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. 50**

DECLARATION OF NAVEED Z. MANZOOR
IN SUPPORT OF FOREIGN REPRESENTATIVE'S MOTION
FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING
THE CCAA SISP APPROVAL ORDER AND (II) GRANTING RELATED RELIEF

I, Naveed Z. Manzoor, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the law of the United States, as follows:

1. I am the Chief Restructuring Officer ("**CRO**") of Acerus Pharmaceuticals Corporation ("**APC**"), which is the duly appointed foreign representative ("**Foreign Representative**") of the above captioned debtors (the "**Debtors**"), in Canadian proceedings (the **Canadian Proceedings**") commenced under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), pending before the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"). I am authorized to provide this declaration on behalf of the Foreign Representative and each of the Debtors.

2. I was previously Chief Financial Officer of APC from November 20, 2022 until January 26, 2023. From August 22, 2022 to November 20, 2022, I was the Chief Strategy Officer of APC.

[1] The Debtors in these 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.

3. I am also a managing director at FAAN Advisors Group Inc. ("**FAAN**"), an advisory firm that provides companies with interim management, chief financial officer, crisis management and strategic planning services. I often act as a chief restructuring officer of companies undergoing either a formal or informal restructuring and have been involved in number of cross-border restructuring proceedings.

4. I am the duly-authorized representative to act on behalf of the Foreign Representative. In preparing this declaration (this "**Declaration**"), I have reviewed the Debtors' records and public filings, and have relied on the Debtors' advisors and other members of the Debtors' senior management as necessary.

5. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' employees, operations, and finances, information learned from my review of relevant documents and information supplied to me by other members of the Debtors' management and their advisors, or my opinion based on my experience, knowledge, and information concerning the Debtors' operations, financial affairs, and restructuring initiatives. I am over the age of 18, and I am authorized to submit this Declaration on behalf of the Foreign Representative. If called upon to testify, I could and would testify competently to the facts set forth in this Declaration.

6. I respectfully submit this Declaration 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 "**Motion**").[2]

[2] Capitalized terms used but not defined herein shall have the meaning given to them in the Motion or the SISP (as defined therein).

A. The Pre-Filing SISP

7. Prior to initiating the Canadian Proceedings, on September 21, 2022, APC retained EY and 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**").

8. The Pre-Filing SISP was designed to identify potential bidders and investors. 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**"). EY also canvassed its global network which led to a number of discussions with strategics throughout the globe.

9. Subsequently, the Debtors, with the assistance of EY, prepared a teaser document and sent it to the Prospective Bidders. A confidential information memorandum was also prepared. A data room was also set up, which included information with respect to the Debtors and their products, to assist Prospective Bidders (the "**Data Room**"). The confidential information memorandum and access to the Data Room were available to Prospective Bidders who signed non-disclosure agreements.

10. 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. However, no actionable transactions were identified through the Pre-Filing SISP. The Monitor has continued discussion with parties who have previously expressed interest following the commencement of the Canadian Proceedings.

11. The Pre-Filing SISP did not lead to any actionable transaction. Accordingly, the Debtors filed for protection under the CCAA and commenced the Canadian Proceedings. Since

the granting of the Initial Order, the Monitor has continued discussions with the parties who had previously expressed interest. The purpose of these discussions is to update them on the status of these CCAA proceedings and assess their continued interest in the Debtors' assets and operations. While the Pre-Filing SISP did not lead to an actionable transaction, the Debtors, their advisors, and the Monitor believe it is appropriate to undertake a further SISP under the supervision of the Canadian Court with the benefit of the stay afforded by the Canadian Proceedings.

B. The SISP

12. On March 2, 2023, the Debtors sought entry of an order from the Canadian Court approving the SISP and extending the stay applicable to the Debtors in the Canadian Proceedings. On March 9, 2023, the Canadian Court granted the requested relief and entered the SISP Approval Order. In the endorsement approving the SISP, the Canadian Court found, among other things, that the "SISP was designed to build on the pre-filing SISP Process and to maximize flexibility for a restructuring, reorganization or sale." A true and correct copy of the Canadian Court's endorsement is attached hereto as **Exhibit A**.

13. The SISP is intended to solicit interest in the Opportunity for a sale of or investment in all or part of the Debtors' assets (which includes the drugs Noctiva, Natesto, Strendra (avanafil), Lidbree, Tefina, TriVair and all other products of the Debtors) and business operations. During the SISP, the Debtors will continue operating. A true and correct copy of the SISP is attached as Schedule A to the CCAA SISP Approval Order, which is attached as Exhibit 1 to the Proposed Order annexed to the Motion.

1. Overview

14. The SISP provides that the Monitor, with the assistance of the Debtors and its advisors, 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. The SISP is

designed to be broad and flexible. Accordingly, the SISP contemplates one or more of a restructuring, recapitalization, reverse vesting order, 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 Property and the Debtors' Business.

15. 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.

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)

16. The milestones referred to in the above table are described in detail below. I understand that the milestones are also supported by the Monitor. The Monitor and I as CRO believe that the milestones of the proposed 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.

2. **Notification Process**

17. The SISP requires that the Monitor, with the assistance of the Debtors, prepare a list of Known Potential Bidders. These include:

a) parties that have approached the Debtors or the Monitor indicating an interest in the Opportunity;

b) local and international strategic and financial parties who the Monitor, in consultation with the Debtors, believe may be interested in purchasing all or part of the Business or Property or investing in the Debtors pursuant to the SISP; and

c) any other parties that showed an interest in the Debtors and/or their assets by way of the previous Pre-Filing SISP, in each case whether or not such party has submitted a letter of intent or similar document.

18. The Monitor and Debtors will further apprise the market of the SISP by arranging for notice of the SISP (the "**Notice**") to be published in The Globe and Mail (*National Edition*), and any other newspaper or journal that the Monitor considers appropriate. Additionally, the Debtors will issue a press release with Canada Newswire or any other comparable newswire entity, setting out the information contained in the Notice and such other relevant information that the Monitor considers appropriate. Moreover, the Monitor has published the Notice on the Monitor's website for the Canadian Proceedings.

19. The Monitor, in consultation with the Debtors and the CRO, will prepare:

a) a process summary, describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP;

b) the confidential information memorandum;

c) a form non-disclosure agreement; and

d) the Monitor will, in consultation with the Debtors, coordinate all reasonable questions for information and due diligence, including access to the Data Room.

20. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder by no later than five (5) days following issuance of the CCAA SISP Approval Order. The Teaser

Letter and the NDA will also be sent by the Monitor 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.

3. **Potential Bidders and Formal Binding Offers**

21. Each Potential Bidder must provide the Monitor with a NDA executed by it and a letter setting forth the identity of, and contact information for, such Potential Bidder, in addition to any other information that the Monitor may reasonably request. Parties who do so will be granted access to the confidential information memorandum, an electronic Data Room containing due diligence materials and information relating to the Debtors, the Property and the Business as the Monitor, in consultation with the Debtors, deems appropriate.

22. Selected due diligence materials may be withheld from certain Potential Bidders if the Monitor and the Debtors determine such information to represent proprietary or sensitive competitive information or if such disclosure could impair the Debtors or their Business or the integrity of the SISP.

23. Potential Bidders that wish to make a formal offer to purchase or make an investment in the Debtors or their Property or Business must submit a binding offer to the Monitor by the Bid Deadline on April 28, 2023 at 5:00 p.m. (Toronto Time), or such later date as may be communicated by the Monitor to Potential Bidders through a Bid Deadline Letter.

24. Following the Bid Deadline, the Monitor, the Debtors, and the CRO will assess the Bids received. The Debtors, in consultation with the Monitor and the CRO, will designate the most competitive Bids that comply with the following requirements, among others:

a) the Bid must be a binding offer to acquire all, substantially all, or a portion of the Property or the shares of the Debtors pursuant to a reverse vesting order, and/or a binding offer to make an investment in, restructure, reorganize or refinance the Business or the Debtors;

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

c) 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;

d) 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 Debtors to make a determination as to the Bidder's financial and other capabilities to consummate the proposed transaction;

e) for a Sale Proposal, the Bid must include, among other things, a commitment by the Bidder to provide a non-refundable deposit in the amount of not less 10% of the purchase price offered upon the Bidder being selected as the Successful Bidder; and

f) for an Investment Proposal, the Bid must include, among other things, 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.

25. The Monitor, in consultation with the Debtors, may (a) 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; and (b) aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

26. The Monitor is required to notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within five (5) business days of the Bid Deadline, being no later than May 5, 2023, or at such later time as it deems appropriate.

27. The Monitor, in consultation with the Debtors, may extend the Bid Deadline. Any such extension of the Bid Deadline shall be communicated to Potential Bidders by a bid deadline extension letter from the Monitor delivered by email and posted on the Monitor's case website maintained in connection with the Canadian Proceedings.

4. **Selection of Successful Bid**

28. The Debtors, in consultation with the Monitor and the CRO will evaluate Bids based upon several factors including, without limitation:

a) 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 Debtors in their business judgment, in consultation with the Monitor and CRO);

b) the identity, circumstances and ability of the Bidder to successfully complete such transactions;

c) the proposed transaction documents;

d) factors affecting the speed, certainty and value of the transaction;

e) the assets and liabilities included or excluded from the Bid,

f) any related restructuring costs;

g) the manufacturing capabilities of the Bidder; and

h) the likelihood and timing of consummating such transaction.

29. At any stage of the SISP, the Monitor, in consultation with the Debtors, 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.

30. If the Monitor receives one or more Bids that are designated as Qualified Bids, the Debtors, in consultation with the Monitor and the Debtors, may (a) select one or more of such Qualified Bids as the successful bid, with or without negotiation of Qualified Bids with Qualified Bidders; or (b) direct such Qualified Bidders to participate in an Auction to be conducted and administered by the Monitor, with the assistance of the Debtors, in accordance with the terms of the SISP.

5. **Auction (if necessary)**

31. Following the evaluation of the Qualified Bid(s), the Debtors, in consultation with the Monitor and CRO must determine whether the Auction will be held not less than two (2) business days prior to the commencement of the Auction. Instructions to participate in the Auction, along with the Initial Bid, will be provided to Qualified Bidders in writing not less than two (2) business days prior to the commencement of 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 then promptly thereafter inform in writing to each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction.

32. The Auction (if necessary) will proceed on May 9, 2023, sixty-one (61) days following issuance of the CCAA SISP Approval Order and shall be governed by the following procedures, as may be supplemented by the Monitor:

a) *Participation at the Auction*. Unless otherwise agreed to in writing by the Monitor, only the Debtors, the CRO, the Auction Participants, the Monitor and each of their respective advisors will be entitled to attend the Auction,

b) *No Collusion*. Each Auction Participant will 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 (as defined below) is a good-faith bona fide offer, which, if accepted by the Debtors on the record of the Auction forms a binding agreement between the parties;

c) *Minimum Overbid*. The Auction will begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Debtors, in consultation with, and with the approval of, the Monitor and CRO, and any bid made at the Auction by an Auction Participant subsequent to the Monitor's announcement of the Initial Bid, must proceed in minimum additional increments of $100,000 or as otherwise declared by the Monitor during the Auction with the approval of the Debtors;

d) *Bidding Disclosure*. The Auction will 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;

e) *Bidding Conclusion*. The Auction will 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), 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 Debtors, will be at liberty to set additional procedural rules for the Auction as it sees fit.

33. During the Auction, the Debtors, in consultation with the Monitor, will (a) review Qualified Bids and Overbids, as the case may be, considering the factors set out in paragraph 28 above with respect to the selection of the Successful Bid from the Bids received; and (b) identify the highest or otherwise best Qualified Bid or Overbid received at any given time during the Auction, being the Successful Bid(s), and the Qualified Bidder(s) making such bid the Successful Bidder(s).

6. **Sale Approval Hearing**

34. The Successful Bidder(s) will 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 Debtors.

35. The Debtors will then file a motion in the Canadian Proceedings to approve any transaction with the Successful Bidder(s), no later than May 19, 2023, seventy-one (71) days following issuance of the CCAA SISP Approval Order, seeking approval from the Canadian 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 Debtors on and as of the date of approval of the Successful Bid(s) by the Canadian Court.

7. **Potential for Stalking Horse Bid**

36. Notwithstanding anything to the contrary in the SISP, the Debtors, in consultation with, and with the approval of, the Monitor, may attempt to negotiate a stalking horse bid prior to the Bid Deadline to provide certainty for the Debtors during the SISP. If the Debtors, in consultation with, and with the approval of, the Monitor, accept a Stalking Horse Bid, such Stalking Horse Bid will be subject to approval by the Canadian Court and the Debtors shall bring a motion before the Canadian Court on notice to the service list in the Canadian Proceedings seeking the approval of the Stalking Horse Bid, together with approval of necessary amendments to the SISP. All Potential Bidders will be promptly informed of any approval by the Canadian Court of a Stalking Horse Bid and any related amendments to the SISP.

8. **SISP Approval**

37. The SISP, which is a continuation of the Pre-Filing SISP, was developed by the Debtors, in consultation with the Monitor, the CRO, and the DIP Lender. As discussed herein, the SISP is intended to provide a flexible, fair, and efficient structure for canvassing the market for the Property and/or Business.

38. The flexibility afforded to the Monitor and the Debtors, the enhanced role of the Monitor, and the stakeholder consultation contemplated by the SISP will ensure that the Debtors' restructuring proceeds in a way that maximizes stakeholder value. This flexibility is critical to the Debtors' ability to maximize stakeholder recovery given, among other things, the complexities associated with licensing and the regulatory environment in the pharmaceutical industry and the Debtors' liquidity constraints.

39. The Monitor supported the approval of the SISP by the Canadian Court and I am advised that the Monitor is supportive of the recognition of the CCAA SISP Approval Order.

40. Further, it is a requirement of the DIP Facility Agreement that a SISP acceptable to the DIP Lender be commenced. The DIP Lender was supportive of the approval of the SISP by the Canadian Court and I understand that the DIP Lender is supportive of the recognition of the CCAA SISP Approval Order by this Court.

41. In light of the foregoing, I believe that the SISP is appropriate and reasonable under the circumstances and provides a fair and efficient means of canvassing the market for the Property and/or Business. Further, I believe that it provides the appropriate degree of oversight and consultation to ensure that the SISP proceeds fairly and in the best interests of the Debtors and their stakeholders without unduly tempering its efficiency.

C. Extension to Stay or Proceedings

42. Pursuant to the ARIO, the Stay of Proceedings (defined therein) was extended to April 5, 2023. Since the granting of the ARIO, the Debtors have acted in good faith and with due diligence to, among other things, stabilize its business, negotiate, and liaise with its key vendors and customers, and prepare the SISP, all with the oversight of the Monitor.

43. The SISP contemplates a Bid Deadline of April 28, 2023 and an outside date of May 19, 2023 to hear the Sale Approval Motion. As such, in connection with seeking the Canadian Court's approval of the SISP, the Debtors concurrently sought an extension of the Stay of Proceedings from April 5, 2023 to May 19, 2023. The Canadian Court, through the CCAA SISP Approval Order, extended the Stay of Proceedings to May 19, 2023.

[*Remainder of page intentionally left blank.*]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: March 14, 2023
Oakville, Ontario

/s/ Naveed Z. Manzoor
Naveed Z. Manzoor
CRO of Acerus Pharmaceuticals Corporation

EXHIBIT A

Canadian Court Endorsement

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

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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.