

**DRAFT**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency**  
**March 24, 2004**

**Annex III**

**Non-Conforming Measures of the United States with Respect to Financial Services**

**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 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.<sup>1</sup>
  - (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 either 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), 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.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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

**DRAFT**  
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**March 24, 2004**

4. The United States limits its commitments under Article 12.9.1(c) (Non-Conforming Measures) with respect to Article 12.4 (Market Access) in the following manner:
- (a) With regard to banking and other financial services (excluding insurance), Article 12.9.1(c) shall apply only to non-conforming measures relating to 12.4(a) and not to those non-conforming measures relating to Article 12.4(b); and
  - (b) With regard to insurance, Article 10.9.1(c) shall not apply to non-conforming measures relating to Article 10.4.

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intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

**DRAFT**  
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**January 28, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>Senior Management &amp; Boards of Directors</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>12 U.S.C. 72</b>
<b>Description:</b>	<b>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.</b>

**DRAFT**  
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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>National Treatment Market Access</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>12 U.S.C. 619</b>
<b>Description:</b>	<b>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.</b>

**DRAFT**  
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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>National Treatment Market Access</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>12 U.S.C. 1463 et seq. &amp; 12 U.S.C. 1751 et seq.</b>
<b>Description:</b>	<b>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.</b>

**DRAFT**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency**  
**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>Market Access National Treatment</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>12 U.S.C. 3104(d)</b>
<b>Description:</b>	<b>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.</b>

**DRAFT**  
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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

**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) are exempt from registration 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.

**DRAFT**  
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**March 24, 2004**

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**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>National Treatment</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>12 U.S.C. 221, 302, 321</b>
<b>Description:</b>	<b>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.</b>



**DRAFT**  
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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>Market Access</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>12 U.S.C. 36(g); 12 U.S.C. 1828(d)(4); 12 U.S.C. 1831u(a)(4)</b>
<b>Description:</b>	<b>The United States undertakes no commitment with respect to Article 12. 4(b) (Market Access) 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.</b>

**DRAFT**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency**  
**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>Market Access</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>12 U.S.C. 1831u</b>
<b>Description:</b>	<b>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.</b>

**DRAFT**  
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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

**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.

**DRAFT**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency**  
**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>Most Favored Nation Treatment Market Access</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>15 U.S.C. 77jjj(a)(1)</b>
<b>Description:</b>	<b>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.</b>

**DRAFT**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency**  
**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>Most Favored Nation Treatment Market Access</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>22 U.S.C. 5341-5342</b>
<b>Description:</b>	<b>Designation as a primary dealer in U.S. government debt securities is conditioned on reciprocity.</b>

**DRAFT**  
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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>Most Favored Nation Treatment</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>15 U.S.C. 78o(c)</b>
<b>Description:</b>	<b>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.</b>

**DRAFT**  
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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Banking and Other Financial Services (Excluding Insurance)</b>
<b>Obligations Concerned:</b>	<b>National Treatment</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>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)</b>
<b>Description:</b>	<p><b>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:</b></p> <ul style="list-style-type: none"><li><b>• Capital, reserves and income of the GSE are exempt from certain taxation.</b></li><li><b>• Securities issued by the GSE are exempt from registration and periodic reporting requirements under federal securities laws.</b></li><li><b>• The U.S. Treasury may, in its discretion, purchase obligations issued by the GSE.</b></li></ul>

**DRAFT**  
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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

**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:**



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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Insurance</b>
<b>Obligations Concerned:</b>	<b>National Treatment Cross-Border Trade</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>31 U.S.C. § 9304</b>
<b>Description:</b>	<b>Branches of foreign insurance companies are not permitted to provide surety bonds for U.S. Government contracts.</b>

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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Insurance</b>
<b>Obligations Concerned:</b>	<b>National Treatment Cross-Border Trade</b>
<b>Level of Government:</b>	<b>Central</b>
<b>Measures:</b>	<b>46 C.F.R. § 249.9</b>
<b>Description:</b>	<b>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-US insurer, the insured must demonstrate that the risk was substantially first offered in the US market.</b>

**DRAFT**  
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**March 24, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section A**

<b>Sector:</b>	<b>Insurance</b>
<b>Obligations Concerned:</b>	<b>National Treatment</b> <b>Most-Favored-Nation Treatment</b> <b>Cross-Border Trade</b> <b>Senior Management and Boards of Directors</b>
<b>Level of Government:</b>	<b>Regional</b>
<b>Measures:</b>	<b>All existing non-conforming measures of all states, the District of Columbia, and Puerto Rico</b>
<b>Description:</b>	

**DRAFT**  
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**January 28, 2004**

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**  
**Schedule of the United States, Section B**

**Sector:** Insurance

**Obligations Concerned:** Market Access

**Level of Government:** All

**Measures:**

**Description:** The U.S. reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the GATS.