

ANNEX III

Financial Services

Schedule of Canada – Explanatory Notes

1. Canada's Schedule to this Annex sets out:
 - (a) headnotes that limit or clarify commitments of Canada with respect to the obligations described in subparagraphs (b) and (c);
 - (b) in Section A, the reservations taken by Canada, pursuant to Article 10.9.1, with respect to existing measures that do not conform with obligations imposed by Articles relating to:
 - (i) Article 10.2 (National Treatment);
 - (ii) Article 10.3 (Most-Favoured-Nation Treatment);
 - (iii) Article 10.4 (Market Access for Financial Institutions);
 - (iv) Article 10.5 (Cross-Border Trade); or
 - (v) Article 10.8 (Senior Management and Boards of Directors); and
 - (c) in Section B, the reservations taken by Canada, pursuant to Article 10.9.2, for measures that Canada may adopt or maintain that do not conform with obligations imposed by Article 10.2 (National Treatment), 10.3 (Most-Favoured-Nation Treatment), 10.4 (Market Access for Financial Institutions), 10.5 (Cross-Border Trade), or 10.8 (Senior Management and Boards of Directors).
2. Each reservation in Section A sets out the following elements:
 - (a) **Sector** refers to the general sector in which the reservation is taken;
 - (b) **Sub-sector** refers to the specific sector in which the reservation is taken;
 - (c) **Type of Reservation** specifies the obligation referred to in paragraph 1(b) for which the reservation is taken;

- (d) **Level of Government** indicates the level of government maintaining the measure for which the reservation is taken;
 - (e) **Measures** identifies the laws, regulations or other measures, as qualified by the **Description** element, for which the reservation is taken. 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 a subordinate measure adopted or maintained under the authority of and consistent with the measure; and
 - (f) **Description** sets out references, if any, for liberalisation on the date of entry into force of this Agreement pursuant to other sections of Canada's Schedule to this Annex, and the remaining non-conforming aspects of the existing measures for which the reservation is taken.
3. Each reservation in Section B sets out the following elements:
- (a) **Sector** refers to the general sector in which the reservation is taken;
 - (b) **Sub-sector** refers to the specific sector in which the reservation is taken;
 - (c) **Type of Reservation** specifies the obligation referred to in paragraph 1(c) for which the reservation is taken;
 - (d) **Level of Government** indicates the level of government maintaining the measure for which the reservation is taken; and
 - (e) **Description** sets out the scope of the sectors, sub-sectors or activities covered by the reservation.
4. In the interpretation of a reservation in Section A, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of the Chapter against which the reservation is taken. To the extent that:
- (a) the **Measures** element is qualified by a specific reference in the **Description** element, the **Measures** element as so qualified shall prevail over all other elements; and

(b) the **Measures** element is not so qualified, the **Measures** element shall prevail over all other elements, unless a discrepancy between the **Measures** element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the **Measures** element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

5. In the interpretation of a reservation in Section B, all elements of the reservation shall be considered. The **Description** element shall prevail over all other elements.

6. Where Canada maintains a measure that requires that a service supplier be a citizen, permanent resident, or resident of its territory as a condition to the supply of a service in its territory, a reservation for that measure taken with respect to Article 10.2 (National Treatment), 10.3 (Most-Favoured-Nation Treatment), 10.4 (Market Access for Financial Institutions) or 10.5 (Cross-Border Trade) shall operate as a reservation with respect to Article 8.3 (National Treatment), 8.4 (Most-Favoured-Nation Treatment), or 8.8 (Performance Requirements) to the extent of that measure.

Headnotes

1. Commitments under this Agreement, in the sub-sectors listed in this Schedule, are undertaken subject to the limitations and conditions set forth in these headnotes and in the Schedule below.
2. To clarify the commitment of Canada with respect to Article 10.4 (Market Access for Financial Institutions), juridical persons supplying financial services and constituted under the laws of Canada are subject to non-discriminatory limitations on juridical form. For example, partnerships and sole proprietorships with limited or unlimited liability are generally not acceptable juridical forms for financial institutions in Canada. This headnote does not affect or otherwise limit a choice by an investor of the other Party between a branch or subsidiary.
3. The listing of a measure as a reservation in Section A or B does not mean that it cannot otherwise be justified as a measure adopted or maintained for prudential reasons pursuant to Article 10.10 (Exceptions).
4. Canada limits its commitments pursuant to Article 10.9.1(c) with respect to Article 10.4 (Market Access for Financial Institutions) in the following manner: Article 10.9.1(c) shall apply only to non-conforming measures relating to Article 10.4(a) and not to those non-conforming measures relating to Article 10.4(b).

ANNEX III

Schedule of Canada

Section A

Sector:	Financial Services
Sub-sector:	All
Type of Reservation:	National Treatment (Article 10.2)
Level of Government:	Federal
Measures:	<i>Bank Act – s.s. 159(2)</i> <i>Insurance Companies Act – s.s. 167(2)</i> <i>Trust and Loans Companies Act – s.s. 163(2)</i> <i>Cooperative Credit Associations Act – s.s. 169(2)</i>
Description:	A simple majority of the directors at a financial institution are required to be resident Canadians.

Sector:	Financial Services
Sub-sector:	All
Type of Reservation:	National Treatment (Article 10.2) Most-Favoured-Nation (Article 10.3) Cross-Border Trade (Article 10.5) Senior Management and Boards of Directors (Article 10.8)
Level of Government:	Sub-national
Measures:	
Description:	All existing non-conforming measures of all provinces and territories.

Section B

Sector:	Financial Services
Sub-sector:	All
Type of Reservation:	Market Access for Financial Institutions (Article 10.4)
Description:	<p>Canada reserves the right to adopt or maintain a measure that is not inconsistent with Canada's obligations under Article XVI of the <i>General Agreement on Trade in Services</i> as set out in Canada's Schedule of Specific Commitments under the GATS (GATS/SC/16/Suppl.4/Rev.1).</p> <p>For purposes of this entry only, Canada's Schedule of Specific Commitments is modified as follows:</p>
Sector/Sub-sector:	Market Access Improvements
All	<p>Under Mode 3 (All sectors) remove:</p> <p>Federally-regulated financial institutions having capital in excess of Can\$750 million are required, within five years of having reached the threshold, to have 35 percent of their voting shares widely-held and listed and posted for trading on a Canadian Stock Exchange.</p> <p>Under Mode 3 (All sectors) add:</p> <p>Federally-regulated financial institutions having equity in excess of Can\$1 billion are required within three years of having reached the threshold, to have 35 percent of their voting shares widely-held and listed and posted for trading on a stock exchange in Canada.</p>

Under Mode 3 (Banking and other financial services)
delete:

No one person (Canadian or foreign) may own more than
10 percent of any class of shares of a Schedule I bank.

Under Mode 3 (All sectors) add:

No person (Canadian or foreign) may own more than
10 percent of any class of shares of a federally-regulated
financial institution without Ministerial approval.

No person (Canadian or foreign) may own more than
20 percent of any class of voting shares, or 30 percent of
any class of non-voting shares, of federally-regulated
financial institution with more than Can\$5 billion in equity.

Sector:	Financial Services
Sub-sector:	Banking and Other Financial Services (Excluding Insurance)
Type of Reservation:	National Treatment (Article 10.2)
Level of Government:	Federal
Description:	<p>Canada reserves the right to adopt or maintain a measure requiring that a foreign bank establish a subsidiary in order to accept or maintain retail deposits of less than Can\$150,000.</p> <p>Canada reserves the right to adopt or maintain a measure prohibiting full service bank branches and lending bank branches from becoming member institutions of the Canadian Deposit Insurance Corporation.</p>

Sector: Financial Services

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

Type of Reservation: National Treatment (Article 10.2)

Level of Government: Federal

Description: Canada reserves the right to adopt or maintain a measure requiring that foreign banks that have been authorised to establish a branch in Canada be members of the Canadian Payments Association. Canada also reserves the right to adopt or maintain a measure prohibiting foreign lending branches from being members of the Canadian Payments Association.

Sector:	Financial Services
Sub-sector:	Banking and Other Financial Services (Excluding Insurance)
Type of Reservation:	Most-Favoured-Nation Treatment (Article 10.3)
Level of Government:	Federal and sub-national
Description:	Canada reserves the right to adopt or maintain a measure relating to cross-border trade in securities services.