

United States
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 8-K

Current Report
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

February 22, 2018 (January 26, 2018)
Date of Report (Date of earliest event reported)

PHARMACYTE BIOTECH, INC.
(Exact Name of Registrant as Specified in its Charter)

Nevada
(State or other jurisdiction of incorporation)

333-68008
(Commission File Number)

62-1772151
(I.R.S. Employer Identification No.)

23046 Avenida de la Carlota, Suite 600
Laguna Hills, CA
(Address of Principal Executive Offices)

92653
(Zip Code)

Registrant's telephone number, including area code: **(917) 595-2850**

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

On February 22, 2018, PharmaCyte Biotech, Inc. (“Company”) entered into a financial advisory, offering and at the market offering letter agreement (“Agreement”) with Aeon Capital, Inc. (“Aeon”) pursuant to which the Company may sell from time to time, at its option, shares of its common stock, \$0.0001 par value per share (“Shares”), having an aggregate offering price of up to \$25,000,000, through Aeon as the Company’s financial advisor and exclusive placement agent. Sales of the Shares, if any, will be made under the Company’s previously filed and currently effective Registration Statement on Form S-3 (File No. 333-220441) in transactions that are deemed to be “at the market offerings” as defined in Rule 415 under the Securities Act of 1933, as amended, or transactions structured as a public offering of a distinct block or blocks of the Shares (“Block Trades”), provided that any Shares sold in such Block Trades must first be approved for sale by the Company and may be at market or at discounted prices. Aeon will use reasonable best efforts to sell the Shares from time to time, based upon the Company’s instructions (including any price, time or size limitations or other customary parameters or conditions the Company may impose). The Company cannot provide any assurances that it will sell any Shares pursuant to the Agreement. In connection with a transaction deemed to be an “at the market offering”, the Company has agreed to pay Aeon a cash fee of 3% of the aggregate sales price from the issuance of the Shares, if any. In connection with a transaction structured as a Block Trade, the Company has agreed to pay Aeon: (i) a cash fee of 7% of the aggregate sales price of the Shares sold in the Block Trade unless the Company introduced the investor to Aeon in which event the fee shall be 4%; and (ii) five-year warrants to purchase an aggregate of 5% of the number of Shares sold in the Block Trade at an exercise price equal to the price per share at which Shares are sold in the Block Trade. In addition, the Company has agreed to reimburse Aeon for certain expenses in an amount not to exceed \$10,000. The Company has also agreed to provide Aeon with customary indemnification rights. The offering of the Shares will terminate upon the earliest to occur of: (i) the sale of all of the Shares; or (ii) the termination of the Agreement by the Company or Aeon on thirty (30) days written notice.

The foregoing description of the Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Agreement, which is attached hereto as Exhibit 10.1 and incorporated by reference herein.

Pepper Hamilton LLP, counsel to the Company, has issued an opinion to the Company dated February 22, 2018 regarding the validity of the Shares to be issued and sold pursuant to the Agreement. A copy of the opinion is filed as Exhibit 5.1 to this Current Report on Form 8-K.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of any offer to buy the securities discussed herein, nor shall there be any offer, solicitation or sale of the securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

Item 1.02 Termination of a Material Definitive Agreement.

On February 14, 2014, the Company entered into a financial advisory, offering and at the market offering engagement agreement (“Chardan Agreement”) with Chardan Capital Markets, LLC (“Chardan”) pursuant to which Chardan agreed to use its reasonable best efforts to act as the Company’s sales agent in connection with the sale of Shares in “at the market” or privately negotiated transactions of up to \$50,000,000, depending upon market conditions and at the discretion of the Company. On January 26, 2018, the Company and Chardan entered into a Mutual Termination Agreement (“Termination Agreement”) terminating the Chardan Agreement. The Company is not subject to any termination penalties related to the termination of the Chardan Agreement. The Company does not owe any further fees to Chardan.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are being filed herewith:

- 5.1 [Legal Opinion of Pepper Hamilton LLP](#)
- 10.1 [Financial Advisory, Offering and At-the-Market Offering Engagement Letter dated February 22, 2018, by and between PharmaCyte Biotech, Inc. and Aeon Capital, Inc..](#)
- 10.2 [Mutual Termination Agreement dated January 26, 2018, by and between PharmaCyte Biotech, Inc. and Chardan Capital Markets, LLC.](#)
- 23.1 Consent of Pepper Hamilton LLP (contained in Exhibit 5.1 above)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated February 22, 2018

PHARMACYTE BIOTECH, INC.

By: /s/ Kenneth L. Waggoner
Kenneth L. Waggoner
Chief Executive Officer
President and General Counsel



The New York Times Building
37th Floor
620 Eighth Avenue
New York, NY 10018-1405
212.808.2700
Fax 212.286.9806

February 22, 2018

PharmaCyte Biotech, Inc.
23046 Avenida de la Carlota, Suite 600
Laguna Hills, California 92653

Re: Securities Registered under Registration Statement on Form S-3

Ladies and Gentlemen:

This opinion is being furnished to you in connection with (i) the Registration Statement on Form S-3 (Registration No. 333-220441) (as amended from time to time, the “**Registration Statement**”), filed by PharmaCyte Biotech, Inc., a Nevada corporation (the “**Company**”), with the Securities and Exchange Commission (the “**Commission**”), and declared effective on September 28, 2017, for the registration of, among other things, an indeterminate number of shares of Common Stock, \$0.0001 par value per share, (“**Common Stock**”) of the Company, which may be issued from time to time on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (“**Securities Act**”), as set forth in the Registration Statement and the prospectus contained therein (the “**Base Prospectus**”) and (ii) the prospectus supplement, dated February 22, 2018 (the “**Prospectus Supplement**”) and, together with the Base Prospectus, the “**Prospectus**”) relating to the issuance and sale from time to time by the Company of shares of Common Stock with an aggregate offering price of up to \$25,000,000 (the “**Shares**”).

We understand that the Shares are to be offered and sold in the manner set forth in the Prospectus pursuant to the Financial Advisory, Offering and At-the-Market Offering Engagement Letter, dated February 22, 2018, by and between the Company and Aeon Capital, Inc., as agent (the “**Agreement**”). The Agreement is being filed with the Commission as Exhibit 10.1 to the Company’s Current Report on Form 8-K, filed on the date hereof.

We have acted as your counsel in connection with the issue and sale by the Company of the Shares. We are familiar with the proceedings taken by the Board of Directors of the Company (the “**Board of Directors**”) in connection with the execution and delivery of the Agreement and the authorization, issuance and sale of the Shares. We have examined all such documents as we considered necessary to enable us to render this opinion, including but not limited to the Registration Statement, the Prospectus, the Agreement, the Company’s Articles of Incorporation, as amended, and the Company’s Bylaws, as amended, certain resolutions of the Board of Directors, corporate records and instruments, and such laws and regulations as we have deemed necessary for purposes of rendering the opinions set forth herein.

In our examination, we have assumed: (a) the legal capacity of all natural persons; (b) the genuineness of all signatures; (c) the authenticity of all documents submitted to us as originals; (d) the conformity to original documents of all documents submitted to us as certified, conformed, photostatic or facsimile copies; (e) the authenticity of the originals of such latter documents; (f) the truth, accuracy and completeness of the information, representations and warranties contained in the records, documents, instruments, certificates and records we have reviewed; and (g) the absence of any undisclosed modifications to the agreements and instruments reviewed by us. As to any facts material to the opinions expressed herein, which were not independently established or verified, we have relied upon statements and representations of officers and other representatives of the Company and others.

Based on the foregoing, and subject to the assumptions, qualifications, limitations, and exceptions set forth herein, we are of the opinion that the Shares have been duly authorized for issuance and, when issued and paid for in accordance with the terms and conditions of the Agreement, the Shares will be validly issued, fully paid and non-assessable.

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February 22, 2018

The foregoing opinions are limited to the applicable statutory provisions of the Nevada Private Corporations Chapter of the Nevada Revised Statutes, including interpretations thereof in published decisions of the Nevada courts, and applicable provisions of the Nevada Constitution, and applicable federal laws of the United States of America and we express no opinion as to the effect of the laws of any other jurisdiction, domestic or foreign.

This opinion letter is given as of the date hereof, and we express no opinion as to the effect of subsequent events or changes in law occurring or becoming effective after the date hereof. We assume no obligation to update this opinion letter or otherwise advise you with respect to any facts or circumstances or changes in law that may hereafter occur or come to our attention.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Current Report on Form 8-K to be filed by the Registrant in connection with the issuance and sale of the Shares in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act and to the use of our name therein and in the Prospectus Supplement under the caption "Legal Matters." By giving such consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ Pepper Hamilton LLP
Pepper Hamilton LLP



February 22, 2018

PharmaCyte Biotech, Inc.
23046 Avenida de la Carlota
Suite 600
Laguna Hills, CA 92653
Attention: Kenneth L. Waggoner

Re: Financial Advisory, Offering and At the Market Offering (“ATM”)

Dear Mr. Waggoner:

This letter agreement (“Agreement”) will confirm the basis upon which PharmaCyte Biotech, Inc. (“Company”) has engaged Aeon Capital, Inc. (“Aeon”) to act as the Company’s sole financial advisor and exclusive placement agent in connection with a planned offering of the Company’s shares of common stock (“Common Stock”), par value \$0.0001 per share (“Transaction”). The terms of our appointment are as follows:

1. Engagement Period. The Company hereby engages Aeon, for the period beginning on the date hereof and ending upon consummation of the “Offering,” as defined below (“Engagement Period”), subject to the provisions of Section 14 hereof. During the Engagement Period and as long as Aeon is proceeding in good faith with the Offering, the Company agrees not to enter into any agreement with any other source of financing (whether equity, debt or otherwise), any underwriter, potential underwriter, placement agent, financial advisor, fund, investment vehicle or any other person or entity in connection with an offering of the Company’s securities or any other financing by the Company, except as otherwise mutually agreed to by Aeon and the Company.
 - a. Offering. The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through Aeon, acting as agent and/or principal, shares (“Shares” or “Securities”) of the Company’s Common Stock, having an aggregate offering price of up to \$25,000,000. The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, “Securities Act”), with the Securities and Exchange Commission (“SEC”) a registration statement on Form S-3 (File No. 333-220441), including a base prospectus, relating to certain securities, including the Common Stock, to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, “Exchange Act”). The Company will prepare a prospectus supplement specifically relating to the Shares (“Prospectus Supplement”) to the base prospectus included as part of such registration statement. Aeon will act the exclusive sales agent for the Company, on a “reasonable best efforts” basis, in connection with the Offering.
 - b. Agent Sales. Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company may sell and issue Shares from time to time through Aeon, acting as sales agent, and Aeon agrees to use its reasonable best efforts to sell, as sales agent for the Company, the Shares on the following terms:

- i. The Shares shall be sold on any day that (A) is a trading day for the OTCQB operated by the OTC Markets Group, Inc. ("OTCQB"), (B) the Chief Executive Officer of the Company has instructed Aeon by telephone (confirmed promptly by electronic mail) to make such sales ("Sales Notice") and (C) the Company has satisfied its obligations under Section 6 of this Agreement. In each Sales Notice the Company shall state (A) the maximum amount of the Shares to be sold by Aeon (subject to the limitations set forth in Section 1(a)), (B) the minimum price per Share at which such Shares may be sold and (C) the date on which the sales should begin and end. Subject to the terms and conditions hereof, Aeon shall use its reasonable efforts to sell all the Shares in accordance with each Sales Notice delivered to Aeon consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the OTCQB to sell such up to the amount specified, and otherwise in accordance with the terms of such Sales Notice.
- ii. The Company acknowledges and agrees that (A) there can be no assurance that Aeon will be successful in selling the Shares, (B) Aeon will incur no liability or obligation to the Company or any other person or entity if it does not sell Shares for any reason other than a failure by Aeon to use its reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations to sell such Shares as required under this Agreement and (C) Aeon shall be under no obligation to purchase Shares on a principal basis pursuant to this Agreement. Notwithstanding (ii)(C) above, if Aeon purchases and sells as a principal in any transaction, and not as a sales agent for the Company, Aeon shall only resell to the public and not through privately negotiated transactions, or to or for its own account.
- iii. Aeon may sell Shares by any method permitted by law deemed to be an ATM as defined in Rule 415 of the Securities Act, including, without limitation, sales made directly on the OTCQB, on any other existing trading market for the Common Stock or to or through a market maker. Aeon may also sell Shares in Transactions structured as a public offering of a distinct block or blocks of the Company's Securities ("Block Trades"); provided, however, that any Shares sold in Block Trades must first be approved for sale by the Company.
- iv. Aeon shall provide written confirmation (which may be by facsimile or electronic mail) to the Company following the close of trading on the OTCQB each day in which the Shares are sold under this Section 1(b) setting forth the number of the Shares sold on such day, the aggregate sales price, the Net Proceeds (as defined below) payable to the Company and the compensation payable by the Company to Aeon with respect to such sales pursuant to Section 2 below.
- v. Unless otherwise specified in the applicable Sales Notice, settlement for sales of Shares will occur on the second Business Day following the date on which such sales are made (each a "Settlement Date"). On or before each Settlement Date the Company shall, or shall cause its transfer agent to, issue and deliver the Shares sold pursuant to such Sales Notice to Aeon's account at The Depository Trust Company via the DWAC system. The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Shares sold ("Net Proceeds") will be equal to the aggregate sales price received by Aeon at which such Shares were sold, after deduction for (i) Aeon's commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof and (ii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales. On each Settlement Date, Aeon will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date.
- vi. Any obligation of Aeon to use its reasonable efforts to sell the Shares on behalf of the Company shall be subject to the continuing accuracy of the representations and warranties of the Company herein, to the performance by the Company of its obligations hereunder and to the continuing satisfaction of the additional conditions specified in Section 6 of this Agreement.

2. Compensation.
- a. In connection with a Transaction structured as an ATM, the Company will pay Aeon a cash fee of three percent (3%) (“ATM Placement Fee”) of the aggregate sales price from the issuance of Securities.
- b. In connection with a Block Trade, the Company will pay Aeon aggregate transaction fee (“Traditional Placement Fee”) as stated below.
- i. Cash Fee. The Company shall pay to Aeon an aggregate cash fee equal to seven percent (7%) of the aggregate sales price of Securities sold or amount drawn in the Block Trade.
- ii. Warrant Fee. In connection with the consummation of a Block Trade the Company shall issue to Aeon or its designee five-year warrants (“Agent Warrants”) to purchase an aggregate of five percent (5%) of the number of such Securities sold by the Company in such Block Trade. The Agent Warrants shall contain customary terms and be in substantially the form agreed to by the Company and Aeon. The exercise price for the Agent Warrants shall be the price at which the Shares are sold in such Block Trade.
- iii. For any Transaction involving an investor introduced to Aeon by the Company, the cash compensation described above shall be reduced by three percent (3%).
3. Expenses. In addition to any fees or other compensation that may be paid to Aeon hereunder, whether or not any Transaction occurs, the Company will reimburse Aeon promptly upon receipt of an invoice for fees and expenses of Aeon’s counsel related to this Agreement not to exceed \$10,000.
4. SEC Filings. The Company represents and warrants to, and agrees with, Aeon that:
- a. The Company has filed, in accordance with the provisions of the Securities Act, with the SEC a registration statement on Form S-3 (File No. 333-220441). At the time of such filing, the Company met the requirements of Form S-3 under the Securities Act. Such registration statement meets the requirements set forth in Rule 415(a)(1)(x) under the Securities Act and complies with this Rule. The Company will file with the SEC, pursuant to Rule 424(b) under the Securities Act and the rules and regulations (“Rules and Regulations”) of the SEC promulgated thereunder, a supplement to the form of prospectus included in such registration statement relating to the placement of the Shares and the plan of distribution thereof and has advised Aeon of all further information (financial and other) with respect to the Company required to be set forth therein. Such registration statement, including the exhibits thereto, as amended at the date of its effectiveness under the Securities Act, is hereinafter called the “Registration Statement”; such prospectus in the form in which it appears in the Registration Statement is hereinafter called the “Base Prospectus”; and the supplemented form of prospectus, in the form in which it will be filed with the SEC pursuant to Rule 424(b) (including the Base Prospectus as so supplemented) is hereinafter called the “Prospectus Supplement.” Any reference in this Agreement to the Registration Statement, the Base Prospectus or the Prospectus Supplement shall be deemed to refer to and include the documents incorporated by reference therein (“Incorporated Documents”) pursuant to Item 12 of Form S-3 which were filed under the Exchange Act, on or before the date of this Agreement, or the issue date of the Base Prospectus or the Prospectus Supplement, as the case may be; and any reference in this Agreement to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, the Base Prospectus or the Prospectus Supplement shall be deemed to refer to and include the filing of any document under the Exchange Act after the date of this Agreement, or the issue date of the Base Prospectus or the Prospectus Supplement, as the case may be, and deemed to be incorporated therein by reference. All references in this Agreement to financial statements and schedules and other information that is “contained,” “included,” “described,” “referenced,” “set forth” or “stated” in the Registration Statement, the Base Prospectus or the Prospectus Supplement (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that is or is deemed to be incorporated by reference in the Registration Statement, the Base Prospectus or the Prospectus Supplement, as the case may be. No stop order suspending the effectiveness of the Registration Statement or the use of the Base Prospectus or the Prospectus Supplement has been issued, and no proceeding for any such purpose is pending or initiated or, to the Company's knowledge, threatened by the SEC. For purposes of this Agreement, “free writing prospectus” has the meaning set forth in Rule 405 under the Securities Act and the “Time of Sale Prospectus” means the preliminary prospectus, if any, together with the free writing prospectuses, if any, used in connection with the Transaction, including any documents incorporated by reference therein.

- b. The Registration Statement and any further documents related thereto to be filed with the SEC will contain all exhibits and schedules as required by the Securities Act. Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the Securities Act and the Exchange Act and the applicable Rules and Regulations and did not and, as amended or supplemented, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Base Prospectus, the Time of Sale Prospectus, if any, and the Prospectus Supplement, each as of its respective date, comply in all material respects with the Securities Act and the Exchange Act and the applicable Rules and Regulations. Each of the Base Prospectus, the Time of Sale Prospectus, if any, and the Prospectus Supplement, as amended or supplemented, did not and will not contain as of the date thereof any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Incorporated Documents, when they were filed with the SEC, conformed in all material respects to the requirements of the Exchange Act and the applicable Rules and Regulations, and none of such documents, when they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein (with respect to Incorporated Documents incorporated by reference in the Base Prospectus or Prospectus Supplement), in light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Base Prospectus, the Time of Sale Prospectus, if any, or Prospectus Supplement, when such documents are filed with the SEC, will conform in all material respects to the requirements of the Exchange Act and the applicable Rules and Regulations and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. No post-effective amendment to the Registration Statement reflecting any facts or events arising after the date thereof which represent, individually or in the aggregate, a fundamental change in the information set forth therein is required to be filed with the SEC. There are no documents required to be filed with the SEC in connection with the transaction contemplated hereby that (x) have not been filed as required pursuant to the Securities Act or (y) will not be filed within the requisite time period. There are no contracts or other documents required to be described in the Base Prospectus, the Time of Sale Prospectus, if any, or Prospectus Supplement, or to be filed as exhibits or schedules to the Registration Statement, that have not been described or filed as required.
- c. The Company has delivered, or will as promptly as practicable deliver, to Aeon complete conformed copies of the Registration Statement and of each consent and certificate of experts, as applicable, filed as a part thereof, and conformed copies of the Registration Statement (without exhibits), the Base Prospectus, the Time of Sale Prospectus, if any, and the Prospectus Supplement, as amended or supplemented, in such quantities and at such places as Aeon reasonably request. Neither the Company nor any of its directors and officers has distributed and none of them will distribute, any offering material in connection with the offering and sale of the Shares other than the Base Prospectus, the Time of Sale Prospectus, if any, the Prospectus Supplement, the Registration Statement, copies of the documents incorporated by reference therein and any other materials permitted by the Securities Act.

5. Representations and Warranties. Except as set forth under the corresponding section of the Disclosure Schedules attached to this Agreement, which Disclosure Schedules shall be deemed a part hereof, the Company hereby makes the representations and warranties set forth below to the Aeon.

- a. Organization and Qualification. All of the direct and indirect subsidiaries of the Company (“Subsidiary” or “Subsidiaries”) are set forth on Schedule 5(a). Except as set forth in Schedule 5(a), the Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any “Liens”, which for purposes of this Agreement shall mean a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction, and all the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. The Company and each of the Subsidiaries organized under the laws of the United States is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Except as set forth on Schedule 5(a), neither the Company nor any Subsidiary is in violation or default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in (i) a material adverse effect on the legality, validity or enforceability of this Agreement, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole or (iii) a material adverse effect on the Company’s ability to perform in any material respect on a timely basis its obligations under this Agreement (any of (i), (ii) or (iii), a “Material Adverse Effect”) and no “Proceeding”, which for purposes of this Agreement shall mean any action, claim, lawsuit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition, whether commenced or threatened) has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

- b. Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery of this Agreement by the Company and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Company, and no further action is required by the Company, its board of directors or its stockholders in connection therewith other than in connection with the "Required Approvals" (as defined in subsection 5(d) below). This Agreement has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.
- c. No Conflicts. The execution, delivery and performance of this Agreement by the Company, the issuance and sale of the Securities and the consummation by the Company of the other transactions contemplated hereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of any agreement, credit facility, debt or other instrument evidencing a Company or Subsidiary debt or otherwise, or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii) could not have or reasonably be expected to result in a Material Adverse Effect.
- d. Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other "Person", defined as an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind, including, without limitation, the OTCQB) in connection with the execution, delivery and performance by the Company of this Agreement, other than such filings as are required to be made under applicable federal and state securities laws (collectively, "Required Approvals").
- e. Issuance of the Securities; Registration. The Securities are duly authorized and, when issued and paid for in accordance with this Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all liens imposed by the Company other than restrictions on transfer provided for in this Agreement. The issuance by the Company of the Securities will be registered under the Securities Act. All of the Securities will be freely transferable and tradable by the purchasers of the Securities ("Purchaser" or "Purchasers") without restriction, other than any restrictions arising solely from an act or omission of a Purchaser. The Securities will be issued pursuant to the Registration Statement, and the issuance of the Securities will be registered by the Company under the Securities Act. The Registration Statement is available for the issuance of the Securities thereunder, and the Company has not received any notice that the SEC has issued or intends to issue a stop-order with respect to the Registration Statement or that the SEC otherwise has suspended or withdrawn the effectiveness of the Registration Statement, either temporarily or permanently, or intends or has threatened in writing to do so. The "Plan of Distribution" section under the Registration Statement permits the issuance and sale of the Securities hereunder. Upon receipt of the Securities, the Purchasers will have good and marketable title to such Securities, and the Securities will be freely tradable on the OTCQB.
- f. Capitalization. The capitalization of the Company is as set forth on Schedule 5(f). Except as set forth on Schedule 5(f), the Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees and pursuant to the conversion or exercise of securities exercisable, exchangeable or convertible into Common Stock ("Common Stock Equivalents"). No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by this Agreement. Except as a result of the purchase and sale of the Securities or as described in the SEC Reports (as defined below) or disclosed to Aeon, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under such securities. All of the outstanding Shares are validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding Shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. There are no stockholder agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders, except as otherwise disclosed to Aeon.

- g. SEC Reports; Financial Statements. The Company has complied in all material respects with requirements to file all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date of this Agreement (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “SEC Reports”) on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act and the Rules and Regulations. None of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and Rules and Regulations with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“GAAP”), except as may be otherwise specified in such financial statements or the Notes thereto and except that unaudited financial statements may not contain all Notes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.
- h. Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the SEC Reports, except as specifically disclosed in the SEC Reports, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company’s financial statements pursuant to GAAP or required to be disclosed in filings made with the SEC, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or “Affiliate” (defined as any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144 under the Securities Act), except pursuant to existing Company stock option plans or as a result of a direct stock grant or a direct option grant. The Company does not have pending before the SEC any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement or as set forth on Schedule 5(h), no event, liability or development has occurred or exists with respect to the Company or a Subsidiary or their respective business, properties, operations or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made that has not been publicly disclosed one trading day prior to the date hereof.
- i. Litigation. There is no action, lawsuit, inquiry, notice of violation, Proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, “Action”) which (i) adversely affects or challenges the legality, validity or enforceability of any of this Agreement or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company or any current or former director or officer of the Company. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act. No employee of the Company’s or any Subsidiary is a member of a union that relates to such employee’s relationship with the Company, and neither the Company or any of its Subsidiaries is a party to a collective bargaining agreement. The Company and its Subsidiaries believe that their relationships with their employees are good. No executive officer, to the knowledge of the Company, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

- j. Labor Relations. No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company which could reasonably be expected to result in a Material Adverse Effect.
- k. Compliance. Neither the Company nor any Subsidiary (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any order of any court, arbitrator or governmental body or (iii) is or has been in violation of any statute, rule or regulation of any governmental authority, including, without limitation, all foreign, federal, state and local laws applicable to its business and all such laws that affect the environment, except in each case as could not reasonably be expected to have a Material Adverse Effect.
- l. Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not have or reasonably be expected to result in a Material Adverse Effect (“Material Permits”). Neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.
- m. Title to Assets. To the extent possible, the Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them that is material to the business of the Company and the Subsidiaries and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and Liens for the payment of federal, state or other taxes, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.
- n. Patents and Trademarks. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other similar intellectual property rights necessary or material for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have could reasonably be expected to have a Material Adverse Effect (collectively, “Intellectual Property Rights”). Neither the Company nor any Subsidiary has received notice (written or otherwise) that the Intellectual Property Rights used by the Company or any Subsidiary violates or infringes upon the rights of any third party. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights of others. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- o. Insurance. The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company is engaged, including, but not limited to, directors and officers insurance coverage at least \$5 million in the aggregate. To the best knowledge of the Company, such insurance contracts and policies are accurate and complete. The Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.
- p. Transactions with Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company and, to the knowledge of the Company, none of its employees are presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner, other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement of expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements with the Company.

- q. Sarbanes-Oxley. Except as set forth on Schedule 5(q), the Company is in material compliance with the provisions of the Sarbanes-Oxley Act of 2002 which are applicable to it as of the date of this Agreement.
- r. Certain Fees. Except as otherwise provided in this Agreement, no brokerage or finder's fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by this Agreement.
- s. OTCQB Rules. The issuance and sale of the Securities hereunder will not contravene the rules and regulations of the OTCQB.
- t. Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become subject to the Investment Company Act.
- u. Registration Rights. Except as disclosed in the SEC Reports, no Person has any right to cause the Company to cause the registration under the Securities Act of any Securities of the Company.
- v. Application of Takeover Protections. The Company and its Board of Directors will take reasonable actions to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's Certificate of Incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under this Agreement, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.
- w. Solvency. Based on the financial condition of the Company as of the date of this Agreement: (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature; (ii) the Company's assets do not constitute unreasonably small capital to carry on its business for the current fiscal year as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, and projected capital requirements and capital availability thereof; and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its debt when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one (1) year from the date of this Agreement. The SEC Reports set forth as of the dates thereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" shall mean: (i) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade accounts payable and accrued expenses incurred in the ordinary course of business); (ii) all guaranties, endorsements and other contingent obligations in respect of Indebtedness of others, whether or not the same are or should be reflected in the Company's balance sheet (or the Notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (iii) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.
- x. Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and each Subsidiary has filed all necessary federal, state and foreign income and franchise tax returns and has paid or accrued all taxes shown as due thereon, and the Company has no knowledge of a tax deficiency which has been asserted or threatened against the Company or any Subsidiary.

- y. Foreign Corrupt Practices. Neither the Company, nor to the knowledge of the Company, any agent or other person acting on behalf of the Company, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended.
 - z. Audit Firm. To the knowledge of the Company, the Company's audit firm who the Company expects will express its opinion with respect to the financial statements to be included in the Company's next Annual Report on Form 10-K, is a registered public accounting firm as required by the Securities Act.
 - aa. Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities (other than for Aeon's placement of the Securities), or (iii) paid or agreed to pay to any person any compensation for soliciting another to purchase any other securities of the Company.
 - bb. Approvals. The issuance and quotation of the Shares on the OTCQB requires no further approvals, including but not limited to, the approval of shareholders.
 - cc. FINRA Affiliations. There are no affiliations with any Financial Industry Regulatory Authority ("FINRA") member firm among the Company's officers, directors or, to the knowledge of the Company, any five percent (5%) or greater stockholder of the Company, except as set forth in the Base Prospectus.
6. Offering Conditions. The Offering will be conditioned upon, among other things, the following:
- a. No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC, and any request for additional information on the part of the SEC (to be included in the Registration Statement, the Base Prospectus or the Prospectus Supplement or otherwise) shall have been complied with to the reasonable satisfaction of Aeon.
 - b. Aeon shall not have discovered and disclosed to the Company on or prior to any Settlement Date that the Registration Statement, the Base Prospectus or the Prospectus Supplement or any amendment or supplement thereto contains an untrue statement of a fact which, in the opinion of counsel for Aeon, is material or omits to state any fact which, in the opinion of such counsel, is material and is required to be stated therein or is necessary to make the statements therein not misleading.
 - c. All corporate proceedings and other legal matters incident to the authorization, form, execution, delivery and validity of each of this Agreement, the Shares, the Registration Statement, the Base Prospectus and the Prospectus Supplement and all other legal matters relating to this Agreement and the transactions contemplated hereby shall be reasonably satisfactory in all material respects to counsel for Aeon, and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to opine upon such matters.
 - d. Aeon shall have received from outside counsel to the Company such counsel's written opinion, addressed to Aeon in form and substance reasonably satisfactory to Aeon, which opinion shall include a "10b-5" representation from such counsel.
 - e. (i) Neither the Company nor any of its Subsidiaries shall have sustained since the date of the latest audited financial statements included or incorporated by reference in the Base Prospectus, any loss or interference with its business from fire, explosion, flood, terrorist act or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth in or contemplated by the Base Prospectus and (ii) since such date there shall not have been any change in the capital stock or long-term debt of the Company or any of its Subsidiaries or any change, or any development involving a prospective change, in or affecting the business, general affairs, management, financial position, stockholders' equity, results of operations or prospects of the Company and its Subsidiaries, otherwise than as set forth in or contemplated by the Base Prospectus, the effect of which, in any such case described in clause (i) or (ii), is, in the judgment of Aeon, so material and adverse as to make it impracticable or inadvisable to proceed with the sale or delivery of the Shares on the terms and in the manner contemplated by the Base Prospectus, the Time of Sale Prospectus, if any, and the Prospectus Supplement.

- f. The Common Stock is registered under the Exchange Act and, as of the date of each Settlement Date, the applicable Shares shall be listed and authorized for trading on the OTCQB, and satisfactory evidence of such actions shall have been provided to the Aeon. The Company shall have taken no action designed to, or likely to have the effect of terminating the registration of the Common Stock under the Exchange Act or delisting or suspending from trading the Common Stock from the OTCQB, nor has the Company received any information suggesting that the SEC is contemplating terminating such registration or the OTCQB is contemplating not quoting the Company's Shares on the OTCQB.
 - g. Subsequent to the execution and delivery of this Agreement, there shall not have occurred any of the following: (i) trading in securities generally on the New York Stock Exchange, the NASDAQ Stock Market, the OTCQB or in trading in any securities of the Company on any exchange or in the over-the-counter market shall have been suspended or minimum or maximum prices or maximum ranges for prices shall have been established on any such exchange or such market by the SEC, by such exchange or by any other regulatory body or governmental authority having jurisdiction; (ii) a banking moratorium shall have been declared by federal or state authorities or a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States; (iii) the United States shall have become engaged in hostilities in which it is not currently engaged, the subject of an act of terrorism, there shall have been an escalation in hostilities involving the United States, or there shall have been a declaration of a national emergency or war by the United States; or (iv) there shall have occurred any other calamity or crisis or any change in general economic, political or financial conditions in the United States or elsewhere, if the effect of any such event in clause (iii) or (iv) makes it, in the sole judgment of Aeon, impracticable or inadvisable to proceed with the sale or delivery of the Shares on the terms and in the manner contemplated by the Base Prospectus and the Prospectus Supplement.
 - h. No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any governmental agency or body which would, as of a Settlement Date, prevent the issuance or sale of the Shares or materially and adversely affect or potentially and adversely affect the business or operations of the Company; and no injunction, restraining order or order of any other nature by any federal or state court of competent jurisdiction shall have been issued as of a Settlement Date which would prevent the issuance or sale of the Shares or materially and adversely affect or potentially and adversely affect the business or operations of the Company.
 - i. The Company will prepare and file with the SEC a Current Report on Form 8-K with respect to the Company's engagement of Aeon, including this Agreement as an exhibit thereto.
 - j. If applicable, the Company shall have entered into subscription agreements with each of the Purchasers and such agreements shall be in full force and effect and shall contain representations and warranties of the Company as agreed between the Company and the Purchasers.
 - k. FINRA shall have raised no objection to the fairness and reasonableness of the terms and arrangements of this Agreement. In addition, the Company shall, if requested by Aeon, make or authorize Aeon's counsel to make on the Company's behalf, an Issuer Filing with FINRA pursuant to NASD Rule 2710 with respect to the Registration Statement and pay all filing fees required in connection therewith.
 - l. Prior to each Settlement Date, the Company shall have furnished to Aeon such further information, certificates and documents as Aeon may reasonably request.
7. Finders' Fees and Adjustments. The Company represents to Aeon that the Company is or will be liable for any finder's fees to third parties in connection with the introduction of the Company to Aeon. The Company represents and warrants to Aeon that the entry into this Agreement or any other action of the Company in connection with the proposed Offering will not violate any agreement between the Company and any other underwriter. Aeon reserves the right to reduce any item of their compensation or adjust the terms thereof as specified herein in the event that a determination and/or suggestion will be made by FINRA to the effect that the underwriters' aggregate compensation is in excess of FINRA rules or that the terms thereof require adjustment; provided, however, the aggregate compensation otherwise to be paid to the underwriters by the Company may not be increased above the amounts stated herein without the written approval of the Company.
8. Integration. Other than as previously disclosed or reflected in its public filings, neither the Company nor any of its affiliates has either prior to the effective date of the Registration Statement, made any offer or sale of any securities which are required to be "integrated" pursuant to the Securities Act or the regulations thereunder with the offer and sale of the Shares pursuant to the Registration Statement.

9. Company Cooperation. During the Engagement Period, the Company agrees to cooperate with Aeon and to furnish, or cause to be furnished, to Aeon, any and all information and data concerning the Company and the Offering that Aeon reasonably deems appropriate (“Information”). During the Engagement Period, the Company will provide Aeon reasonable access during normal business hours to all of the Company’s assets, properties, books, contracts, commitments and records and to the Company’s officers, directors, employees, appraisers, independent accountants, legal counsel and other consultants and advisors. The Company acknowledges and agrees that in rendering its services hereunder, Aeon will be using and relying on such Information (and information available from public sources and other sources deemed reliable by Aeon) without independent verification thereof by Aeon or independent appraisal by Aeon of any of the Company’s assets. Except as contemplated by the terms hereof or as required by applicable law, Aeon will keep strictly confidential all non-public Information concerning the Company provided to Aeon. No obligation of confidentiality will apply to Information that: (i) is in the public domain as of the date hereof or hereafter enters the public domain without a breach by Aeon; (ii) was known or became known by Aeon prior to the Company’s disclosure thereof to Aeon as demonstrated by the existence of its written records; (iii) becomes known to Aeon from a source other than the Company, and other than by the breach of an obligation of confidentiality owed to the Company; (iv) is disclosed by the Company to a third party without restrictions on its disclosure; or (v) is independently developed by Aeon.
10. Administration. Aeon will collaborate on the engagement of all other professionals, background checks and the like to avoid duplication of effort or cost. For administrative convenience, Aeon will serve to administer such professionals and will pay and submit invoices for expense reimbursement to the Company related to services and expenses that are for the benefit of Aeon. Other reimbursable expenses of Aeon will be submitted directly to the Company for payment in accordance with Section 1 hereof. The allocation of the compensation payable to Aeon as selling commission to other dealers or for other permitted purposes set forth in Section 1 of this Agreement shall be determined by Aeon without reference to the Company. Disbursements of such allocations shall be made solely and directly by Aeon as it determines.
11. Third-Party Rights. This Agreement does not create, and shall not be construed as creating, rights enforceable by any person or entity not a party hereto, except those entitled hereto by virtue of the indemnification provisions hereof. The Company acknowledges and agrees that Aeon is not and shall not be construed as a fiduciary of the Company and shall have no duties or liabilities to the equity holders or the creditors of the Company or any other person by virtue of this Agreement or the retention of Aeon hereunder, all of which are hereby expressly waived.
12. Indemnification.
- a. To the extent permitted by law, the Company will indemnify Aeon, together with its respective affiliates, stockholders, directors, officers, employees and controlling persons (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) against all losses, claims, damages, expenses and liabilities, as the same are incurred (including the reasonable fees and expenses of counsel), relating to or arising out of its activities hereunder or pursuant to this Agreement, except to the extent that any losses, claims, damages, expenses or liabilities (or actions in respect thereof) are found in a final judgment (not subject to appeal) by a court of law to have resulted primarily and directly from any Aeon’s willful misconduct, bad faith or gross negligence in performing the services described in this Agreement.
 - b. Promptly after receipt by any Aeon of notice of any claim or the commencement of any action or Proceeding with respect to which such Aeon is entitled to indemnity hereunder, Aeon will notify the Company in writing of such claim or of the commencement of such action or proceeding, but failure to so notify the Company shall not relieve the Company from any obligation it may have hereunder, except and only to the extent such failure results in the forfeiture by the Company of substantial rights and defenses. If the Company so elects or is requested by Aeon, the Company will assume the defense of such action or Proceeding and will employ counsel reasonably satisfactory to such Aeon and will pay the fees and expenses of such counsel. Notwithstanding the preceding sentence, Aeon will be entitled to employ counsel separate from counsel for the Company and from any other party in such action if counsel for Aeon reasonably determines that it would be inappropriate under the applicable rules of professional responsibility for the same counsel to represent both the Company and Aeon. In such event, the reasonable fees and disbursements of no more than one such separate counsel will be paid by the Company, in addition to local counsel. The Company will have the exclusive right to settle the claim or Proceeding provided that the Company will not settle any such claim, action or proceeding unless either: (i) such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising or that may arise out of such claim, action or Proceeding; or (ii) the Company has obtained the prior written consent of Aeon, which consent shall not be unreasonably withheld.
 - c. The Company agrees to notify Aeon promptly of the assertion against it or any other person of any claim or the commencement of any action or Proceeding relating to a transaction contemplated by this Agreement.

- d. If for any reason the foregoing indemnity is unavailable to Aeon or insufficient to hold Aeon harmless, then the Company shall contribute to the amount paid or payable by Aeon as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect not only the relative benefits received by the Company on the one hand and Aeon on the other, but also the relative fault of the Company on the one hand and Aeon on the other that resulted in such losses, claims, damages or liabilities, as well as any relevant equitable considerations. The amounts paid or payable by a party in respect of losses, claims, damages and liabilities referred to above shall be deemed to include any reasonable legal or other fees and expenses incurred in defending any litigation, proceeding or other action or claim. Notwithstanding the provisions hereof, Aeon's share of the liability hereunder shall not be in excess of the amount of fees actually received, or to be received, by Aeon under this Agreement (excluding any amounts received as reimbursement of expenses incurred by Aeon).
- e. These indemnification provisions shall remain in full force and effect whether or not the Transaction contemplated by this Agreement is completed, shall survive the termination of this Agreement and shall be in addition to any liability that the Company might otherwise have to any indemnified party under this Agreement or otherwise.
13. Termination. The term of Aeon's engagement hereunder shall continue in accordance with the Agreement and shall end on the final closing of the Transaction; provided, however, the Agreement can be terminated by either party for any reason, without or without cause, upon thirty (30) days written notice of termination to the other party.
14. Notices. Any notice or other communication required or permitted to be given by any party to any other party pursuant to the terms of this Agreement ("Notice") shall be in writing, unless otherwise specified in this Agreement, and if sent to Aeon, shall be delivered to Aeon at 1715 Hwy 35, Suite 103, Middletown, New Jersey, e-mail: dmallios@aeoncapitalinc.com Attention: Demetrios Mallios with a copy to Ortol Rosenstadt, LLP, 501 Madison Avenue, New York, New York, Attention William Rosenstadt, e-mail: wsr@ortolirosenstadt.com; or; or if sent to the Company, shall be delivered to PharmaCyte Biotech, Inc., 23046 Avenida de la Carlota, Suite 600, Laguna Hills, California 92653 attention: Kenneth L. Waggoner, e-mail: kwaggoner@pharmacYTE.com, with a copy to Pepper Hamilton LLP, 620 Eighth Avenue, New York, New York 10018-1405, attention: Merrill Kraines, e-mail: krainesm@pepperlaw.com. Each party to this Agreement may change such address for Notices by sending to the parties to this Agreement Notice of a new address for such purpose. Each such Notice or other communication shall be deemed given: (i) when delivered personally or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day (as defined below), or, if such day is not a Business Day on the next succeeding Business Day; (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier; and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid). For purposes of this Agreement, "Business Day" shall mean any day on which commercial banks in the City of New York are open for business.
15. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and Aeon and their respective successors and the affiliates, controlling persons, officers and directors. References to any of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.
16. Entire Agreement; Amendment; Severability. This Agreement (including all schedules and exhibits attached hereto and Sales Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended, except pursuant to a written instrument executed by the Company and Aeon. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement.

17. Miscellaneous. The Company represents that it is free to enter into this Agreement and the transactions contemplated hereby, that it will act in good faith and that it will not hinder Aeon's efforts hereunder. This Agreement will be deemed to have been made and delivered in New York City and both the binding provisions of this Agreement and the transactions contemplated hereby will be governed as to validity, interpretation, construction, effect and in all other respects by the internal laws of the State of New York, without regard to the conflict of laws principles thereof. Each of Aeon and the Company: (i) agrees that any lawsuit, action or Proceeding arising out of or relating to this Agreement and/or the transactions contemplated hereby will be instituted exclusively in New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York; (ii) waives any objection which it may have or hereafter to the venue of any such lawsuit, action or Proceeding; and (iii) irrevocably consents to the jurisdiction of the New York Supreme Court, County of New York, and the United States District Court for the Southern District of New York in any such suit, action or proceeding. The Company and Aeon each hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this Agreement or any transaction contemplated hereby. Each of Aeon and the Company further agrees to accept and acknowledge service of any and all process which may be served in any such lawsuit, action or proceeding in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York and agrees that service of process upon the Company mailed by certified mail to the Company's address will be deemed in every respect effective service of process upon the Company, in any such lawsuit, action or Proceeding, and service of process upon Aeon mailed by certified mail to Aeon's address will be deemed in every respect effective service process upon Aeon, in any such lawsuit, action or Proceeding.

[SIGNATURE PAGE FOLLOWS]

This Agreement may be executed in counterparts (including facsimile or .pdf counterparts), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Very truly yours,

AEON CAPITAL, INC.

By /s/ Demetrios Mallios
Demetrios Mallios
Head of Investment Banking

Accepted and agreed as of the date first written above:

PHARMACYTE BIOTECH, INC.

By /s/ Kenneth L. Waggoner
Kenneth L. Waggoner
Chief Executive Officer
President and General Counsel

PHARMACYTE BIOTECH

VIA EMAIL ONLY

January 26, 2018

Kerry Propper
Chief Executive Officer
Chardan Capital Markets, LLC
17 State Street
New York, NY 10004

Re: Mutual Termination Agreement

Dear Mr. Propper:

This letter is to confirm that PharmaCyte Biotech, Inc. (“Company”) and Chardan Capital Markets, LLC (“Chardan”) have agreed to mutually terminate the letter agreement between Chardan Capital Markets, LLC (“Chardan”) and the Company dated May 28, 2014, as amended on December 15, 2016 (collectively, “Engagement Agreement”). Chardan agrees that no further fees or warrants are due and payable by the Company to Chardan pursuant to the Engagement Agreement.

Sincerely,

/s/ Kenneth L. Waggoner
Chief Executive Officer
President and General Counsel

Acknowledged and Agreed

Chardan Capital Markets, LLC

By: /s/ George Kaufman
Name: George Kaufman
Title: Managing Director