

Annex III

Financial Services Non-Conforming Measures

Schedule of the United States

Explanatory Notes

1. The Schedule of the United States to Annex III sets out:
 - (a) headnotes that limit or clarify the commitments of the United States with respect to the obligations described in subparagraph (b)(i) through (v) and subparagraph (c);
 - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of the United States that do not conform to some or all of the obligations imposed by:
 - (i) Article 12.2 (National Treatment);
 - (ii) Article 12.3 (Most-Favored-Nation Treatment);
 - (iii) Article 12.4 (Market Access for Financial Institutions);
 - (iv) Article 12.5 (Cross-Border Trade); or
 - (v) Article 12.8 (Senior Management and Boards of Directors); and
 - (c) in Section B, pursuant to Article 12.9, the specific sectors, subsectors, or activities for which the United States may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
 - (a) **Sector** refers to the general sector for which the entry is made;
 - (b) **Subsector** refers to the specific sector for which the entry is made;
 - (c) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(b) that, pursuant to Article 12.9 (Non-Conforming Measures), do not apply to the listed measure(s);
 - (d) **Level of Government** indicates the level of government maintaining the listed measure(s);

- (e) **Measures** identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the **Measures** element:
 - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and
- (f) **Description**
 - (i) for entries related to banking and other non-insurance financial services, sets out the non-conforming aspects of the entry and the subsector, financial institution, or activities covered by the entry; and
 - (ii) for entries related to insurance, provides a general, nonbinding description of the **Measures**.

3. Each entry in Section B sets out the following elements:

- (a) **Sector** refers to the general sector for which the entry is made;
- (b) **Subsector** refers to the specific sector for which the entry is made;
- (c) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(c) that, pursuant to Article 12.9 (Non-Conforming Measures), do not apply to the sectors, subsectors, or activities listed in the entry;
- (d) **Level of Government** indicates the level of government maintaining the listed measure(s); and
- (e) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry.

4. For entries in Section A, in accordance with Article 12.9.1(a) (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the law, regulation, or other measure identified in the **Measures** element or in the **Description** element of that entry, except to the extent the measure identified in the **Measures** or the **Description** element has been modified by a Specific Commitment in an Annex to Chapter Twelve (Financial Services).

5. For entries in Section B, in accordance with Article 12.9.4 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the sectors, subsectors, and activities identified in the **Description** element of that entry.

6. Where the United States maintains a measure that requires that a service supplier be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service

in its territory, a listing for that measure taken in Annex III with respect to Article 12.2 (National Treatment), 12.3 (Most-Favored-Nation Treatment), 12.4 (Market Access for Financial Institutions), or 12.5 (Cross-Border Trade) shall operate as a non-conforming measure with respect to Articles 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), and 10.9 (Performance Requirements) to the extent of that measure.

Headnotes

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set out in these headnotes and in Sections A and B below.
2. National treatment commitments in these subsectors are subject to the following limitations:
 - (a) National treatment with respect to banking will be provided based upon the foreign bank's "home state" in the United States, as that term is defined under the *International Banking Act*, where that Act is applicable. A domestic bank subsidiary of a foreign firm will have its own "home state," and national treatment will be provided based upon the subsidiary's home state, as determined under applicable law.¹
 - (b) National treatment with respect to insurance financial institutions will be provided according to a non-U.S. insurance financial institution's state of domicile, where applicable, in the United States. State of domicile is defined by individual states, and is generally the state in which an insurer is incorporated, is organized, or maintains its principal office in the United States.
3. To clarify the U.S. commitment with respect to Article 12.4 (Market Access for Financial Institutions), juridical persons supplying banking or other financial services (excluding insurance) and constituted under the laws of the United States are subject to non-discriminatory limitations on juridical form.²
4. The United States limits its commitments under Article 12.9.1(c) (Non-Conforming Measures) with respect to Article 12.4 (Market Access for Financial Institutions) in the following manner: with regard to banking and other financial services (excluding insurance), Article 12.9.1(c) shall apply only to non-conforming measures relating to Article 12.4(a) and not to those non-conforming measures relating to Article 12.4(b).

¹ Foreign banking organizations are generally subject to geographic and other limitations in the United States on a national treatment basis. Where such limitations do not conform to national treatment, they have been listed as non-conforming measures. For purposes of illustration, under this approach, the following situation does not accord national treatment and would therefore be listed as a non-conforming measure: a foreign bank from a particular home state is accorded less favorable treatment than that accorded to a domestic bank from that state with respect to expansion by branching.

² For example, partnerships and sole proprietorships are generally not acceptable juridical forms for depository financial institutions in the United States. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

Section A

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| Sector: | Financial Services |
| Subsector: | Banking and Other Financial Services (excluding Insurance) |
| Obligations Concerned: | Senior Management and Boards of Directors (Article 12.8) |
| Level of Government: | Central |
| Measures: | 12 U.S.C. § 72 |
| Description: | All directors of a national bank must be U.S. citizens, except that the Comptroller of the Currency may waive the citizenship requirement for not more than a minority of the total number of directors. |

Sector: Financial Services

Subsector: Banking and Other Financial Services (excluding Insurance)

Obligations Concerned: National Treatment (Article 12.2)
Market Access for Financial Institutions (Article 12.4)

Level of Government: Central

Measures: 12 U.S.C. § 619

Description: Foreign ownership of Edge corporations is limited to foreign banks and U.S. subsidiaries of foreign banks, while domestic non-bank firms may own such corporations.

Sector: Financial Services

Subsector: Banking and Other Financial Services (excluding Insurance)

Obligations Concerned: National Treatment (Article 12.2)
Market Access for Financial Institutions (Article 12.4)

Level of Government: Central

Measures: 12 U.S.C. § 1463 *et seq.* & 12 U.S.C. § 1751 *et seq.*

Description: Federal and state laws do not permit a credit union, savings bank, or savings association (both of the latter two entities may be also called thrift institutions) in the United States to be established through branches of corporations organized under a foreign country's law.

Sector: Financial Services

Subsector: Banking and Other Financial Services (excluding Insurance)

Obligations Concerned: National Treatment (Article 12.2)
Market Access for Financial Institutions (Article 12.4)

Level of Government: Central

Measures: 12 U.S.C. § 3104(d)

Description: In order to accept or maintain domestic retail deposits of less than \$100,000, a foreign bank must establish an insured banking subsidiary. This requirement does not apply to a foreign bank branch that was engaged in insured deposit-taking activities on December 19, 1991.

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| Sector: | Financial Services |
| Subsector: | Banking and Other Financial Services (excluding Insurance) |
| Obligations Concerned: | National Treatment (Article 12.2) |
| Level of Government: | Central |
| Measures: | 15 U.S.C. §§ 80b-2, 80b-3 |
| Description: | Foreign banks are required to register as investment advisers under the <i>Investment Advisers Act of 1940</i> to engage in securities advisory and investment management services in the United States, while domestic banks ¹ (or a separately identifiable department or division of the bank) do not have to register unless they advise registered investment companies. The registration requirement involves record maintenance, inspections, submission of reports, and payment of a fee. |

¹ For greater certainty, “domestic banks” include U.S. bank subsidiaries of foreign banks.

Sector: Financial Services

Subsector: Banking and Other Financial Services (excluding Insurance)

Obligations Concerned: National Treatment (Article 12.2)

Level of Government: Central

Measures: 12 U.S.C. §§ 221, 302, 321

Description: Foreign banks cannot be members of the Federal Reserve System, and thus may not vote for directors of a Federal Reserve Bank. Foreign-owned bank subsidiaries are not subject to this measure.

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| Sector: | Financial Services |
| Subsector: | Banking and Other Financial Services (excluding Insurance) |
| Obligations Concerned: | Market Access for Financial Institutions (Article 12.4) |
| Level of Government: | Central |
| Measures: | 12 U.S.C. § 36(g); 12 U.S.C. § 1828(d)(4); 12 U.S.C. § 1831u(a)(4) |
| Description: | The United States undertakes no commitment with respect to Article 12.4(b) (Market Access for Financial Institutions) in relation to the expansion, via the establishment of a branch or the acquisition of one or more branches of a bank without acquisition of the entire bank, by a foreign bank into another state from its “home state,” as that term is defined under applicable law. Except as provided elsewhere in this Schedule, such expansion shall be accorded on a national treatment basis in accordance with headnote 2(a). |

Sector: Financial Services

Subsector: Banking and Other Financial Services (excluding Insurance)

Obligations Concerned: Market Access for Financial Institutions (Article 12.4)

Level of Government: Central

Measures: 12 U.S.C. § 1831u

Description: Interstate expansion by a foreign bank through the establishment of branches by merger with a bank located outside the “home state,” as that term is defined under applicable law, of a foreign bank shall be accorded on a national treatment basis in accordance with headnote 2(a), except as provided elsewhere in this Schedule.

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| Sector: | Financial Services |
| Subsector: | Banking and Other Financial Services (excluding Insurance) |
| Obligations Concerned: | National Treatment (Article 12.2) Market Access for Financial Institutions (Article 12.4) |
| Level of Government: | Central |
| Measures: | 12 U.S.C. § 3102(a)(1); 12 U.S.C. § 3103(a); 12 U.S.C. § 3102(d) |
| Description: | <p>Establishment of a federal branch or agency by a foreign bank is not available in the following states that may prohibit establishment of a branch or agency by a foreign bank:</p> <ul style="list-style-type: none"> • Branches and agencies may be prohibited in Alabama, Kansas, Maryland, North Dakota, and Wyoming. • Branches, but not agencies, may be prohibited in Delaware, Florida, Georgia, Idaho, Louisiana, Mississippi, Missouri, Oklahoma, Texas, and West Virginia. |

Certain restrictions on fiduciary powers apply to federal agencies.

Note: The cited federal measures provide that certain state law restrictions shall apply to the establishment of federal branches or agencies.

Sector: Financial Services

Subsector: Banking and Other Financial Services (excluding Insurance)

Obligations Concerned: Most-Favored-Nation Treatment (Article 12.3)
Market Access for Financial Institutions (Article 12.4)

Level of Government: Central

Measures: 15 U.S.C. § 77jjj(a)(1)

Description: The authority to act as a sole trustee of an indenture for a bond offering in the United States is subject to a reciprocity test.

Sector: Financial Services

Subsector: Banking and Other Financial Services (excluding Insurance)

Obligations Concerned: Most-Favored-Nation Treatment (Article 12.3)
Market Access for Financial Institutions (Article 12.4)

Level of Government: Central

Measures: 22 U.S.C. §§ 5341-5342

Description: Designation as a primary dealer in U.S. government debt securities is conditioned on reciprocity.

Sector: Financial Services

Subsector: Banking and Other Financial Services (excluding Insurance)

Obligations Concerned: Most-Favored-Nation Treatment (Article 12.3)

Level of Government: Central

Measures: 15 U.S.C. § 78o(c)

Description: A broker-dealer registered under U.S. law that has its principal place of business in Canada may maintain its required reserves in a bank in Canada subject to the supervision of Canada.

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| Sector: | Financial Services |
| Subsector: | Banking and Other Financial Services (excluding Insurance) |
| Obligations Concerned: | National Treatment (Article 12.2) |
| Level of Government: | Central |
| Measures: | 12 U.S.C. § 1421 <i>et seq.</i> (Federal Home Loan Banks); 12 U.S.C. § 1451 <i>et seq.</i> (Federal Home Loan Mortgage Corporation); 12 U.S.C. § 1717 <i>et seq.</i> (Federal National Mortgage Association); 12 U.S.C. § 2011 <i>et seq.</i> (Farm Credit Banks); 12 U.S.C. § 2279aa-1 <i>et seq.</i> (Federal Agricultural Mortgage Corporation); 20 U.S.C. § 1087-2 <i>et seq.</i> (Student Loan Marketing Association) |
| Description: | <p>The United States may grant advantages, including but not limited to the following, to one or more of the Government-Sponsored Enterprises (GSEs) listed above:</p> <ul style="list-style-type: none"> • Capital, reserves and income of the GSE are exempt from certain taxation. • Securities issued by the GSE are exempt from registration and periodic reporting requirements under federal securities laws. • The U.S. Treasury may, in its discretion, purchase obligations issued by the GSE. |

Sector: Financial Services

Subsector: Banking and Other Financial Services (excluding Insurance)

Obligations Concerned: National Treatment (Article 12.2)
Most-Favored-Nation Treatment (Article 12.3)
Market Access for Financial Institutions (Article 12.4)
Senior Management and Boards of Directors (Article 12.8)

Level of Government: Regional

Measures: All existing non-conforming measures of all states, the District of Columbia, and Puerto Rico

Description:

Sector: Financial Services

Subsector: Insurance

Obligations Concerned: National Treatment (Article 12.2)
Cross-Border Trade (Article 12.5)

Level of Government: Central

Measures: 31 U.S.C. § 9304

Description: Branches of foreign insurance companies are not permitted to provide surety bonds for U.S. Government contracts.

Sector: Financial Services

Subsector Insurance

Obligations Concerned: National Treatment (Article 12.2)
Cross-Border Trade (Article 12.5)

Level of Government: Central

Measures: 46 C.F.R. § 249.9

Description: When more than 50 percent of the value of a maritime vessel whose hull was built under federally guaranteed mortgage funds is insured by a non-U.S. insurer, the insured must demonstrate that the risk was substantially first offered in the U.S. market.

Sector: Financial Services

Subsector: Insurance

Obligations Concerned: National Treatment (Article 12.2)
Most-Favored-Nation Treatment (Article 12.3)
Cross-Border Trade (Article 12.5)
Senior Management and Boards of Directors (Article 12.8)

Level of Government: Regional

Measures: All existing non-conforming measures of all states, the District of Columbia, and Puerto Rico

Description:

Section B

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| Sector: | Financial Services |
| Subsector: | Insurance |
| Obligations Concerned: | Market Access for Financial Institutions (Article 12.4) |
| Level of Government: | All |
| Description: | The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the GATS. |