

Cavalier David
Form 4
August 03, 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)
07/30/2010

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 Ownership (Instr. 4) |
|--|--------------------------------------|--|--------------------------------|---|---|--|--|
| | | | Code | V | Amount | (A) or (D) | Price |
| Common Stock, par value \$0.01 per share | 07/30/2010 | | J | | 5,892,857 (3) (4) | A | \$ 0.28 |
| | | | | | 31,915,876 | I (8) (9) | |
| | | | | | | | See Footnote (8) (9) |

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) | 7. Title and Amount of Underlying Security (Instr. 3 and 4) | Amount of Underlying Security (Instr. 3 and 4) | | | |
|--|--|--------------------------------------|--|--------------------------------|---|--|---|--|-----------------|--------------|------------|
| | | | | Code | V | (A) | (D) | Date Exercisable | Expiration Date | Title | Amount |
| Warrants (right to buy) | \$ 0.28 | 07/30/2010 | | J | | 11,785,714 | | <u>(6)</u> (7) | 07/30/2017 | Common Stock | 11,785,714 |

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 C.
Cavalier

08/03/2010

**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) As of July 30, 2010, Xmark Opportunity Fund, L.P., a Delaware limited partnership ("Opportunity LP"), held (i) 9,725,121 common shares, \$0.01 par value per share (the "Common Shares"), of Aeolus Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and (ii) warrants to purchase up to 17,304,642 Common Shares of the Company at an exercise price of \$0.28 per share, subject to certain adjustments.
- (2) As of July 30, 2010, Xmark Opportunity Fund, Ltd., a Cayman Islands exempted company ("Opportunity Ltd"), held (i) 21,179,524 Common Shares of the Company, and (ii) warrants to purchase up to 37,595,357 Common Shares of the Company at an exercise price of \$0.28 per share, subject to certain adjustments.
- (3) Pursuant to a Securities Purchase and Exchange Agreement, by and among the Company, on the one hand, and Opportunity LP and Opportunity Ltd (together, the "Investors"), on the other hand, dated as of October 6, 2009, as amended by that certain Amendment Agreement to the Securities Purchase and Exchange Agreement, dated as of December 24, 2009, the Investors granted to the Company the option (the "Put Option") to require the Investors, severally and not jointly, to acquire up to 5,892,857 units (the "Units"), comprised

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of an aggregate of 5,892,857 Common Shares and warrants to purchase up to an aggregate of 11,785,714 Common Shares (the "July Warrants"), with an initial exercise price of \$0.28 per share, subject to adjustment as provided in the July Warrants.

On July 25, 2010, the Company gave written notice to the Investors that it was exercising the Put Option in full, effective July 30, 2010.

- (4) In accordance with the terms of the Put Option, on July 30, 2010, the Company sold and issued to the Investors in a private placement an aggregate of 5,892,857 Units, comprised of 5,892,857 Common Shares and 11,785,714 July Warrants, at a purchase price of \$0.28 per Unit, for aggregate gross proceeds of \$1,650,000.

The July Warrants are exercisable for a seven-year period from their date of issuance; contain a "cashless exercise" feature which allows the holder to exercise the July 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 Shares without exercising the July

- (5) 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.
- (6) The July Warrants may be exercised immediately.

The July 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

- (7) prohibition cannot be removed by the holder before the 61st day after such holder's notice to the Company of its election to remove such prohibition.

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

- (8) 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. 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 [CONT FN9]
- (9) [FROM FN8] 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.

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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