ANNEX III
NON-CONFORMING MEASURES OF BAHRAIN WITH RESPECT TO FINANCIAL SERVICES

INTRODUCTORY NOTE FOR THE SCHEDULE OF BAHRAIN

1. The Schedule of Bahrain to Annex III sets out:

(a) headnotes that limit or clarify the commitments of Bahrain with respect to the obligations described in clauses (i)–(v) of subparagraph (b), and

(b) pursuant to paragraph 1 of Article 11.9 (Non-Conforming Measures), the existing measures of Bahrain that are not subject to some or all of the obligations imposed by:

(i) Article 11.2 (National Treatment);

(ii) Article 11.3 (Most-Favored-Nation Treatment);

(iii) Article 11.4 (Market Access for Financial Institutions);

(iv) Article 11.5 (Cross-Border Trade); or

(v) Article 11.8 (Senior Management and Boards of Directors).

2. Each entry as described in paragraph 1(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 obligations referred to in paragraph 1(b) that, pursuant to Article 11.9 (Non-Conforming Measures), do not apply to the non-conforming aspects of the law, regulation, or other measure that are set out in the **Description** element of the entry;

(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** sets out the non-conforming aspects of the measure for which the entry is made.

3. In accordance with paragraph 1(a) of Article 11.9 (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 that are set out in the **Description** element of that entry, except to the extent the measure identified in the **Description** element has been modified by a Specific Commitment in an Annex to Chapter Eleven (Financial Services).

ANNEX III
NON-CONFORMING MEASURES OF BAHRAIN 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. To clarify Bahrain's commitment with respect to Article 11.4 of the Agreement (Market Access for Financial Institutions), juridical persons supplying financial services and constituted under the laws of Bahrain are subject to non-discriminatory limitations on juridical form.[1]

[1] For example, partnerships and sole proprietorships are generally not acceptable juridical forms for deposit taking institutions in Bahrain. 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.

Schedule of Bahrain with Respect to Financial Services

Sector:	Financial Services
Sub-Sector:	Banking and other Financial Services (Excluding Insurance)
Obligations Concerned:	National Treatment (Article 11.2)
Level of Government:	Central
Measures:	*Legislative Decree No. 19 of 1991* (Bahrain Development Bank); and *Legislative Decree No. 4 of 1979* (Bahrain Housing Bank).
Description:	Bahrain may grant advantages and exemptions to the Bahrain Housing Bank and the Bahrain Development Bank including, but not limited to, funding and guarantees and exemptions from capital and reserves requirements.

Sector:	Financial Services
Sub-Sector:	Insurance
Obligations Concerned	Market Access for Financial Institutions (Article 11.4)
Level of Government	Central
Measures	*Legislative Decree No. 17 of 1987*
Description:	Bahrain reserves the right to limit the number of new licenses granted to supply General (Non-Life) insurance, except medical products, for a period of six months from the date of entry into force of this Agreement.

Sector: Financial Services

Sub-Sector: Leasing

Obligations Concerned: Market Access for Financial Institutions (Article 11.4)

Level of Government: Central

Measures: Regulation on Conditions and Licensing Criteria for Leasing Companies; and *Legislative Decree No. 23 of1973* with respect to the *Bahrain Monetary Agency Law*.

Description: Beginning no later than 12 months after the date of entry into force of this Agreement, Bahrain will grant new licenses to qualifying leasing companies authorizing them to supply leasing services to individuals in Bahrain.

Note: Stand-alone leasing companies are currently eligible to receive licenses to supply leasing services to companies in Bahrain.

Sector:	Financial Services
Sub-Sector:	Money Changers
Obligations Concerned:	Market Access for Financial Institutions (Article 11.4)
Level of Government:	Central
Measures:	Regulation on Standards, Conditions & Licensing Criteria for Money Changers License; and *Legislative Decree No. 23 of 1973* with respect to the *Bahrain Monetary Agency Law*.
Description:	Money changers must be incorporated in Bahrain.

ANNEX III

NON-CONFORMING MEASURES OF THE UNITED STATES WITH RESPECT TO FINANCIAL SERVICES

INTRODUCTORY NOTE FOR THE SCHEDULE OF THE UNITED STATES

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

   (a) headnotes that limit or clarify the commitments of the United States with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and

   (b) pursuant to Article 11.9 (Non-Conforming Measures), the existing measures of the United States that are not subject to some or all of the obligations imposed by:

      (i) Article 11.2 (National Treatment);

      (ii) Article 11.3 (Most-Favored-Nation Treatment);

      (iii) Article 11.4 (Market Access for Financial Institutions);

      (iv) Article 11.5 (Cross-Border Trade); or

      (v) Article 11.8 (Senior Management and Boards of Directors).

2. Each entry as described in paragraph 1(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 obligation(s) referred to in paragraph 1(b) that, pursuant to Article 11.9, do not apply to the non-conforming aspects of the law, regulation, or other measure listed in the **Measures** element of an entry;

   (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**

(i) for entries related to banking and other non-insurance financial services, sets out the non-conforming aspects of the entry and the subsector, financial institution, or activities covered by the entry; and

(ii) for entries related to insurance, provides a general, nonbinding description of the measure for which the entry is made.

3. In accordance with Article 11.9.1(a), 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 or in the **Description** element of that entry, except to the extent the measure identified in the **Measures** or the **Description** element has been modified by a Specific Commitment in an Annex to Chapter Eleven (Financial Services).

ANNEX III
NON-CONFORMING MEASURES OF THE UNITED STATES WITH RESPECT TO FINANCIAL SERVICES

Headnotes

1. Commitments in these sub-sectors 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.[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, 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 11.4 Agreement (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. The United States limits its commitments under Article 11.9.1(c) (Non-Conforming Measures) with respect to Article 11.4 (Market Access for Financial Institutions) in the following manner: with respect to banking and other financial services (excluding insurance), Article

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[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.

11.9.1(c) shall apply only to non-conforming measures relating to Article 11.4 (a) and not to those non-conforming measures relating to Article 11.4(b).

Schedule of the United States with Respect to Financial Services

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	Senior Management and Boards of Directors (Article 11.8)
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 11.2) Market Access for Financial Institutions (Article 11.4)
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.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	National Treatment (Article 11.2) Market Access for Financial Institutions (Article 11.4)
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.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	National Treatment (Article 11.2) Market Access for Financial Institutions (Article 11.4)
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.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	National Treatment (Article 11.2)
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.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	National Treatment (Article 11.2)
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.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	Market Access for Financial Institutions (Article 11.4)
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 11.4 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(a).

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	Market Access for Financial Institutions (Article 11.4)
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(a), except as provided elsewhere in this Schedule.

Sector: Financial Services

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

Obligations Concerned: National Treatment (Article 11.2)
Market Access for Financial Institutions (Article 11.4)

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.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	Most-Favored-Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4)
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-Favored-Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4)
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.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	Most-Favored-Nation Treatment (Article 11.3)
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 11.2)

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: 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.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4) Senior Management and Boards of Directors (Article 11.8)
Level of Government:	Regional
Measures:	All existing non-conforming measures of all states, the District of Columbia, and Puerto Rico
Description:	

Sector:	Financial Services
Sub-Sector:	Insurance
Obligations Concerned:	National Treatment (Article 11.2) Cross-Border Trade (Article 11.5)
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:	National Treatment (Article 11.2) Cross-Border Trade (Article 11.5)
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:	Market Access for Financial Institutions (Article 11.4)
Level of Government:	All
Measures:	
Description:	The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of GATS.

Sector:	Financial Services
Sub-Sector:	Insurance
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Cross-Border Trade (Article 11.5) Senior Management and Boards of Directors (Article 11.8)
Level of Government:	Regional
Measures:	All existing non-conforming measures of all states, the District of Columbia, and Puerto Rico
Description:	