AEOLUS PHARMACEUTICALS, INC.
Form 10-K/A
May 14, 2013

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

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FORM 10-K/A
(Amendment No. 1)

_____

(MARK ONE)
x ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended September 30, 2012
OR
o TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to_____

Commission File Number 0-50481

_____

AEOLUS PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

_____

Delaware	56-1953785
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
26361 Crown Valley Parkway, Suite 150 Mission Viejo, California	92691
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: 949-481-9825

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, $.01 par value per share
(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes o No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes o No x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer o	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company x

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).Yes o No x

The aggregate market value of the voting common stock held by non-affiliates of the registrant based upon the average of the bid and asked price on the OTC Bulletin Board as of March 31, 2012, the last business day of the registrant's most recently completed second fiscal quarter, was approximately $6,994,038. Shares of common stock held by each executive officer and director and by each other stockholder who owned 10% or more of the outstanding common stock as of such date have been excluded in that such stockholder might be deemed to be an affiliate of the registrant. This determination of affiliate status might not be conclusive for other purposes.

As of February 1, 2013, the registrant had 62,731,963 outstanding shares of common stock.

DOCUMENTS INCORPORATED BY REFERENCE

None.

EXPLANATORY NOTE

Aeolus Pharmaceuticals, Inc. (the "Company") is filing this Amendment No. 1 on Form 10-K/A (this "Form 10-K/A") to amend the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2012, as filed with the Securities and Exchange Commission (the "SEC") on December 31, 2012 (the "Original Form 10-K").

As previously disclosed in the Company's Current Report on Form 8-K filed on February 19, 2013, in connection with the preparation of the Company's Quarterly Report on Form 10-Q for the quarter ended December 31, 2012, the Company determined that its basic and diluted net income (loss) per share calculations should have been prepared using the "two-class method." Under the two-class method, securities that participate in dividends are considered "participating securities." The Company's preferred shares, preferred warrants and most of its common stock warrants are considered "participating securities" because they include non-forfeitable rights to dividends.

Additionally, the Company determined that the diluted net income (loss) per share calculations did not include the net income effect of changes in fair value related to dilutive, liability classified warrants.

Application of the two-class method and, for dilutive earnings per share, including the effect of changes in fair value for liability classified warrants results in a modification to the Company's previously reported basic and diluted net income (loss) per share for the fiscal years ended September 30, 2012 and 2011, and the quarterly periods included therein.

On February 12, 2013, the Audit Committee of the Company's Board of Directors concluded, based on the recommendation of management, that the consolidated statements of operations for the fiscal years ended September 30, 2012 and 2011, and the consolidated statements of operations for the quarterly periods in the years ended September 30, 2012 and 2011, should no longer be relied upon because of the incorrect calculation of earnings per share. The Company's management and the Audit Committee discussed the matters relating to the restatements with Grant Thornton LLP, the Company's independent registered public accountants. See Note K to the Company's accompanying financial statements included in Part II, Item 8 of this Form 10-K/A for additional discussion regarding the restatements.

The purposes of this Form 10-K/A are to: (1) amend Part II, Item 6 to restate the Company's net income (loss) per share presentation in the statements of operations and the net income (loss) per share footnotes for the fiscal years ended September 30, 2012 and 2011, (2) amend Part II, Item 7 to add additional disclosure to the Company's critical accounting policies regarding warrant liability and earnings per share, (3) amend Part II, Item 8 to restate the Company's net income (loss) per share presentation in the statements of operations and the net income (loss) per share footnotes for the fiscal years ended September 30, 2012 and 2011, as well as the net income (loss) per share for the related 2012 and 2011 interim periods, and (4) replace Part III, Items 10 through Item 14, previously intended to be incorporated by reference to the Company's definitive information statement filed pursuant to Regulation 14C in lieu of the Company's 2013 Annual Meeting of Stockholders. The Company does not intend to amend its previously filed Quarterly Reports on Form 10-Q for the periods ended December 31, 2010, March 31, 2011, June 30, 2011, December 31, 2011, March 31, 2012 or June 30, 2012, or its Annual Report on Form 10-K for the year ended September 30, 2011, to reflect the revisions described above. The effects on these periods not being amended is included in this Form 10-K/A. The restated financial statements included in this Form 10-K/A were also included in the Registrant's post-effective amendment to Registration Statement on Form S-1 (Registration No. 333-181409) that was filed with the SEC on February 20, 2013.

In connection with the filing of this Form 10-K/A and pursuant to the rules of the SEC, the Company is including with this Form 10-K/A certain new certifications by its principal executive officer and principal financial officer. In addition, the Company is filing a new consent of Grant Thornton LLP. Accordingly, Part IV, Item 15 has also been

amended to reflect the filing of the new certifications and consent.

Except as stated herein to reflect the restatement noted above, which takes into account our subsequent consideration of conditions that existed at September 30, 2012, this Form 10-K/A does not reflect events or developments occurring after the filing of the Original Form 10-K and no attempt has been made in this Form 10-K/A to modify or update other disclosures as presented in the Original Form 10-K. Accordingly, this Form 10-K/A should be read in conjunction with the Original Form 10-K and the Company's other filings made with the SEC subsequent to the filing of the Original Form 10-K, including the Company's Quarterly Report on Form 10-Q for the quarter ended December 31, 2012 filed with SEC on February 20, 2013.

AEOLUS PHARMACEUTICALS, INC.
ANNUAL REPORT ON FORM 10-K/A
Table of Contents

PART II

Item 6.Selected Financial Data.

Read the following selected financial data in conjunction with our consolidated financial statements and the notes to those statements and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this Annual Report on Form 10-K/A. We derived the consolidated statements of operations data for the five fiscal years ended September 30, 2012 and the related consolidated balance sheet data at those dates from our audited consolidated financial statements. Except for the consolidated statements of operations for the fiscal years ended September 30, 2010, 2009 and 2008 and the consolidated balance sheet data at September 30, 2010, 2009 and 2008, each of these consolidated financial statements is included elsewhere in this Annual Report on Form 10-K/A.

Statement of Operations Data:

	Year Ended September 30,				
	2012	2011	2010	2009	2008
	(in thousands, except per share data)				
Revenue:					
Grant income and contract revenue	$ 7,293	$ 4,821	$ —	$ —	$ —
Costs and expenses:					
Research and development	6,468	5,055	1,690	711	977
General and administrative	3,196	3,668	1,954	1,292	1,540
Total costs and expenses	9,664	8,723	3,644	2,003	2,517
Loss from operations	(2,371)	(3,902)	(3,644)	(2,003)	(2,517)
Other income (expenses), net	4,069	4,222	(21,347)	(144)	(405)
Interest income (expense), net	—	(21)	(878)	(437)	(51)
Net income (loss)	1,698	299	(25,869)	(2,296)	(2,973)
Preferred stock dividend and accretion	—	—	—	—	—
Restated Net income (loss) attributable to common stockholders	$ 856	$ 149	$ (25,869)	$ (2,296)	$ (2,973)
Restated Basic net income (loss) per share attributable to common stockholders (Note K)	$ 0.01	$ 0.00	$ (0.53)	$ (0.07)	$ (0.09)
Restated Diluted net income (loss) per share attributable to common stockholders (Note K)	$ (0.03)	$ (0.04)	$ (0.53)	$ (0.07)	$ (0.11)
Weighted average common shares outstanding:					
Basic (Note K)	61,593	59,474	49,151	34,789	31,953
Restated Diluted (Note K)	71,041	85,862	49,151	34,789	32,217

Balance Sheet Data:

	2012	2011	September 30, 2010	2009	2008
			(in thousands)		
Cash and cash equivalents and marketable securities	281	518	2,355	646	399
Working capital (deficiency)	(1,048)	114	781	5	(1,336)
Total assets	1,256	2,290	2,433	811	1,120
Long-term portion of capital lease obligations and notes payable	—	—	—	1,194	266
Total liabilities	21,591	25,549	29,169	1,968	2,157
Total stockholders' deficit	(20,335)	(23,259)	(26,736)	(1,157)	(1,037)

Item 7.Management's Discussion and Analysis of Financial Condition and Results of Operations.
Introduction

You should read the following discussion in conjunction with our consolidated financial statements and the notes appearing elsewhere in this Annual Report on Form 10-K/A. The following discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of various factors, including those discussed in Item 1A - "Risk Factors" and elsewhere in this Annual Report on Form 10-K/A.

Overview

We are developing a new class of catalytic antioxidant compounds as a medical countermeasure against biological, chemical and radiological weapons as well as for diseases and disorders of the central nervous system, respiratory system, autoimmune system and oncology. Our initial target indications are as a protective agent against the effects of acute radiation syndrome, sulfur mustard gas exposure and chlorine gas exposure. We have reported positive safety results from two Phase I clinical trials of AEOL 10150, our lead drug candidate, with no serious adverse events noted.

We had net income of approximately $1,698,000 and $299,000 for the fiscal years ended September 30, 2012 and 2011, respectively. We had an accumulated deficit of approximately $180,714,000 at September 30, 2012. We have not yet generated any revenue from product sales and do not expect to receive any product revenue from non-government sales in the foreseeable future, if at all. Under the BARDA Contract, we are expected to file an EUA in the second half of 2013, after which BARDA may begin purchasing AEOL 10150 for the Strategic National Stockpile.

We have not had any recurring revenue from product sales. Therefore, we have relied on public or private equity offerings, debt financings, collaboration arrangements and grants to finance our operations.

Corporate Matters

On February 11, 2011, we signed an agreement with BARDA for the development of AEOL 10150 as a MCM against Lung-ARS (the "BARDA Contract"). Pursuant to the BARDA Contract we were awarded approximately $10.4 million in the base period of the contract. On April 16, 2012, we announced that BARDA had exercised two options under the BARDA Contract worth approximately $9.1 million, bringing the total exercised contract value to date to approximately $19.5 million. We may receive up to an additional $98.9 million in options exercisable over the years

following the base period. If all of the options are exercised by BARDA, the total value of the contract would be approximately $118.4 million. Pursuant to the Statement of Work in the BARDA Contract, we expect to provide the data necessary for filing an EUA in the second half of 2013. Once the EUA is filed, it would be possible for BARDA to begin procuring AEOL 10150 for the strategic national stockpile. Procurements from BARDA may result in significant revenues, and profitability, for Aeolus. If all options are exercised, the period of performance would continue through at least 2016.

Activities conducted during the base period of performance include developing animal models with radiation survival curves, dosing studies, bulk drug manufacturing, final drug product manufacturing, validation testing, compliance studies and the filing of IND, an orphan drug status application and a fast track designation application with the FDA. In the event BARDA exercises options to extend the term of the BARDA Contract, optional activities to be conducted would include, among other things, bulk drug and final drug product manufacturing, stability studies, animal pivotal efficacy studies, human clinical safety studies and Phase I, Phase II and pre-new drug application ("NDA") meetings and applications with the FDA.

On February 14, 2012, the Aeolus team presented the results and deliverables that had been produced during the first twelve months under the base period of the BARDA Contract at an "In-Progress Review" meeting with BARDA, and requested the exercise of additional contract options, which contain the key items required to further advance development of AEOL 10150.

On February 15, 2012, we announced that we entered into a contract modification and no-cost extension with the BARDA. The modification and extension allowed us to continue operating under the base period of the contract awarded in February 2011, and restructured the timing and components of the options that could be awarded under the remaining four years of the agreement. The changes did not impact the total potential value of the contract, which remains at approximately $118.4 million. The contract restructure was driven by our ability to generate cost savings in the base year contract, and to allow BARDA to better manage contract options to expedite development program.

On April 16, 2012, we announced that BARDA had exercised two contract options worth approximately $9.1 million. BARDA's exercise of the options was in response to the presentation of the deliverables and progress made under the contract at the meeting on February 14, 2012. Among the key items in the options BARDA exercised are animal efficacy studies, mechanism of action research and manufacturing and process validation work. All of these items build off of work successfully completed during the first twelve months of the contract base period. The contract is designed to produce the data necessary for an approval under the FDA "Animal Rule" and for a potential Emergency Use Authorization (EUA). An approval or EUA would allow the federal government to buy AEOL 10150 for the Strategic National Stockpile under Project Bioshield. Project Bioshield is designed to accelerate the research, development, purchase and availability of effective medical countermeasures for the Strategic National Stockpile

Since February 11, 2011, we have been actively developing AEOL 10150 under the BARDA Contract. Among the key deliverables accomplished in the program, we hired the necessary personnel required under the contract, initiated the radiation dose studies in mice and NHPs, manufactured a GMP batch for use in human safety studies and a non-GMP batch of material for use in animal efficacy studies, developed significant improvements to the process for manufacturing compound which will reduce the cost of producing the drug; made several discoveries related to the mechanism of damage of radiation and mechanism of action of AEOL 10150; met with the FDA to discuss our IND filing for Lung-ARS; and designed and initiated quality, reporting, risk management and project management programs required under the BARDA Contract.

Under the BARDA Contract, we plan to provide to BARDA the data necessary in order to file an Emergency Use Authorization ("EUA") with the FDA in approximately the second half of 2013. An EUA is a legal means for the FDA to approve new drugs or new indications for previously approved drugs that may be stockpiled and used during a declared emergency. To date, about half of the procurements for the national stockpile for medical countermeasures against potential terrorist events have been made under EUAs, prior to approval by the FDA for the indication in question.

Results of Operations

Fiscal Year Ended September 30, 2012 Compared to Fiscal Year Ended September 30, 2011

We had net income of $1,698,000 (including a non-cash gain for decreases in valuation of warrants of approximately $4,069,000) for the fiscal year ended September 30, 2012, versus net income of $299,000 (including a non-cash gain for decreases in valuation of warrants of $3,887,000) for the fiscal year ended September 30, 2011.

Revenue for the fiscal year ended September 30, 2012 was approximately $7,293,000, compared to $4,821,000 revenue for the fiscal year ended September 30, 2011. The revenue is from the collaboration with BARDA announced on February 11, 2011. Since being awarded the BARDA Contract, we generate contract revenue from a cost-plus fee arrangement. Revenues on reimbursable contracts are recognized as costs are incurred, generally based on allowable costs incurred during the period, plus any recognizable earned fee. We consider fixed fees under cost-plus fee contracts to be earned in proportion to the allowable costs incurred in performance of the contract.

Research and Development

Research and development expenses increased by $1,413,000, or 28%, to approximately $6,468,000 for the fiscal year ended September 30, 2012 from approximately $5,055,000 for the fiscal year ended September 30, 2011. R&D expenses were higher during the fiscal year ended September 30, 2012 versus September 30, 2011 due to work related to the BARDA Contract. For the fiscal year ended September 30, 2012, consultant expenses increased by $626,000 due to costs associated with the BARDA Contract. Preclinical fees increased about $202,000 over the comparable period in 2011 due to increased animal studies to support our ARS development program. The increase also reflected production and development of AEOL 10150 for planned upcoming BARDA studies, for which manufacturing expenses increased about $590,000. We currently have eight development programs in progress: studies of AEOL 10150 as a medical countermeasure against the effects of sulfur mustard gas and chlorine gas on the lungs, against the effects of radiation on the lungs and on the gastro-intestinal tract, and as a treatment for cancer, studies of AEOL 11207 and several other compounds as potential treatments for Parkinson’s disease and epilepsy, and a study of Hexyl as protectant against radiation exposure.

R&D expenses for our antioxidant program have totaled approximately $48,723,000 from inception through September 30, 2012. Because of the uncertainty of our research and development and clinical studies, we are unable to predict the total level of spending on the program or the program completion date. However, we expect R&D expenses during fiscal year 2013 will be comparable to fiscal 2012 since we will continue development under the BARDA Contract. We anticipate that much of the R&D spending should be reimbursed under that contract.

General and Administrative

General and administrative (“G&A”) expenses include corporate costs required to support Aeolus, our employees and consultants and our stockholders. These costs include personnel and outside costs in the areas of legal, human resources, investor relations and finance. Additionally, we include in general and administrative expenses such costs as rent, repair and maintenance of equipment, depreciation, utilities, information technology and procurement costs that we need to support the corporate functions listed above.

G&A expenses decreased approximately $472,000, or 13%, to approximately $3,196,000 for the fiscal year ended September 30, 2012 from about $3,668,000 for the fiscal year ended September 30, 2011. Consulting fees decreased by about $456,000 due to shifting some contractors to employees. As a result, the decrease in consulting fees was partially offset by an increase in salaries and wages of about $304,000. Consulting stock expense decreased by about $356,000 as a result of fewer awards and a lower stock price for the period.

Other Income or Expense

As previously disclosed, certain of our warrants to purchase common stock were deemed to be a liability upon adoption of a new accounting pronouncement on October 1, 2009. Subsequent changes to the fair market value resulted in an offsetting gain in the statements of operations of approximately $4,069,000 for the fiscal year ended September 30, 2012, as compared to approximately $3,887,000 for the fiscal year ended September 30, 2011. The warrant liability and revaluations have not and will not have any impact on our working capital, liquidity or business operations.

Fiscal Year Ended September 30, 2011 Compared to Fiscal Year Ended September 30, 2010

We had net income of $299,000 (including a non-cash gain for decreases in valuation of warrants of approximately $3,887,000) for the fiscal year ended September 30, 2011, versus a net loss of $25,869,000 (including a non-cash charge for increases in valuation of warrants of $21,347,000) for fiscal year ended September 30, 2010.

Revenue for the fiscal year ended September 30, 2011 was approximately $4,821,000, which compares to zero revenue for the fiscal year ended September 30, 2010. The revenue is from the collaboration with BARDA announced on February 11, 2011. Since being awarded the BARDA Contract, we generate contract revenue from a cost-plus fee arrangement. Revenues on reimbursable contracts are recognized as costs are incurred, generally based on allowable costs incurred during the period, plus any recognizable earned fee. We consider fixed fees under cost-plus fee contracts to be earned in proportion to the allowable costs incurred in performance of the contract.

Research and Development

Research and development expenses increased by about $3,365,000, or 199%, to approximately $5,055,000 for the fiscal year ended September 30, 2011 from approximately $1,690,000 for the fiscal year ended September 30, 2010. R&D expenses were higher during the fiscal year ended September 30, 2011 versus September 30, 2010 due to work related to the BARDA Contract. For the fiscal year ended September 30, 2011, consultant expenses increased by about $264,000 due to costs associated with the aforementioned consultant. Preclinical fees increased about $1,907,000 over the comparable period in 2010 due to increased animal studies to support our ARS development program. The increase also reflected the initiation of production of a compound for oncology studies anticipated that began in fiscal year 2011, for which manufacturing expenses increased about $1,118,000. We currently have eight development programs in progress: studies of AEOL 10150 as a medical countermeasure against the effects of sulfur mustard gas and chlorine gas on the lungs, against the effects of radiation on the lungs and on the gastro-intestinal tract, and as a treatment for cancer, studies of AEOL 11207 and several other compounds as potential treatments for Parkinson’s disease and epilepsy, and a study of Hexyl as protectant against radiation exposure.

R&D expenses for our antioxidant program have totaled approximately $42,255,000 from inception through September 30, 2011. Because of the uncertainty of our research and development and clinical studies, we are unable to predict the total level of spending on the program or the program completion date. However, we expect R&D expenses during fiscal year 2012 will be higher than fiscal 2011 since we have been awarded the BARDA Contract. We anticipate that much of the increase in R&D spending should be reimbursed under that contract.

General and Administrative

General and administrative (“G&A”) expenses include corporate costs required to support our company, our employees and consultants and our stockholders. These costs include personnel and outside costs in the areas of legal, human resources, investor relations and finance. Additionally, we include in general and administrative expenses such costs as rent, repair and maintenance of equipment, depreciation, utilities, information technology and procurement costs that we need to support the corporate functions listed above.

G&A expenses increased approximately $1,714,000, or 88%, to approximately $3,668,000 for the fiscal year ended September 30, 2011 from about $1,954,000 for the fiscal year ended September 30, 2010. Salaries and wages increased by about $646,000 due to the addition of a Chief Financial Officer, a Vice President of Manufacturing, a Director of Quality Assurance and Quality Control, and Corporate Controller. Consulting stock expense increased by about $422,000 as a result of the hiring of the aforementioned staff and also due to decreased stock compensation activity in the prior comparable period. Investor relations expenses increased by $118,000, due to increased IR-related activities performed by outside consultants. Legal fees increased by $143,000 as a result of higher reliance on our outside legal counsel for review and compliance related to SEC filings during the current quarter, as well as the review of the BARDA Contract and related contracts.

Other Income or Expense

We incurred interest expense of approximately $21,000 for the fiscal year ended September 30, 2011 compared to interest expense of about $878,000 for the fiscal year ended September 30, 2010. Interest expense in fiscal year 2011 reflects about $21,000 incurred by the second quarter of fiscal year 2011, due to conversion of the Elan note payable compared to the conversion of the Senior Convertible Notes during the prior comparable period.

As previously disclosed, certain of our warrants to purchase common stock were deemed to be a liability upon adoption of a new accounting pronouncement on October 1, 2009. Subsequent changes to the fair market value resulted in an offsetting gain in the statements of operations of approximately $3,887,000 for the fiscal year ended September 30, 2011, as compared to approximately $21,347,000 for the fiscal year ended September 30, 2010. The warrant liability and revaluations have not and will not have any impact on our working capital, liquidity or business operations.

Liquidity and Capital Resources

As of September 30, 2012, we had approximately $281,000 of cash and cash equivalents, a decrease of $237,000 from September 30, 2011. In order to fund on-going operating cash requirements, or to accelerate or expand our oncology and other programs we may need to raise significant additional funds.

We had net income of $1,698,000 (including a non-cash gain for decreases in valuation of warrants of $4,069,000) for the fiscal year ended September 30, 2012, compared to net income of $299,000 (including a non-cash gain for decreases in valuation of warrants of $3,887,000) for the fiscal year ended September 30, 2011. For the same periods, we had cash outflows from operations of approximately $879,000 and $3,102,000, respectively. Our ongoing future cash requirements will depend on numerous factors, particularly the progress of our catalytic antioxidant program and clinical trials and our ability to negotiate and complete collaborative agreements or out-licensing arrangements. In order to help fund our on-going operating cash requirements, we intend to seek new collaborations for our antioxidant research program that include initial cash payments and on-going research support. In addition, we might sell additional shares of our stock and/or convertible debentures and explore other strategic and financial alternatives, including a merger with another company, the sale of stock and/or debt, the establishment of new collaborations for current research programs, that include initial cash payments and ongoing research support and the out-licensing of our compounds for development by a third party. We expect to incur additional losses and negative cash flow from operations for several more years.

In November 2010, we received approximately $244,000 from the QTDP, administered by the IRS and HHS, in support of our development of AEOL 10150 as an MCM for Lung-ARS. Additionally, In November 2010, we received approximately $92,000 from the QTDP in support of our development of AEOL 11207 for Parkinson’s Disease.

On February 11, 2011, we were awarded a contract by BARDA to fund the development of AEOL 10150 as an MCM for Lung-ARS from its current status to FDA approval in response to Special Instructions Amendment 4 to a Broad Agency Announcement (BAA-BARDA-09-34) for advanced research and development of medical countermeasures for chemical, biological, radiological and nuclear threats. The contract value could be up to $118.4 million depending on options exercised by BARDA and the requirements for approval by the FDA. Under the BARDA Contract, substantially all of the costs of the development of AEOL 10150 as a medical countermeasure for pulmonary injuries resulting from an acute exposure to radiation from a radiological/nuclear accident or attack, particularly injuries associated with ARS or DEARE would be paid for by the U.S. government through BARDA funding. We recognized approximately $7,293,000 in revenue during the fiscal year ended September 30, 2012 related to the BARDA Contract.

We do not have any revenues from product sales and, therefore, we rely on investors, grants, collaborations and licensing of our compounds to finance our operations. We generate limited revenue from reimbursable, cost-plus fee R&D contracts and grants. Revenues on reimbursable contracts are recognized as costs are incurred, generally based on allowable costs incurred during the period, plus any recognizable earned fee. We consider fixed fees under cost-plus fee contracts to be earned in proportion to the allowable costs incurred in performance of the contract.

Since the terms of the BARDA Contract include provisions to cover some general corporate overhead as well as a small provision for profit, the result on our liquidity is that our projected cash burn has been reduced. In order to fund on-going operating cash requirements, or to further accelerate or expand our programs, we expect to need to raise significant additional funds in order to pursue our oncology program.

We have incurred significant losses from operations to date. Our ongoing future cash requirements will depend on numerous factors, particularly the progress of our catalytic antioxidant program, clinical trials and ability to negotiate

and complete collaborative agreements or out-licensing arrangements. In addition, we might sell additional shares of our stock and/or debt and explore other strategic and financial alternatives, including a merger or joint venture with another company, the sale of stock and/or debt, the establishment of new collaborations for current research programs, that include initial cash payments and ongoing research support and the out-licensing of our compounds for development by a third party.

There are significant uncertainties as to our ability to access potential sources of capital. We may not be able to enter into any collaboration on terms acceptable to us, or at all, due to conditions in the pharmaceutical industry or in the economy in general or based on the prospects of our catalytic antioxidant program. Even if we are successful in obtaining collaboration for our antioxidant program, we may have to relinquish rights to technologies, product candidates or markets that we might otherwise develop ourselves. These same risks apply to any attempt to out-license our compounds.

Similarly, due to market conditions, the illiquid nature of our stock and other possible limitations on equity offerings, we may not be able to sell additional securities or raise other funds on terms acceptable to us, if at all. Any additional equity financing, if available, could result in substantial dilution to existing stockholders.

Our forecast of the period of time through which our financial resources will be adequate to support our operations is forward-looking information, and actual results could vary.

Contractual Obligations

Our contractual obligations (in thousands) as of September 30, 2012 were as follows:

		Payments due by period			
Contractual Obligations	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Short and long-term debt	$ —	$ —	$ —	$ —	$ —
Capital lease obligations	—	—	—	—	—
Operating leases	3	3	—	—	—
Purchase obligations	—	—	—	—	—
Total	$ 3	$ 3	$ —	$ —	$ —

Off Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources as defined under the rules of SEC Release No. FR-67. We do not have any capital leases.

Relationship with Goodnow Capital, LLC and Xmark Opportunity Partners, LLC

In July 2003, we initiated a series of transactions that led to our corporate reorganization and recapitalization. We obtained an aggregate of $8,000,000 in secured bridge financing in the form of convertible promissory notes we issued to Goodnow Capital, LLC (“Goodnow”). A portion of this financing allowed us to pay our past due payables and become current. We used the remainder for our operations, including a toxicology study for our catalytic antioxidant compounds under development as a treatment for ALS.

We completed our corporate reorganization on November 20, 2003. The reorganization involved the merger of our former parent company into one of our wholly owned subsidiaries. Subsequent to our 2003 reorganization, we completed a number of equity and debt financings, the majority of which included Xmark as investors. As of September 30, 2012, Xmark Opportunity Partners, LLC, through its management of Goodnow and the Xmark Funds, and through the Xmark Voting Trust and options held by David Cavalier, an affiliate of Xmark and the Chairperson of

our Board of Directors, had voting power over 63.1% of our outstanding common stock and had beneficial ownership, calculated based on SEC requirements, of approximately 63.2% of our common stock. As a result of this significant ownership, Xmark Opportunity Partners, LLC and its affiliates is able to control future actions voted on by our stockholders.

In addition, under the terms of the warrants to purchase up to 61,822,749 shares of our common stock issued to Xmark on October 6, 2009 as well as subsequent warrant issuances on July 30, 2010, August 11, 2010 and December 28, 2010 (collectively, the "Xmark Warrants"), if we were to pay a dividend on our common stock the exercise price of these warrants would be reset from $0.28 per share or $0.50 per share, as applicable, to $0.01 per share and the warrant holders would also receive any such dividend paid. The Xmark Warrants also contain a provision that provides for the reduction of the exercise price to $0.01 upon a change of control and anti-dilution provisions in the event of a stock dividend or split, dividend payment or other issuance, reorganization, recapitalization or similar event. In addition, the Xmark Warrants, among other restrictions, prohibit the sale of Aeolus to an entity other than one that is publicly traded.

Critical Accounting Policies and Estimates

Our consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, which require us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosure of contingent assets and liabilities. We evaluate our estimates, judgments and the policies underlying these estimates on a periodic basis as the situation changes, and regularly discuss financial events, policies, and issues with our independent registered public accounting firm and members of our audit committee. We routinely evaluate our estimates and policies regarding revenue recognition; clinical trial, preclinical, manufacturing and patent related liabilities; license obligations; inventory; intangible assets; share-based payments; and deferred tax assets.

We generally enter into contractual agreements with third-party vendors to provide clinical, preclinical and manufacturing services in the ordinary course of business. Many of these contracts are subject to milestone-based invoicing and the contract could extend over several years. We record liabilities under these contractual commitments when we determine an obligation has been incurred, regardless of the timing of the invoice. Patent-related liabilities are recorded based upon various assumptions or events that we believe are the most reasonable to each individual circumstance, as well as based upon historical experience. License milestone liabilities and the related expense are recorded when the milestone criterion achievement is probable. We have not recognized any assets for inventory, intangible items or deferred taxes as we have yet to receive regulatory approval for any of our compounds. Any potential asset that could be recorded in regards to any of these items is fully reserved. In all cases, actual results may differ from our estimates under different assumptions or conditions.

Warrant Liability

On October 1, 2009, we adopted new accounting guidance, originally referred to as EITF 07-5 and recently codified by FASB as ASC Topic 815. The guidance revised previously existing guidance for determining whether an Instrument (or Embedded Feature) is indexed to an entity's own stock. Equity-linked instruments (or embedded features) that otherwise meet the definition of a derivative are not accounted for as derivatives if certain criteria are met, one of which is that the instrument (or embedded feature) must be indexed to the entity's own stock. We applied the new guidance to outstanding instruments as of October 1, 2009. The fair value of the warrants affected by the new guidance at the dates of issuance totaled $8,282,000 and was initially recorded as a component of additional paid-in capital. Upon adoption of the new guidance, we recorded a decrease to the opening balance of additional-paid-in capital of $8,142,000 and recorded a decrease to accumulated deficit totaling $4,353,000, representing the decrease in the fair value of the warrants from the date of issuance to October 1, 2009. The fair value of the warrants at October 1, 2009 of $3,789,000 was classified as a liability in the balance sheet as of that date.

Increases or decreases in fair value of the warrants are included as a component of other income (expenses) in the accompanying statement of operations for the respective period. As of September 30, 2012, the liability for warrants decreased to approximately $19,319,000, resulting in an additional gain to the statements of operations for the fiscal

year ended September 30, 2012 of approximately $4,069,000. The warrant liability and revaluations have not and will not have any impact on our working capital, liquidity or business operations.

Under FASB ASC Topic 815, we are required to revalue certain of our outstanding warrants at each balance sheet date. An increase in warrant liability for a period results in a corresponding charge to our statement of operations for such period and a decrease in warrant liability for a period results in a corresponding gain to our statement of operations for such period. Historically, the quarterly revaluation of our warrants has resulted in unpredictable (and sometimes significant) changes to our reported liabilities and significant additional gains or losses charged to the statement of operations from period to period. During the years ended September 30, 2012 and 2011, for example, we incurred a gain of $4,069,000 and $3,887,000, respectively, to our warrant liability related to outstanding warrants. The warrant liability accounting has the potential to result in an increase or reduction in the company’s net income and, therefore, earnings per share, from quarter to quarter even where there is otherwise no change to our revenue or expenses due to operations in any particular period. Our management believes that warrant liability accounting may cause certain parties to erroneously conclude that we have earned net income in certain prior periods by generating revenue – for example, from sales, licensing or other methods – in excess of expenses for such period, when the actual net income (loss) for a prior period was based primarily on quarter-over-quarter adjustments tied to the revaluation of our outstanding warrants, which is primarily driven by changes in our stock price period-over-period.

Earnings Per Share

As discussed in Note K to our accompanying financial statements, for purposes of calculating earnings per share, we have historically used the “treasury stock method” in order to give effect to outstanding “in-the-money” stock options and warrants. We have determined that out basic net income (loss) per share calculations should have been prepared using the “two-class method” because, by contract, our outstanding preferred shares, preferred warrants and the majority of our common warrants would participate in any potential common stock dividends declared by us in the future even though we do not currently meet the corporate law financial requirements that would allow us to declare or pay a dividend. The adjustment discussed above solely affects the calculation of net income per share. We have also determined that fair value adjustments relating to our common stock warrants subject to warrant liability accounting should be removed from our calculation of net income (loss) available to diluted shareholders in accordance with the treasury stock method.

Revenue Recognition

We do not currently generate revenue from product sales, but do generate revenue from the BARDA Contract. We recognize revenue from the BARDA Contract in accordance with the authoritative guidance for revenue recognition. Revenue is recognized when all of the following criteria are met: (i) persuasive evidence of an arrangement exists, (ii) delivery (or passage of title) has occurred or services have been rendered, (iii) the seller’s price to the buyer is fixed or determinable, and (iv) collectability is reasonably assured. We also comply with the authoritative guidance for revenue recognition regarding arrangements with multiple deliverables.

The BARDA Contract is classified as a “cost-plus-fixed-fee” contract. We recognize government contract revenue in accordance with the authoritative guidance for revenue recognition including the authoritative guidance specific to federal government contracts. Reimbursable costs under the contract primarily include direct labor, subcontract costs, materials, equipment, travel, and indirect costs. In addition, we receive a fixed fee under the BARDA Contract, which is unconditionally earned as allowable costs are incurred and is not contingent on success factors. Reimbursable costs under this BARDA Contract, including the fixed fee, are generally recognized as revenue in the period the reimbursable costs are incurred and become billable.

Item 8. Financial Statements and Supplementary Data.

INDEX TO FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
Aeolus Pharmaceuticals Inc.

We have audited the accompanying consolidated balance sheets of Aeolus Pharmaceuticals Inc. (the "Company") as of September 30, 2012 and 2011, and the related consolidated statements of operations, shareholders' equity (deficit), and cash flows for each of the two years in the period ended September 30, 2012. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The company is not required to have, nor were we engaged to perform an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Aeolus Pharmaceutical Inc. and its subsidiary as of September 30, 2012 and 2011, and the consolidated results of their operations and their cash flows for each of the two years in the period ended September 30, 2012, in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note K, net income (loss) per share in the accompanying financial statements has been restated.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note C to the financial statements, the Company has incurred recurring losses and negative cash flows from operations, and management believes the Company does not currently possess sufficient working capital to fund its operations through fiscal 2013. These conditions, along with other matters as set forth in Note C, raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note C. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ GRANT THORNTON LLP
San Diego, CA
December 28, 2012 (except for Note K and the related effects thereof as to which the date is February 19, 2013)

AEOLUS PHARMACEUTICALS, INC.
CONSOLIDATED BALANCE SHEETS
(DOLLARS IN THOUSANDS)

	September 30, 2012	2011
ASSETS		
Current assets:		
Cash and cash equivalents	$ 281	$ 518
Accounts receivable	882	1,677
Prepaids and other current assets	61	63
Total current assets	1,224	2,258
Investment in CPEC LLC	32	32
Total assets	$ 1,256	$ 2,290
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable and accrued expenses	$ 2,272	$ 2,144
Total current liabilities	2,272	2,144
Warrant liability	19,319	23,405
Total liabilities	21,591	25,549
Commitments and Contingencies (Notes E and I)		
Stockholders' deficit:		
Preferred stock, $.01 par value per share, 10,000,000 shares authorized:		
Series A nonredeemable convertible preferred stock, 1,250,000 shares authorized as of September 30, 2012 and 2011, respectively; no shares issued and outstanding as of September 30, 2012 and 2011, respectively	—	—
Series B nonredeemable convertible preferred stock, 1,600,000 and 600,000 shares authorized as of September 30, 2012 and 2011, respectively; 526,080 and 526,080 shares issued and outstanding as of September 30, 2012 and 2011, respectively	5	5
Common stock, $.01 par value per share, 200,000,000 shares authorized; 62,731,963 and 60,470,718 shares issued and outstanding at September 30, 2012 and 2011, respectively	627	605
Additional paid-in capital	159,747	158,543
Accumulated deficit	(180,714)	(182,412)
Total stockholders' deficit	(20,335)	(23,259)
Total liabilities and stockholders' deficit	$ 1,256	$ 2,290

The accompanying notes are an integral part of these consolidated financial statements.

AEOLUS PHARMACEUTICALS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE DATA)

	Fiscal Year Ended September 30,	
	2012	2011
Revenue:		
Contract revenue	$ 7,293	$ 4,821
Costs and expenses:		
Research and development	6,468	5,055
General and administrative	3,196	3,668
Total costs and expenses	9,664	8,723
Loss from operations	(2,371)	(3,902)
Interest expense	—	(21)
Warrant liability gain (charges)	4,069	3,887
Other income, net	—	335
Net income (loss)	$ 1,698	$ 299
Restated Net income (loss) attributable to common stockholders – basic	$ 856	$ 149
Restated Net income (loss) attributable to common stockholders – diluted	$ (2,161)	$ (3,253)
Restated Basic net income (loss) per common share (Note K)	$ 0.01	$ 0.00
Restated Diluted net income (loss) per common share (Note K)	$ (0.03)	$ (0.04)
Weighted average common shares outstanding:		
Basic (Note K)	61,593	59,474
Restated Diluted (Note K)	71,041	85,862

The accompanying notes are an integral part of these consolidated financial statements.

AEOLUS PHARMACEUTICALS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(Dollars in thousands)

	Series B Preferred Stock		Common Stock		Additional	Accumulated	Total Stockholders'
	Shares	Par Value	Shares	Par Value	Paid-in Capital	Deficit	Deficit
Balance at September 30, 2010	475,087	5	56,817,177	568	155,402	(182,711)	(26,736)
Common stock sales, net of issuance costs of $13,000	—	—	2,500,000	25	585	—	610
Note payable conversion	50,993	1	—	—	211	—	212
Issuance of warrant for note payable conversion	—	—	—	—	452	—	452
Exercise of warrants	—	—	1,153,541	12	900	—	913
Issuance of warrants to a consultant	—	—	—	—	88	—	88
Stock-based compensation	—	—	—	—	905	—	905
Net income for the fiscal year ended September 30, 2011	—	—	—	—	—	299	299
Balance at September 30, 2011	526,080	5	60,470,718	$ 605	158,543	(182,412)	(23,259)
Common stock sales, net of issuance costs of $18,000	—	—	2,200,166	22	620	—	642
Exercise of warrants	—	—	61,079	—	16	—	16
Issuance of warrants to consultants	—	—	—	—	199	—	199
Stock-based compensation	—	—	—	—	369	—	369
Net income for the fiscal year ended September 30, 2012	—	—	—	—	—	1,698	1,698
Balance at September 30, 2012	526,080	$ 5	62,731,963	$ 627	$ 159,747	$ (180,714)	$ (20,335)

The accompanying notes are an integral part of these consolidated financial statements.

14

AEOLUS PHARMACEUTICALS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)

	Fiscal Year Ended September 30,	
	2012	2011
Cash flows from operating activities:		
Net income (loss)	$ 1,698	$ 299
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation	7	5
Noncash compensation	568	993
Noncash interest and financing costs	17	—
Change in fair value of warrants	(4,086)	(3,887)
Change in assets and liabilities:		
Accounts receivable	795	(1,677)
Prepaid expenses and other assets	(6)	(22)
Accounts payable and accrued expenses	128	1,187
Net cash used in operating activities	(879)	(3,102)
Cash flows from investing activities:		
Purchase of equipment	—	—
Net cash used in investing activities	—	—
Cash flows from financing activities:		
Proceeds from issuance of common stock and warrants	660	1,000
Proceeds from the exercise of warrants	—	276
Costs related to the issuance of common stock and warrants	(18)	(11)
Net cash provided by financing activities	642	1,265
Net increase (decrease) in cash and cash equivalents	(237)	(1,839)
Cash and cash equivalents at beginning of year	518	2,355
Cash and cash equivalents at end of year	$ 281	$ 518
Supplemental disclosure of cash flow information:		
Non-cash payments of interest	$ —	$ 21
Supplemental disclosure of non-cash investing and financing activities:		
Preferred stock and warrants issued for payment of note payable	$ —	$ 453
Preferred stock and warrants issued for payment of interest on note payable	$ —	$ 210

The accompanying notes are an integral part of these consolidated financial statements.

AEOLUS PHARMACEUTICALS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
SEPTEMBER 30, 2012

A. Organization, Business and Summary of Significant Accounting Policies

Organization

The accompanying audited consolidated financial statements include the accounts of Aeolus Pharmaceuticals, Inc. and its wholly-owned subsidiary, Aeolus Sciences, Inc. (collectively "we," "us," "Company" or "Aeolus"). All significant intercompany accounts and transactions have been eliminated in consolidation. Aeolus is a Delaware corporation. The Company's primary operations are located in Mission Viejo, California.

Business

Aeolus is developing a new class of broad-spectrum, catalytic antioxidant compounds based on technology discovered at Duke University and National Jewish Health. The Company's lead compound, AEOL 10150, is a metalloporphyrin specifically designed to neutralize reactive oxygen and nitrogen species. The Company is developing AEOL 10150 as a medical countermeasure against the pulmonary effects of radiation exposure under a contract ("BARDA Contract") valued at up to $118.4 million with the Biomedical Advanced Research and Development Authority ("BARDA"), a division of the Department of Health and Human Services ("HHS"). Additionally, Aeolus receives development support from the National Institutes of Health ("NIH") for development of the compound as a medical countermeasure against radiation and chemical exposure.

Restatement of Net Income (Loss) Per Common Share

As discussed in Note K, the Company has restated Net Income (Loss) Per Common Share for the years ended September 30, 2012 and 2011 and for the unaudited quarterly periods included in Note J.

B. Summary of Significant Accounting Policies

Basis of Presentation

The consolidated financial statements include the accounts of Aeolus and its wholly owned subsidiary. All significant intercompany accounts and transactions have been eliminated. The Company uses the equity method to account for its 35.0% ownership interest in CPEC.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Such estimates include revenue recognition, warrant liability, allowance for doubtful accounts, stock-based compensation and warrant expense. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company invests available cash in short-term bank deposits. Cash and cash equivalents include investments with maturities of three months or less at the date of purchase. The carrying value of cash and cash equivalents approximate their fair market value at September 30, 2012 and 2011 due to their short-term nature.

Significant customers and accounts receivable

For the year ended September 30, 2012, the Company's primary customer was BARDA. For the year ended September 30, 2012, revenues from BARDA comprised 100% of total revenues. As of September 30, 2012, the Company's receivable balances were comprised 100% from this customer. Unbilled accounts receivable, included in accounts receivable, totaling $558,000 as of September 30, 2012 relate to work that has been performed, though invoicing has not yet occurred. All of the unbilled receivables are expected to be billed and collected within the next 12 months. Accounts receivable are stated at invoice amounts and consist primarily of amounts due from HHS as well as amounts due under reimbursement contracts with other government entities and non-government and philanthropic organizations. If necessary, the Company records a provision for doubtful receivables to allow for any amounts which may be unrecoverable. This provision is based upon an analysis of the Company's prior collection experience, customer creditworthiness and current economic trends. As of September 30, 2012 and 2011, an allowance for doubtful accounts was not recorded as the collection history from the Company's customers indicated that collection was probable.

Concentrations of credit risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. The Company places its cash and cash equivalents with high quality financial institutions. Management believes that the financial risks associated with its cash and cash equivalents and investments are minimal. Because accounts receivable consist primarily of amounts due from the U.S. federal government agencies, management deems there to be minimal credit risk.

Revenue Recognition

Aeolus recognizes revenue in accordance with the authoritative guidance for revenue recognition. Revenue is recognized when all of the following criteria are met: (i) persuasive evidence of an arrangement exists, (ii) delivery (or passage of title) has occurred or services have been rendered, (iii) the seller's price to the buyer is fixed or determinable, and (iv) collectability is reasonably assured.

The BARDA Contract is classified as a "cost-plus-fixed-fee" contract. Aeolus recognizes government contract revenue in accordance with the authoritative guidance for revenue recognition including the authoritative guidance specific to federal government contracts. Reimbursable costs under the contract primarily include direct labor, subcontract costs, materials, equipment, travel, and indirect costs. In addition, we receive a fixed fee under the BARDA Contract, which is unconditionally earned as allowable costs are incurred and is not contingent on success factors. Reimbursable costs under this BARDA Contract, including the fixed fee, are generally recognized as revenue in the period the reimbursable costs are incurred and become billable.

Fair Value of Financial Instruments

The carrying amounts of our short-term financial instruments, which include cash and cash equivalents, accounts receivable, accounts payable, and accrued liabilities approximate their fair values due to their short maturities.

Fair Value Measurements

The Company adopted Accounting Standards Codification ("ASC") Topic 820, Fair Value Measurements and Disclosures, for financial and non-financial assets and liabilities.

ASC 820 discusses valuation techniques, such as the market approach (comparable market prices), the income approach (present value of future income or cash flow) and the cost approach (cost to replace the service capacity of an asset or replacement cost). The Company utilizes the market approach. The statement utilizes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The following is a brief description of those three levels:

- Level 1: Observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices that are observable for the asset or liability, either directly or indirectly. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.
- Level 3: Unobservable inputs that reflect the reporting entity's own assumptions.

The warrant liability is measured at fair market value on a recurring basis as of September 30, 2012 and 2011 and is summarized below (in thousands):

Fair value at September 30, 2012			Fair value at September 30, 2011		
Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
$—	$—	$19,319	$—	$—	$23,405

The following table summarizes, as of September 30, 2012, the warrant activity subject to Level 3 inputs which are measured on a recurring basis:

	Fair value measurements of warrants using significant unobservable inputs (Level 3)
Balance at September 30, 2011	$ 23,405
Warrants exercised	(17)
Change in fair value of warrant liability	(4,069)
Balance at September 30, 2012	$ 19,319

Research and Development

Research and development costs are expensed in the period incurred.

Leases

The Company leases office space and office equipment under month to month operating lease agreements. For the years ended September 30, 2012 and 2011, total rent expense was approximately $36,000 and $18,000, respectively.

Income Taxes

The Company recognizes liabilities or assets for the deferred tax consequences of temporary differences between the tax bases of assets or liabilities and their reported amounts in the financial statements. These temporary differences will result in taxable or deductible amounts in future years when the reported amounts of the assets or liabilities are recovered or settled. A valuation allowance is established when management determines that is more likely than not that all or a portion of a deferred tax asset will not be realized. Management evaluates the Company's ability to realize its net deferred tax assets on a quarterly basis and valuation allowances are provided, as necessary. During this evaluation, management reviews its forecasts of income in conjunction with other positive and negative evidence surrounding the Company's ability to realize its deferred tax assets to determine if a valuation allowance is required. Adjustments to the valuation allowance will increase or decrease the Company's income tax provision or benefit. Management also applies the relevant guidance to determine the amount of income tax expense or benefit to be allocated among continuing operations, discontinued operations, and items charged or credited directly to stockholders' equity (deficit).

A tax position must meet a minimum probability threshold before a financial statement benefit is recognized. The minimum threshold is a tax position that is more likely than not be sustained upon examination by the applicable taxing authority, including resolution of any related appeals or litigation process, based on the technical merits of the position. The Company recognizes interest and penalties related to uncertain tax positions in income tax expense.

Net Income (Loss) Per Common Share (as restated)

The Company computes net income attributable to common stockholders using the two-class method required for participating securities. Under the two-class method, securities that participate in dividends, such as the Company's outstanding preferred shares, preferred warrants, and most common stock warrants, are considered "participating securities." Our preferred shares, preferred warrants and common stock warrants are considered "participating securities" because they include non-forfeitable rights to dividends.

In applying the two-class method, (i) basic net income (loss) per share is computed by dividing net income (less any dividends paid on participating securities) by the weighted average number of shares of common stock and participating securities outstanding for the period and (ii) diluted earnings per share may include the additional effect of other securities, if dilutive, in which case the dilutive effect of such securities is calculated using the treasury stock method. The Company does have other securities with a dilutive effect outstanding, so the Company's basic net income (loss) per share uses the two-class method and diluted net income (loss) per share uses the treasury stock method.

	Fiscal Year Ended September 30,	
	2012	2011
Numerator:		
Net income (loss)	$ 1,698	$ 299
Net income attributable to participating securities (1)	(842)	(151)
Net income (loss) attributable to common stockholders – basic (1)	$ 856	$ 148
Net income (loss)	$ 1,698	$ 299
Less gain (loss) on warrant liability for participating common warrants (1)	3,859	3,553
Net income (loss) attributable to common stockholders – diluted (1)	$ (2,161)	$ (3,253)
Denominator:		
Weighted-average shares used in computing net income (loss) per share attributable to common stockholders – basic	61,593	59,474
Effect of potentially dilutive securities:		
Common stock warrants (1)	9,448	26,388
Convertible preferred warrants	—	—
Convertible preferred stock	—	—
Common stock options	—	—
Non-participating common stock warrants	—	—
Weighted-average shares used in computing net income (loss) per share attributable to common stockholders – diluted (1)	71,041	85,862
Basic net income (loss) per common share (1)	$ 0.01	$ 0.00
Diluted net income (loss) per common share (1)	$ (0.03)	$ (0.04)

Diluted weighted average common shares excluded incremental shares of approximately 51,364,000 (1) and 35,680,000 (1), respectively, for the fiscal year 2012 and 2011, due to their anti-dilutive effect.

(1) Amounts changed from the Company's Form 10-K filing on December 31, 2012. See note K.

Accounting for Stock-Based Compensation

The Company recognizes stock based compensation expense in the statement of operations based upon the fair value of the equity award amortized over the vesting period.

Segment Reporting

The Company currently operates in one segment.

Warrant Liability

The Company has warrants with an embedded feature that meet the requirements of derivative accounting per Accounting Standards Codification (“ASC”) Topic 815. The Company records these warrants at their fair value in accordance with Accounting Standards Codification (“ASC”) Topic 820, Fair Value Measurements and Disclosures.

Increases or decreases in fair value of the warrants are included as a component of other income (expense) in the accompanying statement of operations for the respective period. As of September 30, 2012, the liability for warrants decreased to approximately $19,319,000 from approximately $23,405,000 as of September 30, 2011, as a result of warrant exercises of $17,000 and a gain to the statements of operations for the fiscal year ended September 30, 2012 of approximately $4,069,000. The warrant liability and revaluations have not and will not have any impact on the Company's working capital, liquidity or business operations. Some of the Company's warrants contain terms that limit the number of shares the Company would be required to issue thereunder unless the warrant holder agrees to increase the limit prior to exercise. If the warrants outstanding as of September 30, 2012 were exercised in full without regard to any current exercise limits contained therein, the Company would be required to issue a maximum of 59,149,999 shares of common stock.

C. Liquidity

The accompanying financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America, assuming the Company will continue as a going concern, which contemplates the realization of assets and the liquidation of liabilities in the normal course of business.

The Company has incurred significant cash outflows from operations of approximately $879,000 and $3,102,000 for the fiscal years ended September 30, 2012 and 2011, respectively. The Company had net income of approximately $1,698,000 (including a non-cash gain for decreases in valuation of warrants of approximately $4,069,000) for the year ended September 30, 2012. In 2011 the Company had net income from operations of approximately $299,000 (including a non-cash gain for decreases in valuation of warrants of $3,887,000). The Company expects to incur additional losses and cash outflows from operations for several more years.

The Company has historically raised capital through the sale of its common shares and preferred shares; said financing transactions are more thoroughly discussed at note F – Stockholders' Equity. Management expects they will need to continue to finance the Company's operations through equity financing for several more years. Subsequent to September 30, 2012, the Company's management has been engaged in discussions with various investors to raise additional capital through the sale of common shares. However, there is no assurance that this contemplated financing will be consummated on acceptable terms or at all.

If the Company is unable to obtain additional funding for its operations, it will need to eliminate or substantially limit some or all of its activities, merge with another company, sell, lease or license some or all of its assets, or cease operations entirely. There is no assurance that the Company will be able to obtain additional financing on acceptable terms, or at all, or that the Company will be able to merge with another Company or sell, lease or license any or all of its assets. This raises substantial doubt about the Company's ability to continue as a going concern. These financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or amounts and classifications of liabilities that might result from this uncertainty.

D. Investments

Investment in CPEC LLC

The Company uses the equity method to account for its 35.0% ownership interest in CPEC. CPEC had $91,000 of net assets at each of September 30, 2012 and 2011. Aeolus' share of CPEC's net assets is included in other assets and the Company has no operations or activities unrelated to the out licensing of bucindolol.

E. Commitments

The Company acquires assets still in development and enters into license and research and development arrangements with third parties that often require milestone and royalty payments to the third party contingent upon the occurrence of certain future events linked to the success of the asset in development. Milestone payments may be required, contingent upon the successful achievement of an important point in the development life-cycle of the pharmaceutical product (e.g., approval of the product for marketing by a regulatory agency). If required by the arrangement, the Company may also be required to make royalty payments based upon a percentage of the net sales of the pharmaceutical product in the event that regulatory approval for marketing is obtained. Because of the contingent nature of these payments, they are not included in the table of contractual obligations. No milestones have been met, nor have any payments been made, as of September 30, 2012.

We are also obligated to pay patent filing, prosecution, maintenance and defense costs, if any, for the intellectual property the Company has licensed from National Jewish Health ("NJH"), National Jewish Medical and Research Center (the "NJMRC") and Duke University.

These arrangements may be material individually, and in the unlikely event that milestones for multiple products covered by these arrangements were reached in the same period, the aggregate charge to expense could be material to the results of operations in any one period. In addition, these arrangements often give Aeolus the discretion to unilaterally terminate development of the product, which would allow Aeolus to avoid making the contingent payments; however, Aeolus is unlikely to cease development if the compound successfully achieves clinical testing objectives.

F. Stockholders' Deficit

Basis of Presentation

Preferred Stock

The Certificate of Incorporation of the Company authorizes the issuance of up to 10,000,000 shares of Preferred Stock, at a par value of $0.01 per share, of which 1,250,000 shares are designated Series A Convertible Preferred Stock and 1,600,000 shares are designated Series B Convertible Preferred Stock. The Board of Directors has the authority to issue Preferred Stock in one or more series, to fix the designation and number of shares of each such series, and to determine or change the designation, relative rights, preferences, and limitations of any series of Preferred Stock, without any further vote or action by the stockholders of the Company.

In January 2001, the Company issued to Elan 28,457 shares of Series B Stock. In February 2002, the Company issued 58,883 additional shares of Series B Stock and 480,000 shares of common stock to Elan in exchange for the retirement of a $1,400,000 note payable to Elan. In May 2002, the Company sold 416,204 shares of Series B Stock to Elan for $3,000,000. On January 14, 2005, Elan converted 28,457 shares of the Series B Stock into 28,457 shares of common stock.

On February 7, 2011, the Company elected to exercise its right to repay a related party note payable to Elan, with a maturity value of approximately $663,000, with 50,993 shares of Series B Stock and a warrant to purchase an aggregate of 896,037 shares of Series B Stock at an exercise price of $0.01 per share. The warrant has a term of five years, a cashless exercise provision and customary anti-dilution adjustments in the event of stock splits, stock combination, reorganizations and similar events. In connection with the issuance, the Company amended its certificate of incorporation on February 7, 2011 to increase the authorized number of shares of Series B Stock from 600,000 to 1,600,000. The fair value of the warrants issued on February 7, 2011 was estimated to be $452,000 using the Black-Scholes option pricing model with the following assumptions: dividend yield of 0%, expected volatility of 93.3%, risk free interest rate of 2.39% and an expected life of five years.

As of September 30, 2012 and 2011, 526,080 shares of Series B Stock were outstanding, respectively. There are no shares of Series A Convertible Preferred Stock issued or outstanding.

With respect to dividend rights and rights upon liquidation, winding up and dissolution, the Series B Stock ranks pari passu with the common stock. Subject to any rights of senior stock, holders of Series B Stock are entitled to receive dividends or distributions as, when and if declared by the Board of Directors. In the event the Board of Directors declares a dividend or distribution with respect to the outstanding common stock, the holders of Series B Stock are entitled to receive the amount of dividends per share in the same form payable on the common stock based on the largest number of shares of common stock issuable upon conversion of the outstanding Series B Stock. In the event of

a liquidation, winding up or dissolution of the Company, subject to any rights of senior stock, the holders of Series B Stock are entitled to receive, pari passu with the holders of the common stock, the assets of the Company based on the largest number of shares of common stock issuable upon conversion of the outstanding Series B Stock.

Each share of Series B Stock is convertible into one share of common stock. The Series B Stock can be converted into common stock at any time upon the election of the holders of the Series B Stock except to the extent such conversion would result in the holders of Series B Stock owning in the aggregate more than 9.99% of the outstanding common stock.

The Series B Stock is not entitled to vote on any matter submitted to the vote of holders of the common stock except that the Company must obtain the approval of a majority of the outstanding shares of Series B Stock to either amend the Company's Certificate of Incorporation in a manner that would adversely affect the Series B Stock (including by creating an additional class or series of stock with rights that are senior or pari passu to the Series B Stock) or change the rights of the holders of the Series B Stock in any other respect.

Common Stock

August 2010 Financing

On August 12, 2010, the Company announced an additional financing with certain existing investors (the "August 2010 Investors"). Under the terms of the agreement, the Company received $1,000,000 in gross proceeds in exchange for the issuance of 2,500,000 shares of common stock and warrants to purchase up to 1,875,000 shares at an exercise price of $0.50 per share. The Company also granted to the August 2010 Investors the option to acquire, collectively, up to an additional 2,500,000 units, comprised of an aggregate of 2,500,000 shares of common stock and warrants to purchase up to an aggregate of 1,875,000 additional shares of common stock at an exercise price of $0.50 (the "August 2010 Call Option"). In addition, the August 2010 Investors granted to the Company the option to require these August 2010 Investors, severally and not jointly, to acquire up to 2,500,000 additional units, less any additional units acquired under the August 2010 Call Option, at the per additional unit purchase price of $0.40 (the "August 2010 Put Option"). On December 28, 2010, the investors exercised their Call Option and the Company received $1 million in proceeds in exchange for 2,500,000 common shares and 1,875,000 warrants.

Net cash proceeds from the August 2010 Financing, after deducting for expenses, were approximately $900,000.

The fair value of the August 2010 Warrants was estimated to be $542,000 using the Black-Scholes option pricing model with the following assumptions: dividend yield of 0%; expected volatility of 91.83%; risk free interest rate of 2.08%; and an expected life of seven years. The proceeds from the August 2010 financing were allocated based upon the relative fair values of the August 2010 Warrants and the August 2010 Shares. Due to the anti-dilution provisions of the August 2010 Warrants, these warrants were deemed to be a liability under current accounting guidance and, as a result, the warrant liability was increased by $542,000 of which $179,000 was recorded as a charge to the Statement of Operations and $363,000 of proceeds from the August 2010 financing was allocated to the value of the August 2010 Warrants.

On December 28, 2010, the investors exercised their Call Option and the Company received $1,000,000 in proceeds in exchange for 2,500,000 common shares and 1,875,000 warrants, with an initial exercise price of $0.50 per share, subject to adjustment as provided in the warrants (the "Additional Warrants"). The Additional Warrants are exercisable for a seven-year period from their date of issuance; contain a "cashless exercise" feature that allows the holder to exercise the Additional 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 Stock without exercising the Additional Warrant; contain a provision that 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 upon a change of control; and contain anti-dilution provisions in the event of a stock dividend or split, dividend payment or other issuance, reorganization, recapitalization or similar event.

The net cash proceeds to the Company from the December 2010 financing, after deducting for expenses, were approximately $990,000.

The fair value of the August 2010 Call Option warrants was estimated to be $912,000 using the Black-Scholes option pricing model with the following assumptions: dividend yield of 0%; expected volatility of 90.51%; risk free interest rate of 2.89%; and an expected life of seven years. The proceeds from the August 2010 Call Option exercise were allocated based upon the relative fair values of the August 2010 Call Option Warrants and the August 2010 Put Option Shares. Due to the anti-dilution provisions of the August 2010 Call Option Warrants, these warrants were deemed to be a liability under current accounting guidance and as a result the warrant liability was increased by $912,000 of which $534,000 was recorded as a charge to the Statement of Operations and $378,000 of proceeds from the August 2010 Call Option exercise was allocated to the value of the October 2009 Warrants.

March 2012 Financing

On March 30, 2012 and April 4, 2012, the Company entered into Securities Purchase Agreements (the "Purchase Agreements") with certain accredited investors (the "Purchasers") and completed a financing (the "March 2012 Financing"). Under the terms of the Purchase Agreements, the Company received $660,000 in gross proceeds in exchange for the issuance of an aggregate of 2,200,166 units (the "March 2012 Units"), consisting of 2,200,166 shares of common stock and 1,650,126 warrants, at a purchase price of $0.30 per Unit. Each Unit consisted of (i) one share of common stock (the "March 2012 Common Shares") and (ii) a five year warrant to purchase 0.75 of a share of the Company's common stock (the "March 2012 Warrants"). The March 2012 Warrants have an initial exercise price of $0.40 per share.

On March 30, 2012, the Company received $530,000 in gross proceeds in exchange for the issuance of an aggregate of 1,766,833 March 2012 Units, which consisted of 1,766,833 shares of common stock and 1,325,126 warrants.

On April 4, 2012, the Company received $130,000 in gross proceeds in exchange for the issuance of an aggregate of approximately 433,333 March 2012 Units, which consisted of 433,333 shares of common stock and 325,000 warrants.

Net cash proceeds from the March 2012 Financing, after deducting for expenses, were $642,000. The Company also incurred non-cash expenses in the form of 12,501 warrants issued to consultants, at similar terms as the March 2012 Warrants, for services provided. Pursuant to the warrants, the Company is obligated to issue up to a total of 1,662,627 shares of common stock as of September 30, 2012 in connection with the March 2012 Financing.

The fair value of the March 2012 Warrants issued on March 30, 2012 was estimated to be $363,000 using the Black-Scholes option pricing model with the following assumptions: dividend yield of 0%, expected volatility of 150.74%, risk free interest rate of 1.04% and an expected life of five years. The proceeds from the March 2012 Financing were allocated based upon the relative fair values of the March 2012 Financing Warrants and the March 2012 Common Shares.

The fair value of the March 2012 Warrants issued on April 4, 2012 was estimated to be $84,000 using the Black-Scholes option pricing model with the following assumptions: dividend yield of 0%, expected volatility of 149.36%, risk free interest rate of 1.05% and an expected life of five years. The proceeds from the March 2012 Financing were allocated based upon the relative fair values of the March 2012 Financing Warrants and the March 2012 Common Shares.

Dividends

The Company has never paid a cash dividend on its common stock and does not anticipate paying cash dividends on its common stock in the foreseeable future. If we pay a cash dividend on our common stock, we also must pay the same dividend on an as converted basis on our Series B preferred stock. In addition, under the terms of the warrants to purchase up to 59,149,999 shares of our common stock issued to Xmark Opportunity Partners, LLC or its affiliates ("Xmark") in three transactions (on each of October 6, 2009, July 30, 2010 and August 11, 2010), and any additional warrants issued pursuant to the put and/or option right granted in our August 2010 financing, if we were to pay a dividend on our common stock, the exercise price of these warrants would be reset from $0.28 per share or $0.50 per share, as applicable, to $0.01 per share and the warrant holders would also be entitled receive any such dividend paid.

Warrants

As of September 30, 2012, warrants to purchase an aggregate of 62,132,626 shares of common stock were outstanding. Details of the warrants for common stock outstanding at September 30, 2012 were as follows:

23

Number of Shares	Exercise Price	Expiration Date
100,000	$ 0.50	May 2014
100,000	$ 1.00	May 2014
100,000	$ 1.50	May 2014
125,000	$ 0.65	June 2014
125,000	$ 1.00	June 2014
20,000	$ 0.39	September 2014
15,000	$ 0.50	September 2014
15,000	$ 0.60	September 2014
50,000	$ 0.38	April 2015
50,000	$ 0.50	May 2016
50,000	$ 0.50	July 2016
50,000	$ 1.00	July 2016
50,000	$ 1.50	July 2016
50,000	$ 2.00	July 2016
50,000	$ 2.50	July 2016
43,614,285	$ 0.28	October 2016
1,337,627	$ 0.40	March 2017
325,000	$ 0.40	April 2017
300,000	$ 0.258	June 2017
11,785,714	$ 0.28	July 2017
35,000	$ 0.30	August 2017
1,875,000	$ 0.50	August 2017
35,000	$ 0.44	September 2017
1,875,000	$ 0.50	December 2017
62,132,626		

As of September 30, 2012, one warrant to purchase an aggregate of 896,037 shares of preferred stock was outstanding. Details of the warrant for preferred stock outstanding at September 30, 2012 were as follows:

Number of Shares	Exercise Price	Expiration Date
896,037	$ 0.01	February 2016
896,037	$	

As of September 30, 2011, warrants to purchase an aggregate of 61,039,999 shares of common stock were outstanding. Details of the warrants for common stock outstanding at September 30, 2011 were as follows:

Number of Shares	Exercise Price	Expiration Date
940,000	$ 0.28	May 2012
100,000	$ 0.45	May 2014
100,000	$ 1.00	May 2014
100,000	$ 1.50	May 2014
125,000	$ 0.65	June 2014
125,000	$ 1.00	June 2014
20,000	$ 0.39	September 2014
15,000	$ 0.50	September 2014
15,000	$ 0.60	September 2014
50,000	$ 0.38	April 2015

50,000	$	0.50	May 2016
50,000	$	0.50	July 2016
50,000	$	1.00	July 2016
50,000	$	1.50	July 2016
50,000	$	2.00	July 2016
50,000	$	2.50	July 2016
43,614,285	$	0.28	October 2016
11,785,714	$	0.28	July 2017
1,875,000	$	0.50	August 2017
1,875,000	$	0.50	December 2017
61,039,999			

As of September 30, 2011, one warrant to purchase an aggregate of 896,037 shares of preferred stock was outstanding. Details of the warrant for preferred stock outstanding at September 30, 2011 were as follows:

Number of Shares	Exercise Price	Expiration Date
896,037	$ 0.01	February 2016
896,037	$	

Below is a summary of warrant activity for the last two fiscal years ended September 30:

	Number of Shares	Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at 9/30/2010	66,901,667	$ 0.34	5.5 years	$ 16,278
Granted	3,821,037	$ 0.58	6.6 years	$ 367
Exercised	(1,336,668)	$ 0.28	0.5 years	$ 580
Cancelled	(7,250,000)	$ 0.78		$ -
Forfeited	(200,000)	$ 1.75		$ -
Outstanding at 9/30/2011	61,936,036	$ 0.30	5.2 years	$ 8,258
Granted	1,997,627	$ 0.38	4.5 years	$ 35
Exercised	(940,000)	$ 0.28		$ -
Cancelled	-	$ -		$ -
Forfeited	-	$ -		$ -
Outstanding at 9/30/2012	62,993,663	$ 0.30	4.2 years	$ 5,344
Exercisable at 9/30/2012	62,993,663	$ 0.30	4.2 years	$ 5,344

G. Stock-Based Compensation

As an integral component of a management and employee retention program designed to motivate, retain and provide incentive to the Company's management, employees and key consultants, the Board of Directors approved the 2004 Stock Incentive Plan (the "2004 Plan") and reserved 10,000,000 shares of common stock for issuance under the 2004 Plan. As of September 30, 2012, 2,250,909 shares were available to be granted under the 2004 Plan. The exercise price of the incentive stock options ("ISOs") granted under the 2004 Plan must not be less than the fair market value of the common stock as determined on the date of the grant. The options may have a term up to 10 years. Options typically vest immediately or up to one year following the date of the grant.

Under the Company's 1994 Stock Option Plan (the "1994 Plan"), incentive stock options or non-qualified stock options to purchase 2,500,000 shares of Aeolus' common stock may be granted to employees, directors and consultants of the Company. As of September 30, 2012, there were no shares available to be granted under the 1994 Plan. The exercise price of the ISOs granted under the 1994 Plan must not be less than the fair market value of the common stock as determined on the date of the grant. The options may have a term up to 10 years. Options typically vest over one to three years following the date of the grant.

Below is a summary of stock option activity for the last three fiscal years ended September 30:

	Number of Shares	Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at 9/30/2010	7,921,904	$ 1.12	7.0 years	$ 874
Granted	1,095,000	$ 0.53	9.5 years	$ 8
Exercised	-	$ -		$ -
Cancelled	(74,276)	$ 28.30		$ -
Forfeited	-	$ -		$ -
Outstanding at 9/30/2011	8,942,628	$ 0.82	6.5 years	$ 259
Granted	691,250	$ 0.30	9.6 years	$ 49
Exercised	-	$ -		$ -
Cancelled	(85,217)	$ 10.77		$ -
Forfeited	(75,000)	$ 0.41		$ 3
Outstanding at 9/30/2012	9,473,661	$ 0.70	5.8 years	$ 154
Exercisable at 9/30/2012	9,066,895	$ 0.71	5.6 years	$ 120

Stock options granted to consultants during fiscal year 2012 and 2011 were fully vested when issued or vested over a twelve month period. Stock option expense for stock options granted to consultants was $14,000 and $26,000 for fiscal year 2012 and 2011, respectively. For the fiscal years 2012 and 2011, all stock options were issued at or above fair market value of a share of common stock. The weighted-average grant-date fair value of options granted during fiscal years 2012 and 2011 was $0.28 and $0.54, respectively.

A summary of the status of non-vested shares for the fiscal years ended September 30 was:

	Number of Shares	Weighted Average Grant-Date Fair Value
Nonvested at September 30, 2010	1,749,161	613,461
Granted	1,095,000	595,315
Vested	(2,251,254)	(913,167)
Forfeited	-	-
Nonvested at September 30, 2011	592,907	295,461
Granted	691,250	190,660
Vested	(839,891)	(369,320)
Forfeited	(37,500)	(10,607)
Nonvested at September 30, 2012	406,766	106,194

The total unrecognized compensation expense for outstanding stock options was $98,000 as of September 30, 2012, which will be recognized over a weighted average period of eight months. The total fair value of shares vested during fiscal years 2012 and 2011 was $369,000 and $913,000, respectively.

The details of stock options for the fiscal year ended September 30, 2012 are as follows:

	Options Outstanding			Options Exercisable		
Range of Exercise Prices	Number Outstanding at September 30, 2012	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)	Number Exercisable at September 30, 2012	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)
$0.23-$0.30	1,601,250	$0.29	7.28	1,318,856	$0.30	6.75
$0.31-$0.40	3,767,750	$0.38	7.67	3,643,378	$0.39	7.61
$0.41-$0.50	177,000	$0.46	6.75	177,000	$0.46	6.75
$0.51-$0.60	963,750	$0.59	6.64	963,750	$0.59	6.64
$0.61-$0.70	66,500	$0.68	3.88	66,500	$0.68	3.88
$0.71-$0.80	382,250	$0.75	4.66	382,250	$0.75	4.66
$0.81-$0.90	769,835	$0.88	3.66	769,835	$0.88	3.66
$0.91-$1.00	44,500	$0.94	2.99	44,500	$0.94	2.99
$1.01-$1.50	1,337,519	$1.48	0.93	1,337,519	$1.48	0.93
$1.51-$5.00	363,307	$2.77	1.75	363,307	$2.77	1.75

Stock-based compensation expense recognized in the statement of operations is as follows (in thousands):

	For the fiscal year ended September 30,	
	2012	2011
Research and Development Expenses	$ 14	$ 79
General and Administrative Expenses	554	914
Total Stock-based Compensation Expense	$ 568	$ 993

The fair value of the options associated with the above compensation expense was determined at the date of the grant using the Black-Scholes option pricing model with the following weighted average assumptions:

	For the fiscal year ended September 30,	
	2012	2011
Dividend yield	0 %	0 %
Expected volatility	146 %	89% - 179%
Risk-free interest rate	0.90 %	1.1% - 3.7%
Expected option life after shares are vested	5.23 years	8.35 years

Effective July 1, 2011, the Company began using historical information regarding the volatility of its own stock price for purposes of calculating an expected volatility rate for stock option valuation purposes. From April 1, 2009 through June 30, 2011, the Company used a peer group of publicly traded entities to determine an expected volatility rate for stock option valuation. There was no material impact on the financial statements as a result of this change as of July 1, 2011. In addition, the Company changed its method of amortization of stock-based compensation from the multiple attribute method to straight line for option grants made on and subsequent to April 1, 2009. There was no material impact on the financial statements as a result of this change as of April 1, 2009. The Company believes the use of its historical stock price and straight line amortization results in a better estimate of the Company's stock-based compensation expense.

H. Income Taxes

As of September 30, 2012 and 2011, the Company had federal net operating loss ("NOL") carry-forwards of $110,986,000 and $111,347,000, respectively and state operating loss carry-forwards of $32,912,000 and $34,757,000, respectively. The use of these federal and state NOL carry-forwards might be subject to limitation under the rules regarding a change in stock ownership as determined by the Internal Revenue Code (the "Code"). The Company may have had a change of control under Section 382 of the Code during fiscal 2004 and 2006; however, a complete analysis of the limitation of the NOL carry-forwards will not be completed until the time the Company projects it will be able to utilize such NOLs. The federal net operating and the state net operating losses began to expire in 2010. Additionally, the Company had federal research and development carry-forwards as of September 30, 2012 and 2011 of $3,587,000 and $3,329,000, respectively. The Company had state research and development carry-forwards as of September 30, 2012 and 2011 of $892,000 and $624,000, respectively.

Significant components of the Company's deferred tax assets at September 30, 2012 and 2011 consisted of the following (in thousands):

	2012	2011
Net operating loss carry-forwards	$ 40,645	$ 40,939
Research and development credit carry-forwards	4,479	3,953
Accrued payroll related liabilities	2,802	2,750
Depreciation and amortization	939	—
State Taxes	(1,554)	(1,450)
Total deferred tax assets	47,311	46,192
Deferred tax liabilities	—	—
Valuation allowance for deferred assets	(47,311)	(46,192)
Net deferred tax asset	$ —	$ —

Due to the uncertainty surrounding the realization of the favorable tax attributes in future tax returns, all of the deferred tax assets have been fully offset by a valuation allowance. The change in the valuation allowance is primarily a result of the net operating loss carry-forwards.

Taxes computed at the statutory federal income tax rate of 34% are reconciled to the provision for income taxes as follows (dollars in thousands):

	2012	2011
Effective income tax rate	0%	0%
United States Federal income tax at statutory rate	$ 577	$ 95
State income taxes (net of federal benefit)	99	2

Warrant expense	(1,621)	(1,311)
Prior year deferred true up	1,119	1,178
Change in valuation reserves	(365)	(212)
Other	193	250
Provision for income taxes	$ 2	$ 2

I. Agreements

Duke Licenses

The Company has obtained exclusive worldwide licenses (the "Duke Licenses") from Duke University ("Duke") to develop, make, have made, use and sell products using certain technology in the field of free radical and antioxidant research, developed by certain scientists at Duke. Future discoveries in the field of antioxidant research from these scientists' laboratories at Duke are also covered by the Duke Licenses. The Duke Licenses require the Company to use its best efforts to pursue development of products using the licensed technology and compounds. These efforts are to include the manufacture or production of products for testing, development and sale. Aeolus is also obligated to use its best efforts to have the licensed technology cleared for marketing in the United States by the U.S. Food and Drug Administration and in other countries in which Aeolus intends to sell products using the licensed technology. Aeolus will pay royalties to Duke on net product sales during the terms of the Duke Licenses, and milestone payments upon certain regulatory approvals and annual sales levels. In addition, Aeolus is obligated under the Duke Licenses to pay all or a portion of patent prosecution, maintenance and defense costs. Unless earlier terminated, the Duke Licenses continue until the expiration of the last to expire issued patent on the licensed technology.

National Jewish Medical and Research Center Agreements

Aeolus has an exclusive worldwide license ("NJH License") from National Jewish Health to develop, make, have made, use and sell products using certain technology developed by certain scientists at NJH. The NJH License requires Aeolus to use commercially reasonable efforts to diligently pursue the development and government approval of products using the licensed technology. Aeolus will be obligated to pay royalties to NJH on net product sales during the term of the NJH License and a milestone payment upon regulatory approval, if obtained. In addition, Aeolus is obligated under the NJH License to pay all or a portion of patent prosecution, maintenance and defense costs. Unless earlier terminated, the NJH License continues until the expiration of the last to expire issued patent on the licensed technology.

Elan Corporation, plc

In May 2002, the Company entered into a collaboration transaction with affiliates of Elan Corporation, plc for the development of the Company's catalytic antioxidant compounds as a treatment for tissue damage from cancer radiation and chemotherapy. Although Elan and the Company terminated this collaboration in January 2003, the Company will pay Elan a royalty on net sales of its catalytic antioxidant products sold, if any, for the prevention and treatment of radiation-induced and chemotherapy-induced tissue damage.

J. Quarterly Financial Data (as restated) (unaudited)

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total Year
Fiscal 2012					
Total revenue	$2,215	$2,231	$1,448	$1,399	$7,293
Net income (loss) (1)	$2,977	$2,763	$3,064	$(7,106)	$1,698
Net income available to stockholders – Basic (2)	$1,487	$1,381	$1,558	$(7,106)	$856
Net income available to stockholders – Diluted (2)	$(415)	$(283)	$(307)	$(7,106)	$(2,161)
	$0.02	$0.02	$0.02	$(0.11)	$0.01

Basic net income (loss) per common share attributable to common stockholders (2)					
Diluted net income (loss) per common share attributable to common stockholders (2)	$(0.01)	$0.00	$0.00	$(0.11)	$(0.03)

30

Fiscal 2011					
Total revenue	$—	$785	$1,912	$2,124	$4,821
Net income (loss) (1)	$(7,620)	$3,778	$6,293	$(2,152)	$299
Net income available to stockholders – Basic (2)	$(7,620)	$1,879	$3,144	$(2,152)	$149
Net income available to stockholders – Diluted (2)	$(7,620)	$(937)	$(687)	$(2,152)	$(3,254)
Basic net income (loss) per common share attributable to common stockholders (2)	$(0.13)	$0.03	$0.05	$(0.04)	$0.00
Diluted net income (loss) per common share attributable to common stockholders (2)	$(0.13)	$(0.01)	$(0.01)	$(0.04)	$(0.04)

(1) The net income (loss) per share restatement did not impact net income (loss) reported by the Company.
(2) Amounts restated from the Company's Form 10-K filing on December 31, 2012. See note K.

K. Subsequent Events

As referenced in note B and J, the Company identified an error in the calculation of net income (loss) per common share since the filing of the 10-K on December 31, 2012. All references or presentations of net income (loss) per common share have been restated from the original filing of the 10-K on December 31, 2012.

Basic net income (loss) per share

As discussed in Note B, the Company computes basic net income (loss) per weighted average share attributable to common stockholders using the two-class method. Previously the Company used the weighted average number of shares of common stock outstanding during the period.

The restatement to our calculation relates to an unaccounted term in our preferred shares, preferred warrants and the majority of our common warrants (59,149,999 warrants). Each of these shares and warrants would participate in any potential common stock dividends declared by the Company. Dividend participation by these shares and warrants requires the two-class method of net income (loss) per share calculation in accordance with ASC 260-10-45-60.

Our previous basic income (loss) per share calculation was as follows:

	Fiscal year ended September 30,	
	2012	2011
Numerator:		
Net income (loss)	$ 1,698	$ 299
Denominator:		
Weighted-average number of shares – basic	61,593	59,474
Net income (loss) per share – basic	$ 0.03	$ 0.01

Our restated basic income (loss) per share calculation is as follows:

	Fiscal year ended September 30,	
	2012	2011

Net income (loss)	$1,698	$299

Common stock and participating shares	Weighted-average Number of shares	Net income	Weighted-average Number of shares	Net income
Common stock	61,593	$856	59,474	$149
Participating common stock warrants	59,150	$822	51,150	$148
Participating series B preferred stock	526	$7	526	$1
Participating series B preferred warrants	896	$12	896	$2
	122,165	$1,698	112,046	$299

Numerator:				
Weighted-average net income (loss)		$856		$149
Denominator:				
Weighted-average number of basic shares	61,593		59,474	
Basic net income (loss) per share		$0.01		$0.00

Diluted net income (loss) per share

As discussed in Note B, the Company computes diluted net income (loss) per weighted average share attributable to common stockholders using the two-class method, and when appropriate, the treasury method. Previously the Company used the weighted average number of shares of common and dilutive potential common shares outstanding during the applicable period. Potential common shares outstanding consist of stock options, warrants and convertible preferred stock using the treasury stock method and are excluded if their effect is anti-dilutive.

The restatement to our calculation relates to the required removal of fair value adjustments relating to our common stock warrants subject to warrant liability accounting from our calculation of net income (loss) available to diluted shareholders. Each of these warrants would participate in any potential common stock dividends in the future. The Company did not account for the removal of any non-cash gain (loss) from the fluctuation of the warrant liability associated with the incremental warrants in our calculation of net income (loss) per common share.

Our previous diluted income (loss) per share calculation was as follows:

	Fiscal year ended September 30,	
	2012	2011
Numerator:		
Net income (loss)	$ 1,698	$ 299
Denominator:		
Weighted-average number of shares – basic	61,593	59,474
Dilutive securities – equity awards	11,156	22,828
Weighted-average number of shares – diluted	72,749	82,302
Net income (loss) per share – diluted	$ 0.02	$ 0.00

Our restated diluted income (loss) per share calculation is as follows:

	Fiscal year ended September 30, 2012			Fiscal year ended September 30, 2011		
Net income (loss)	$1,698			$299		
Less gain (loss) on warrant liability:						
Participating common warrants	3,859			3,553		
Undistributed net income (loss)	$(2,161)			$(3,254)		
Common stock and common stock	Outstanding	Incremental Dilutive shares *	Diluted shares	Outstanding	Incremental Dilutive shares *	Diluted shares

equivalents in order of dilutive effect						
Common stock	61,593		61,593	59,474		59,474
Participating common warrants	59,150	9,448	9,448	59,150	26,388	26,388
Participating preferred warrants	896	869	**	896	879	**
Series B preferred shares	526	526	**	526	526	**
Common stock options	9,474	240	**	8,943	1,497	**
Non-participating common stock warrants	2,983	75	**	1,890	476	**
			71,041			85,862

Numerator:		
Weighted-average net income (loss)	$ (2,161)	$ (3,254)
Denominator:		
Weighted-average number of basic shares	71,041	85,862
Diluted net income (loss) per share	$ (0.03)	$ (0.04)

* Treasury method applied

** Excluded as the effect is anti-dilutive

Diluted weighted average common shares included incremental shares of approximately 9,448,000 and 26,388,000 shares for the fiscal years ended September 30, 2012 and 2011 issuable upon the exercise of warrants to purchase common stock. Diluted weighted average common shares excluded incremental shares of approximately 51,364,000 and 35,680,000, respectively, for the fiscal year 2012 and 2011, due to their anti-dilutive effect.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

As of February 12, 2013, we carried out an evaluation, under the supervision and with the participation of our management, including our President and Chief Executive Officer (our Principal Executive Officer) and Chief Financial Officer (our Principal Financial and Accounting Officer), of the effectiveness of our disclosure controls and procedures required by Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Based upon that evaluation, our Principal Executive Officer and Principal Financial and Accounting Officer have concluded that our disclosure controls and procedures were not effective as of September 30, 2012 to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms.

In connection with the preparation of the Quarterly Report on Form 10-Q for the first quarter of fiscal year 2013, we determined that our basic and diluted net income (loss) per share calculations should have been prepared using the “two-class method.” Under the two-class method, securities that participate in dividends are considered “participating securities.” Our preferred shares, preferred warrants and most of our common stock warrants are considered “participating securities” because they include non-forfeitable rights to dividends.

Additionally, we determined that the diluted net income (loss) per share calculations did not include the net income effect of changes in fair value related to dilutive, liability classified warrants.

Application of the two-class method and, for dilutive earnings per share, including the effect of changes in fair value for liability classified warrants resulted in a modification to our previously reported basic and diluted net income (loss) per share for the fiscal years ended September 30, 2012 and 2011, and the quarterly periods included therein.

On February 12, 2013, the Audit Committee of our Board of Directors concluded, based on the recommendation of management, that the consolidated statements of operations for the fiscal years ended September 30, 2012 and 2011, and the consolidated statements of operations for the quarterly periods in the years ended September 30, 2012 and 2011 (collectively, the “Prior Financial Statements”), should no longer be relied upon because of the incorrect calculation of earnings per share. Our management and the Audit Committee discussed the matters relating to the

restatements with Grant Thornton LLP, our independent registered public accountants.

We filed a Current Report on Form 8-K on February 19, 2013 to reflect the revisions to our Annual Report on Form 10-K for the year ended September 30, 2012 described above. We included the revisions set forth above in our post-effective amendment to registration statement on Form S-1 (File No. 333-181409) filed on February 19, 2013 (the “Form S-1”). We are filing this amendment to our Annual Report on Form 10-K/A for the year ended September 30, 2012 to reflect these revisions.

We do not intend to amend our previously filed Quarterly Reports on Form 10-Q for the periods ended December 31, 2010, March 31, 2011, June 30, 2011, December 31, 2011, March 31, 2012 or June 30, 2012, or our Annual Report on Form 10-K for the year ended September 30, 2011, to reflect the revisions described above.

A material weakness is a significant deficiency, or combination of deficiencies, in internal control over financial reporting that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. As a result of the determination that our diluted net income (loss) per share calculations did not include the net income effect of changes in fair value related to dilutive, liability classified warrants for the fiscal years ended September 30, 2012 and 2011, and the quarterly periods included therein, management has determined that a material weakness existed as of September 30, 2012.

Management believes the material weakness is due to a deficiency in technical resources over financial reporting. As a result of the material weakness, management is evaluating mitigating controls to minimize the potential for incorrect calculations of earnings per share in our future financial statements.

Management's Report on Internal Control over Financial Reporting
Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15 (f) and 15d-15 (f) of the Exchange Act. Our internal control over financial reporting is a process designed to provide reasonable assurance to our management and Board of Directors regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on our financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements, errors or fraud. Also, projections of any evaluations of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of September 30, 2012. In making this assessment, our management used criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in an Internal Control Integrated Framework. Based on the criteria set forth by COSO, management concluded that our internal control over financial reporting was not effective as of September 30, 2012.

This Annual Report on Form 10-K/A does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by our registered public accounting firm pursuant to rules of the SEC that permit the Company to provide only management's report in this Annual Report on Form 10-K/A.

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended) during the quarter ended September 30, 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Information Regarding Directors

The following sets forth the names and ages (as of December 27, 2012) of our directors, and certain other information about them.

Name of Director	Age as of December 27, 2012	Director Since
David C. Cavalier	43	April 2004
John M. Farah, Jr., Ph.D.	60	October 2005
Joseph J. Krivulka	60	June 2004
Amit Kumar, Ph.D.	48	June 2004
Michael E. Lewis, Ph.D.	61	June 2004
Chris A. Rallis	59	June 2004
Peter D. Suzdak, Ph.D.	54	June 2004

David C. Cavalier has been the Chairman of our Board since April 30, 2004, and an employee of the Company since November 2009. Since 2001, he has been a Principal and the Chief Operating Officer of Xmark Opportunity Partners, LLC, a manager of a family of private investment funds. From 1995 to 1996, Mr. Cavalier worked for Tiger Real Estate, a $785 million private investment fund sponsored by Tiger Management Corporation. Mr. Cavalier began his career in 1994 in the Investment Banking Division of Goldman, Sachs & Co. working on debt and equity offerings for public and private real estate companies. He received a B.A. from Yale University and an M. Phil. from Oxford University. We believe that Mr. Cavalier's experiences, qualifications, attributes and skills to serve as a director of our Company include his strong understanding of our Company and operations, having served as Chairman of the Board for over 7 years and as an employee for the past 2 years. In addition, Mr. Cavalier's past experience and expertise in investment banking and company financings are a valuable contribution to our Board.

John M. Farah, Jr., Ph.D. has been an independent director of ours since October 2005 and a member of our audit committee. He is founder and managing director of a private international consultancy serving branded biopharma clients in the US and abroad and currently serves as an independent director of the private biopharmaceutical company, Melior Discovery, Inc. From 2008 to 2010, Dr. Farah was an independent director of GenSpera, Inc. (GNSZ), a publicly-traded pharmaceutical development stage company. Dr. Farah was a vice president at Cephalon, Inc., a biopharmaceutical company, from October 1992 until December 2011 after the company was integrated into Teva Pharmaceuticals. At Cephalon, Dr. Farah led the headquarter team of an international business unit with oversight of strategic product registrations, operations and sales abroad; he was latterly responsible for key Asia Pacific markets coordinating corporate product support for third party distributors and licensees. Dr. Farah joined Cephalon in 1992 to manage scientific affairs in support of the company's R&D department. He gained increasing responsibilities in scientific affairs, and eventually, became a senior team member of worldwide business development

promoting and negotiating R&D and commercial alliances with multinational and regional pharmaceutical firms. In 2003, Dr. Farah led worldwide product export with P&L responsibilities for third party product sales and support, and in 2006 focused on strategic growth and commercial success in Asia and the Americas ex-US. In addition to his responsibilities for business development and regional international revenues, Dr. Farah oversaw successful patent litigations in Europe and Latin America. From 2008 until the company's acquisition by Teva, he served as treasurer and a director of Cephalon's political action committee. Prior to joining Cephalon, Dr. Farah was a research investigator at GD Searle in nervous system and immunoinflammatory disease programs. His training included postdoctoral neuroscience research at the National Institutes of Health (NIH, NINCDS) following his doctorate in physiology from the Uniformed Services University. He holds a B.S. in Zoology from the University of Maryland and a B.H.A. from New College of California. We believe that Dr. Farah should serve as a director of our Company because of his extensive career in the pharmaceutical industry and international experience. Dr. Farah's past experience negotiating research partnerships, product licensing and academic collaborations are a valuable contribution to our Board and his experience allows him to provide additional insight to our Board in considering and approving these types of partnerships for the Company.

Joseph J. Krivulka is the founder of Triax Pharmaceuticals, LLC, Akrimax Pharmaceuticals LLC and Rouses Point Pharmaceuticals, LLC. Mr. Krivulka has served as its Chief Executive Officer of Triax Pharmaceuticals, LLC since November 2004, Chairman of the Board of Akrimax Pharmaceuticals, LLC since January 2008 and Chairman of the Board of Rouses Point Pharmaceuticals, LLC since September 2008. He also co-founded Reliant Pharmaceuticals, LLC and served as its President from 1999 until 2004. Mr. Krivulka has more than 25 years of experience in the pharmaceutical industry and was formerly Chief Executive Officer of Bertek, Inc., a subsidiary of Mylan Laboratories Inc., and Corporate Vice President of Mylan Laboratories. He has extensive expertise in product launches, reformulation and line extensions, clinical development, and manufacturing. He successfully brought to market numerous branded products and managed Mylan's entry into the branded pharmaceutical business, with the acquisition of several pharmaceutical companies. Mr. Krivulka is a member of the board of directors of Nektar Therapeutics, a publicly-held pharmaceutical company. We believe Mr. Krivulka's 25 years in the pharmaceutical industry, as well as his experience as a director of multiple public companies over his career, provide him with critical insight about our technology and make him a valuable asset to our Board. In particular, Mr. Krivulka has been involved in the launch of a number of pharmaceutical products and he is very familiar with pharmaceutical manufacturing processes, which allow him to provide valuable advice to our Board.

Amit Kumar, Ph.D. is currently the Chairman of the Board of Ascent Solar Technologies, a publicly-held solar energy company. From September 2001 to June 2010, Dr. Kumar was President and Chief Executive Officer of CombiMatrix Corporation, a publicly-held biotechnology company. He has been a director of CombiMatrix since September 2000. Previously, Dr. Kumar was Vice President of Life Sciences of Acacia Research Corp. From January 1999 to February 2000, Dr. Kumar was the founding President and CEO of Signature BioSciences, Inc., a life science company developing technology for advanced research in genomics, proteomics and drug discovery. From January 1998 to December 1999, Dr. Kumar was an Entrepreneur in Residence with Oak Investment Partners, a venture capital firm. From October 1996 to January 1998, Dr. Kumar was a Senior Manager at Idexx Laboratories, Inc., a biotechnology company. From October 1993 to September 1996, he was Head of Research & Development for Idetek Corporation, which was later acquired by Idexx Laboratories, Inc. Dr. Kumar received his B.S. in Chemistry from Occidental College. After joint studies at Stanford University and the California Institute of Technology, he received his Ph.D. from the California Institute of Technology in 1991. He also completed a post-doctoral fellowship at Harvard University from 1991 to 1993. Dr. Kumar is also a member of the board of directors of Luechemix and Tacere Therapeutics, both private biotechnology companies. We believe that Dr. Kumar should serve as a director of our Company in light of his experience serving as an officer and on the board of directors of a number of publicly-held companies, as well as his past venture capital and capital-raising experience. Dr. Kumar's experience in scientific research and development is also a valuable contribution to our Board, particularly during deliberations and discussions relating to research and development matters.

Michael E. Lewis, Ph.D. has been President of BioDiligence Partners, Inc., a private consulting firm, since 1994. He co-founded Cara Therapeutics Inc., a privately-held biopharmaceutical company, and from 2004 to 2009 served as a director and Chief Scientific Advisor of Cara. He has also served as a director of Polymedix, Inc., a publicly-held biotechnology company, since 2003. Dr. Lewis co-founded Arena Pharmaceuticals, Inc. in 1997, and was a director until 2000 and Arena's Chief Scientific Advisor until 2003. He also co-founded Adolor Corporation in 1994 and served as its Chief Scientific Advisor until 1997. Dr. Lewis was Vice President of Research at Symphony Pharmaceuticals, Inc. from 1993 to 1994. He also co-founded Cephalon, Inc., where he served as Senior Scientist, Director of Pharmacology, and Senior Director of Scientific Affairs, between 1988 and 1993. Prior to that, Dr. Lewis was a Principal Investigator at E.I. DuPont de Nemours & Co., Inc. from 1985 to 1987. Dr. Lewis received a B.A. with Special Honors in Psychology from George Washington University, and an M.A. and Ph.D. in Psychology from Clark University, followed by postdoctoral training in neurosciences at the University of Cambridge, the National Institutes of Health, and the University of Michigan. We believe that it is appropriate for Dr. Lewis to serve as a director of our Company because of his experience as a chief scientific advisor of several companies and his long tenure serving on the boards of public companies. In addition, his background allows him to provide additional insight to the Board in analyzing our Company's scientific strategies.

36

Chris A. Rallis has been an executive-in-residence at Pappas Ventures, a life science venture capital firm since January 2008. Previously, Mr. Rallis was the President and Chief Executive Officer of ImmunoBiosciences, Inc. ("IBI"), a vaccine technology company located in Raleigh, North Carolina from April 2006 through June 2007. Prior to joining IBI, Mr. Rallis served as an executive in residence (part time) for Pappas Ventures, and as a consultant for Duke University and Panacos Pharmaceuticals, Inc. Mr. Rallis is the former President and Chief Operating Officer and director of Triangle Pharmaceuticals, Inc., which was acquired by Gilead Sciences in January 2003 for approximately $465 million. Prior to assuming the role of President and COO in March 2000, he was Executive Vice President, Business Development and General Counsel. While at Triangle, Mr. Rallis participated in 11 equity financings generating gross proceeds of approximately $500 million. He was also primarily responsible for all business development activities which included a worldwide alliance with Abbott Laboratories and the in-licensing of ten compounds. Before joining Triangle in 1995, Mr. Rallis served in various business development and legal management roles with Burroughs Wellcome Co. over a 13-year period, including Vice President of Strategic Planning and Business Development. Mr. Rallis also serves on the boards of Adherex Technologies, Inc., a publicly-held biopharmaceutical company located in Research Triangle Park, NC and Oxygen Biotherapeutics, Inc., a publicly-held biopharmaceutical company located in Morrisville, NC. Mr. Rallis serves on the audit committees of both boards and chairs the audit committee at Adherex. Mr. Rallis received his A.B. degree in economics from Harvard College and a J.D. from Duke University. We believe that Mr. Rallis should serve as a director of our Company in light of his experience serving as an executive officer of, and participating in a number of equity financings for, other pharmaceutical companies. Mr. Rallis' experiences in development activities and strategic alliances are valuable to Board deliberations. In addition, his venture capital consulting experience allows him to contribute additional insight to the Board in refining our Company's business strategies and commercial objectives.

Peter D. Suzdak , Ph.D. is a research and development executive with more than 23 years of experience in U.S. and European pharmaceutical companies. Dr. Suzdak is currently Chief Scientific Officer at Corridor Pharmaceuticals. Prior to joining Corridor, Dr. Suzdak was President, Chief Executive Officer and founder of Cardioxyl Pharmaceuticals and raised $14.5 million in venture capital financing and advanced its lead compound into clinical development for acute decompensated heart failure. Prior to joining Cardioxyl in 2006, Dr. Suzdak was President, Chief Executive Officer and co-founder of Artesian Therapeutics, Inc. and raised $15 million in venture capital financing and advanced two lead drug discovery programs from idea stage to clinical candidate selection stage. In October 2005, Artesian Therapeutics was acquired by CardiomePharma. Prior to joining Artesian Therapeutics, Dr. Suzdak was most recently at Guilford Pharmaceuticals, Inc. from 1995 to 2002. During his tenure as Vice President of Research, then Senior Vice President of Research and Development, Dr. Suzdak was responsible for all pharmaceuticals drug discovery, preclinical development and clinical development at Guilford. Dr. Suzdak was responsible for establishing an integrated drug discovery and development function at Guilford and building an extensive technology and intellectual property platform around multiple novel biological targets. Prior to joining Guilford, Dr. Suzdak held various positions at Novo-Nordisk A/S in Copenhagen, Denmark from 1988 to 1995, including Director of Neurobiology Research. Dr. Suzdak was involved in multiple drug discovery and development collaborations with major pharmaceutical companies in the U.S. and Europe, including Abbott which resulted in the successful discovery, clinical development, approval and marketing of the novel anti-epileptic Gabatril®. Prior thereto, Dr. Suzdak was a Pharmacology Research Associate in the Clinical Neuroscience Branch of the National Institute of Mental Health in Bethesda, in the laboratory of Dr. Steven M. Paul, from 1985 to 1988. Dr. Suzdak received his Ph.D. in Pharmacology from the University of Connecticut and a B.S. in Pharmacy from St. Johns University. We believe it is appropriate for Dr. Suzdak to serve as a director of our Company due to his more than 23 years of experience in the research and development of pharmaceuticals. In particular, Dr. Suzdak's educational background in pharmacology allows him to provide valuable insight to the Board in deliberations relating to the research and development of our Company's pharmaceutical products, including our key compounds, and our product development efforts.

Our Executive Officers

The information required by this Item 10 concerning our executive officers is set forth under the heading “Executive Officers” located at the end of Part I Item 1 of this Annual Report on Form 10-K.

Family Relationships and Orders, Judgments and Decrees

There is no family relationship between any of our officers or directors. There are no orders, judgments, or decrees of any governmental agency or administrator, or of any court of competent jurisdiction, revoking or suspending for cause any license, permit or other authority to engage in the securities business or in the sale of a particular security or temporarily or permanently restraining any of our officers or directors from engaging in or continuing any conduct, practice or employment in connection with the purchase or sale of securities, or convicting such person of any felony or misdemeanor involving a security, or any aspect of the securities business or of theft or of any felony. Nor are any of the officers or directors of any corporation or entity affiliated with us so enjoined.

Section 16(a) Beneficial Ownership Reporting Compliance

To our knowledge, there were no reports required under Section 16(a) of the Exchange Act that were not timely filed during the fiscal year ended September 30, 2012, except for: (i) seven Form 4s filed by John Farah, a director, for an option grant made on each of November 7, 2011, December 14, 2011, February 10, 2012, March 20, 2012, May 14, 2012, July 11, 2012 and August 13, 2012; (ii) three Form 4s filed by Joseph J. Krivulka, a director, for an option grant made on each of November 7, 2011, March 20, 2012 and July 11, 2012; (iii) seven Form 4s filed by Amit Kumar, a director, for an option grant made on each of November 7, 2011, December 14, 2011, February 10, 2012, March 20, 2012, May 14, 2012, July 11, 2012 and August 13, 2012; (iv) two Form 4s filed by Michael E. Lewis, a director, for an option grant made on each of November 7, 2011 and July 11, 2012; (v) seven Form 4s filed by Chris Rallis, a director, for an option grant made on each of November 7, 2011, December 14, 2011, February 10, 2012, March 20, 2012, May 14, 2012, July 11, 2012 and August 13, 2012; and (vi) three Form 4s filed by Peter D. Suzdak, a director, for an option grant made on each of November 7, 2011, March 20, 2012 and July 11, 2012. Each of the Form 4s was filed late inadvertently.

Code of Ethics

We have a Code of Ethics that applies to our Chief Executive Officer, senior financial officers, controller and other similar employees. The purpose of the Code of Ethics is to provide written standards that are reasonably designed to promote: honest and ethical conduct; full, fair, accurate, timely and understandable disclosure in reports and documents filed with the SEC and other public communications by the Company; compliance with applicable governmental laws, rules and regulations; prompt internal reporting of violations of the Code of Ethics; and accountability for adherence to the Code of Ethics; and to deter wrongdoing. A copy of our Code of Ethics can be obtained from our website at www.aeoluspharma.com. If we make any substantive amendments to our Code of Ethics or grant any waiver from a provision of the Code of Ethics to any executive officer or director, we will promptly disclose the nature of the amendment or waiver on our website at www.aeoluspharma.com and/or in our public filings with the SEC.

Audit Committee

The Board has established an Audit Committee in accordance with section 3(a)(58)(A) of the Exchange Act. The Audit Committee currently consists of Mr. Rallis, Chairman, Dr. Kumar and Dr. Farah. The Board has determined that Mr. Rallis is an “audit committee financial expert,” as defined in Item 407(d)(5) of Regulation S-K promulgated by the SEC (“Regulation S-K”). The Board has determined that all of the members of the Audit Committee meet the Nasdaq Audit Committee independence standards, as currently in effect.

Item 11. Executive Compensation.

EXECUTIVE COMPENSATION

The following table sets forth all compensation earned for services rendered to Aeolus in all capacities for the fiscal year ended September 30, 2012 and 2011, by its principal executive officer, principal financial officer, and its one other executive officer who served in such capacity as of the end of fiscal 2012, collectively referred to as the “Named Executive Officers”.

Summary Compensation Table

Name and Principal Position(s)	Fiscal Year	Annual Compensation Salary ($)	Bonus ($)	Option Awards ($) (1)	All Other Compensation ($)	Total ($)
John L. McManus	2012	$ 409,000	—$	89,325	$ —$	498,325
President and	2011	$ 345,608	50,000	$ 91,600	—$	487,208
Chief Executive Officer						
Russell Skibsted (2)	2012	$ 255,625	—$	107,025	$ —$	362,650
Senior Vice President, Chief Financial Officer and Secretary	2011	$ 161,306	—$	149,835	$ —$	311,141
David C. Cavalier	2012	$ 332,313	—$	—$	—$	332,313
Chairman of the Board	2011	$ 261,458	—$	—$	—$	261,458

(1) The amounts in the “Option Awards” column reflect the aggregate grant date fair value of awards for grants of options to each listed Named Executive Officer, computed in accordance with FASB ASC Topic 718. These amounts do not represent the actual amounts paid to or realized by any of the Named Executive Officers during fiscal 2012 or fiscal 2011. The fair value of the options was determined at the date of the grant using the Black-Scholes option pricing model with the following weighted average assumptions: (i) dividend yield: 0%; (ii) expected volatility: 143.41%; (iii) risk-free interest rate: 0.68%; and (v) expected option life after shares are vested: 5.27 years. We use a straight line method of amortization of stock-based compensation.

(2) Mr. Skibsted became an employee of ours in February 2011.

Grants of Plan Based Awards During the Fiscal Year Ended September 30, 2012

The following table summarizes all option grants during the fiscal year ended September 30, 2012 to the Named Executive Officers. Each of these options was granted pursuant to the 2004 Plan.

Name	Grant Date	All Other Option Awards: Number of Securities Underlying Options (#)(1)	Exercise or Base Price of Option Awards	Grant Date Fair Value of Option Awards (2)
John L. McManus	7/14/2012	250,000	$ 0.28	$ 63,150

(1) The option grant vests on a monthly basis for twelve months with a ten-year term, subject to earlier termination upon certain events.

(2) The amounts in the “Grant Date Fair Value of Option Awards” column reflect the aggregate grant date fair value of awards for grants of options to Mr. McManus in fiscal 2012, computed in accordance with FASB ASC Topic 718. These amounts do not represent the actual amounts paid to or realized by Mr. McManus during fiscal 2012.

Outstanding Equity Awards as of September 30, 2012

The following table sets forth information regarding unexercised stock options for each of the Named Executive Officers outstanding as of September 30, 2012. We have not awarded stock grants or other equity incentive awards and as such have not made any disclosures regarding such awards.

Name	Number of Securities Underlying Unexercised Options Exercisable	Number of Securities Underlying Unexercised Options Unexercisable	Option Awards Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options	Option Exercise Price	Option Expiration Date
John L. McManus	10,000	—		$ 0.97	7/29/2015
	10,000	—		$ 0.91	8/31/2015
	10,000	—		$ 1.12	9/30/2015
	10,000	—		$ 1.15	10/31/2015
	10,000	—		$ 1.03	11/30/2015
	10,000	—		$ 0.95	12/30/2015
	10,000	—		$ 0.89	1/31/2016
	10,000	—		$ 0.90	2/28/2016
	10,000	—		$ 0.80	3/31/2016
	10,000	—		$ 0.75	4/28/2016
	10,000	—		$ 0.60	5/31/2016
	10,000	—		$ 0.81	6/30/2016
	250,000	—		$ 0.75	7/14/2016
	250,000	—		$ 0.90	7/13/2017
	250,000	—		$ 0.32	7/14/2018
	1,000,000	—		$ 0.30	5/6/2019
	250,000	—		$ 0.39	7/30/2019
	250,000	—		$ 0.40	7/14/2020
	1,500,000	—		$ 0.40	7/29/2020
	250,000	—		$ 0.40	7/14/2021
	41,666	208,334 (1)		$ 0.28	7/14/2022
Russell Skibsted	360,000	—		$ 0.60	12/15/2020
David Cavalier	20,000	—		$ 1.85	9/22/2014
	20,000	—		$ 0.90	9/7/2015
	30,000	—		$ 0.85	9/12/2016
	30,000	—		$ 0.55	7/27/2017
	27,750	—		$ 0.40	12/11/2018
	3,750	—		$ 0.29	2/5/2019
	11,250	—		$ 0.33	3/26/2019
	3,750	—		$ 0.38	4/30/2019
	11,250	—		$ 0.35	6/4/2019
	15,000	—		$ 0.39	7/30/2019

(1) Options vest at a rate of approximately 20,833 per month from the grant date for twelve months, provided that John McManus is an employee or consultant of the Company on the applicable vesting date. In the event of a sale of the Company, through a merger or otherwise, all of the options shall be fully vested and immediately exercisable.

Option Exercises and Stock Vested During the Fiscal Year Ended September 30, 2012

No stock options were exercised by any Named Executive Officer during the fiscal year ended September 30, 2012.

We had no stock awards outstanding as of or for the year ended September 30, 2012.

Employment Agreement with John McManus

On July 30, 2010, we and John McManus entered into an amended and restated employment agreement (the “Restated Agreement”). Under the Restated Agreement, Mr. McManus serves as President, Chief Executive Officer and Chief Operating Officer of the Company. Pursuant to the agreement, Mr. McManus is paid $ 33,333 per month.

Under the Restated Agreement, we will also continue to grant Mr. McManus on an annual basis a stock option to purchase 250,000 shares of the Common Stock with an exercise price equal to the closing price of the Common Stock, as reported on the OTCQB, on the day of the grant. The options will vest at a rate of 20,833 shares per month from the grant date for twelve months, provided that Mr. McManus is an employee or consultant of us on the applicable vesting date. In the event of a sale of the Company, through a merger or otherwise, all of the options held by Mr. McManus shall be fully vested and immediately exercisable. In addition, the Restated Agreement provides that Mr. McManus will be entitled to receive a cash bonus of not less than $100,000 if during the term of the Restated Agreement we enter into a definitive agreement for a development or partnership with another life sciences company for the joint development or commercialization of any of our owned or in-licensed patent rights or for a change of control of the Company, including through an acquisition or merger.

The initial term of the Restated Agreement was through June 30, 2011, and the current term is through June 30, 2013 unless terminated earlier. The Restated Agreement will automatically renew for additional one-year periods unless either party gives written notice at least 90 days prior to the commencement of the next 1-year term of the agreement, of such party's intent not to renew the agreement. If the Restated Agreement is terminated by us for any reason other than for cause, we shall pay Mr. McManus all payments due and owing, if any, under the agreement as if the agreement continued in effect for the full remainder of the current term.

Letter Agreement and Consulting Agreement with Russell Skibsted

On September 1, 2010, we and Russell Skibsted entered into an offer letter agreement, pursuant to which we offered Mr. Skibsted full-time employment as our Senior Vice President, Chief Financial Officer and Secretary commencing upon the announcement of a contract for the development of AEOL 10150 as a medical countermeasure with the Biomedical Advanced Research and Development Authority ("BARDA"). On February 15, 2011, we announced a contract with BARDA for the development of AEOL 10150 (the "BARDA Contract") and concurrently appointed Mr. Skibsted to the position of Senior Vice President, Chief Financial Officer and Secretary in accordance with the terms of the Offer Letter. The Offer Letter provides that Mr. Skibsted will be entitled to a monthly salary of $20,833.33 and that Mr. Skibsted will be entitled to participate in all of our current customary employee benefit plans and programs, subject to eligibility requirements, enrollment criteria and the other terms and conditions of such plans and programs. In addition, pursuant to the Offer Letter, Mr. Skibsted was granted a stock option to purchase 360,000 shares of the Common Stock under the 2004 Plan. The stock option has an exercise price of $0.60 per share, the closing stock price of our Common Stock on the date of grant, and vested at a rate of 30,000 shares per month over a period of twelve months from the date of grant.

For the period from September 1, 2010 through immediately prior to our announcement of the BARDA Contract, Mr. Skibsted had been providing consulting services to us pursuant to a Consulting Agreement, dated as of September 1, 2010, between us and Mr. Skibsted (the "Skibsted Consulting Agreement"). Pursuant to the Skibsted Consulting Agreement, Mr. Skibsted received a monthly consulting fee of $15,000 per month. The Skibsted Consulting Agreement was terminated on February 15, 2011 concurrent with our appointment of Mr. Skibsted as our Senior Vice President, Chief Financial Officer and Secretary pursuant to the Offer Letter.

Consulting Arrangements

Prior to June 30, 2011, McManus & Company, Inc. ("M&C"), which is owned by Mr. John McManus, provided us with administrative, accounting and financial consulting services. In addition, M&C also provided us with our corporate headquarters, facilities management and the outsourcing of the administrative, accounting, finance and accounting functions. Pursuant to an agreement with M&C, we paid M&C a monthly consulting payment of $25,000. During

fiscal 2012 and 2011, we paid M&C $0 and $180,000, respectively, in consulting fees pursuant to services rendered by M&C under the agreement. The agreement terminated on June 30, 2011.

Separation Agreements

We did not enter into any separation agreements during fiscal 2012.

Payments Upon Termination or Change of Control

We have an employment with Mr. John McManus, which provides for payments to Mr. McManus upon termination of employment or a change of control of Aeolus under specified circumstances. For information regarding the specific circumstances that would trigger payments and the provision of benefits, the manner in which payments and benefits would be provided and conditions applicable to the receipt of payments and benefits, see "—Employment Agreement with John McManus."

The following tables set forth information regarding potential payments and benefits that each Named Executive Officer who was serving as an executive officer on September 30, 2012 would receive upon termination of employment or consulting arrangement or a change of control of Aeolus under specified circumstances, assuming that the triggering event occurred on September 30, 2012.

Summary of Potential Payments Upon Termination or Change of Control

	Termination without Cause			Voluntary Resignation
Name	Cash Payments(1)	Value of Benefits(2)	Value of Options with Accelerated Vesting	Cash Payments
John L. McManus	$ 299,997	$ 18,117	$ 18,750(3)	—

(1) This amount reflects a lump sum payment equal to the remaining term of the Named Executive Officer's employment agreement with the Company, from October 1, 2012 through June 30, 2013, assuming notice of termination was given on September 30, 2012.

(2) The amounts in this column reflect the estimated value of health, dental, life and disability insurance that would be provided to the Named Executive Officer pursuant to his employment agreement with the Company for the period from October 1, 2012 through June 30, 2013.

(3) Pursuant to the Named Executive Officer's employment agreement with the Company, in the event the Named Executive Officer was terminated without cause on September 30, 2012, options to purchase 208,334 shares would have vested. The amounts in this column are calculated based on the difference between $0.37, the closing market price per share of the Common Stock on September 28, 2012, the last trading day of fiscal year 2012, and the exercise price per share of $0.28 for the options subject to accelerated vesting.

	Immediately upon a Change of Control			Termination without Cause in Connection with a Change of Control			
Name	Cash Payments(4)	Value of Options with Accelerated Vesting		Cash Payments(6)	Value of Benefits(7)	Value of Options with Accelerated Vesting	
John L. McManus	$ 100,000	$ 18,750	(5)	$ 399,997	$ 18,117	$ 18,750	(5)

(4) The amounts in this column reflect the lump sum payment payable upon a change of control pursuant to the Named Executive Officer's employment agreement with the Company in effect on September 30, 2012 assuming a change of control of the Company occurred on September 30, 2012.

(5) Pursuant to the 2004 Plan, all outstanding options shall vest in connection with a change of control of the Company. The amounts in this column are calculated based on the difference between $0.37, the closing market price per share of the Common Stock on September 28, 2012, the last trading day of fiscal year 2012, and the $0.28 exercise

price per share of the 208,334 options subject to accelerated vesting.

(6) The amounts in this column reflect the lump sum payment payable pursuant to a termination upon a change of control pursuant to the Named Executive Officer's employment agreement with the Company in effect on September 30, 2012 assuming a change of control of the Company occurred on September 30, 2012.

(7) The amounts in this column reflect the estimated value of health, dental, life and disability insurance that would be provided to the Named Executive Officer pursuant to his employment agreement with the Company for the period from October 1, 2011 through June 30, 2012.

Summary of Actual Payments Upon Termination of Employment

No payments were made to any Named Executive Officer in connection with a termination of employment during fiscal 2012.

COMPENSATION OF DIRECTORS

The following table sets forth information for the fiscal year ended September 30, 2012 regarding the compensation of our directors.

Director Compensation

Name	Fees Earned or Paid in Cash	Option Awards(1)	All Other Compensation	Total
David C. Cavalier	—$	—	—$	—
John M. Farah, Jr., Ph.D.	—	22,141	—	22,141
Joseph J. Krivulka	—	13,902	—	13,902
Amit Kumar, Ph.D.	—	24,112	—	24,112
Michael E. Lewis, Ph.D.	—	11,641	—	11,641
Chris A. Rallis	—	24,112	—	24,112
Peter D. Suzdak, Ph.D.	—	15,272	—	15,272

(3) The amounts in the "Option Awards" column reflect the aggregate grant date fair value of awards for grants of options to each listed director in fiscal 2012, computed in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 718. These amounts do not represent the actual amounts paid to or realized by the directors during fiscal 2012. The fair value of the options was determined at the date of the grant using the Black-Scholes option pricing model with the following weighted average assumptions: (i) dividend yield: 0%; (ii) expected volatility: 147.02%; (iii) risk-free interest rate: 0.99%; and (v) expected option life after shares are vested: 5.5 years. We use a straight line method of amortization of stock-based compensation.

All directors are reimbursed for expenses incurred in connection with each board or committee meeting attended. In addition, the Board adopted the following compensation program for the outside members of the Board on December 11, 2008, effective beginning July 1, 2008:

- Each non-executive Board member shall be eligible to receive nonqualified stock options for up to an aggregate of 45,000 shares per year based upon the number of meetings attended by the non-executive Board member during the year. The option exercise prices shall be equal to the closing price of the Common Stock on the grant date. The options shall have 10-year terms and vest, as long as the director remains on the Board, on a monthly basis over a 12-month period beginning on the date of grant. Unvested options expire upon resignation or termination from the Board.

- In addition, each Audit Committee member shall be eligible to receive a nonqualified stock option for up to an aggregate of 15,000 shares per year based the number of Audit Committee meetings attended by the Audit Committee member during the year. The option exercise prices shall be equal to the closing price of the Common Stock on the grant date. The options shall have 10-year terms and vest, as long as the director remains on the Board, on a monthly basis over a 12-month period beginning on the date of grant. Unvested options expire upon resignation or termination from the Board.

Outstanding Equity Awards for Directors as of September 30, 2012

The following table sets forth information regarding unexercised stock options for each Director outstanding as of September 30, 2012. We have not awarded stock grants or other equity incentive awards and as such have not made any disclosures regarding such awards.

Name	Number of Securities Underlying Unexercised Options Exercisable	Number of Securities Underlying Unexercised Options Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options
David C. Cavalier	172,750	—	—
John M. Farah, Jr., Ph.D.	248,780	25,311	—
Joseph J. Krivulka	230,375	16,875	—
Amit Kumar, Ph.D.	320,939	25,311	—
Michael E. Lewis, Ph.D.	222,500	11,250	—
Chris A. Rallis	320,939	25,311	—
Peter D. Suzdak, Ph.D.	239,375	16,875	—

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Equity Compensation Plan and Additional Equity Information as of September 30, 2012

Plan category	(a)Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b)Weighted-average exercise price of outstanding options, warrants and rights	(c)Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by our stockholders:			
2004 Stock Incentive Plan	7,749,091	$ 0.47	2,250,909
1994 Stock Option Plan	1,724,570	$ 1.73	0

Equity compensation plans and securities not approved by our stockholders:				
Warrants to purchase Common Stock Issued to National Securities	50,000	$	0.38	Not applicable
Warrants to Purchase Common Stock Issued to Dan Delmonico	50,000	$	0.49	Not applicable
Warrants to Purchase Common Stock Issued to Michael Kruger	50,000	$	0.50	Not applicable
Warrants to Purchase Common Stock Issued to Noble International Investments, Inc.	300,000	$	1.00	Not applicable
Warrants to Purchase Common Stock Issued to CEOcast, Inc.	250,000	$	0.83	Not applicable
Warrants to Purchase Common Stock Issued to Market Pathways	250,000	$	1.50	Not applicable
Warrant to Purchase Common Stock Issued to Roberts Mitani, LLC	300,000	$	0.258	Not applicable
Warrants to Purchase Common Stock Issued to Columbia Capital Securities, Inc.	35,000	$	0.37	Not applicable
Warrants to Purchase Common Stock Issued to Monarch Bay Associates, LLC	35,000	$	0.37	Not applicable
Total – Common Stock	10,793,661			2,250,909
Warrants to purchase Series B Preferred Stock	896,037	$	0.01	Not applicable
Total – Series B Preferred Stock	896,037			177,883

Description of Equity Compensation Plans and Equity Securities Not Approved by Our Stockholders

The warrants to purchase shares of our common stock issued to Dan Delmonico in September 2009 have not been approved by our stockholders. In consideration for services provided by Mr. Delmonico to us, we issued three warrants each to purchase up to 20,000, 15,000 and 15,000 shares of our common stock with an exercise price of $0.39, $0.50 and $0.60, respectively. The warrants are exercisable for five years from the date of grant and contain standard adjustment provisions in the event we declare a stock dividend or engage in a recapitalization, reclassification or reorganization of our capital stock.

The warrants to purchase shares of our common stock issued to National Securities Corporation ("NSC") have not been approved by our stockholders. In January 2010, we entered into an agreement with NSC pursuant to which we retained NSC as a non-exclusive financial advisor for the period from January 6, 2010 through January 6, 2011. For these services, we issued a warrant to purchase up to 50,000 shares of our common stock with an exercise price of $0.38. The warrant is exercisable for five years from the date of grant and contains standard adjustment provisions in the event we declare a stock dividend or engage in a recapitalization, reclassification or reorganization of our capital stock.

The warrants to purchase shares of our common stock issued to Michael Kruger ("Kruger") have not been approved by our stockholders. In May 2011, we entered into an agreement with Kruger as a consultant to assist us with investor relations for a one-year period. For these services, on May 10, 2011, we issued five warrants, each to purchase up to 50,000 shares of our common stock with an exercise price of $0.50, $1.00, $1.50, $2.00 and $2.50 and vesting dates of May 10, 2011, August 8, 2011, November 6, 2011, February 4, 2012 and May 4, 2012, respectively. The warrants are exercisable for five years from the date of grant and contain standard adjustment provisions in the event we declare a stock dividend or engage in a recapitalization, reclassification or reorganization of our capital stock. In addition, we are required to give Kruger advance notice of a change in control of Aeolus during the term of the warrants. We terminated the agreement with Kruger on July 29, 2011, and the warrants to purchase shares of our common stock with the exercise prices of $1.00, $1.50, $2.00 and $2.50 were cancelled concurrently with the termination of our agreement with Kruger.

The warrants to purchase shares of our common stock issued to Noble International Investments, Inc. ("Noble") have not been approved by our stockholders. In May 2011, we entered into an agreement with Noble to provide us with financial advisory services in connection our strategic initiatives for a one-year period. For these services, on May 18, 2011, we issued three warrants each to purchase up to 100,000 shares of our common stock with an exercise price of $0.50, $1.00 and $1.50, respectively, and vesting at a rate of 8,333 shares of our common stock per month. The warrants are exercisable for three years from the date of grant and contain standard adjustment provisions in the event we declare a stock dividend or engage in a recapitalization, reclassification or reorganization of our capital stock. In addition, we are required to give Noble advance notice of a change in control of Aeolus during the term of the warrants.

The warrants to purchase shares of our common stock issued to CEOcast, Inc. ("CEOcast") have not been approved by our stockholders. In June 2011, we entered into a consulting agreement with CEOcast to provide us with investor relations services for a one-year period. For these services, on June 1, 2011, we issued two warrants each to purchase up to 125,000 shares of our common stock with an exercise price of $0.51 and $1.00, respectively, and vesting at a rate of 10,416.67 shares of our common stock per month. The warrants are exercisable for three years from the date of grant and contain standard adjustment provisions in the event we declare a stock dividend or engage in a recapitalization, reclassification or reorganization of our capital stock. In addition, we are required to give CEOcast advance notice of a change in control of Aeolus during the term of the warrants.

45

The warrants to purchase shares of our common stock issued to Market Pathways have not been approved by our stockholders. In July 2011, we entered into an agreement with Market Pathways to assist us with investor relations for a one-year period. For these services, on July 22, 2011, we issued five warrants each to purchase up to 50,000 shares of our common stock with an exercise price of $0.50, $1.00, $1.50, $2.00 and $2.50 and vesting dates of July 22, 2011, October 20, 2011, January 18, 2012, April 17, 2012 and July 16, 2012, respectively. The warrants are exercisable for five years from the date of grant and contain standard adjustment provisions in the event we declare a stock dividend or engage in a recapitalization, reclassification or reorganization of our capital stock. In addition, we are required to give Market Pathways advance notice of a change in control of Aeolus during the term of the warrants.

The warrant to purchase shares of our Common Stock issued to Roberts Mitani, LLC have not been approved by our stockholders. In June 2012, we entered into an advisory agreement with Roberts Mitani, LLC whereby we engaged Roberts Mitani, LLC to serve as an advisor to provide strategic advisory services to us on a non-exclusive basis. For these services, on June 26, 2012, we issued a warrant to purchase up to 300,000 shares of our Common Stock with a per share exercise price of $0.258. The warrant is exercisable for seven years from the date of grant and contains standard adjustment provisions in the event we declare a stock dividend or engage in a recapitalization, reclassification or reorganization of our capital stock.

The warrants to purchase shares of our Common Stock issued to Columbia Capital Securities, Inc. and Monarch Bay Associates, LLC have not been approved by our stockholders. In August 2012, we entered into an advisory agreement with Columbia Capital Securities, Inc. and Monarch Bay Associates, LLC whereby we engaged them to serve as an advisor to provide strategic advisory services to us on a non-exclusive basis. For these services, we have agreed to pay each of Columbia Capital Securities, Inc. and Monarch Bay Associates, LLC a monthly retainer in the form of a warrant to purchase up to an aggregate of 17,500 shares of Common Stock, commencing on August 17, 2012 and continuing monthly thereafter during the term of their engagement under the advisory agreement. Each of these warrants has an exercise price equal to the closing price of the Common Stock on the date of issuance, is deemed fully vested upon issuance, is exercisable at any time on or before the five year anniversary of the date of issuance and contains standard adjustment provisions in the event we declare a stock dividend or engage in a recapitalization, reclassification or reorganization of our capital stock. On August 17, 2012, we issued a warrant to purchase up to an aggregate of 17,500 shares of Common Stock with a per share exercise price of $0.30 to each of Columbia Capital Securities, Inc. and Monarch Bay Associates, LLC. On September 17, 2012, we issued a warrant to purchase up to an aggregate of 17,500 shares of Common Stock with a per share exercise price of $0.44 to each of Columbia Capital Securities, Inc. and Monarch Bay Associates, LLC.

Security Ownership of Certain Beneficial Owners and Management

The following tables set forth certain information regarding the ownership of shares of Aeolus' Common Stock and Series B Preferred as of the close of business on October 9, 2012 by:

- each person known by Aeolus to beneficially own more than 5% of the outstanding shares of each class of our stock;
- each of our directors;
- each of our Named Executive Officers; and
- all of our directors and executive officers as a group.

Identity of Owner or Group (1)(2)	Preferred Stock Beneficially Owned	Preferred Stock Percentage Owned	Common Stock Beneficially Owned	Common Stock Percentage Owned(4)
Directors:				
David C. Cavalier	-	-	39,748,589(5)	63.1%
John M. Farah, Jr., Ph.D. (6)	-	-	256,905	*
Joseph J. Krivulka (7)	-	-	819,333	1.3%
Amit Kumar, Ph.D. (6)	-	-	329,064	*
Michael E. Lewis, Ph.D. (6)	-	-	226,250	*
Chris A. Rallis (6)	-	-	329,064	*
Peter D. Suzdak, Ph.D. (6)	-	-	245,000	*
Named Executive Officers:				
John L. McManus (8)	-	-	4,283,633	6.5%
Russell Skibsted (9)	-	-	380,000	*
All directors and executive officers as a group (9 persons)	-	-	46,617,838(10)	66.6%
Greater than 5% Stockholders:				
Elan Corporation, plc	526,080	100.0%(3)	526,080(11)	*
Lincoln House				
Lincoln Place				
Dublin 2, Ireland				
Efficacy Biotech Master Fund Ltd	-	-	3,179,402(12)	5.0%
11622 El Camino Real, Suite 100				
San Diego, CA 92130				
Xmark Opportunity Partners, LLC and its affiliates	-	-	39,748,589(5)	63.1%
90 Grove Street				
Ridgefield, CT 06877				

* Less than one percent

(1) Unless otherwise indicated, the address of all the owners is: c/o Aeolus Pharmaceuticals, Inc., 26361 Crown Valley Parkway, Suite 150, Mission Viejo, California 92691.

(2) This table is based upon information supplied by our executive officers, directors and principal stockholders and Schedule 13Ds and 13Gs, as amended, filed with the SEC. Unless otherwise indicated in the footnotes to this table and subject to community property laws where applicable, we believe that each of the stockholders named in this table has sole voting and investment power with respect to the shares indicated as beneficially owned.

(3) Percent of shares beneficially owned by any person is calculated by dividing the number of shares of preferred stock beneficially owned by that person by 526,080, the number of shares of preferred stock outstanding as of the close of business on October 9, 2012, and the number of shares of preferred stock as to which that person has the right to acquire voting or investment power within 60 days of October 9, 2012.

(4) Percentages are rounded.

(5) Consists of 172,750 shares of Common Stock issuable upon exercise of options held by David C. Cavalier; 11,225,121 shares of Common Stock owned by Xmark Opportunity Fund, L.P., a Delaware limited partnership ("Opportunity LP"); 24,679,524 shares of Common Stock owned by Xmark Opportunity Fund, Ltd., a Cayman Islands exempted company ("Opportunity Ltd"); 1,023,731 shares of Common Stock owned by Xmark JV Investment Partners, LLC, a Delaware limited liability company ("JV Partners"); and 2,647,463 shares of Common Stock owned by Goodnow Capital, L.L.C. ("Goodnow"), a Delaware limited liability company. In addition to the shares of Common Stock set forth above, Opportunity LP, Opportunity Ltd and JV Partners can acquire an additional 18,429,642, 40,220,357 and 500,000, respectively, shares of Common Stock upon the exercise of warrants held by such parties. The warrants are subject to an issuance limitation that prevents the holder of the warrants from exercising the warrants if the holder would beneficially own more than 9.99% of the shares of Common Stock then issued and outstanding, which limitation cannot be modified by the holder before the 61st day after notice to the Company of the holder's intention to waive the issuance limitation.

(6) Consists solely of shares of Common Stock issuable upon exercise of options.

(7) Consists of 333,333 shares owned directly, 250,000 shares issuable upon exercise of warrants held by Mr. Krivulka and 236,000 shares issuable upon exercise of options.

(8) Consists of 70,300 shares owned directly, 10,000 shares owned directly by Mr. McManus' spouse and 4,203,333 shares issuable upon exercise of options.

(9) Consists of 10,000 shares owned directly, 10,000 shares owned directly by Mr. Skibsted's spouse and 360,000 shares issuable upon exercise of options.

(10) Consists of shares of Common Stock beneficially owned by our directors and the following executive officers: Mr. McManus and Mr. Skibsted. See footnotes (5), (6), (7), (9) and (10) above.

(11) Consists of 526,080 shares of Common Stock which were issuable upon conversion of an aggregate of 526,080 shares of Series B Preferred Stock as of the close of business on October 9, 2012.

(12) Consists of 3,179,402 shares of Common Stock. Efficacy Capital, Ltd. is the investment advisor of Efficacy Biotech Master Fund Ltd. Mark Lappe and Jon Faiz Kayyem exercise share voting and dispositive power over these shares.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Certain Related Party Transactions

Aeolus has adopted a policy that all transactions between Aeolus and its executive officers, directors and other affiliates must be approved by a majority of the members of the Board and by a majority of the disinterested members of the Board, and must be on terms no less favorable to Aeolus than could be obtained from unaffiliated third parties.

Consulting Agreement

Through June 2011, M&C, which is owned by Mr. John McManus, provided us with administrative, accounting and financial consulting services. In addition, M&C provided us with our corporate headquarters, facilities management and the outsourcing of the administrative, accounting, finance and accounting functions. Pursuant to an agreement with M&C, we paid M&C a monthly consulting payment of $25,000. During fiscal 2012 and 2011, we paid M&C $0 and $180,000, respectively, in consulting fees pursuant to services rendered by M&C under the agreement. The agreement terminated on June 30, 2011.

March and April 2012 Financing

On March 30, 2012 and April 4, 2012, we entered into a Securities Purchase Agreement with certain accredited investors (the "Purchasers") to sell and issue to the Purchasers an aggregate of approximately 2,200,166 units (the "Units") at a purchase price of $0.30 per Unit, resulting in aggregate gross proceeds to us of approximately $660,049.90 (the "Private Placement"). Each Unit consists of (i) one share of Common Stock and (ii) a five year warrant to purchase 0.75 shares of Common Stock. The warrants have an initial exercise price of $0.40 per share. One of the Purchasers in the April 4, 2012 closing was Joseph Krivulka, a member of the Board, who purchased 333,333 Units, resulting in aggregate proceeds to us of $99,999.90. In connection with the Purchase Agreement, we also entered into a Registration Rights Agreement with the Purchasers, pursuant to which we agreed, among other things, to file a registration statement with the SEC to register the resale of: (1) the shares of Common Stock issued pursuant to the

Private Placement, and (2) the shares of Common Stock issuable upon exercise of the Warrants.

Director Independence

After review of all relevant transactions or relationships between each director, or any of his family members, and the Company, our senior management and its independent registered public accounting firm, the Board of Directors has affirmatively determined that all of our directors are independent directors within the meaning of the applicable Nasdaq Stock Market, LLC ("Nasdaq") listing standards, as currently in effect, excluding Mr. Cavalier

Item 14. Principal Accounting Fees and Services.

The following table shows the aggregate fees accrued by us for audit and other services for the fiscal years ended September 30, 2012 and September 30, 2011 provided by Grant Thornton LLP.

Fiscal Year 2012		Total
Audit Fees (1)	$	132,502
Audit-Related Fees		—
Tax Fees		—
All Other Fees		15,900
Total Fees Fiscal Year 2012	$	148,402

Fiscal Year 2011		Total
Audit Fees (1)	$	106,826
Audit-Related Fees		—
Tax Fees		—
All Other Fees		—
Total Fees Fiscal Year 2011	$	106,826

(1) Represents fees billed for professional services rendered for the audit and/or reviews of our financial statements and in connection with our statutory and regulatory filings or engagements.

All fees described above were approved by our Audit Committee. Pursuant to its Charter, the Audit Committee may establish pre-approval policies and procedures, subject to SEC and Nasdaq rules and regulations, to approve audit and permissible non-audit services. However, it has not yet done so.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a) The following financial statement schedules and exhibits are filed as part of this report or incorporated herein by reference:

(1) Financial Statement Schedules.

All financial statement schedules for which provision is made in Regulation S-X are omitted because they are not required under the related instructions, are inapplicable, or the required information is given in the financial statements, including the notes thereto.

(2) Exhibits.

		Incorporated by Reference To			
Exhibit Number	Description of Document	Registrant's Form	Date Filed with the SEC	Exhibit Number	Filed Herewith
2.1	Agreement and Plan of Merger and Reorganization dated September 16, 2003 between Incara, Inc. and Incara Pharmaceuticals Corporation	S-4	09/19/03	2.1	

3.1	Amended and Restated Certificate of Incorporation	10-K	12/31/12	3.1
3.2	Bylaws, as amended	8-K	10/27/05	3.1

Exhibit Number	Description of Document	Incorporated by Reference To Registrant's Form	Date Filed with the SEC	Exhibit Number	Filed Herewith
4.1	Form of Common Stock Certificate	10-Q	08/11/04	4.1	
4.2	Form of Series B Preferred Stock Certificate	S-4	09/19/03	4.8	
4.3	Form of Warrant to Purchase Common Stock dated June 5, 2006.	8-K	06/06/06	10.3	
4.4	Registration Rights Agreement dated May 22, 2007 by and among the Company and each of the Purchasers whose names appear on the Schedule attached thereto.	8-K	5/23/07	4.1	
4.5	Registration Rights Agreement dated October 6, 2009 by and among the Company and the investors whose names appear on the signature pages thereof.	8-K	10/06/09	4.1	
4.6	Form of Warrant to Purchase Common Stock dated May 22, 2007.	8-K	5/23/07	10.2	
4.7	Form of Warrant to Purchase Common Stock	8-K	10/06/09	10.2	
4.8	Registration Rights Agreement dated September 16, 2003 among Incara Pharmaceuticals Corporation, Incara, Inc. and Goodnow Capital, L.L.C.	S-4	09/19/03	10.101	
4.9	Registration Rights Agreement dated August 11, 2010 by and among Aeolus Pharmaceuticals, Inc. and the investors listed therein	8-K	8/12/10	4.1	
10.1*	License Agreement between Duke University and Aeolus Pharmaceuticals, Inc., dated July 21, 1995	S-1	12/08/95	10.4	
10.2	Amended and Restated Limited Liability Company Agreement of CPEC LLC dated July 15, 1999, among CPEC LLC, Intercardia, Inc. and Interneuron Pharmaceuticals, Inc.	8-K	07/23/99	10.42	
10.3	Assignment, Assumption and License Agreement dated July 15, 1999, between CPEC LLC and Intercardia, Inc.	8-K	07/23/99	10.43	
10.4*	License Agreement dated January 19, 2001 between Incara Pharmaceuticals Corporation and Incara Development, Ltd.	10-Q	02/13/01	10.59	
10.5*	License Agreement dated January 19, 2001 between Elan Corporation, plc, Elan Pharma International Ltd. and Incara Development, Ltd.	10-Q	02/13/01	10.60	

10.6	Registration Rights Agreement dated December 21, 2000 among Incara Pharmaceuticals Corporation, Elan International Services, Ltd. and Elan Pharma International Ltd.	10-Q	02/13/01	10.62
10.7	Agreement and Amendment, effective as of January 22, 2001, by and among Incara Pharmaceuticals Corporation, Elan International Services, Ltd. and Elan Pharma International Limited	10-Q	05/14/01	10.64
10.8	Second Agreement and Amendment, effective as of January 22, 2001, by and among Incara Pharmaceuticals Corporation, Elan International Services, Ltd. and Elan Pharma International Limited	10-Q	05/14/01	10.65
10.9	Third Agreement and Amendment, effective as of January 22, 2001, by and among Incara Pharmaceuticals Corporation, Elan International Services, Ltd. and Elan Pharma International Limited	8-K	06/01/01	10.66

Exhibit Number	Description of Document	Incorporated by Reference To Registrant's Form	Date Filed with the SEC	Exhibit Number	Filed Herewith
10.10	Agreement and Fourth Amendment, effective February 13, 2002, by and among Incara Pharmaceuticals Corporation, Elan International Services, Ltd., Elan Pharma International Limited and Elan Pharmaceutical Investments III, Ltd.	10-Q	02/14/02	10.75	
10.11*	License Agreement dated June 25, 1998 between Duke University and Aeolus Pharmaceuticals, Inc.	10-Q	05/15/02	10.82	
10.12*	License Agreement dated May 7, 2002 between Duke University and Aeolus Pharmaceuticals, Inc.	10-Q	05/15/02	10.83	
10.13*	License Agreement dated November 17, 2000 between National Jewish Medical and Research Center and Aeolus Pharmaceuticals, Inc.	10-Q	02/13/01	10.56	
10.14	Exclusive License Agreement, dated January 15, 2009, by and between the Company and National Jewish Health	10-Q	05/16/11	10.7	
10.15*	Securities Purchase Agreement dated as of May 15, 2002, among Incara Pharmaceuticals Corporation, Aeolus Pharmaceuticals, Inc., Elan Pharma International Limited and Elan International Services, Ltd.	8-K/A	07/03/02	10.84	
10.16*	Development and Option Agreement dated May 15, 2002, among Elan Pharma International Limited, Incara Pharmaceuticals Corporation and Aeolus Pharmaceuticals, Inc.	8-K/A	07/03/02	10.85	
10.17	Amended and Restated Registration Rights Agreement dated as of May 15, 2002, among Incara Pharmaceuticals Corporation, Elan International Services, Ltd. and Elan Pharma International Limited	8-K/A	07/03/02	10.86	
10.18	Amendment No. 1 to License Agreement dated May 14, 2002, between Aeolus Pharmaceuticals, Inc. and Duke University (amending License Agreement dated July 21, 1995)	8-K/A	07/03/02	10.87	
10.19	Amendment No. 1 to License Agreement dated May 14, 2002, between Aeolus Pharmaceuticals, Inc. and Duke	8-K/A	07/03/02	10.88	

	University (amending License Agreement dated June 25, 1998)			
10.20	Amendment No. 1 to License Agreement dated May 14, 2002, between Aeolus Pharmaceuticals, Inc. and National Jewish Medical and Research Center (amending License Agreement dated November 17, 2000)	8-K/A	07/03/02	10.89
10.21*	Subaward Agreement, dated March 16, 2011, by and between the Company and the Office of Research and Development of the University of Maryland, Baltimore	10-Q	05/16/11	10.4
10.22	Letter dated May 17, 2004 from Elan International Services, Limited and Elan Pharma International Limited to Incara Pharmaceuticals Corporation	10-Q	08/11/04	10.106
10.23+	Aeolus Pharmaceuticals, Inc. 1994 Stock Option Plan, as amended	10-Q	08/11/04	10.109

Exhibit Number	Description of Document	Incorporated by Reference To Registrant's Form	Date Filed with the SEC	Exhibit Number	Filed Herewith
10.24+	Aeolus Pharmaceuticals, Inc. Amended and Restated 2004 Stock Incentive Plan	S-8	04/28/11	99.1	
10.25+	Amended and Restated Employment Agreement dated July 30, 2010 between Aeolus Pharmaceuticals, Inc. and John L. McManus	8-K	08/02/10	10.4	
10.26+	Letter Agreement dated July 10, 2006 between Aeolus Pharmaceuticals, Inc. and McManus & Company, Inc.	8-K	07/10/06	10.2	
10.27+	Form of Indemnity Agreement	10-K	12/27/11	10.27	
10.28	Terms of Outside Director Compensation	10-K	12/17/04	10.114	
10.29+	Form of Incentive Stock Option Agreement	10-Q	02/08/05	10.115	
10.30+	Form of Nonqualified Stock Option Agreement	10-Q	02/08/05	10.116	
10.31	Subscription Agreement dated June 5, 2006 by and between the Company and the investors whose names appear on the signature pages thereof.	8-K	06/06/06	10.1	
10.32	Board Observer Letter dated June 5, 2006 by and among the Company and Efficacy Biotech Master Fund Ltd.	8-K	06/06/06	10.6	
10.33+	Consulting Agreement, dated December 1, 2010, between Aeolus Pharmaceuticals, Inc. and Brian J. Day	8-K	12/03/10	10.1	
10.34*	Sponsored Research Agreement (Non-Clinical), dated April 12, 2011, by and between the Company and Duke University	10-Q	05/16/11	10.5	
10.35	Securities Purchase Agreement dated August 11, 2010 by and among Aeolus Pharmaceuticals, Inc. and the investors listed therein	8-K	8/12/10	10.1	
10.36	Form of Warrant pursuant to Securities Purchase Agreement dated August 11, 2010 by and among Aeolus Pharmaceuticals, Inc. and the investors listed therein	8-K	8/12/10	10.2	
10.37	Convertible Promissory Note dated February 7, 2007 issued by Aeolus Pharmaceuticals, Inc. to Elan Pharma International Ltd.	S-1	06/04/07	10.43	
10.38	Amendment No. 1 To Convertible Promissory Note dated February 7, 2009 by and between Aeolus Pharmaceuticals,	8-K	3/16/09	10.1	

	Inc. and Elan Pharma International Limited			
10.39+	Form of Restricted Share Award Agreement	S-8 POS	3/31/08	99.2
10.40	Securities Purchase and Exchange Agreement dated October 6, 2009 by and among the Company and the investors whose names appear on the signature pages thereof	8-K	10/06/09	10.1
10.41	Amendment Agreement to the Securities Purchase and Exchange Agreement, dated December 24, 2009, by and among the Company and the investors whose names appear on the signature pages thereof	8-K	12/28/09	10.1
10.42+	Offer Letter, dated September 1, 2010 between the Company and Russell Skibsted	8-K	02/16/11	10.1
10.43*	Contract No. HHSO100201100007C, dated February 11, 2011, by and between the Company and the U.S. Department of Health and Human Services Biomedical Advanced Research and Development Authority	10-Q	05/16/11	10.1

Exhibit Number	Description of Document	Incorporated by Reference To Registrant's Form	Date Filed with the SEC	Exhibit Number	Filed Herewith
10.44*	Research and Manufacturing Agreement, dated February 18, 2011 (the "JMPS Agreement"), by and between the Company and Johnson Matthey Pharmaceutical Materials, Inc. (d/b/a Johnson Matthey Pharma Services).	10-Q	05/16/11	10.2	
10.45*	Appendix 2 to the JMPS Agreement, dated February 18, 2011	10-Q	8/14/12	10.4	
10.46*	Appendix 3 to the JMPS Agreement, dated April 30, 2012	10-Q	8/14/12	10.5	
10.47*	Appendix 4 to the JMPS Agreement, dated April 30, 2012	10-Q	8/14/12	10.6	
10.48*	Appendix 5 to the JMPS Agreement, dated April 30, 2012	10-Q	8/14/12	10.7	
10.49*	Appendix 6 to the JMPS Agreement, dated April 30, 2012	10-Q	8/14/12	10.8	
10.50*	General Management Consulting Assignment, dated February 23, 2011, by and between the Company and Booz Allen Hamilton Inc.	10-Q	05/16/11	10.3	
10.51	Form of Securities Purchase Agreement by and among the Company and the investors whose names appear on the signature pages thereof	8-K	4/5/12	10.1	
10.52	Form of Registration Rights Agreement by and among the Company and the investors party thereto	8-K	4/5/12	10.2	
10.53	Form of Warrant issued to investors in March and April 2012	8-K	4/5/12	10.3	
21.1	List of Subsidiaries	10-K	12/31/12	21.1	
23.1	Consent of Grant Thornton LLP, Independent Registered Public Accounting Firm				X
31.1	Certification of the Principal Executive Officer pursuant to Rule 13a-14(a) and 15d-14(a)				X
31.2	Certification of the Principal Financial and Accounting Officer pursuant to Rule 13a-14(a) and 15d-14(a)				X
32.1	Certification by the Principal Executive Officer and Principal Financial and Accounting Officer pursuant to 18 U.S.C. 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				X
101.INS†	XBRL Instance Document				X

101.SCH†	XBRL Taxonomy Extension Schema Document	X
101.CAL†	XBRL Taxonomy Extension Calculation Linkbase Document	X
101.DEF†	XBRL Taxonomy Extension Definition Linkbase Document	X
101.LAB†	XBRL Taxonomy Extension Label Linkbase Document	X
101.PRE†	XBRL Taxonomy Extension Presentation Linkbase Document	X

* The Company has received confidential treatment of certain portions of this agreement which have been omitted and filed separately with the U.S. Securities and Exchange Commission.

+ Indicates management contract or compensatory plan or arrangement.

† Attached as Exhibit 101 to this report are documents formatted in XBRL (Extensible Business Reporting Language). Users of this data are advised that, pursuant to Rule 406T of Regulation S-T, the interactive data file is deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is otherwise not subject to liability under these sections.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AEOLUS PHARMACEUTICALS, INC.

By: /s/ John L. McManus
John L. McManus
President and Chief Executive Officer

Date: May 14, 2013