



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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**No: TP22/30**

**Friday, 22 April 2022**

## **Virtus Health Limited 03 - Panel Accepts Undertaking**

The Panel has accepted an undertaking from BGH Bidders<sup>1</sup> (see annexure) and declined to make a declaration of unacceptable circumstances in response to an application dated 7 April 2022 from CapVest Partners LLP in relation to the affairs of Virtus Health Limited (see [TP22/27](#)).

The application concerned whether the acquisition of control of Virtus would take place in an efficient, competitive and informed market if BGH's Bidders carried out their intention, as stated in their bidder's statement, to acquire Virtus shares on market during the Bid Period, which may be at prices above the bid price (which would increase the bid price under their bid)<sup>2</sup>, and to then follow that with an announcement.

The issue before the Panel involved (among other things) the operation of Market Integrity Rule 5.13.1. That rule requires an ASX announcement before any on market acquisition at a price variation from the bid price. Accordingly, the issue was whether BGH Bidders' proposal met the rule or whether an announcement had to precede any on market purchase which varied from the bid price.

The Panel considered that, in terms of the principles in section 602 underpinning Chapter 6, the proposal and the attached undertaking did not undermine the existence of an efficient, competitive and informed market. Accordingly, the undertaking sufficiently addresses the circumstances, and it is not against the public interest to decline to make a declaration of unacceptable circumstances. The interpretation of Market Rule 5.13.1 is not a matter for the Panel to determine.

The effect of the undertaking is to allow BGH Bidders to place an order on market and, if the order results in ASX matching sellers to it at a higher price than the bid price, then BGH Bidders must immediately make an announcement and follow the

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<sup>1</sup> Oceania Equity Investments Pty Ltd (ACN 655 692 738) as trustee for the Oceania Trust and A.C.N. 658 293 166 Pty Ltd (ACN 658 293 166)

<sup>2</sup> Under section 651A of the Corporations Act, if the price is higher than the bid price the consideration payable under the bid is automatically increased to the higher price and accepting shareholders are entitled to receive the increase in consideration.

usual ASX market procedure. The undertaking requires BGH Bidders to do this any time there is a subsequent increase.

As the proceedings are determined, the interim orders (see [TP22/28](#)) cease to have effect.

The sitting Panel was Teresa Dyson, Richard Hunt (sitting President) and James Stewart. The Panel will publish its reasons for the decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

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**Takeovers Panel**

**AUSTRALIAN SECURITIES AND  
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A  
UNDERTAKING**

**VIRTUS HEALTH LIMITED 03**

BGH Bidders undertakes to the Panel that in respect of their Takeover Bid and during the Bid Period:

1. if they instruct their broker to make on market acquisitions of Virtus shares on their behalf above the then Bid Price, they will instruct their broker that upon the order on market First Executing on ASX Trade (such that it results in any acquisition above the then Bid Price), the broker is to remove any other orders on their behalf from the market (if any have been entered) at that time; and
2. on the happening of the order First Executing on ASX Trade, immediately:
  - (a) make an announcement on ASX:
    - (i) of the purchase or purchases, and the price (or highest price) paid and
    - (ii) that the Takeover Bid is automatically increased accordingly; and
  - (b) inform ASX and comply with any pre-open or other phase as required by ASX, before BGH Bidders (through their broker) make any further on-market acquisitions other than as ASX Trade automatically matches any unfilled balance under the order; and
  - (c) as soon as practicable after (b), lodge and serve a supplementary bidder's statement as required by law.
3. on each occasion that the order referred to in paragraph 1 results in a subsequent acquisition at a price above that announced under paragraph 2, the requirements of paragraph 2 will be fulfilled again.

For avoidance of doubt, in this undertaking:

- (a) First Executing on ASX Trade means the automatic matching of the buy order with such sell orders as at that time exist on market and
- (b) any unfilled balance of the first order may remain on ASX Trade.

BGH Bidders agrees to confirm in writing to the Panel when it has satisfied its obligations under this undertaking.

**Definitions**

The following definitions apply to this undertaking:

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market operated by it.

**ASX Trade** means the automatic securities trading system of ASX.

**BGH Bidders** means Oceania Equity Investments Pty Ltd (ACN 655 692 738) as trustee for the Oceania Trust and A.C.N. 658 293 166 Pty Ltd (ACN 658 293 166)

**Bid Period** has the meaning given to it in the *Corporations Act 2001* (Cth).

**Bid Price** means the consideration offered for each ordinary share in Virtus under the Takeover Bid.

**Takeover Bid** means the joint off-market takeover offer by the BGH Bidders to acquire all of the fully paid ordinary shares in Virtus that they do not own or control, as announced to ASX on 6 April 2022 and as may be varied in accordance with the *Corporations Act 2001* (Cth).

**Virtus** means Virtus Health Limited (ACN 129 643 492).

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**Signed by Benjamin Gray of BGH Capital Pty Ltd  
with the authority, and on behalf, of BGH Bidders  
Dated 21 April 2022**