

AEOLUS PHARMACEUTICALS, INC.

Form 4

February 21, 2013

FORM 4

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

OMB APPROVAL

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STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

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

(Print or Type Responses)

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

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

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)
90 GROVE STREET, SUITE 201
(Street)

3. Date of Earliest Transaction (Month/Day/Year)
02/19/2013

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

RIDGEFIELD, CT 06877

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

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

(City) (State) (Zip)

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

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price
Common Stock, \$0.01 par value per share	02/19/2013		X		59,149,999	A	<u>(5)</u>
					98,725,838	I	
					<u>(5)</u> <u>(6)</u> <u>(7)</u>		
							See Footnotes <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u> <u>(7)</u>
Common Stock, \$0.01 par value per share	02/19/2013		S	<u>(5)</u>	1,793,894	D	\$ <u>(5)</u>
					96,931,944	I	
					<u>(5)</u> <u>(6)</u> <u>(7)</u>		
							See Footnotes <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u> <u>(7)</u>

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

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(9-02)

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

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title Underlying (Instr. 3)
					(A)	(D)	Date Exercisable	Expiration Date	
Warrants (right to buy)	\$ 0.5	02/19/2013		J		1,875,000	08/11/2010	08/11/2017	Common Stock
Warrants (right to buy)	\$ 0.5	02/19/2013		J		1,875,000	12/28/2010	12/28/2017	Common Stock
Warrants (right to buy)	\$ 0.28	02/19/2013		J		43,614,285	10/06/2009	10/06/2016	Common Stock
Warrants (right to buy)	\$ 0.28	02/19/2013		J		11,785,714	07/30/2010	07/30/2017	Common Stock
Warrants (right to buy)	\$ 0.01	02/19/2013		J	1,875,000		02/19/2013	08/11/2017	Common Stock
Warrants (right to buy)	\$ 0.01	02/19/2013		J	1,875,000		02/19/2013	12/28/2017	Common Stock
Warrants (right to buy)	\$ 0.01	02/19/2013		J	43,614,285		02/19/2013	10/06/2016	Common Stock
Warrants (right to buy)	\$ 0.01	02/19/2013		J	11,785,714		02/19/2013	07/30/2017	Common Stock

Warrants (right to buy)	\$ 0.01	02/19/2013	X	1,875,000	02/19/2013	08/11/2017	Comm Stoc
Warrants (right to buy)	\$ 0.01	02/19/2013	X	1,875,000	02/19/2013	12/28/2017	Comm Stoc
Warrants (right to buy)	\$ 0.01	02/19/2013	X	43,614,285	02/19/2013	10/06/2016	Comm Stoc
Warrants (right to buy)	\$ 0.01	02/19/2013	X	11,785,714	02/19/2013	07/30/2017	Comm Stoc

Reporting Owners

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

Signatures

Xmark Opportunity Partners, LLC, By: Xmark Capital Partners, LLC, its Managing Member, 02/21/2013
By: /s/ David C. Cavalier, its Co-Managing Member

__Signature of Reporting Person

Date

Explanation of Responses:

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

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

The reporting person, Xmark Opportunity Partners, LLC, a Delaware limited liability company ("Opportunity Partners"), is the sole member of the investment manager of Xmark Opportunity Fund, L.P., a Delaware limited partnership ("Opportunity LP"), and Xmark Opportunity Fund, Ltd., a Cayman Islands exempted company ("Opportunity Ltd.," and, together with Opportunity LP, the "Investors"), and, as such, possesses the sole power to vote and the sole power to direct the disposition of all securities of Aeolus Pharmaceuticals, Inc., a Delaware corporation (the "Company"), held by the Investors.

Opportunity Partners is the investment manager of Xmark JV Investment Partners, LLC, a Delaware limited liability company ("JV Partners"), and, as such, possesses the sole power to vote and the sole power to direct the disposition of all securities of the Company held by JV Partners. Collectively, Opportunity LP and Opportunity Ltd. hold a majority of the membership interests in Goodnow Capital, L.L.C., a Delaware limited liability company ("Goodnow"), and, as such, possesses the sole power to vote and the sole power to direct the disposition of all securities of the Company held by Goodnow. David C. Cavalier ("Mr. Cavalier") and Mitchell D. Kaye are Co-Managing Members of Xmark Capital Partners, LLC, a Delaware limited liability company, which is the Managing Member of Opportunity Partners, and share voting and dispositive power with respect to all securities beneficially owned by Opportunity Partners.

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(3) On February 19, 2013, prior to the transactions reported herein, in addition to shares of the Company's common stock, \$0.01 par value per share ("Common Stock"), (a) Opportunity LP held (i) warrants to purchase up to 17,304,642 shares of Common Stock at an exercise price of \$0.28 per share, subject to certain adjustments (the "Opportunity LP \$0.28 Warrants"), and (ii) warrants to purchase up to 1,125,000 shares of Common Stock at an exercise price of \$0.50 per share, subject to certain adjustments (the "Opportunity LP \$0.50 Warrants"); (b) Opportunity Ltd. held (i) warrants to purchase up to 37,595,357 shares of Common Stock at an exercise price of \$0.28 per share, subject to certain adjustments (the "Opportunity Ltd. \$0.28 Warrants"), and (ii) warrants to purchase up to 2,625,000 shares of Common Stock at an exercise price of \$0.50 per share, subject to certain adjustments (together with the Opportunity LP \$0.50 Warrants, the "\$0.50 Warrants");

and (c) JV Partners held warrants to purchase up to 500,000 shares of Common Stock at an exercise price of \$0.28 per share, subject to certain adjustments (together with the Opportunity LP \$0.28 Warrants and the Opportunity Ltd. \$0.28 Warrants, the "\$0.28 Warrants").

(4) On February 19, 2013, the Company, the Investors and JV Partners entered into that certain Warrant Repricing, Exercise and Lockup Agreement, pursuant to which, among other things, the Company, the Investors and JV Partners agreed to decrease the exercise price of the \$0.28 Warrants and the \$0.50 Warrants to an exercise price of \$0.01 per share (collectively, with such decreased exercise price, the "Amended Warrants").

(5) On February 19, 2013, the Investors and JV Partners exercised the Amended Warrants to purchase 59,149,999 shares of Common Stock at an exercise price of \$0.01 per share. The Investors and JV Partners paid the exercise price on a cashless basis pursuant to the terms of the Amended Warrants, resulting in the Company's withholding of 1,793,894 shares of Common Stock to pay the exercise price and issuing to the Investors and JV Partners an aggregate total of 57,356,105 shares of Common Stock.

As of February 19, 2013, following the transactions reported herein, (a) Opportunity LP held 29,095,832 shares of Common Stock, including 957,326 shares of Common Stock held by Goodnow but attributed to Opportunity LP; (b) Opportunity Ltd. held 63,680,084 shares of Common Stock, including 2,475,490 shares of Common Stock held by Goodnow but attributed to Opportunity Ltd.; (c) JV Partners held 1,508,567 shares of Common Stock; and (d) Goodnow held 2,647,463 shares of Common Stock in addition to the (i) 957,326 shares of Common Stock held by Goodnow but attributed to Opportunity LP and (ii) 2,475,490 shares of Common Stock held by Goodnow but attributed to Opportunity Ltd. In addition, as of February 19, 2013, Mr. Cavalier held options to purchase 172,750 shares of Common Stock, all of which such options are currently exercisable by him.

(6)

(7) Opportunity Partners' interest in the securities reported herein is limited to the extent of its pecuniary interest in Opportunity LP, Opportunity Ltd. and JV Partners, if any, and neither the filing of this Form 4 nor any of its contents shall be deemed to constitute an admission by Opportunity Partners or any other person/entity that he, she or it was or is the beneficial owner of any of the securities referred to herein for purposes of Section 16 of the Securities Exchange Act of 1934, or for any other purpose.

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

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