IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Acerus Pharmaceuticals Corporation, *et al.,* Debtors in a foreign proceeding.[1]	Chapter 15 Case No. 23-10111 (MFW) (Jointly Administered) **Hearing Date: TBD** **Objection Deadline: TBD**

FOREIGN REPRESENTATIVE'S
MOTION FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING THE CCAA SISP APPROVAL ORDER AND (II) GRANTING RELATED RELIEF

Acerus Pharmaceuticals Corporation, in its capacity as the authorized foreign representative (the "**Foreign Representative**") for the above-captioned debtors (the "**Debtors**"), which are the subject of proceedings (the "**Canadian Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**") in the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Proposed Order**"), pursuant to sections 105(a), 363, 1501, 1507, 1520, 1521, 1522, 1525, and 1527 of title 11 of the United States Code (the "**Bankruptcy Code**") that recognizes and enforces the Canadian Court's order, attached to the Proposed Order as **Exhibit 1** (the "**CCAA SISP Approval Order**") approving the sale and investment solicitation procedures (the "**SISP**"), which are attached to the CCAA SISP Approval Order as Schedule A, and implementation thereof, as well as providing other relief as this Court deems appropriate (the "**Requested Relief**").

[1] The Debtors in the chapter 15 proceedings, together with the last four digits of their business identification numbers are: Acerus Pharmaceuticals Corporation (6891); Acerus Biopharma Inc. (0687); Acerus Labs Inc (0126); and Acerus Pharmaceuticals USA, LLC (9089). The location of the Debtors' headquarters and the Debtors' foreign representative is: 205-7025 Langer Drive, Mississauga, Ontario, Canada.

In support of this motion (this "**Motion**"),[2] the Foreign Representative rely upon and incorporate the (a) *Declaration of Naveed M. Manzoor in Support of the Foreign Representative's Motion for Entry of an Order (I) Recognizing and Enforcing the CCAA SISP Approval Order and (II) Granting Related Relief* (the "**Manzoor Declaration**") and (b) *Declaration of Elizabeth Pillon in Support of the Foreign Representative's Motion for Entry of an Order (I) Recognizing and Enforcing the CCAA SISP Approval Order and (II) Granting Related Relief* (the "**Pillon Declaration**"), both filed contemporaneously herewith. In further support of this Motion, the Foreign Representative respectfully states the following:[3]

JURISDICTION AND VENUE

1. The Foreign Representative commenced these chapter 15 cases as ancillary proceedings to the Canadian Proceedings pursuant to sections 1504, 1509 and 1515 of title 11 of the Bankruptcy Code.

2. The United States Bankruptcy Court for the District of Delaware (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 109 and 1501, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

[2] Capitalized terms used but not defined here shall have the meanings ascribed to them in the CCAA SISP Approval Order, the *Amended and Restated Initial Order* [D.I. 37-1] (the "**ARIO**"), or the *Order Granting Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, (III) Recognition of Initial Order and Amended and Restated Initial Order, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code* [D.I. 42] (the "**Recognition Order**").

[3] A detailed description of the Debtors and their businesses and the facts and circumstances surrounding these chapter 15 cases are set forth in: (a) *Verified Petition (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, (III) Recognition of Initial Order and Amended and Restated Initial Order, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code* [D.I. 4] (together with the official form petitions filed concurrently therewith, the "**Petition**"); (b) *Declaration of Naveed Z. Manzoor in Support of Debtors' Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Debtors' Motion for Certain Provisional Relief* [D.I. 6] (the "**Manzoor Recognition Declaration**"); and (c) *Declaration of Lee Nicholson as Canadian Counsel to the Debtors in Support of the Debtors' Chapter 15 Petitions and Requests for Certain Related Relief Pursuant to Chapter 15 of the Bankruptcy Code* [D.I. 7] (the "**Nicholson Declaration**"), incorporated by reference herein.

3. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters under 28 U.S.C. § 157(b)(2)(P).

4. The statutory bases for the relief requested herein are sections 105(a), 363, 1501, 1507, 1520, 1521, 1522, 1525, and 1527 of the Bankruptcy Code, and rule 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").[4]

5. The Foreign Representative confirms its consent, pursuant to Bankruptcy Rule 7008 and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**") to the entry of final orders or judgments by the Court to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Venue in this district is proper under 28 U.S.C. § 1410.

BACKGROUND

7. Acerus Pharmaceuticals Corporation ("**APC**") is a pharmaceutical company whose head office is located in Mississauga, Ontario. Directly and through its subsidiaries Acerus Biopharma Inc. ("**ABI**"), Acerus Labs Inc. ("**ALI**"), and Acerus Pharmaceuticals USA, LLC ("**APL**", together with ABI and ALI the "**Subsidiaries**"), APC holds intellectual property rights over pharmaceutical products and various methods of treatment and manufacturing, and carries on a business researching, trialing, and bringing said products to market for distribution. APC does

[4] By this Motion, the Foreign Representative solely requests entry of an order granting recognition of the CCAA SISP Approval Order, through which the Canadian Court has already approved the SISP. Thus, the Foreign Representative respectfully submits that Local Rule 6004-1 is inapplicable to this Motion. To the extent that Local Rule 6004-1 is deemed to apply, the provisions highlighted by Local Rule 6004-1(c) can be found in the SISP, a copy of which is attached in full as Schedule 1 to the CCAA SISP Approval Order, and which is also summarized in the Manzoor Declaration.

business in the Unites States and Canada, has partners located internationally and continues to explore business opportunities globally through licensing and partnerships.

8. Additional information about the Debtors' business and operations, the events leading up to the filing of the Petition, and the facts and circumstances surrounding the Canadian Proceedings and these chapter 15 cases are set forth in the Manzoor Recognition Declaration.

9. On January 26, 2023, the Debtors commenced proceedings under the CCAA to initiate a restructuring process under the supervision of the Canadian Court. The same day, the Canadian Court entered an initial order (the "**Initial Order**") appointing Ernst & Young, Inc. as monitor (the "**Monitor**") of the Debtors and authorizing APC to act as Foreign Representative of the Debtors. On February 3, 2023, the Canadian Court entered the ARIO.

10. On January 29, 2023 (the "**Petition Date**"), the Foreign Representative properly commenced these chapter 15 cases under sections 1504, 1509, and 1515 of the Bankruptcy Code by the filing of a petition for recognition of the Canadian Proceedings under section 1515 of the Bankruptcy Code. On January 31, 2023, the Court entered an order [D.I. 24] authorizing the joint administration and procedural consolidation of these chapter 15 cases pursuant to Bankruptcy Rule 1015(b).

11. Also on January 31, 2023, the Court entered an order [D.I. 25] (the "**Provisional Relief Order**") granting certain relief on a provisional basis pursuant to section 1519 of the Bankruptcy Code. On February 27, 2023 the Court entered the Recognition Order, thereby granting recognition of the Canadian Proceedings as "foreign main proceedings" pursuant to chapter 15 of the Bankruptcy Code.[5]

[5] The Recognition Order found, among other things, that the Debtors had satisfied the applicable requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1509, 1515, 1517, 1520, and 1521 of the Bankruptcy Code with respect to the relief granted therein, the Foreign Representative incorporates such findings herein.

A. The Pre-Filing SISP

12. Prior to initiating the Canadian Proceedings, on September 21, 2022, APC retained Ernst & Young Inc. ("**EY**") and FAAN Advisors Group Inc. ("**FAAN**") to administer a sales and investment solicitation process for the rights to Natesto and Noctiva as part of its strategic review of capital and business alternatives (the "**Pre-Filing SISP**"). *See* Manzoor Declaration ¶ 7. The Pre-Filing SISP was designed to identify potential bidders and investors.[6] During the course of the Pre-Filing SISP, the Debtors and their advisors assembled a list of approximately one-hundred-and-thirteen (113) potential buyers and investors (the "**Prospective Bidders**"). *See id.* ¶ 8.

13. The Debtors, with assistance from their advisors, then prepared a teaser document and a confidential information memorandum and sent both to the Prospective Bidders.[7] *See id.* ¶ 9. A data room was also established which included information with respect to the Debtors and their products to assist Prospective Bidders (the "**Data Room**"). *See id.* The Data Room and confidential information memorandum was available to all Prospective Bidders who signed non-disclosure agreements. *See id.*

14. Over the course of the Pre-Filing SISP, various parties signed non-disclosure agreements and reviewed the confidential information memorandum and information provided in the Data Room and the Debtors' advisors received submissions from various parties indicating formal interest. *See id.* ¶ 10. Although no actionable transactions were identified through the Pre-Filing SISP, the Monitor has continued discussions with parties who have previously expressed interest following the commencement of the Canadian Proceedings. *See id.*

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[6] As indicated in the SISP, the Debtors contemplate the sale of the Debtors' property or the investment in the Debtors, potentially pursuant to a reverse vesting order.

[7] The confidential information memorandum was provided to Prospective Bidders only after an executed non-disclosure agreement was signed.

15. While the Pre-Filing SISP did not lead to an actionable transaction, the Debtors and the Monitor determined that it would be appropriate to undertake a further SISP process under the supervision of the Canadian Court.

B. The SISP

16. On March 2, 2023, the Debtors served a motion in the Canadian Proceedings (the "**CCAA SISP Motion**") seeking entry of the CCAA SISP Approval Order, which, among other things, approves the SISP. *See* Manzoor Declaration ¶ 12. The CCAA SISP Motion also sought an extension of the Stay of Proceedings. *See id.* All parties in interest were provided an opportunity to be heard with respect to, and object to, the relief granted under the CCAA SISP Approval Order. *See* Pillon Declaration ¶ 5. There were no objections and/or responses submitted to the Canadian Court in connection with the CCAA SISP Motion. *See id.* On March 9, 2023, the Canadian Court granted the relief requested in the CCAA SISP Motion and entered the CCAA SISP Approval Order. *See* Manzoor Declaration ¶ 12.

17. The SISP provides that the Monitor, with the assistance of the Debtors and the CRO, will solicit interest in, and opportunities for, an acquisition or refinancing of the Debtors' business or a sale of the assets and/or business of the Debtors, in whole or in part. *See* Manzoor Declaration ¶ 14. The SISP is designed to be broad and flexible and contemplates one or more of a restructuring, recapitalization, reverse vesting, or other form of reorganization of the business and affairs of the Debtors as a going concern or a sale of all, substantially all or one or more components of the Debtors' property and the Debtors' business. *See id.*

18. The SISP contemplates six (6) key milestones and deadlines, which may be extended or amended by the Debtors, with the prior written approval of the Monitor. *See id.* ¶ 15.

Milestone	Deadline
Publish notice of SISP and deliver teaser letter and NDA to Known Potential Bidders	Five (5) days following issuance of the SISP Order (March 14, 2023)
Bid Deadline	Fifty (50) days following issuance of SISP Order (April 28, 2023)
Monitor to notify each Bidder in writing as to whether its Bid constitutes a Qualified Bid	Within five (5) business days following the Bid Deadline (No later than May 5, 2023)
Monitor to notify each Qualified Bidder on whether an Auction will take place	Two (2) business days prior to the commencement of the Auction (No later than May 5, 2023)
Auction date (if required)	Sixty-one (61) days following issuance of SISP Order (May 9, 2023)
Hearing of the Sale Approval Motion	No later than seventy-one (71) days following issuance of SISP Order (No later than May 19, 2023)

19. The Debtors and Monitor believe that the milestones in the SISP provide prospective bidders with sufficient time to participate in the SISP, especially considering that the SISP is, in essence, a continuation of the Pre-Filing SISP which began in September 2022 and continued through December 2022. *See* Manzoor Declaration ¶ 16. The SISP also provides for a notification process, bidding procedures, protocol for selection of a successful bid, an auction process (if necessary), and the requirement for approval of any proposed transaction. *See* Manzoor Declaration ¶¶ 17-36.

20. Similar to bidding procedures in a chapter 11 case, the SISP establishes a clear and open process for the solicitation, receipt, and evaluation of bids on a timeline that the Debtors believe is reasonable and will provide parties with sufficient time and information to submit a competitive bid. *See* Manzoor Declaration ¶¶ 21-27. The Debtors believe, based on consultation with their advisors, that the timeline of the SISP provides a fair and reasonable process that will

adequately canvass the market, while balancing against the significant risk of further market decline. *See* Manzoor Declaration ¶ 15.

21. The SISP sets out the parameters by which the Debtors, under the oversight of the Monitor and the advisors, will, among other things:

a) prepare marketing materials, a process letter, and provide access to the Data Room to applicable parties that execute a non-disclosure agreement in form and substance satisfactory to Debtors;

b) solicit interest in executable transactions (*i.e.*, bids);

c) negotiate any bids received within the SISP;

d) select one or more successful bids;

e) conduct an auction (if necessary); and

f) seek the approval of the Canadian Court of any successful bid.

22. The SISP provides for proper notice and an opportunity for parties in interest to submit a bid. Further, parties in interest had an opportunity to be heard with respect to the relief granted in the CCAA SISP Approval Order. *See* Pillon Declaration ¶¶ 4-5. Also, parties in interest will be provided with adequate notice and an opportunity to object with respect to the relief requested herein in accordance with the procedures set forth in the *Order (A) Scheduling Hearing on Recognition of Chapter 15 Petitions and (B) Specifying Form and Manner of Service of Notice* [D.I. 8].

23. Finally, following the SISP, the Debtors will seek an order approving the successful bid and consummation of the transactions contemplated therein in the Canadian Proceedings (the "**CCAA Implementation Order**"), whereby parties wishing to oppose the entry of the CCAA Implementation Order will have the opportunity to object and be heard before the Canadian Court. The Foreign Representative will thereafter seek recognition of the CCAA Implementation Order through this Court pursuant to a separate motion.

BASIS FOR RELIEF REQUESTED

A. The Primary Purpose of Chapter 15 is to Grant Comity to and Facilitate Cooperation with Foreign Courts

24. Chapter 15 of the Bankruptcy Code is designed to promote cooperation and comity between courts in the United States and foreign courts, protect and maximize the value of a debtor's assets, and facilitate the rehabilitation and reorganization of businesses. 11 U.S.C. § 1501(a). It empowers courts with "broad, flexible rules to fashion relief appropriate for effectuating [chapter 15's] objectives in accordance with comity." *In re Vitro SAB de CV*, 701 F.3d 1031, 1053 (5th Cir. 2012); *see also In re SPhinX, Ltd.*, 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006) ("[C]hapter 15 maintains—and in some respects enhances—the 'maximum flexibility' . . . that section 304 provided bankruptcy courts in handling ancillary cases in light of principles of international comity and respect for the laws and judgments of other nations.") (internal citations omitted); *Lavie v. Ran*, 406 B.R. 277, 282 (S.D. Tex. 2009) (stating that post-recognition relief in a chapter 15 case involves weighing "'flexible and pragmatic' subjective considerations and comity").

25. In determining whether to recognize and enforce foreign orders, principles of comity are the primary consideration in a court's analysis. *See, e.g., Vitro SAB de CV*, 701 F.3d at 1043–44 (stating that, within the context of chapter 15, comity is a "principal objective"). Under these principles, "a foreign judgment should generally be accorded comity if its proceedings are 'fair and impartial.'" *Collins v. Oilsands Quest, Inc. (In re Oilsands Quest Inc.)*, 484 B.R. 593, 597 (S.D.N.Y. 2012) (holding that it was "clear that the Canadian proceedings have been fair and impartial, and that the Canadian proceedings have afforded creditors a full and fair opportunity to be heard in a manner that is fully consistent with this country's standards of due process").

26. With respect to recognizing and enforcing the orders of foreign proceedings commenced under the CCAA, United States courts have routinely concluded that the CCAA is a sound statutory insolvency scheme that fosters reorganization in a manner that is consistent with fundamental principles and policies of the United States. *See, e.g., Cornfeld v. Invs. Overseas Servs., Ltd.*, 471 F.Supp. 1255, 1259 (S.D.N.Y. 1979) ("The fact that the foreign country involved is Canada is significant. It is well-settled in New York that the judgments of the Canadian courts are to be given effect under principles of comity. . . . More importantly, Canada is a sister common law jurisdiction with procedures akin to our own, and thus there need be no concern over the adequacy of the procedural safeguards of Canadian proceedings.") (internal quotation marks and citations omitted). As is the case with Canada, when a foreign proceeding is "in a sister common law jurisdiction with procedures akin to our own, comity should be extended with less hesitation, there being fewer concerns over the procedural safeguards employed in those foreign proceedings." *In re Bd. of Dirs. of Hopewell Int'l Ins. Ltd.*, 238 B.R. 25, 66 (Bankr. S.D.N.Y. 1999) (internal citation omitted).

B. Recognition and Enforcement of the CCAA SISP Approval Order is Appropriate under Chapter 15 of the Bankruptcy Code

27. The Court should recognize and enforce the CCAA SISP Approval Order because: i) under sections 1521 and 1522 of the Bankruptcy Code, the relief granted therein protects the assets of the Debtors and the interests of creditors; ii) section 1520(a)(3) grants relief to the Foreign Representative that would be available to a trustee under section 363 of the Bankruptcy Code; iii) the relief granted therein is warranted as "additional assistance" under section 1507 of the Bankruptcy Code; iv) recognizing and enforcing the CCAA SISP Approval Order is appropriate and in furtherance of the principle purpose of chapter 15 and therefore authorized pursuant to

section 105(a) of the Bankruptcy Code; and v) the relief granted therein is not contrary to United States public policy.

1. **Recognition and Enforcement is Appropriate and Warranted Pursuant to Sections 1521 and 1522 of the Bankruptcy Code as it Protects the Assets of the Debtors and the Interests of Creditors.**

28. Under section 1521 of the Bankruptcy Code the Court may grant "any appropriate relief" to "effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1521(a). Relief under section 1521(a) of the Bankruptcy Code may only be granted if the interests of "the creditors and the other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a).

29. The SISP satisfies the requirement under section 1522 of the Bankruptcy Code that the interests of creditors, the debtor, and other interested parties be "sufficiently protected." 11 U.S.C. § 1522(a). Although the Bankruptcy Code does not define "sufficient protection," it "requires a balancing of the interests of Debtors, creditors, and other interested parties." *In re Petroforte Brasileiro de Petroleo Ltda.*, 542 B.R. 899, 909 (Bankr. S.D. Fla. 2015); *see also In re Better Place, Inc*., No. 13-1181, 2018 Bankr. LEXIS 322 at *19 (LSS) (Bankr. D. Del. Feb. 5, 2018) ("The analysis under [section] 1522 is one of balancing the respective interests based on the relative harms and benefits in light of the circumstances presented.") (citations omitted); H.R. Rep. No. 109-31, pt. 1, at 116 (2005) (providing that such protection is lacking where "it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors").

30. The SISP is a product of extensive, arm's-length negotiations between the Debtors and various key stakeholders, and parties in interest had an opportunity to object and be heard with respect to the relief requested within the CCAA SISP Approval Order (*see* Pillon Declaration ¶¶ 4-5), and entry thereof by the Canadian Court evidences that the SISP and the other relief requested by the CCAA SISP Approval Order is proper in light of the facts and circumstances.

31. The CCAA SISP Approval Order and the terms of the SISP provide a viable path forward for the Debtors and are supported by the Debtors' key stakeholders, including the DIP Lender. The SISP (a) will promote active bidding from interested parties and elicit the highest or otherwise best offers available for some or all of the Debtors' assets and (b) is designed to facilitate orderly yet competitive bidding to maximize the value realized by these estates from any eventual transaction.

32. Further, it is well-settled that the best way to determine value is exposure to the market, and where there is a court-approved auction process (such as the auction contemplated under the SISP, if appropriate), a full and fair price is presumed obtained for the assets sold. *See Bank of Am. Nat'l Trust & Sav. Ass'n. v. LaSalle St. P'ship*, 526 U.S. 434, 457 (1999); *see also In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (while a "sale transaction does not require an auction procedure, . . . the auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction").

33. As such, granting the requested relief is appropriate because the interests of all parties in interest are "sufficiently protected" throughout the Canadian Proceedings (*see* 11 U.S.C. § 1522(a)), since creditors and other parties in interest have been given notice of the hearing to consider entry of the CCAA SISP Approval Order and will be given a full and fair opportunity to be heard and present objections to approval of any transaction resulting from the SISP, including the sale of the Debtors' property. Additionally, recognizing and enforcing the CCAA SISP Approval Order will protect the interests of both the Debtors and their stakeholders, as the relief granted thereunder sets the necessary stage for the Debtors to obtain the best bid for some or all of their assets and consummate a related transaction under the supervision of the Canadian Court.

34. Recognizing and enforcing the CCAA SISP Approval Order and the relief granted thereunder, is "appropriate relief" pursuant to sections 1521 and 1522 of the Bankruptcy Code. Indeed, courts in this and other jurisdictions have previously granted the recognition of SISP orders issued by Canadian courts. *See, e.g.*, *In re Entrec Corp.*, No. 20-32643 (MI) (Bankr. S.D. Tex. May 29, 2020) [D.I. 36] (recognizing an order issued by the Canadian court approving the proposed SISP); *In re Just Energy Grp. Inc.*, No. 21-30823 (MI) (Bankr. S.D. Tex. Sept. 19, 2022) [D.I. 196] (same); *In re Xebec Holding USA,* No. 22-10934 (KBO) (Bankr. D. Del Dec. 21, 2022) [D.I. 36] (granting recognition of the Canadian proceeding, including the order previously issued order by the Canadian court approving the debtors' SISP).

2. The Relief Requested Herein is Appropriate Relief Available Under Section 1520(a)(3).

35. Section 1520(a)(3) provides that, upon recognition of a foreign proceeding as a foreign main proceeding, "the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by section 363 and 552[.]" 11 U.S.C. § 1520(a)(3).[8] As described above, the SISP sets forth the procedures through which the Monitor, with the assistance of the Debtors and the CRO, will solicit interest in, and opportunities for, an acquisition or refinancing of the Debtors' business or a sale of the assets and/or business of the Debtors, in whole or in part. Recognition and enforcement of the CCAA SISP Approval Order, which grants relief to the Debtors that would otherwise be available to them under section 363 of the Bankruptcy Code, is therefore appropriate and within the Court's authority pursuant to section 1520(a)(3) of the Bankruptcy Code.

[8] Additionally, section 1521(a)(7) permits a court to "grant[] any additional relief that may be available to a trustee except for relief available under sections 522, 544, 547, 548, 550, and 724(a)." 11 U.S.C. § 1521(a)(7). In addition to section 1520(a)(3), the Foreign Representative asserts the Requested Relief is also appropriate under section 1521(a)(7) of the Bankruptcy Code.

36. Section 363(b) of the Bankruptcy Code provides that a Debtor "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). As it pertains to the SISP approved by the CCAA SISP Approval Order, a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate's assets. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions"); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986) (implicitly adopting a "sound business purpose" test and a good faith test); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit had adopted a "sound business purpose" test).

37. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) ("The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate."). To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and, therefore, are appropriate in the context of bankruptcy transactions. *See, e.g., In re Integrated Res., Inc.*, 147 B.R. 650, 659 (Bankr. S.D.N.Y. 1992) (bidding procedures "are important tools to encourage bidding and to maximize the value of the debtor's assets"); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) ("[C]ourt-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates"). Recognition and enforcement of the CCAA SISP Approval Order, which establishes procedures designed to enhance competitive

bidding and maximize value of the Debtors' property and business reflects a sound exercise of the Debtors' business judgment and falls within the relief permitted under section 1520(a)(3).

3. The Relief Requested Herein is Warranted as "Additional Assistance" Under Section 1507 of the Bankruptcy Code.

38. The relief requested herein is also warranted as "additional assistance" under section 1507 of the Bankruptcy Code. 11 U.S.C. § 1507; *Vitro SAB de CV*, 701 F.3d at 1057 (explaining that section 1507's "broad grant of assistance is intended to be a catch-all"); *see also* H.R. Rep. No. 109-31, pt. 1, at 109 (2005) (noting that section 1507 authorizes "additional relief" beyond that available under section 1521 of the Bankruptcy Code).

39. In determining whether to exercise its discretion to grant additional relief under section 1507(a), a court should consider "whether such additional assistance, consistent with the principles of comity, will reasonably assure" the: (1) just treatment of all holders of claims against or interests in the debtor's property; (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding; and (3) prevention of preferential or fraudulent dispositions of property of the debtor. Recognition and enforcement of the CCAA SISP Approval Order is appropriate under section 1507 of the Bankruptcy Code, as all applicable factors are satisfied.

40. *First*, reasonable assurance of "just treatment of all holders of claims" is met when "foreign insolvency law provides a comprehensive procedure for the orderly resolution of claims and the equitable distribution of assets among all of the estate's creditors in one proceeding." *In re Oi S.A.*, 587 B.R. 253, 267 (Bankr. S.D.N.Y. 2018). As discussed above, the CCAA provides for such a procedure, as previously recognized by numerous United States courts, and a scheme for the "equitable, orderly, and systematic" distribution. *See e.g. Allstate Life Ins. Co. v. Linter*

Grp. Ltd., 994 F.2d 996, 1000 (2d Cir. 1993).[9] Accordingly, recognizing and enforcing the CCAA SISP Approval Order would provide just treatment for all holders of claims against or interests in the Debtors, and the first factor in the section 1507(b) analysis is satisfied.

41. *Second*, requiring reasonable assurance of the "protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding" is satisfied where "creditors are given adequate notice of the timing and procedures for filing claims, and such procedures do not create additional procedures for a foreign creditor seeking to file a claim." *Oi S.A.*, 587 B.R. at 268. The Debtors' creditors and parties in interest have been treated fairly in connection with the Debtors' obtaining the CCAA SISP Approval Order. Such parties have been provided proper and sufficient notice of, and had the opportunity to raise any objections to, the substantive relief requested in the CCAA SISP Approval Order. *See* Pillon Declaration ¶¶ 4-5. Accordingly, the second factor in the section 1507(b) analysis is satisfied.

42. *Third*, section 1507(b) requires that the additional assistance reasonably assure "prevention of preferential or fraudulent dispositions of property of the debtor." 11 U.S.C. § 1507(b)(3). Preferential or fraudulent transfers are not permitted under the CCAA, which provides for the recovery of such transfers. *See* CCAA § 36.1(1) (incorporating by reference sections 38 and 95- 101 of Canada's *Bankruptcy and Insolvency Act*, which allows for preferential or undervalued transactions made by a debtor to be set aside). Accordingly, the third factor in the

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[9] Additionally, the relief being sought under the CCAA SISP Approval Order is similar to relief routinely afforded to debtors under chapter 11 of the Bankruptcy Code and routinely granted by bankruptcy courts in chapter 11 cases in this District. *See, e.g.*, *In re DCL Holdings (USA), Inc.*, No. 22-11319 (JKS) (Bankr. D. Del. Feb. 22, 2023) [D.I. 264] (approving bidding procedures for sale of substantially all of debtors' assets); *In re Clovis Oncology, Inc.*, No. 22-11292 (JKS) (Bankr. D. Del. Jan. 24, 2023) [D.I. 257] (same); *In re First Guaranty Mortg. Corp.*, No. 22-10584 (CTG) (Bankr. D. Del. Sept. 29, 2022) [D.I. 499] (same).

section 1507(b) analysis is given the CCAA's prohibition against preferential and/or fraudulent transfers.

43. Recognition and enforcement of the CCAA SISP Approval Order is therefore appropriate under section 1507 of the Bankruptcy Code as such relief will provide the Debtors and all parties in interest with certainty that the CCAA SISP Approval Order will be enforceable not only in Canada, but in the United States, and will therefore protect and prevent prejudice to such parties by ensuring uniform application of the CCAA SISP Approval Order.

4. **Recognizing and Enforcing the CCAA SISP Approval Order is Appropriate and in Furtherance of the Principle Purpose of Chapter 15 and Therefore Authorized Pursuant to Section 105(a) of the Bankruptcy Code.**

44. Pursuant to section 105(a) of the Bankruptcy Code, this Court has broad authority in its administration of cases under the Bankruptcy Code, and is empowered to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions [of the Bankruptcy Code]." 11 U.S.C. § 105(a). Although the equitable authority bestowed onto bankruptcy courts under section 105(a) is not unfettered, it provides the court with the flexibility required to ensure that it is able to serve the purposes of the Bankruptcy Code within the constructs of its specific provisions.

45. As stated above, the purpose of chapter 15 of the Bankruptcy Code is to facilitate comity between the U.S. and foreign courts. Moreover, with respect to Canadian proceedings, as a "sister common law jurisdiction with procedures akin to our own"—orders issued by Canadian courts are generally found to be entitled to comity. *United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc.*, 216 F. Supp. 2d 198, 212 (S.D.N.Y. 2002).

46. Accordingly, granting comity to the CCAA SISP Approval Order would be in furtherance of carrying out the provisions of chapter 15 and thus authorized and appropriate under

section 105(a) of the Bankruptcy Code. *See, e.g., In re Ephedra Products Liab. Litig.*, 349 B.R. 333, 334 (S.D.N.Y. 2006) (granting recognition of an order of the Canadian court regarding the resolution of claims in the Canadian proceeding pursuant to 11 U.S.C. § 105(a)).

5. **The Relief Requested Herein is Not Contrary to United States Public Policy.**

47. A court may deny a request for any chapter 15 relief that would be "manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. Courts have emphasized that "public policy exception" in section 1506 of the Bankruptcy Code is narrow, and its application should be restricted to the most fundamental policies of the United States. *See Collins v. Oilsands Quest Inc.*, 484 B.R. at 597. A foreign judgment should generally be accorded comity if the foreign jurisdiction's proceedings meet fundamental standards of fairness. *Vitro S.A.B de CV*, 701 F.3d at 1069.

48. The recognition and enforcement of the CCAA SISP Approval Order is not contrary to United States public policy. First, the Canadian Proceedings, operating within the parameters of the CCAA, comply with fundamental standards of fairness and due process, which generally require that each interested party has notice of proceedings and an opportunity to be heard by a neutral court that contends with each party's arguments. Second, recognition and enforcement of the CCAA SISP Approval Order is not contrary to United States public policy, as the CCAA SISP Approval Order and process contemplated thereunder are similar to procedures (*e.g.*, bidding procedures) frequently utilized in chapter 11 cases. Accordingly, recognizing and enforcing the CCAA SISP Approval Order does not contravene United States public policy, and the relief requested herein is therefore appropriate.

NOTICE

49. The Foreign Representative will provide notice of this Motion in accordance with the procedures set forth in the *Order (A) Scheduling Hearing on Recognition of Chapter 15 Petitions and (B) Specifying Form and Manner of Service of Notice* [D.I. 8]. In light of the nature of the relief requested, the Foreign Representative requests that this Court find that no further notice is required.

[*Remainder of page intentionally left blank.*]

WHEREFORE, for the reasons set forth herein, the Foreign Representative respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A** (i) granting the relief requested herein and (ii) granting the Foreign Representative and the Debtors such other and further relief as the Court deems proper and just.

Dated: March 14, 2023
Wilmington, Delaware

Respectfully submitted,

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP

/s/ Steven L. Walsh
Michael J. Barrie (DE No. 4684)
Jennifer R. Hoover (DE No. 5111)
Steven L. Walsh (DE No. 6499)
1313 North Market Street, Suite 1201
Wilmington, DE 19801
Telephone: (302) 442-7010
Facsimile: (302) 442-7012
E-mail: mbarrie@beneschlaw.com
jhoover@beneschlaw.com
swalsh@beneschlaw.com

-and-

SIDLEY AUSTIN LLP
William E. Curtin (admitted *pro hac vice*)
Michael A. Sabino (admitted *pro hac vice*)
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599
Email: wcurtin@sidley.com
msabino@sidley.com

Counsel to the Foreign Representative

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
Acerus Pharmaceuticals Corporation, *et al.,*	Case No. 23-10111 (MFW)
Debtors in a foreign proceeding.[1]	(Jointly Administered) **Re: D.I. __**

ORDER GRANTING FOREIGN REPRESENTATIVE'S MOTION FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING THE CCAA SISP APPROVAL ORDER AND (II) GRANTING RELATED RELIEF

Upon consideration of the motion (the "**Motion**")[2] filed by the Foreign Representative as the "foreign representative" of the Debtors, pursuant to sections 105(a), 363, 1501, 1507, 1520, 1521, 1522, 1525, and 1527 of the Bankruptcy Code, for entry of an order (this "**Order**") (I) recognizing and enforcing the CCAA SISP Approval Order, attached hereto as **Exhibit 1**, approving the sale and investment solicitation procedures (the "**SISP**") and implementation thereof, and (II) granting such other relief as the Court deems just and proper, all as more fully set forth in the Motion; and upon consideration of the Manzoor Declaration and Pillon Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 109 and 1501; and venue being proper before this Court pursuant to § 1410; and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court may enter a final order consistent with Article III of the United States Constitution; and adequate and sufficient notice of the filing of the Motion having been given by

[1] The Debtors in the chapter 15 proceedings, together with the last four digits of their business identification numbers are: Acerus Pharmaceuticals Corporation (6891); Acerus Biopharma Inc. (0687); Acerus Labs Inc (0126); and Acerus Pharmaceuticals USA, LLC (9089). The location of the Debtors' headquarters and the Debtors' foreign representative is: 205-7025 Langer Drive, Mississauga, Ontario, Canada.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the Foreign Representative; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and this Court having held a hearing to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court previously entered the Recognition Order [D.I. 42] on February 27, 2023, where findings were made that the Debtors had satisfied the requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1509, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code. All such findings by this Court are hereby incorporated by reference herein.

C. On March 9, 2023, the Canadian Court entered the CCAA SISP Approval Order, approving, among other things, the SISP.

D. The relief granted herein is necessary and appropriate to effectuate the objectives of chapter 15 of the Bankruptcy Code to protect the Debtors and the interests of their creditors and other parties in interest, is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted.

E. Absent the requested relief, the efforts of the Debtors, the Canadian Court, and the Foreign Representative in conducting the Canadian Proceedings and effectuating the restructuring under Canadian law may be frustrated, a result contrary to the purposes of chapter 15 of the Bankruptcy Code.

F. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on, the Motion was given, which notice is adequate for all purposes, and no further notice need be given.

G. All creditors and other parties in interest, including the Debtors, are sufficiently protected by the relief granted herein.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

1. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.

2. Pursuant to sections 105(a), 363, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, the CCAA SISP Approval Order, and its respective terms, including any immaterial or administrative amendments thereto, including those necessary to give effect to the substance of such order, either pursuant to the terms therein or as approved by the Canadian Court, are fully recognized and given full force and effect in the United States.

3. The SISP, including all deadlines and requirements therein as set forth in the CCAA SISP Approval Order, is hereby fully recognized and given full force and effect in the United States, including as bidding procedures for the sale of assets and/or equity of the Debtors located in the territorial jurisdiction of the United States, and shall apply with respect to parties located in the United States.

4. The omission of any particular provision of the CCAA SISP Approval Order in this Order shall not diminish or impair the effectiveness of such provision.

5. Nothing in this Order ratifies, approves, and/or recognizes the sale and/or vesting of any property, and all rights, claims, objections, and interests of any interested party, at law or in equity, with respect to any proposed sale and vesting of property pursuant any transaction contemplated under the SISP are not waived and are expressly preserved.

6. All persons and entities subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any actions inconsistent with, or interfering with the enforcement and implementation of, the CCAA SISP Approval Order or any documents incorporated by the foregoing.

7. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion and the CCAA SISP Approval Order.

8. Notwithstanding any provisions in the Bankruptcy Rules to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court retains jurisdiction to enforce any and all terms and provisions of the CCAA SISP Approval Order.

10. The Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of this Order, any request for additional relief and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of the Court.

11. A copy of this Order shall be served within five business days of entry of this Order, by electronic mail to the extent email addresses are available and otherwise by first class or

international mail, upon the Notice Parties (as defined in the *Order (A) Scheduling Hearing on Recognition of Chapter 15 Petitions and (B) Specifying Form and Manner of Service of Notice*) and such other entities as the Court may direct. Such service shall be good and sufficient service and adequate notice for all purposes.

12. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Canadian Proceedings, this Order, these chapter 15 cases, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under sections 306 and 1510 of the Bankruptcy Code.

13. This Order shall be effective and enforceable immediately upon entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

<u>Exhibit 1</u>

CCAA SISP Approval Order

Court File No. CV-23-00693595-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 9TH DAY
	)	
JUSTICE CONWAY	)	OF MARCH, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION,
ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ORDER

(SISP Approval and Extension to Stay of Proceedings)

THIS MOTION, made by Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Applicants**"), for an Order approving a sale and investment solicitation process was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Naveed Manzoor sworn March 2, 2023 (the "**Manzoor Affidavit**"), and the Exhibits thereto, the Second Report of Ernst & Young Inc. ("**EY**"), in its capacity as Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") dated March 7, 2023 (the "**Second Report**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for First Generation Capital Inc. ("**FGC**"), counsel for the FGC in its capacity as the DIP Lender, and such other parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavits of service of Philip Yang, as filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them under the Sale and Investment Solicitation Process attached hereto as Schedule "A" (the "**SISP**").

APPROVAL OF THE SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the Applicants and the Monitor are authorized to immediately commence the SISP to solicit interest in the opportunity for a sale of or investment in all or part of the Applicants' assets (which includes Noctiva, Natesto, Strendra (avanafil), Lidbree, Tefina, TriVair) and all other products of the Applicants and business operations.

4. **THIS COURT ORDERS** that the SISP (subject to any amendments thereto that may be made in accordance therewith and with this Order) is hereby approved and the Applicants, the Monitor and the Chief Restructuring Officer (the "**CRO**"), and their respective affiliates, partners, employees, advisors and agents (collectively, "**Assistants**") are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and this Order.

5. **THIS COURT ORDERS** that each of the Monitor, the CRO, the Applicants, and their respective Assistants shall have no liability with respect to any and all losses, claims, damages or liability, of any nature or kind, to any person in connection with or as a result of performing their duties under the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor, the CRO or the Applicants, as applicable, as determined by this Court.

6. **THIS COURT ORDERS** that the Monitor or the Applicants may from time to time apply to this Court to amend, vary or supplement this Order or to seek directions with respect to the SISP.

7. **THIS COURT ORDERS** that, pursuant to section 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS), the Monitor and the Applicants are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages

to an electronic address of prospective bidders or offerors and to their advisors, but only to the extent required to provide information with respect to the SISP in these proceedings.

PROTECTION OF PERSONAL INFORMATION

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Monitor and the Applicants are authorized and permitted to disclose personal information of identifiable individuals ("**Personal Information**") to prospective bidders or offerors and to their advisors, including human resources and payroll information, records pertaining to the Applicants' past and current employees, and information on specific customers, but only to the extent desired or required to negotiate or attempt to complete a transaction under the SISP. Each prospective bidder or offeror to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial legislation. Each prospective bidder or offeror to whom any Personal Information is disclosed shall also limit the use of such Personal Information to its participation in the SISP, and if it does not complete a sale, shall return all such information to the Applicants, or in the alternative destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the assets and/or business acquired pursuant to the sale in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

9. **THIS COURT ORDERS** that the Stay Period as referred to in the Amended and Restated Initial Order of Justice Osborne dated February 3, 2023 (the "**Amended and Restated Initial Order**") is extended, until and including May 19, 2023.

UNSEALING

10. **THIS COURT ORDERS** that paragraph 28 of the Initial Order of Justice Osborne dated January 26, 2023 (the "**Initial Order**") and paragraph 65 of Amended and Restated Initial Order are amended as follows:

Paragraph 28 of the Initial Order is hereby deleted.

Paragraph 65 of the Amended and Restated Initial Order is amended to state the following: "**THIS COURT ORDERS** that Confidential Appendix "C" to the First Report is hereby sealed pending further order of the Court, and shall not form part of the public record"

GENERAL

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

Conway J.

Schedule "A"

SALE AND INVESTMENT SOLICITATION PROCESS

Introduction

1. On January 26, 2023, Acerus Pharmaceuticals Corporation ("**Acerus**") and certain of its subsidiaries (collectively, the "**Applicants**") were granted an initial order (as amended or amended and restated from time to time, the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**" and the "**CCAA Proceedings**") by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). The Initial Order (which was amended and restated on February 3, 2023), among other things:

   (a) stayed all proceedings against the Applicants, their assets and their respective directors and officers;

   (b) appointed Ernst & Young Inc. as the monitor of the Applicants (in such capacity, the "**Monitor**");

   (c) authorized the Applicants to enter into a debtor-in-possession financing facility (the "**DIP Facility**") with First Generation Capital Inc. (the "**DIP Lender**") pursuant to the DIP facility loan agreement dated January 26, 2023 (the "**DIP Facility Loan Agreement**"), as well as the related charge in favour of the DIP Lender (the "**DIP Charge**") over all of the Applicants' present and future assets, property and undertakings of every nature and kind whatsoever, and wherever situate including all proceeds thereof to secure the amounts outstanding under or in connection with the DIP Facility; and

   (d) authorized the Applicants to pursue all avenues of sale or investment of their assets or business, in whole or in part, subject to prior approval of the Court before any material sale or refinancing.

2. Further to the Applicants' restructuring efforts, the Monitor will, with the assistance of its advisors and the Applicants and its chief restructuring officer, FAAN Advisors Group Inc. (the "**CRO**"), conduct the sale and investment solicitation process (the "**SISP**") described herein pursuant to a Court order dated March 9, 2023 (the "**SISP Order**"). The SISP is intended to solicit interest in an acquisition or refinancing of the business or a sale of the assets and/or the business of the Applicants by way of merger, reorganization, recapitalization, primary equity issuance or other similar transaction. The Monitor, in consultation with the Applicants, intend to provide all qualified interested parties with an opportunity to participate in the SISP.

Opportunity

3. The SISP is intended to solicit interest in the opportunity (the "**Opportunity**") for a sale of or investment in all or part of the Applicants' assets (the "**Property**", which includes Noctiva, Natesto, Strendra (avanafil), Lidbree, Tefina, TriVair and all other products of the Applicants (the "**Products**")) and business operations (the "**Business**").

4. Except to the extent otherwise set forth in a definitive sale or investment agreement with the Successful Bidder (as defined below), any sale of the Property or investment in the Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Applicants, or any of their

respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, financial and monetary claims charges, options and interests therein and thereon pursuant to Court order(s), to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court order(s).

Role of the Monitor

5. The Monitor's responsibilities pursuant to the SISP include:

   (a) administering the SISP, in consultation with the Applicants;

   (b) consulting with the Applicants in connection with the bidding procedures included in this SISP and the closing of the transaction contemplated in the Successful Bid(s) (as defined below);

   (c) assisting the Applicants to facilitate information requests, including assisting the Applicants in preparing or modifying financial information to assist with the bidding procedures described in this SISP;

   (d) reporting to the Court in connection with the SISP, including the bidding process described in this SISP, and the closing of the transaction contemplated in the Successful Bid(s);

   (e) conducting an Auction (as defined below), if necessary, in accordance with the Auction procedures contemplated herein; and

   (f) assisting the Applicants with the closing of the transaction contemplated in the Successful Bid(s).

6. In consultation with the Applicants, the Monitor may seek Court approval of an amendment to the SISP or may seek the Court's directions in respect of the SISP.

Timeline

7. The following table sets out the key milestones under the SISP:

Milestone	Deadline
Deadline to publish notice of SISP, deliver Teaser Letter and NDA to Known Potential Bidders, and set up electronic data room	Five (5) days following issuance of the SISP Order March 14, 2023
Bid Deadline	Fifty (50) days following issuance of the SISP Order April 28, 2023

Monitor to notify each Bidder in writing as to whether its Bid constitutes a Qualified Bid	Within 5 business days following Bid Deadline No later than May 5, 2023
Monitor to notify each Qualified Bidder on whether an Auction will take place	Two (2) business days prior to the commencement of the Auction No later than May 5, 2023
Auction Date (if required)	Sixty-one (61) days following issuance of the SISP Order May 9, 2023
Hearing of the Sale Approval Motion	No later than seventy-one (71) days following issuance of the SISP Order, subject to the availability of the Court No later than May 19, 2023

8. Subject to any order of the Court, the dates set out in the SISP, including the Bid Deadline and Auction Date, may be amended or extended by the Monitor, in consultation with the Applicants.[1]

Solicitation of Interest: Notice of the SISP

9. As soon as reasonably practicable, but, in any event, by no later than five (5) days from the SISP Order:

(a) the Monitor, in consultation with the Applicants, will prepare a list of potential bidders, including (i) parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity, (ii) local and international strategic and financial parties who the Monitor, in consultation with the Applicants, believe may be interested in purchasing all or part of the Business or Property or investing in the Applicants pursuant to the SISP, and (iii) parties that showed an interest in the Applicants and/or their assets by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the "**Known Potential Bidders**");

(b) the Monitor will cause a notice of the SISP (and such other relevant information that the Monitor, in consultation with the Applicants, considers appropriate) (the "**Notice**") to be published in The Globe and Mail (National Edition), and any other

[1] The term Applicants as referred to in paragraphs 8 to 40 shall be read to include the Chief Restructuring Officer, Naveed Z. Manzoor, on behalf of FAAN Advisors.

newspaper or journal as the Monitor, in consultation with the Applicants, considers appropriate, if any;

(c) the Monitor will cause a press release to be issued with Canada Newswire or comparable newswire entity setting out the information contained in the Notice and such other relevant information that the Monitor, in consultation with the Applicants, considers appropriate; and

(d) the Monitor, in consultation with the Applicants, will prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor and Applicants and their respective counsel which shall inure to the benefit of any purchaser of the Business or Property or any part thereof (an "**NDA**").

10. The Monitor will cause the Teaser Letter and NDA to be sent to each Known Potential Bidder by no later than five (5) days from the SISP Order and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Potential Bidders and Due Diligence Materials

11. Any party who wishes to participate in the SISP (a "**Potential Bidder**") must provide to the Monitor (i) an NDA executed by it, (ii) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder, and (iii) any other information that the Monitor may reasonably request. The Monitor, in its discretion, may accept an NDA executed by a Potential Bidder during the previous, out-of-court strategic review process in satisfaction of the requirement set out in (i).

12. The Monitor, in consultation with the Applicants, subject to competitive and other business considerations, afford each Potential Bidder who has satisfied the conditions set out in paragraph 11 above such access to due diligence material and information relating to the Applicants, the Property and the Business as the Monitor in consultation with the Applicants deems appropriate. Due diligence may include access to an electronic data room containing information about the Applicants, the Property and the Business, and may also include management presentations, and other matters which a Potential Bidder may reasonably request and as to which the Monitor, in its judgment and in consultation with the Applicants, may agree. The Monitor will designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Monitor nor the Applicants will be obligated to furnish any information relating to the Applicants, the Property or Business to any person other than as is expressly provided for in the SISP. Furthermore and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Monitor and the Applicants, determine such information to represent proprietary or sensitive competitive information / disclosure could impair the Applicants or their Business or the integrity of the SISP. None of the Monitor, the Applicants, or any of their respective agents, advisors or estates shall be held responsible for, and none of them will bear any liability with respect

to, any information obtained by any person in connection with a sale of the Property or Business or investment in the Applicants.

13. Without limiting the generality of any term or condition of any NDA between the Applicants, on the one hand, and any Potential Bidder or Bidder (as defined below), on the other, unless otherwise agreed by the Monitor and Applicants or ordered by the Court, no Potential Bidder or Bidder shall be permitted to have any discussions with (a) any counterparty to any contract with the Applicants (or any of them), any secured creditor of the Applicants, any current or former director, manager, shareholder, officer (other than the CRO), member or employee of the Applicants (or any of them), other than in the normal course of business and wholly unrelated to the Applicants, the potential transaction, the confidential information, the SISP or the CCAA Proceedings, and (b) any other Potential Bidder or Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto. Notwithstanding the foregoing, where any such communications are agreed to with the Monitor's consent, such discussions shall be made in the presence of the Monitor. For greater certainty at no time shall such secured creditors (including in the capacity as a director of the Applicants) be entitled to communicate or discuss with one another or with any other Potential Bidder or Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto.

14. Potential Bidders and Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Applicants (or any of them).

Formal Binding Offers

15. Potential Bidders that wish to make a formal offer to purchase, or make an investment in, the Applicants or their Property or Business, or any part thereof (a "**Bidder**") shall submit a binding offer (a "**Bid**") that complies with all of the following requirements to the Monitor at the address specified in Schedule "1" hereto (including by e-mail), which Bid shall be delivered by such Bidder by no later than 5:00 p.m. (Toronto Time) on fifty (50) days following issuance of the SISP Order or such later date as may be communicated by the Monitor to Potential Bidders via a Bid Deadline Letter (as defined below) (the "**Bid Deadline**"):

(a) the Bid must be a binding offer to:

(i) acquire all, substantially all or a portion of the Property or the shares of the Applicants pursuant to a reverse vesting order (a "**Sale Proposal**"); and/or

(ii) make an investment in, restructure, reorganize or refinance the Business or the Applicants (an "**Investment Proposal**");

(b) the Bid must include a duly authorized and executed definitive transaction document;

(c) the definitive transaction document in respect of a Sale Proposal or Investment Proposal shall include, among other things:

(i) that the Bid is not conditioned upon (A) the outcome of unperformed due diligence by the Bidder, or (B) obtaining financing, but may be conditioned upon the Applicants receiving the required approvals or amendments relating to the licences required to operate the business, and/or transfer of the Products, if necessary;

(ii) any and all conditions and approvals required to complete the closing of the transaction; and

(iii) all terms in respect of such Sale Proposal or Investment Proposal, as applicable;

(d) the Bid (either individually or in combination with other bids that make up one Bid) shall be an offer to purchase or make an investment in some or all of the Applicants or their Property or Business and shall be consistent with the necessary terms and conditions established by the Monitor and the Applicants and communicated to Bidders;

(e) the Bid must include a letter stating that the Bidder's offer is irrevocable until approval of the Successful Bid(s) by the Court, provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction contemplated by such Bid;

(f) the Bid must include written evidence of a firm, irrevocable commitment for financing or other evidence of the Bidder's ability to consummate the proposed transaction that will allow the Monitor and Applicants to make a determination as to the Bidder's financial and other capabilities to consummate the proposed transaction;

(g) the Bid must include written evidence, in form and substance satisfactory to the Monitor and Applicants, of authorization and approval from the Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of such Bid, and identification of any anticipated shareholder, regulatory or other approvals outstanding, and the anticipated process and time frame and any anticipated impediments for obtaining such approvals;

(h) the Bid must not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;

(i) the Bid must fully disclose the identity of each entity that will be entering into the transaction or the financing thereof, or that is otherwise participating in or benefiting from such Bid;

(j) without limiting the foregoing, a Sale Proposal Bid must include:

(i) the purchase price in Canadian dollars and a description of any non-cash consideration, including any future royalty payments or other deferred payment, details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;

(A) if the purchase price involves a royalty, earn-out or other deferred payment, the Sale Proposal shall include a specific indication of the Bidder's proposal and/or commitments for and relating to obtaining necessary regulatory approvals and the Bidder's commercialization strategy, manufacturing capabilities, proposed sale milestones and minimum sale amounts, budget and/or commitment for capital expenditures, direct marketing and sales initiatives and support and proposed product positioning within the Potential Bidder's current product portfolio;

(ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

(iii) a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;

(iv) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and

(v) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the purchase price offered upon the Bidder being selected as the Successful Bidder;

(k) without limiting the foregoing, an Investment Proposal Bid must include:

(i) a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

(ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in Canadian dollars;

(iii) the underlying assumptions regarding the pro forma capital structure;

(iv) a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;

(v) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which liabilities and obligations it does not intend to assume; and

(vi) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the total new investment contemplated in the Bid upon the Bidder being selected as the Successful Bidder;

(l) the Bid must include acknowledgements and representations of the Bidder that the Bidder:

(i) has, to its satisfaction, had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicants prior to making its Bid;

(ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and

(iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicants, or the completeness of any information provided in connection therewith, except as may be expressly stated in the definitive transaction agreement(s) signed by the Applicants;

(m) the Bid must contain such other information as may be reasonably requested by the Monitor in consultation with the Applicants;

(n) the Bid must be received by the Bid Deadline;

(o) the Bid must contemplate closing the transaction set out therein on or before May 31, 2023.

16. Following the Bid Deadline, the Monitor, and the Applicants will assess the Bids received. The Applicants, in consultation with the Monitor, may designate the most competitive Bids that comply with the requirements set out herein to be "**Qualified Bids**". The Applicants and the Monitor shall be under no obligation to designate the highest or otherwise best Bid, or any Bid, as a Qualified Bid. Only Bidders whose Bids have been designated as Qualified Bids shall be eligible to participate in the Auction and/or become the Successful Bidder(s).

17. The Monitor, in consultation with the Applicants, may waive strict compliance with any one or more of the requirements set out herein and deem such non-compliant Bids to be a Qualified Bid.

18. The Monitor may, in consultation with the Applicants, may aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

19. The Monitor and the Applicants shall be entitled to discuss and negotiate the Bid and form of any Sale Proposal or Investment Proposal prior to the Bid Deadline for purposes of amending or clarifying the terms and form thereof.

20. The Monitor shall cause each Bidder to be notified in writing as to whether its Bid constituted a Qualified Bid within five (5) business days of the Bid Deadline, or at such later time as the Monitor deems appropriate.

21. The Monitor, in consultation with the Applicants, may extend the Bid Deadline. Any such extension of the Bid Deadline shall be communicated to Potential Bidders by bid deadline extension letter (a "**Bid Deadline Letter**") from the Monitor delivered by email and posted on the Monitor's case website.

Evaluation of Competing Bids

22. Bids shall be evaluated based upon several factors including, without limitation: (i) the purchase price and the net value of the consideration provided by such Bid (with the value of any non-cash consideration being determined by the Applicants in their business judgment, in consultation with the Monitor), (ii) the identity, circumstances and ability of the Bidder to successfully complete such transactions, (iii) the proposed transaction documents, (iv) factors affecting the speed, certainty and value of the transaction, (v) the assets and liabilities included or excluded from the Bid, (vi) any related restructuring costs, (vii) the manufacturing capabilities of the Bidder and (viii) the likelihood and timing of consummating such transaction, each as determined by the Applicants in their business judgment, in consultation with the Monitor.

23. At any stage of the SISP, the Monitor, in consultation with the Applicants, may ascribe monetary values to non-monetary terms in any Bid, Qualified Bid, Initial Bid, or Overbids for the purposes of assessing and/or valuing such bids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed or not assumed.

24. If the Monitor receives one or more Bids that are designated as Qualified Bids (the "**Qualified Bidders**"), the Applicants, in consultation with the Monitor, may:

(a) select one or more of such Qualified Bids as the successful bid (the "**Successful Bid(s)**", and the Qualified Bidder(s) making such bid, the "**Successful Bidder(s)**"), with or without negotiation of Qualified Bids with Qualified Bidders; and/or

(b) direct such Qualified Bidders to participate in an Auction to be conducted and administered by the Monitor, with the assistance of its advisors and the Applicants, in accordance with the terms of this SISP (the "**Auction**").

Auction

25. Following the evaluation of the Qualified Bid(s), the Applicants, in consultation with the Monitor must determine whether the Auction will be held not less than two (2) business days prior to the commencement of the Auction. The Monitor shall notify and provide instructions to participate in the Auction to each Qualified Bidder not less than two (2) business days prior to the commencement of the Auction.

26. Only Qualified Bidders shall be eligible to participate in the Auction. No later than 5:00 p.m. (Toronto time) on the business day prior to the Auction, each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing, or cause to be informed in writing, each Qualified Bidder who has expressed its intent to participate in the Auction (the "**Auction Participants**") of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction.

Auction Procedure

27. The Auction shall be governed by the following procedures:

(a) **Participation at the Auction.** Only the Applicants, the Auction Participants, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Auction Participants will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Monitor shall provide all Auction Participants with the details of the Initial Bid (as defined below) by 5:00 p.m. (Toronto Time) two (2) business day before the Auction Date;

(b) **No Collusion.** Each Auction Participant shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the SISP; and (ii) its bid and each subsequent Overbid is a good-faith *bona fide* offer, which, if accepted by the Applicants on the record of the Auction forms a binding agreement between the parties, and that the Auction Participant intends to consummate the proposed transaction if selected as the Successful Bidder;

(c) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Applicants, in consultation with, and with the approval of, the Monitor (the "**Initial Bid**"), and any bid made at the Auction by a Auction Participant subsequent to the Monitor's announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional increments of $100,000.00, or as otherwise declared by the Monitor during the Auction with the approval of the Applicants;

(d) **Bidding Disclosure.** The Auction shall be conducted such that all Overbids will be made and received in one group video-conference, on an open basis, and all Auction Participants will be entitled to be present for all bidding with the understanding that the true identity of each Auction Participant will be fully disclosed to all other Auction Participants and that all material terms of each subsequent bid will be fully disclosed to all other Auction Participants throughout the entire Auction; provided, however, that the Monitor, in its discretion, may establish separate video conference rooms to permit interim, technical, or clarifying discussions between the Monitor and individual Auction Participants with the understanding that all formal Overbids will be delivered in one group video conference, on an open basis;

(e) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each Auction Participant has had and refused the opportunity to submit an Overbid with full knowledge of the then-existing highest Qualified Bid(s) or Overbid(s)s, at which time the Monitor will declare the Auction to be concluded;

(f) **No Post-Auction Bids.** No Overbids will be considered for any purpose after the Monitor has declared the Auction to be concluded; and

(g) **Auction Procedures.** The Monitor, in consultation with the Applicants, shall be at liberty to modify or to set additional procedural rules for the Auction as it sees fit.

28. During the Auction, the Applicants, in consultation with, and with the approval of, the Monitor, will:

(a) review Qualified Bids and Overbids, as the case may be, considering the factors set out in paragraph 22, among others; and

(b) identify the highest or otherwise best Qualified Bid or Overbid received at any given time during the Auction, with the highest or otherwise best such bid or bids at the conclusion of the Auction being the Successful Bid(s), and the Qualified Bidder(s) making such bid the Successful Bidder(s).

Deposits

29. Any deposit made by the Successful Bidder(s) pursuant to this SISP shall be held by the Monitor in a single interest bearing account designated solely for such purpose and such deposit shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid(s).

Sale Approval Motion Hearing

30. The Successful Bidder(s) shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid(s) was made within two (2) business days of the Successful Bid(s) being selected as such, unless extended by the Monitor, in consultation with the Applicants.

31. At the hearing of the motion to approve any transaction with the Successful Bidder(s) (the "**Sale Approval Motion**"), the Applicants shall seek, among other things, approval from the Court to consummate the Successful Bid(s). All the Qualified Bids other than the Successful Bid(s), if any, shall be deemed to be rejected by the Applicants on and as of the date of approval of the Successful Bid(s) by the Court.

Consultation with the Secured Lenders

32. The Monitor, in consultation with the Applicants, may, as it deems appropriate, consult with secured creditors of the Applicants throughout the SISP upon such assurances as to confidentiality as the Monitor may require. To the extent any secured creditor is or is related to a Potential Bidder, the Monitor and Applicants shall not provide such secured lender with information that might create an unfair advantage or jeopardize the integrity of the SISP unless such secured creditor irrevocably confirms in writing to the Monitor that it shall not submit or participate directly or indirectly in the submission of a Bid. Except as set forth in this paragraph, nothing in this SISP shall prohibit a secured creditor of the Applicants (i) from participating as a Bidder in the SISP, or (ii) committing to bid its secured debt, including a credit bid of all outstanding indebtedness under any DIP loan facility (inclusive of interest and all amounts payable under any DIP loan agreement to and including the date of closing of a definitive transaction) in the SISP.

Confidentiality and Access to Information

33. Unless expressly provided for herein, participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bidders, or Successful Bidder(s), or the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such

other Potential Bidders, Bidders, Qualified Bidders, or Successful Bidder(s) in connection with the SISP, except to the extent that the Applicants (in consultation with, and with the approval of, the Monitor and with the consent of the applicable bidders) are seeking to combine separate Bids to form a Qualified Bid.

34. All discussions regarding Bids should be directed through the Monitor. Under no circumstances should the management of the Applicants be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the Potential Bidder or Bidder or Qualified Bidder, as applicable, from the SISP.

Supervision of the SISP

35. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP, the SISP Order, the Initial Order and any other orders of the Court, and is entitled to receive all information in relation to the SISP. In the event that there is disagreement as to the interpretation or application of the SISP, the Court will have the jurisdiction to hear and resolve such dispute.

36. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Applicants, or the Monitor and any Potential Bidder, Bidder, Qualified Bidder, Successful Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Applicants.

37. Without limiting the generality of preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including, without limitation, any Potential Bidder, Bidder, Qualified Bidder, Successful Bidder, the Applicants, or any other creditor or other stakeholder of the Applicants, for any act or omission related to the process contemplated by this SISP. By submitting a Bid, each Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever.

38. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, the Auction and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

39. The Applicants, with the approval of the Monitor, shall have the right to modify the SISP (including, without limitation, pursuant to any Bid Deadline Letter) if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the service list in these CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.

40. Notwithstanding anything to the contrary in this SISP, the Applicants, in consultation with, and with the approval of, the Monitor, may attempt to negotiate a stalking horse bid (a "**Stalking Horse Bid**") prior to the Bid Deadline to provide certainty for the Applicants during the SISP. If the Applicants, in consultation with, and with the approval of, the Monitor, accept a Stalking Horse Bid, such Stalking Horse Bid shall be subject to approval by the Court and the Applicants shall bring a motion before the Court on notice to the service list in these CCAA Proceedings seeking the approval of the Stalking Horse Bid,

together with approval of necessary amendments to the SISP. All Potential Bidders shall be promptly informed of any Court approval of a Stalking Horse Bid and any related amendments to the SISP.

Schedule "1"

Address of Monitor

To the Monitor:

Ernst and Young Inc.
EY Tower, 100 Adelaide Street West
PO Box 1
Toronto, ON M5H 0B3

Attention: Alex Morrison, Michael Hayes and Allen Yao

Email: alex.f.morrison@parthenon.ey.com

michael.hayes@parthenon.ey.com

allen.yao@parthenon.ey.com

Electronically issued / Délivré par voie électronique : 09-Mar-2023
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-23-00693595-00CL

Court File No. CV-23-00693595-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER
(SISP APPROVAL AND EXTENSION TO STAY OF PROCEEDINGS)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel : (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants