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SMART ONLINE INC
Form SC 13D/A
March 04, 2009

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

(Amendment No. 12)*

Smart Online, Inc.
(Name of Issuer)

Common Stock, par value \$0.001
(Title of Class of Securities)

83171V 10 0
(CUSIP Number)

Avy Lugassy
Atlas Capital, SA
118 Rue du Rhone
CH-1204
Geneva Switzerland
+41 22 718 1 741

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

February 24, 2009
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box:

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP NO. 83171V 10 0

1. NAMES OF REPORTING PERSONS

Atlas Capital, SA

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2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3. SEC USE ONLY

4. SOURCE OF FUNDS

OO

5. CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS

2(d) OR 2(e):

6. CITIZENSHIP OR PLACE OF ORGANIZATION:

Switzerland

NUMBER OF
SHARES
BENEFICIALLY
OWNED BY
EACH REPORTING
PERSON WITH

7. SOLE VOTING POWER:

6,674,759 (1)

8. SHARED VOTING POWER:

0

9. SOLE DISPOSITIVE POWER:

6,674,759 (1)

10. SHARED DISPOSITIVE POWER:

0

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:

6,674,759 (1)

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW 11 EXCLUDES CERTAIN SHARES:

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):

36.4%

14. TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):

CO

(1) See Item 5(a) for a detailed explanation of the Reporting Person's beneficial ownership of Common Stock.

This Amendment No. 12 (this "Amendment") amends the Report on Schedule 13D, originally filed on April 4, 2008, as amended on April 24, 2008, April 25, 2008, May 5, 2008, May 14, 2008, May 19, 2008, May 22, 2008, June 18, 2008, July 14, 2008, October 14, 2008, November 5, 2008, and February 9, 2009 (as amended, the "Schedule 13D"). Except as provided herein, this Amendment does not modify any of the information previously reported on the Schedule 13D. Capitalized terms used and not otherwise defined have the meaning given to them in the Schedule 13D.

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Item 3. Source and Amount of Funds or Other Consideration.

Item 3 is hereby amended and restated as follows:

As of February 24, 2009, the Reporting Person has acquired, in the aggregate, 6,674,759 shares of Common Stock either from the Issuer or from other shareholders of the Issuer. The Reporting Person has paid an aggregate of \$18,562,905.66 for these shares from corporate funds, including 56,206 shares acquired from Dennis Michael Nouri (the former President and Chief Executive Officer of the Issuer) pursuant to a note cancellation agreement. In exchange for the shares acquired from Mr. Nouri, the Reporting Person cancelled a note under which Mr. Nouri owed the Reporting Person principal and interest totaling \$85,117.

Item 4. Purpose of Transaction.

Item 4 is hereby amended and restated as follows:

The Reporting Person acquired the shares of Common Stock for investment purposes. Subject to, among other things, the Issuer's business prospects, prevailing prices, and market conditions, the Reporting Person may purchase additional shares of Common Stock and/or other securities of the Issuer from time to time in the open market, in privately negotiated transactions, or otherwise. In addition, one of the Reporting Person's investment goals is diversification, which may require the Reporting Person to sell shares of Common Stock. Accordingly, the Reporting Person may, from time to time, make decisions to sell shares of Common Stock based upon then-prevailing market conditions.

On February 20, 2008, the Issuer entered a line of credit with Paragon Commercial Bank ("Paragon"), which was renewed on February 19, 2009. This line of credit is secured by an irrevocable standby letter of credit in the amount of \$2.5 million issued by HSBC Private Bank (Suisse) SA, with the Reporting Person as account party. In connection with entering the line of credit, the Reporting Person and the Issuer agreed to an amendment to the Reimbursement Agreement, which had been entered into on November 10, 2006. Under the amended agreement, the Issuer has agreed that in the event of a default by the Issuer in the repayment of the line of credit that results in the letter of credit being drawn, the Issuer shall reimburse the Reporting Person any sums that the Reporting Person is required to pay under such letter of credit. At the sole discretion of the Issuer, these payments may be made in cash or by issuing shares of Common Stock at a set per share price of \$2.50. The Reimbursement Agreement and the amendment thereto are attached hereto as Exhibits 1 and 2, respectively, and are incorporated herein by reference.

In connection with entering the line of credit, the Reporting Person and the Issuer also agreed to an amendment of the Stock Purchase Warrant and Agreement, which had been entered into on January 15, 2007. Under the terms of the amended agreement, the Reporting Person may elect to purchase up to 444,444 shares of Common Stock at \$2.70 per share upon termination of, or if the Issuer is in breach under the terms of, the Issuer's line of credit with Paragon. The original Stock Purchase Warrant and Agreement and the amendment thereto are attached hereto as Exhibits 3 and 4, respectively, and are incorporated herein by reference.

On November 14, 2007, in an initial closing, the Issuer sold \$3.3 million aggregate principal amount of secured subordinated convertible notes due November 14, 2010 (the "Notes") to noteholders, including the Reporting Person (the "Noteholders"). In addition, the Noteholders committed to purchase on a pro rata basis up to \$5.2 million aggregate principal amount of Notes upon approval and call by the Issuer's Board of Directors in future closings. On August 12, 2008, the Issuer exercised its option to sell \$1.5 million aggregate principal

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amount of Notes with substantially the same terms and conditions as the Notes sold on November 14, 2007. In connection with the sale of the additional Notes, the Noteholders holding a majority of the aggregate principal amount of the Notes outstanding agreed to increase the aggregate principal amount of Notes that they are committed to purchase from \$8.5 million to \$15.3 million. On November 21, 2008, the Issuer sold \$500,000 aggregate principal amount of Notes to two new investors, and on January 6, 2009, the Issuer sold \$500,000 aggregate principal amount of Notes to the Reporting Person, all on substantially the same terms and conditions as the previously issued Notes.

On February 24, 2009, the Issuer sold \$500,000 aggregate principal amount of Notes to the Reporting Person on substantially the same terms and conditions as the previously issued Notes. On the same date, the Noteholders holding a majority of the aggregate principal amount of the Notes outstanding agreed that the Issuer may sell up to \$6 million aggregate principal amount of additional secured subordinated notes to new investors or existing Noteholders at any time on or before December 31, 2009 with a maturity date of November 14, 2010 or later. In addition, the maturity date definition for each of the Notes was changed from November 14, 2010 to the date upon which the Note is due and payable, which is the earlier of (1) November 14, 2010, (2) a change of control, or (3) if an event of default occurs, the date upon which Noteholders accelerate the indebtedness evidenced by the Notes.

The formula for calculating the conversion price of the Notes was also amended such that the conversion price of each outstanding Note and any additional note sold in the future would be the same and set at the lowest applicable conversion price, as described below. The Reporting Person currently holds \$4,300,000 aggregate principal amount of Notes.

The Issuer is obligated to pay interest on the Notes at an annualized rate of 8% payable in quarterly installments commencing three months after the purchase date of the Notes. The Issuer does not have the ability to prepay the Notes without the approval of Noteholders holding at least a majority of the principal amount of the Notes then outstanding.

On the earlier of November 14, 2010 or a merger or acquisition or other transaction pursuant to which the Issuer's existing stockholders hold less than 50% of the surviving entity, or the sale of all or substantially all of the Issuer's assets, or similar transaction, or event of default, each Noteholder in its sole discretion shall have the option to:

- o convert the principal then outstanding on its Notes into shares of Common Stock, or
- o receive immediate repayment in cash of the Notes, including any accrued and unpaid interest.

If a Noteholder elects to convert its Notes under these circumstances, the conversion price will be the lowest "applicable conversion price" determined for each Note. The "applicable conversion price" for each Note shall be calculated by multiplying 120% by the lowest of:

- o the average of the high and low prices of the Common Stock on the OTC Bulletin Board averaged over the five trading days prior to the closing date of the issuance of such Note,
- o if the Common Stock is not traded on the Over-The-Counter market, the closing price of the Common Stock reported on the Nasdaq National Market or the principal exchange on which the Common Stock is listed, averaged over the five trading days prior to the closing

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date of the issuance of such Note, or

- o the closing price of the Common Stock on the OTC Bulletin Board, the Nasdaq National Market or the principal exchange on which the Common Stock is listed, as applicable, on the trading day immediately preceding the date such Note is converted,

in each case as adjusted for stock splits, dividends or combinations, recapitalizations or similar events.

Payment of the Notes will be automatically accelerated if the Issuer enters voluntary or involuntary bankruptcy or insolvency proceedings.

The Notes and Common Stock into which they may be converted have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or any state, local, or foreign securities laws. As a result, offers and sales of the Notes were made pursuant to Regulation D under the Securities Act and only to accredited investors.

In addition, if the Issuer proposes to file a registration statement to register any of its Common Stock under the Securities Act in connection with the public offering of such securities solely for cash, subject to certain limitations, the Issuer must give each Noteholder who has converted its Notes into Common Stock the opportunity to include such shares of converted Common Stock in the registration. The Issuer has agreed to bear the expenses for any of these registrations, exclusive of any stock transfer taxes, underwriting discounts, and commissions.

The Convertible Secured Subordinated Note Purchase Agreement, the Form of Convertible Secured Subordinated Promissory Note, the Registration Rights Agreement, the Security Agreement, the First Amendment to Convertible Secured Subordinated Note Purchase Agreement, the Second Amendment and Agreement to Join as a Party to Convertible Secured Subordinated Note Purchase Agreement and Registration Rights Agreement, the Third Amendment to Convertible Secured Subordinated Note Purchase Agreement and Registration Rights Agreement and Amendment to Convertible Secured Subordinated Promissory Notes, and the Form of Convertible Secured Subordinated Promissory Note to be issued post January 2009 are attached hereto as Exhibits 5 through 12 and are incorporated herein by reference.

Except as may be set forth herein, the Reporting Person has no plans or proposals which would relate to or result in any of the matters set forth below:

- (a) the acquisition by any person of additional securities of the Issuer, or the disposition of securities of the Issuer;
- (b) an extraordinary corporate transaction, such as a merger, reorganization, or liquidation, involving the Issuer or any of its subsidiaries;
- (c) a sale or transfer of a material amount of assets of the Issuer or any of its subsidiaries;
- (d) any change in the present Board of Directors or management of the Issuer, including any plans or proposals to change the number or term of the Issuer's Board of Directors or to fill any existing vacancies thereon;
- (e) any material change in the present capitalization or dividend policy of the Issuer;

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- (f) any other material change in the Issuer's business or corporate structure;
- (g) changes in the Issuer's charter, bylaws, or instruments corresponding thereto or other actions which may impede the acquisition of control of the Issuer by any person;
- (h) causing a class of securities of the Issuer to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;
- (i) a class of equity securities of the Issuer becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Securities Exchange Act of 1934, as amended; or
- (j) any action similar to any of those enumerated above.

Item 5. Interest in Securities of the Issuer.

Item 5 is hereby amended and restated as follows:

(a) The Reporting Person beneficially owns 6,674,759 shares of Common Stock, which represents approximately 36.4% of the issued and outstanding shares of Common Stock.

(b) The Reporting Person has sole power to vote or to direct the vote and sole power to dispose or to direct the disposition of all 6,674,759 shares of Common Stock reported in Item 5(a) of this Schedule 13D.

(c) The trading dates, number of shares of Common Stock purchased and price per share for all transactions in the Common Stock that were effected since the triggering date of the Reporting Person's most recently filed Schedule 13D are set forth below. All transactions represent purchases of Common Stock on the OTC Bulletin Board by the Reporting Person, except for the transaction on February 24, 2009, which was a privately negotiated transaction between the Reporting Person and another shareholder of the Issuer.

Date of Transaction	Number of Shares Purchased	Price Per Share
2/5/09	15,000	\$2.25
2/6/09	15,000	\$2.25
2/9/09	15,000	\$2.2471
2/10/09	15,000	\$2.2473
2/24/09	187,274	\$2.25
2/24/09	8,000	\$2.10

(d) No other person has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the Common Stock beneficially owned by the Reporting Person.

(e) Not applicable.

Item 7. Material to be Filed as Exhibits.

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Item 7 is hereby amended and restated as follows:

- Exhibit 1 Reimbursement Agreement, dated November 10, 2006, by and between the Issuer and the Reporting Person (incorporated herein by reference to Exhibit 10.48 to the Issuer's Annual Report on Form 10-K, as filed with the Securities Exchange Commission (the "SEC") on March 25, 2008)
- Exhibit 2 Amendment to Reimbursement Agreement, dated February 20, 2008, by and between the Issuer and the Reporting Person (previously filed with the original Schedule 13D)
- Exhibit 3 Stock Purchase Warrant and Agreement, dated January 15, 2007, by and between the Issuer and the Reporting Person (incorporated herein by reference to Exhibit 10.44 to the Issuer's Registration Statement on Form S-1, as filed with the SEC on April 3, 2007)
- Exhibit 4 Amendment No. 1 to Stock Purchase Warrant and Agreement, dated February 20, 2008, by and between the Issuer and the Reporting Person (previously filed with the original Schedule 13D)
- Exhibit 5 Convertible Secured Subordinated Note Purchase Agreement, dated November 14, 2007, by and among the Issuer and certain investors, including the Reporting Person (incorporated herein by reference to Exhibit 4.1 to the Issuer's Quarterly Report on Form 10-Q, as filed with the SEC on November 14, 2007)
- Exhibit 6 Form of Convertible Secured Subordinated Promissory Note (incorporated herein by reference to Exhibit 4.2 to the Issuer's Quarterly Report on Form 10-Q, as filed with the SEC on November 14, 2007)
- Exhibit 7 Registration Rights Agreement, dated November 14, 2007, by and among the Issuer and certain investors, including the Reporting Person (incorporated herein by reference to Exhibit 10.6 to the Issuer's Quarterly Report on Form 10-Q, as filed with the SEC on November 14, 2007)
- Exhibit 8 Security Agreement, dated November 14, 2007, among the Issuer and Doron Roethler, as agent for certain investors, including the Reporting Person (incorporated herein by reference to Exhibit 10.7 to the Issuer's Quarterly Report on Form 10-Q, as filed with the SEC on November 14, 2007)
- Exhibit 9 First Amendment to Convertible Secured Subordinated Note Purchase Agreement, dated August 12, 2008, by and among the Issuer and certain investors, including the Reporting Person (previously filed with Amendment No. 10 to the Schedule 13D)
- Exhibit 10 Second Amendment and Agreement to Join as a Party to Convertible Secured Subordinated Note Purchase Agreement and Registration Rights Agreement, dated November 21, 2008, by and among the Issuer and certain investors, including the Reporting Person (previously filed with Amendment No. 11 to the Schedule 13D)
- Exhibit 11 Third Amendment to Convertible Secured Subordinated Note Purchase Agreement and Registration Rights Agreement and Amendment to Convertible Secured Subordinated Promissory Notes, dated February 24, 2009, by and among the Issuer and certain investors, including

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the Reporting Person

Exhibit 12 Form of Convertible Secured Subordinated Promissory Note to be issued post January 2009

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete and correct.

ATLAS CAPITAL, SA

Dated: March 4, 2009

/s/ Avy Lugassy

Signature

Name: Avy Lugassy

Title: Member of the Management