

# Australian Securities and Investments Commission Amendment Regulations 2004 (No. 1) 2004 No. 102

## EXPLANATORY STATEMENT

Statutory Rules 2004 No. 102

Issued by the Parliamentary Secretary to the Treasurer

*Australian Securities and Investments Commission Act 2001*

*Australian Securities and Investments Commission Amendment Regulations 2004 (No. 1)*

Subsection 251(1) of the *Australian Securities and Investments Commission Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to allow Australian Securities and Investments Commission Act (ASIC) to pass appropriate information to "Market Regulation Services Inc.", the supervisor of brokers on the Toronto Stock Exchange.

ASIC is given certain sensitive information in confidence or in connection with the performance of its functions or the exercise of its powers under the corporations legislation. Subsection 127(4B) of the Act authorises the disclosure, by an authorised person, of such information to prescribed bodies corporate (including foreign companies) if the Chairperson of ASIC is satisfied that the information will enable or assist the body corporate to monitor compliance with, enforce, or perform functions or exercise powers under the *Corporations Act 2001*, the business law of a State not covered by the Act, the business law of a foreign country or the operating rules of the body corporate. Subsection 127(4C) of the Act provides that the regulations may specify a body corporate for the purposes of subsection 127(B) if, and only if, the body corporate conducts, or is involved in the supervision of, a financial market, or is a body corporate that holds an Australian clearing and settlement facility licence.

Regulation 8A of the *Australian Securities and Investments Commission Regulations 2001* (the Principal Regulations) provides that the bodies corporate listed in Schedule 3 to the Principal Regulations are specified for the purposes of subsection 127(4C) of the Act.

The *Financial Services Reform Amendment Act 2003*, which received Royal Assent on 17 December 2003, amended the Act to expand the range of bodies corporate that can be prescribed under subsection 127(4C) of the Act to include bodies corporate that are involved in the supervision of a financial market, in addition to the financial markets themselves.

ASIC was already authorised to provide information to the market operator in Toronto (the Toronto Stock Exchange), by virtue of Regulation 8A of the Principal Regulations. However, this did not extend to the separate supervisor in Toronto ("Market Regulation Services Inc.").

The Regulations prescribe "Market Regulation Services Inc." as a body corporate for the purpose of subsection 127(4C) of the Act, which authorises the disclosure to prescribed bodies corporate of information that is given to ASIC in confidence or in connection with the performance of its functions or the exercise of its powers under the corporations legislation. "Market Regulation Services Inc." is the first supervisory body prescribed under subsection 127(4C) of the Act.

The Regulations commenced on the date of their notification in the *Gazette*.