



In the matter of Pinnacle VRB Ltd No. 10  
[2001] ATP 21

**Catchwords**

*Mistaken and erroneous acceptance of bid by broker – acceptance of bid without consent – interim orders made by Panel to preserve status quo*

*Corporations Act 2001 (Cth), section 657E*

On 28, September 2001, we made interim orders restraining any further dealings in various shares including those which are the subject of the disputed acceptances in the application by Ronay Investments Pty Ltd and Mr David Pethard for a declaration of unacceptable circumstances received on 26 September 2001 (the Pinnacle No.10 application).

Ronay alleges that CSFB, Ronay's broker, erroneously and mistakenly authorised acceptance of Vantek's bid by Ronay and a number of other Pinnacle shareholders. Ronay states that it Credit Suisse First Boston Australia Equities Private Limited (CSFB) erroneously and mistakenly accepted Vantek's offer on behalf of Ronay and other Pinnacle shareholders. Ronay also complains that Vantek has refused to consent to a reversal of the transaction which is necessary under the SCH Business Rules before the acceptances could be reversed.

## REASONS FOR DECISION

These are our reasons for our decision to make interim orders restraining any further dealings in, and the exercise of any rights in relation to, the shares the subject of the disputed acceptances (Disputed Shares) in the application by Ronay Investments Pty Ltd and Mr David Pethard for a declaration of unacceptable circumstances received on 26 September 2001 concerning Vantek (VRB) Technology Corp's (Vantek) takeover bid (the Bid) for Pinnacle VRB Limited (Pinnacle) (the Application).

### *The Panel*

1. The Panel in this matter is constituted by Marian Micalizzi (sitting President), Robyn Ahern (sitting Deputy President) and Alison Lansley.

### *The Application*

2. Ronay Investments Pty Ltd (**Ronay**) and Mr David Pethard (together, the **Applicants**) applied on 26 September 2001 for interim and final orders and a declaration under sections 657A, 657D and 657E of the Corporations Act 2001 in relation to purported acceptance by Ronay, in respect of some of its shares in Pinnacle, of Vantek's takeover offer on Saturday, 22 and Sunday, 23 September 2001.

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3. The Applicants deny that Ronay gave any authorisation or instruction to its broker, CSFB to initiate acceptance of the Bid and that accordingly, the acceptance was given as a result of a mistake by CSFB. The Application notes that CSFB has requested that the transaction be reversed in accordance with the Business Rules of Securities Clearing House (SCH) which governs the administration of the Clearing House Electronic Sub-register System (CHESS) (the **SCH Business Rules**). Under the SCH Business Rules, the acceptance can only be reversed or withdrawn if Vanteck consents to that reversal or withdrawal. Vanteck has declined to give that consent.
4. The Applicants have applied for a declaration that Vanteck's refusal to allow a withdrawal or reversal of the purported acceptance of the Vanteck offer by CSFB on behalf of Ronay constitutes unacceptable circumstances.
5. Mr Pethard is a director of Pinnacle and also controls Ronay. Mr Pethard recommended that shareholders reject Vanteck's offer and continues to make that recommendation. Pinnacle has 3 directors - Messrs John Anderson, Peter Williams and David Pethard.
6. Until 20 August 2001, Messrs John Fraser, Rodney Duncan, David Lenigas and John Hawkins, as nominees of Vanteck and its controlling shareholder, were also directors of Pinnacle.
7. On 20 August 2001, Vanteck notified Pinnacle that it intended to requisition a general meeting of Pinnacle under section 249F of the *Corporations Act* to consider the removal of Mr David Pethard and Mr Peter Williams as directors of Pinnacle.
8. On or around 24 August 2001, Vanteck's notice of general meeting and accompanying materials were distributed to all Pinnacle shareholders. The meeting, previously scheduled to be held on 1 October 2001, has now been postponed until a date not earlier than 15 October 2001 pending the outcome of the Panel's decision in relation to the Pinnacle No.9 application.
9. The Application states that the mistaken acceptance of the Bid by CSFB on behalf of Ronay and the other affected Pinnacle shareholders would have the effect of giving Vanteck control of Pinnacle. Vanteck would control sufficient votes at the upcoming general meeting to be able to determine the outcome of the resolution to be put removing Mr Pethard and Mr Williams as directors of Pinnacle and that accordingly, if Vanteck were allowed to keep the acceptances it would give rise to unacceptable circumstances.

#### *Application for interim orders*

10. The Applicants applied for the following interim relief:

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- “4. Interim orders
- 4.1 Pending the making of a declaration of unacceptable circumstance and the orders requested, the Panel is requested to make interim orders as follows:
- a) that Vanteck make an ASX release and public announcement that Vanteck’s entitlement to the Shares is the subject of an application by Ronay and Mr Pethard to the CSP;
  - b) that Vanteck be precluded from exercising any rights attached to the Shares, including voting the Shares pending the making of final orders;
  - c) that Vanteck, its directors and officers cease the making of any public statements to the effect that Mr Pethard and/or Ronay have accepted the Vanteck offer.”

#### *Application for final orders*

11. The Applicant applied for the following final orders:

#### **“3. Orders Sought**

- 3.1 The Panel is requested to make a declaration of unacceptable circumstance in relation to the refusal to allow a withdrawal of the acceptance or a reversal of the purported acceptance of the Vanteck offer by CSFB on behalf of Ronay. The remedies and reliefs sought pursuant to the declaration of unacceptable circumstance by the Panel are as follows:
- (a) that Vanteck be ordered to accept the withdrawal of the acceptance made by CSFB under clause 16.5 of the SCH Business Rules; or
  - (b) that SCH be ordered to reverse the acceptance on the basis that the acceptance was clearly made by mistake and void.”

#### *Proceedings*

12. The Panel met on 26 and 27 September 2001. It decided to conduct proceedings in relation to the Application and to consider whether to make any interim orders. The Panel prepared draft interim orders on 27 September and provided these to interested parties with an opportunity to make submissions before 9.00am on Friday, 28 September and rebut any submissions by 10.00am that day. The draft interim orders contemplated restricting activity in relation to the Disputed Shares held by all affected Pinnacle shareholders as well as Ronay. The draft interim orders were provided to the following interested parties:

- Vanteck
- Pinnacle
- The Applicant
- CSFB and its customers, being the affected Pinnacle shareholders
- ASX Perpetual Registrars Pty Ltd (Vanteck’s registry)
- ASX

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- ASX Settlement & Transfer Corporation (the securities clearing house)

We received submissions and rebuttals from Vanteck, CSFB, ASX Settlement & Transfer Corporation and rebuttal submissions from the Applicants. The Panel considered those submissions on the morning of Friday, 28 September 2001 and made this decision.

#### *Jurisdiction*

13. The Applicants sought interim relief, essentially to preserve the *status quo* of the various parties' rights, so that final relief might be effective, when and if it was granted. Accordingly, in assessing the application for interim relief, we considered the possible outcomes of the Application for final relief.
14. None of the submissions received disputed the Panel's ability or reasoning for contemplating the interim orders – being to preserve the *status quo*.
15. Vanteck's submissions stated that on 26 September 2001, Vanteck sent an order to its Canadian registry authorising the issue of Vanteck shares and share certificates (**Vanteck Shares**) to the affected Pinnacle shareholders. It therefore argued that the proposed interim order to prevent Vanteck issuing the Vanteck Shares was obsolete. Vanteck further submitted that the interim orders should restrict not only Vanteck from exercising any rights in relation to the Disputed Shares but also the affected Pinnacle shareholders and that the securities clearing house should be restrained from reversing or withdrawing any transfer of the Disputed Shares during the period of operation of the orders, so that the *status quo* is preserved.
16. CSFB submitted that if it receives ratification from any affected Pinnacle shareholder during the period of operation of the interim orders, then it should be entitled to allow the acceptance. CSFB suggested amendments to the draft interim orders to carve out those Pinnacle shares to which this would apply.
17. The Applicants submitted in rebuttal that given CSFB had made the acceptances by mistake, the transactions are void and therefore it would be unjust and unfair not to allow them to exercise their voting rights in respect of the Disputed Shares while the Panel deals with the Application. They also indicated that they had no objection to the securities clearing house reversing or withdrawing the acceptances for the Disputed Shares. In addition, they submitted that, in respect of Vanteck's submission regarding the issue of Vanteck Shares, Vanteck's actions were premature given that it was on notice since the evening of 24 September 2001 that the acceptances by CSFB had not been authorised.
18. The Panel considers that it is justified in making interim orders if:

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- (a) the orders prevent some of the harm which might result from unacceptable circumstances, while it is determined whether such circumstances exist and what relief (if any) should be given in relation to the circumstances;
- (b) the detriment suffered by those adversely affected by the orders is less than the detriment which would be suffered if no orders were made; and
- (c) reasonable precautions are taken to reduce or eliminate the detriment to those adversely affected by the orders.

#### *Balance of Convenience*

19. If the Applicants are entitled to the final relief they seek against Vantek, the potential is high for them to be adversely affected by allowing Vantek to process the acceptances and finalise the issue of the Vantek Shares as consideration, particularly given the upcoming Pinnacle general meeting and the status of the Bid. On the other hand, the Panel does not consider that Vantek would suffer any significant detriment as a result of the *status quo* being preserved by the interim orders. We acknowledged Vantek's submissions that restrictions should also apply to the affected Pinnacle shareholders and amended the final form of the orders accordingly.
20. We note that after the Application was made to the Panel and received by interested parties, on 26 September Vantek took steps to issue the Vantek Shares as consideration for the Disputed Shares. This further indicated to us that the interim orders would be appropriate to preserve the *status quo*.

#### *Decision*

21. Accordingly, we consider it appropriate to make the interim orders set out in the Annexure preserving the *status quo*, especially given that Vantek took steps on 26 September to issue the Vantek Shares through its Canadian registry, and that little or no detriment would result.
22. The interim orders have effect for 2 months or until these proceedings are determined.

**Marian Micalizzi**

**President of the Sitting Panel**

**Decision dated 4 October 2001**

**Reasons published 4 October 2001**

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### **Reasons for Decision – Pinnacle VRB Ltd No. 10**

Pinnacle VRB Limited

Application by Ronay Investments Pty Ltd and Mr David Pethard

Interim Order

Ronay Investments Pty Ltd (**Ronay**) and Mr David Pethard have made an application to the Corporations and Securities Panel (the **Panel**) for a declaration of unacceptable circumstances under section 657A of the Corporations Act. The circumstances (the **Relevant Circumstances**) that the application seeks to have declared to be unacceptable circumstances relate to acceptances, or purported acceptances, of the takeover bid (the **Bid**) made by Vanteck (VRB) Technology Corp (**Vanteck**) for Pinnacle VRB Limited (**Pinnacle**) which were initiated on behalf of Ronay by Credit Suisse First Boston Australia Equities Private Limited on or about Monday 24 September 2001 (the **Ronay Acceptances**).

**Pursuant to section 657E of the Corporations Act, the Panel orders that:**

1. Vanteck and the parties referred to in the schedule to this order (the **CSFB Clients**) do not exercise any voting rights or other rights attached to the fully paid ordinary shares in Pinnacle referred to in the schedule to this order (the **Relevant Securities**);
2. Vanteck does not dispose of, transfer or charge any of the Relevant Securities or any interest in any of the Relevant Securities;
3. Pinnacle does not register any transfer or transmission of the Relevant Securities;
4. Neither Vanteck nor ASX Perpetual Registrars Limited takes any action to complete any transfer of the Relevant Securities to Vanteck;
5. The securities clearing house (as defined in the Corporations Act) does not take any action to complete, reverse or withdraw any transfer of the Relevant Securities to Vanteck or any other person (including, without limitation, by taking any of the action referred to in Rule 16.6.2 of the SCH Business Rules);
6. Vanteck does not take any further steps to issue, or to complete the issue of, any ordinary shares in Vanteck (**Vanteck Shares**) as consideration for the Relevant Securities under the Bid;
7. The CSFB Clients do not dispose of, transfer or charge any of the Vanteck Shares that may have been issued as consideration for the Relevant Securities under the Bid or any interest in any of those Vanteck Shares;
8. The CSFB Clients do not exercise any voting rights or other rights attached to any Vanteck Shares that may have been issued as consideration for the Relevant Securities under the Bid;

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9. Any exercise of the voting or other rights attached to the Relevant Securities or to any Vantech Shares issued as consideration for the Relevant Securities under the Bid be disregarded; and
10. Vantech and each of Vantech's directors and officers does not make any public statement that acceptances of the Bid have been, or may have been, received in respect of any of the Relevant Securities without stating that an application has been made to the Panel by Ronay and Mr David Pethard seeking a withdrawal of the Ronay Acceptances,

**in each case, without the prior consent of the Panel, for a period of 2 months from the date of this order.**

If, before the end of the period of 2 months specified above, proceedings for a declaration under section 657A in relation to the Relevant Circumstances (and all related proceedings for an order under section 657D) are determined, this order will cease to have effect.

Dated: 28 September 2001

Signed:

*(sgd Alison Lansley)*

ALISON LANSLEY

#### Schedule

SHAREHOLDER	NUMBER OF RELEVANT SECURITIES
Mrs Donna Margaret Luxton 62 Peel Street Redland Bay Qld 4165	11,000
Mr Edward Albert French & Mrs Lynne Shirley French PO Box 39 (Roys Road) Palmwoods Qld 4555	4,376
Mr Philip Ang 1122 Malvern Road Malvern Vic 3144	29,167
Mr Gavin Bust 6 Atheldene Drive Glen Waverley Vic 3150	1
Eastcoast Air & Electric Pty Ltd (Eastcoast Super Fund A/c)	30,000

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C/- S Pollard & M Bonnici PO Box 2020 Taren Point NSW 2229	
Lazar Mayer Pty Ltd C/- H Jolson Room 1711 Owen Dixon Chambers West 205 William Street Melbourne Vic 3000	12,000
Mr Warren Sherry Neill 15 Vincent Court Campbelltown SA 5074	620
Mrs Mary Murray 22 Katrina Avenue Mona Vale NSW 2103	3,445
Mitpan Investments Pty Ltd 5 Paddys Lane Park Orchards Vic 3114	795,696
Ronay Investments Pty Ltd Unit 22 33 Queens Road Melbourne Vic 3004	682,441
Mr Benito Randazzo & Mrs Mary Fandazzo 56 Summerhill Road Reservoir Vic 3073	180
Mr Brian John Bugeja & Mrs Judyanny Elizabeth Bugeja 7 Thornton Close Hallam Vic 3803	10,000
Amecoy Pty Ltd 24 Pakenham Street Mount Lawley WA 6050	90,000
Ms Jan Berg 24 Pakenham Street Mount Lawley WA 6050	35,000
Mr Kurt Smyth & Mrs Beverley Smyth (Eighth Amacorp Pty Ltd SSF T A/C) 13 Market Street Essendon Vic 3040	5,000



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Foxwell Investments Pty Ltd 7 Riverside Drive Kew East Vic 3102	5,000
Mr Ken Sturrock & Mrs Helen Sturrock (K&H Sturrock Superannuation A/C) C/- Cavendish Superannuation PO Box 7803 Cloisters Square WA 6850	36,750