

AEROGEN INC  
Form 3/A  
March 29, 2005

**FORM 3 UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

OMB APPROVAL

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**INITIAL STATEMENT OF 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 *			2. Date of Event Requiring Statement	3. Issuer Name <b>and</b> Ticker or Trading Symbol	
X MARK ASSET MANAGEMENT LLC			(Month/Day/Year)	AEROGEN INC [AEGN]	
(Last)	(First)	(Middle)	11/04/2004		
301 TRESSER BLVD., SUITE 1320			4. Relationship of Reporting Person(s) to Issuer		5. If Amendment, Date Original Filed(Month/Day/Year)
(Street)			(Check all applicable)		01/05/2005
STAMFORD, CT 06901			<input type="checkbox"/> Director <input checked="" type="checkbox"/> 10% Owner <input type="checkbox"/> Officer <input type="checkbox"/> Other (give title below)    (specify below)		6. Individual or Joint/Group Filing(Check Applicable Line) <input checked="" type="checkbox"/> Form filed by One Reporting Person <input type="checkbox"/> Form filed by More than One Reporting Person
(City)	(State)	(Zip)			

**Table I - Non-Derivative Securities Beneficially Owned**

1. Title of Security (Instr. 4)	2. Amount of Securities Beneficially Owned (Instr. 4)	3. Ownership Form: Direct (D) or Indirect (I) (Instr. 5)	4. Nature of Indirect Beneficial Ownership (Instr. 5)
Common Stock, par value \$0.001 per share <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>	18,936 <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>	I <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>	See footnotes <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>

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

SEC 1473 (7-02)

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

1. Title of Derivative Security (Instr. 4)	2. Date Exercisable and Expiration Date (Month/Day/Year)	3. Title and Amount of Securities Underlying Derivative Security	4. Conversion or Exercise	5. Ownership Form of	6. Nature of Indirect Beneficial Ownership
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	Date Exercisable	Expiration Date	(Instr. 4) Title	Amount or Number of Shares	Price of Derivative Security	Derivative Security: Direct (D) or Indirect (I) (Instr. 5)	(Instr. 5)
Warrant <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>	Â <u>(7)</u>	03/22/2009 <sup>(8)</sup>	Common Stock, par value \$0.001 per share	764,610 <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>	\$ 3.25	I <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>	See footnotes <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>
Warrant <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>	Â <u>(9)</u>	05/11/2009 <sup>(10)</sup>	Common Stock, par value \$0.001 per share	902,050 <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>	\$ 3.25	I <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>	See footnotes <u>(1)</u> <u>(2)</u> <u>(3)</u> <u>(4)</u> <u>(5)</u> <u>(6)</u>

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
XMARK ASSET MANAGEMENT LLC 301 TRESSER BLVD., SUITE 1320 STAMFORD, CT 06901	Â	Â X	Â	Â

## Signatures

/s/ Mitchell D. Kaye, Manager of Xmark Asset Management, LLC

03/29/2005

\_\_Signature of Reporting Person

Date

## Explanation of Responses:

\* If the form is filed by more than one reporting person, *see* Instruction 5(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) Xmark Asset Management, LLC, a New York limited liability company ("XAM"), serves as investment manager for each of Xmark Fund, L.P., a Delaware limited partnership ("Xmark LP"), and Xmark Fund, Ltd., a Cayman Islands exempted company ("Xmark Ltd"). In such capacity, XAM possesses the power to vote and direct the disposition of all securities held by Xmark LP and Xmark Ltd. As of November 4, 2004, Xmark LP is the holder of (i) 74,025 shares (the "Xmark LP Preferred") of the Series A-1 Preferred Stock, par value \$0.001 per share (the "Preferred Stock") of Aerogen, Inc., a Delaware corporation (the "Company"), which are presently convertible into 740,250 shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), (ii) warrants expiring on March 22, 2009, which entitle Xmark LP to purchase up to an aggregate of 339,600 shares of Common Stock at an exercise price of \$3.25 per share (the "Xmark LP March 2009 Warrants"),

(2) which exercise price is subject to adjustment as set forth in the Xmark LP March 2009 Warrants, (iii) warrants expiring on May 11, 2009, which entitle Xmark LP to purchase up to an aggregate of 400,650 shares of Common Stock at an exercise price of \$3.25 per share (the "Xmark LP May 2009 Warrants", and together with the Xmark LP March 2009 Warrants, the "Xmark LP Warrants"), which exercise price is subject to adjustment as set forth in the Xmark LP May 2009 Warrants and (iv) 8,411 shares of Common Stock issued in lieu of the cash payment of quarterly dividends on the Preferred Stock held by Xmark LP for the quarters ended March 31, 2004 and June 30, 2004. As of November 4, 2004, Xmark Ltd is the holder of (i) 92,641 shares (the "Xmark Ltd Preferred") of Preferred Stock, which are presently convertible into 926,410 shares of Common Stock, (ii) warrants expiring on March 22, 2009, which entitle Xmark Ltd to purchase up to an aggregate of 425,010 shares of

(3)

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Common Stock at an exercise price of \$3.25 per share (the "Xmark Ltd March 2009 Warrants"), which exercise price is subject to adjustment as set forth in the Xmark Ltd March 2009 Warrants, (iii) warrants expiring on May 11, 2009, which entitle Xmark Ltd to purchase up to an aggregate of 501,400 shares of Common Stock at an exercise price of \$3.25 per share (the "Xmark Ltd May 2009 Warrants", and together with the Xmark Ltd March 2009 Warrants, the "Xmark Ltd Warrants"), which exercise price is subject to adjustment as set forth in the Xmark Ltd May 2009 Warrants and (iv) 10,525 shares of Common Stock issued in lieu of the cash payment of quarterly dividends on the Preferred Stock held by Xmark Ltd for the quarters ended March 31, 2004 and June 30, 2004. The terms of the Xmark LP Preferred, the Xmark Ltd Preferred, the Xmark LP Warrants and the Xmark Ltd Warrants preclude each of Xmark LP and Xmark Ltd from converting the Xmark LP Preferred and the Xmark Ltd Preferred or

- exercising the Xmark LP Warrants and the Xmark Ltd Warrants if the conversion or exercise thereof would result in Xmark LP, Xmark Ltd and/or their affiliates beneficially owning in excess of 4.99% of the Company's outstanding Common Stock following any such conversion or exercise (the "Issuance Limitation"). Each such Issuance Limitation is waivable by Xmark LP and Xmark Ltd, respectively, providing 61 days' advance written notice to the Company. On November 3, 2004, Xmark LP and Xmark Ltd each provided a written waiver of the Issuance Limitation to the Company with respect to the Xmark LP Preferred and the Xmark Ltd Preferred. As a result of this waiver and as a result of the fact that XAM possesses the sole power to vote and direct the disposition of the securities described above, for purposes of Reg. Section 240.13d-3, XAM may be deemed to beneficially own 1,685,596 shares of Common Stock, or approximately 26.1% of the shares of Common Stock deemed issued and
- (4) outstanding as of November 4, 2004. On January 5, 2005, the reporting person filed a Form 3 reporting beneficial ownership of the Xmark LP Preferred, the Xmark Ltd Preferred, the Xmark LP Warrants and the Xmark Ltd Warrants without regard to the effectiveness of the Issuance Limitation with respect to the Xmark LP Warrants and the Xmark Ltd Warrants. The Issuance Limitation with respect to the Xmark LP Warrants and the Xmark Ltd Warrants remains effective as of that date; thus the reporting person did not beneficially own any shares of Common Stock underlying such warrants at November 4, 2004. Therefore, the line item in Table II relating to the Xmark LP Warrants and the Xmark Ltd Warrants is hereby deleted. In addition, the effectiveness of the waiver of the Issuance Limitation with respect to the Xmark LP Preferred and the Xmark Ltd Preferred was November 4, 2004 and not January 4, 2005, as previously reported. Mitchell D. Kaye is the sole Manager of XAM,
- (5) and as such possesses sole power to vote and direct the disposition of all securities of the Company held by Xmark LP and Xmark Ltd.
- The Xmark LP March 2009 Warrants and the Xmark Ltd March 2009 Warrants are not exercisable as a result of the Issuance Limitation. The Issuance Limitation with respect to the Xmark LP March 2009 Warrants and the Xmark Ltd March 2009 Warrants remains effective as of that date; thus the reporting person did not beneficially own any shares of Common Stock underlying such warrants at November 4, 2004. Therefore, the line item in Table II relating to the Xmark LP March 2009 Warrants and the Xmark Ltd March 2009 Warrants is hereby deleted.
- (6) The Xmark LP March 2009 Warrants and the Xmark Ltd March 2009 Warrants expire on March 22, 2009, unless the expiration date is extended as more fully detailed therein.
- The Xmark LP May 2009 Warrants and the Xmark Ltd May 2009 Warrants are not exercisable as a result of the Issuance Limitation. The Issuance Limitation with respect to the Xmark LP March 2009 Warrants and the Xmark Ltd March 2009 Warrants remains effective as of that date; thus the reporting person did not beneficially own any shares of Common Stock underlying such warrants at November 4, 2004. Therefore, the line item in Table II relating to the Xmark LP May 2009 Warrants and the Xmark Ltd May 2009 Warrants is hereby deleted.
- (7) The Xmark LP May 2009 Warrants and the Xmark Ltd May 2009 Warrants expire on May 11, 2009, unless the expiration date is extended as more fully detailed therein.
- (8) The Xmark LP May 2009 Warrants and the Xmark Ltd May 2009 Warrants expire on May 11, 2009, unless the expiration date is extended as more fully detailed therein.
- (9) The Xmark LP May 2009 Warrants and the Xmark Ltd May 2009 Warrants expire on May 11, 2009, unless the expiration date is extended as more fully detailed therein.
- (10)

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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