ANNEX III

UNITED STATES’ RESERVATIONS TO
CHAPTER 11 (FINANCIAL SERVICES)

HEADNOTES

1. Commitments in these sub-sectors under this Agreement 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, 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-United States 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 either is incorporated, is organised or maintains its principal office in the United States.

3. To clarify the United States 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

¹ Foreign banking organisations 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 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 United States bank subsidiary of a foreign bank, is considered a “domestic bank” and not a “foreign bank”. Please refer to the referenced measures for 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.
4. 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).
GENERAL NOTE

1. The Schedule of a Party to this Annex sets out:
   
   (a) headnotes that limit or clarify the commitments of a Party with respect to the obligations described in subparagraphs 1(b) and 1(c);

   (b) in Section A, pursuant to Article 11.10.1 (Non-Conforming Measures), a Party’s existing measures that are not subject to some or all of the obligations imposed by:
      
      (i) Article 11.3 (National Treatment);

      (ii) Article 11.4 (Most-Favoured-Nation Treatment);

      (iii) Article 11.5 (Market Access for Financial Institutions);

      (iv) Article 11.6 (Cross-Border Trade); or

      (v) Article 11.9 (Senior Management and Boards of Directors); and

   (c) in Section B, pursuant to Article 11.10.2 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which a Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:
      
      (i) Article 11.3 (National Treatment);

      (ii) Article 11.4 (Most-Favoured-Nation Treatment);

      (iii) Article 11.5 (Market Access for Financial Institutions);

      (iv) Article 11.6 (Cross-Border Trade); or

      (v) Article 11.9 (Senior Management and Boards of Directors).

2. Each Schedule entry in Section A sets out the following elements:

   (a) **Sector** refers to the sector for which the entry is made;

   (b) **Sub-Sector**, where referenced, refers to the specific subsector for which the entry is made;
(c) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(b) that, pursuant to Article 11.10.1(a) (Non-Conforming Measures), do not apply to the listed measure(s) as indicated in the headnote for each Party’s schedule;

(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**, as indicated in the headnote for each Party’s schedule, either sets out the non-conforming measure or provides a general non-binding description of the measure for which the entry is made.

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

(a) **Sector** refers to the sector for which the entry is made;

(b) **Sub-Sector**, where referenced, refers to the specific subsector for which the entry is made;

(c) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(c) that, pursuant to Article 11.10.2 (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 and/or nature of the sectors, subsectors or activities covered by the entry to which the reservation applies; and

(f) **Existing Measures** identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

4. Parties recognise that measures falling under exceptions applicable to this chapter, such as those in Article 11.11 (Exceptions), need not be scheduled. Nevertheless, some Parties have listed measures that may fall within applicable exceptions. For greater certainty, the listing of a measure in a Party’s Schedule to Annex III is without prejudice to whether that measure or any other measure:
(a) adopted or maintained by the Party; or

(b) adopted or maintained by any other Party;

is covered by exceptions such as those in Article 11.11 (Exceptions).
INTRODUCTORY NOTE

1. The Schedule of the United States to this Annex sets out:

(a) headnotes that limit or clarify the commitments of the United States with respect to the obligations described in subparagraphs (b)(i) through (v) and in subparagraph (c);

(b) in Section A, pursuant to Article 11.10.1 (Non-Conforming Measures), the existing measures of the United States that do not conform with some or all of the obligations imposed by:

(i) Article 11.3 (National Treatment);

(ii) Article 11.4 (Most-Favoured-Nation Treatment);

(iii) Article 11.5 (Market Access for Financial Institutions);

(iv) Article 11.6 (Cross-Border Trade); or

(v) Article 11.9 (Senior Management and Boards of Directors); and

(c) in Section B, pursuant to Article 11.10.2 (Non-Conforming Measures), the specific sectors, sub-sectors 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 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions), Article 11.6 (Cross-Border Trade), or Article 11.9 (Senior Management and Boards of Directors) (articles referenced in subparagraphs (b)(i) through (v)).

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) **Sub-sector** refers to the specific sector for which the entry is made;

(c) **Obligations Concerned** specifies the article(s) referred to in paragraph 1(b) that, pursuant to Article 11.10.1(a) (Non-Conforming Measures), do not apply to the non-conforming aspects of the law, regulation or other measure, as set out in paragraph 4;
(d) **Level of Government** indicates the level of government maintaining the scheduled 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** provides a general, non-binding description of the measure for which the entry is made.

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) **Sub-sector** refers to the specific sector for which the entry is made;

(c) **Obligations Concerned** specifies the article(s) referred to in paragraph 1(c) that, pursuant to Article 11.10.2 (Non-Conforming Measures), do not apply to the sectors, sub-sectors, or activities scheduled 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, sub-sectors, or activities covered by the entry.

(f) **Existing Measures** identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, sub-sectors or activities covered by the entry.

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 of this Agreement 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.

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. Parties recognise that measures falling under exceptions applicable to this chapter, such as those in Article 11.11, need not be scheduled. Nevertheless, some Parties have listed measures that may fall within applicable exceptions. The listing of a measure in a Party’s Schedule to Annex III is without prejudice to whether that measure, another measure adopted or maintained by the Party, or a measure adopted or maintained by any other Party is covered by Article 11.11.
ANNEX III

SECTION A

A-1

Sector: Financial Services

Sub-Sector: Banking and Other Financial Services (Excluding Insurance)

Obligations Concerned: Senior Management & 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.
A-2

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


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. 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


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.
| A-4                                                                                 |
|---|------------------------------------------------------------------------------------|
| **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. |
A-5

Sector: Financial Services

Sub-Sector: Banking and Other Financial Services (Excluding Insurance)

Obligations Concerned: National Treatment (Article 11.3)

Level of Government: Central


Description: Foreign banks are required to register as investment advisers under the Investment Advisers Act of 1940 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, 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.
A-7

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


Description: The United States undertakes no commitment with respect to Article 11.5(b) 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:

- the establishment of a “de novo” branch in another state;

- the establishment of branches by merger with a bank in another state; or

- 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 headnote 2(a).
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. 3103(a); 12 U.S.C. 3102(d)

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:

- Branches and agencies may be prohibited in Kansas, Maryland, North Dakota and Wyoming.

- 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 shall apply to the establishment of federal branches or agencies.
A-9

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


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.
A-10

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. 5341-5342

Description: Designation as a primary dealer in U.S. government debt securities is conditioned on reciprocity.²

²A 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.
A-11

**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.
A-12

Sector: Financial Services

Sub-Sector: Banking and Other Financial Services (Excluding Insurance)

Obligations Concerned: National Treatment (Article 11.3)

Level of Government: Central


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:

- 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.
A-13

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:

- restrict or fail to provide an explicit mechanism for initial entry for the various juridical forms (e.g., subsidiary, branch, agency, representative office) through which foreign banks may obtain a state license to conduct business activities within their territory; and

- 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.

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For purposes of transparency, Appendix I-A sets out an illustrative, non-binding list of foreign bank structures explicitly provided for at the regional level of government.
A-14

Sector: Financial Services

Sub-Sector: Insurance

Obligations Concerned: National Treatment (Article 11.3)
Cross-Border Trade (Article 11.6)
Market Access for Financial Institutions (Article 11.5)

Level of Government: Central


Description: Branches of foreign insurance companies are not permitted to provide surety bonds for U.S. Government contracts.
A-15

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.
A-16

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 1-B sets out an illustrative, non-binding list of non-conforming measures maintained at the regional level of government.
APPENDIX 1-A

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

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4 This document is provided for transparency purposes only, and 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 the Agreement.
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<tr>
<td>Wyoming</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
APPENDIX 1-B

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

<table>
<thead>
<tr>
<th>Part I: Measures affecting a commercial presence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Juridical Form</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

---

5 This document is provided for transparency purposes only, and is neither exhaustive nor binding.
## Part I: Measures affecting a commercial presence

<table>
<thead>
<tr>
<th>Juridical Form</th>
<th>Senior Management and Boards of Directors</th>
<th>Government Ownership or Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reinsurance and retrocession</td>
<td>The following states have no mechanism for licensing initial entry of a non-US insurance company as a subsidiary, unless that company is already licensed in some other US state:</td>
<td></td>
</tr>
<tr>
<td>Juridical Form</td>
<td>Senior Management and Boards of Directors</td>
<td>Government Ownership or Control</td>
</tr>
<tr>
<td>----------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Maryland, Minnesota, Mississippi.</td>
<td>The following states have no mechanism for licensing initial entry of a non-US insurance company as a branch, unless that company is already licensed in some other US state: Arkansas, Arizona, Connecticut, Georgia, Kansas, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont, Wyoming.</td>
<td>Hawaii, Idaho, Kansas, Kentucky, Maine, Maryland, Montana, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Washington, Wyoming.</td>
</tr>
<tr>
<td>Part II: Measures affecting a natural person</td>
<td>Residency</td>
<td>Citizenship</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>-----------</td>
<td>-------------</td>
</tr>
<tr>
<td>Insurance intermediation, and services auxiliary to insurance</td>
<td>Non-resident licenses are not issued to individuals not licensed in another US state in: 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, Washington.</td>
<td></td>
</tr>
<tr>
<td>Agency services</td>
<td>Residency</td>
<td></td>
</tr>
</tbody>
</table>
## Part II: Measures affecting a natural person

<table>
<thead>
<tr>
<th>Residency</th>
<th>Citizenship</th>
<th>Differential license fees</th>
</tr>
</thead>
</table>

Consultancy, actuarial, risk assessment, and claim settlement services

ANNEX III

SECTION B

B-1

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 16 to that entity, or any new, reorganised, or transferee entity with similar functions and objectives with respect to housing finance.