

AEOLUS PHARMACEUTICALS, INC.

Form 4

August 03, 2010

FORM 4

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

OMB APPROVAL

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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

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)
90 GROVE STREET
(Street)

3. Date of Earliest Transaction (Month/Day/Year)
07/30/2010

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

RIDGEFIELD, CT 06877

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

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

(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 (A) 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)
Common Stock, par value \$0.01 per share	07/30/2010		J	5,892,857 (3) (4)	A \$ 0.28 31,915,876	I (8)	See Footnote (8)

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

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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 and Amount of Underlying Securities (Instr. 3 and 4)	Amount of Underlying Securities (Instr. 3 and 4)
Warrants (right to buy)	\$ 0.28	07/30/2010		J	11,785,714	<u>(6)(7)</u> 07/30/2017	Common Stock	11,785,714

Reporting Owners

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

Signatures

XMARK OPPORTUNITY PARTNERS, LLC , By: Xmark Capital Partners, LLC, its Managing Member, By: /s/ Mitchell D. Kaye, its Managing Member

08/03/2010

__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).

(1) As of July 30, 2010, Xmark Opportunity Fund, L.P., a Delaware limited partnership ("Opportunity LP"), held (i) 9,725,121 common shares, \$0.01 par value per share (the "Common Shares"), of Aeolus Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and (ii) warrants to purchase up to 17,304,642 Common Shares of the Company at an exercise price of \$0.28 per share, subject to certain adjustments.

(2) As of July 30, 2010, Xmark Opportunity Fund, Ltd., a Cayman Islands exempted company ("Opportunity Ltd"), held (i) 21,179,524 Common Shares of the Company, and (ii) warrants to purchase up to 37,595,357 Common Shares of the Company at an exercise price of \$0.28 per share, subject to certain adjustments.

(3) Pursuant to a Securities Purchase and Exchange Agreement, by and among the Company, on the one hand, and Opportunity LP and Opportunity Ltd (together, the "Investors"), on the other hand, dated as of October 6, 2009, as amended by that certain Amendment Agreement to the Securities Purchase and Exchange Agreement, dated as of December 24, 2009, the Investors granted to the Company the option (the "Put Option") to require the Investors, severally and not jointly, to acquire up to 5,892,857 units (the "Units"), comprised of an aggregate of 5,892,857 Common Shares and warrants to purchase up to an aggregate of 11,785,714 Common Shares (the "July Warrants"), with an initial exercise price of \$0.28 per share, subject to adjustment as provided in the July Warrants.

(4) On July 25, 2010, the Company gave written notice to the Investors that it was exercising the Put Option in full, effective July 30, 2010. In accordance with the terms of the Put Option, on July 30, 2010, the Company sold and issued to the Investors in a private placement an aggregate of 5,892,857 Units, comprised of 5,892,857 Common Shares and 11,785,714 July Warrants, at a purchase price of \$0.28 per Unit, for aggregate gross proceeds of \$1,650,000.

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The July Warrants are exercisable for a seven-year period from their date of issuance; contain a "cashless exercise" feature which allows the holder to exercise the July Warrants without a cash payment to the Company under certain circumstances; contain a dividend participation right which allows the holder to receive any cash dividends paid on the Common Shares without exercising the July

- (5) 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 Shares which can be purchased in the event of a stock dividend or split, dividend payment or other issuance, reorganization, recapitalization or similar event.
- (6) The July Warrants may be exercised immediately.

- (7) The July Warrants contain an issuance limitation prohibiting the Investors from exercising those securities to the extent that such exercise would result in beneficial ownership by the Investors of more than 9.99% of the Common Shares then issued and outstanding, which prohibition cannot be removed by the holder before the 61st day after such holder's notice to the Company of its election to remove such prohibition.

- (8) The reporting person, Xmark Opportunity Partners, LLC, a Delaware limited liability company ("Opportunity Partners"), is the sole member of the investment manager of Opportunity LP and Opportunity Ltd, and, as such, possesses the sole power to vote and direct the disposition of all securities of the Company held by Opportunity LP and Opportunity Ltd. 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. Mitchell D. Kaye and David C. Cavalier, the Co-Managing Members of Xmark Capital Partners, LLC, the Managing Member of Opportunity Partners, share voting and investment power with respect to all securities beneficially owned by Opportunity Partners.

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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