

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 119

Issued by the authority of the Parliamentary Secretary to the Treasurer

Australian Securities and Investments Commission Act 2001

Australian Securities and Investments Commission Amendment Regulations 2007 (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 amendments to the Regulations allow the Australian Securities and Investments Commission (ASIC) to pass confidential information to three further market operators, namely Bloomberg Tradebook Australia Pty Ltd (BTA), BGC Partners (Australia) Pty Ltd (BGC) and Mercari Pty Ltd (Mercari).

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 amendments to the Regulations to include market operators BTA, BGC and Mercari among the prescribed bodies corporate for the purposes of subsection 127(4B) allows each to more effectively perform the market supervisory functions required of them as financial market licensees.

Under the Corporations Agreement 2002, the Commonwealth must consult with and receive approval from the Ministerial Council for Corporations before making amendments to certain provisions of the Principal Regulations. The Council has approved these amendments, and agreed to dispense with the period of public exposure given that the amendments are technical in nature.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.