

JAMES WHEELDON
Barrister

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3 February 2017

Mr Simon Wilkinson
Managing Director
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*By hand delivery and email:
info@innateimmuno.com*

Dear Mr Wilkinson

Re: Concerns regarding acquisitions of shares by a director and his associates

1. I am writing to you as a shareholder in Innate Immunotherapeutics Ltd (the "Company").
2. I am concerned by recent press reports in Australia and the United States regarding acquisitions of shares in the Company by one of the directors of the Company, Mr Christopher Carl Collins, and by persons apparently associated with him.
3. It seems to me that the most charitable gloss that can be put on things is to say that Mr Collins, despite being a director of an ASX-listed company, is ignorant of his basic obligations under Australian company and securities laws, including his fiduciary obligations as a director.
4. Mr Collins has, as a director of the Company, acted in apparent violation of the *Corporations Act 2001* ("Corporations Act") and the Company's Code of Conduct & Ethics. Whether his conduct is wilful and intentional, or simply the product of ignorant disregard for his obligations under Australian law, is not clear.
5. I set out below some queries regarding my concerns.
6. I request a response by no later than close of business, Sydney time, on Tuesday 7 February 2017.
7. Because my concerns relate to (among other things) whether full and accurate disclosure of material facts regarding the ownership and control of the Company has been given to the market, I suggest that your response to my queries (or at least the material substance thereof) should be simultaneously given to the public announcements platform of the Australian Securities Exchange ("ASX") for immediate release.
8. In the event that I do not receive a satisfactory response, I intend to take action without further notice to the Company.
9. Such action may include the commencement of proceedings in the Federal Court of Australia (or another court having Corporations Act jurisdiction) in relation to

oppression of minority shareholders and/or breach of directors' duties, or by making an application to the Takeovers Panel for a declaration of unacceptable circumstances in relation to the affairs of the Company.

10. Because Mr Collins' conduct appears, in my opinion, to involve contraventions of the Corporations Act, I am copying relevant officers of the Australian Securities & Investments Commission on this correspondence.

Apparent contravention by Mr Collins of section 671B of the Corporations Act

11. Mr Collins is a resident of Buffalo, New York. He has been a member of the House of Representatives of the United States Congress since 2012.
12. Mr Collins has been a substantial (over 15%) shareholder of the Company since before the initial public offering of the Company's shares on 19 December 2013. Despite this, he did not give his first substantial shareholder notice to ASX in respect of his shareholding in the Company until 22 May 2015 - **nearly eighteen months after the IPO**.
13. As you would know, section 671B of the Corporations Act requires a person who holds more than 5% of the voting capital of a listed company to give a substantial shareholder notice to ASX **within two business days** of becoming a substantial holder.
14. A contravention of section 671B is a criminal offence of strict liability: section 671B(1A).
15. Mr Collins' apparent violation of one of the most well-known and basic obligations under Australia's securities laws - the obligation to disclose a substantial shareholding - raises serious questions about:
 - a. whether he has received adequate training regarding his obligations as a director of an Australian listed company; and
 - b. whether the Company's published Code of Conduct & Ethics is adequately enforced by the Board of Directors.
16. I am unable to find any indication (either in the Company's annual reports, or in - for example - Mr Collins' detailed online biography¹) that Mr Collins has received **any** training or education in respect of his basic obligations under Australian law as a director of a listed company.
17. I note that the Company's 2016 *Corporate Governance Statement* (given to ASX on 29 July 2016) states that:
 - a. the Company has not established any formal program for inducting new Directors (despite the ASX Corporate Governance Council's formal recommendation that listed entities should have a program to ensure directors have the skills and knowledge needed to perform their duties effectively); and
 - b. the Company does not enter into written agreements with directors setting out the terms of their appointment (again, despite the ASX Corporate Governance Council's formal recommendation that listed entities should enter into written agreements with directors).
18. The Company's Code of Conduct & Ethics provides as follows:
 - a. the Code is applicable to directors of the Company (clause 1.2 of the Code);
 - b. all Company personnel (including directors) are expected to adhere to the Code "*both in letter and spirit*", and such adherence is a term of employment

¹ See <https://chriscollins.house.gov/about/full-biography>

- with the Company, and any violation of the Code which may affect the reputation of the Company may lead to disciplinary action (clause 3.1);
- c. Company personnel must comply fully with the content and spirit of all relevant laws and regulations, and must not knowingly participate in illegal activity, and must actively promote compliance with laws, rules, regulations and the Code (clauses 4.2, 4.3 and 4.5);
 - d. Company personnel (including directors) should always act with the highest standard of ethics and integrity, which includes “*a recognition that superior ethical behaviour means complying with the spirit, as well as the letter of the law*” (clause 5.1); and
 - e. breaches of the Code will be viewed seriously by the Company, and will result in disciplinary action taken which may range from warnings to dismissal (clause 18.1).
19. Mr Collins’ failure to comply with his substantial shareholder disclosure obligations under Australian law would seem prima facie to amount to a material breach of the Code.
20. In light of the foregoing, I have the following queries:
- a. **Query 1:** What training, guidance or education has Mr Collins undertaken in respect of his legal, fiduciary and other obligations as a director of an ASX-listed Company?
 - b. **Query 2:** What action, if any, did the Company take to discipline or counsel Mr Collins in respect of his failure to comply with his substantial shareholder disclosure obligations as required under Australian?
 - c. **Query 3:** What procedures, if any, has the Company implemented to ensure that directors (including Mr Collins) comply with their directors’ duties and other obligations under Australian law?

Undisclosed acquisitions of shares in the Company by apparent associates of Mr Collins

21. According to media reports and public filings in the United States, a number of family members, employees, political and business associates (including financial donors to Mr Collins’ political campaigns) and other cronies of Mr Collins have recently acquired substantial numbers of shares in the Company.
22. Many of Mr Collins’ associates have acquired their shares not through on-market purchases but rather through discounted private placements apparently arranged by Mr Collins himself.
23. The fact that Mr Collins has intimate and long-standing family, professional, political and financial relationships with other shareholders in the Company has never (to my knowledge) been disclosed to the market in any form, but rather has only come to light as a consequence of these press reports.
24. As you would know, section 606 of the Corporations Act prohibits the acquisition of a relevant interest in more than 20% of the voting capital of a listed company, unless one of the exceptions set out in section 611 applies – one such exception being (for example) that the shareholders of the Company have previously voted to approve the shareholder obtaining a relevant interest in more than 20% of the shares. To my knowledge, none of the exceptions in section 611 is relevant to the following analysis.
25. A contravention of section 606 is a criminal offence.

26. Section 671B of the Corporations Act requires a substantial (i.e. greater than 5%) shareholder in a listed company to give a change in substantial holding notice within two business days whenever there is a movement of at least 1% in the person's (and his associate's) relevant interest in the Company's voting shares.
27. Section 608 of the Corporations Act says a person has a "relevant interest" in a share if he has the power to control the exercise of the voting or disposal of that share, even if that power or control is indirect and unenforceable and only arises as a result of a practice, as opposed to a contract or other binding agreement.
28. Mr Collins' initial substantial holder notice of 22 May 2015 affirmatively represented that Mr Collins was not associated with any other person who held a relevant interest in shares in the Company.
29. Mr Collins most recent substantial holder notice – given to ASX on 15 September 2016 – again affirmatively represented that he was not associated with any other person who held a relevant interest in shares in the Company.
30. According to his most recent Change of Director's Interest Notice on Appendix 3Y (given to ASX on 19 December 2016), Mr Collins is the holder of 37,899,139 fully paid ordinary shares in the Company, representing 17.06% of the voting capital of the Company.
31. In that 19 December 2016 Appendix 3Y, Mr Collins again affirmatively represented that he did not have a relevant interest in any shares in the Company other than the 37,899,139 shares of which he was the direct, registered holder.
32. For the reasons set out below, I have grave concerns about the truthfulness and accuracy of Mr Collins' disclosures regarding his shareholdings.
33. I am concerned that Mr Collins has violated section 606 of the Corporations Act, that he has not disclosed the shareholding of his associates in his substantial shareholder notices as required by law, and that the end result is that the market for shares in the Company is not efficient, competitive and informed.
34. I am concerned that Mr Collins has, as a practical matter, "parked" ownership of substantial quantities of shares with his family members, employees and intimate political allies such that he can be said to have locked up control of the Company illegally, without proper disclosure and in a manner prohibited by the Corporations Act.

Acquisitions of shareholdings by close family members of Mr Collins

35. The Company's annual report for the financial year ended 30 June 2016 was given to ASX on 29 July 2016.
36. The report says that the third and fourth largest shareholders of the Company are Caitlin Collins and Cameron Collins. Each holds 5,200,000 shares, representing (by my calculation) 2.34% of the presently issued voting capital of the Company.
37. The Company has never (to my knowledge) disclosed the fact that Caitlin Collins and Cameron Collins are the adult children of Christopher Collins. Rather, this fact has only been disclosed in recent United States press reports.²
38. According to Mr Collins' Wikipedia entry (the accuracy of which I do not vouch for), Caitlin Collins was born in 1991 and Cameron Collins in 1993. Caitlin Collins appears to

² See, for example, "Powerful Figures in Washington Invest in Tiny Australian Drug Maker", the *New York Times*, 13 January 2017, page A10.

be employed as a first year associate with a law firm in Buffalo, New York³. I have been unable to locate any further information regarding Cameron Collins.

39. The aggregate market value (as of today) of the shares in the Company held by Cameron and Caitlin Collins is over AU\$10 million – each holds shares worth more than AU\$5 million.
40. While I have no knowledge of Cameron Collins’ financial position, it is inconceivable that Caitlin Collins acquired her shares in the Company using savings from her salary as a first-year lawyer. It also seems staggeringly improbable that each of Caitlin and Cameron would have independently (i.e. without guidance or instruction from their father) decided to acquire an expensive portfolio of shares in a little-known biotech company listed on a stock exchange on the other side of the planet.
41. An available inference is that Cameron and Caitlin Collins acquired their shares in the Company using funds provided by their father, and on his advice or instruction.
42. He who pays the piper calls the tune. Another available – if not irresistible – inference is that Cameron and Caitlin Collins are, as a practical matter, “straw” shareholders who will make decisions in respect of their shareholding in the Company in accordance with the wishes of their father.
43. Even if the financial benefits of the shareholding are to accrue to them, it is difficult to imagine Caitlin and Cameron Collins disregarding the wishes of their father in respect of a decision in respect of (say) accepting a takeover offer for the Company, or voting on a proposed scheme of arrangement or a resolution put to the shareholders in the Company.
44. I accept that there may be facts that I am not aware of that would affect this analysis. However, in the absence of information negating the available inferences regarding the shareholdings of Mr Collins’ children, any independent observer would likely arrive at the conclusion that Mr Collins has practical control over the voting and exercise of well in excess of 20% of the voting shares in the Company.
45. If Mr Collins does in fact have any control over the voting or disposal of the shares held by his children, then he has prima facie contravened the “20% rule” in section 606, and also his disclosure obligations under section 671B (as well as his disclosure obligations as a director under the ASX Listing Rules).
46. Even if he does not have any such control, in my submission he has an affirmative obligation to inform the market regarding any power he has to exercise control over the voting or disposal of the shares held by his children.
47. My submission is that, in the absence of satisfactory assurances from Mr Collins and the Company regarding this point, the market for shares in the Company is not efficient, competitive and informed, in violation of the purposes of Chapter 6 of the Corporations Act (as set out in section 602 thereof).

Acquisitions of shareholdings by Mr Collins’ donors and supporters

48. The most recent annual report shows that the following persons were among the top 20 shareholders in the Company (as at 18 July 2016):
 - a. Mr Glenn Arthurs held 3,631,539 shares, representing (as of today) 1.64% of the voting shares in the Company.

³ See <http://www.phillipslytle.com/Staff/267/Caitlin-Collins>

D Ross Arthurs, as trustee for the benefit of the Glenn W Arthurs Grant, held a further 2,851,121 shares, representing (as of today) a further 1.28% of the voting shares in the Company.

I understand that Mr Glenn Arthurs is the managing director of a financial advisory firm in Buffalo, New York.⁴

According to public records, Mr Glenn Arthurs has made numerous donations to Mr Collins' political campaigns over the years.⁵

- b. CHEP II LLC held 3,125,319 shares, representing (as of today) 1.41% of the voting shares in the Company.

I understand that CHEP II LLC is an investment firm based in Buffalo, New York and that its President is Mr Paul Harder.⁶

According to press reports, Mr Harder is a "long time [Chris] Collins friend and fellow businessman"⁷; Mr Harder and his wife have contributed at least US\$32,200 to Mr Collins' political campaigns over the years⁸; and Mr Harder and Mr Collins were co-chairmen in December 2016 of a US\$5,000 a head fundraiser in Buffalo, New York, for (then) President-elect Donald J. Trump⁹.

- c. Mr Thomas Massung held 2,620,415 shares, representing (as of today) 1.18% of the voting shares in the Company.

I understand that Mr Massung is a former senior vice-president of M&T Bank, a financial institution based in Buffalo, New York.¹⁰

According to public records, Mr Massung has made numerous donations to Mr Collins' political campaigns over the years.¹¹

49. Based on the figures provided in the most recent annual report, Messrs Arthurs, Harder and Massung – all of them donors and political allies of Mr Collins – collectively control 5.51% of the shares in the Company.

Heavily discounted issues of Company shares to employees, donors and business associates of Mr Collins

50. On 29 July 2016, the Company gave a Notice of Annual Meeting and Proxy Form to shareholders and to ASX.
51. The notice set out proposed resolutions to approve two private placements of a substantial quantity of shares to sophisticated investors.
52. Approval was sought for:
 - a. "Placement 1" – a heavily discounted placement of up to 10,009,032 shares (representing 4.8% of the pre-issue capital) at US\$0.18 per share to sophisticated investors; and
 - b. "Placement 2" – a not-quite-as-heavily discounted placement of up to 3,542,925 shares (representing 1.7% of the pre-issue capital) at US\$0.26 per share to sophisticated investors.

⁴ See <http://financialservicesinc.ubs.com/team/arthursmalof/meetourteam.html>

⁵ See https://littlesis.org/person/255960/Glenn_Arthurs

⁶ See <http://www.buffalo.edu/ubreporter/archive/vol38/vol38n2/articles/ScholarshipGala.html>

⁷ See <http://buffalonews.com/2016/07/19/collins-early-loyalty-to-trump-prompts-talk-of-mr-secretary/>

⁸ See <https://buffalonews.com/2017/01/19/buffalos-elite-joined-collins-australian-investment/>

⁹ See <https://buffalonews.com/2016/12/31/trumps-campaign-manager-headed-buffalo-fund-raiser-thursday/>

¹⁰ See http://www.annualreports.com/HostedData/AnnualReportArchive/m/NYSE_MTB_2004.pdf

¹¹ See https://littlesis.org/person/255961/Thomas_Massung

53. Approval for both placements was obtained at the annual general meeting and both Placement 1 and Placement 2 were carried out.
54. The 29 July 2016 Notice identified 16 potential recipients of the Placement 1 shares.
55. The sixteen identified recipients of Placement 1 shares include:
- a. Mr Chris Graham, who I understand is the President of Volland Electric Equipment Corp, a business based in Buffalo, New York.¹² Mr Collins' official biography describes Volland Electric as a company owned or controlled by Mr Collins.¹³

In other words, Mr Graham appears to be an employee of Mr Collins.
 - b. Glenn Arthurs and the trustee of his trust, Mr D Ross Arthurs. As noted above, Mr Glenn Arthurs is a donor to Mr Collins' political campaigns.
 - c. Mr Tom Massung. As noted above, he is a donor to Mr Collins political campaigns.
 - d. Mr Michael Hook. Mr Hook is Mr Collins' Congressional chief of staff (i.e. he is directly employed by Mr Collins).¹⁴
 - e. Mr Paul Reid. I understand Mr Reid is the CEO of Reid Petroleum, a business based in upstate New York. According to public records, Mr Reid has donated tens of thousands of dollars to Mr Collins' political campaigns over the years.¹⁵
 - f. Mr Brian Geary. I understand Mr Geary is an executive with Bloch Industries. Mr Collins' official biography describes Bloch Industries as a company owned or controlled by Mr Collins.¹⁶

In addition to appearing to be employed by Mr Collins, according to public records Mr Geary has contributed to Mr Collins' political campaigns.¹⁷
 - g. CHEP II LLC. As noted above, CHEP II LLC is controlled by Paul Harder, a political ally of, and donor to, Mr Collins.
56. In other words, out of the sixteen recipients of the heavily discounted "Placement 1" shares, at least eight are either employees or donors of Mr Collins.
57. Out of the other eight identified recipients of the discounted Placement 1 shares, at least four have close documented ties to Mr Collins:
- a. Mr Bill Paxon, a former United States Congressman and Washington DC political lobbyist.¹⁸ Mr Paxon has deep and longstanding ties to Mr Collins: according to published reports, it was Mr Paxon who "*convinced Collins to get into politics*" in 1998.¹⁹
 - b. Mr Tom Price. Mr Price is, along with Mr Collins, a Republican member of the United States Congress, and is considered a close political ally of Mr Collins.²⁰

¹² See <http://volland.com/index.php/history-of-volland/>

¹³ See <https://chriscollins.house.gov/about/full-biography>

¹⁴ See https://www.legistorm.com/pro_news/view/id/1476.html

¹⁵ See https://littlesis.org/person/133925/Paul_Reid

¹⁶ See <https://chriscollins.house.gov/about/full-biography>

¹⁷ See https://littlesis.org/person/138432/Brian_Geary

¹⁸ See <https://www.akingump.com/en/lawyers-advisors/1-william-paxon.html>

¹⁹ See [http://self.gutenberg.org/articles/eng/Chris_Collins_\(Erie_County\)](http://self.gutenberg.org/articles/eng/Chris_Collins_(Erie_County))

²⁰ See <http://edition.cnn.com/2017/01/23/politics/chris-collins-tom-price-stock-tip/>

- c. Mr Lindy Ruff, the former head coach of the Buffalo Sabres professional hockey team.
 - d. Mr Angelo Fatta, a prominent Buffalo, New York, businessman.
 - e. Mr Tom McMahon, the CEO of CUBRC Inc, a Buffalo New York based research centre (which itself holds 0.94% of the shares in the Company).
58. Out of the sixteen identified recipients of the heavily discounted Placement 1 shares, only three do not have a documented personal or financial relationship with Mr Collins.
59. The 25 identified recipients of the discounted "Placement 2" shares include the following persons:
- a. Michael Hook – Mr Collins' chief of staff (as noted above).
 - b. Mark Lema – a donor to Mr Collins' political campaigns.²¹
 - c. William Grove and Marcia Grove. According to public records, Mr Grove has donated to Mr Collins political campaigns.²² Additionally, as part of his Congressional disclosures in 2014, Mr Collins revealed that he had lent (by way of mortgage) over US\$100,000 to Mr Grove.²³
 - d. Robert Stevenson (the CEO of a Buffalo, New York business) and Chesterine Stevenson – donors to Collins' political campaigns.²⁴
 - e. Brian Lipke (the CEO of a Buffalo, New York business) – a donor to Collins' campaigns.²⁵
 - f. Paul Harder – as noted above, the President of CHEP II LLC and a Collins donor.

The ownership of the Company is unacceptably opaque

60. According to press reports, Mr Collins was recently overheard by reporters "*bragging last week about 'how many millionaires I've made in Buffalo the past few months'*": this was understood by those journalists to be a reference to Mr Collins' having introduced "*Buffalo's elite*" to Innate Immunotherapeutics.²⁶
61. These investors – who were supporters and financial backers of Mr Collins before he introduced them to the Company – would be expected to continue to support Mr Collins in his capacity as a director and major shareholder. It strains credulity to suggest that they would not accede to Mr Collins' wishes and instructions should a matter be put to a vote of the shareholders of this company located on the other side of the world.
62. This is even more the case when those investors were, thanks to Mr Collins' exertions on their behalf, allowed to acquire shares in the Company at a significant discount.
63. To summarise:
- a. Mr Collins holds 17.06% of the voting shares in the Company outright.
 - b. His children hold a further 4.68%.

²¹ See https://littlesis.org/person/216705/Mark_Lema

²² See https://littlesis.org/person/256049/William_Grove

²³ See <https://littlesis.org/relationship/view/id/1241246>

²⁴ See https://littlesis.org/person/58797/Robert_L_Stevenson

²⁵ See https://littlesis.org/person/48340/Brian_I_Lipke

²⁶ See <https://buffalonews.com/2017/01/19/buffalos-elite-joined-collins-australian-investment/>

- c. Persons who have donated to his political campaign and who have, at Collins' invitation, acquired heavily discounted shares in the Company hold (at least) a further 5.51% of the Company.
 - d. Employees of Mr Collins – including his chief of staff – have recently acquired a further unknown number of shares in the Company at a heavy discount.
 - e. Intimate political allies of Mr Collins have also recently acquired a further unknown number of shares in the Company at a heavy discount.
64. In other words, Mr Collins, his children and his intimate political allies and donors control **at least** 27.25% of the voting shares in the Company (based on the Company's filings).
 65. Common sense dictates that Mr Collins' children, employees, financial supporters and intimate political allies would act in accordance with his wishes in respect of – for example – accepting a takeover offer for their shares or voting on a corporate transaction or other proposal put to shareholders.
 66. Any person who is aware of recent press reports regarding the Company, and who has closely inspected the Company's public filings, would come to the irresistible conclusion that Mr Collins has, as a practical matter, obtained control over well in excess of 20% of the voting shares in the Company without shareholder approval (and without, to my knowledge, any of the exceptions in section 611 of the Corporations Act applying).
 67. Even if there is an explanation for this set of circumstances, no such explanation has been given to the market. The market has had to rely on press reports – and the market is consequently materially uninformed. This is not acceptable.
 68. In my opinion, Mr Collins has acted contrary to his duties as a director of the Company in allowing this set of circumstances to arise.
 69. He now has a duty, as a director, to give full disclosure to the market regarding any relationships and understandings he has (whether formal or informal, binding or unenforceable) with the persons referred to in this letter in respect of their shareholdings in the Company.
 70. The Board has a duty to ensure that Mr Collins gives this disclosure to the market as a matter of urgency.
 71. If indeed there are no such relationships or understandings, given the extraordinary web of intimate family, political and financial relationships he has with other shareholders, he still has (in my submission) a duty as a director of the Company to say as much to the market in clear and explicit terms so as to avoid the market for shares in the Company being inefficient, uninformed and uncompetitive.
 72. Mr Collins duty is not to enrich the business and political elite of Buffalo, New York. His overarching duty is to the Company.
 73. In light of the foregoing, I have the following queries:
 - a. **Query 4:** Will Mr Collins publicly explain the nature of his relationships and understandings with the other shareholders named in this letter regarding their shareholdings?
 - b. **Query 5:** Can the Company assure the market that Mr Collins has no power of any kind (whether formal or informal, binding or unenforceable) to exercise the control over the voting or disposal of the shares in the Company held by the shareholders named in this letter?

- c. **Query 6:** On what basis does the Company give that assurance?

Insider trading investigation

74. I note that serious concerns have been raised with the United States Securities and Exchange Commission, and with the Office of Congressional Ethics of the United States House of Representatives, regarding possible violations by Mr Collins and Mr Tom Price of United States insider trading laws and Congressional ethical rules.²⁷
75. In light of the foregoing, I have the following queries:
- a. **Query 7:** Has Mr Collins received any training or guidance regarding the insider trading prohibitions under Australian law (which I note are materially different from, and in many respects materially more stringent than, similar United States laws)?
 - b. **Query 8:** Can the Company assure the market that Mr Collins has never disclosed any "inside information" (as defined in the Corporations Act) in contravention of the Corporations Act?

I look forward to your prompt response.

Yours faithfully



James Wheeldon

cc: Fiona Lourey
Senior Lawyer, Corporate Governance Enforcement
Australian Securities & Investments Commission

Nathania Nero
Lawyer, Corporations
Australian Securities & Investments Commission

Neil Owen
Senior Manager, Market Enforcement
Australian Securities & Investments Commission

²⁷ See <http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=10125>