



Biotech Daily

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Daily news on ASX-listed biotechnology companies

Biotech Daily Editorial: Bank of New York Mellon & Substantial Shareholder Notices

The filing of substantial shareholder notices by the Bank of New York Mellon on behalf of unnamed clients obscures the ownership of public companies.

But it is only defying the former spirit of the Corporations Act 2001, not the letter of the law.

The Australian Securities and Investments Commission (ASIC) previously published 'Regulatory Guide 159: Takeovers, compulsory acquisitions and substantial holding notices' which referred directly to the recommendations of the Cohen Committee:

“...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The Guide has been withdrawn, this provision does not appear to have been replaced and there does not appear to be any law to support this principle.

Last month, the Bank of New York Mellon says it had become substantial in eight Australian biotechnology companies because it held the shares as American depository receipts (ADRs) (BD: May 8, 2019).

Several companies told Biotech Daily that the requirement for repeated, un-informative Bank of New York Mellon notices was recently implemented by ASIC.

The notices serve no purpose, other than to obscure the real share ownership of companies in the same way as “nominee companies”.

Biotech Daily was once told by a company director that the reason he hid his holding behind a nominee company was "because I don't want my wife or the Tax Office to know what I own".

It is time to change the Corporations Act to implement the previous intent to allow shareholders to know who their co-investors are. ASIC says the matter is one for the law of Trusts.

Along with ending the practice of allowing investors to hide behind nominee companies, where even the listed entity cannot find them, Biotech Daily believes the substantial shareholder level should be reduced from 5.0 percent to 1.0 percent, so we have a clearer picture of the major holders.

Finally, if the Bank of New York Mellon is deemed to be a substantial shareholder because it holds the ADRs, then surely Commsec, other trading platforms, all stock brokers and the ASX itself should be filing substantials as well.

Biotech Daily will no longer report Bank of New York Mellon filings on behalf of unnamed investors in biotechnology companies including: Alterity (Prana), Avita, Benitec. Clinuvel, Genetic Technologies, Immutep, Immuron and Kazia.

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