SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: **CV-23-00693595-00CL** **DATE:** **9 March 2023**

NO. ON LIST: **4**

TITLE OF PROCEEDING: RE Acerus Pharmaceuticals Corporation Et Al

BEFORE JUSTICE: MADAM JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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For Defendant, Respondent, Responding Party, Defence:

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ENDORSEMENT OF JUSTICE CONWAY:

All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicants dated March 7, 2023.

The Applicants seek approval of a SISP and an extension of the Stay of Proceedings to May 19, 2023 to permit the SISP to run in accordance with its terms.

The relief sought is supported by the Monitor and DIP lender and is otherwise unopposed.

The SISP was designed to build on the pre-filing SISP Process and to maximize flexibility for a restructuring, reorganization or sale. It has been developed in consultation with the Monitor and the DIP lender. The Applicants may also seek to put a Stalking Horse Bid in place – subject to court approval. The SISP includes protections if a secured creditor wishes to participate in the process.

I am satisfied that the the SISP should be approved, taking into consideration the factors set out in *Nortel Networks Corporation (Re*), 2009 CanLII 39492 (ON SC), and the considerations that will ultimately apply to a sale under s. 36 of the CCAA. In particular, the flexibility of the SISP is designed to maximize the potential available transactions for the ultimate benefit of the stakeholders. The SISP is further justified by the liquidity constraints faced by the Applicants and the requirement in the DIP Facility Agreement for a sales process. As noted, the SISP builds upon the pre-filing SISP efforts and the information obtained through that process. Finally, the Monitor and the CRO believe that the timelines are sufficient to properly canvass the market. I therefore approve the SISP.

The stay extension is granted. I am satisfied that the Applicants are acting in good faith and with due diligence. There will be sufficient liquidity during the extended period, re the Cash Flow Forecast. The Monitor believes the extension will not materially prejudice any creditor.

The Applicants have agreed that it is appropriate not to seal the information about the monthly compensation payable to the CRO. The order contains a provision to unseal that previously redacted information.

Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

Conway J.