



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP22/27

Friday, 8 April 2022

## Virtus Health Limited 03 – Panel Receives Application

The Panel has received an application from CapVest Partners LLP (**CapVest**) in relation to the affairs of Virtus Health Limited (ASX: VRT) (**Virtus**).

Virtus is the subject of competing control proposals for all the fully paid ordinary shares in Virtus from both BGH Capital Pty Ltd<sup>1</sup> (**BGH**) and CapVest.<sup>2</sup>

Details of the application, as submitted by CapVest, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

### Details

On 6 April 2022, BGH released on ASX its bidder's statement containing offers conditional only on the matters listed in section 652C of the *Corporations Act 2001* (Cth) (the **Act**).<sup>3</sup> BGH holds 19.99% of Virtus.

BGH's bidder's statement includes the following disclosure under the heading "**ASIC Market Integrity Rule 5.13.1 Disclosure**" -

*In accordance with rule 5.13.1 of the ASIC Market Integrity Rules, BGH Bidders note they have appointed UBS ... as broker to acquire Shares on market during normal trading hours on the ASX during the Bid Period ... at prices equal to, below, or higher than, the Offer Price (On Market Purchases).*

*Pursuant to section 651A of the Corporations Act, if the price per Share paid to acquire Shares in an On Market Purchase is higher than the Offer Price, the consideration payable*

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<sup>1</sup> in its capacity as investment manager or adviser to the constituent entities of BGH Capital Fund I. The Bid is being made by Oceania Equity Investments Pty Ltd (as trustee for the Oceania Trust) and A.C.N. 658 293 166 Pty Ltd, each currently wholly-owned by BGH Capital Fund I (together, the **BGH Bidders**)

<sup>2</sup> by its bid vehicle, Evergreen Bidco Pty Ltd

<sup>3</sup> generally known as "prescribed occurrences"

*per Share under the Offer will be automatically increased to that higher price (and Shareholders who have previously received consideration for Accepted Shares shall be entitled to receive the increase in consideration immediately).*

*If the price per Share paid to acquire Shares in an On Market Purchase is higher than the Offer Price, BGH Bidders will continue to trade at volume at or above that higher price until notification of the increased consideration payable per Share under the Offer is disclosed by BGH Bidders to the ASX (noting that at the time BGH Bidders execute at a higher price than the Offer Price, BGH Bidders' order may execute with any existing offers in the market at a price between the Offer Price and that higher price)....*

CapVest submits, among other things, that even though an acquisition by BGH on market will automatically increase BGH's Bid price under section 651A of the Act, the requirements of Market Integrity Rule 5.13.1 have not been met by the statement.

Rather, CapVest submits, the rule requires that there be an announcement informing the market that the Bid price is to be increased, stating the amount, before Virtus shares can be purchased on behalf of BGH on market above the existing Bid price.

CapVest submits that BGH's disclosure and its evident interpretation of the market integrity rule deprives the market of information as to the increased price and *"results in the trading of Virtus shares and for Chapter 6 purposes, the acquisition of control of Virtus, taking place in a market that is not 'efficient, competitive and informed.'*

CapVest seeks an interim order to the effect that BGH's broker be restrained from acquiring Virtus shares on behalf of BGH at a price higher than the Bid price until further order.

CapVest seeks final orders to the effect that BGH's broker not be permitted to acquire Virtus shares on behalf of BGH at a price higher than the Bid price:

- until it has announced the price it proposes to acquire them at and ASX Operating Procedures have been complied with<sup>4</sup> and
- until after 9:00 am (London time) following the announcement of the higher price.

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<sup>4</sup> These require the trading state to be changed into "pre-open", during which (among other things) bids and offers are not matched, for one hour