



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

Catchwords

Efficient market – final orders – interim orders – mistaken acceptance of bid by broker – acceptances without consent – reversal of acceptance – consent to reversal/withdrawal – withdrawal of acceptance – acceptance by mistake void – public interest – buy in replacement shares – void contracts of acceptance – unfair prejudice – jurisdiction of Panel

Corporations Act 2001 (Cth), sections 602(c), 654A, 657A, D and E

Business Rules of the Securities Clearing House, r 16.5

An application under section 657C of the Corporations Act by Mr David Pethard and Ronay Investments Pty Ltd for a declaration of unacceptable circumstances, interim orders and final orders from the Panel in relation to Vantek (VRB) Technology Corp’s (Vantek) takeover bid (the Bid) for Pinnacle VRB Limited (Pinnacle). The Panel has declared that unacceptable circumstances exist, and has made orders unwinding the Disputed Acceptances.

THE APPLICATION

1. Mr. David Pethard and Ronay Investments Pty Ltd (**Ronay**) (together, the **Applicants**) applied under sections 657A, D and E of the Corporations Act. We received the application on 26 September 2001 (the **Application**). The Applicants have applied for a declaration of unacceptable circumstances, interim orders and final orders from the Panel in relation to Vantek (VRB) Technology Corp’s (**Vantek**) takeover bid (the **Bid**) for all of the ordinary shares in Pinnacle VRB Limited (**Pinnacle**).
2. The sitting Panel in this matter is Marian Micalizzi (sitting President), Robyn Ahern (sitting Deputy President) and Alison Lansley.
3. The Panel met on 27 September and decided under Regulation 20 to conduct proceedings in relation to the Application.
4. The Application relates to a purported acceptance by Ronay, in respect of some of its shares (the **Ronay Shares**) in Pinnacle, of Vantek’s takeover offers on Saturday and Sunday, 22 & 23 September 2001.
5. The Applicants deny that Ronay gave any authorisation or instruction to its broker, Credit Suisse First Boston Australia Equities Private Limited (**CSFB**) to initiate acceptance of the Bid and that accordingly, the acceptance was given as a result of a mistake by CSFB.
6. The Application notes that CSFB requested that the transaction be reversed in accordance with the Business Rules of the 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,

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the acceptance can only be reversed or withdrawn if Vanteck consents to that reversal or withdrawal. Vanteck has declined to give that consent.

7. The Applicants 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.

Interim Orders

8. The Applicants sought the following interim orders:
 - (a) that Vanteck make an ASX release and public announcement that Vanteck's entitlement to the Ronay 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 Ronay Shares, including voting the Ronay Shares pending the making of final orders; and
 - (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.
9. The Panel granted those interim orders (a copy of which is attached) on 28 September 2001. The interim orders applied to all the Disputed Acceptances, not only the Ronay Shares. The Panel has published separate reasons for its decision to make those interim orders.

Final Orders

10. The Applicants also sought final orders that:
 - (a) Vanteck be required to accept the withdrawal of the Ronay acceptance made by CSFB under clause 16.5 of the SCH Business Rules; or
 - (b) SCH be ordered to reverse the acceptance on the basis that the Ronay acceptance was clearly made by mistake and void.

Facts

11. The facts set out in Annexure 1 are not disputed by the parties (with one exception about a relatively non-material time issue which is noted in the Annexure).
12. Essentially, a misunderstanding within CSFB's back office caused a CSFB employee to mistake a list of ticks, which represented that telephone contact had been made from CSFB's back office to its client advisers, as consent to accept the Vanteck bid (**Disputed Acceptances**). One of the factors which influenced CSFB's employee to enter acceptances over the weekend of 22-23 September, without further checking, was a mistaken belief that Vanteck's bid was closing on 21 September (whereas Vanteck actually extended its bid on the last day of its bid to a new closing date of 12 October 2001).

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13. The Disputed Acceptances related to approximately 17 clients of CSFB (the **CSFB Clients**) and approximately 2 million shares which constitute approximately 3 per cent of the voting shares in Pinnacle.
14. It has not been disputed that the Disputed Acceptances were made without Ronay's, or the other CSFB Clients', consent.
15. The error was discovered before the next business day and was notified quickly and without delay to Vantek's registry prior to the commencement of trading on Monday 24 September 2001. The error was also notified to Vantek's solicitors later that morning.
16. Vantek took steps to continue the processing of the Disputed Acceptances after it had been put on notice of the dispute, and proceeded to take steps to issue shares in Vantek as consideration for the Disputed Acceptances after becoming aware of the Application. It is not clear whether the Vantek board was aware, at the time of its meeting on 24 September, that the Disputed Acceptances were in fact in dispute. The Panel does not consider it necessary to decide that.
17. Vantek has refused to consent to the withdrawal.
18. CSFB has written to all of the CSFB Clients giving them an opportunity to ratify the acceptance of Vantek's offer. At the time of writing these reasons, the Panel has been informed of only one CSFB Client consenting to ratify the acceptance.

Basis for Decision

Jurisdiction

19. It has been suggested by Vantek that the Panel does not have jurisdiction to consider the matter because the error by CSFB did not constitute unacceptable circumstances. Vantek argued that Ronay would have to show that the Disputed Acceptances constituted a mistake, under contract law.
20. The Panel does not accept this argument. It is sufficient for the Panel to determine that unacceptable circumstances exist having regard to the effect on the potential control of Pinnacle that allowing Vantek to retain the shares would have, and that it would not be against the public interest to make a declaration in relation to those circumstances.
21. The Panel considers that the acquisition of control or potential control of companies in Australia would not take place in an efficient, competitive and informed market if it were based on acceptances clearly made other than in accordance the intentions of their beneficial owners.

Section 657A

22. Vantek, in its application, outlined the elements of section 657A which it considered the Panel must take into account before being in a position to make a declaration of unacceptable circumstances. The Panel has also considered the

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legislative provisions which relate to its declaration making power and is satisfied that:

- (a) *The circumstances are unacceptable*, in that the Panel considers it unacceptable that the Disputed Acceptances were made without the CSFB Clients' consent and Vanteck has refused to consent to the process of unwinding the mistaken acceptances;
 - (b) *The circumstances relate to the control, or potential control of Pinnacle*. We considered that a group of shares comprising three percent would likely have some effect on the control of Pinnacle, given the current position of Vanteck in its bid for Pinnacle, and given that some at least of the relevant three percent came from persons opposed to the bid. This view was reinforced by Vanteck's submission that its bid "could be adversely affected" by any orders reversing the Disputed Acceptances.
 - (c) Vanteck also asserts later in its submissions that the Disputed Acceptances "will not give, and has not given, Vanteck control of Pinnacle". The Panel does not accept that Vanteck has posed the proper test for the Panel to consider in relation to the effect on control of the Disputed Acceptances. The Panel considers that 3% of Pinnacle shares would be likely to have some effect on the potential control of Pinnacle particularly given Vanteck's current level of acceptances and the stage of Vanteck's bid;
 - (d) *It is not against the public interest* for a clearly mistaken acceptance, by a broker, against the wishes of a client, to be reversed and to allow the direct wishes of the holders of Pinnacle shares to determine the outcome of Vanteck's takeover bid; and
 - (e) *The market for control of Pinnacle would not be efficient or competitive* if it were determined, at least in part, by the clearly mistaken acceptance by a broker, against the wishes of the owners of the relevant shares.
23. The Panel has considered the purposes of Chapter 6 of the Corporations Act. The Panel believes that the purposes of the Corporations Act do not include allowing Vanteck to retain the relevant shares in these circumstances.

Section 654

24. Vanteck asserted that the Panel should not make any order unwinding the Disputed Acceptances because to do so would cause Vanteck to breach section 654A of the Corporations Act which prohibits, unless under circumstances not relevant to this matter, a bidder disposing of bid class securities during the bid period.
25. The Panel does not accept that the policy of section 654A was intended to prevent Vanteck unwinding the Disputed Acceptances. Unwinding an acquisition by the bidder due to an erroneous acceptance by a broker does not raise the harm against which section 654A is directed, of a bidder offering to

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acquire shares under a bid, and at the same time actively and deliberately disposing of them.

26. The Panel does not consider that Vanteck would be unfairly prejudiced by any order it made which required Vanteck to do something which, absent the Panel's order, would be prohibited by section 654A. Compliance with the Panel's order, made in recognition of the existence of section 654A, must override any obligation of Vanteck not to reverse the Disputed Acceptances.

Binding Contracts

27. Vanteck asserted that the Panel should not unwind binding contracts formed between Vanteck and the CSFB Clients. It asserted that to do so would cast doubt on the security of Australian securities contracts for Australian and international securities markets participants. It suggested that such an order would reduce local and international confidence in the safety of property rights in Australia. Finally, Vanteck asserted that reversing off market transactions, made in error, and notified to the bidder and the market in a timely manner, would overturn the principle of commercial certainty of market transactions and the certainty and integrity of trading on ASX.
28. The Panel considers that Vanteck's submissions hold little weight in the circumstances of this case.
29. The Panel recognises that the contracts formed as a result of CSFB sending valid CHESSE messages to SCH were formed in good faith by Vanteck, and are, absent any action by the Panel, legally binding. However, the legality of the contracts has never been at issue in this matter.
30. The Panel does not consider that unwinding legally sound contracts is a step to be taken lightly. However, the Panel considers the particular, clear, facts of the case warrant it. The decision will not set an unfortunate precedent in Australia, and will be recognized for what it is by local and international market participants.

Unfair Prejudice to Vanteck

31. The Panel does not consider that any unfair prejudice will flow to Vanteck if the Panel orders the Disputed Acceptances to be unwound.
 - (a) Vanteck was advised very quickly, before any market or other reasonable reliance had been made on them, that CSFB considered the Disputed Acceptances to have been made erroneously;
 - (b) Vanteck had it within its power to slow or suspend the processing of the Disputed Acceptances;
 - (c) It is unlikely to cost Vanteck any material sums to unwind the transactions and cancel the Vanteck shares issued as consideration for the Disputed Acceptances (the **Vanteck Shares**);
 - (d) Vanteck was aware of the Application to the Panel by the time it issued the Vanteck Shares;

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- (e) Any of the CSFB Clients who wished to accept the Vanteck bid has been given an opportunity to ratify CSFB's acceptance, and any others will have an opportunity to accept the Vanteck bid, if they wish, after the Disputed Acceptances have been reversed and the shares are back in the CSFB controlled positions; and
 - (f) The Panel does not accept Vanteck's submission that "its bid for Pinnacle could be adversely affected" by reversing the Disputed Acceptances, since it will merely be restored to the position it held prior to the Disputed Acceptances.
32. The Panel received submissions that both Ronay and Vanteck have a right of indemnity against CSFB under rule 16.4.5 of the SCH Business Rules in respect of losses arising from CSFB having made the Disputed Acceptances. Vanteck submitted that it cannot be sure what losses CSFB will admit to Vanteck having suffered as a result of CSFB having breached its warranty that it had authority to make the Disputed Acceptances and that therefore this may, in these circumstances, be an inadequate remedy for Vanteck. CSFB submitted that Vanteck would be free to pursue its rights under the SCH Business Rules but also stated that it would not regard Vanteck as suffering loss if the acceptances were reversed. While the Panel notes that there may be some uncertainty regarding Vanteck's ability to recover any loss from CSFB under the SCH Business Rules, it is not persuaded that this is a sufficient reason for deciding that the Disputed Acceptances should not be reversed.
33. The Panel does not accept that the CSFB Clients' primary form of redress for the mistakes of CSFB in this particular case should be an action in damages against CSFB. That would not be efficient, timely or cost effective.

Prejudice if the Panel Declines the Application for Unwinding Orders

34. The Panel considers that requiring CSFB to "buy in" replacement shares on market for its clients would have unacceptable consequences on the market for Pinnacle shares. To buy in 3% of Pinnacle shares, within time for the CSFB Clients to vote at the forthcoming EGM, or even without such time pressure, would cause an unwarranted disturbance to the market for Pinnacle shares.
35. The Panel is also concerned that CSFB buying in the shares on market, for cash, while Vanteck had acquired the Disputed Acceptance shares for Vanteck shares, would be unlikely to advance the purpose of section 602(c) of Chapter 6 of the Corporations Act.
36. The Panel further notes that requiring CSFB to "buy in" replacement shares on market would not redress the shift in voting power in Pinnacle to Vanteck resulting from the Disputed Acceptances to the position that would have been the case had the unacceptable circumstances not occurred.

Law of Mistake

37. The Panel does not accept Vanteck's assertion that the law of mistake should have any relevance to this decision.

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SCH Business Rules – Adequate Remedy

38. The Panel agrees with Vanteck's assertion that the SCH Business Rules provide an adequate remedy to Ronay for any costs associated with the error by CSFB and reversing the Disputed Acceptances for i.e. that CSFB indemnify Ronay as an aggrieved holder of Pinnacle shares. The Panel considers that the SCH Business Rules also provide for an appropriate remedy for Vanteck to correct other aspects of the harm caused by the Disputed Acceptances, and that remedy is for Vanteck to consent to reversal of the Disputed Acceptances.
39. The Panel considers that Vanteck's submissions in relation to SCH Business Rule 16.5.4(b) are not relevant to this matter, as the rule relates to an entirely different situation i.e. where an acceptor is given a specific legal right under the Corporations Act to withdraw their acceptance.

CSFB's Authority to Accept on Behalf of Ronay

40. Vanteck asserted that CSFB, as agent appointed by Ronay and the other CSFB Clients, had full authority to accept on their behalf, and that Ronay and the other CSFB Clients have abrogated their rights against Vanteck by appointing CSFB as their agent.
- 40A. The Panel agrees with Vanteck that, when the Disputed Acceptances were made by CSFB, Vanteck was entitled to accept those acceptances on the assumption that CSFB was acting within its proper authority, until such time as Vanteck was advised by CSFB of its error. The Panel considers that Vanteck's submissions do not carry sufficient weight when the fact is that CSFB acted clearly (albeit mistakenly) against the wishes of the persons who may have appointed it as agent.

Reversing the Transactions

41. The Panel considers that its powers to make orders under section 657D of the Corporations Act, including the power to make remedial orders, enables it to void the contracts formed between Vanteck and the CSFB Clients by the Disputed Acceptances.
42. The Panel sought submissions from Vanteck as to whether the Vanteck Shares that it issued on Thursday 26 September, 2001, after the Application to the Panel had been made, could be cancelled. Vanteck advised that they can be cancelled.

Previous instances of this kind of mistake having been made in Australia

43. The Panel received submissions that this type of mistake in takeovers is uncommon. CSFB's solicitors cited examples where the bidder had willingly reversed the acceptance transactions in a takeover. Vanteck's solicitors provided submissions on this point which suggested that market practice is to buy shares back in to cure disputed sales. Vanteck's submissions suggested that buying in, and damages were the norm for disputed on-market sale or

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purchase transactions. However, the submissions are less relevant to the particular circumstances than CSFB's.

Market Practice

44. The Panel was unable to elicit material submissions on what is current market practice for dealing with requests for reversal of transactions within rule 16.5 of the SCH Business Rules, nor whether current market practice under that rule is appropriate for dealing with the situation that arises under this application.

Should the Panel Deal Only With Ronay's Shares

45. The specific application before the Panel was made only on Ronay's behalf. The Panel sought submissions on, and considered the question of, whether the Panel's decision, and any orders should apply to all the Disputed Acceptances made by CSFB on Saturday, 22 and Sunday, 23 September 2001, or only to that for the Ronay Shares.
46. All parties submitted that any order that the Panel made should apply to all of the shares that were the subject of the Disputed Acceptances, with the exclusion of any shares for which their beneficial owners had given CSFB instructions ratifying the Disputed Acceptance for those shares. At the time of writing these reasons, one Pinnacle shareholder has ratified a Disputed Acceptance, those shares are not subject to the orders the Panel has made.

Directors' duties

47. Vantek's submissions alleged that a declaration and orders that Vantek consent to reverse the Disputed Acceptances would cause Vantek's directors to take action which is contrary to their fiduciary obligations as directors. Vantek further submitted that in the course of its bid for Pinnacle, it is in the best interests of Vantek and its shareholders to obtain the maximum possible number of acceptances of the bid.
48. The Panel does not consider that the question of Vantek's directors' duties is relevant to the decision to be made by the Panel in these proceedings.

Costs

49. Vantek has sought an order that CSFB pay its costs, in the event the Panel makes a declaration of unacceptable circumstances. The Panel is considering whether it is appropriate to make an order in respect of costs and will seek further submissions from parties on costs.

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DECISION

50. The Panel considers that the circumstances resulting from the Disputed Acceptances, and Vanteck's refusal to consent to the reversal of the Disputed Acceptances, constitute unacceptable circumstances having regard to the effect on potential control of Pinnacle which allowing Vanteck to retain the Shares would have.
51. The Panel had made interim orders restraining dealing with, or voting, the Relevant Shares and the Vanteck Shares. Following its decision to declare the circumstances to be unacceptable, it has made orders which seek to return parties to the position they would have been in if the unacceptable circumstances had not occurred. Copies of the Panel's interim and final orders (as of this date) are attached.
52. The Panel does not consider that this decision should necessarily apply to other cases unless they involve a clearly unauthorised mistake, for a parcel of shares which the bidder considered significant and where the error was discovered very quickly and was notified to the bidder and to the market very quickly.
53. The Panel is aware that in some cases offerees who have accepted a bid may change their minds as to their preferences in the bid, perhaps after changed market circumstances, or a rival bid, and may seek to withdraw those acceptances and allege an error. The Panel does not see that this decision could be used as any precedent in such circumstances.

Marian Micalizzi

President of the Sitting Panel

Decision dated 4 October 2001

Reasons published 10 October 2001.



Pinnacle VRB Limited

Application by ronay investments pty ltd and mr david pethard

interim order

28 September 2001

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 Vanteck Shares issued as consideration for the Relevant Securities under the Bid be disregarded; and
10. Vanteck and each of Vanteck'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.

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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) C/- S Pollard & M Bonnici PO Box 2020 Taren Point NSW 2229	30,000
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

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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
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



IN THE MATTER OF PINNACLE VRB LTD NO. 10

**Corporations Act
Section 657A
Declaration**

5 October 2001

Whereas:

- A. Vanteck (VRB) Technology Corp (**Vanteck**) made offers to acquire all of the issued shares in Pinnacle VRB Limited (**Pinnacle**) on 30 July 2001;
- B. Credit Suisse First Boston Australia Equities Private Limited (**CSFB**) erroneously and mistakenly accepted Vanteck's offers on behalf of Ronay Investments Pty Ltd (**Ronay**) and other clients of CSFB (**CSFB Clients**) on Saturday, 22 September 2001 and Sunday, 23 September 2001 (the **Acceptances**);
- C. Upon becoming aware on the morning of Monday, 24 September 2001 that the Acceptances had been made erroneously and mistakenly, CSFB immediately contacted Vanteck's registry (ASX Perpetual Registrars Limited) requesting consent from Vanteck to the withdrawal or reversal of the Acceptances;
- D. On Monday, 24 September 2001 and Tuesday 25 September 2001 CSFB contacted Vanteck's solicitors, repeating its advice that CSFB had authorised the Acceptances erroneously and mistakenly and seeking consent to their withdrawal or reversal;
- E. Vanteck has refused to give its consent to the withdrawal or reversal of the Acceptances,

under section 657A of the Corporations Act, the Corporations and Securities Panel declares that the circumstances set out in recitals A to E are unacceptable circumstances in relation to the affairs of Pinnacle.

5 October 2001

Marian Micalizzi
President

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CORPORATIONS & SECURITIES PANEL CORPORATIONS ACT SECTION 657d orderS

5 October 2001

Pinnacle VRB Limited **Application by ronay investments pty ltd and mr david pethard**

The Corporations and Securities Panel (the **Panel**) has declared under section 657A of the Corporations Act that unacceptable circumstances exist in relation to the application by Ronay Investments Pty Ltd (**Ronay**) and Mr David Pethard dated 26 September 2001. The circumstances (the **Relevant Circumstances**) declared to be unacceptable circumstances relate to acceptances of the takeover offers (the **Bid**) made by Vanteck (VRB) Technology Corp (**Vanteck**) for Pinnacle VRB Limited (**Pinnacle**) which were made erroneously and mistakenly by Credit Suisse First Boston Australia Equities Private Limited (**CSFB**) on behalf of Ronay and other clients of CSFB on Saturday, 22 September 2001 and Sunday, 23 September 2001 (the **Acceptances**) and Vanteck's refusal to consent to withdrawal or reversal of the Acceptances.

PURSUANT TO SECTION 657D OF THE CORPORATIONS ACT, THE PANEL ORDERS THAT:

1. CSFB AS SOON AS PRACTICABLE SENDS A VALID TAKEOVER ACCEPTANCE REMOVAL REQUEST MESSAGE IN ACCORDANCE WITH THE SCH BUSINESS RULES ON BEHALF OF THE CSFB CLIENTS;
2. Vanteck consents to, and authorises, the withdrawal or reversal of the Acceptances and instructs ASX Perpetual Registrars Limited to send a Valid Message in accordance with the SCH Business Rules within two business days of CSFB making the Valid Takeover Acceptance Removal Request on behalf of Vanteck authorising the release of the fully paid ordinary shares in Pinnacle referred to in the schedule to this order (the **Relevant Securities**) to the parties named in respect of the Relevant Securities in the schedule (the **CSFB Clients**);
3. Vanteck and ASX Perpetual Registrars Limited not take any action to complete any transfer of the Relevant Securities to Vanteck;
4. Pinnacle not register any transfer or transmission of the Relevant Securities to Vanteck;
5. The securities clearing house (as defined in the Corporations Act) takes any action necessary to reverse or withdraw the Acceptances in respect of the Relevant Securities in accordance with the procedures set out in the SCH Business Rules;
6. Any contracts between Vanteck and the CSFB Clients arising as a result of the Acceptances are cancelled;

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7. Vanteck 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;
8. Vanteck takes all action necessary to cancel the Vanteck Shares issued to the CSFB Clients and take no further steps to issue, or to complete the issue of, the Vanteck Shares;
9. The CSFB Clients not deal, in any way, with any of the Vanteck Shares that may have been issued as consideration for the Relevant Securities under the Bid or with any interest in any of those Vanteck Shares and not exercise any voting rights or other rights attached to the Vanteck Shares;
10. The CSFB Clients do all things reasonably required of them in order for Vanteck to cancel the Vanteck Shares that may have been issued as consideration for the Relevant Securities under the Bid;
11. Orders 1 to 10 take effect when either:
 - (a) the review Panel reaches a decision in relation to the application proposed by Vanteck for review of the Panel's decision in these proceedings, subject to any decision of that review Panel, and that until any such decision is made by the review Panel, the Panel makes orders in the same terms as paragraphs numbered 1 to 10 of the Panel's interim orders in these proceedings dated 28 September 2001; or
 - (b) the time period within which Vanteck may make an application to the Panel for review of the Panel's decision in these proceedings expires without Vanteck having made such application for review;
12. The orders in the same terms as paragraphs numbered 1 to 10 of the Panel's interim orders shall cease to have effect when orders 1 to 10 take effect.; and
13. Orders 1 to 10 cease to have effect in respect of a CSFB Client where CSFB has provided the Panel with written evidence that the CSFB Client does not wish to have its Acceptance withdrawn or reversed and agrees to accept the Bid and the President of the sitting Panel in these proceedings consents to orders 1 to 10 ceasing to have effect in respect of that CSFB Client.

Dated: 5 October 2001

Signed:

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MARIAN MICALIZZI

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) C/- S Pollard & M Bonnici PO Box 2020 Taren Point NSW 2229	30,000
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	682,441

Takeovers Panel

Reasons for Decision - Pinnacle VRB Ltd No.10

Melbourne Vic 3004	
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 Packenham Street Mount Lawley WA 6050	90,000
Ms Jan Berg 24 Packenham 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
Mr Ken Sturrock & Mrs Helen Sturrock (K&H Sturrock Superannuation A/C) C/- Cavendish Superannuation PO Box 7803 Cloisters Square WA 6850	36,750

PINNACLE NO.10
TIMELINE AND SEQUENCE OF EVENTS IN RELATION TO CSFB ACCEPTANCES
FOR VANTECK TAKEOVER OF PINNACLE

EVENT	DATE	TIME
CSFB clerk (CHA) receives a copy of a list of CSFB clients holding Pinnacle shares from absent employee (SHA, bid clerk) re Pinnacle clients with ticks next to some of the holdings. CHA understood this meant client to accept bid (which SHA, bid clerk, also believed was closing that day)	21 September 2001	9 am
CSFB clerk CHA enters acceptance message for one holding as test run	22 September 2001	am
CSFB clerk CHA enters acceptance messages for remaining clients on list with ticks marked	23 September 2001	Between 2.05pm and 2.15pm
CSFB faxes ASX Perpetual notifying of its mistake in making the acceptances and requesting consent to withdraw them (<i>Also discussed by telephone</i>)	24 September 2001	9.02 am
Vantec Board meeting resolves to issue Vantec shares as consideration for the acceptances received into the bid	24 September 2001	11.15am
CSFB contacts Freehills (acting for Vantec) on advice of ASXP. CSFB informs Freehills of mistake and seeks Vantec's position in relation to granting of consent (<i>Freehills indicates to CSFB at all times that Vantec's position was not to grant consent as acceptances were valid</i>)	24 September 2001	12 noon
CSFB inputs SCH BR 16.5 message into CHESS seeking reversal of each acceptance	24 September 2001	Approx. 2.00 pm

Vanteck sends Change of Substantial Shareholding Notice to ASX announcements office	24 September 2001	6.02 pm
Pethard calls Fraser (Vanteck) and informs him that Ronay acceptance was made in error	24 September 2001	Evening 24 September, precise time is not agreed between parties.
Panel Executive receives information from Minter Ellison (for Pinnacle) that Pethard related interests had accepted Vanteck offer	24 September 2001	7.00pm
Panel Executive has telephone conversation with David Pethard in which he indicates no authority had been given to CSFB to accept the offer and that he considered the consequences to be serious given upcoming Pinnacle EGM	24 September 2001	7.15pm
CSFB compliance officers speak with ASX and informs ASX of the erroneous acceptance	25 September 2001	am
Freehills indicates to Panel Executive that Vanteck considers acceptances to be valid and will not grant consent to withdraw	25 September 2001	Approx. 10.00 am
Pinnacle lodges Supplementary Target's Statement notifying shareholders of dispute in relation to Pethard/ Ronay acceptance and noting Pethard disputes the acceptance	25 September 2001	10.49 am
CSFB compliance officer has various telephone conversations with Freehills to explain that the acceptances had been made in error by CSFB, that CHES message seeking reversal of the acceptance had been sent and seeking consent from Vanteck	25 & 26 September 2001	Afternoon and evening of 25 th and morning of 26 th
Panel receives Pinnacle No. 10 application on behalf of Ronay & Pethard	26 September 2001	4.00 pm

Pinnacle lodges further Supplementary Target's Statement notifying shareholders that acceptance for Ronay had been lodged erroneously and that the issue was now the subject of an application to the Panel	26 September 2001	5.07 pm
Pinnacle lodges announcement notifying shareholders of postponement of EGM until 15 October 2001	26 September 2001	5.09 pm
Vantek sends message to Canadian registry authorising issue of shares and share certificates to accepting Pinnacle shareholders in accordance with earlier Board resolution	27 September 2001	4.02 am <i>(11.02 am Vancouver time on 26 September)</i>
CSFB compliance officer writes to ASX Compliance Office acknowledging error by CSFB in breach of SCH Business Rule 16.3 and setting out steps CSFB has taken to attempt to withdraw the acceptances	27 September 2001	-

NOTES

- CSFB did not accept the bid for all Pinnacle shares for which it is the CHESSE Controlling Participant.
- CSFB has obtained one ratifying consent to allow the acceptance to stand