

United States-Australia Free Trade Agreement
Financial Services Annex

Non-Conforming Measures of the United States with Respect to
Banking and Other Financial Services (Excluding Insurance)

Headnotes

1. Commitments in these subsectors under the 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 subsectors are subject to the following limitation: National treatment 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
3. To clarify the U.S. commitment with respect to Article 13.4 of the Agreement (Market Access), 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 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.

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4. The United States limits its commitments under Article 13.9.1(c) (Non-Conforming Measures) with respect to Article 13.4 (Market Access) in the following manner: Article 13.9.1(c) shall apply only to non-conforming measures relating to 13.4 (a) and not to those non-conforming measures relating to Article 13.4(b).

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **Senior Management & Boards of Directors**

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.**

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **National Treatment**
Market Access

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.**

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **National Treatment
Market Access**

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.**

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **National Treatment
Market Access**

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: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **National Treatment**

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 Investment Advisers Act of 1940 to engage in securities advisory and investment management services in the United States, while domestic banks* (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.**

* For greater clarity, “domestic banks” include U.S. bank subsidiaries of foreign banks.

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **National Treatment**

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: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **Market Access**

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 paragraph (b) of Article 4 of the Agreement 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.**

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **Market Access**

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, except as provided elsewhere in this schedule.**

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **National Treatment
Market Access**

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 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.

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **Most Favored Nation Treatment
Market Access**

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.**

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **Most Favored Nation Treatment
Market Access**

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. ***

* 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 not taken a national treatment reservation for its government debt market, that fact shall be a positive factor in the consideration of such firm's request for designation.

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **Most Favored Nation Treatment**

Level of Government: **Central**

Measures: **15 U.S.C. 780(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:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	National Treatment
Level of Government:	Central
Measures:	12 U.S.C. 1421 et seq. (Federal Home Loan Banks); 12 U.S.C. 1451 et seq. (Federal Home Loan Mortgage Corporation); 12 U.S.C. 1717 et seq. (Federal National Mortgage Association); 12 U.S.C. 2011 et seq. (Farm Credit Banks); 12 U.S.C. 2279aa-1 et seq. (Federal Agricultural Mortgage Corporation); 20 U.S.C. 1087-2 et seq. (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.

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Sector: **Banking and Other Financial Services (Excluding Insurance)**

Obligations Concerned: **National Treatment**
Most-Favored-Nation Treatment
Market Access
Senior Management and Boards of Directors

Level of Government: **Regional**

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

Description: