

AEROGEN INC  
Form 3/A  
March 29, 2005

# FORM 3 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

OMB APPROVAL

OMB  
Number: 3235-0104  
Expires: January 31,  
2005  
Estimated average  
burden hours per  
response... 0.5

## INITIAL STATEMENT OF 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 \*

Â XMARK ASSET  
MANAGEMENT LLC

(Last) (First) (Middle)

301 TRESSER BLVD., SUITE  
1320

(Street)

STAMFORD,Â CTÂ 06901

(City) (State) (Zip)

2. Date of Event Requiring  
Statement

(Month/Day/Year)  
11/04/2004

3. Issuer Name **and** Ticker or Trading Symbol  
AEROGEN INC [AEGN]

4. Relationship of Reporting  
Person(s) to Issuer

(Check all applicable)

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

5. If Amendment, Date Original  
Filed(Month/Day/Year)  
01/05/2005

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

### Table I - Non-Derivative Securities Beneficially Owned

1. Title of Security  
(Instr. 4)

2. Amount of Securities  
Beneficially Owned  
(Instr. 4)

3. Ownership  
Form:  
Direct (D)  
or Indirect  
(I)  
(Instr. 5)

4. Nature of Indirect Beneficial  
Ownership  
(Instr. 5)

Common Stock, par value \$0.001 per share (1) 18,936 (1) (2) (3) (4) (5)  
(2) (3) (4) (5) (6) (6)

I (1) (2) (3)  
(4) (5) (6)

See footnotes (1) (2) (3) (4) (5) (6)

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

SEC 1473 (7-02)

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information contained in this form are not  
required to respond unless the form displays a  
currently valid OMB control number.**

### Table II - Derivative Securities Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative  
Security  
(Instr. 4)

2. Date Exercisable and  
Expiration Date  
(Month/Day/Year)

3. Title and Amount of  
Securities Underlying  
Derivative Security

4. Conversion  
or Exercise

5. Ownership  
Form of

6. Nature of Indirect  
Beneficial  
Ownership

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	Date Exercisable	Expiration Date	(Instr. 4) Title	Amount or Number of Shares	Price of Derivative Security	Derivative Security: Direct (D) or Indirect (I) (Instr. 5)	(Instr. 5)
Warrant (6)	(1) (2) (3) (4) (5) Â (7)	03/22/2009(8)	Common Stock, par value \$0.001 per share	764,610 (1) (2) (3) (4) (5) (6)	\$ 3.25	I (1) (2) (3) (4) (5) (6)	See footnotes (1) (2) (3) (4) (5) (6)
Warrant (6)	(1) (2) (3) (4) (5) Â (9)	05/11/2009(10)	Common Stock, par value \$0.001 per share	902,050 (1) (2) (3) (4) (5) (6)	\$ 3.25	I (1) (2) (3) (4) (5) (6)	See footnotes (1) (2) (3) (4) (5) (6)

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
XMARK ASSET MANAGEMENT LLC 301 TRESSER BLVD., SUITE 1320 STAMFORD, CT 06901	Â	Â X	Â	Â

## Signatures

/s/ Mitchell D. Kaye, Manager of Xmark Asset Management,  
LLC

03/29/2005

\_\_Signature of Reporting Person

Date

## Explanation of Responses:

\* If the form is filed by more than one reporting person, *see* Instruction 5(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).

Xmark Asset Management, LLC, a New York limited liability company ("XAM"), serves as investment manager for each of Xmark Fund, L.P., a Delaware limited partnership ("Xmark LP"), and Xmark Fund, Ltd., a Cayman Islands exempted company ("Xmark Ltd"). In such capacity, XAM possesses the power to vote and direct the disposition of all securities held by Xmark LP and Xmark Ltd. As of November 4, 2004, Xmark LP is the holder of (i) 74,025 shares (the "Xmark LP Preferred") of the Series A-1 Preferred Stock, par value \$0.001 per share (the "Preferred Stock") of Aerogen, Inc., a Delaware corporation (the "Company"), which are presently convertible into 740,250 shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), (ii) warrants expiring on March 22, 2009, which entitle Xmark LP to purchase up to an aggregate of 339,600 shares of Common Stock at an exercise price of \$3.25 per share (the "Xmark LP March 2009 Warrants"),

which exercise price is subject to adjustment as set forth in the Xmark LP March 2009 Warrants, (iii) warrants expiring on May 11, 2009, which entitle Xmark LP to purchase up to an aggregate of 400,650 shares of Common Stock at an exercise price of \$3.25 per share (the "Xmark LP May 2009 Warrants", and together with the Xmark LP March 2009 Warrants, the "Xmark LP Warrants"), which exercise price is subject to adjustment as set forth in the Xmark LP May 2009 Warrants and (iv) 8,411 shares of Common Stock issued in lieu of the cash payment of quarterly dividends on the Preferred Stock held by Xmark LP for the quarters ended March 31, 2004 and June 30, 2004. As of November 4, 2004, Xmark Ltd is the holder of (i) 92,641 shares (the "Xmark Ltd Preferred") of Preferred Stock, which are presently convertible into 926,410 shares of Common Stock, (ii) warrants expiring on March 22, 2009, which entitle Xmark Ltd to purchase up to an aggregate of 425,010 shares of

(3)

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Common Stock at an exercise price of \$3.25 per share (the "Xmark Ltd March 2009 Warrants"), which exercise price is subject to adjustment as set forth in the Xmark Ltd March 2009 Warrants, (iii) warrants expiring on May 11, 2009, which entitle Xmark Ltd to purchase up to an aggregate of 501,400 shares of Common Stock at an exercise price of \$3.25 per share (the "Xmark Ltd May 2009 Warrants", and together with the Xmark Ltd March 2009 Warrants, the "Xmark Ltd Warrants"), which exercise price is subject to adjustment as set forth in the Xmark Ltd May 2009 Warrants and (iv) 10,525 shares of Common Stock issued in lieu of the cash payment of quarterly dividends on the Preferred Stock held by Xmark Ltd for the quarters ended March 31, 2004 and June 30, 2004. The terms of the Xmark LP Preferred, the Xmark Ltd Preferred, the Xmark LP Warrants and the Xmark Ltd Warrants preclude each of Xmark LP and Xmark Ltd from converting the Xmark LP Preferred and the Xmark Ltd Preferred or

exercising the Xmark LP Warrants and the Xmark Ltd Warrants if the conversion or exercise thereof would result in Xmark LP, Xmark Ltd and/or their affiliates beneficially owning in excess of 4.99% of the Company's outstanding Common Stock following any such conversion or exercise (the "Issuance Limitation"). Each such Issuance Limitation is waivable by Xmark LP and Xmark Ltd,

- (4) respectively, providing 61 days' advance written notice to the Company. On November 3, 2004, Xmark LP and Xmark Ltd each provided a written waiver of the Issuance Limitation to the Company with respect to the Xmark LP Preferred and the Xmark Ltd Preferred. As a result of this waiver and as a result of the fact that XAM possesses the sole power to vote and direct the disposition of the securities described above, for purposes of Reg. Section 240.13d-3, XAM may be deemed to beneficially own 1,685,596 shares of Common Stock, or approximately 26.1% of the shares of Common Stock deemed issued and

outstanding as of November 4, 2004. On January 5, 2005, the reporting person filed a Form 3 reporting beneficial ownership of the Xmark LP Preferred, the Xmark Ltd Preferred, the Xmark LP Warrants and the Xmark Ltd Warrants without regard to the effectiveness of the Issuance Limitation with respect to the Xmark LP Warrants and the Xmark Ltd Warrants. The Issuance Limitation with respect to the Xmark LP Warrants and the Xmark Ltd Warrants remains effective as of that date; thus the reporting person did not beneficially own any shares of Common Stock underlying such warrants at November 4, 2004. Therefore, the line item in Table II relating to the Xmark LP Warrants and the Xmark Ltd Warrants is hereby deleted. In addition, the effectiveness of the waiver of the Issuance Limitation with respect to the Xmark LP Preferred and the Xmark Ltd Preferred was November 4, 2004 and not January 4, 2005, as previously reported. Mitchell D. Kaye is the sole Manager of XAM,

- (6) and as such possesses sole power to vote and direct the disposition of all securities of the Company held by Xmark LP and Xmark Ltd.

The Xmark LP March 2009 Warrants and the Xmark Ltd March 2009 Warrants are not exercisable as a result of the Issuance Limitation. The Issuance Limitation with respect to the Xmark LP March 2009 Warrants and the Xmark Ltd March 2009 Warrants remains effective as of that date; thus the reporting person did not beneficially own any shares of Common Stock underlying such warrants at November 4, 2004. Therefore, the line item in Table II relating to the Xmark LP March 2009 Warrants and the Xmark Ltd March 2009 Warrants is hereby deleted.

- (8) The Xmark LP March 2009 Warrants and the Xmark Ltd March 2009 Warrants expire on March 22, 2009, unless the expiration date is extended as more fully detailed therein.

The Xmark LP May 2009 Warrants and the Xmark Ltd May 2009 Warrants are not exercisable as a result of the Issuance Limitation. The Issuance Limitation with respect to the Xmark LP March 2009 Warrants and the Xmark Ltd March 2009 Warrants remains effective as of that date; thus the reporting person did not beneficially own any shares of Common Stock underlying such warrants at November 4, 2004. Therefore, the line item in Table II relating to the Xmark LP May 2009 Warrants and the Xmark Ltd May 2009 Warrants is hereby deleted.

- (10) The Xmark LP May 2009 Warrants and the Xmark Ltd May 2009 Warrants expire on May 11, 2009, unless the expiration date is extended as more fully detailed therein.

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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