

ASX ANNOUNCEMENT

30 May 2022

VIRTUS HEALTH LIMITED (ASX: VRT)

Virtus' Second Supplementary Target's Statement (CapVest Offer)

Virtus Health Limited (ACN 129 643 492) (**Virtus**) refers to the off-market takeover offer (**CapVest Offer**) by Evergreen Bidco Pty Ltd (ACN 657 613 860), an entity controlled by CapVest Partners LLP (**CapVest**).

Virtus' second supplementary target's statement in respect of the CapVest Offer (**Second Supplementary Target's Statement**) is attached in accordance with section 647(3)(b) of the *Corporations Act 2001* (Cth).

A copy of the Second Supplementary Target's Statement will be served on CapVest and lodged with the Australian Securities and Investments Commission today.

This announcement is authorised by the Virtus Board.

-ENDS-

Further information:

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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.



Virtus Health Limited
ACN 129 643 492

Second Supplementary Target's Statement – CapVest Takeover

1 Second Supplementary Target's Statement

This document is a supplementary target's statement under section 644 of the *Corporations Act 2001* (Cth) (**Act**). It is the second supplementary target's statement (**Second Supplementary Target's Statement**) issued by Virtus Health Limited (ACN 129 643 492) (**Virtus**) in relation to the off-market takeover bid made by CapVest for all Virtus Shares. This Second Supplementary Target's Statement supplements, and should be read together with, Virtus' first supplementary target's statement in relation to the CapVest Takeover dated 16 May 2022 (**First Supplementary Target's Statement**) and Virtus' target's statement as included in the transaction booklet dated 5 May 2022 (**Booklet**).

2 Your Directors recommend that you REJECT the CapVest Transaction

For the reasons set out below, the Virtus Directors have changed their recommendation and now recommend that you **DO NOT ACCEPT** the CapVest Takeover.

The CapVest Scheme and proposed Capital Reduction will no longer proceed and accordingly, there is now no need to vote in relation to the meetings that were convened to consider these resolutions.

The following events have occurred since the date of the First Supplementary Target's Statement:

- On 24 May 2022, BGH increased the offer price under the BGH Takeover to \$8.15 per Virtus Share (**Revised BGH Offer**), which is equivalent to the Scheme Consideration and superior to the CapVest Takeover Consideration (\$8.10 per Virtus Share);
- BGH also announced that, as at 24 May 2022, its voting power in Virtus Shares is 22.38%, which significantly increased the risk that the Scheme will not be approved by the Requisite Majority of Virtus Shareholders. BGH announced today that its current voting power in Virtus shares is 26.26%;
- On 24 May 2022, Virtus wrote to CapVest informing it of the Revised BGH Offer and encouraging CapVest to confirm whether or not CapVest will increase their offer and amount payable to Virtus Shareholders under the Scheme and CapVest Takeover;
- On 26 May 2022, Virtus announced that CapVest had not formally responded to Virtus' request to confirm their position on improving their offer under the CapVest Transaction, and that Virtus had invoked the fiduciary out provision in the Implementation Deed to allow it to engage with BGH;

- On 27 May 2022 the Independent Expert provided an updated opinion and has concluded that the Scheme is not in the best interests of Virtus shareholders (a copy of the report is attached); and
- On 27 May 2022, Virtus terminated the Implementation Deed in accordance with clause 13.2 of the Implementation Deed (see section 3 for further detail).

The Virtus Board now unanimously recommends that Virtus Shareholders **accept the BGH Takeover** dated 24 May 2022 in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the BGH Takeover is fair and reasonable. Attached is an ASX release containing an update in relation to the Revised BGH Offer (**ASX Release**).

To validly accept the Revised BGH Offer, your acceptance must be received by **7.00pm (Melbourne time) on 31 May 2022**, unless the BGH Offer Period is extended. Details of how to accept the BGH Takeover are set out in the BGH Bidder's Statement and the Third Supplementary Target's Statement in relation to the BGH Takeover that was issued by Virtus today.

3 Termination of Implementation Deed

As the Independent Expert concluded that the Scheme is not in the best interests of Virtus Shareholders, your Directors were permitted under clause 8.3(d)(i) of the Implementation Deed to change their recommendation in relation the Scheme.

Subsequently, on 27 May 2022 Virtus provided notice of termination of the Implementation Deed to CapVest pursuant to clause 13.2 of the Implementation Deed.

In accordance with clause 11.3 of the Implementation Deed, Virtus must now pay CapVest a break fee of \$7,192,147 within 10 business days of the written demand from CapVest that was received on 27 May 2022.

4 What to do if you have already accepted the CapVest Takeover

If you have accepted the CapVest Takeover, *you will not be entitled to accept the offer under the BGH Takeover* unless the CapVest Takeover is withdrawn or it lapses in circumstances where any of the CapVest Takeover Conditions have not been satisfied or waived.

CapVest cannot withdraw the CapVest Takeover unless ASIC consents to the withdrawal. If that occurs, the close of the offer period will be brought forward to the withdrawal date. If any of the CapVest Takeover Conditions are not satisfied or waived at that time, your acceptance into the CapVest Takeover will be void. You would then be free to accept the BGH Offer if it remains open at that time.

If the CapVest Takeover is not withdrawn and any of the CapVest Takeover Conditions are not satisfied or waived before the end of the CapVest Takeover Offer Period (which is scheduled to close at 7.00pm (Sydney time) on Tuesday, 5 July 2022), the CapVest Takeover will lapse and your acceptance into the CapVest Takeover will be void. You would then be free to accept the BGH Offer if it remains open at that time.

If BGH acquires an interest in 90% or more of Virtus Shares as a result of the BGH Offer, it would be entitled to compulsorily acquire the outstanding Virtus Shares in accordance with the Corporations Act (including your Virtus Shares). BGH has stated that it is their intention to proceed to compulsory acquisition of the remaining Virtus Shares if they are entitled to do so,¹

¹ See section 3.3 of BGH's Bidder's Statement.

in which case you would receive the same consideration for your Virtus Shares as you would get if you accepted the BGH Offer, although you will receive the consideration at a later point in time.

5 General

Unless the context otherwise requires, capitalised terms used but not defined in this Second Supplementary Target's Statement have the same meaning as terms defined in the Booklet.

This Second Supplementary Target's Statement prevails to the extent of any inconsistency with the First Supplementary Target's Statement or the Booklet.

A copy of this Second Supplementary Target's Statement is being lodged with ASIC today. Neither ASIC nor any of its officers take any responsibility for its contents. A copy of this Second Supplementary Target's Statement has also been provided to ASX. Neither ASX nor any of its officers takes any responsibility for the contents of this document.

6 Authorisation

This Second Supplementary Target's Statement has been approved by a resolution passed by the Virtus Board.



Sonia Petering
on behalf of the Board of Virtus Health Limited (ACN 129 643 492)

Dated: 30 May 2022

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)

ASX ANNOUNCEMENT

30 May 2022

VIRTUS HEALTH LIMITED (ASX: VRT)

VIRTUS AGREES WITH BGH NEXT STEPS IN RELATION TO REVISED BGH OFFER

Further to the announcement by Virtus Health Limited (**Virtus**) on Friday 27 May that the Virtus Board unanimously recommends that Virtus shareholders **ACCEPT** the off-market takeover offer (**Revised BGH Offer**) by Oceania Equity Investments Pty Ltd as trustee of the Oceania Trust and A.C.N. 658 293 166 Pty Ltd (**BGH Bidders**) (which was revised by BGH Bidders on 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 has now reached agreement with BGH in relation to certain steps to be undertaken by Virtus and BGH to facilitate the successful completion of the Revised BGH Offer.

1. Special Dividend

Virtus confirms its intention to pay a special fully franked dividend of up to 30 cents per Virtus share (**Special Dividend**) if BGH acquires voting power in Virtus of:

- (a) 50% by 7pm (Melbourne time) on 31 May 2022; and
- (b) 90% by 5pm (Melbourne time) on 14 June 2022.

There is no certainty that the Special Dividend will be declared or paid, or the amount of the Special Dividend.

While Virtus was previously considering paying a special dividend of up to 44 cents per Virtus share, this amount has now been revised having regard to the need to pay the break fee of \$7,192,147 to CapVest and the needs of the business.

BGH and Virtus will work cooperatively in good faith and will use all reasonable endeavours to ensure that current Virtus shareholders receive any Special Dividend and the benefit of the associated franking credits.

Under the terms of the Revised BGH Offer, if any Special Dividend is paid and the record date for the Special Dividend occurs before BGH has paid shareholders who accept the Revised BGH Offer, BGH is entitled to deduct the

amount of the Special Dividend from the consideration under the Revised BGH Offer. If the Special Dividend is 30 cents per Virtus share, the consideration payable by BGH will be reduced from \$8.15 per share to \$7.85 per share, although the amount of cash accepting Virtus shareholders will receive in total from BGH and Virtus is still \$8.15 per share.

2. Making it easier for Virtus shareholders to accept the Revised BGH Offer

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.

To make it easier for Virtus shareholders to accept the Revised BGH Offer, the BGH Bidders have confirmed that they will, for the purposes of section 7.4(c) of the BGH Bidder's Statement, for shareholders who hold their shares on the issuer sponsored sub-register, treat receipt of a signed acceptance form by email prior to the end of the offer period as valid (even though the acceptance form has not been physically delivered to the share registry). The email address that shareholders should send your completed acceptance form to is corpactprocessing@computershare.com.au

If shareholders need a replacement acceptance form or have any questions as to how to accept, please contact the BGH Offer Information Line on 1300 620 418 or outside Australia +61 3 9415 4656.

3. Vesting of performance rights and options

Virtus will cause all of the outstanding performance rights and options currently on issue to be vested and exercised so that holders can accept into the Revised BGH Offer the Virtus shares issued to them as a result.

4. Access to due diligence

Virtus has agreed to provide BGH with access to a data room and other assistance so that it can prepare for the transition to ownership should it acquire control of Virtus as a result of the Revised BGH Offer.

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.

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. As a matter of law, BGH's offer period will be automatically extended for 14 days if its voting power in Virtus increases to more than 50% before this time. BGH has advised that its voting power in Virtus shares is currently 26.26%.

Virtus shareholders should have regard to their individual circumstances and if in any doubt as to what to do, should consult their licensed financial adviser or other suitable professional adviser before making any decision in relation to their Virtus shares.

This announcement is authorised by the Virtus Board.

-ENDS-

Further information:

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