AEOLUS PHARMACEUTICALS, INC.
Form 10-Q
May 06, 2005
**Table of Contents**

# UNITED STATES

# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# FORM 10-Q

**x Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**For the quarterly period ended March 31, 2005.**

**¨ 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 Number) |
|---|---|
| P.O. Box 14287<br>79 T.W. Alexander Drive<br>4401 Research Commons, Suite 200<br>Research Triangle Park, NC<br>(Address of Principal Executive Office) | 27709<br>(Zip Code) |

**Registrant s Telephone Number, Including Area Code 919-558-8688**

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 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 ¨

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). YES ¨ NO x

Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practicable date.

| Class | Outstanding as of May 3, 2005 |
|---|---|
| Common Stock, par value $.01 | 13,975,760 Shares |

**Table of Contents**

AEOLUS PHARMACEUTICALS, INC.

INDEX TO FORM 10-Q

Table of Contents

AEOLUS PHARMACEUTICALS, INC.

CONSOLIDATED BALANCE SHEETS

(In thousands, except shares and per share data)

| | March 31, 2005 | September 30, 2004 |
|---|---|---|
| | (Unaudited) | |
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | $ 3,267 | $ 7,381 |
| Accounts receivable | 6 | 131 |
| Prepaids and other current assets | 205 | 118 |
| Total current assets | 3,478 | 7,630 |
| Property and equipment, net | 10 | 15 |
| Other assets | 211 | 211 |
| Total assets | $ 3,699 | $ 7,856 |
| LIABILITIES AND STOCKHOLDERS EQUITY | | |
| Current liabilities: | | |
| Accounts payable | $ 644 | $ 1,185 |
| Accrued expenses | 88 | 102 |
| Liabilities of discontinued operations | 180 | 250 |
| Total current liabilities | 912 | 1,537 |
| Long-term note payable | 826 | 787 |
| Total liabilities | 1,738 | 2,324 |
| Stockholders equity: | | |
| Preferred stock, $.01 par value per share, 3,000,000 shares authorized: | | |
| Series B nonredeemable convertible preferred stock, 600,000 shares authorized; 475,087 and 503,544 shares issued and outstanding at March 31, 2005 and September 30, 2004, respectively | 5 | 5 |
| Common stock, $.01 par value per share, 50,000,000 shares authorized; 13,975,760 and 13,947,303 shares issued and outstanding at March 31, 2005 and September 30, 2004, respectively | 139 | 139 |
| Additional paid-in capital | 145,621 | 145,576 |
| Accumulated deficit | (143,804) | (140,188) |
| Total stockholders equity | 1,961 | 5,532 |
| Total liabilities and stockholders equity | $ 3,699 | $ 7,856 |

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

Table of Contents

AEOLUS PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)

(In thousands, except per share data)

| | Three Months Ended March 31, | | Six Months Ended March 31, | |
|---|---|---|---|---|
| | 2005 | 2004 | 2005 | 2004 |
| Revenue | | | | |
| Grant income | $ 6 | $ 55 | $ 115 | $ 102 |
| Costs and expenses: | | | | |
| Research and development | 1,152 | 1,969 | 2,772 | 3,597 |
| General and administrative | 516 | 344 | 966 | 1,057 |
| Total costs and expenses | 1,668 | 2,313 | 3,738 | 4,654 |
| Loss from operations | (1,662) | (2,258) | (3,623) | (4,552) |
| Interest expense, net | (5) | (50) | (7) | (99) |
| Other income | 8 | | 14 | |
| Net loss | (1,659) | (2,308) | (3,616) | (4,651) |
| Preferred stock dividend accreted | | | | (135) |
| Net loss attributable to common stockholders | $ (1,659) | $ (2,308) | $ (3,616) | $ (4,786) |
| Net loss per weighted share attributable to common stockholders: | | | | |
| Basic and diluted | $ (0.12) | $ (0.49) | $ (0.26) | $ (1.26) |
| Weighted average common shares outstanding: | | | | |
| Basic and diluted | 13,974 | 4,736 | 13,961 | 3,806 |

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

Table of Contents

AEOLUS PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

(In thousands)

| | Six Months Ended March 31, | |
|---|---|---|
| | 2005 | 2004 |
| Cash flows from operating activities: | | |
| Net loss | $ (3,616) | $ (4,651) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation and amortization | 5 | 5 |
| Noncash compensation | 23 | 103 |
| Noncash consulting expense | 22 | 64 |
| Noncash interest expense | 39 | 100 |
| Amortization of debt issuance costs | | 15 |
| Change in assets and liabilities: | | |
| Accounts receivable | 125 | |
| Prepaids and other assets | (87) | (45) |
| Accounts payable and accrued expenses | (625) | 687 |
| Net cash used in operating activities | (4,114) | (3,722) |
| Cash flows from financing activities: | | |
| Proceeds from notes payable | | 3,500 |
| Proceeds from sale of common stock | | 2 |
| Net cash provided by financing activities | | 3,502 |
| Net decrease in cash and cash equivalents | (4,114) | (220) |
| Cash and cash equivalents at beginning of period | 7,381 | 586 |
| Cash and cash equivalents at end of period | $ 3,267 | $ 366 |
| Supplemental disclosure of noncash activities: | | |
| Series C preferred stock dividend accreted | $ | $ 135 |
| Common stock issued in exchange for note payable and accrued interest | $ | $ 3,095 |
| Common stock issued in exchange for Series C preferred stock | $ | $ 14,637 |
| Beneficial conversion feature of convertible debenture | $ | $ 2,500 |

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

Table of Contents

AEOLUS PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

A. Basis of Presentation

The Company is developing catalytic antioxidant molecules to protect against the damaging effects of reactive oxygen-derived molecules, commonly referred to as free radicals. In October 2004, the Company initiated a Phase 1 clinical trial for amyotrophic lateral sclerosis ( ALS , also known as Lou Gehrig s disease).

The Company refers collectively to Aeolus Pharmaceuticals, Inc., a Delaware corporation ( Aeolus ) and its wholly owned subsidiary, Aeolus Sciences, Inc., a Delaware corporation. The Company also has a 35.0% equity interest in CPEC LLC, a Delaware limited liability company, which had minimal activity during the six months ended March 31, 2005. The Company uses the equity method to account for its investment in CPEC. The Company s primary operations are located in Research Triangle Park, North Carolina. On July 16, 2004, the Company effected a one-for-ten reverse stock split of its common stock and changed its name from Incara Pharmaceuticals Corporation to Aeolus Pharmaceuticals, Inc. All common stock amounts in these financial statements have been adjusted for the reverse stock split.

All significant intercompany activity has been eliminated in the preparation of the consolidated financial statements. The unaudited consolidated financial statements have been prepared in accordance with the requirements of Form 10-Q and Rule 10-01 of Regulation S-X. Some information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to those rules and regulations. In the opinion of management, the accompanying unaudited consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) necessary to present fairly the consolidated financial position, results of operations and cash flows of the Company. The consolidated balance sheet at September 30, 2004 was derived from the Company s audited financial statements included in the Company s Annual Report on Form 10-K for the fiscal year ended September 30, 2004. The unaudited consolidated financial statements included herein should be read in conjunction with the audited consolidated financial statements and the notes thereto included in that Annual Report on Form 10-K and in the Company s other SEC filings. Results for the interim period are not necessarily indicative of the results for any other period.

B. Liquidity

The Company incurred operating losses of $3,623,000 and $11,977,000 for the six months ended March 31, 2005 and for the fiscal year ended September 30, 2004, respectively. The Company expects to incur additional losses during the remainder of fiscal 2005 and for several more years.

Management believes it has adequate financial resources to fund its operations through fiscal 2005, but in order to fund on-going operating cash requirements beyond fiscal 2005, or to accelerate or expand its programs, the Company needs to raise significant additional funds. The

**Table of Contents**

Company intends to explore strategic and financial alternatives, including a merger with another company, the sale of shares of stock, the establishment of new collaborations for current research programs that include initial cash payments and on-going research support and the out-licensing of our compounds for development by a third party.

If the Company is unable to obtain additional financing to fund operations beyond fiscal 2005, it will need to eliminate some or all of its activities, merge with another company, sell some or all of its assets to another company, or cease operations entirely.

C. Recent Accounting Pronouncements

In December 2004, the Financial Accounting Standards Board (the FASB ) issued Statement of Financial Accounting Standards ( SFAS ) No. 123 (revised 2004), Share-Based Payment ( SFAS 123R ), which establishes standards for transactions in which an entity exchanges its equity instruments for goods or services. SFAS 123R requires companies to expense the value of employee stock options and similar awards. Share-based payments will be measured at fair value on the grant date, based on the estimated number of awards that are expected to vest. SFAS 123R applies to all unvested share-based awards outstanding at the company s adoption date. SFAS 123R eliminates the exception to account for such awards using the intrinsic method previously allowable under Accounting Principals Board Opinion No. 25 Accounting for Stock Issued to Employees ( APB 25 ). SFAS 123R will be effective for the Company s fiscal year beginning October 1, 2005. The Company is currently evaluating the effect of this pronouncement.

In April 2005, the FASB issued Interpretation No. 47, Accounting for Conditional Asset Retirement Obligations ( Interpretation No. 47 ), which clarifies that an entity is required to recognize a liability for the fair value of a conditional asset retirement obligation when incurred if the liability s fair value can be reasonably estimated. The fair value of a liability for the conditional asset retirement obligation should be recognized when incurred, which is generally upon acquisition, construction, or development and (or) through the normal operation of the asset. Uncertainty about the timing and (or) method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. Interpretation No. 47 is effective no later than the end of fiscal years beginning after December 15, 2005. The Company is currently evaluating the effect of this pronouncement.

D. Net Loss Per Common Share

The Company computes basic net loss per weighted average share attributable to common stockholders using the weighted average number of shares of common stock outstanding during the period. The Company computes diluted net loss per weighted average shares attributable to common stockholders using the weighted average number of shares of common and dilutive potential common shares outstanding during the period. Diluted weighted average common shares excluded incremental shares of approximately 4,744,000 as of March 31, 2005 related to stock options to purchase common stock, convertible preferred stock, convertible debt and warrants to purchase common and preferred stock. These shares were excluded due to their antidilutive effect as a result of the Company s net losses.

Table of Contents

E. Stock-Based Compensation

Under the principles of APB 25, Accounting for Stock Issued to Employees , the Company does not recognize compensation expense associated with the grant of stock options to employees unless an option is granted with an exercise price at less than fair market value. SFAS No. 123, Accounting for Stock Based Compensation ( SFAS 123 ), requires the use of option valuation models to recognize as expense stock option grants to consultants and to provide supplemental information regarding options granted to directors and employees.

For the six months ended March 31, 2005 and 2004, all stock options were issued at or above the fair market value of a share of common stock. Fully vested stock options with a fair market value of $22,000 and $64,000 were granted to consultants and expensed during the six months ended March 31, 2005 and 2004, respectively.

Pro forma information regarding the Company s net loss was determined as if the Company had accounted for its employee stock options under the fair value method of SFAS 123. The fair value of each option grant for employees and consultants is estimated on the date of the grant using the Black-Scholes option valuation model with the following weighted-average assumptions used for grants:

| | Three and Six Months Ended March 31, | |
|---|---|---|
| | 2005 | 2004 |
| Dividend yield | 0% | 0% |
| Expected volatility | 195% | 274% |
| Risk-free interest rate | 2.9% - 4.3% | 1.2% - 4.7% |
| Expected option life (in years from vesting) | 3 | 3 |

Table of Contents

The Company s pro forma information utilizing the Black-Scholes option valuation model is as follows (in thousands, except for net loss per share information):

| | Three Months Ended March 31, | | Six Months Ended March 31, | |
|---|---|---|---|---|
| | 2005 | 2004 | 2005 | 2004 |
| Net loss attributable to common stockholders as reported | $ (1,659) | $ (2,308) | $ (3,616) | $ (4,786) |
| Pro forma adjustment for stock-based compensation | (87) | (205) | (289) | (587) |
| Pro forma net loss attributable to common stockholders | $ (1,746) | $ (2,513) | $ (3,905) | $ (5,373) |
| Basic and diluted net loss per weighted share attributable to common stockholders: | | | | |
| As reported | $ (0.12) | $ (0.49) | $ (0.26) | $ (1.26) |
| Pro forma - adjusted for stock-based compensation | $ (0.12) | $ (0.53) | $ (0.28) | $ (1.41) |

F. Commitments and Contingencies

At March 31, 2005, the Company had future contractual operating lease commitments of $576,000 primarily for its administrative office and laboratory facilities, of which $180,000 was accrued as liabilities of discontinued operations on the balance sheet. In December 1999, the Company sold its anti-infectives division ( IRL ) to a private pharmaceutical company. The Company remains contingently liable through May 2007 for a lease obligation of approximately $2,124,000 assumed by the purchaser on the former IRL facility in Cranbury, New Jersey. No amounts are recorded in the accompanying financial statements for this contingent liability.

**Table of Contents**

Item 2. Management s Discussion and Analysis of Financial Condition and Results of Operations.

Introduction

Unless otherwise noted, the phrase we or our refers collectively to Aeolus Pharmaceuticals, Inc. and our wholly owned subsidiary, Aeolus Sciences, Inc.

This report contains, in addition to historical information, statements by us with respect to expectations about our business and future results, which are forward-looking statements under the Private Securities Litigation Reform Act of 1995. These statements and other statements made elsewhere by us or our representatives, which are identified or qualified by words such as likely, will, suggests, expects, might, believe, should, may, estimates, potential, predict, continue, would, anticipates, plans, or similar expressions, are based on a number of a are subject to risks and uncertainties. Actual results could differ materially from those currently anticipated or suggested due to a number of factors, including those set forth herein, those set forth in our Annual Report on Form 10-K for the fiscal year ended September 30, 2004 and in our other SEC filings, and including risks relating to the need to conserve and obtain funds for operations, uncertainties relating to clinical trials, the early stage of products under development and regulatory reviews, new accounting requirements and competition. All forward-looking statements are based on information available as of the date hereof, and we do not assume any obligation to update such forward-looking statements.

Operations Summary

We are developing a new class of small molecule catalytic antioxidants that destroy oxygen-derived free radicals, believed to be an important contributor to the pathogenesis of many diseases. Our catalytic antioxidants have been shown to reduce damage to tissue in animal studies of neurological disorders such as amyotrophic lateral sclerosis (ALS, also known as Lou Gehrig s disease) and stroke, and in other non-neurological indications such as cancer radiation therapy, chronic bronchitis and asthma. In October 2004, we began a Phase 1 clinical trial with our lead compound, AEOL 10150, as a treatment for ALS. In March 2005, we announced interim results of our clinical trial.

We do not have any revenue, other than grant income, and therefore we must rely on outside investors, grants, collaborations or out-licensing of our compounds to finance our operations.

Need for Additional Funds

We believe we have adequate financial resources to fund our operations through fiscal 2005, but in order to fund on-going operating cash requirements beyond fiscal 2005, or to accelerate or expand our programs, we need to raise significant additional funds. Our need for additional financing is discussed under Liquidity and Capital Resources.

**Table of Contents**

Results of Operations

We had net losses of $1,659,000 and $3,616,000 for the three and six months ended March 31, 2005, respectively, versus net losses attributable to common stockholders of $2,308,000 and $4,786,000 for the three and six months ended March 31, 2004, respectively.

In August 2003, we were awarded a $100,000 Small Business Innovation and Research, or SBIR, Phase I grant from the National Cancer Institute, a division of the National Institutes of Health, or NIH, and in March 2004, we were awarded up to $375,000 for the first year of a SBIR Phase II grant. Pursuant to the grants, we are studying the antitumor and radiation-protective effects of our catalytic antioxidants. The study is a collaboration between us and the Department of Radiation Oncology at Duke University Medical Center. We recognized $115,000 and $102,000 of grant income during the six months ended March 31, 2005 and 2004, respectively. The first year Phase II grant period expired in January 2005 and we have received approval for a second year of the Phase II grant program.

Research and development, or R&D, expenses decreased $817,000, or 41%, to $1,152,000 for the three months ended March 31, 2005 from $1,969,000 for the three months ended March 31, 2004. R&D expenses decreased $825,000, or 23%, to $2,772,000 for the six months ended March 31, 2005 from $3,597,000 for the six months ended March 31, 2004. Our primary operational focus and R&D spending during the three and six months ended March 31, 2005 was on conducting our Phase 1 clinical trial for the treatment of ALS while our primary operational focus and R&D spending during the three and six months ended March 31, 2004 was on preclinical pharmacology and toxicology tests on our lead compound. We eliminated our R&D staff during the past year and are using more R&D consultants. Therefore, we incurred greater expenses for clinical trial and sponsored research costs in the first three and six months of fiscal 2005, versus the same periods in fiscal 2004, while we incurred less expenses associated with preclinical activities and payroll costs. R&D expenses for our antioxidant program have totaled $26,930,000 from inception through March 31, 2005. Because of the uncertainty of our research and development and clinical studies, we are unable to predict the level of spending and the anticipated program completion date, if any.

General and administrative, or G&A, expenses increased $172,000, or 50%, to $516,000 for the three months ended March 31, 2005 from $344,000 for the three months ended March 31, 2004. G&A expenses decreased $91,000 or 9%, to $966,000 for the three months ended March 31, 2005 from $1,057,000 for the three months ended March 31, 2004. G&A expenses were higher during the three months ended March 31, 2005 versus March 31, 2004 due to a signing bonus paid to our new Chief Executive Officer and increased costs for liability insurance, Board of Director fees and investor relations costs. G&A expenses for the six months ended March 31, 2005 were lower than for the six months ended March 31, 2004, as the higher expenses incurred during the last quarter were offset by financing and reorganization activities that occurred during the three months ended December 31, 2003, which resulted in higher than normal legal, accounting and filing fees.

The conversion of notes payable to common stock in April 2004 resulted in lower interest expenses in fiscal 2005 than in fiscal 2004.

Table of Contents

We accreted $135,000 of dividends on our Series C preferred stock during the six months ended March 31, 2004. As part of a reorganization effected on November 20, 2003, all shares of Series C preferred stock were converted into common stock.

Liquidity and Capital Resources

At March 31, 2005, we had $3,267,000 of cash, a decrease of $4,114,000 from September 30, 2004. The decrease in cash was primarily due to the $3,616,000 net loss for the six months ended March 31, 2005 and a $625,000 decrease in current liabilities due to less payables for preclinical activities at March 31, 2005 than we had at September 30, 2004. We believe we have adequate financial resources to conduct operations at least through the end of fiscal 2005, but in order to fund on-going operating cash requirements beyond fiscal 2005, or to accelerate or expand our programs, we need to raise significant additional funds.

We incurred operating losses of $3,623,000 and $11,977,000 for the six months ended March 31, 2005 and for the fiscal year ended September 30, 2004, respectively. Due to the nonrecurring charges for financing, reorganization and stock options recognized in fiscal 2004, we anticipate our quarterly operational costs will continue to be lower during fiscal 2005 than they were in fiscal 2004. Our ongoing 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 explore other strategic and financial alternatives, including a merger with another company. We also might out-license one or more of our compounds for development by a third party.

There are uncertainties as to these potential sources of capital. Our access to capital might be restricted because we might not be able to enter into any collaboration on terms acceptable or favorable to us 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 a collaboration for our antioxidant program, we might 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 stock offerings, we might not be able to sell additional securities or raise other funds on terms acceptable or favorable to us. It can be difficult for small biotechnology companies such as us to raise funds in the equity markets. Any additional equity financing, if available, would likely result in substantial dilution to existing stockholders.

Recently Issued Accounting Standards

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment , or SFAS 123R, which establishes standards for transactions in which an entity exchanges its equity instruments for goods or services. SFAS 123R requires companies to expense the value of employee stock options and similar awards.

Table of Contents

Share-based payments will be measured at fair value on the grant date, based on the estimated number of awards that are expected to vest. SFAS 123R applies to all unvested share-based awards outstanding at the company s adoption date. SFAS 123R eliminates the exception to account for such awards using the intrinsic method previously allowable under Accounting Principals Board Opinion No. 25 Accounting for Stock Issued to Employees . SFAS 123R will be effective for our fiscal year beginning October 1, 2005. We are currently evaluating the effect of this pronouncement.

In April 2005, the FASB issued Interpretation No. 47, Accounting for Conditional Asset Retirement Obligations , which clarifies that an entity is required to recognize a liability for the fair value of a conditional asset retirement obligation when incurred if the liability s fair value can be reasonably estimated. The fair value of a liability for the conditional asset retirement obligation should be recognized when incurred, which is generally upon acquisition, construction, or development and (or) through the normal operation of the asset. Uncertainty about the timing and (or) method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. Interpretation No. 47 is effective no later than the end of fiscal years beginning after December 15, 2005. We are currently evaluating the effect of this pronouncement.

**Table of Contents**

Item 4. Controls and Procedures.

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e)) pursuant to Exchange Act Rule 13a-15. Based upon their evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures are effective.

No change in our internal control over financial reporting occurred during our last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Management is aware that there is a lack of segregation of duties due to the small number of employees dealing with general administrative and financial matters. However, management has decided that considering the employees involved and the control procedures in place, risks associated with such lack of segregation are insignificant and potential benefits of adding employees to clearly segregate duties do not justify the expenses associated with such increases at this time.

**Table of Contents**

Part II. OTHER INFORMATION

Item 4. Submission of Matters to a Vote of Security Holders

The Annual Meeting of Stockholders of Aeolus Pharmaceuticals was held on March 8, 2005. The following is a brief description of each matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each matter.

(a) The stockholders elected the following persons as directors of Aeolus Pharmaceuticals: David C. Cavalier, Chris A. Rallis, Peter D. Suzdak, Michael E. Lewis, Joseph J. Krivulka and Amit Kumar. The votes for and against (withheld) each nominee were as follows:

| Nominee | Votes For | Votes Withheld | Votes Abstained |
|---|---|---|---|
| David C. Cavalier | 11,416,558 | 20,142 | 0 |
| Chris A. Rallis | 11,397,899 | 38,801 | 0 |
| Peter D. Suzdak | 11,397,899 | 38,801 | 0 |
| Michael E. Lewis | 11,415,749 | 20,951 | 0 |
| Joseph J. Krivulka | 11,397,889 | 38,811 | 0 |
| Amit Kumar | 11,416,729 | 19,971 | 0 |

(b) The stockholders approved Aeolus Pharmaceuticals 2004 Stock Option Plan and reserved 2,000,000 shares of common stock for issuance thereunder, with 9,558,726 shares voting for approval, 60,785 shares voting against, 1,385 shares abstained and 1,815,804 shares were broker non-votes.

Item 6. Exhibits.

| Exhibit # | Description |
|---|---|
| 31.1 | Certification of the Chief Executive Officer pursuant to Rule 13a-14(a) |
| 31.2 | Certification of the Chief Financial Officer pursuant to Rule 13a-14(a) |
| 32.1 | Certification by the Chief Executive Officer pursuant to 18 U.S.C. 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 32.2 | Certification by the Chief Financial Officer pursuant to 18 U.S.C. 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

Table of Contents

**SIGNATURES**

Pursuant to the requirements 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.

Date: May 6, 2005

By: /s/ Richard P. Burgoon, Jr.

Richard P. Burgoon, Jr.

Chief Executive Officer

(Principal Executive Officer)

Date: May 6, 2005

By: /s/ Richard W. Reichow

Richard W. Reichow

Executive Vice President, Chief Financial

Officer and Treasurer

(Principal Financial and Accounting Officer)