

ANNEX III

SCHEDULE OF THE UNITED STATES

HEADNOTES

1. Commitments in these sub-sectors under Chapter 11 (Financial Services) are undertaken subject to the limitations and conditions set forth in these headnotes and in the Schedule below.

2. National treatment commitments in these sub-sectors 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*, when 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, when applicable, in the United States. State of domicile is defined by individual states, and is generally the state in which an insurer either is incorporated, is organised or maintains its principal office in the United States.

3. To clarify the U.S. commitment with respect to Article 11.5 (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. For entries in Section A, in accordance with Article 11.10.1(a) (Non-Conforming Measures), and subject to Article 11.10.1(c) (Non-Conforming Measures), the Articles

¹ Foreign banking organisations are generally subject to geographic and other limitations in the United States on a national treatment basis. If the 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 favourable treatment than that accorded to a domestic bank from that state with respect to expansion by branching. For greater certainty, a bank that is incorporated in the United States, including a U.S. bank subsidiary of a foreign bank, is considered a "domestic bank" and not a "foreign bank". The referenced measures include the relevant comprehensive definitions.

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.

specified in the **Obligations Concerned** element of an entry do not apply to the non-conforming aspects of the law, regulation or other measure identified in the **Measures** element of that entry, except to the extent that such non-conforming aspects are inconsistent with a Specific Commitment in Annex 11-B. In addition, **Description** provides a general, non-binding description of the measure for which the entry is made.

5. For entries in Section B, in accordance with Article 11.10.2 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the sectors, sub-sectors and activities identified in the **Description** element of that entry.

6. Article 11.10.1(c) (Non-Conforming Measures) shall not apply to non-conforming measures relating to Article 11.5(b) (Market Access for Financial Institutions).

ANNEX III

Section A

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	Senior Management and Boards of Directors (Article 11.9)
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
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	National Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.5)
Level of Government:	Central
Measures:	12 U.S.C. 619
Description:	Foreign ownership of Edge Act corporations is limited to foreign banks and U.S. subsidiaries of foreign banks, while domestic non-bank firms may own such corporations. Edge Act corporations are international financial vehicles chartered, supervised and examined by the Board of Governors of the Federal Reserve through which U.S. banking organisations may conduct certain activities abroad that are permissible to foreign banks abroad but may not otherwise be permissible to U.S. banks.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	National Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.5)
Level of Government:	Central
Measures:	12 U.S.C. 1463 <i>et seq.</i> 12 U.S.C. 1751 <i>et seq.</i>
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 organised under a foreign country's law.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	National Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.5)
Level of Government:	Central
Measures:	12 U.S.C. 3104(d)
Description:	In order to accept or maintain domestic retail deposits of less than the standard maximum deposit insurance amount, and requiring deposit insurance protection, 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.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	National Treatment (Article 11.3)
Level of Government:	Central
Measures:	15 U.S.C. 80b-2 and 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 clarity, “domestic banks” include U.S. bank subsidiaries of foreign banks.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	National Treatment (Article 11.3)
Level of Government:	Central
Measures:	12 U.S.C. 221, 302 and 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.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	Market Access for Financial Institutions (Article 11.5)
Level of Government:	Central
Measures:	12 U.S.C. 36(g) 12 U.S.C. 1828(d)(4) 12 U.S.C. 1831u
Description:	The United States undertakes no commitment with respect to Article 11.5(b) (Market Access for Financial Institutions) in relation to the expansion, by a foreign bank into another state from its “home state,” as that term is defined under applicable law, via: (a) the establishment of a “<i>de novo</i>” branch in another state; (b) the establishment of branches by merger with a bank in another state; or (c) the acquisition of one or more branches of a bank in another state without the acquisition of the entire bank, if not permitted by the state in which the resulting branch is or would be located. Except as provided elsewhere in this Schedule, such expansion shall be accorded on a national treatment basis in accordance with paragraph 2(a) of the headnote.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	National Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.5)
Level of Government:	Central
Measures:	12 U.S.C. 3102(a)(1) 12 U.S.C. 3102(d) 12 U.S.C. 3103(a)
Description:	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: (a) branches and agencies may be prohibited in Kansas, Maryland, North Dakota and Wyoming; and (b) branches, but not agencies, may be prohibited in Georgia, Missouri and Oklahoma. Certain restrictions on fiduciary powers apply to federal agencies. Note: The cited federal measures provide that certain state law restrictions apply to the establishment of federal branches or agencies.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	Most-Favoured-Nation Treatment (Article 11.4) Market Access for Financial Institutions (Article 11.5) Cross-Border Trade (Article 11.6)
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
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	Most-Favoured-Nation Treatment (Article 11.4) Market Access for Financial Institutions (Article 11.5)
Level of Government:	Central
Measures:	22 U.S.C. 5341 and 5342
Description:	Designation as a primary dealer in U.S. government debt securities is conditioned on reciprocity. ²

² A foreign-owned firm from any country that accords to United States companies the same competitive opportunities in the underwriting and distribution of government debt instruments as the country accords to a domestic company will be entitled to be designated as a primary dealer, assuming the firm meets applicable business requirements established by the Federal Reserve. If such country has entered into a Free Trade Agreement with the United States and the country has undertaken an obligation to provide national treatment for its government debt market, that fact shall be a positive factor in the consideration of such firm's request for designation.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	Most-Favoured-Nation Treatment (Article 11.4)
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.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	National Treatment (Article 11.3)
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:	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: (a) Capital, reserves and income of the GSE are exempt from certain taxation. (b) Securities issued by the GSE are exempt from registration and periodic reporting requirements under federal securities laws. (c) The U.S. Treasury may, in its discretion, purchase obligations issued by the GSE.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	National Treatment (Article 11.3) Most-Favoured-Nation Treatment (Article 11.4) Market Access for Financial Institutions (Article 11.5) Senior Management and Boards of Directors (Article 11.9)
Level of Government:	Regional
Measures:	All existing non-conforming measures of all states, the District of Columbia and Puerto Rico
Description:	Pursuant to the measures referred to above, some U.S. states may, among other things: (a) restrict or fail to provide an explicit mechanism for initial entry for the various juridical forms (for example, subsidiary, branch, agency, representative office) through which foreign banks may obtain a state licence to conduct business activities within their territory;³ and (b) impose citizenship requirements on some or all members of the boards of directors of state-chartered depository institutions. Additionally, states may impose restrictions or conditions upon the business activities with respect to juridical form; that is, with respect to a foreign bank operating in the state as a state-licensed or state-chartered incorporated entity, branch, agency or representative office. Some of the above limitations may reflect state reciprocity requirements.

³ For purposes of transparency, Appendix III-A sets out an illustrative, non-binding list of foreign bank structures explicitly provided for at the regional level of government.

Sector:	Financial Services
Sub-Sector:	Insurance
Obligations Concerned:	National Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.5) Cross-Border Trade (Article 11.6)
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
Sub-Sector:	Insurance
Obligations Concerned:	Cross-Border Trade (Article 11.6)
Level of Government:	Central
Measures:	46 C.F.R. 249.9
Description:	When more than 50 per cent 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
Sub-Sector:	Insurance
Obligations Concerned:	National Treatment (Article 11.3) Most-Favoured-Nation Treatment (Article 11.4) Market Access for Financial Institutions (Article 11.5) Cross-Border Trade (Article 11.6) Senior Management and Boards of Directors (Article 11.9)
Level of Government:	Regional
Measures:	All existing non-conforming measures of all states, the District of Columbia and Puerto Rico. For purposes of transparency, Appendix III-B sets out an illustrative, non-binding list of non-conforming measures maintained at the regional level of government.

APPENDIX III-A

LIST OF FOREIGN BANK STRUCTURES EXPLICITLY PROVIDED FOR AT THE REGIONAL LEVEL OF GOVERNMENT⁴

	Commercial Bank Ownership	Branches	Agencies	Rep Offices
Alabama	Yes	Yes	Yes	Yes
Alaska	Yes	Yes	No	No
Arizona	No	No	No	No
Arkansas	No	No	No	No
California	Yes	Yes	Yes	Yes
Colorado	No	No	No	No
Connecticut	Yes	Yes	Yes	Yes
Delaware	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes
Florida	No	Yes	Yes	Yes
Georgia	No	No	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes
Illinois	No	Yes	No	Yes
Indiana	Yes	No	No	No
Iowa	No	No	No	No
Kansas	No	No	No	No
Kentucky	No	No	No	Yes
Louisiana	Yes	Yes	Yes	Yes
Maine	Yes	Yes	Yes	Yes
Maryland	No	No	No	No
Massachusetts	Yes	Yes	Yes	Yes
Michigan	Yes	Yes	Yes	Yes
Minnesota	Yes	No	No	Yes
Mississippi	Yes	Yes	Yes	Yes
Missouri	Yes	No	Yes	Yes
Montana	Yes	No	No	No
Nebraska	No	No	No	No
Nevada	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes
New Mexico	No	No	No	No
New York	Yes	Yes	Yes	Yes

⁴ This list is provided for transparency purposes only, is neither exhaustive nor binding, and is based upon information available as of December 2010, not as of the date of entry into force of this Agreement.

North Carolina	Yes	Yes	Yes	Yes
North Dakota	No	No	No	No
Ohio	Yes	Yes	Yes	Yes
Oklahoma	No	No	Yes	Yes
Oregon	No	Yes	No	No
Pennsylvania	Yes	Yes	Yes	Yes
Puerto Rico	Yes	Yes	Yes	Yes
Rhode Island	Yes	No	No	No
South Carolina	No	No	No	No
South Dakota	No	No	No	No
Tennessee	No	No	No	No
Texas	Yes	Yes	Yes	Yes
Utah	No	Yes	Yes	Yes
Vermont	Yes	Yes	No	No
Virginia	No	No	No	No
Washington	No	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes	Yes
Wisconsin	Yes	No	No	No
Wyoming	No	No	No	No

APPENDIX III-B

ILLUSTRATIVE LIST OF U.S. REGIONAL NON-CONFORMING MEASURES AFFECTING INSURANCE⁵

Part I: Measures affecting a commercial presence			
	Juridical Form	Senior Management and Boards of Directors	Government Ownership or Control
Direct insurance	<u>The following states have no mechanism for licensing initial entry of a non-U.S. insurance company as a subsidiary, unless that company is already licensed in some other U.S. state:</u> Minnesota, Mississippi and Tennessee. <u>The following states have no mechanism for licensing initial entry of a non-U.S. insurance company as a branch, unless that company is already licensed in some other U.S. state:</u> Arkansas, Arizona, Connecticut, Georgia, Kansas, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Tennessee, Vermont and Wyoming.	<u>Citizenship requirement (for board of directors):</u> Louisiana, Washington, Oklahoma, Pennsylvania, California, Florida, Georgia, Idaho, Indiana, Mississippi, Oregon, New York, South Dakota, Wyoming, Tennessee, Illinois and Missouri. <u>Citizenship requirement (for incorporators):</u> Hawaii, Idaho, Indiana, South Dakota, Washington, Georgia, Alaska, Florida, Kansas, Kentucky, Maine, Missouri, Montana, Texas and Wyoming. <u>Residency requirement (for organising members of mutuals):</u> Arkansas, California; Idaho; Kansas; North Dakota, Minnesota, Mississippi, Montana, Vermont and Wyoming. <u>Citizenship/residency requirement (for organisers of fraternal</u>	<u>Government-owned or -controlled insurance companies are not authorised to conduct business:</u> Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Kansas, Kentucky, Maine, Maryland, Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Washington and Wyoming.

⁵ This list is provided for transparency purposes only, and is neither exhaustive nor binding.

Part I: Measures affecting a commercial presence			
	Juridical Form	Senior Management and Boards of Directors	Government Ownership or Control
		<u>benefit societies</u>): Alaska, Arizona, Arkansas, California, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Vermont, Washington, West Virginia and Wyoming. <u>Residency requirement (for organisers of domestic reciprocal insurers)</u>): Arizona, Arkansas, California, Delaware, Georgia, Idaho, Indiana, Kentucky, Maine, Maryland, Mississippi, Montana, Pennsylvania, South Dakota, Tennessee, Virginia, Washington and Wyoming.	
Reinsurance and retrocession	<u>The following states have no mechanism for licensing initial entry of a non-U.S. insurance company as a subsidiary, unless that company is already licensed in some other U.S.</u>		<u>Government-owned or -controlled insurance companies are not authorised to conduct business:</u> Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Georgia,

Part I: Measures affecting a commercial presence			
	Juridical Form	Senior Management and Boards of Directors	Government Ownership or Control
	state: Maryland, Minnesota and Mississippi. <u>The following states have no mechanism for licensing initial entry of a non-U.S. insurance company as a branch, unless that company is already licensed in some other U.S. state: Arkansas, Arizona, Connecticut, Georgia, Kansas, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont and Wyoming.</u>		Hawaii, Idaho, Kansas, Kentucky, Maine, Maryland, Montana, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Washington and Wyoming.

Part II: Measures affecting a natural person			
	Residency	Citizenship	Differential licence fees
Insurance intermediation, and services auxiliary to insurance	<u>Non-resident licences are not issued to individuals not licensed in another U.S. state in:</u> Connecticut, Colorado, California, Delaware, Georgia, Florida, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Mississippi, Montana, Nevada, New Jersey, North Dakota, Nebraska, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Virginia, West Virginia, Texas and Washington.		
Brokerage services	<u>Residency requirement:</u> Alabama, Arkansas, California and Louisiana. <u>Residency requirement (for surplus lines brokers):</u> All states except California, Idaho, Maine, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Texas, Vermont, West Virginia and		<u>Differential licence fees for non-residents:</u> Alaska, California, Colorado, Georgia, Indiana, Louisiana, Maine, Montana, New Hampshire, North Dakota, Oklahoma, Rhode Island and Vermont.

Part II: Measures affecting a natural person			
	Residency	Citizenship	Differential licence fees
	Wyoming.		
Agency services	<u>Residency requirement:</u> California, Florida, Kansas, Louisiana, Oregon, Rhode Island and Texas. <u>Residency requirement (for surplus lines brokers):</u> All states except Alaska, Arkansas, Florida, Idaho, Kentucky, Louisiana, Nevada, New Mexico, Ohio, Oregon, South Dakota, Texas, West Virginia and Wyoming.		<u>Differential licence fees for non-residents:</u> Alaska, California, Colorado, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, New Hampshire, New Jersey, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Vermont, Wisconsin and Wyoming.
Consultancy, actuarial, risk assessment, and claim settlement services	<u>Residency requirement:</u> Alabama, California, Florida, Georgia, Indiana, Illinois, Kentucky, Maryland, Michigan, Mississippi, Montana, Nevada, North Carolina, Oklahoma, Oregon, Pennsylvania and Washington.	<u>Citizenship requirement:</u> Alabama, Missouri, New Mexico and Oklahoma.	

ANNEX III

Section B

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligations Concerned:	National Treatment (Article 11.3)
Level of Government:	Central
Description:	With regard to the Federal Home Loan Banks, Federal Home Loan Mortgage Corporation and Federal National Mortgage Association, the United States reserves the right to adopt or maintain measures that grant advantages, including those described in the entry on page Annex III – United States – 14 to that entity, or any new, reorganised or transferee entity with similar functions and objectives with respect to housing finance.
Existing 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)