soliciting proxies without furnishing proxy statements containing the information specified in Schedule 14A. AAI also violated Rule 14a-9 thereunder, which prohibits the use of proxy statements containing materially false or misleading statements or materially misleading omissions necessary to make statements made not misleading.

52. In addition, AAI violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13 and 12b-20 thereunder, which require every issuer with securities registered pursuant to Section 12 of the Exchange Act, to file with the Commission annual, quarterly, and current reports containing such information as the Commission's rules may require and such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

53. In addition, AAI violated Exchange Act Rule 13a-15(a), which requires issuers required to file reports pursuant to Section 13(a) or 15(d) to maintain disclosure controls and procedures as defined in Exchange Act Rule 13a-15(e) and to maintain internal control over financial reporting as defined in Exchange Act Rule 13a-15(f).

[5] The violations herein do not require a showing of scienter. *See, e.g., Aaron v. S.E.C.*, 446 U.S. 680, 701-02 (1980); *S.E.C. v. Hurgin*, 484 F. Supp. 3d 98, 109 (S.D.N.Y. 2020); *S.E.C. v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978); *Ponce v. S.E.C.*, 345 F.3d 722, 737 n.10 (9th Cir. 2003); *S.E.C. v. World-Wide Coin Investments*, 567 F. Supp. 724, 749 (N.D. Ga. 1983).

54. In addition, AAI violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

55. In addition, AAI violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to, among other things, provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

Violations by Ault

56. As a result of the conduct described above, Ault violated and was a cause of AAI's violations of Securities Act Sections 17(a)(2) and 17(a)(3).

57. In addition, Ault violated and was a cause of AAI's violations of Exchange Act Section 14(a) and Exchange Act Rules 14a-3 and 14a-9.

58. In addition, Ault was a cause of AAI's violations of Exchange Act Section 13(a) and Exchange Act Rules 13a-1, 13a-11, 13a-13, and 12b-20.

59. In addition, Ault was a cause of AAI's violations of Exchange Act Section 13(b)(2)(A) and Section 13(b)(2)(B).

60. In addition, Ault violated Exchange Act Rule 13b2-1, which prohibits any person from directly or indirectly falsifying any books and records subject to Section 13(b)(2)(A) of the Exchange Act.

Violations by Horne

61. As a result of the conduct described above, Horne violated Exchange Act Rule 13b2-1 and was a cause of AAI's violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B).

DISGORGEMENT BY AULT

62. The disgorgement and prejudgment interest ordered in paragraph IV.F is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.F shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

REMEDIAL EFFORTS BY AAI

63. In determining to accept the Offer of AAI, the Commission considered AAI's remedial act of restating its financial statements to correct its erroneous accounting for the changes

in fair value of the warrants it held in related party Avalanche.

UNDERTAKINGS BY AAI

Respondent AAI undertakes to:

Independent Consultant

64. Retain, within 30 days of the date of entry of the Order, at its own expense, a qualified independent consultant (the "Consultant") not unacceptable to the Commission staff, to conduct a comprehensive review and evaluation of the adequacy of Respondent's ICFR and DCP, and to provide recommendations for improvements as may be needed to ensure Respondent's compliance with ICFR and DCP requirements. This review and evaluation shall also include an assessment of Respondent's policies and procedures regarding public disclosures; policies and procedures involving the approval and recording of current and historic transactions with related parties insofar as they may affect ongoing financial reporting in Respondent's current periodic and other reports; and consolidation accounting and fair value estimates, including concerning related party transactions.

65. Respondent shall provide, within 45 days of the issuance of this Order, a copy of the engagement letter detailing the Consultant's responsibilities to the Commission staff.

66. Respondent shall require the Consultant to complete its review and evaluation, and to make its recommendations in a written report ("Report"), within six (6) months of entry of this Order.

67. Respondent shall require the Consultant to issue the Report simultaneously to Respondent and the Commission staff. The Report shall include a description of the Consultant's review and evaluation, the conclusions reached, and the Consultant's recommendations for changes or improvements to Respondent's ICFR and DCP.

68. Respondent will adopt and implement all recommendations in the Consultant's Report within 180 days of the issuance of the Report. As to any recommendation that Respondent considers to be unduly burdensome or impractical, Respondent may, within 30 days of the issuance of the Report, submit in writing to the Consultant and the Commission staff a proposed alternative reasonably designed to accomplish the same objectives. As to any recommendation on which Respondent and the Consultant do not agree within 30 days thereafter, after attempting in good faith to reach an agreement, Respondent will abide by the determination of the Consultant. As to any such disputed recommendation, the Consultant shall inform Respondent and the Commission staff of the Consultant's final determination within 60 days after issuance of the Report.

69. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance.

The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Tim England, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5561, with a copy to the Office of the Chief Counsel of the Division of Enforcement. no later than 60 days from the date of completion of the undertakings.

70. All written material required herein to be provided to the Commission staff shall be provided by the Respondent and the Consultant to Melissa Hodgman, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

71. Respondent agrees that, for good cause shown, the Commission staff may extend any of the dates set forth above. In the event Respondent decides to request an extension of any such dates, it shall provide the Commission staff a written extension request that explains the circumstances and rationale for such request. The written extension request shall be submitted to the Commission staff no later than 30 days before the applicable deadline.

72. Respondent shall cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records, and personnel as reasonably requested for the above-referenced review, and obtaining the cooperation of respective employees or other persons under Respondent's control.

73. Respondent shall require the Consultant to report to the Commission staff on its activities as the Commission staff may request.

74. Respondent and the Consultant shall agree that the Consultant is an independent third-party and not an employee or agent of the Respondent. In addition, Respondent and the Consultant agree that no attorney-client relationship shall be formed between them.

75. Respondent (i) shall not have received legal, auditing, or other services from, or have had any affiliations with, the Consultant during the two years prior to the issuance of this Order; (ii) shall not have the authority to terminate the Consultant without prior written approval of the Commission staff; and (iii) shall compensate the Consultant for services rendered pursuant to the Order at their reasonable and customary rates.

76. Respondent agrees, for the period of engagement and for a period of two years from completion of the engagement, not to (i) retain the Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

77. The reports by the Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports

could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

78. Respondent agrees to require that these undertakings shall be binding upon any acquirer or successor in interest to Respondent.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that**:**

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, AAI cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, 13a-15(a), 14a-3, and 14a-9.

B. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Ault cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, 13b2-1, 14a-3, and 14a-9.

C. Pursuant to Section 21C of the Exchange Act, Horne cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Exchange Act Rule 13b2-1.

D. AAI shall comply with the undertakings enumerated in the Undertakings section above, at paragraphs 64-78.

E. AAI shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $700,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

F. Ault shall, within 14 days of the entry of this Order, pay disgorgement of $75,000 and prejudgment interest of $10,504, and pay a civil money penalty in the amount of $150,000, for a total payment of $235,504, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

G. Horne shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $20,720 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying AAI as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Melissa Hodgman, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5561.

H. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents Ault and Horne, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Ault and Horne under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Ault and Horne of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary