

SMI PRODUCTS INC
Form 8-K
August 17, 2007

**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 and Exchange Act of 1934**

**Date of Report (date of earliest event reported):
August 15, 2007**

SMI PRODUCTS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

333-55166
(Commission
File Number)

88-0363465
(IRS Employer
Identification No.)

122 Ocean Park Blvd., Suite 307
Santa Monica, CA
(Address of principal executive offices)

90405
(Zip Code)

Registrant's telephone number, including area code:

(310) 396-1691

Not Applicable

(Former name or former address, if changed since last report)

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 (*see* General Instruction A.2. below):

- 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))
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Item 1.01 Entry into a Material Definitive Agreement.

On August 15, 2007, SMI Products, Inc. (the “Company”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Nile Therapeutics, Inc., a Delaware corporation (“Nile”) and the Company’s wholly-owned subsidiary, Nile Merger Sub, Inc., a Delaware corporation (“Nile Merger Sub”), pursuant to which Nile will complete an acquisition and recapitalization transaction (the “Merger”) with the Company. Nile is a development-stage biopharmaceutical company that develops and commercializes innovative products for the treatment of cardiovascular and metabolic disease. The Merger is subject to customary conditions of closing, including a financing requirement regarding Nile. However, there can be no assurance that the conditions to closing will be fulfilled or that the Merger will ultimately be consummated.

At the effective time of the Merger, each of the then issued and outstanding shares of common stock, \$0.001 par value per share (Nile “Common Stock”) of Nile will be automatically converted into such number of shares of the Company’s common stock par value \$0.001 per share (the “SMI Common Stock”) determined by dividing (x) 23,750,000 by (y) the aggregate number of shares of Nile Common Stock issued and outstanding immediately prior to the effective time, on a fully diluted basis, after giving effect to the conversion, exchange and exercise of all securities (including rights, warrants and options) directly or indirectly convertible for Nile Common Stock whether or not such securities are presently convertible, exchangeable or exercisable) (the “Exchange Ratio”), so that, after giving effect to such Merger, the holders of Nile Common Stock, on a fully-diluted basis, will hold approximately 95% of the issued and outstanding shares of SMI Common Stock. All outstanding warrants, options and other rights to purchase or acquire shares of Nile Common Stock outstanding immediately prior to the Merger shall convert into the right to purchase that number of shares of SMI Common Stock based upon and at exercise prices adjusted by the Exchange Ratio.

At the effective time of the Merger, the stockholders of the Company immediately prior to the Merger will hold 1,250,000 shares of SMI Common Stock, which shall represent approximately 5% of the outstanding shares of SMI Common Stock on a fully-diluted basis immediately following the effective time. At June 30, 2007 the Company was indebted to Fountainhead Capital Partners Limited, a shareholder holding approximately 73.5% of the Company’s Common Stock, in the amount of \$165,901, comprised of (i) six (6) convertible promissory notes aggregating a principal balance of \$92,558 due and payable on August 11, 2008; (ii) a convertible promissory note with a principal balance of \$31,637 due on September 30, 2007, (iii) a convertible promissory note with a principal balance of \$8,116 due on March 31, 2008 and (iv) a convertible promissory note with a principal balance of \$33,590 due on June 30, 2008 (together, the “SMI Notes”). As a condition to the closing of the Merger, the principal balance of the SMI Notes and all accrued interest thereunder shall be converted into a number of shares of SMI Common Stock, which when aggregated with shares of SMI Common Stock presently held by all holders of SMI Common Stock shall be equal to 1,250,000 shares of SMI Common Stock.

Upon completion of the Merger, the Company will adopt and continue implementing Nile's business plan. Further, upon completion of the Merger, the current officers and directors of the Company will resign and the current officers and directors of Nile will be appointed officers and directors of the Company. For accounting purposes, the Merger is expected to be accounted for as a reverse acquisition with Nile as the accounting acquiror (legal acquiree) and the Company as the accounting acquiree (legal acquiror).

Pursuant to the terms of the Merger Agreement, the Merger shall close on or before August 31, 2007, although Nile has the right to extend the closing for up to an additional 30 day period.

The foregoing description of the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Agreement and Plan of Merger and the schedules attached thereto, copies of which are filed as exhibits to this report and incorporated herein by reference. The Merger Agreement has been filed in order to provide information regarding the terms and conditions thereof in accordance with applicable rules and regulations of the Securities and Exchange Commission ("SEC"). Pursuant to the Merger Agreement, each of Nile, the Company and Nile Merger Sub made certain representations, warranties and covenants. The representations, warranties and covenants were made by the parties to and solely for the benefit of each other in the context of all of the terms and conditions of the Merger Agreement and in the context of the specific relationship between such parties. Accordingly, investors and stockholders should not rely on the representations, warranties and covenants. Furthermore, investors and stockholders should not rely on the representations, warranties and covenants as characterizations of the actual state of facts or continuing intentions of the parties, since they were only made as of the date of the Merger Agreement. Information concerning the subject matter of such representations, warranties and covenants may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company's reports or other filings with the SEC.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
2.1	Agreement and Plan of Merger between SMI Products, Inc., a Delaware corporation, Nile Therapeutics, Inc., a Delaware corporation and Nile Merger Sub, Inc., dated as of August 15, 2007

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Cautionary Note Regarding Forward-looking Statements:

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company's filings with the SEC including the most recent reports on Forms 10-KSB, 10-QSB and 8-K, and any amendments thereto.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant duly caused this Report to be signed on its behalf by the undersigned hereto duly authorized.

SMI PRODUCTS, INC.

Date: August 17, 2007

By: */s/ Geoffrey Alison*
Geoffrey Alison
President