

RICHTER

**Richter Advisory Group Inc.
181 Bay Street, 33rd Floor
Toronto, ON M5J 2T3
www.richter.ca**

Court File No. CV-18-603054-00CL

**SIXTH REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS MONITOR OF
ARALEZ PHARMACEUTICALS INC. AND ARALEZ PHARMACEUTICALS CANADA INC.**

December 12, 2018

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**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
ARALEZ PHARMACEUTICALS INC. AND ARALEZ PHARMACEUTICALS CANADA INC.**

**SIXTH REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS MONITOR OF
ARALEZ PHARMACEUTICALS INC. AND ARALEZ PHARMACEUTICALS CANADA INC.**

DECEMBER 12, 2018

I. INTRODUCTION

1. On August 10, 2018 (the “**Filing Date**”), the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (the “**Initial Order**”) granting Aralez Pharmaceuticals Inc. (“**API**”) and Aralez Pharmaceuticals Canada Inc. (“**Aralez Canada**” and together with API, the “**Companies**”) protection pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and appointing Richter Advisory Group Inc. (“**Richter**”) as Monitor of the Companies in their CCAA proceedings (the “**Monitor**”). The Initial Order provided the Companies with a stay of proceedings until September 7, 2018. The Companies’ CCAA proceedings are referred to herein as the “**CCAA Proceedings**”.
2. Also on the Filing Date, Aralez Pharmaceuticals Management Inc., Aralez Pharmaceuticals R&D Inc., Aralez Pharmaceuticals U.S. Inc., POZEN Inc. (“**Pozen**”), Halton Laboratories LLC, Aralez Pharmaceuticals Holdings Limited and Aralez Pharmaceuticals Trading DAC (collectively with each of the foregoing entities, the “**Chapter 11 Entities**”, and with the Companies, collectively the “**Aralez Entities**”) each filed voluntary petitions with the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Court**”) for relief under title 11 of the United States Bankruptcy Code, 11 U.S.C § 101-1532 (the “**Chapter 11 Proceedings**”).
3. On September 5, 2018, the Court issued the Amended and Restated Initial Order (the “**Amended Initial Order**”), which incorporated certain amendments to the Initial Order. Also on September 5, 2018, the Court issued an order extending the stay of proceedings in respect of the Companies to November 14, 2018.
4. On October 10, 2018, the Court granted orders approving, among other things:
 - (i) the proposed sales process (the “**Sales Process**”), including the bidding procedures (the “**Bidding Procedures**”) and bid protections to be used in connection with the Sales Process;
 - (ii) the share purchase agreement (the “**Canadian Stalking Horse Agreement**”) dated September 18, 2018, between the Companies and Nuvo Pharmaceuticals Inc. (“**Nuvo**”) for the sale of all of the shares of Aralez Canada (the “**Canadian Assets**”), which would serve as a stalking horse bid as part of the Sales Process;
 - (iii) the procedure to solicit claims against the Companies and any of the Companies’ current and former directors and officers (the “**Claims Process**”); and
 - (iv) an extension of the stay of proceedings in respect of the Companies to December 7, 2018.
5. On October 25, 2018, the Court granted an order approving a cross-border insolvency protocol to provide coordination and cooperation between the Court and the U.S. Court overseeing the Chapter 11 Proceedings.

6. On November 16, 2018, the Court granted an order approving, among other things, the Companies' proposed key employee retention plan (the "**KERP**"). On November 28, 2018, the Court granted an order approving the Companies' proposed key executive incentive plan (the "**KEIP**") and granting a charge in favour of the participants under the KERP and the KEIP, including the priority ranking thereto.
7. On December 7, 2018, the Court granted an order approving, among other things:
 - (i) the transaction contemplated by the Canadian Stalking Horse Agreement between the Companies and Nuvo (the "**Nuvo Transaction**");
 - (ii) vesting in Nuvo, upon the closing of the Nuvo Transaction, API's right, title and interest in and to the Canadian Assets; and
 - (iii) terminating the CCAA Proceedings and discharging Richter as Monitor in respect of Aralez Canada upon the filing of a certificate by the Monitor (save and except for certain further responsibilities pertaining to claims filed against Aralez Canada pursuant to the Claims Process).
8. Richter, in its capacities as Proposed Monitor and Monitor, has previously provided this Court with six reports (the "**Prior Reports**"). The Prior Reports, the Amended Initial Order and copies of other material documents pertaining to the CCAA Proceedings are available on the Monitor's website at <http://insolvency.richter.ca/A/Aralez-Pharmaceuticals>.

II. PURPOSE OF REPORT

9. The purpose of this report of the Monitor (the "**Sixth Report**") is to provide information to the Court pertaining to:
 - (i) background information on the Companies and the Bezafibrate US Assets (as hereinafter defined);
 - (ii) an overview of solicitation processes to market and sell the Bezafibrate US Assets;
 - (iii) the material terms and conditions of the asset purchase agreement dated December 6, 2018 (the "**Bezafibrate APA**"), between Aralez Canada and Intercept Pharmaceuticals, Inc. ("**Intercept**" or the "**Purchaser**"), for the sale of the Bezafibrate US Assets (the "**Transaction**"), subject to the Court's approval;
 - (iv) the Monitor's support for the Companies' request that this Court grant an order (the "**Approval and Vesting Order**"):
 - (a) approving the Bezafibrate APA and the Transaction, and authorizing Aralez Canada to take any and all steps necessary to complete the Transaction; and

- (b) upon closing of the Transaction, (i) vesting all right, title and interest of Aralez Canada in and to the Bezafibrate US Assets, and (ii) granting the Product IP License (as defined in the Bezafibrate APA), to the Purchaser free and clear of all liens, charges, security interests and other encumbrances, other than Permitted Encumbrances; and.
- (v) the proposed distribution protocol for sale proceeds received from the Nuvo Transaction and the Transaction, once closed, and the Monitor's support for the Companies' request that this Court grant an order approving such distributions (the "**Distribution Order**").

III. TERMS OF REFERENCE

- 10. In preparing this Sixth Report, the Monitor has relied solely on information and documents provided by the Aralez Entities and their advisors, including unaudited financial information, declarations and affidavits of the Aralez Entities executives (collectively, the "**Information**"). In accordance with industry practice, Richter 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 the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
- 11. Unless otherwise stated, all monetary amounts noted herein are expressed in United States ("**U.S.**") dollars, which is the Companies' common reporting currency.
- 12. Capitalized terms used but not defined in this Sixth Report are defined in the Bezafibrate APA or the Affidavit of Mr. Adrian Adams sworn December 6, 2018 (the "**December 6 Adams Affidavit**"), filed in support of the within motion. This Sixth Report should be read in conjunction with the December 6 Adams Affidavit, as certain information contained in the December 6 Adams Affidavit has not been included herein in order to avoid unnecessary duplication.

IV. BACKGROUND

- 13. API was formed from the 2016 merger of Pozen, a Delaware corporation, and Tribute Pharmaceuticals Canada Inc. (predecessor to Aralez Canada) ("**Tribute**"), a corporation incorporated under the laws of the Province of Ontario. API is the ultimate parent and public company shell of the Aralez Entities and its affiliates. Aralez Canada, a wholly-owned, direct subsidiary of API, is the Canadian operating company of the Aralez Entities.
- 14. Aralez Canada is involved in, among other things, the development, marketing, distribution and sale of products containing bezafibrate as the active pharmaceutical ingredient in both Canada and the United States. However,

these two geographic territories are treated separately, including through separate agreements. The Transaction only involves the sale of Aralez Canada's rights in respect of the U.S. development, marketing, selling and distribution of such products (i.e. not the equivalent Canadian rights, which remain with Aralez Canada and are subsumed as part of the Nuvo Transaction).

15. Pursuant to a Sale, Marketing and Distribution agreement dated June 30, 2008, as amended (the "**Bezafibrate Canada Agreement**"), between Tribute and the predecessor of what is now Allergan Pharmaceuticals International Limited ("**Allergan**"), Aralez Canada agreed, *inter alia*, to perform certain sales, marketing and distribution activities, in Canada, for pharmaceutical products containing bezafibrate as the active pharmaceutical ingredient, to be sold under the trade-mark "Bezalip". Bezalip is a bezafibrate based, sustained release oral therapy for the treatment of high cholesterol.
16. In addition, pursuant to a Product Development and Profit Share Agreement dated May 4, 2011, as amended (the "**Bezafibrate US Agreement**"), between Tribute (now Aralez Canada) and the predecessor of Allergan, Tribute agreed to develop, manufacture and, if approved, market¹ pharmaceutical products containing bezafibrate, exclusively in the U.S. ("**Bezafibrate Products**"). For purposes of the Sixth Report, Bezafibrate Products refers to pharmaceutical products containing bezafibrate that are developed, manufactured and marketed in the U.S. pursuant to the Bezafibrate US Agreement.
17. The Monitor understands from its discussions with the Companies that, although Aralez Canada markets bezafibrate-based products (i.e. Bezalip) in Canada pursuant to the Bezafibrate Canada Agreement, Aralez Canada has not developed (and consequently, has not marketed or sold) any Bezafibrate Products in the U.S. since entering into the Bezafibrate US Agreement. As noted in the December 6 Adams Affidavit, none of the Chapter 11 Entities are parties to, or have any interest in, the Bezafibrate US Agreement.
18. The intention of Aralez Canada when it first entered into the Bezafibrate US Agreement was to develop and, if approved, market Bezafibrate Products in the U.S. At the time Aralez Canada entered into the Bezafibrate US Agreement, Aralez Canada operated with limited competition in the market for Bezafibrate Products. However, by 2016, Aralez Canada had several generic competitors in this space, which eroded the potential market share of Bezafibrate Products. Accordingly, developing and marketing any Bezafibrate Products in the U.S. was considered by the Companies to be challenging.

¹ In accordance with the Bezafibrate US Agreement, "market" includes to promote, distribute, test, package, label, market, advertise, sell or offer to sell, and marketing has a corresponding meaning.

19. The Bezafibrate Products, together with the Product IP License and the Purchased Regulatory Documentation (each as defined in the Bezafibrate APA) and the Bezafibrate US Agreement (collectively, the “**Bezafibrate US Assets**”) constitute the assets to be sold to Intercept pursuant to the Bezafibrate APA.

V. PREVIOUS MARKETING EFFORTS

20. The Monitor has been advised by management of the Aralez Entities that, as a means to explore strategic options and to determine if there was any third-party interest in developing and commercializing the Bezafibrate US Assets, Aralez Canada (including its predecessor, Tribute) conducted market outreach in search of a purchaser and/or strategic partner for the Bezafibrate US Assets, at times with the assistance of a financial advisor and at times conducted solely by management, as discussed further below.

2014 Marketing Process

21. In February 2014, Tribute retained JSB Partners, LP (“**JSB**”), an investment banking and advisory firm specializing in biotechnology and pharmaceutical companies, to identify one or more parties interested in the Bezafibrate US Assets and work toward the completion of a transaction for same.
22. As part of its mandate, JSB contacted 96 parties identified as potential purchasers, including Intercept, to acquire or enter into a transaction for the Bezafibrate US Assets. Of the 96 parties contacted:
 - (i) 28 parties expressed an interest in the Bezafibrate US Assets;
 - (ii) 5 parties signed a non-disclosure agreement (“**NDA**”); and
 - (iii) 2 parties (the “**Interested Parties**”), but not Intercept, submitted non-binding term sheets to acquire the Bezafibrate US Assets.
23. The Monitor understands that the Aralez Entities, with the assistance of JSB, facilitated due diligence efforts by, among other things, providing management presentations to the Interested Parties. However, these efforts did not ultimately result in any binding commitments, and the marketing process was put on hold in mid-2015, primarily due to the Aralez Entities’ shifting their focus to the merger of Tribute and Pozen, as noted above.

2017 Marketing Process

24. In 2017, after being advised by Intercept of its continued interest in a transaction for the Bezafibrate US Assets, the Aralez Entities decided to restart, without the engagement of a financial advisor, the process to identify a potential purchaser or strategic partner for the Bezafibrate US Assets. As part of the 2017 marketing process, the Monitor understands that the Aralez Entities contacted approximately 20 potential purchasers, including Intercept,

the Interested Parties and certain other parties that had expressed interest in the Bezafibrate US Assets as part of the 2014 marketing process conducted by JSB.

25. Management of the Aralez Entities advised the Monitor that the best offer received for the Bezafibrate US Assets was from Intercept, and the parties had agreed on basic non-binding terms by June 2017, as discussed further below.
26. Additional details concerning the previous marketing efforts can be found in the Confidential Supplement to the Sixth Report (the “**Confidential Supplement**”). The Confidential Supplement will be filed with the Court on a sealed and confidential basis, pending closing of the Transaction, and is subject to a sealing order pending closing of the Transaction. The Monitor has been advised by management of the Companies and their legal counsel that the Confidential Supplement contains commercially sensitive information that, if released, may jeopardize the Transaction and any subsequent attempts to market the Bezafibrate US Assets. The Monitor accepts the Companies’ position and the potential harm that would result if such information was not sealed. Accordingly, the Monitor supports the Companies’ request for a sealing order, as detailed in the December 6 Adams Affidavit. The Confidential Supplement will be provided to the Court electronically and in a sealed envelope prior to the return of the within motion.

Sales Process

27. The Sales Process, which was conducted by the Aralez Entities with the assistance of its investment banker, Moelis & Company LLC (“**Moelis**”), provided for an orderly and competitive process through which potential acquirers could submit higher or otherwise better offers for the assets of the Aralez Entities, including the Canadian Assets, subject to the Bidding Procedures. None of the parties contacted by the Aralez Entities or Moelis as part of the Sales Process submitted an offer for some or all of the Bezafibrate US Assets.
28. Nuvo, as the “Successful Bidder” for the Canadian Assets, has confirmed that the Canadian Stalking Horse Agreement excludes the Bezafibrate US Assets, and there has been considerable work done by the Monitor, Nuvo, Intercept and the Companies, and their respective legal advisors (including in drafting the various agreements, transaction documents and approval and vesting orders), so as to ensure that the Nuvo Transaction and the Transaction are mutually exclusive and do not interfere with one another.
29. The Companies intend to close the Transaction prior in time to the closing of the Nuvo Transaction, so that the Bezafibrate US Assets will not be assets of Aralez Canada at the time of the closing of the Nuvo Transaction.

VI. THE TRANSACTION

30. Since June, 2017, the Companies and Intercept have engaged in lengthy and comprehensive negotiations, requiring the cooperation and consultation with a third party, Allergan (as licensor under the Bezafibrate US Agreement), in an effort to finalize a transaction for the Bezafibrate US Assets. According to the December 6 Adams Affidavit, the Companies, Allergan and Intercept reached a deal, in principle, for the Bezafibrate US Assets just prior to the Filing Date; however, they were unable to complete a transaction prior to the commencement of the CCAA Proceedings. Since the Filing Date, the parties continued negotiations to finalize the terms of the Bezafibrate APA and structure of the Transaction in the context of the CCAA Proceedings.
31. As more fully described in the December 6 Adams Affidavit, the Monitor understands that, notwithstanding the CCAA Proceedings, Intercept has continued to show an interest in the Bezafibrate US Assets due to synergies that are unique to Intercept's product portfolio. Ultimately, on December 6, 2018, Aralez Canada and Intercept executed the Bezafibrate APA.
32. The material terms of the Bezafibrate APA, a redacted copy of which is attached as Exhibit "D" to the December 6 Adams Affidavit, are as follows (all defined terms in this section have those meanings ascribed to them in the Bezafibrate APA):
 - (i) Purchaser: Intercept Pharmaceuticals, Inc.
 - (ii) Purchased Assets: Aralez Canada will: (a) grant, and Intercept will accept, the Product IP License; and (b) sell, transfer, convey, assign and deliver to Intercept the Purchased Regulatory Documentation (i.e. regulatory documentation associated with the Bezafibrate US Assets, including certain regulatory drug applications, reports and other documents and records) and the Bezafibrate US Agreement, including any and all licenses to intellectual property provided to Aralez Canada pursuant to such agreement.
 - (iii) Purchase Price: Comprised of a lump sum amount due on closing (the "**Base Purchase Price**"), plus an additional amount due upon receiving initial regulatory approval for Intercept's first Bezafibrate Product (the "**Milestone Payment**", and together with the Base Purchase Price, the "**Purchase Price**"), as more particularly set out in the Confidential Supplement.
 - (iv) Deposit: The Monitor has been advised by the parties that the Purchaser paid a deposit of 5% of the Base Purchase Price to the Escrow Agent on December 6, 2018.
 - (v) Assumed Liabilities: (a) all liabilities of Aralez Canada relating to the Bezafibrate US Assets solely arising in the period that is from and after the closing of the Transaction; and (b) all liabilities assumed under the Bezafibrate US Agreement solely arising in the period that is from and after the closing of the Transaction.

- (vi) Closing: Not later than three business days following satisfaction of all closing conditions contemplated under the Bezafibrate APA.
- (vii) Outside Date: If the Transaction is not approved by the Court by December 27, 2018, Intercept has the right to terminate the Bezafibrate APA and receive a full refund of the Deposit.
- (viii) Sales Process Condition: The Bezafibrate APA mandates that no transactions approved through the Sales Process (in Canada) or the CCAA Proceedings, including the Nuvo Transaction, may negatively impact the benefits conferred to Intercept under the Bezafibrate APA. It further requires that any transaction documentation for a sale approved under those processes/proceedings explicitly note that the Bezafibrate US Assets are not involved in any such approved sale and that the benefits conferred under the Bezafibrate APA are not adversely affected by any such sale. The Monitor notes that Nuvo Transaction has been structured so as to satisfy this condition of the Bezafibrate APA.
- (ix) Closing Conditions: the Bezafibrate APA is subject to certain conditions including, but not limited to:
 - (a) granting by the Court of the Approval and Vesting Order in a form and substance satisfactory to the Purchaser;
 - (b) obtaining a written consent from Allergan to the assignment to Intercept of the Bezafibrate US Agreement, which the Monitor understands, based on the December 6 Adams Affidavit, has already been executed by Allergan;
 - (c) Allergan executing the Amended Bezafibrate US Agreement (as defined below), and delivering same in escrow prior to closing; and
 - (d) any liabilities and obligations must be paid or otherwise satisfied to cure Aralez Canada's defaults, if any, under the Bezafibrate US Agreement, or to effect the assumption thereof and assignment to Intercept pursuant to the CCAA, as provided in the Bezafibrate APA and in the Approval and Vesting Order. The Companies have advised the Monitor that there are no known cure costs owing to Allergan under the Bezafibrate US Agreement.
- (x) Consultation: The Bezafibrate APA also places certain obligations upon the Companies (and their successors) subsequent to closing. For example, for a period of 90 days following closing, API is required to make certain of its and its affiliates' employees and consultants available to Intercept for the purpose of answering its reasonable questions regarding the Bezafibrate US Assets. Both Intercept and Aralez Canada also maintain certain post-closing obligations to assist one another with the preparation of various documents, to provide one another with access to information and documents and to report the unauthorized use of certain interests transferred under the Bezafibrate APA. Nuvo has been involved in the negotiation of, and has consented to, these continuing obligations of Aralez Canada.

- (xi) Release: The Bezafibrate APA provides that Aralez Canada releases Intercept from any claims as of the closing of the Bezafibrate APA, whether or not those claims were known to Aralez at the time of closing. Such claims do not include claims relating to a breach of the Bezafibrate APA and associated agreements.
33. In addition to the terms and conditions set out above, concurrently with the closing of the Transaction, the Monitor understands that Intercept and Allergan intend to amend and restate the Bezafibrate US Agreement in the form attached as Exhibit “E” to the Bezafibrate APA (the “**Amended Bezafibrate US Agreement**”). The Amended Bezafibrate US Agreement contains terms that are materially similar to those of the Bezafibrate US Agreement, with necessary amendments to: (i) reflect the change in the parties to the agreement; and (ii) extend certain development timelines under the agreement.
34. The Companies and Intercept have advised the Monitor that the Bezafibrate US Assets are likely of value to Intercept for the following reasons:
- (i) Intercept is not interested in the Bezafibrate US Assets (or the rights thereunder) on their own, but rather intend to combine products developed from the Bezafibrate US Assets with another of its proprietary products to create a new combination product;
 - (ii) Bezafibrate Products must be developed pursuant to the terms of the Bezafibrate US Agreement, which cannot be assigned without the consent of Allergan. Allergan has consented to the Transaction, and may not consent to a transaction involving another purchaser;
 - (iii) under the terms of the Bezafibrate US Agreement and the Amended Bezafibrate US Agreement, time is of the essence since development must occur on a specified timeline that, because it has already completed certain preliminary preparatory work, Intercept can still meet (although time remains of the essence); and
 - (iv) the Transaction excludes the Canadian rights in respect of Bezalip, and has been carefully structured and negotiated with Nuvo so as to permit both the Nuvo Transaction and the Transaction to proceed, thereby maximizing recoveries for the applicable assets. The Nuvo Transaction will generate significantly higher proceeds than the Transaction and has an established closing timeline that must be met; accordingly, the Companies are wary of any delay or obstruction to the Nuvo Transaction. It is unclear that another purchaser would be prepared to accept the particular terms, timing and structure of the Transaction.

Impact on Canadian Stalking Horse Agreement

35. Nuvo is aware of, and has been consulted at length by, the Companies and the Monitor, with respect to the obligations of Aralez Canada under the Bezafibrate APA, and any other associated agreements, as well as the releases granted in favour of Intercept, which will remain with Aralez Canada post-closing of the Nuvo Transaction. As noted in the December 6 Adams Affidavit, Nuvo does not oppose the relief sought on the within motion.
36. As noted above, the Transaction is intended to close before the closing of the Nuvo Transaction. However, in the unlikely event the Nuvo Transaction will close prior to the closing of the Transaction, the Bezafibrate APA provides that at any time on or after December 28, 2018 (i.e. the earliest expected closing date for the Nuvo Transaction), Aralez Canada may transfer the Bezafibrate US Assets to API, in which case API will assume the place of Aralez Canada and become fully bound by all the obligations of Aralez Canada under the Bezafibrate APA.

VII. URGENCY TO COMPLETE THE TRANSACTION

37. The Monitor has been advised that the value of the Bezafibrate US Assets to Intercept depreciates every day that it is not able to commercialize them. Pursuant to the terms of the Bezafibrate US Agreement and Amended Bezafibrate US Agreement, there are strict development timelines imposed by Allergan, which, if not met, could adversely impact Intercept's commercial benefit from the Bezafibrate US Assets. In that regard, the Monitor understands that, for Intercept, if the Transaction is not approved by December 27, 2018, it is willing to forgo the opportunity as the development timelines will become too compressed and difficult to meet.
38. In connection with the above, the Monitor has been advised that Intercept is not prepared to wait for the closing of the Nuvo Transaction and wishes to close the Transaction as soon as possible (which accords with the Companies' preference to close the Transaction prior to the Nuvo Transaction, to avoid the necessity of transferring the Bezafibrate US Assets from Aralez Canada to API). In addition, Intercept has advised that it is not interested in nor willing to serve as a stalking horse bidder in any subsequent sale process and is not prepared to extend its offer to purchase the Bezafibrate US Assets for the duration of any additional sale process. At this time, if approved by the Court at the sale approval hearing scheduled for December 17, 2018, the parties would intend to close the Transaction on December 18, 2018.
39. Given the foregoing, additional delays will put the Transaction at risk.

VIII. PROPOSED DISTRIBUTION PROTOCOL

40. Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P. (collectively, "**Deerfield**"), have a first priority security interest in substantially all present and after-acquired property of the Aralez Entities, including intangible property (collectively, the "**Deerfield Security**"). As noted in the Prior Reports, the Monitor has received written opinions from Torys LLP in Ontario and New York, and from Berger Harris LLP, local counsel to the Monitor in Delaware, confirming that subject to the typical assumptions and qualifications for opinions of this nature, the loan and security documents granted by the Companies to Deerfield, including the Deerfield Security, are, as applicable, valid and enforceable and, in the case of the Ontario opinion, the applicable security interests have been created and perfected.
41. On the within motion, the Companies are seeking the authority for API or the Monitor to make distributions, in cash or otherwise, to Deerfield from the receipt of sale proceeds from the Nuvo Transaction and the Transaction, once closed. The Distribution Order provides that API or the Monitor is authorized to make distributions to Deerfield, without further of the Court, up to the maximum amount owing to Deerfield in connection with the Companies' debtor-in-possession financing facility, if any, and the obligations of the Aralez Entities under the June 8, 2015 loan agreement (as amended) between Deerfield, as lender, and API, Aralez Canada and Pozen (the "**Facility Agreement**"). The Monitor notes that based on the outstanding secured indebtedness of approximately \$281.5 million owing to Deerfield (as at August 6, 2018) under the Facility Agreement, Deerfield will suffer a significant shortfall on its advances to the Aralez Entities.
42. Any distributions made to Deerfield are subject to API or the Monitor retaining sufficient reserves (the "**Reserve**") from the sale proceeds, or elsewhere, to:
 - (i) pay, in full, any and all amounts that rank, or may rank, in priority to Deerfield, including professional fees subject to the Administration Charge;
 - (ii) account for any amounts that may potentially be owed to Nuvo as a result of the final reconciliation of closing net working capital, indebtedness and net cash, pursuant to the Canadian Stalking Horse Agreement;
 - (iii) secure the obligations incurred by API since the Filing Date; and
 - (iv) pay any other contingent amounts appropriate under the circumstances.
43. The Monitor will work with the Companies and Deerfield to determine the appropriate quantum of the Reserve, prior to API or the Monitor making any distributions to Deerfield.

44. The Distribution Order provides that any portion of the Reserve subsequently determined by the Monitor, in consultation with API and Deerfield, to no longer be necessary or appropriate to retain, shall be distributed to Deerfield as soon as practicable following such determination, up to the maximum amount of the obligations owing under the Facility Agreement.
45. There have been no objections in Canada on the validity, enforceability or priority of the Deerfield Security, and the Monitor supports the Companies' request for granting of the Distribution Order.

IX. MONITOR'S CONCLUSION AND RECOMMENDATIONS

46. The Monitor is of the view that the relief requested by the Companies on the within motion is both appropriate and reasonable, based on the following:
 - (i) the market for the Bezafibrate US Assets was extensively canvassed prior to the Filing Date and as part of the Sales Process, and all likely bidders have been provided with an opportunity to bid on the Bezafibrate US Assets;
 - (ii) the consideration is fair and reasonable in the circumstances;
 - (iii) the Transaction would be substantially more beneficial to the Companies' creditors as compared to the alternatives (i.e. sale or liquidation under a bankruptcy);
 - (iv) Allergan has consented to the assignment of the Bezafibrate US Agreement to Intercept and it is unclear whether Allergan will support another party to develop the Bezafibrate Products;
 - (v) the development timelines pursuant to the Bezafibrate US Agreement substantially eliminates the opportunity to further market the Bezafibrate US Assets for sale without putting the Transaction at risk;
 - (vi) the Transaction permits the Nuvo Transaction to proceed unimpeded; and
 - (vii) the Bezafibrate APA has been approved by respective boards of directors for each of the Companies, Nuvo and Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P., the Companies' primary secured creditor.
47. Based on the foregoing, the Monitor recommends that the Court grant the Approval and Vesting Order, and the Distribution Order.

All of which is respectfully submitted this 12th day of December, 2018.

Richter Advisory Group Inc.
In its capacity as CCAA Monitor of
Aralez Pharmaceuticals Inc. and
Aralez Pharmaceuticals Canada Inc. and not
in its personal or corporate capacity

Per:



Paul van Eyk,
CPA, CA-IFA, CIRP, LIT, Fellow of INSOL
Senior Vice President



Pritesh Patel,
MBA, CFA, CIRP, LIT
Vice President

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INC.**

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

SIXTH REPORT OF THE MONITOR

TORYS LLP

79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, ON M5K 1N2

Fax: 416.865.7380

David Bish (LSO#: 41629A)

Tel: 416.865.7353

Email: dbish@torys.com

Adam M. Slavens (LSO#: 54433J)

Tel: 416.865.7333

Email: aslavens@torys.com

Lawyers for Richter Advisory Group Inc.,
in its capacity as Monitor of Aralez
Pharmaceuticals Inc. and Aralez
Pharmaceuticals Canada Inc.