

AEOLUS PHARMACEUTICALS, INC.

Form 4

August 16, 2010

**FORM 4**

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

OMB APPROVAL

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

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

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

(Print or Type Responses)

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

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

5. Relationship of Reporting Person(s) to Issuer  
(Check all applicable)

(Last) (First) (Middle)  
90 GROVE STREET  
(Street)

3. Date of Earliest Transaction (Month/Day/Year)  
08/11/2010

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

RIDGEFIELD, CT 06877

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

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

(City) (State) (Zip)

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

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price
Common Stock, par value \$0.01 per share	08/11/2010		P		2,500,000 <u>(1)</u> <u>(10)</u>	A	<u>(1)</u> <u>(10)</u> 34,415,876
						I	<u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(8)</u> <u>(9)</u> <u>(10)</u>
							See Footnotes <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(8)</u> <u>(9)</u> <u>(10)</u>

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

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SEC 1474 (9-02)

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

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)
				Code V	(A) (D)	Date Exercisable Expiration Date
Warrants (right to buy)	\$ 0.5	08/11/2010		P	2,500,000 <u>(1) (4) (8)</u> <u>(10)</u>	08/11/2010 08/11/2017
Call Option (right to buy)	\$ 0.4	08/11/2010		P	2,500,000 <u>(1) (5) (10)</u>	10/01/2010 <sup>(4)</sup> 12/31/2010 <sup>(4)</sup>
Put Option (obligation to buy)	\$ 0.4	08/11/2010		S	2,500,000 <u>(1) (6) (7)</u> <u>(10)</u>	10/01/2010 <sup>(6)(7)</sup> 12/31/2010 <sup>(6)(7)</sup>

## Reporting Owners

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

## Signatures

By: Xmark Capital Partner, LLC, its Managing Member, By: /s/ Mitchell D. Kaye, its Co-Managing Member 08/13/2010

\_\_Signature of Reporting Person

Date

## Explanation of Responses:

- \* If the form is filed by more than one reporting person, see Instruction 4(b)(v).
- \*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) Pursuant to a Securities Purchase Agreement (the "Securities Agreement"), by and among Aeolus Pharmaceuticals, Inc., a Delaware corporation (the "Company"), on the one hand, and Xmark Opportunity Fund, L.P., a Delaware limited partnership ("Opportunity LP"), and Xmark Opportunity Fund, Ltd., a Cayman Islands exempted company ("Opportunity Ltd," together with Opportunity LP, the "Investors"), on the other hand, dated as of August 11, 2010, the Company sold and issued to (i) Opportunity LP, 750,000 units (the

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"Financing Units") for a purchase price of \$300,000 and (ii) Opportunity Ltd, 1,750,000 Financing Units for a purchase price of \$700,000. [CONT FN10]

- (2) As of August 11, 2010, Opportunity LP held (i) 10,475,121 shares of Common Stock, (ii) warrants to purchase up to 17,304,642 shares of Common Stock at an exercise price of \$0.28 per share, subject to certain adjustments, and (iii) warrants to purchase up to 562,500 shares of Common Stock at an exercise price of \$0.50 per share, subject to certain adjustments.

- (3) As of August 11, 2010, Opportunity Ltd held (i) 22,929,524 shares of Common Stock, (ii) warrants to purchase up to 37,595,357 shares of Common Stock at an exercise price of \$0.28 per share, subject to certain adjustments, and (iii) warrants to purchase up to 1,312,500 shares of Common Stock at an exercise price of \$0.50 per share, subject to certain adjustments.

- (4) The August 2010 Warrants are exercisable for a seven-year period from their date of issuance; contain a "cashless feature which allows the Investors to exercise the August 2010 Warrants without a cash payment to the Company under certain circumstances; contain a dividend participation right which allows the Investors to receive any cash dividends paid on the Common Shares without exercising the August 2010 Warrants; contain a provision which provides for the reduction of the exercise price to \$0.01 in the event of any such payment of cash dividends by the Company or a change of control; and contain standard anti-dilution provisions which provide for the adjustment of the exercise price and the number of shares of Common Shares which can be purchased in the event of a stock dividend or split, dividend payment or other issuance, reorganization, recapitalization or similar event.

- (5) Pursuant to the Securities Agreement, the Company granted a call option, at an exercise price of \$0.40 per Financing Unit, to (i) Opportunity LP to acquire up to 750,000 additional Financing Units (the "LP Call Option") and (ii) Opportunity Ltd to acquire up to 1,750,000 additional Financing Units (the "Ltd Call Option").

- (6) Pursuant to the Securities Agreement, Opportunity LP granted to the Company a put option, at an exercise price of \$0.40 per Financing Unit, requiring Opportunity LP to acquire from the Company up to 750,000 additional Financing Units, less the number of Financing Units acquired pursuant to the LP Call Option, if any (the "LP Put Option"). Opportunity Ltd granted to the Company a put option, at an exercise price of \$0.40 per Financing Unit, requiring Opportunity Ltd to acquire from the Company up to 1,750,000 additional Financing Units, less the number of Financing Units acquired pursuant to the Ltd Call Option, if any (the "Ltd Put Option"). [CONT FN7]

- (7) [FROM FN6] Opportunity LP and Opportunity Ltd have the right to terminate the LP Put Option and the Ltd Put Option, respectively, if they reasonably determine that a material adverse event, condition or circumstance has occurred with respect to the prospects of the Company's AEOL 10150 drug candidate for acute radiation syndrome; provided that the Company's failure to receive a grant or financing shall not, by itself, constitute a material adverse event, condition or circumstance with respect thereto.

- (8) The August 2010 Warrants contain an issuance limitation prohibiting the Investors from exercising those securities to the extent that such exercise would result in beneficial ownership by the Investors of more than 9.99% of the Common Shares then issued and outstanding, which prohibition cannot be removed by the Investor before the sixty-first (61st) day after such Investor's notice to the Company of its election to remove such prohibition.

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

- (10) [FROM FN1] Each Financing Unit is comprised of one (1) share of the Company's common stock, \$0.01 par value per share (the "Common Stock"), and one (1) warrant to purchase .75 of one (1) share of Common Stock with an initial exercise price of \$0.50 per share of Common Stock, subject to certain adjustments (the "August 2010 Warrants").

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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