



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/35

Monday, 2 May 2022

Virtus Health Limited 05 - Panel Receives Application

The Panel has received an application from Virtus Health Limited (**Virtus**) in relation to its affairs.

Virtus is the subject of competing control proposals for all its fully paid ordinary shares from both BGH Capital Pty Ltd¹ (**BGH Bidders**) and CapVest Partners LLP (**CapVest**) which have been the subject of several Panel applications.²

Details of the application, as submitted by Virtus, 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 Bidders announced their intention to make an off-market takeover bid for Virtus at \$8 per share and released their bidders' statement (**BGH BS**) to the ASX. At the time of announcing, BGH Bidders had voting power of 19.99% of Virtus.

On 11 April 2022, Virtus announced that CapVest had made revisions to its concurrent scheme and bid proposals such that, among other things, the price under:

- CapVest's scheme of arrangement was increased to \$8.15 per share and
- CapVest's takeover bid was increased to \$8.10 per share,

less the value of any distributions or dividends other than the \$0.12 interim dividend declared by Virtus on 22 February 2022 (**Revised CapVest Proposal**).

¹ 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

² See [TP22/15 Virtus Health Limited – Declaration of Unacceptable Circumstances and Orders](#), [TP22/22 Virtus Health Limited 02 – Panel Declines to Conduct Proceedings](#), [TP22/30 Virtus Health Limited 03 – Panel Accepts Undertaking](#). The Panel's decision in Virtus Health Limited 03 is the subject of a review application from CapVest – see [TP22/33 – Virtus Health Limited 04R – Panel Receives Review Application and President Makes Interim Orders](#)

Also on 11 April 2022, Virtus sent a letter to BGH Bidders, expressing concerns with various deficiencies in the BGH BS (**Virtus Letter**).³ On 14 April 2022, BGH Bidders responded to the Virtus Letter.

On 20 April 2022, BGH Bidders announced the dispatch of the BGH BS, which did not contain any amendments to the bidders' statement lodged on 6 April 2022, did not address any of the deficiencies identified in the Virtus Letter or refer to the Revised CapVest Proposal.

On 21 April 2022, BGH Bidders lodged a supplementary bidders' statement (**BGH Supplementary BS**) which referred to the Revised CapVest Proposal but, in Virtus's opinion, did not appropriately address the concerns set out in the Virtus Letter and further omitted information material to the decision of Virtus shareholders whether to accept the bid.

On 27 April 2022, Virtus learned that BGH Bidders had received some acceptances of their bid.

Virtus submits (among other things) that:

1. The BGH BS contained no reference to the Revised CapVest Proposal, omitted other material information, and contained misleading statements – including misleading and inaccurate descriptions of the tax rulings sought by Virtus in relation to the CapVest proposals.
2. BGH Bidders did not amend the BGH BS prior to dispatch despite the issues in paragraph 1 above being brought to their attention by Virtus.
3. The BGH Supplementary BS contains misleading statements and omits material information, including that it does not state the price offered under the Revised CapVest Proposal, does not adequately update and correct their previous disclosure, and makes the following statement that Virtus submits is incorrect – *“the after-tax returns under the BGH Bidders' Offer may be more attractive to such Shareholders than the after-tax returns available under the Revised CapVest Takeover Offer”*.
4. Virtus is not aware that the BGH Supplementary BS has been dispatched to Virtus shareholders. If it has not been dispatched, that would be contrary to ASIC guidance.

Virtus seeks interim orders that BGH Bidders be restrained from processing acceptances under their bid or closing their bid until the conclusion of Panel proceedings.

Virtus seeks final orders that BGH Bidders:

- provide corrective disclosure via a supplementary bidders' statement, in a form that ASIC and the Panel do not object to, that is dispatched to Virtus shareholders
- provide withdrawal rights to Virtus shareholders for a period of not less than 10 trading days and

³ On 13 April 2022, BGH Bidders sent an email to Virtus stating (among other things) it would respond to Virtus's concerns at some stage the next day. Also on 13 April 2022, Virtus provided BGH Bidders with a copy of an amended and restated Transaction Implementation Deed between Virtus and CapVest (signed that day)

- *“must extend the offer period of the BGH Bid so that it remains open until the earliest date it could have closed if BGH Bidders had sent a replacement bidder’s statement, instead of dispatching the BGH BS, without the consent of Virtus under item 6 of section 633(1) of the Corporations Act”.*

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