

ASX ANNOUNCEMENT

14 June 2022

VIRTUS HEALTH LIMITED (ASX: VRT)

Virtus' Fifth Supplementary Target's Statement (BGH Offer)

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

A copy of the Fifth 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

Fifth Supplementary Target's Statement – BGH Offer

1 Fifth 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 fifth supplementary target's statement (**Fifth 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 Fifth Supplementary Target's Statement supplements, and should be read together with, Virtus' fourth supplementary target's statement in relation to the BGH Offer dated 1 June 2022 (**Fourth Supplementary Target's Statement**), Virtus' third supplementary target's statement in relation to the BGH Offer dated 30 May 2022 (**Third Supplementary Target's Statement**), Virtus' second supplementary target's statement in relation to the BGH Offer dated 16 May 2022 (**Second Supplementary Target's Statement**), Virtus' first supplementary target's statement in relation to the BGH Offer dated 11 May 2022 (**First Supplementary Target's Statement**) and Virtus' target's statement in relation to the BGH Offer dated 3 May 2022 (**Original Target's Statement**).

2 BGH further increased offer price to \$8.155 – BGH Offer Period extended to 27 June 2022

The BGH Bidders announced on 13 June 2022 that they have increased their offer price to \$8.155 (**Increased BGH Offer**). As a result of the increase in consideration payable to Virtus Shareholders, the BGH Offer Period has been automatically extended to **7.00pm (Melbourne time) on 27 June 2022**, unless further extended.

The Increased BGH Offer will apply to all Virtus Shareholders who accept the BGH Offer, including Virtus Shareholders who have already accepted the BGH Offer. Accepting Shareholders will be paid the increased consideration in accordance with the time for payment under the terms of the BGH Offer.

The Increased BGH Offer of \$8.155 represents a significant c. 60.2% premium to the dividend adjusted undisturbed Virtus share price of \$5.09 as at 13 December 2021¹.

The Virtus Directors unanimously recommend that Virtus Shareholders **ACCEPT** the Increased BGH Offer, for the reasons set out in section 1 of the Third Supplementary Target's Statement (dated 30 May 2022) in relation to the BGH Offer.

¹ Being the last closing price before the first announcement that Virtus had received an unsolicited indication of interest from BGH to acquire 100% of the shares in Virtus by way of scheme of arrangement. Historical market prices and premium metrics are adjusted for Virtus' interim dividend of \$0.12, which was declared on 22 February 2022 with Virtus Shares beginning to trade ex-dividend from 23 March 2022.

Each Virtus Director has accepted the BGH Offer in respect of all Virtus Shares controlled or held by, or on behalf of, that Virtus Director.

For instructions on how to accept the BGH Offer, refer to section 4 of the Fourth Supplementary Target's Statement (dated 1 June 2022), available on ASX and Virtus' website <https://www.virtushealth.com.au/investor-centre>.

3 Special Dividend

On 14 June 2022, Virtus announced that the Virtus Board had declared a special fully franked dividend of 30 cents per Virtus Share (**Special Dividend**) now that the BGH Bidders had acquired voting power in Virtus of over 90%. The record date for the Special Dividend is 20 June 2022, and the Special Dividend will be paid on 1 July 2022.

The BGH Bidders have agreed that they will not process acceptances under the BGH Offer until at least two Business Days after the record date for the Special Dividend. This means that all Virtus Shareholders who have accepted the BGH Offer will receive the Special Dividend, and eligible Virtus Shareholders may receive the benefit from the franking credits of up to 13 cents per Virtus Share attached to the Special Dividend (depending on their tax status and specific circumstances, as set out below in section 4).

Under the terms of the BGH Offer, the BGH Bidders are entitled to deduct the amount of the Special Dividend from the consideration under the BGH Offer if the record date for the Special Dividend occurs before the BGH Bidders have paid Virtus Shareholders who have accepted the BGH Offer. Accordingly, the consideration payable by the BGH Bidders will be reduced from \$8.155 per Virtus Share to \$7.855 per Virtus Share, although the amount of cash accepting Virtus Shareholders will receive in total from the BGH Bidders and Virtus is still \$8.155 per Virtus Share.

4 Tax implications of the Special Dividend

4.1 Overview

This section 4 provides a summary of the general Australian income tax consequences for Virtus Shareholders in relation to the Special Dividend.

The information contained in this section 4 is only a general guide and is not intended to be an authoritative or complete statement of the tax law applicable to the specific circumstances of any Virtus Shareholder and should not be relied upon by Virtus Shareholders as tax advice. Virtus Shareholders are strongly advised to seek their own professional advice with respect to the tax implications of the BGH Offer.

The following is a general summary of the Australian income tax implications for Virtus Shareholders who hold their Virtus Shares on capital account of receiving the Special Dividend.

This summary does not apply to all Virtus Shareholders, including those who:

- acquired their Virtus Shares pursuant to an employee share plan;
- hold their Virtus Shares as revenue assets, as trading stock, or are subject to the Taxation of Financial Arrangements provisions in Division 230 of the *Income Tax Assessment Act 1997* or other special taxation rules;
- are financial institutions, insurance companies, partnerships, tax exempt organisations or dealers in securities;

- are shareholders who changed their tax residency while holding their Virtus Shares; or
- are foreign shareholders who own their Virtus Shares through a permanent establishment in Australia.

This summary has been prepared on the basis of Australian income tax law and administrative practice as at the date of this document. References to Australian resident Virtus Shareholders are to Virtus Shareholders who are residents of Australia for Australian income tax purposes and are not tax resident in any other jurisdiction.

4.2 Tax ruling

Virtus is seeking a class ruling from the Australian Taxation Office (**ATO**) seeking confirmation on specific Australian tax implications for Virtus Shareholders of the Special Dividend.

Specifically, the class ruling application seeks the ATO's confirmation:

- that the Special Dividend does not constitute part of the capital proceeds received for the disposal of Virtus Shares;
- of the tax implications for Virtus Shareholders of the receipt of the Special Dividend and any associated franking credits; and
- whether the ATO will seek to apply any of the relevant integrity measures to the Special Dividend.

While it is anticipated that the views in the class rulings should be consistent with the summary in this section 4, it is possible that the ATO's views may differ from this summary.

The final class ruling is only expected to be issued after payment of the Special Dividend. When published, the final class ruling will be available on the ATO's website (<https://www.ato.gov.au/>) and Virtus' website (<https://www.virtushealth.com.au/>).

4.3 Australian income tax implications of the Special Dividend

(a) Australian resident individuals, companies and complying superannuation entities

The Special Dividend should constitute assessable income of an Australian resident Virtus Shareholder that is an individual, a company (including a trust that is a corporate tax entity) or a complying superannuation entity. Such Australian resident Virtus Shareholders should include the Special Dividend in their assessable income in the year that the Special Dividend is paid, together with any franking credits attached to the Special Dividend (subject to certain conditions, outlined below).

Such Virtus Shareholders should be entitled to a tax offset equal to any franking credits attached to the Special Dividend that is paid by Virtus (subject to certain conditions, outlined below). Where the tax offset exceeds the tax payable on the Virtus Shareholder's taxable income, those Virtus Shareholders that are individuals or complying superannuation entities (but not those that are companies) may be entitled to a tax refund for the amount of the excess.

(b) Australian resident trusts

Virtus Shareholders who are trustees of a trust (other than a trust that is a corporate tax entity or a trustee of a complying superannuation entity) must include the amount of the Special Dividend, together with any franking credits received on the Special Dividend in determining the net income of the trust for the income year in which the Special Dividend is paid. The applicable laws relating to the treatment of dividends, and in particular franked dividends, for trusts are complex but, provided that certain conditions are satisfied, both the liability to pay tax on the Special Dividend (and any franking credits) and the tax offset provided by any franking credits should be able to flow through to the beneficiaries of the trust.

(c) Entitlement to utilise franking credits

In order to be entitled to claim a tax offset for franking credits paid on the Special Dividend, an Australian resident Virtus Shareholder must have held their Virtus Shares “at risk” for a period of at least 45 continuous days during the relevant qualification period (not including the date of acquisition or the date of disposal of the Virtus Shares within the relevant qualification period).

The relevant qualification period commences 45 days before the Special Dividend record date and ends on the day before the BGH Offer is or becomes unconditional.

(d) Application of dividend franking integrity measures

The ATO may apply certain integrity measures to prevent a Virtus Shareholder from being entitled to a tax offset for the franking credits attached to the Special Dividend. The class ruling application seeks the ATO’s confirmation that it will not apply any of those integrity measures in relation to the Special Dividend.

In the event that the ATO seeks to apply these integrity measures, the ATO may issue a determination that no franking credits are available to a Virtus Shareholder in respect of the Special Dividend; however, the franking credits would also not be included in a Virtus Shareholder’s assessable income. While the ATO is not expected to apply these integrity measures, although it is possible that the ATO’s views may differ from this summary.

(e) Non-resident Virtus Shareholders

Non-resident Virtus Shareholders should not be subject to Australian income tax on, including by way of having tax withheld from, the Special Dividend unless the ATO applies the integrity measures referred to above.

5 Accelerated payment terms

As disclosed in BGH’s sixth supplementary target’s statement dated 13 June 2022, ASIC has granted the BGH Bidders relief to accelerate the time for payment of the BGH Offer Consideration to Virtus Shareholders who accept the BGH Offer. BGH Bidders have said that they will now pay Virtus Shareholders who accept the BGH Offer by no later than 4 Business Days after:

- the date that the Prescribed Occurrences Condition is fulfilled or waived; and
- the date that you accept the BGH Offer.

If the Prescribed Occurrences Condition is fulfilled or waived by 27 June 2022, accepting Virtus Shareholders will not have any withdrawal rights under section 650E of the Corporations Act by reason of the extension of the Offer Period to 27 June 2022, as the BGH Bidders will pay the

BGH Offer Consideration to those accepting Virtus Shareholders no later than within one month of when they otherwise would have in the absence of any extension of the BGH Offer Period.

However, if the BGH Offer remains subject to the Prescribed Occurrences Condition and BGH Bidders vary the BGH Offer in a way that postpones for more than one month the time BGH Bidders have to meet their obligations under the BGH Offer, accepting Virtus Shareholders will be entitled to withdraw their acceptances of the BGH Offer. Virtus Shareholders will be notified of any such withdrawal rights at the time of the variation.

6 General

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

This Fifth Supplementary Target's Statement prevails to the extent of any inconsistency with either the Original Target's Statement, the First Supplementary Target's Statement, the Second Supplementary Target's Statement, the Third Supplementary Target's Statement or the Fourth Supplementary Target's Statement.

A copy of this Fifth 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 Fifth 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.

7 Authorisation

This Fifth 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: 14 June 2022