

Cavalier David
Form 4
August 16, 2010

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 *
Cavalier David

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)

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

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

C/O AEOLUS PHARMACEUTICALS, INC., 26361 CROWN VALLEY PARKWAY, SUITE 150

(Street)

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

MISSION VIEJO, CA 92691

(City) (State) (Zip)

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

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

See Footnotes (1) (2) (3) (8) (9) (10) (11)

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

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SEC 1474 (9-02)

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

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	
				Code	V (A) (D)	Date Exercisable	Expiration Date
Warrants (right to buy)	\$ 0.5	08/11/2010		P	250,000 <u>(1) (4) (8)</u> <u>(11)</u>	08/11/2010	08/11/2017
Call Option (right to buy)	\$ 0.4	08/11/2010		P	2,500,000 <u>(1) (5) (11)</u>	10/01/2010 ⁽⁴⁾	12/31/2010 ⁽⁴⁾
Put Option (obligation to buy)	\$ 0.4	08/11/2010		S	2,500,000 <u>(1) (6) (7)</u> <u>(11)</u>	10/01/2010 ⁽⁶⁾⁽⁷⁾	12/31/2010 ⁽⁶⁾⁽⁷⁾

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
Cavalier David C/O AEOLUS PHARMACEUTICALS, INC. 26361 CROWN VALLEY PARKWAY, SUITE 150 MISSION VIEJO, CA 92691	X	X		

Signatures

/s/ David Cavalier 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).
- 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 "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 FN11]
- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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").
- (5) 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]
- (6) [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.
- (7) 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.
- (8) The reporting person, David C. Cavalier, is a Co-Managing Member of Xmark Capital Partners, LLC, the Managing Member of Xmark Opportunity Partners, LLC, a Delaware limited liability company ("Opportunity Partners"). 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. Mitchell D. Kaye, a Co-Managing Member of Xmark Capital Partners, LLC, and Mr. Cavalier share voting and investment power with respect to all securities beneficially owned by Opportunity Partners. Mr. Cavalier's interest in the securities reported herein is limited to the extent of his pecuniary interest in Opportunity LP and Opportunity Ltd, if any. [CONT FN10]
- (9) [FROM FN9] Neither the filing of this Form 4 nor any of its contents shall be deemed to constitute an admission by Mr. Cavalier or any other person that he 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, as amended, or for any other purpose.
- (10) 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"). [FROM FN11]
- (11)

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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