

IN THE MATTER OF THE BANKRUPTCY OF  
Old API Wind-down Ltd.  
of the City of Mississauga in the Province of Ontario

**TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS  
ON PRELIMINARY ADMINISTRATION**

**BACKGROUND**

Old API Wind-down Ltd. (formerly, Aralez Pharmaceuticals Inc.) ("**API**" or the "**Company**") was a public company incorporated under the British Columbia *Business Corporations Act*, S.B.C. 2002, c.57, as amended, with its registered office located at 666 Burrard Street, Vancouver, British Columbia, and its head office located at 7100 West Credit Avenue, Suite 101, Mississauga, Ontario (the "**Head Office**"). The leased Head Office served as the global headquarters for the Aralez Group (as defined below). API traded on the NASDAQ Global Market ("**NASDAQ**") and the Toronto Stock Exchange ("**TSX**") under the following symbols: NASDAQ:ARLZ and TSX:ARZ.

API was the ultimate parent and public company shell of the Aralez group of companies, which, in addition to API, comprised ten subsidiary companies operating and/or incorporated in the United States, Canada, Ireland, Luxembourg and Barbados (collectively with API, the "**Aralez Group**"). The Aralez Group was a specialty pharmaceutical company focused on acquiring, marketing, developing and commercializing products primarily related to cardiovascular health and pain management.

API was formed from the 2016 merger of POZEN Inc. ("**Pozen**"), a Delaware corporation, and Tribute Pharmaceuticals Canada Inc. (predecessor to Aralez Pharmaceuticals Canada Inc., API's Canadian operating entity, "**Aralez Canada**").

The operations of the Aralez Group were conducted via its various subsidiaries. API had no operations or employees, and its assets historically consisted of cash, investments in the other Aralez Group entities and intercompany receivables.

**RESTRUCTURING PROCEEDINGS**

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. and Aralez Canada (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**"). 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. The Companies' CCAA proceedings are referred to herein as the "**CCAA Proceedings**".

Also on the Filing Date, Aralez Pharmaceuticals Management Inc., Aralez Pharmaceuticals R&D Inc., Aralez Pharmaceuticals U.S. Inc., Pozen, Halton Laboratories LLC, Aralez Pharmaceuticals Holdings Limited and Aralez Pharmaceuticals Trading DAC (collectively, the “**Chapter 11 Debtors**”) each filed voluntary petitions with the United States Bankruptcy Court for the Southern District of New York for relief under title 11 of the United States Bankruptcy Code, 11 U.S.C § 101-1532 (the “**Chapter 11 Proceedings**”).

As part of the CCAA Proceedings, the Companies conducted a Court-approved sale process through which two Canadian sale transactions, including one for the shares of Aralez Canada, were identified and approved by the Court. Those sale transactions closed in December 2018. Upon the closing of the transaction for the shares of Aralez Canada, the CCAA proceedings, solely in respect of Aralez Canada, were terminated effective December 31, 2018. Further sale transactions have been pursued by the Chapter 11 Debtors as part of the Chapter 11 Proceedings.

As a result of these transactions (both in the CCAA Proceedings and the Chapter 11 Proceedings), substantially all of the business and assets of API and its subsidiaries have been sold. However, the sale proceeds generated by these sale transactions were not sufficient to repay, in full, the obligations owing to the Aralez Group's secured creditor, Deerfield Partners, L.P. and Deerfield Private Design Fund III, L.P. (collectively, “**Deerfield**”).

Richter, in its capacities as Proposed Monitor and Monitor, has filed with the Court ten reports (the “**Prior Reports**”), which, among other things, provided the Court with information relating to the CCAA Proceedings, the Monitor's (and Proposed Monitor's) activities and conduct, the results of the sales processes in the CCAA Proceedings and Chapter 11 Proceedings, the results of the claims process conducted by the Monitor in respect of the Companies and the distribution protocol for any interim or future distributions made in cash or otherwise to Deerfield on account of its indebtedness owed from the Companies. The Prior Reports, the Amended Initial Order and copies of other material documents pertaining to the CCAA Proceedings are available on Richter's website at <http://insolvency.richter.ca/A/Aralez-Pharmaceuticals>.

On May 17, 2019, the Court issued an order (the “**CCAA Termination Order**”), *inter alia*,

- (i) terminating the CCAA Proceedings upon the filing of a certificate (the “**Discharge Certificate**”) by the Monitor with the Court certifying that all Remaining Matters (as defined in the CCAA Termination Order) in the CCAA Proceedings have been completed;
- (ii) terminating, releasing and discharging all court ordered charges pursuant to the Amended Initial Order, either immediately or effective upon filing of the Discharge Certificate;
- (iii) discharging Richter in its capacity as Monitor upon the filing of the Discharge Certificate; and
- (iv) authorizing API to file an assignment in bankruptcy.

Accordingly, on May 30, 2019, after API confirmed that the Remaining Matters had been completed, the Monitor filed the Discharge Certificate, and, on the same date, API made an assignment in bankruptcy.

Richter was appointed as trustee in bankruptcy of the Company (in such capacity, the “**Trustee**”), subject to affirmation by the creditors at the first meeting of creditors.

On June 6, 2019, notice of the first meeting of creditors, a list of creditors, a proof of claim form and form of proxy were sent to all known creditors of the Company. Furthermore, on June 7, 2019, notice of the first meeting of creditors was published in the National Post.

The activities of the Trustee since its appointment have primarily consisted of statutory work in accordance with the provisions of the Bankruptcy and Insolvency Act (Canada) (the “**BIA**”).

## **CAUSES OF BANKRUPTCY**

The pharmaceutical industry is highly competitive and the Aralez Group had to deal with many market factors, including: (i) the costs associated with operating in a highly regulated industry, (ii) the need to invest significantly in marketing and infrastructure costs with unpredictable, and often minimal returns, (iii) competition from approved generic drugs, (iv) legal costs associated with maintaining and defending patents, and (v) pricing and/or pharmaceutical products being subject to increased pressure from various governments and other payors.

As discussed in the Prior Reports, the Trustee understands that the principal causes of the Company's financial difficulties can be summarized as follows:

- (i) Unsuccessful Product Launches – The Aralez Group committed significant resources to the anticipated launch of Yosprala in 2016 and the relaunch of Zontivity in 2017 in the U.S., both of which were unsuccessful and ultimately, by 2018, were no longer being actively marketed by the Aralez Group;
- (ii) High Costs Structure / Significant Debts – Increased operational costs supported by significant long-term debt, and the corresponding debt servicing costs; and
- (iii) Generic Competition – The Aralez Group face increased competition from generic competitors on existing and new products, which has significantly impacted current and future revenue streams.

As a result of the foregoing, API experienced significant consolidated net losses in fiscal 2016 (USD\$102.9 million) and 2017 (USD\$125.2 million) Further, as at March 31, 2018, the book value of API's total liabilities exceeded the book value of its total assets. Following a comprehensive strategic review to evaluate opportunities to streamline their business, reduce costs and improve their capital structure and liquidity position (which included retaining an investment banker and financial advisor to consider/assist with strategic alternatives), the Aralez Group ultimately determined that the appropriate approach was to proceed with a sale of substantially all of their assets through a court-supervised process pursuant to: (i) the CCAA with respect to the Companies, and (ii) section 363 of the United States Bankruptcy Code with respect to the Chapter 11 Debtors.

As the net proceeds realized from the sales transactions in the CCAA Proceedings and the Chapter 11 Proceedings were insufficient to fully satisfy API's secured indebtedness or support a distribution to API's unsecured creditors, the Company was not in a position to present a Plan of Compromise or Arrangement to its creditors. As a result, and as there still remained a need for a process to wind down the Company's

operations, on May 30, 2019, API made an assignment in bankruptcy pursuant to the CCAA Termination Order.

## FINANCIAL POSITION/ASSETS

As at the date of bankruptcy, the Company's assets comprise limited prepaid expenses and potential sales taxes receivables. The Company expects to achieve nominal realizations from these assets.

Given that realizations from estate assets are projected to be nominal, and Deerfield will suffer a shortfall on its advances to API under the Facility Agreement (as defined below), it is not anticipated that there will be any funds available for distribution to unsecured creditors of the Company.

## SECURED CREDITORS

API, Aralez Canada and Pozen entered into a loan agreement on June 8, 2015 (as amended) with Deerfield, as lender (the "**Facility Agreement**"). API is the borrower under the Facility Agreement in the principal amount of USD\$275.0 million, comprised of the following:

- (i) USD\$75.0 million aggregate principal of 2.5% senior secured convertible notes, which mature in February 2022 (the "**Secured Notes**"); and
- (ii) USD\$200.0 million aggregate facility agreement bearing interest at 12.5% due to be repaid in October 2022 (the "**Secured Credit Facility**").

According to the Company's Statement of Affairs, as at the date of bankruptcy, approximately USD\$42.2 million (or CAD\$56.8 million) remains owing to Deerfield in respect of the Facility Agreement.

The Trustee understands that the Secured Credit Facility and the Secured Notes are guaranteed by each entity within the Aralez Group (other than API) (collectively, the "**Guarantors**"). The Trustee further understands that, as security for the Secured Credit Facility and the Secured Notes, Deerfield has a first priority security interest in substantially all present and after-acquired property of API and the Guarantors, including intangible property (collectively, the "**Deerfield Security**").

During the CCAA Proceedings, the Monitor received written opinions from its counsel, 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 API 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.

It is the intention of the Trustee to discuss the security review with the Inspectors to be appointed at the first meeting of creditors.

## SECURITY FOR UNPAID WAGES – S.81.3 CLAIMS

The Trustee is not aware of any potential claims pursuant to section 81.3 of the BIA. As previously noted, API did not have any employees.

## PREFERRED CREDITORS

The Company's Statement of Affairs indicates that, as at the date of bankruptcy, there were no known preferred creditors.

## UNSECURED CREDITORS

The Company's Statement of Affairs indicates that there are approximately 33 unsecured creditors with claims totalling approximately CAD\$147,211.46.

## CLAIMS FILED

As at 9:00 a.m. on the date of this report, the Trustee has recorded proofs of claim filed, as follows:

	Claims Filed (#) <sup>(2)</sup>	Amount (CAD)	Proxies in Favour of Trustee (#)	Amount (CAD)
Secured	2	\$59,744,039	Nil	\$59,744,039
Preferred	Nil	Nil	Nil	Nil
Unsecured <sup>(1)</sup>	2	>\$2	Nil	>\$2
<b>TOTAL</b>	<b>4</b>	<b>&gt;\$ 59,744,041</b>	<b>Nil</b>	<b>&gt;\$ 59,744,041</b>

(1) The two unsecured claims relate to the secured claims filed by Deerfield in respect of amounts owing under the Facility Agreement. Given the limited assets, properties and undertakings of the Company, the value of Deerfield's secured indebtedness exceeds the value of the Deerfield Security; however, the exact amount of Deerfield's unsecured claims are unknown at this time.

(2) The Trustee received one unliquidated claim, which was filed by a former officer of the Company. This claim has been excluded from the figures in the table above and will not be admitted by the Trustee for purposes of voting at the first meeting of creditors.

## PREFERENCE PAYMENTS AND TRANSFERS UNDER VALUE

The Trustee has not performed a review of the Company's books and records with respect to potential fraudulent preferences, settlements or transfers at undervalue, as defined in the BIA. It is the intention of the Trustee to discuss the scope of its review with the Inspectors.

## **TRUSTEE'S FEES**

In consideration for consenting to act in these proceedings, Deerfield has guaranteed payment of the Trustee's fees and disbursements for statutory work in accordance with the provisions of the BIA, including the fees and disbursements of its legal counsel, to the maximum amount of \$100,000 should insufficient funds be available from API's estate (the "**Guarantee**"). In support of the Guarantee, Deerfield has provided a deposit to the Trustee in the amount of \$100,000.

## **OTHER**

Further information relating to the Company's bankruptcy proceedings may be obtained from Richter's website at: <http://insolvency.richter.ca/A/Aralez-Pharmaceuticals>.

Dated at Toronto, Ontario, this 20<sup>th</sup> day of June, 2019.

## **RICHTER ADVISORY GROUP INC.**

in its capacity as Trustee of the estate of

Old API Wind-down Ltd.

and not in its personal or corporate capacity

  
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Pritesh Patel, MBA, CFA, CIRP, LIT