



# Biotech Daily

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## Patrys, Citigroup And Hiding Behind Nominee Companies

For the fourth time in 11 trading days, Citigroup Global Markets Australia has filed a substantial shareholder notice on behalf of an unknown investor moving, but not necessarily selling or buying, Patrys shares (BD: Feb,1, 10, 13, 2012).

Each notice of Citigroup ceasing or becoming a substantial holder has been “in its capacity as prime broker ... under a securities lending agreement”. Today’s was resuming substantial with 22,575,819 shares or 6.209 percent of the company – sufficient voting power to requisition extraordinary general meetings.

These agreements allow the trader to hide behind a nominee company and “lend” shares to Citigroup or other prime brokers for purposes that defy most investors, but could be to raise funds to buy more shares or to perform other legitimate derivative actions.

While Biotech Daily takes a dim view of arcane derivative trading, we are more concerned with a lack of transparency that flies in the face of the spirit – but not the letter – of the law.

The Australian Securities and Investments Commission ‘Regulatory Guide 159: Takeovers, compulsory acquisitions and substantial holding notices’ refers directly to the recommendations of the Cohen Committee (RG 159.270, 271):

“...the intention thereof is to enable a shareholder to know who [their] co-adventurers are and the public to find out who controls the business to which they are contemplating investment or to which they are considering granting credit”:  
Report of the Committee on Company Law Amendment UK (1945) p39.

“The substantial holding requirement promotes the principle that the acquisition of control takes place in an efficient, competitive and informed market: s602(a). But the purpose of the requirement is not limited to identifying bidders or potential bidders. The general purpose is to maintain an informed market in quoted securities.”

While there is a “guide”, there does not appear to be any law to support this principle.

Citigroup does not have to disclose the identity of the original owner of the shares, nor does that owner.

It is not just tedious to report that an unknown shareholder is regularly lending, selling buying and/or transferring shares, it raises questions about the ownership of the target - or victim – company.

As previously published (BD: Jun 25, 2009): If Al Capone holds 22% of Helpful Taxation Tips Co, with Edward Kelly (19%) and Ronald Biggs (15%) but they all hide under Honest Nominees (56%) then investors might think the company benign, when it is not.

One company director told Biotech Daily that he needed to hide his holdings to prevent the Australian Taxation Office and his wife knowing how much he was worth.

The principle enshrined in the ASIC Regulatory Guide needs to be written into the Corporations Act as a mandatory disclosure.

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