

ASX ANNOUNCEMENT

11 May 2022

VIRTUS HEALTH LIMITED (ASX: VRT)

Virtus' First Supplementary Target's Statement

Virtus Health Limited (ACN 129 643 492) (**Virtus**) refers to the off-market takeover offer by entities wholly owned by BGH Capital Pty Ltd (**BGH**).

Virtus' first supplementary target's statement is attached in accordance with section 647(3)(b) of the *Corporations Act 2001* (Cth).

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

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.



Virtus Health Limited
ACN 129 643 492

First Supplementary Target's Statement

1 First 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 first supplementary target's statement (**First Supplementary Target's Statement**) issued by Virtus Health Limited (ACN 129 643 492) (**Virtus**) in relation to the off-market takeover bid made by the BGH Bidders for all the Virtus Shares in which the BGH Bidders do not have a Relevant Interest. This First Supplementary Target's Statement supplements, and should be read together with, Virtus' target's statement dated 3 May 2022 (**Original Target's Statement**).

2 Risk that you may not get the best price if you sell Virtus Shares on market

Virtus Shareholders should be aware that, following the outcome of Takeovers Panel proceedings (see section 2.1 below), the structure of the unsolicited BGH Offer means that:

- *BGH may acquire Virtus Shares on market at prices higher than the \$8.00 BGH Offer Consideration without prior disclosure of that improved offer consideration to ASX; and*
- *any Virtus Shareholder who sells their Virtus Shares to BGH on market will not receive any improved offer consideration under the BGH Offer (to the extent the BGH Offer price is subsequently increased).*

2.1 Takeovers Panel declined to commence proceedings on CapVest application

On 7 April 2022 CapVest made an application to the Takeovers Panel seeking orders that BGH may only make purchases on ASX at a price higher than the BGH Offer Consideration after first announcing the improved Offer Consideration to ASX (see section 9.4 of the Original Target's Statement).

The Takeovers Panel has made a final decision not to make the orders requested by CapVest. The decision was made on the basis that BGH has undertaken to make an immediate announcement after it first executes a buy order on market (to purchase Virtus Shares) at a higher price than the \$8.00 BGH Offer Consideration.¹

¹ See the announcement "TOV: VRT 04R – Panel Declines to Conduct Proceedings" released on 4 May 2022, available on www.asx.com.au.

2.2 Implications of selling your Virtus Shares on market

In its Bidders Statement BGH has advised that it has appointed a broker to acquire Virtus Shares on market during normal trading hours at prices equal to, below, or higher than the \$8.00 BGH Offer Consideration.

If BGH purchases Virtus Shares on market at a price higher than \$8.00, it must increase the price under the BGH Offer to match the maximum price that it has paid for Virtus Shares on market (**Improved BGH Consideration**). If this occurs, all Virtus Shareholders who have accepted the BGH Offer will receive the Improved BGH Consideration for their Virtus Shares if the BGH Offer becomes unconditional.

However, BGH does not consider that it needs to disclose to ASX the amount of any Improved BGH Consideration prior to its buy order being executed – accordingly, Virtus Shareholders selling their Virtus Shares on market should be aware that they may not be receiving the highest price for their shares.

In other words, if you sell your Virtus Shares on market, you will forfeit the ability to receive any further upside from the bidding contest in respect of those shares (including any Improved BGH Consideration or subsequent CapVest consideration²). Accordingly, if Virtus Shareholders wish to retain the possibility of receiving the highest amount of consideration under the bidding contest, they should exercise care in placing sell orders before the outcome of the bidding contest for Virtus becomes clearer.

The price of Virtus Shares on the ASX have exceeded the BGH Offer Consideration of \$8.00 and have often exceeded the CapVest Scheme consideration of \$8.15 since the announcement of the signing of the CapVest Implementation Deed on 13 March 2022.

3 No withdrawal rights available if you accept the BGH Offer

Virtus made an application to the Takeovers Panel seeking withdrawal rights for Virtus Shareholders who accepted the BGH Offer in reliance on BGH's defective Bidder's Statement (as mentioned in section 5.2 of the Original Target's Statement).

The Takeovers Panel has declined to commence proceedings,³ meaning that Virtus Shareholders who have accepted the BGH Offer will not be able to withdraw their acceptance of that offer⁴.

Virtus has made an application to the Takeovers Panel to review the decision to decline to conduct proceedings. Virtus will keep shareholders updated of the outcome of its application. There is no certainty that Virtus will be successful in its application or that any shareholder will be permitted to withdraw your acceptance of the BGH Offer.

4 Update on CapVest Transaction

On 4 May 2022, the Supreme Court of New South Wales made the following orders in relation to the CapVest Scheme:

² Noting there can be no certainty that BGH will increase the BGH Offer Consideration or that CapVest will increase the consideration offered under the CapVest Transaction.

³ See the announcement "TOV: VRT 05 Panel Declines to Conduct Proceedings" released on 9 May 2022, available on www.asx.com.au.

⁴ Except in limited circumstances where BGH extends the BGH Offer by more than one month and Virtus Shareholders are entitled to withdraw their acceptance under the Corporations Act, or if the Prescribed Occurrences Condition is not fulfilled or waived such that the BGH Offer terminates.

- that Virtus convene and hold the CapVest Scheme Meeting to consider and vote on the CapVest Scheme; and
- approving the distribution to Virtus Shareholders of the explanatory statement in respect of the CapVest Scheme (**CapVest Booklet**, which is available at the following link: <https://www.virtushealth.com.au/transaction-booklet>).

The CapVest Scheme Meeting will be held as a virtual (online only) meeting at 11.00am (Sydney time) on Monday, 6 June 2022. Shareholders will be able to access the Scheme Meeting using the following link at the time of the meeting:

<https://www.meetings.linkgroup.com/VRTSCHEME>

As at the date of this First Supplementary Target's Statement, the Virtus Board considers that the CapVest Transaction is the superior proposal available to Virtus Shareholders.

Please refer to the CapVest Booklet for further details regarding the CapVest Transaction.

5 Virtus Board's Recommendation

For the reasons set out in the Original Target's Statement, the Virtus Board unanimously determined the BGH Offer⁵ to be INFERIOR to the CapVest Transaction and therefore **unanimously recommends that you DO NOT ACCEPT the BGH Offer**. To do this, simply DO NOTHING in respect of the BGH Offer.

Your Directors will not be accepting the BGH Offer in respect of any Virtus Shares which are held or controlled by or on behalf of them, consistent with their recommendation to Virtus Shareholders.

The Virtus Board **unanimously recommends that you vote in favour of the CapVest Scheme, and accept the CapVest Takeover should the CapVest Scheme not be approved by Virtus Shareholders or the Court**, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the CapVest Scheme is in the best interests of Virtus Shareholders and the CapVest Takeover is fair and reasonable.

The reasons for this recommendation are set out in detail in the CapVest Booklet, which has been sent to Virtus Shareholders. The Transaction Booklet also sets out reasons why you might consider not supporting the CapVest Transaction, and you should read the Transaction Booklet carefully before making any decision in relation to the CapVest Transaction.

6 General

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

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

A copy of this First 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 First 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.

⁵ At \$8.00 per Virtus Share and in the form provided in BGH's Bidder's Statement.

7 Authorisation

This First 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: 11 May 2022

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