



# Biotech Daily

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*Daily news on ASX-listed biotechnology companies*

## Three Strikes For Two Strikes Board Spill Policy

Until the Cochlear shareholder's vote today, the recently enacted 'Two Strikes Policy' had received three biotechnology strikes.

Intended to give shareholders a greater degree of power over the companies in which they invest, the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011, took effect on July 1, 2011, amending Section 250 of the Corporations Act, so that if a company receives 25 percent or more votes against the remuneration report at two successive annual general meetings, the company must propose a 'spill' resolution requiring a 50 percent majority to re-elect directors, except for the managing director, with 90 days.

But under the Law of Unintended Consequences, the biotechnology industry has seen three successive examples where a single shareholder can provide either all or most of the votes to lead to the spill resolution.

Biotech Daily strongly supports openness, transparency and shareholder activism, but the potential for disruption by a single disenfranchised investor is high among small and medium capitalization companies, and in any industry.

At last year's Sirtex meeting, 9.7 million of about 10 million votes against resolutions came from founder and former chairman Dr Bruce Gray, providing 33.24 percent of the votes against the remuneration report (BD: Sep 21, 2012).

Cryosite included a spill resolution in its notice of meeting following last year's 'first strike', believed to be primarily the shareholding of Cell Care Australia which holds about 21 percent of the company (BD: Sep 27, 2012).

Calzada has also included a spill resolution following a first strike in 2011 with 32,441,152 proxy votes (25.46%) against the remuneration report, believed to be primarily the 29,158,903 shares held by Fleming SG Capital Special Opportunities, which has since sold all of its holding (BD: Oct 12, 2012).

While Cochlear shareholders may have vindicated the amendments with a depth and breadth of votes against the remuneration report, it is clear the policy is open to abuse.

Biotech Daily believes that apart from the 25 percent of votes cast, a minimum number of individual shareholders, possibly as few as 10 or 20, should be required in order for the dissent to count towards a 'strike'.

While this could lead to a form of branch-stacking, a single dissenting shareholder would at least need to convince others of the merits of his or her case.

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