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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

THIRD REPORT OF THE MONITOR

DATED MAY 25, 2023

TABLE OF CONTENTS

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(each an "**Applicant**" and collectively, the "**Applicants**")

THIRD REPORT OF THE MONITOR

DATED MAY 25, 2023

INTRODUCTION

1. On January 26, 2023, the Applicants brought an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings to allow them an opportunity to restructure their business and affairs.

2. On that same day, the Court granted an Initial Order (the "**Initial Order**") in these CCAA proceedings (the "**CCAA Proceedings**"). The Initial Order, among other things:

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

   b) approved the engagement of FAAN Advisors Group Inc. ("**FAAN**") as Chief Restructuring Officer ("**CRO**");

   c) ordered an initial stay of proceedings in favour of the Applicants, as subsequently extended (the "**Stay Period**");

d) granted certain Court-ordered charges; and

e) approved an interim financing facility (the "**DIP Facility**") provided by First Generation Capital Inc. ("**FGC**", and in its capacity as the DIP Facility lender, the "**DIP Lender**").

3. On January 29, 2023, the Applicants commenced ancillary insolvency proceedings under Chapter 15 of the United States Bankruptcy Code (the "**Chapter 15 Cases**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**"). On February 27, 2023, the U.S. Bankruptcy Court granted an Order recognizing the CCAA Proceedings as the foreign main proceedings and giving full force and effect to the orders entered in the CCAA Proceedings.

4. On February 3, 2023, the Court granted an Amended and Restated Initial Order (the "**ARIO**") amending and restating the Initial Order. The ARIO, among other things:

a) approved a key employee retention plan (the "**KERP**");

b) increased the amounts which may be borrowed by the Applicants under the DIP Facility; and

c) increased certain Court-ordered charges and granted an additional Court-ordered charge in respect of the KERP.

5. On March 9, 2023, the Court granted an Order (the "**SISP Order**") that, among other things, approved a sale and investment solicitation process (the "**SISP**") to be conducted by the Monitor, in consultation with the Applicants, and extended the Stay Period through May 19, 2023.

6. On March 23, 2023, the U.S. Bankruptcy Court granted an Order recognizing the SISP Order. As a result, the SISP, including all deadlines and requirements as set forth in the SISP Order, is recognized and given full force and effect within the jurisdiction of the United States.

7. Pursuant to an Order issued by this Court on May 15, 2023, the Stay Period was most recently extended until and including May 30, 2023.

PURPOSE

8. The purpose of this report (the "**Third Report**") is to provide information to the Court on:

a) key activities of the Applicants and the Monitor since the issuance of the Second Report of the Monitor, dated March 7, 2023 (the "**Second Report**");

b) the Applicants' receipts and disbursements for the period from March 6, 2023 to May 14**,** 2023, as compared to the cash flow forecast appended as Appendix "C" to the Second Report;

c) the Applicants' updated cash flow forecast for the period from May 15, 2023 to July 2, 2023;

d) the Monitor's review of the personal property security held by FGC;

e) the conduct and outcome of the SISP; and

f) the Applicants' motion for an Order that, among other things:

   i. approves the subscription agreement dated as of May 15, 2023 (the "**Subscription Agreement**") between FGC, as purchaser (in such capacity, the "**Purchaser**") and APC, as issuer, and the transactions contemplated therein (the "**Transactions**");

   ii. grants a release in favour of the Applicants' directors, officers and advisors, the CRO and the Monitor and its legal counsel and FGC and its directors, officers and advisors; and

   iii. extends the Stay Period through to June 30, 2023.

TERMS OF REFERENCE

9. In preparing this Third Report and making the comments herein, the Monitor has been provided with, and has relied upon, audited and unaudited financial information, books and records prepared by the Applicants, discussions with management of the Applicants ("**Management**"), and information from other third-party sources (collectively, the "**Information**"). Except as described in this Third Report in respect of the Cash Flow Forecast:

a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and

b) some of the information referred to in this Third Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.

10. Future oriented financial information referred to in this Third Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

11. Unless otherwise indicated, the Monitor's understanding of factual matters expressed in this Third Report concerning the Applicants and their business is based on the Information, and not independent factual determinations made by the Monitor.

12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

13. Additional information regarding the CCAA Proceedings and the Chapter 15 Cases, including copies of the Monitor's reports and key documents related to the Chapter 15 Cases, can be found on the Monitor's website at www.ey.com/ca/acerus.

BACKGROUND INFORMATION

14. This Third Report should be read in conjunction with the Affidavit of Naveed Z. Manzoor sworn May 18, 2023 (the "**Manzoor Affidavit**") in support of the Applicants' motion for, among other relief, approval of the Transactions.

15. Headquartered in Mississauga, Ontario, the Applicants carry on a specialty pharmaceutical business focused on the research, development, commercialization and distribution of innovative prescription products primarily in the fields of urology and men's health.

16. APC was incorporated under the *Ontario Business Corporations Act* (the "**OBCA**"). APC was previously listed on the TSX under the ticker "ASP.TO" and the OTCQB Exchange in the United States under the ticker "ASPCF". As of March 3, 2023, APC has been delisted from the TSX.

17. FGC holds approximately 89.3% of APC's outstanding shares. FGC is affiliated with the Chairman of the Board of Directors of APC (the "**Board**").

18. The other three Applicants are APC's wholly-owned subsidiaries and are financially dependant on APC:

    a) Acerus Biopharma Inc. ("**ABI**") **-** Incorporated under the OBCA, ABI is the principal operating entity holding intellectual property rights to Natesto™ and certain early-stage research and development projects. Natesto™ is an FDA approved nasal gel for male testosterone replacement therapy in hypogonadism (i.e., reduction or absence of hormone secretion);

    b) Acerus Labs Inc. ("**ALI**") - Incorporated under the OBCA, ALI is the principal operating entity holding certain early-stage research and development projects.

    c) Acerus Pharmaceuticals USA, LLC ("**APL**") - Incorporated under the laws of the State of Delaware, U.S.A., APL owns the global rights to Noctiva™, a desmopressin nasal spray for nocturia due to nocturnal polyuria (i.e., overproduction of urine at night).

Pre-Filing Loan Facilities

19. The Applicants are indebted to FGC in the amount of approximately US$47.945 million of principal under a fully-drawn secured loan facility (the "**2021 Facility**"), bearing interest at a fixed rate of 8% per annum. Originally established on April 30, 2021, this facility has since undergone multiple amendments to increase borrowing capacity, and is set to mature on December 31, 2024.

20. In addition, the Applicants owe US$2.0 million of principal to FGC under a separate secured credit facility established on December 21, 2022 (the "**December 2022 Facility**"), bearing an interest rate of 8% per annum. The December 2022 Facility does not require any principal or interest payments until the maturity date on December 31, 2024. In connection with the December 2022 Facility, ABI, ALI, and APL also guaranteed APC's obligations under the 2021 Facility and granted security in respect thereof (until that time, APC was the sole obligor under the 2021 Facility).

<u>DIP Facility</u>

21. Pursuant to the Initial Order, this Court approved the DIP Facility with a borrowing limit of US$500,000 and granted the DIP Lender's Charge in favour of the DIP Lender to secure all of the actual advances, interest and obligations under the DIP Facility. Pursuant to the ARIO, this Court increased the amounts which could be borrowed by the Applicants under the DIP Facility to US$7 million. As of the date of this Third Report, the DIP Facility is fully drawn.

UPDATE ON THE APPLICANTS' ACTIVITIES

22. The Applicants have maintained sales of Natesto™ through distributors in the U.S. and Canadian markets. Concurrently, the Applicants are continuing the ambulatory blood pressure monitoring study related to Natesto™ (the "**ABPM Study**") as required by the FDA. After the CCAA filing, the Applicants entered into a deposit agreement with the administrator of the ABPM Study program to ensure payment of services provided by the administrator and other service providers (including clinical sites) on and after the CCAA filing date. With the support of the Monitor, the Applicants are engaged in ongoing communication with the clinical sites involved in the ABPM Study to address concerns and mitigate disruptions.

23. The Applicants continue to diligently pursue the commercialization of Noctiva™ toward a relaunch of the product in the U.S. market. This effort involves negotiating and entering into certain post-filing agreements related to the trial production and associated testing services, which include a Research & Development Services Agreement with Renaissance Lakewood, LLC which is negotiated and pending execution, and a testing services agreement with Catalent Pharma Solutions, LLC which is executed. The Applicants have consulted with the Monitor throughout these activities.

24. The Applicants, with the assistance of the Monitor, have engaged in communications with various stakeholders, including suppliers, health plan administrators, employees and contractors, to provide information regarding these CCAA Proceedings and to ensure that the Applicants are able to maintain their operations.

25. The Applicants and the Monitor have been in discussions with Jones Day's counsel regarding certain concerns Jones Day has raised regarding the disclosure about the Jones Day Litigation (as defined below). From those discussions, the Monitor and the Applicants understand that Jones Day may wish to file materials providing greater background to the litigation.

APPLICANTS' RECEIPTS AND DISBURSEMENTS

26. A summary of the Applicants' actual receipts and disbursements during the period from March 6, 2023 to May 14, 2023 (the "**Reporting Period**") as compared to the cash flow forecast appended to the Second Report (the "**Variance Analysis**") is attached hereto as **Appendix "A"**.

27. During the Reporting Period, the Applicants fully drew the remaining balance of the US$7.0 million DIP Facility to ensure they had sufficient liquidity to advance the commercialization of Noctiva and cover expenses necessary to conclude the CCAA Proceedings. As of May 14, 2023, the Applicants had cash balance of approximately C$8.691 million, which is C$6.573 million higher than projected. As detailed in Appendix "A", this favourable variance is attributable to a timing difference related to the DIP draws and the deferral of certain expenditures.

THE APPLICANTS' CASHFLOW FORECAST

28. The Applicants, with the assistance of the Monitor, have further updated the cash flow forecast (the "**Updated Cash Flow Forecast**") for the period from May 15, 2023 to July 2, 2023 (the "**Forecast Period**"). A copy of the Updated Cash Flow Forecast is attached hereto as **Appendix "B"**.

29. The Updated Cash Flow Forecast projects that the Applicants' funds are sufficient to fund operations during the proposed extension of the Stay Period. The Updated Cash Flow forecast reflects the assumption that the Transactions will be successfully concluded in the week of June 26, 2023.

CONDUCT AND OUTCOME OF THE SISP

The Pre-filing Strategic Process

30. As detailed in the prior reports of the Monitor, the Applicants invested significant time and efforts in exploring strategic transaction opportunities prior to the CCAA proceedings. The Board established a special committee of independent directors (the "**Special Committee**") to oversee these efforts.

31. The Applicants' financing needs became more urgent as their informal solicitation efforts did not yield any offers. In September 2022, the Applicants engaged Ernst & Young Inc. and Ernst & Young Orenda Corporate Finance Inc. (collectively, "**EY**") as financial advisor and FAAN as Chief Strategic Officer. The Applicants, with the assistance of EY and FAAN, conducted a comprehensive pre-filing strategic review process (the "**Pre-Filing Strategic Process**"). In the Pre-Filing Strategic Process, the Applicants and EY contacted approximately 113 financial and strategic parties to explore business and strategic alternatives. Additionally, EY made informal inquiries with certain strategic parties in the EU, Latin America, India, Japan and China.

32. Despite receiving several offers, the Applicants were unable to identify an actionable transaction prior to the commencement of the CCAA Proceedings.

Conduct of the SISP

33. The SISP was developed based on feedback and information received from the Pre-Filing Strategic Process.

34. The Second Report describes the SISP in detail, and the key dates pertinent to the SISP are summarized therein as follows.

Milestone	Deadline
Publish notice of SISP and deliver Teaser Letter and NDA to Known Potential Bidders	March 14, 2023 (i.e., 5 days from the SISP Order)
Bid Deadline	April 28, 2023 (i.e., 50 days from the SISP Order)

Monitor to notify each Bidder in writing as to whether its Bid constitutes a Qualified Bid	No later than May 5, 2023 (i.e., within 5 business days following the Bid Deadline)
Monitor to notify each Qualified Bidder on whether an Auction will take place	No later than May 5, 2023 (i.e., 2 business days prior to the Auction)
Auction date, if required	May 9, 2023
Hearing of the Sale Approval Motion	No later than May 19, 2023

35. In accordance with the SISP Order, the Monitor completed the following steps before March 14, 2023:

a) in consultation with the Applicants, prepared a list of known interested parties for the SISP, as further described herein;

b) caused the Applicants to issue a press release regarding the SISP on March 14, 2023;

c) published a notice of the SISP in The Globe and Mail (National Edition) on March 14, 2023, with a copy attached hereto as **Appendix "C"**;

d) posted the SISP Notice on the Monitor's case website; and

e) updated the Teaser Letter and Confidential Information Memorandum (the "**CIM**") with the assistance of the Applicants. A copy of the updated Teaser Letter is attached hereto as **Appendix "D"**.

36. Based on feedback from the Pre-Filing Strategic Process, after consultation with the Applicants, the Monitor focused the SISP outreach efforts on strategic parties. During the SISP, the Monitor reached out to approximately 56 strategic parties and three financial parties in North America and overseas. This outreach included 20 new parties who had not previously been contacted in the Pre-Filing Strategic Process.

37. For the parties who had previously submitted proposals during the Pre-Filing Strategic Process and indicated ongoing interest, the Monitor held discussions to ensure each of them was informed of the SISP requirements and relevant updated information. For other known parties,

the Monitor sent out copies of the updated Teaser and the non-disclosure agreement and followed up with phone calls and/or emails as necessary.

38. Out of the parties contacted during the SISP, six parties (the "**Potential Bidders**") either executed NDAs or continued to rely on the NDAs from the Pre-Filing Strategic process. These parties were provided with the updated CIM and granted access to the Data Room.

39. The Potential Bidders expressed interest in different parts or all of the Applicants' assets or operations. As a result, the scope of their due diligence requests varied significantly. The Monitor closely oversaw the due diligence process to ensure that all of these Potential Bidders' information requests were addressed in a timely and reasonable manner. Among other things, the Monitor ensured that:

a) The Applicants diligently provided responses and information as requested by the Potential Bidders;

b) Relevant documents were promptly uploaded to the data room for access by all Potential Bidders, as appropriate; and

c) The Applicants' executives attended meetings with the Potential Bidders, with the Monitor participating in these meetings.

Outcome of the SISP

40. On March 17, 2023, the Monitor was informed by one Potential Bidder that it chose not to pursue the opportunity, citing reasons unrelated to the SISP. In or around late April 2023, two additional Potential Bidders communicated to the Monitor that, after careful assessment, they decided not to submit an offer.

41. By the Bid Deadline on April 28, 2023, the Monitor received three bids as follows:

a) one credit bid from FGC (the "**FGC Bid**") in the form of the Subscription Agreement, as detailed herein, for the acquisition of APC's shares and substantially all of the Applicants' assets through a reverse vesting structure. The credit bid amount includes the balances totalling approximately US$62.2 million owing as of April 28, 2023, plus any accrued and unpaid interest thereon, under the credit facilities provided by FGC (being the 2021 Facility, the December 2022 Facility and the DIP Facility);

b) one bid (the "**Unsuccessful Bid 1**") that offered a nominal purchase price to acquire a single pipeline product; and

c) a bid from a strategic party (the "**Unsuccessful Bid 2**") in respect of another single product, offering an upfront payment, as well as royalties and milestone payments that are tied to future sales of this product.

42. On May 1, 2023, after the Bid Deadline, two new parties reached out to the Applicants and the Monitor, expressing a potential interest in submitting an offer. However, given that the Bid Deadline had expired—and after considering information provided by those parties with respect to their preliminary valuation of the Applicants and the extra time they would need to complete due diligence—the Applicants and the Monitor declined the interest expressed by these two parties.

43. On May 5, 2023, the Monitor wrote to all the three bidders advising that the date by which each bidder would be notified as to whether its bid constituted a Qualified Bid (as defined in the SISP) would be deferred to May 9, 2023. This extension allowed the Applicants, in consultation with the Monitor, sufficient time to evaluate the three bids received.

44. Following careful analysis and with the benefit of input from the CRO, the Applicants' legal counsel and the Monitor and its legal counsel, the Applicants determined, and the Monitor agreed, that the FGC Bid represented the highest and best bid received in the SISP. That determination was based upon the following considerations:

a) Unsuccessful Bid 1 was for nominal consideration which would not be sufficient to cover expected professional fees to complete a potential transaction or to result in any proceeds for distribution to creditors.

b) The upfront payment of Unsuccessful Bid 2 was insufficient to repay the DIP Facility and cover the exit costs required to complete these CCAA Proceedings. Given the high degree of uncertainty regarding the contingent consideration contemplated in

Unsuccessful Bid 2 and whether liquidity could be generated from the assets excluded from Unsuccessful Bid 2, it was not practical for the Applicants to pursue this option.

c) The vast majority of the potential value of Unsuccessful Bid 2 is contingent consideration dependent on future sales of the target product. After conducting a comprehensive assessment of the contingent consideration's value, as summarized in the confidential Bid Summary (as described and defined below), the Applicants, in consultation with the Monitor, determined that the consideration proposed in Unsuccessful Bid 2 was significantly less favourable compared to that of the FGC Bid.

d) Unsuccessful Bid 2 was not a going concern transaction and it excluded certain assets of the Applicants, which would require continued expense to maintain. The Applicants have not been able to identify a viable transaction regarding these excluded assets through extensive solicitation efforts, and it is unlikely that any liquidity can be realized on the excluded assets.

e) Unlike the FGC Bid, Unsuccessful Bid 2 did not assume any liabilities of the Applicants and did not provide for the potential employment of any existing employees.

f) The purchase price of the FGC Bid was considerably higher than the other offers received and is payable by way of credit bid on closing. The FGC Bid is a going concern solution for the Applicants' business and, as such, it presents the opportunity for the Applicants to provide ongoing employment to certain of their employees, to provide continued business to their vendors, and to continue development of its pharmaceutical products.

45. To assist the Court in comparing the bids, the Monitor has prepared a confidential bid summary to be filed herewith as **Confidential Appendix "E"** (the "**Bid Summary**") which contains information which is commercially sensitive. The Applicants' will seek a sealing order in respect of the Bid Summary at the motion.

46. On May 8, 2023, following a thorough discussion with the Monitor, its counsel, the CRO, and the Applicants' counsel, the Special Committee considered and recommended proceeding with finalizing the FGC Bid.

47. On May 9, 2023, the Monitor informed the bidders who submitted Unsuccessful Bid 1 and Unsuccessful Bid 2 that their bids were not selected as a successful bid and that an auction would not be held. In large part, this decision was based on the view—shared by the Monitor, the Applicants and the CRO—that Unsuccessful Bid 1 and Unsuccessful Bid 2 were both commercially unviable and that an auction was unlikely to improve either bid to such an extent that they would become competitive with the FGC Bid. As a result, the Monitor, the Applicants, and the CRO determined that incurring the costs of an auction would be unwarranted in the circumstances.

48. Following the Special Committee meeting, the Applicants, the CRO, the Monitor and their respective legal counsel continued discussions with a view toward finalizing the form of the Subscription Agreement and ancillary documents. The Monitor was consulted throughout this process.

49. On May 12, 2023, the Board convened, in the absence of the Chairman, to consider the Special Committee's recommendation of selecting the FGC bid as the Successful Bid under the SISP. After considering the available options, the bids received and the recommendations of Applicants' counsel, the Monitor and the CRO, the Board approved the FGC Bid as the successful bid.

SECURITY REVIEW

50. The FGC Bid is a credit bid of all of the Applicants' secured indebtedness to FGC. The Monitor has therefore requested that its legal counsel Fasken Martineau DuMoulin LLP ("**Fasken**") review and provide an opinion with respect to the validity and enforceability of the FGC security in Ontario. The Monitor also engaged a U.S. law firm, Dechert LLP ("**Dechert**") to review the validity and enforceability of the security granted by the APL in the United States.

51. As noted above, the secured indebtedness to FGC is pursuant to:

a) the 2021 Facility totalling approximately US$47.945 million of principal;

b) the December 2022 Facility totalling approximately US$2 million of principal; and

c) the DIP Facility totalling approximately US$7 million of principal.

52. Fasken has provided the Monitor with a legal opinion that, subject to customary assumptions and qualifications, the loan and security agreements grant in favour of FGC a valid and enforceable security interest in the collateral referenced therein and that such security interests are properly perfected in the Province of Ontario. Dechert has provided a memo to the Monitor confirming that FGC has properly perfected security under U.S. law.

53. As is customary in security review opinions, the opinion provided by Fasken contains: (a) an assumption that value has been given by the secured party to each of the Applicants and that the security interest granted by the security documents has attached; and (b) a qualification that the enforceability of the security may be limited by, among other things, fraudulent conveyance, assignments, preferences, or other laws affecting creditors' rights generally.

54. Certain creditors have raised with the Monitor, and the Monitor has noted, that the subsidiaries of APC first guaranteed and granted security for the obligations of APC in connection with the December 2022 Facility and that the guarantee and security given by the subsidiaries at that time secured not only the fresh advances made under the December 2022 Facility but also all advances made by FGC to APC before that date. The foregoing is set out in more detail in the affidavit of Naveed Manzoor sworn on January 25, 2023 in connection with the initial CCAA application. The Monitor is informed that the giving of the subsidiary guarantees and security in December 2022 was a condition to the availability of the December 2022 Facility and that the December 2022 advances and prior advances made by FGC to APC were used for the ongoing operation of the APC business generally.

55. The Monitor has not sought a legal opinion as to whether the validity or enforceability of the guarantee and security given by the subsidiaries of APC may be impaired as a result of these (or other) circumstances which would otherwise fall within the customary assumptions and qualifications of a security opinion. Formulating such an opinion would require a detailed assessment of the intentions, facts and circumstances surrounding, among other things, the various advances, the use of funds advanced and the giving of the guarantees and security, all in the context of equitable principles. The investigation and preparation of an opinion of this nature would be costly and could at best express a reasoned view which would not be binding on any party in interest. To the extent such matters are to be determined, that determination must be made by the Court to have any value and binding effect. As discussed below, notwithstanding

that the FGC Bid is presented as a credit bid in the full amount of the indebtedness to FGC, the Monitor is of the view that the issue does not need to be determined at this time.

56. The Monitor has not identified any reasonable basis to question the validity or enforceability of the security given by APC to FGC in respect of the approximately US$62.2 million[1] total aggregate amount owing under the 2021 Facility, the December 2022 Facility and the DIP Facility as of April 28, 2023. Nor has the Monitor identified any reasonable basis on which the validity or enforceability of the security given by the subsidiaries of APC in respect of advances made under the December 2022 Facility (approximately US$2 million in principal) or under the DIP Facility (approximately US$7 million in principal) may be questioned.

57. On this basis, even if the security given by the subsidiaries of APC to FGC for advances made prior to December 2022 was disregarded, FGC would still be in a position to credit bid at least US$62.2 million at the APC level and US$9 million plus interest at the subsidiary level.[2] It is notable that, even valued at these reduced amounts, the FGC Bid would remain the highest and best offer received in the SISP.

58. The Monitor notes that the issues and analysis raised above in respect of FGC's security were considered by the Applicants, the CRO, and the Monitor when comparing the offers and alternatives submitted during the SISP.

THE SUBSCRIPTION AGREEMENT

59. The Subscription Agreement contemplates the effective acquisition by FGC of the shares of APC that it does not own and, indirectly, substantially all assets of the Applicants except enumerated Excluded Assets and Excluded Liabilities (as described below).

60. The proposed Transactions are to be implemented through a reverse vesting order, and contemplate a pre-closing restructuring and the transfer of the Excluded Assets and Excluded Liabilities relating to the Canadian Applicants (APC, ABI and ALI) to a newly incorporated entity (Residual Co. 1), and those related to APL to a separate newly incorporated entity

[1] Includes both principal amounts and interest accrued as of April 28, 2023.
[2] US$9 million comprises approximately US$2 million in principal under the December 2022 Facility and approximately US$7 million in principal under the DIP Facility, before considering any excess cash the Applicants may hold upon closing the Transactions.

(Residual Co. 2). This will allow FGC to indirectly acquire APC's business and assets on a "free and clear" basis. FGC will then subscribe for and purchase new shares of APC, and all existing shares of APC will be cancelled, such that FGC will become the sole shareholder of APC.

61. The material terms of the Subscription Agreement are summarized below for ease of reference:[3]

a) the purchase price payable will be a credit bid of US$62,187,732.63, plus all accrued and unpaid interest thereon through to and including the Closing Date, plus any fees and expenses associated therewith. This amount represents 100% of the three credit facilities which will be owing as of the Closing Date;

b) the Purchaser will retain the Retained Liabilities, including:

i. all liabilities and obligations in respect of the post-filing period;

ii. all liabilities of the Applicants arising from and after the Closing Date;

iii. tax liabilities related to the post-filing period and other tax liabilities for which current and former directors and officers may he held liable;

iv. Intercompany Claims among the Applicants (i.e., any claim that may be asserted against any of the Applicants by or on behalf of any other Applicant or any of their affiliated companies, partnerships, or other corporate entities);

v. indemnification obligations to current and former directors and officers covered under the director and officer insurance policies of the applicable Applicant or Applicants, only to the extent covered by such director and officer insurance policy; and

vi. contingent liabilities of APL in connection with the case filed by Jones Day against Serenity Pharmaceuticals, LLC (a predecessor of APL), Samuel Herschkowitz and Alain Kodsi, No. 657373/2019 (the "**Jones Day Litigation**").

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[3] This is not an exhaustive list of terms. In the event of any inconsistency between this summary and the Subscription Agreement, the Subscription Agreement governs. Any capitalized terms that are not defined in this section have the meanings given to them in the Subscription Agreement.

c) The Purchaser will acquire substantially all of the Applicants' business and assets other than the Excluded Assets, which include:

   i. books and records regarding the Excluded Liabilities;

   ii. the Administrative Expense Amount to be estimated by the Monitor to cover costs needed to complete the restructuring proceedings and wind-down the estate;

   iii. the Excluded Contracts and Excluded Leases as set out in Schedule 2.2 (c) of the Subscription Agreement;

   iv. communication and information related to the Transactions and Excluded Assets;

   v. rights related to ResidualCos under the Transaction documents; and

   vi. any other asset, contract or lease identified by FGC in writing as an Excluded Asset no later than two days prior to the Closing Date.

d) Excluded Liabilities consist of all claims and liabilities of the Applicants other than the Retained Liabilities.

e) The Purchaser will conduct interviews with employees and make offers of employment to certain individuals before the Closing Date.

f) The conditions to closing include, without limitation:

   i. The Approval and Reverse Vesting Order (the "**ARVO**") shall be issued by May 31, 2023 or such later date agreed to in writing by the Purchaser in its sole discretion; and

   ii. A recognition order of the ARVO (the "**U.S. Recognition Order**") shall be issued by the U.S. Bankruptcy Court within 28 days of the ARVO.

g) The Subscription Agreement may be terminated if the transaction has not closed on or before June 30, 2023 or such later date agreed to by both APC and FGC in writing in consultation with the Monitor.

MONITOR'S ASSESSMENT

62. The SISP was well structured, and when combined with the Pre-Filing Strategic Process, it resulted in a broad canvassing of the market for potential purchasers of the Applicants' business.

63. The SISP was administered by the Monitor, which has extensive experience in marketing businesses and assets, and included extensive consultation with the Applicants.

64. The Subscription Agreement—which arose from a fair, transparent, and robust SISP—represents the only viable option arising out of the SISP and is anticipated to result in the highest realization for the Applicants' business and assets in the current circumstances.

65. The Subscription Agreement benefits numerous stakeholders (including customers, employees and suppliers) by facilitating a transaction that allows the Applicants to continue operating as a going concern.

66. Pursuant to section 36(3) of the CCAA, the Monitor has also evaluated whether the completion of the Transactions contemplated by the Subscription Agreement would be more beneficial to the Applicants' creditors and other stakeholders as compared to a sale or disposition of the business and assets of the Applicants under a bankruptcy. The Monitor has determined that:

a) A potential bankruptcy could cause significant disruption in operations and delay the market launch of Noctiva, thus adversely impacting the business value. The uncertainty surrounding the timeline for transferring the patents and license to the Purchaser during bankruptcy proceedings adds to the complexity. This, coupled with the bankruptcy procedure itself, could result in a substantial delay in closing the Transactions.

b) The obtaining of the ARVO is a condition of closing the Subscription Agreement. The reverse vesting structure is unlikely to be available in a potential bankruptcy given the vesting of the assets in the trustee. Furthermore, even if FGC was willing to proceed based on an asset sale structure, instead of the ARVO, the Monitor believes it is unlikely that the recovery could be enhanced by pursuing a sale transaction in a bankruptcy.

c) Accordingly, it is the Monitor's view that a sale or disposition of the business and assets of the Applicants in a bankruptcy would most likely result in a lower recovery. In the Monitor's view, the market has been sufficiently canvassed and the FGC Bid is the only viable bid in the circumstances. It is unlikely that there is any material value to the assets of the Applicants in any transaction other than the FGC Bid.

Reverse Vesting Structure vs. Asset Sale Structure

67. The pharmaceutical industry is heavily regulated. As described in detail in the Manzoor Affidavit, the Applicants possess numerous intellectual properties, licenses and regulatory approvals in the U.S., Canada, and other markets that are crucial to their commercial activities.

68. In a conventional asset sale transaction structure, some of these licenses and regulatory approvals might be cumbersome or very time-consuming to transfer to a third-party purchaser, and the procedures necessary to effect such transfer would likely result in additional risk, delays and costs.

69. The reverse vesting structure facilitates a more efficient and swift completion of the Transactions, without exposure to the risks, costs or delays of attempting to seek the transfer of the patents, licences and regulatory approvals. This is critically important to preserve the value of the Applicants' business and assets.

70. In addition, the Applicants have significant contracts that will be Retained Contracts pursuant to the Subscription Agreement. These include contracts with government entities in the U.S. The reverse vesting structure will mitigate substantial delays and costs associated with seeking consents to assignment from contract counterparties or court approval of assignments if such consents cannot be obtained. The Monitor notes that the Subscription Agreement does not require the Purchaser to cure pre-filing arrears under the Retained Contracts. The Applicants have informed the Monitor that they intend to serve notice of the approval hearing to counterparties involved in the significant Retained Contracts who are owed pre-filing amounts.

71. While the Excluded Assets and Excluded Liabilities will be vested out into Residual Cos, in this structure, the outcome would be the same as if the Transactions had been carried out using an asset purchase structure. There will be no inter-company transfer of assets and liabilities among the existing Applicants prior to closing. Therefore, the Monitor concurs with the Applicants' view that the Transactions will not result in any material prejudice or impairment of any creditors' rights which would have been avoided in an asset purchase transaction.

72. FGC is only interested in pursuing a reverse vesting structure. During the SISP, in response to the Monitor's specific inquiry, FGC advised that it is not prepared to consider a plan of arrangement or asset purchase.

73. Furthermore, the reverse vesting transaction structure will allow the Applicants to preserve certain tax attributes which would be otherwise adversely impacted through an asset purchase structure. FGC has advised that the retention of these tax attributes represents an important consideration.

74. Accordingly, the Monitor is of the view that, in light of the result of the SISP, the reverse vesting structure set out in the proposed ARVO represents the only viable alternative to implement the Transactions for the benefit of the Applicants' stakeholders; the Monitor therefore supports the relief requested.

75. The Monitor is also satisfied that good faith efforts were made to sell the assets to a party that is not related to the Applicants. The Pre-filing Strategic Process and the SISP were both designed to canvass the market broadly to identify parties that might be interested in purchasing, or investing in, the Applicants. These sale processes were conducted with the benefit of experienced advisors. The FGC Bid is the best and highest bid that resulted from the Applicants' marketing efforts. The consideration in the FGC Bid is superior to the consideration that would have been received in any other offer made in accordance with the SISP and, in fact, is the only viable offer that the Applicants received.

THE PROPOSED RELEASES

76. The Applicants also seek the issuance of court-ordered releases (the "**Releases**") in favour of:

a) the present and former directors, officers, employees, legal counsel and advisors of the Applicants;

b) the CRO;

c) the Monitor and its legal counsel;

d) FGC, in its capacities as secured lender to the Applicants and majority shareholder of APC, and its current and former directors, officers, employees, legal counsel and advisors; and

e) FGC and its current and former directors, officers, employees, legal counsel, and advisors (the "**Released Parties**").

77. The full scope of the release provisions is set out in the proposed ARVO and should be read in conjunction with this Third Report. The Releases explicitly do not release or discharge any claim that is not permitted to be released, pursuant to section 5.1(2) of the CCAA, in connection with the Subscription Agreement, or individuals named as defendants in the Jones Day Litigation with respect to their liability in that proceeding.

78. This Release is being pursued with the support of FGC to provide certainty and closure for the Released Parties in the most efficient and appropriate manner given the circumstances.

79. The Releases are essential to the consummation of the Transactions and the orderly wind-down of these CCAA proceedings. The Monitor, having considered the circumstances, believes each of the Released Parties has, in a meaningful way, contributed to the Transactions and the successful restructuring of the Applicants.

80. The Monitor is unaware of any statutory liabilities concerning the Released Parties. Additionally, neither the Applicants nor the Monitor have received any indication from stakeholders intending to assert a claim against any of the Released Parties in respect of claims covered by the Releases.

81. The Monitor concurs with the Applicants' view that the Releases are reasonable and not overly broad in the circumstances, and supports the relief requested by the Applicants.

EXTENSION TO THE STAY PERIOD

82. Should the Court approve the Subscription Agreement and the Transactions contemplated therein, the Applicants will seek the U.S. Recognition Order, which is one of the closing conditions.

83. The Stay Period is currently set to expire on May 30, 2023. The Applicants are requesting an extension of the Stay Period until June 30, 2023.

84. The Monitor is of the view that the requested stay extension is necessary and appropriate for the following reasons:

a) the Applicants require the extension in order to obtain the U.S. Recognition Order and close the Transactions; and

b) the Applicants have continued to operate in good faith and with due diligence since the date of the Initial Order.

85. Based on the Cash Flow Forecast, it appears that the Applicants will have sufficient liquidity for the duration of the extended Stay Period.

CONCLUSIONS AND RECOMMENDATIONS

86. The Monitor supports the relief sought by the Applicants pursuant to the proposed ARVO and the extension of the Stay Period.

All of which is respectfully submitted this 25th day of May, 2023.

ERNST & YOUNG INC., in its capacity as Monitor of the Applicants, and not in its corporate or personal capacity

per:

Alex Morrison
Senior Vice-President

Michael Hayes
Senior Vice-President

Allen Yao
Vice-President

Appendix “A”

Acerus Pharmaceuticals Corporation and Subsidiaries (collectively, the “Applicants”)
Cash Flow Variance Analysis for the Period from March 6, 2023 to May 14, 2023
$CDN in Thousands

	Actual	Forecast	Variance	*Notes*
Receipts				
Product Sales	$ 2,759	$ 2,257	$ 501	*1*
Total Receipts	2,759	2,257	501	
Less: Disbursements				
Direct Selling Costs	1,242	1,621	(379)	*2*
Payroll & Contractors	407	465	(58)	
Contract Manufacturing Costs	62	1,086	(1,025)	*3*
Other Product Related Expenses	1,720	1,960	(239)	*3*
Other SG&A	134	153	(19)	
Restructuring Costs	1,480	1,759	(279)	*3*
Total Disbursements	5,045	7,044	(1,999)	
Net cash receipts/(disbursements)	**$ (2,286)**	**$ (4,787)**	**$ 2,500**	
Cash Balance				
Opening Balance	$ 4,196	$ 4,192	$ 3	
Net Cash Receipts/(disbursements)	(2,286)	(4,787)	2,500	
DIP draws/(repayment)	6,782	2,713	4,069	*4*
Ending Cash Balance	**$ 8,691**	**$ 2,118**	**$ 6,573**	
DIP Facility				
Opening Balance	$ 2,713	$ 2,713	$ -	
DIP Draws/(Repayment)	6,782	2,713	4,069	
Closing Balance	**$ 9,495**	**$ 5,426**	**$ 4,069**	

In the Matter of the CCAA of Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC (collectively, the "Applicants")

Cash flow variance analysis for the period from Mach 6 to May 14, 2023

Disclaimer:

This variance analysis compares the Applicants' actual receipts and disbursements compared to the cash flow forecast appended to the Second Report of the Monitor, dated March 7, 2023.

1. **Product Sales**
   The positive variance in product sales represents a reversal of delays in collection from third-party logistic service providers that occurred in the preceding period.

2. **Direct Selling Costs**
   The favourable variance can be attributed to both lower-than-expected costs and a timing difference. The latter is projected to reverse in the subsequent periods.

3. **Contract Manufacturing Costs, Other Product Related Expenses and Restructuring Costs**
   The variances in these categories represent primarily timing differences which are anticipated to reverse in the future.

4. **DIP Draws/(Repayment)**
   In the week of April 17, 2023, the Applicants drew the remaining balance of US$5 million from the US$7 million DIP facility in order to maintain sufficient liquidity during these CCAA proceedings.

Appendix “B”

Acerus Pharmaceuticals Corporation and Subsidiaries (collectively, the "Applicants")
Cash Flow Forecast for the Period May 15, 2023 to July 2, 2023
$CDN in Thousands

	Week #	17	18	19	20	21	22	23	
	Ending	**May 21**	**May 28**	**Jun 04**	**Jun 11**	**Jun 18**	**Jun 25**	**Jul 02**	**Total**
	Notes								
Receipts									
Product Sales	1	$ 95	$ 129	$ 88	$ 88	$ 88	$ 88	$ 122	$ 699
Total Receipts		**$ 95**	**$ 129**	**$ 88**	**$ 88**	**$ 88**	**$ 88**	**$ 122**	**$ 699**
Disbursements									
Direct Selling Costs	2	8	277	323	66	66	62	62	864
Payroll & Contractor costs	3	35	95	3	58	100	110	188	588
Contract manufacturing costs	4	187	58	-	-	-	-	166	412
Other Product Related Expenses	5	156	627	20	20	20	271	220	1,336
Other SG&A	6	-	2	14	5	-	9	210	240
Restructuring Costs & Admin Reserve	7	152	442	80	50	25	114	1,821	2,683
Total Disbursements		538	1,501	440	200	212	565	2,667	6,123
Net cash receipts/(disbursements)		**$ (443)**	**$ (1,372)**	**$ (352)**	**$ (112)**	**$ (124)**	**$ (477)**	**$ (2,545)**	**$ (5,424)**
Cash Balance									
Opening Balance	8	$ 8,691	$ 8,248	$ 6,876	$ 6,524	$ 6,412	$ 6,288	$ 5,812	$ 8,691
Net Cash Receipts/(disbursements)		(443)	(1,372)	(352)	(112)	(124)	(477)	(2,545)	$ (5,424)
DIP draws/(repayment)		-	-	-	-	-	-	-	$ -
Ending Cash Balance		**$ 8,248**	**$ 6,876**	**$ 6,524**	**$ 6,412**	**$ 6,288**	**$ 5,812**	**$ 3,267**	**$ 3,267**
DIP Facility									
Opening Balance	9	$ 9,495	$ 9,495	$ 9,495	$ 9,495	$ 9,495	$ 9,495	$ 9,495	$ 9,495
DIP Draws/(Repayment)	9	-	-	-	-	-	-	-	$ -
Closing Balance		**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**	**$ 9,495**

In the Matter of the CCAA of Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC (collectively, the "Applicants")

Notes to the Unaudited Cash Flow Forecast of the Applicants

Disclaimer:

In preparing this cash flow forecast (the "**Cash Flow Forecast**"), the Applicants, with the assistance of FAAN Advisors Group Inc. in its capacity as the Chief Restructuring Officer, and in consultation with Ernst & Young Inc. (the "**Monitor**"), have relied upon unaudited financial information and the Applicants have not attempted to further verify the accuracy or completeness of such information. The Cash Flow Forecast includes estimates concerning the operations of the Applicants and additional assumptions discussed below with respect to the requirements and impact of a *Companies' Creditors Arrangement Act* ("**CCAA**") filing (the "**Probable and Hypothetical Assumptions**" or the "**Assumptions**"). Since the Cash Flow Forecast is based on Assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Cash Flow Forecast period will vary from the Cash Flow Forecast, even if the Assumptions materialize, and such variation may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court appointed Monitor pursuant to section 23(1)(b) of the CCAA, which requires a Monitor to review the debtor's cash flow statements as to its reasonableness and to file a report with the Court on the Monitor's findings.

Pursuant to this standard, the Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of the Applicants and other employees of the Applicants. Since the Probable and Hypothetical Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Monitor also reviewed the support provided by the Applicants for the Probable and Hypothetical Assumptions and the preparation and presentation of the Cash Flow Forecast.

Based on the Monitor's review, nothing has come to the Monitor's attention that causes the Monitor to believe, in any material respect, that:

(a) The Probable and Hypothetical Assumptions are not consistent with the purpose of the Cash Flow Forecast;
(b) As at the date of this report, the Probable and Hypothetical Assumptions are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow Forecast, given the Probable and Hypothetical Assumptions; or
(c) The Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions.

Overview:

The Cash Flow Forecast includes the receipts and disbursements of the Applicants during the Cash Flow Forecast period. The Applicants, with the assistance of FAAN, and in consultation with the Monitor, have prepared the Cash Flow Forecast based primarily on estimated receipts and disbursements related to the ongoing operations and the CCAA proceedings.

The Cash Flow Forecast reflects the assumption that the transactions contemplated in the subscription agreement dated as of May 15, 2023 (the "**Subscription Agreement**"), as detailed in the Third Report, will be closed during the week ending July 2, 2023.

Assumptions:

1. **Product Sales**
   The Cash Flow Forecast reflects the continued sale of Natesto^{TM} during the CCAA Proceedings. Cash receipts are forecast based on accounts receivable and projected sales during the forecast period, before rebates and other direct selling costs, as described in Note 2.

2. **Direct Selling Costs**
   These payments include amounts related to health plans, a co-pay program and incentives to pharmacy partners, as well as fees charged by third-party logistics service providers and distributors. A portion of these payments represents a projected deposit that will be held by the Monitor in trust. This deposit will be used to cover post-filing costs in accordance with arrangements with a service provider.

3. **Payroll and Contractor Costs**
   Payroll and contractor payments are forecast based on historical run rates and anticipated staffing levels. Salaried employees receive semi-monthly pay. This line item also includes payments pursuant to the key employee retention plan approved by Court.

4. **Contract Manufacturing Costs**
   Represents estimated payments to third party contract manufacturers for the production of commercial batches of the Applicants' products.

5. **Other Product Related Expenses**
   Included in these expenses are fees charged by regulatory agencies, clinical trial costs, and costs to maintain intellectual property rights, and certain indirect selling costs.

6. **Other SG&A**
   Includes office lease, insurance premium and other administrative expenses.

7. **Restructuring Costs & Administrative Reserve**
   Restructuring costs include primarily professional fee payments and expenses to the Applicants' Canadian and U.S. legal counsel, the Monitor and its counsel and the Chief Restructuring Officer in connection with the Applicants' restructuring proceedings.

   This line item includes an estimated reserve of the professional fees that are required to complete these restructuring proceedings.

8. **Beginning Balance**
   Represents the opening cash balance as of March 15, 2023.

9. **Debt-in-Possession Facility ("DIP") Draws and Repayments**
   The entire balance of the US$7 million DIP facility has been fully drawn as of May 15. 2023.

Appendix “C”

Rates

FROM B1

That proved to be a land mine for SVB, which was forced to sell a portion of its bond portfolio at a loss to meet customer withdrawals – and the sale sparked a run on the bank.

Some analysts have argued that SVB's experience was relatively idiosyncratic and based on poor risk management decisions by the technology-focused lender.

But following on the heels of the British bond crisis last fall – which saw pension funds squeezed by a sudden shift in asset valuations – the SVB episode has heightened concerns that aggressive monetary-policy tightening has left underappreciated cracks throughout the financial system.

The Fed was sufficiently concerned about contagion spreading from SVB to other banks to announce a US$25-billion lending facility on Sunday. That will allow U.S. banks to swap their bonds for cash in the event of a bank run.

"The actions taken by policy makers to backstop the system, very quickly, is an important step in the right direction," Mr. Pollick said.

"But there is a concern here that when you think about the Fed tightening further, financial stability relative to price stability is a trade off that we haven't really seen since the savings and loan crisis back in the 1980s and 1990s."

The Fed is in an awkward position, after chair Jerome Powell delivered a hawkish message during a Congressional hearing last week, saying that he expected to raise rates several more times. That guidance seems out of place as financial stability concerns come to the fore.

The Bank of Canada, by contrast, paused its monetary policy tightening campaign last week, although central-bank officials have left the door open to more rate hikes.

Interest-rate swaps, which capture market expectations for upcoming central-bank decisions, are now pricing in no further Bank of Canada interest-rate hikes, and rate cuts beginning this summer.

Taylor Schleich, director of economics and strategy at National Bank Financial, said that markets may be overreacting by pricing in Bank of Canada rate cuts by the summer. But the failure of SVB could have a tangible impact on the economy, if banks get nervous and pull back on lending. That, in turn, could make inflation fall even faster than the central bank is expecting.

"Even if this does remain an isolated incident, it's certainly going to have a lingering impact on sentiment for markets and probably for banks as well, and businesses," Mr. Schleich said.

"Certainly financial conditions got a lot tighter very quickly. And that does translate into the real economy."

China

FROM B1

Even after the government lifted those pandemic rules in December, many entrepreneurs have been wary of making new investments.

Some have even left the country as the climate for private businesses has deteriorated.

The state-led banking system has been steering more loans in recent years to state-owned enterprises. Government-controlled construction companies have squeezed out many private real estate developers. The Communist Party has insisted on a larger role in the decision making of private companies. And many local governments have forced private companies to make large "donations" or pay arbitrarily imposed fines to help cover the costs of social programs.

Speaking on Monday at his first news conference as Premier, Mr. Li delivered the most forceful statement by a Chinese leader in years of the need to preserve the vitality of the private sector. He promised a commercial environment "in which businesses of all forms of ownership will be treated equally, protecting the property rights and interests of entrepreneurs according to the law, encouraging fair competition between business entities of all types."

He offered no specifics about reviving the economy. He cautioned that even China's goal of 5-per-cent growth this year, the lowest target in decades, would not be easy to achieve, particularly at a time when many other countries also face significant economic challenges.

But he offset short-term concerns about growth by making a case for China's continued economic strengths. "There is the massive scale of its market, its comprehensive array of industries, abundant human resources and a robust base for development – even more important, there are our clear institutional advantages," he said, apparently referring to Communist Party rule.

Mr. Li's remarks triggered a sharp jump on Monday morning in share prices in Hong Kong and a smaller but notable increase in mainland China, even as markets elsewhere in Asia fell on worries about government takeovers of two troubled banks in the United States.

Mr. Li's comments were particularly noteworthy because he, unlike his predecessor, is seen as a close ally of Mr. Xi, who has overseen the ever-expanding role of the Communist Party in daily life and who has tended to emphasize security over economic growth.

Mr. Xi delivered brief remarks before Mr. Li at the close of the nine-day annual session of China's largely ceremonial, Communist Party-controlled legislature, the National People's Congress. Mr. Xi did not mention the country's economic challenges, focusing to a considerable extent on the need for security and stability.

The difference in tone and substance between the two men's comments suggested that Mr. Xi would leave the details of economic policy to the Premier, while Mr. Xi would play the role of the paternalistic Communist Party leader who provides security for the people but is not directly responsible for the month-to-month vicissitudes of the economy.

Many business leaders in China have been worried as Mr. Xi's emphasis on national security has been used to justify greater party involvement in private companies' affairs, as well as strong pressure on businesses to co-operate with the military under a so-called "civil-military fusion" policy. But Mr. Xi repeated his case that emphasizing national security was fully consistent with economic progress.

"Security is the foundation of development, and stability is the precondition for strength and prosperity," Mr. Xi said.

Mr. Xi and Foreign Minister Qin Gang both delivered strong criticisms of the United States last week, accusing it of seeking to contain China. But when asked on Monday about Sino-American relations, Mr. Li steered clear of geopolitical issues and of direct criticism of the U.S. government, choosing instead to endorse free trade and commercial co-operation.

"Opening up to the outside is our fundamental national policy, and no matter how the international situation changes, we will be unwavering in advancing it," he said.

Mr. Li suggested Mr. Xi and President Joe Biden follow up on understandings they reached during a November meeting in Bali, Indonesia, before the flight of a Chinese spy balloon across the U.S. led to a souring of bilateral relations.

The Premier's news conference with foreign and local journalists at the end of the annual legislative session is presented as a demonstration of political accountability. But the leadership screens questions beforehand, to ensure that no topics that China's leaders do not want to address publicly are raised.

NEW YORK TIMES NEWS SERVICE

Fallout: Some Canadian companies with accounts in the U.S. were able to move funds to safety

FROM B1

Customers wait outside a Silicon Valley Bank in Wellesley, Mass., on Monday. U.S. financial regulators have announced plans to ensure SVB depositors get all of their money. BRIAN SNYDER/REUTERS

Maria Pacella, managing partner with Vancouver-based Pender Ventures, said in an interview that there are also longer-term concerns about what the tech landscape will look like with fewer funders.

"Who's going to take up that spot and make sure this doesn't just get concentrated in our top banks? That isn't good for anyone," she said. "We might see a clamping down on credit from financial institutions, which we were starting to see anyway with rising interest rates. The last thing we needed was for the banks to have another excuse not to provide capital."

The weekend after SVB's failure on Friday was tense and busy, as technology companies made emergency plans and bombarded banks with requests to move money to safety. Industry associations surveyed members and contacted political leaders to prepare them for what could happen next.

But a consensus quickly emerged that there would be limited immediate fallout in Canada, even in a worst-case scenario – if there had been no rescue plan announced Sunday, for example. The Canadian Venture Capital and Private Equity Association determined only 10 per cent of venture-capital-backed Canadian companies had deposits with SVB, while the Council of Canadian Innovators concluded that 9.3 per cent of 64 companies it surveyed were "severely impacted," meaning they wouldn't be able to cover payroll or operating costs without access to SVB accounts.

As a result, the two organizations' recommendations to government were relatively mild. CCI vice-chairman John Ruffolo told Finance Minister Chrystia Freeland in an e-mail Sunday that companies whose debt facilities were affected had "a multitude of choices" in Canada from other banks, their own investors, as well as two Crown agencies, Business Development Bank of Canada and Export Development Corp.

Mr. Ruffolo suggested the Finance Minister make a statement saying the government was on top of the situation, and the vast majority of Canadian tech companies had little to no SVB exposure.

The CVCA's main suggestion was that the federal government instruct BDC to provide bridge financing to companies. That advice "became almost moot" with the U.S. announcement Sunday, said Kim Furlong, the association's chief executive.

The association's other suggestion was that the government allow for quicker disbursements to venture capitalists through an existing federal initiative, which the financiers could then invest in startups.

Ms. Freeland issued a statement late Sunday saying she had spoken to industry representatives, and that Canada's "well-regulated banking system is sound and resilient."

> We might see a clamping down on credit from financial institutions, which we were starting to see anyway with rising interest rates.
>
> MARIA PACELLA
> MANAGING PARTNER, PENDER VENTURES

SVB's Canadian operation was limited to offering venture loans to companies, because it wasn't licensed to hold deposits here. It faced stiff competition from the big banks, notably Canadian Imperial Bank of Commerce, Royal Bank of Canada and Bank of Montreal, which had moved aggressively into tech banking.

SVB's business in Canada had just US$692-million in assets and US$349-million in loans as of December, according to filings with the Office of the Superintendent of Financial Institutions. OSFI took control of SVB Canada on Sunday, just before the U.S. Federal Reserve, Treasury Department and Federal Deposit Insurance Corp. announced plans to ensure SVB's depositors got all their money.

Many Canadian companies that had raised money from U.S. venture capital firms did have SVB accounts south of the border, though for many those accounts represented small amounts of their cash.

Some were able to move funds to safety before SVB went into receivership. Others weren't so lucky, including Toronto's AcuityAds Holdings Inc., which revealed Friday it had US$55-million – about 90 per cent of its bank deposit cash – held with SVB. But that level of exposure was rare for a Canadian company; AcuityAds said it had taken steps to rely on other banking relationships, and by Monday its situation was resolved.

Mr. Ruffolo said in an interview Monday that he believes any risk of contagion from SVB's failure has been contained, and that "there really is no short-term impact of consequence" in Canada. But he added Canada has lost "a very good, high-quality competitor that kept the banks honest." He said he worries SVB's demise will lead to higher pricing and stricter loan terms and conditions for tech companies, dampening risk capital availability.

Ms. Furlong said she worries that U.S. venture capital firms, which worked extensively with SVB, could retreat even further from the market. "If the U.S. market is hit strongly, we're definitely going to feel it" in Canada, she said. "We want to ensure this ecosystem continues to grow and doesn't falter because of external factors, such as the disappearance of SVB."

With a report from David Milstead

Appendix "D"

Acerus Pharmaceuticals Corporation & Certain Subsidiaries (collectively “Acerus”)

Investment Opportunity

March 2023

Urology & Men’s Health Focus

Commercial stage, best-in-class products

Summary

On January 26, 2023, Acerus initiated restructuring proceedings under Canada’s *Companies’ Creditors Arrangement Act* (“**CCAA**”) by obtaining an initial order (as amended and restated from time to time, the “**Initial Order**”) granted by the Ontario Superior Court of Justice (the “**Canadian Court**”). Ernst & Young Inc. was appointed as monitor (the “**Monitor**”) by the Canadian Court in the CCAA proceedings.

On February 27, 2023, the U.S. Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”) granted an Order pursuant to Chapter 15 of the United States Bankruptcy Code, recognizing the Initial Order and the CCAA proceedings as foreign main proceedings, among other relief.

On March 9, 2023, the Canadian Court authorized Acerus to conduct a sale and investment solicitation process (the “**SISP**”). The SISP is intended to solicit interest in a sale of or investment in all or part of Acerus’ assets and operations as described below. The Monitor will administer the SISP, in consultation with Acerus. The SISP process and timeline can be found below.

If you are interested in pursuing this opportunity, please sign back the non-disclosure agreement (“**NDA**”) to initiate the due diligence process. Pursuant to the Court order approving the SISP, prospective bidders have **until Friday, April 28, 2023 to submit their bid** in the form of a binding offer.

IMPORTANT: This communication is made for informational purposes only and is subject to the terms and conditions of the SISP, including, without limitation, the limitation of liability in favour of the Monitor.

Business Overview

Acerus carries on a specialty pharmaceutical business focused on the fields of urology and men’s health. Acerus’ portfolio of products include:

- Two U.S. FDA approved prescription drugs:
  - Natesto™: a nasal gel for male testosterone replacement therapy in hypogonadism (i.e., reduction or absence of hormone secretion). Natesto™ has also received regulatory approval in Canada and certain other international markets;
    - Highly prevalent condition; impacting 2 million Americans;
    - It is associated with significant somatic symptoms such as erectile dysfunction and may be contributing to the burden of cardio-metabolic disease;
  - Noctiva™: a desmopressin nasal spray for nocturia due to nocturnal polyuria (i.e., overproduction of urine at night);
    - Highly prevalent condition; impacting more than 40 million Americans;
    - Negatively impacts quality of life, work productivity and is correlated with high co-morbidity, mortality, and healthcare-related costs;
- The exclusive licensing and commercial agreements for the distribution of avanafil in Canada. Avanafil is available in the U.S. under the brand name Stendra® for the treatment of erectile dysfunction;
- Exclusive rights to commercialize Lidbree™ (a pain relief device combination) in Canada; and
- Other pipeline products in various stages of research and development such as Tefina™ and TriVair™.

Noctiva™ for the Treatment of Nocturia

Noctiva™ is a low dose desmopressin nasal spray approved by the FDA in March 2017 to treat nocturia

It is the first drug demonstrated to be safe, effective, with robust clinical benefit in patients with nocturia

Significantly improves quality of life; correlated with the decrease in nocturic episodes and the ability to have uninterrupted sleep (5.5 to 8 hours)

- **Indication of nocturia in *all* adults**
- For the treatment of nocturia in association with all underlying medical and social factors which might contribute to nocturia, including, but not limited to, OAB and BPH
- Two (low) dosage forms, allowing for titration as needed
- No therapeutic equivalent(s) cited

Unique Features

- **Patented formulation with novel excipient acts as permeation enhancer to increase bioavailability and reduce variability**
- **Patented spray pattern creates wide conical plume which selectively directs most of the drug to well vascularized nasal turbinates in anterior to mid-nasopharynx**
- **One spray 30 minutes before bed**
- **Rapid absorption and onset of action within 30 minutes. Lasts for ~4 to 6 hours after administration**
- **Anti-diuretic effect of Noctiva™ dissipates by morning, minimizing the potential risk of hyponatremia**
- **Superior efficacy and safety compared to the only other FDA approved drug product for the treatment of nocturia**

- Noctiva™ patent protection is expected through 2030, with two (2) Orange-book eligible patents
- Patent term extension beyond 2030 possible with new formulations
- Foundational patents define specific dose ranges, peak blood concentration ranges and routes of administration, which are essential for safe and effective use of desmopressin for nocturia

Natesto® for the Treatment of Hypogonadism

Unique Features

- **Patented gel formulation allows for rapid absorption of small doses of testosterone**
- **Enables unique PK profile where absorption peaks drive efficacy and troughs drive safety profile**
- **One application per nostril, 3 times per day**
- **Rapid absorption and onset of action within one hour**
- **90% of men achieved normal testosterone levels (300-1050 ng/dl) at Day 90**
- **Normal range achieved as early as 30 days after starting Natesto® treatment**
- **Peak PK levels return to patient baseline between doses minimizing the potential risk of polycythemia and disruption of the HPG axis, preserving sperm**

Natesto® is a low dose testosterone nasal gel approved by the FDA in May 2014 to treat hypogonadism

It is a unique short-acting testosterone therapy that has been demonstrated to be safe, effective, and of clinical benefit in patients with hypogonadism

- **Indication for use in adult males with conditions associated with deficiency or absence of endogenous testosterone**
- Natesto® combines the ease of traditional gels with a much lower risk that women or children will suffer secondary testosterone exposure
- Dose titration possible with 2-3 times per day, depending on the region, dosing option

- Natesto® enabling intellectual property provides patent protection through 2034 (Orange-book listed patents)
- Additional patent options to extend beyond 2034 are in progress
- Foundational patents define specific dose ranges, pulsatile PK profile, and routes of administration, which are essential for safe and effective use of testosterone for hypogonadism

Large Market and Revenue Potential

Noctiva™

- Approximately 40M adults in the US experience the need to urinate two or more times each night
- Fewer than 10% (3M) of patients are being treated with drugs for nocturia
- Access for greater than 55% of covered Commercial Lives
- WAC pricing opportunity of more than $750 per month

Natesto®

- Greater than 7.8M total prescriptions written for testosterone therapy in 2021
- Total prescriptions grew by 3% 2021 vs. 2020
- Access for greater than 80% of covered Commercial Lives
- WAC pricing of more than $800 per month
- Preferred brand coverage with major commercial PBMs

SISP

Recipients of this document should direct any questions or requests for additional information to the Monitor (*contact information below*) and should not contact anyone at Acerus other than as directed or arranged by the Monitor.

Any party who wishes to participate in the SISP (a "**Potential Bidder**") must provide to the Monitor (i) an NDA executed by the Potential Bidder, (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 SISP will proceed in one phase. The following is a summary of key milestones and deadlines in the SISP. These milestones and deadlines may be extended or amended by the Monitor, in consultation with Acerus.

Bid Deadline	April 28, 2023
Monitor to notify each Bidder in writing as to whether its Bid constitutes a Qualified Bid	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
Auction Date (if required)	May 9, 2023
Hearing of the Sale Approval Motion	Targeted for no later than May 19, 2023 (subject to Court availability)

Monitor Contacts	
Prospective parties should contact the Monitor via one of following persons to get further information. Prospective parties are requested not to contact Acerus other than as directed by the Monitor.	
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