

ASX ANNOUNCEMENT

27 May 2022

VIRTUS HEALTH LIMITED (ASX: VRT)

VIRTUS DIRECTORS CHANGE THEIR RECOMMENDATION – NOW UNANIMOUSLY RECOMMEND REVISED BGH OFFER

Further to yesterday's announcement by Virtus Health Limited (**Virtus**), Virtus announces that it has not received any formal response from CapVest. Further, the independent expert, Deloitte Corporate Finance Pty Limited, has provided an updated opinion and concluded that the CapVest scheme is not in the best interests of Virtus shareholders in light of the Revised BGH Offer received on 24 May 2022. A copy of that report is attached to this announcement.

As a result, and consistent with clause 13.2 of the Transaction Implementation Deed (**TID**) between Virtus and CapVest dated 13 March 2022 (as amended and restated on 13 April 2022 and 4 May 2022), Virtus has terminated the TID. In accordance with clause 11.3 of the TID, Virtus must pay CapVest a break fee of \$7,192,147 within 10 business days of a written demand from CapVest.

Due to the price now available under the Revised BGH Offer and taking into account all relevant considerations (including conditionality, certainty and timing) in the interests of Virtus and its shareholders, the Virtus Board has unanimously determined that the Revised BGH Offer is superior to the CapVest scheme and takeover on the basis that:

- the cash consideration under the Revised BGH Offer is equivalent to the cash consideration under the CapVest scheme, and superior to the cash consideration under the CapVest takeover offer;
- the Revised BGH Offer is subject only to no prescribed occurrences occurring in relation to Virtus before the end of the offer period, compared to the CapVest scheme, which is subject to (amongst other things) a scheme approval threshold and a material adverse change condition and in respect of which the independent expert opinion conclusion condition is no longer satisfied, and the CapVest takeover, which is subject to (amongst other things) a 50.1% minimum acceptance condition, the resolution with respect to the permitted capital return being passed and a no material adverse change condition;

- the Revised BGH Offer of \$8.15 represents a c. 60.1% premium to the dividend adjusted undisturbed Virtus share price of \$5.09 as at 13 December 2021¹;
- a significantly increased risk that the CapVest scheme will not be approved by the requisite majority of Virtus shareholders in light of BGH's increased voting power in Virtus shares which, as at 24 May 2022 was disclosed by BGH as 22.38%; and
- the Independent Expert has concluded that the CapVest scheme is not in the best interests of Virtus shareholders.

Accordingly, the Virtus Board unanimously recommends that Virtus shareholders ACCEPT the Revised BGH Offer dated 24 May 2022 in the absence of a superior proposal and subject to the Independent Expert continuing to conclude that the Revised BGH Offer is fair and reasonable. Virtus shareholders are encouraged to accept the Revised BGH Offer by 7.00pm (Melbourne time) on 31 May 2022.

Each Virtus Director intends to accept the Revised BGH Offer in respect of all Virtus shares controlled or held by, or on behalf of, that Virtus Director subject to the same qualifications.

The Revised BGH Offer is scheduled to close at 7.00pm (Melbourne time) on 31 May 2022 – Virtus encourages all shareholders to accept the Revised BGH Offer as soon as possible, and ensure that sufficient time is allowed for their acceptance to be received and processed before the close of the offer period. Details on how to accept the Revised BGH Offer are set out in section 7.3 of BGH's bidder's statement dated 6 April 2022. Virtus shareholders should have regard to their individual circumstances and if in any doubt as to what to do, should consult their licenced financial adviser or other suitable professional adviser before making any decision in relation to their Virtus shares.

As a matter of law, BGH's offer period will be automatically extended for 14 days if, within the last 7 days of the offer period, its voting power in Virtus increases to more than 50%. As mentioned above, as far as Virtus is aware, BGH's voting power in Virtus shares is currently 22.38%.

Virtus is in discussions with BGH, including regarding the payment of a special fully franked dividend should BGH acquire more than 50% of Virtus shares. There is no certainty that any special dividend will be declared or paid, or the amount of any such special dividend. Virtus will provide a further update to shareholders if it decides to pay a special dividend. Virtus also intends to cause all of the

¹ Being the last closing price before the first announcement that Virtus had received an unsolicited indication of interest from BGH to acquire 100% of the shares in Virtus by way of scheme of arrangement. Historical market prices and premium metrics are adjusted for Virtus' interim dividend of \$0.12, which was declared on 22 February 2022 with Virtus Shares beginning to trade ex-dividend from 23 March 2022.

outstanding performance rights and options currently on issue to be vested and exercised and able to be accepted into the Revised BGH Offer should BGH acquire more than 50% of Virtus shares.

This announcement is authorised by the Virtus Board.

-ENDS-

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Virtus Health Limited (ASX:VRT) brings together leading clinicians, scientists, researchers and support staff to provide the very best in fertility care and related specialised diagnostic and day hospital services. We have developed one of the most successful ARS collaborations in the world. With 126 of the world's leading fertility specialists supported by over 1300 professional staff, we are the largest network and provider of fertility services in Australia, Ireland and Denmark, Singapore and UK.

27 May 2022

The Directors
Virtus Health Limited
Level 3
176 Pacific Highway
Greenwich NSW 2065

Dear Directors

Our opinion dated 5 May 2022 in respect of the Proposed CapVest Scheme

We refer to our independent expert's report dated 5 May 2022 which disclosed that it was our opinion that the Proposed CapVest Scheme is fair and reasonable to, and therefore in the best interests of, Shareholders in the absence of a superior proposal. All terminology and definitions used in this letter are consistent with those used in our independent expert's reports.

BGH had previously also made a takeover offer (the Proposed BGH Takeover) for Virtus and on 24 May 2022, BGH increased their offer price to AUD 8.15 per share. On 25 May 2022, BGH announced that their relevant interest in Virtus had increased to 22.38%.

On 26 May 2022, the directors of Virtus announced that CapVest has not formally responded to a request for confirmation of whether or not CapVest will increase their offer under the Proposed CapVest Scheme or the Proposed CapVest Takeover. They also announced that Virtus has commenced discussions with BGH invoking the fiduciary out provision in the Transaction Implementation Deed with CapVest.

The Proposed BGH Takeover is currently scheduled to close at 7pm (Melbourne time) on 31 May 2022.

We note the following in relation to the Proposed CapVest Scheme:

- The offer price under the Proposed BGH Takeover is now the same as the offer price under the Proposed CapVest Scheme
- The increase in BGH's shareholding in Virtus, along with the expectation that the shareholding may increase further before the date of the vote of the scheme meeting, significantly increases the risk that the Proposed CapVest Scheme will fail and consequently shareholders will not receive the consideration of AUD 8.15 per share under the Proposed CapVest Scheme

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- ASIC Regulatory Guide 111 requires that if a transaction is fair, then it is also reasonable. However, one of the key reasonableness factors we consider relevant is the significant shareholding held by BGH in Virtus
- The Proposed BGH Takeover is currently scheduled to close prior to the date of the Proposed CapVest Scheme meeting and as such absent an extension of the offer, shareholders who do not accept the Proposed BGH Takeover prior to 31 May 2022 will not receive the consideration of AUD 8.15 per share. However, the Proposed CapVest Takeover of AUD 8.10 per share may still be available to Shareholders
- The consideration under the Proposed CapVest Scheme and the Proposed CapVest Takeover includes a special franked dividend which may be of value to some Shareholders
- The Directors of Virtus are in discussions with BGH regarding the payment of a special franked dividend should BGH acquire more than 50% of Virtus shares. However, at this stage, there is no certainty that any dividend will be declared or paid, or what the quantum of any such dividend may be.

In summary, the consideration under the Proposed BGH Takeover is now identical to that under the Proposed CapVest Scheme. In addition, there is a higher risk that the Proposed CapVest Scheme will fail whilst the Proposed BGH Takeover has no or limited conditionality.

On the basis of these considerations, we are now of the opinion that the Proposed CapVest Scheme, whilst still being fair and reasonable is not in the best interests of Shareholders, in the absence of another superior proposal.

An individual shareholder's decision in relation to the Proposed CapVest Scheme, the Proposed CapVest Takeover or the Proposed BGH Takeover may be influenced by their particular circumstances. If in doubt the shareholder should consult an independent adviser, who should have regard to their individual circumstances.

This opinion should be read in conjunction with our detailed report in respect of the Proposed CapVest Offers. It should also be read in conjunction with the BGH Takeover IER which is contained in the Target's Statement that was sent to Shareholders.

Yours faithfully



Tapan Parekh

Authorised Representative (Number: 461009)