

s 22

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From: s 22
Sent: Wednesday, 14 October 2020 4:18 PM
To: s 22
Cc: s 22
Subject: RE: Agenda: quarterly meeting [SEC=OFFICIAL]

OFFICIAL

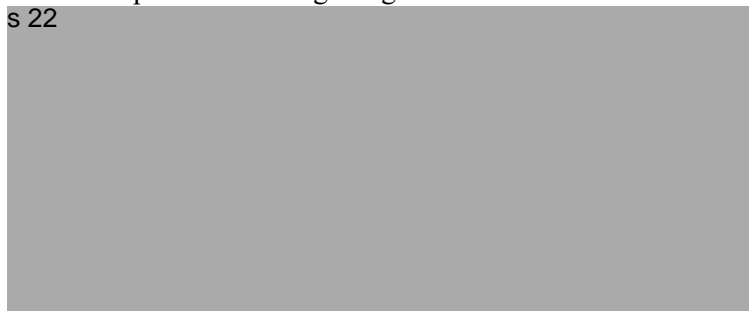
Hi s 22

Cheers again for the chat.

Please see attached revised agenda.

For Item 1 (Budget update), we have listed the following topics of discussion in order of importance. Grateful if ASIC could pick a few topics attendees would like spoken to:

- s 22
- Responsible lending obligations



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Regards,

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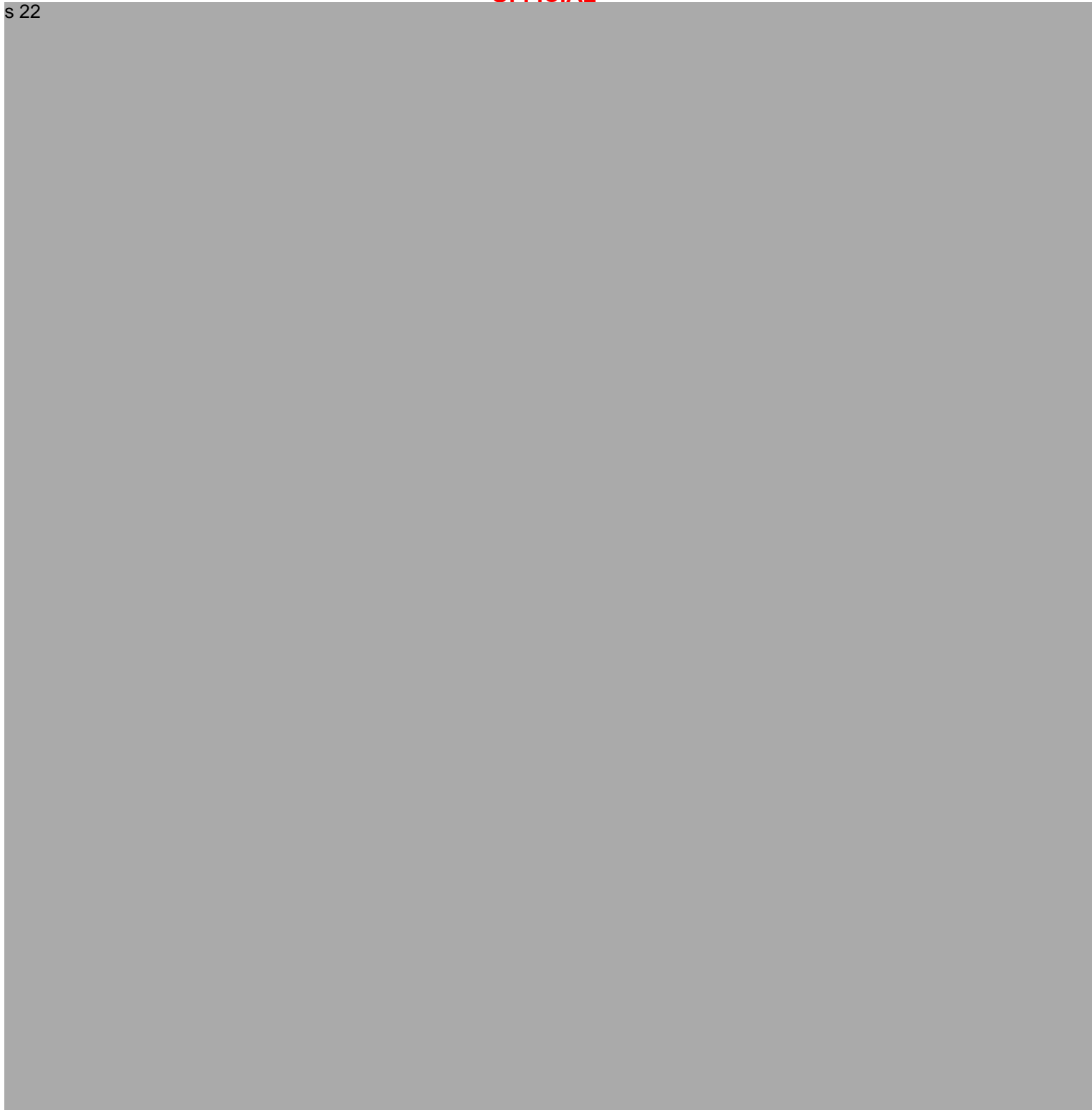


Analyst
Market Conduct Division
The Treasury, Level 29, 201 Kent Street, Sydney NSW 2000
☎: +s 22 ☎: s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)

The email trail below is outside the scope of the request and has been deleted.

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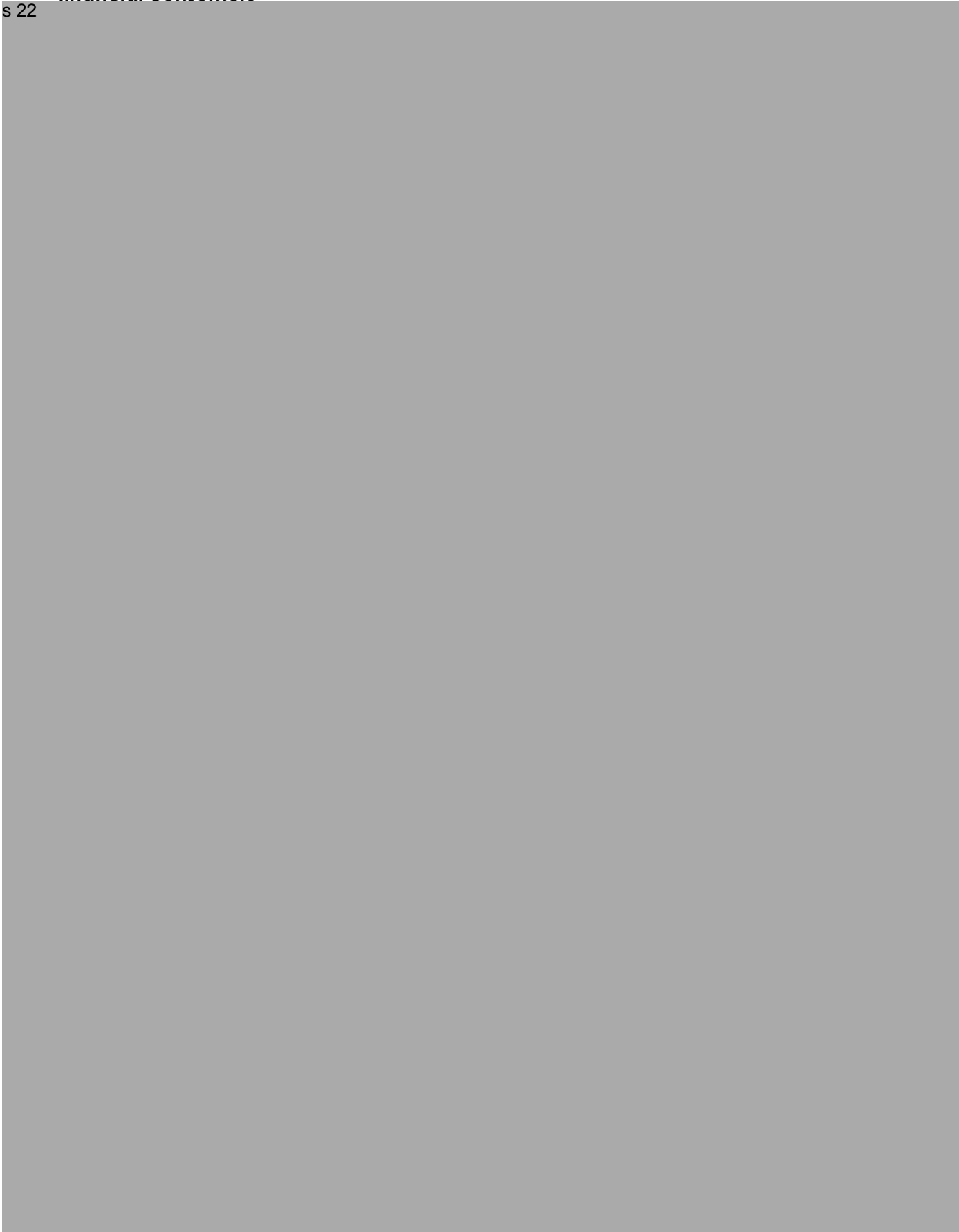
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Meeting of the G20/OECD Task Force on Financial Consumer Protection

COVID-19 – Latest developments on policies or approaches to protect and support financial consumers

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Supporting an economic recovery

In addition to those measures we have referred to in our previous interventions, the Federal Government has now turned its focus to supporting an economic recovery through targeted fiscal reform.

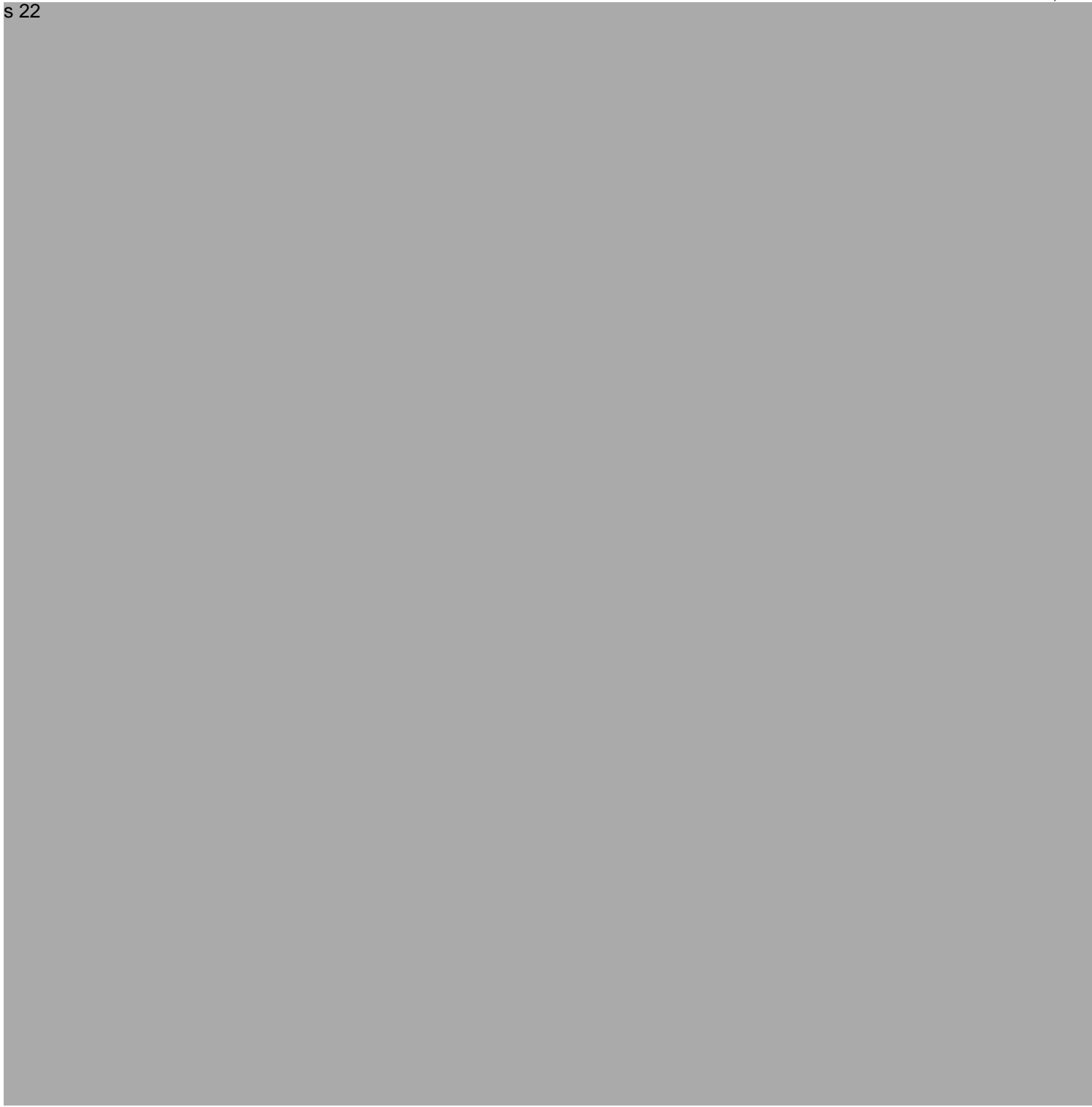
The Federal Government has announced its intention to reform some consumer credit laws. This will include:

- Removing responsible lending obligations from the National Consumer Credit Protection Act 2009, with the exception of small amount credit contracts and consumer leases where heightened obligations will be introduced to address consumer harms in these sectors;
- Ensuring that authorised deposit-taking institutions continue to comply with prudential lending standards requiring sound credit assessment and approval criteria;
- Adopting key elements of prudential lending standards and applying them to non-bank lenders;
- Protecting consumers from the predatory practices of debt management firms by requiring them to hold an Australian Credit Licence when they are paid to represent consumers in disputes with financial institutions;
- Allowing lenders to rely on the information provided by borrowers, replacing the current practice of 'lender beware' with a 'borrower responsibility' principles. This is expected to reduce the 'red tape' required to obtain credit, including a reduction in the need to verify the information provided by a credit applicant;
- Removing the ambiguity regarding the application of consumer lending laws to small business lending.

The Government expects these reforms to improve access to credit for consumers and ensure it flows through the economy. Consumers will continue to be protected by design and distribution obligations, product intervention powers and a requirement that lenders act 'efficiently, honestly and fairly' in their dealing with borrowers.

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From: Luu, Nghi <Nghi.Luu@TREASURY.GOV.AU>
Sent: Monday, 20 July 2020 7:04 PM
To: Tim Gough <Tim.Gough@asic.gov.au>; s 22 <[redacted]@asic.gov.au>
Cc: s 22 <[redacted]@treasury.gov.au>; s 22 <[redacted]@treasury.gov.au>; s 22 <[redacted]@TREASURY.GOV.AU>; s 22 <[redacted]@treasury.gov.au>
Subject: RLOs [SEC=OFFICIAL:Sensitive]

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OFFICIAL: Sensitive

Hi Tim, s 22

As flagged with you some time ago, we have been looking at options for RLO reform.

We are operating on a tight timeframe, and would like to discuss some early thinking with you.

Are you available tomorrow afternoon to discuss further? If so, can you please suggest some options that work for you.

Regards
Nghì

Nghi Luu

Principal Adviser

Financial System Division | Markets Group

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s 22

From: s 22 @asic.gov.au>
Sent: Thursday, 8 October 2020 10:50 AM
To: s 22 ; s 22 ; s 22 ; Gough, Tim (ASIC - Protected); s 22 ; s 22 ; s 22 (ASIC - Protected); s 22 ; s 22 ; s 22 ; Auster, Amy; s 22
Subject: RE: ASIC/TSY: New framework for non-ADIs [SEC=OFFICIAL]
Follow Up Flag: Follow up
Flag Status: Flagged

Hi s 22

Thanks to you and the Treasury team for your time yesterday. This email covers the following matters:

1. It provides information on credit cards (including the high interest rates currently charged by some providers) in support of retaining, in a revised form, the obligation to link the credit limit to the time taken to repay the credit.
2. s 37(2)(b), s 47C, s 47E(d)
3. ASIC's thinking in relation to the obligations to apply to mortgage brokers and other intermediaries – we consider that the simplest approach would be to extend the best interests duty (BID) to all intermediaries rather than trying to develop a new standard in a very short period of time. This stance is consistent with the rationale for the decision to relieve mortgage brokers from the responsible lending obligations, and would also provide competitive neutrality.
4. Brief comments on Margin loans and flow-on changes that may be needed.

We will come back to you separately on some other issues, including any information on the finance broker market.

Credit cards

We appreciate the Government's position on removing restrictions on lending. That said, one of the rationales for introducing an obligation on credit card providers to consider the extent to which consumers can repay the credit limit on continuing credit contracts within a reasonable period of time was the risk of a debt trap due to the persistently high interest rate charges on credit cards.

This has been a consistent theme in this market since at least 2015 (with the Senate Inquiry into credit card interest rates) and the subsequent 2017-18 reforms. The most recent contact we had on this issue was with s 22 team earlier this year, which were instigated by similar concerns from the Government. You may wish to speak to her about the Government's current view/concerns about these products.

Our experience is that many credit card interest rates are high, and cards offered by non-ADIs often have relatively high interest rates when compared to cards provided by ADIs. Some examples are below; for comparison's sake we note that [this ADI product](#) has an interest rate of 7.49%.

- [Skye credit card](#), 23.99%, provided by Flexicards Australia
- [Gem Visa](#), 24.99%, provided by Latitude Finance Australia
- [Latitude Mastercard](#), 24.5%, provided by Latitude Finance Australia

Linking the credit limit to the time taken to repay it manages the risk of consumers being provided with high-cost debt where, in summary, the majority of their payments are quickly being directed to meeting interest charges rather than enabling them to make new purchases. Obligations about meeting minimum repayments do not address this risk as the issue is not the affordability of the minimum repayment but the risks associated with the consumer's use of the card, particularly if both the limit and interest rate are high.

Finally, during our discussion, you asked about information on the size of the credit card market. In Report 580 *Credit card lending in Australia*, which looked at consumers with problematic credit card debt, the data we obtained indicated that American Express and Latitude (the two non-ADI lenders in our review) had over \$ 45 open consumer credit card accounts in June 2017. This made up almost \$ 45 of the open credit card accounts that we looked at.

Limitations in general conduct / consumer law obligations

Intermediaries

As discussed yesterday, we continue to consider that the removal of the responsible lending obligations will cause issues where the mortgage broker best interest duty does not apply. To that end, we note that part of the rationale for removing these obligations is the existence of that new duty. Based on our experience, these issues are likely to be most severe in the finance broking sector; we can provide examples of poor conduct we have seen/sought to address if it would assist.

Margin loans

For your information, the relevant laws applying to margin loans are sections 985EA – 985K of the Corporations Act 2001 and regulations 7.8.08A – 7.8.10A of the Corporations Regulations 2001.

Flow-on changes that may be needed

One provision relating to credit guides that may require a flow-on change is s126(2)(f), which currently requires lenders credit guides to contain information about their obligations under s132 (to provide a copy of their assessment on request) and s133 (the prohibition around unsuitable credit contracts).

Regards

s 22

Senior Manager — Credit and Banking
Financial Services and Wealth Group

Australian Securities and Investments Commission

Level 5, 100 Market Street, Sydney 2000

Tel: +s 22

s 22 [@asic.gov.au](mailto: @asic.gov.au)



ASIC

From: s 22 [@asic.gov.au](mailto: @asic.gov.au)

Sent: Wednesday, 7 October 2020 10:33 AM

To: s 22 [@TREASURY.GOV.AU](mailto: @TREASURY.GOV.AU); s 22 [@asic.gov.au](mailto: @asic.gov.au); Tim

Gough <[Tim.Gough@asic.gov.au](mailto: Tim.Gough@asic.gov.au)>; s 22 [@asic.gov.au](mailto: @asic.gov.au); s 22

[@asic.gov.au](mailto: @asic.gov.au); s 22 [@asic.gov.au](mailto: @asic.gov.au); s 22

[@TREASURY.GOV.AU](mailto: @TREASURY.GOV.AU); s 22 [@TREASURY.GOV.AU](mailto: @TREASURY.GOV.AU); s 22

[@treasury.gov.au](mailto: @treasury.gov.au); Auster, Amy <[Amy.Auster@TREASURY.GOV.AU](mailto: Amy.Auster@TREASURY.GOV.AU)>

Cc: s 22 [@asic.gov.au](mailto: @asic.gov.au)

Subject: RE: ASIC/TSY: New framework for non-ADIs [SEC=OFFICIAL]

s 47C, s 47E(d)

Regards

s 22
Senior Specialist | Strategy
(I am on secondment to Strategy but also working one day a week for the Financial Services and Wealth Group)

Australian Securities and Investments Commission

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Tel: +s 22
s 22 @asic.gov.au



-----Original Appointment-----

From: s 22 @TREASURY.GOV.AU>
Sent: Friday, 2 October 2020 5:33 PM
To: s 22 ; s 22 ; Tim Gough; s 22 ; s 22 ; s 22 ; s 22 ; s 22 ; s 22 ; s 22 ; s 22 ; Auster, Amy
Subject: ASIC/TSY: New framework for non-ADIs [SEC=OFFICIAL]
When: Wednesday, 7 October 2020 11:00 AM-12:00 PM (UTC+10:00) Canberra, Melbourne, Sydney.
Where: Conference Scheduling

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s 22 invites you to this conference.

ASIC/TSY: New framework for non-ADIs [SEC=OFFICIAL]
Wednesday, 7 October 2020, 11:00 AM | 1 hr
(UTC+10:00) Canberra, Melbourne, Sydney

To Join the Conference from other locations:

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From: s 22 @treasury.gov.au>

Sent: Friday, 2 October 2020 3:28 PM

To: s 22 @asic.gov.au>

Cc: s 22 @asic.gov.au>; s 22 @asic.gov.au>; s 22 @TREASURY.GOV.AU>; s 22 @TREASURY.GOV.AU>; s 22 @TREASURY.GOV.AU>

Subject: RE: Meeting Tuesday? Credit reforms [SEC=OFFICIAL]

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Hi s 22

As discussed, I think we will need a few meetings next week as we furiously work to get drafting instructions finalised by Friday. Our timeline has us working towards releasing draft legislation for consultation on 26 October.

Initially we will need to focus on the new framework for non-ADIs – potentially 2-3 meetings to settle this – and then the other Credit Act provisions that will be affected by the removal of the RLOs – 1 meeting. We would also be interested in having a meeting about ASIC’s enforcement framework and the scope of licensing obligations. At this

stage it is probably safer to book in too many meetings rather than not have enough – also, happy to push the discussion on the enforcement framework until the following week as that is unlikely to feed into the drafting instructions.

Let me know if any of the following times work for ASIC and we will send through a couple meeting invitations:

- Tuesday – 1-2pm
- Tuesday – 4-5pm
- Wednesday – 11-12
- Wednesday – After 3pm
- Friday – 10-11
- Friday – 1-2:30pm

Thanks,

s 22

Manager

Banking and Access to Finance | Financial System Division

The Treasury, Langton Crescent, Parkes ACT 2600

Phone: s 22

OFFICIAL

From: s 22 @asic.gov.au>

Sent: Friday, 2 October 2020 11:27 AM

To: s 22 @treasury.gov.au>; s 22 @TREASURY.GOV.AU>

Cc: s 22 @asic.gov.au>; s 22 @asic.gov.au>

Subject: Meeting Tuesday? Credit reforms [SEC=OFFICIAL]

Hi s 22 – how does Tuesday suit for a discussion on the reforms? We are all available other than between 10.30 and 12 or 2 to 3?

Let us know what suits?

s 22

Senior Specialist | Strategy

(I am on secondment to Strategy but also working one day a week for the Financial Services and Wealth Group)

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From: s 22 @asic.gov.au
Sent: Tuesday, 13 October 2020 2:23 PM
To: s 22
Cc: s 22
Subject: RE: Consumer Credit - ASIC Instruments [SEC=OFFICIAL:Sensitive]

Hi s 22

Other than the instrument you mention (re credit cards), we do not believe there are any legislative instruments that will be directly affected by the reforms.

We note that there is one instrument (<https://www.legislation.gov.au/Details/F2016L00319>) that relates to some details on SACC warnings and reverse mortgage information statements. This instrument was just to update some details in prescribed disclosure material. It would not be directly affected by the reforms, but it may be helpful to incorporate these edits into refreshed requirements for SACCs and reverse mortgages.

There will be some individual instruments where we have given exemptions from, or modified, the relevant RLOs. The removal of the relevant provisions by the reforms will only mean those entities no longer require those instruments (or that the modifications will no longer operate, as the modified provision is repealed).

Kind regards

s 22

Senior Specialist – Credit and Banking
Financial Services and Wealth
Australian Securities and Investments Commission

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Mob: +s 22
s 22 @asic.gov.au

From: s 22 @TREASURY.GOV.AU>
Sent: Monday, 12 October 2020 10:16 AM
To: s 22 @asic.gov.au>
Cc: s 22 @treasury.gov.au>; s 22 @TREASURY.GOV.AU>;
s 22 @TREASURY.GOV.AU>; s 22 @TREASURY.GOV.AU>;
s 22 @treasury.gov.au>
Subject: Consumer Credit - ASIC Instruments [SEC=OFFICIAL]

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Hi s 22

I hope you had a nice weekend.

Our Law Design Office colleagues (s 22 [REDACTED] cc'd) have asked whether ASIC might be able to provide a list of ASIC instruments which may be affected as a result of the Government's consumer credit reforms?

I am aware of the instrument made under s 160F but if there are any others please let us know.

Kind Regards,

s 22 [REDACTED]

Analyst

Banking and Access to Finance Unit | Financial System Division

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From: @asic.gov.au>
Sent: Tuesday, 6 October 2020 12:25 PM
To:
Cc: Gough, Tim (ASIC - Protected); s 22 ; s 22 ; s 22 ; s 22
ASIC - Protected); s 22
Subject: Credit Reforms - Example System Level Obligations [SEC=OFFICIAL]
Attachments: 20201006 - Example System Level Obligations.docx

Hi s 22 and all,

Please find **attached** a document setting out some thoughts on what system level obligations could look like for non-ADIs. We can discuss this in one of our videoconferences if helpful.

Kind regards,
s 22

s 22

Lawyer — Credit and Banking
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