COMMUNICATION FROM THE UNITED STATES OF AMERICA

Revised Conditional Offer of The United States in Banking and Other Financial Services (Excluding Insurance) Based on the Understanding in Financial Services

Addendum

The following pages replace and cancel pages 22-23 of MTN.GNS/W/112/Rev.1.

This offer is based on the Articles of Agreement to the General Agreement on Trade in Services (the Framework), the Annex on Financial Services (the Annex), and the Understanding on Commitments in Financial Services (the Understanding) contained in the 20 December 1991 document MTN.TNC/W/FA. Pursuant to these documents, the market access obligations of the Understanding have been adopted as an alternative to the market access obligations of the Framework. The cross-border, movement of consumer, commercial presence, and movement of personnel obligations of the Understanding thus substitute for the corresponding obligations of the Framework.

This offer is intended to represent a standstill with respect to federal, state, and local measures in the United States banking and securities sectors pursuant to the Understanding. Non-governmental organizations and associations are bound only to the extent set out in paragraph 2 of the Understanding’s national treatment provisions.

This revised offer should be read in conjunction with the U.S. exemption from Article II with respect to financial services, and is conditional on receiving adequate liberalization commitments from other Parties. The offer is also subject to technical changes, in particular changes needed to conform reservations to the obligations in the Understanding with the provisions of the Framework. Consistent with paragraph 2 of the Annex, future and existing prudential measures do not constitute restrictions on market access or national treatment and are thus not scheduled as such.
Federal Measures - Subsidiaries

The National Bank Act generally requires that all the directors of a national bank be citizens unless a national bank is an affiliate or subsidiary of a foreign bank, in which case only a majority of the board need be citizens.

The Bank Holding Company Act of 1956 and the international Banking Act of 1978 require a potential host state to expressly authorize a foreign bank with a bank subsidiary or domestic deposit-taking branch in another state to own additional bank subsidiaries within the host state. Under this authority, some states do not permit foreign banks to own subsidiaries in their territory on the same basis as domestic bank holding companies from the foreign bank’s “home state”.

A majority of the shares of an Edge corporation (specialized international banking companies chartered under federal law) can be owned by domestically owned banks and domestically owned non-bank companies willing to restrict their business activities to those closely related to banking. Majority ownership of an Edge corporation by a non-U.S. person is limited to foreign banks and U.S. subsidiaries of foreign banks. Other foreign persons may directly or indirectly own only a minority of the shares of an Edge corporation.

Federal Measures - Branches and Agencies

The international Banking Act defers to express state law prohibitions on the establishment of a Federal branch or agency.

Under the International Banking Act, foreign banks that are engaged directly or indirectly in taking domestic deposits in one state through a subsidiary or branch, can expand directly into another host state only through limited branches or agencies, and only as expressly permitted by the host state laws. State-chartered bank subsidiaries that are not members of the Federal Reserve System are not subject to this prohibition (all other U.S. bank subsidiaries are).
### COMMERCIAL BANKS (continued)

#### Other Federal Measures

Corporations owned by foreign governments are not exempt from the Bank Holding Company Act, while corporations owned by the Federal or state governments are exempt.

#### CONDITIONS AND QUALIFICATIONS ON NATIONAL TREATMENT

**Federal Measures - Branches and Agencies**

Under the Federal Deposit Insurance Corporation Improvement Act of 1991, foreign bank branches are prohibited from taking insured deposits unless they were engaged in that activity on 19 December 1991.

Foreign bank branches and agencies in the United States are required to register under the Investment Advisers Act of 1940, while domestic banks are exempt from registration.

Foreign banks with branches and agencies in the United States cannot be members of the Federal Reserve System, and may thus not vote for board members of local reserve banks. Foreign-owned subsidiaries in the United States can be members.

The United States Internal Revenue Service does not permit stand-by letters of credit issued by foreign bank branches and agencies to be used as security for tax liabilities for cross-border insurance activities.
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NOTES

1. Because the Understanding is adopted as an alternative approach to Part III of the Framework, the terms, limitations and conditions of market access listed in this offer relate to provisions of the Understanding; the provisions of Article XVI of the Framework are not addressed.

It is understood that the institutional framework of a Party's financial sector relating to the separation of financial activities does not constitute a market access restriction per se.

2. It is understood that the Framework's national treatment obligation, including "conditions of competition", has the following meaning:

(a) Each Party shall grant to financial service providers of any other Party, in the application of all measures, treatment no less favourable than that accorded to its financial service providers in like circumstances.

(b) A measure of a Party, whether such measure accords different or identical treatment, shall be deemed to be consistent with paragraph (a) only if it provides to financial service providers of any other Party equal competitive opportunities as are available to financial service providers of the Party in like circumstances. Equal competitive opportunities shall be deemed to exist where a measure does not disadvantage financial service providers of any other Party in their ability to compete as compared with the Party's financial service providers in like circumstances. In assessing equal competitive opportunities a principal factor will be the effect of a Party's measures. The absence of a significant market share in the territory of a Party by financial service providers of any other Party shall not in itself constitute denial of equal competitive opportunities.

It is further understood that certain language in Article XVII(3) of the Framework, (i.e. "modifies the conditions of competition") does not (1) exempt from the national treatment commitment any measure existing at the time of entry into force of the Agreement, even if no change is made in the measure, or (2) prevent a party from adopting a measure that alters in any way the conditions of competition, so long as such measure does not deny to financial service providers of another Party national treatment, as defined in paragraphs (a) and (b) of this note.
3. This offer is based on the assumption that it is not necessary to schedule non-discriminatory interstate banking restrictions in the United States. National treatment under the International Banking Act's application of interstate banking to foreign banks is determined according to a foreign bank's "home state". A foreign bank's home state is generally the first state in the United States where a foreign bank takes domestic deposits (either through a subsidiary or branch). National treatment is provided where a foreign bank from a particular home state is accorded no less favourable treatment than that accorded a domestic bank or bank holding company from the foreign bank's home state. A different approach to national treatment will require revisions to this offer.

4. The following illustrative prudential requirements are applicable to the regulation of commodities and securities services, and are provided for transparency purposes only: (1) instruments meeting the definition of futures and options under the Commodity Exchange Act must generally be offered on a recognized exchange; (2) service providers transacting securities or commodities business in the United States must generally be registered under United States laws; (3) securities must generally be registered before being offered in the United States.