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Takeover Offer for Healius Limited – intention to withdraw Offer and cancel EGM

Australian Clinical Labs Limited (**ACL**) refers to its off-market takeover offer for all of the fully paid ordinary shares on issue in Healius Limited (**Healius**), the terms and conditions of which are set out in ACL's replacement bidder's statement dated 14 April 2023 (**Bidder's Statement**)¹ (the **Offer**)².

Intention to not waive breaches of Conditions and to withdraw Offer

The ACL Board has carefully considered recent developments in relation to Healius and its business, including:

- the significant deterioration in its trading performance since ACL announced its intention to make the Offer, culminating in the announcement of 1H FY24 guidance of \$14 million-\$17 million in underlying EBIT (**1H Guidance**);³ and
- the recent pro rata, accelerated, non-renounceable entitlement offer (**Entitlement Offer**) undertaken by Healius to raise \$187 million, the proceeds of which will be used to satisfy the requirement of its lenders that it reduce net debt by at least \$150 million by 30 June 2024.

These factors have resulted in the Healius Share price declining by 45% since ACL announced its intention to make the Offer on 20 March 2023.⁴ The ACL Board is concerned based on the 1H Guidance that Healius is at risk of a significant statutory NPAT loss in 1H FY24.

Given this, the ACL Board no longer believes that the Offer Consideration of 0.74 ACL Shares for each Healius Share (under which ACL Shareholders would hold 32% of the Merged Group⁵) fairly reflects the relative contribution that each of Healius and ACL would make to the Merged Group.

¹ As supplemented by ACL's second supplementary bidder's statement dated 22 May 2023, ACL's third supplementary bidder's statement dated 9 October 2023 (**Third Supplementary Bidder's Statement**) and ACL's fourth supplementary bidder's statement dated 9 November 2023, and as varied by ACL's notice of variation of the Offer dated 20 July 2023 and ACL's notice of variation of the Offer dated 1 November 2023.

² Capitalised terms used in this announcement have the same meanings given to them in the Bidder's Statement, unless the context requires otherwise.

³ See Healius' ASX announcement titled "*Trading update, equity raising and capital structure initiatives*" on Monday, 20 November 2023.

⁴ Based on a Healius Share price of: (i) \$2.78 as at the close of trading on the Last Practicable Trading Date, and (ii) \$1.52 as at the close of trading on the ASX on Thursday, 14 December 2023 (being the last trading day before the date of this announcement).

⁵ If ACL acquired 100% of the Healius Shares on issue as at the date of the Bidder's Statement under the Offer. This does not take into account the effect of the issue of new Healius Shares under the Entitlement Offer. As noted in ACL's ASX announcement on Tuesday, 21 November 2023 titled "*Takeover Offer for Healius – Healius' announced Entitlement Offer*", the Offer does not extend to any Healius Shares issued under the Entitlement Offer.

ASX Announcement

As previously noted by ACL, a number of Conditions have been breached since the date of the Offer, including Conditions relating to Healius' financial position and performance and its share capital.⁶

Given the significance of these Conditions to the Offer, ACL has determined that it does not intend to waive the breaches of these Conditions (and declare the Offer free from the relevant Conditions). ACL intends to apply to ASIC for consent to the withdrawal of the Offer pursuant to section 652B of the Corporations Act.

Despite its decision, the ACL Board continues to believe that the benefits of a merger between ACL and Healius, on appropriate terms, are compelling and that the two companies have the potential to be worth significantly more together than as standalone entities. However, the ACL Board is concerned that there is significant uncertainty at the current point in time as to what an appropriate merger ratio would be given the difficulty in assessing the actual performance that Healius is likely to achieve in FY24.

The ACL Board intends to closely monitor the performance of Healius in the coming months and remains open to a merger between the two companies.

ACCC decision in relation to the Proposed Merger

ACL also notes that the Australian Competition and Consumer Commission (**ACCC**) today announced that it opposes the combination of ACL and Healius.

While this decision is disappointing, based on the ACCC's statement of issues this was not unexpected. The decision by the ACCC now gives ACL the ability to challenge the ACCC's position directly in the Federal Court if it makes a new offer for Healius in the near future (however, ACL notes that there is no certainty that it will make such an offer). It is important to note that the ACCC's decision is not a conclusive finding of law. ACL remains confident that a combination of ACL and Healius would not substantially lessen competition, and ACL is now in a position to prosecute this view directly in the Federal Court.

It is important to note that the ACCC has also stated to ACL that it would be open to ACL to re-engage with the ACCC and offer a revised remedy (divestment) package following the ACCC's decision today. ACL has engaged in discussions with several parties who have expressed interest in acquiring assets that would comprise a revised divestment package intended to address the ACCC's concerns. In the event that ACL makes a new offer for Healius in the near future, it may choose to propose such a revised package to the ACCC.

Next steps

ACL will update Healius Shareholders and the market on the outcome of its application to ASIC for consent to the withdrawal of the Offer.

In the event that this consent is not granted, the Offer will lapse at the end of the Offer Period, which currently closes at 7:00pm (Sydney time) on Thursday, 29 February 2024.

If a Healius Shareholder has accepted the Offer (and has not validly withdrawn that acceptance) and the Offer lapses or is withdrawn (as described above), that Healius Shareholder's acceptance (and the contract arising from that acceptance) of the Offer will become void with effect from the relevant time and, if that occurs, that Healius Shareholder will be free to deal with the relevant Healius Shares from that time.

⁶ These Conditions include the Conditions in Sections 11.9(f)(i) to 11.9(f)(iii) (*Announcements regarding Healius' expected FY23 financial performance*), 11.9(g)(ii) to 11.9(g)(v) (*Healius' FY23 financial results*), 11.9(m)(i) (*No material adverse change*), 11.9(p)(ii)(A) and 11.9(p)(ii)(B) (*No other material occurrences*) and 11.9(r)(ii) (*Debt Covenants*), Sections 11.9(o)(iv) (*Prescribed Occurrences Condition*) and 11.9(x) (*No issue of convertible securities, derivatives or other rights*) of the Bidder's Statement. See the Third Supplementary Bidder's Statement and ACL's announcement to the ASX on 21 November 2023 titled "Takeover Offer for Healius – Healius' announced Entitlement Offer" for details of the breaches of these Conditions.

ASX Announcement

ACL gives notice that, in accordance with rule 5.1(c) of ACL's constitution, the ACL Board has resolved to cancel the ACL EGM that was scheduled to be held at 3:00pm (Sydney time) on Friday, 16 February 2024 as, given that the Offer will be withdrawn or lapse, it is no longer necessary or appropriate for ACL Shareholders to consider or pass the resolution that would be put to ACL Shareholders at the ACL EGM, which related solely to the approval of the issue of ACL Shares as Offer Consideration.

The ACL Board intends to provide ACL Shareholders with more information regarding its ongoing growth strategies, both organically and through potential strategic acquisitions, at the time of the announcement of its 1H FY24 results, which are due to be released in February 2024.

– ENDS –

This announcement was authorised for release to the ASX by the ACL Board.

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About Australian Clinical Labs

ACL is a leading Australian private provider of pathology services. Our NATA accredited laboratories perform a diverse range of pathology tests each year for a range of clients including doctors, specialists, patients, hospitals and corporate clients. ACL is one of the largest private hospital pathology businesses nationally. ACL is focused on its mission of combining talented people, and medical and scientific leadership, with innovative thinking and technologies to empower decision making that saves and improves patients' lives.