

AEOLUS PHARMACEUTICALS, INC.

Form 4

February 18, 2011

**FORM 4**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

OMB APPROVAL

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**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
Xmark Opportunity Partners, LLC

2. Issuer Name and Ticker or Trading Symbol  
AEOLUS PHARMACEUTICALS, INC. [AOLS]

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)

3. Date of Earliest Transaction (Month/Day/Year)  
12/28/2010

\_\_\_\_ Director \_\_\_\_\_ 10% Owner  
\_\_\_\_ Officer (give title below) \_\_\_\_\_ Other (specify below)

90 GROVE STREET, SUITE 201

(Street)

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)  
\_X\_ Form filed by One Reporting Person  
\_\_\_ Form filed by More than One Reporting Person

RIDGEFIELD, CT 06877

(City) (State) (Zip)

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
				(A) or (D)	Price		
Common Stock, \$0.01 par value per share	12/28/2010		X	2,500,000	A \$ 0	(3) (4) (5) (6) (7) (8)	I (1) (2) (12) See Footnotes
					40,458,327		

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474 (9-02)

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned**  
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title of Underlying Security (Instr. 3)	
				Code	V (A) (D)	Date Exercisable	Expiration Date	Title
Warrants (right to buy)	\$ 0.5	12/28/2010		X	2,500,000	12/28/2010	12/28/2017	Common Stock
Call Option (right to buy)	\$ 0.4	12/28/2010		X	2,500,000	10/01/2010	12/31/2010	Common Stock Warrants
Put Option (obligation to buy)	\$ 0.4	12/28/2010		J	2,500,000	10/01/2010	12/31/2010	Common Stock Warrants

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
Xmark Opportunity Partners, LLC 90 GROVE STREET SUITE 201 RIDGEFIELD, CT 06877		X		

## Signatures

Xmark Opportunity Partners, LLC, By: Xmark Capital Partner, LLC, its Managing Member,  
By: /s/ David C. Cavalier its Co-Managing Member

02/18/2011

\*\*Signature of Reporting Person

Date

## Explanation of Responses:

\* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

\*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

- The reporting person, Xmark Opportunity Partners, LLC, a Delaware limited liability company ("Opportunity Partners"), is the sole member of the investment manager of Xmark Opportunity Fund, L.P., a Delaware limited partnership ("Opportunity LP"), and Xmark Opportunity Fund, Ltd., a Cayman Islands exempted company ("Opportunity Ltd," and, together with Opportunity LP, the "Investors"), and, as such, possesses the sole power to vote and the sole power to direct the disposition of all securities of Aeolus Pharmaceuticals, Inc., a Delaware corporation (the "Company"), held by the Investors.
- (1) Opportunity Partners is the investment manager of Xmark JV Investment Partners, LLC, a Delaware limited liability company ("JV Partners"), and, as such, possesses the sole power to vote and the sole power to direct the disposition of all securities of the Company held by JV Partners. Collectively, Opportunity LP and Opportunity Ltd hold a majority of the membership interests in Goodnow Capital, L.L.C., a Delaware limited liability company ("Goodnow"), and, as such, possesses the sole power to vote and the sole power to direct the disposition of all securities of the Company held by Goodnow. David Cavalier ("Mr. Cavalier") and Mitchell D. Kaye are

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Co-Managing Members of Xmark Capital Partners, LLC, a Delaware limited liability company, which is the Managing Member of Opportunity Partners and share voting and dispositive power with respect to all securities beneficially owned by Opportunity Partners.

- (3) As of December 28, 2010, Opportunity LP held (i) 11,225,121 shares of the Company's common stock, \$0.01 par value per share (the "Common Stock"), including 1,276,435 shares of Common Stock held by Goodnow but attributed to Opportunity LP, (ii) warrants to purchase up to 17,304,642 shares of Common Stock at an exercise price of \$0.28 per share, subject to certain adjustments, and (iii) warrants to purchase up to 1,125,000 shares of Common Stock at an exercise price of \$0.50 per share, subject to certain adjustments.
- (4) As of December 28, 2010, Opportunity Ltd held (i) 24,679,524 shares of Common Stock, including 3,300,653 shares of Common Stock held by Goodnow but attributed to Opportunity Ltd, (ii) warrants to purchase up to 37,595,357 shares of Common Stock at an exercise price of \$0.28 per share, subject to certain adjustments, and (iii) warrants to purchase up to 2,625,000 shares of Common Stock at an exercise price of \$0.50 per share, subject to certain adjustments.
- (5) As of December 28, 2010, (i) JV Partners held 1,023,731 shares of Common Stock and warrants to purchase up to 500,000 shares of Common Stock at an exercise price of \$0.28 per share, subject to certain adjustments, and (ii) Goodnow held 3,529,951 shares of Common Stock in addition to the (a) 1,276,435 shares of Common Stock held by Goodnow but attributed to Opportunity LP and (b) 3,300,653 shares of Common Stock held by Goodnow but attributed to Opportunity Ltd. In addition, as of December 28, 2010, (x) Opportunity Partners had the right to vote 1,000,000 shares of Common Stock pursuant to a Voting Trust Agreement, dated as of April 19, 2004, as amended, by and among Opportunity Partners and the holders of such Common Stock, and (y) Mr. Cavalier held options to purchase 172,750 shares of Common Stock, all of which such options are currently exercisable by him (the "Cavalier Options").
- (6) Pursuant to a Securities Purchase Agreement (the "Securities Agreement"), by and between the Company, on the one hand, and the Investors, on the other hand, dated as of August 11, 2010, the Company sold and issued to (i) Opportunity LP, 750,000 units (the "Financing Units") for a purchase price of \$300,000, and (ii) Opportunity Ltd, 1,750,000 Financing Units for a purchase price of \$700,000. Each Financing Unit is comprised of one (1) share of Common Stock and one (1) warrant to purchase .75 of one (1) share of Common Stock with an initial exercise price of \$0.50 per share of Common Stock, subject to certain adjustments (the "December 2010 Warrants").
- (7) Pursuant to the Securities Agreement, (x) the Company granted a call option, at an exercise price of \$0.40 per Financing Unit, to (i) Opportunity LP to acquire up to 750,000 additional Financing Units (the "LP Call Option") and (ii) Opportunity Ltd to acquire up to 1,750,000 additional Financing Units (the "Ltd Call Option," and, together with the LP Call Option, the "Call Option"), and (y) the Company acquired a put option that would require (i) Opportunity LP to purchase from the Company up to 750,000 Financing Units (the "LP Put Option"), less any Financing Units purchased by Opportunity LP pursuant to the LP Call Option, and (ii) Opportunity Ltd to purchase from the Company up to 1,750,000 Financing Units (the "Ltd Put Option," and, together with the LP Put Option, the "Put Option"), less any Financing Units purchased by Opportunity Ltd pursuant to the Ltd Call Option.
- (8) On December 27, 2010, the Investors delivered a written notice to the Company that they were exercising the Call Option in full, and, accordingly, on December 28, 2010, the Company sold and issued to the Investors an aggregate of 2,500,000 shares of Common Stock and December 2010 Warrants to purchase an aggregate of 1,875,000 shares of Common Stock.
- (9) The warrants set forth in this Form 4 are exercisable for a seven-year period from their date of issuance; contain a "cashless feature" which allows the Investors to exercise the warrants without a cash payment to the Company under certain circumstances; contain a dividend participation right which allows the Investors to receive any cash dividends paid on the Common Stock without exercising the warrants; contain a provision which provides for the reduction of the exercise price to \$0.01 in the event of any such payment of cash dividends by the Company or a change of control; and contain standard anti-dilution provisions which provide for the adjustment of the exercise price and the number of shares of Common Stock which can be purchased in the event of a stock dividend or split, dividend payment or other issuance, reorganization, recapitalization or similar event.
- (10) The warrants set forth in this Form 4 contain an issuance limitation prohibiting the Investors from exercising such warrants to the extent that, after giving effect to such exercise of the warrants, the Investors would beneficially own more than 9.99% of the Common Stock then issued and outstanding, which prohibition cannot be modified by the Investors before the sixty-first (61st) day after such Investors' notice to the Company of its election to modify such prohibition.
- (11) Pursuant to the Securities Agreement, upon the Investors' exercise of the Call Option in full, on December 28, 2010, the Put Option terminated.
- (12) Opportunity Partners' interest in the securities reported herein is limited to the extent of its pecuniary interest in Opportunity LP and Opportunity Ltd, if any, and neither the filing of this Form 4 nor any of its contents shall be deemed to constitute an admission by Opportunity Partners or any other person/entity that he, she or it was or is the beneficial owner of any of the securities referred to herein for purposes of Section 16 of the Securities Exchange Act of 1934, or for any other purpose.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

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