

Chapter Twelve

Financial Services

Article 12.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) financial institutions of the other Party;
 - (b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
 - (c) cross-border trade in financial services.
2. Articles 10.8 through 10.12 and 11.11 are hereby incorporated into and made a part of this Chapter. Section B of Chapter Ten (Investment) is hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 10.8 through 10.11, as incorporated into this Chapter.¹ No other provision of Chapter Ten (Investment) or Chapter Eleven (Cross Border Trade in Services) shall apply to a measure described in paragraph 1.
3. This Chapter does not apply to measures adopted or maintained by a Party relating to:
 - (a) activities or services forming part of a public retirement plan or statutory system of social security; or
 - (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

Article 12.2: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

¹ For greater certainty, the provisions of Chapter Ten (Investment) hereby incorporated include, are subject to, and shall be interpreted in conformity with, Annexes 10-A through 10-H of that Chapter, as applicable.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in Article 12.5(1), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 12.3: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- (a) accorded unilaterally;
- (b) achieved through harmonization or other means; or
- (c) based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.4: Market Access for Financial Institutions

Neither Party may, with respect to investors of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory adopt or maintain measures that:

- (a) impose limitations on:

- (i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive financial service suppliers, or the requirements of an economic needs test,
 - (ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,
 - (iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, or
 - (iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of a numerical quota or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

Article 12.5: Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 12.5.
2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this Article as long as such definitions are not inconsistent with the obligations of paragraph 1.
3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

Article 12.6: New Financial Services²

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt a new law or modify an existing law.
2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party would permit the new financial service and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

Article 12.7: Treatment of Certain Information

Nothing in this Chapter requires a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers;
or
- (b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 12.8: Senior Management and Boards of Directors

1. Neither Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. Neither Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 12.9: Non-Conforming Measures

1. Articles 12.2 through 12.5 and 12.8 and Section A of Annex 12.9 do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:

² The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is supplied within neither Party's territory. Such application shall be subject to the domestic law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.6.

- (i) the central level of government, as set out by that Party in its Schedule to Annex III,
 - (ii) a regional level of government, as set out by that Party in its Schedule to Annex III, or
 - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 12.2, 12.3, 12.4, and 12.8 and Section A of Annex 12.9.
2. Articles 12.2 through 12.5 and 12.8 and Section A of Annex 12.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex III.
3. Annex 12.9 sets out certain specific commitments by each Party.
4. Where a Party has set out in its Schedule to Annexes I and II a measure that does not conform to Articles 10.2, 10.3, 11.2, 11.3, or 11.4 pursuant to paragraphs 1 and 2 of Articles 10.7 and 11.6, that measure shall be deemed to constitute a non-conforming measure, pursuant to paragraphs 1 and 2 of this Article, with respect to Article 12.2, Article 12.3, or Article 12.4, or Section A of Annex 12.9, as the case may be, to the extent that the measure, sector, sub-sector, or activity set out in the Schedule of non-conforming measures is covered by this Chapter.

Article 12.10: Exceptions

1. Notwithstanding any other provision of this Chapter or of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), Fifteen (Electronic Commerce), and Sixteen (Competition Policy, Designated Monopolies, and State Enterprises), including specifically Article 13.16 (Telecommunications - Relationship to Other Chapters), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,³ including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial

³ It is understood that the term “prudential reasons” includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.⁴

2. Nothing in this Chapter or Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), Fifteen (Electronic Commerce), and Sixteen (Competition Policy, Designated Monopolies, and State Enterprises), including specifically Article 13.16 (Telecommunications – Relationship to Other Chapters), applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.5 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or Article 10.8 (Transfers).

3. Notwithstanding Article 10.8 (Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

Article 12.11: Transparency

1. The Parties recognize that transparent regulations and policies and reasonable, objective, and impartial administration governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets.

2. In lieu of Article 20.2 (Publication), each Party shall, to the extent practicable:

- (a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and

⁴ The Parties understand that a Party may take measures for prudential reasons through regulatory or administrative authorities, in addition to those who have regulatory responsibilities with respect to financial institutions, such as ministries or departments of labor.

- (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.
3. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.
 4. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.
 5. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.
 6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.
 7. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.
 8. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.
 9. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

Article 12.12: Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self-regulatory organization.

Article 12.13: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

Article 12.14: Expedited Availability of Insurance Services

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

Article 12.15: Financial Services Committee

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.15.
2. In accordance with Article 21.1(2)(d) (The Free Trade Commission), the Committee shall:
 - (a) supervise the implementation of this Chapter and its further elaboration;
 - (b) consider issues regarding financial services that are referred to it by a Party; and
 - (c) participate in the dispute settlement procedures in accordance with Articles 12.17 and 12.18.
3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 12.16: Consultations

1. A Party may request in writing consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.
2. Officials from the authorities specified in Annex 12.15 shall participate in the consultations under this Article.
3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action

that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 12.17: Dispute Settlement

1. Chapter Twenty-Two (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. For purposes of Article 22.4 (Consultations), consultations held under Article 12.16 with respect to a measure or matter shall be deemed to constitute consultations under Article 22.4(1), unless the Parties otherwise agree. Upon initiation of consultations, the Parties shall provide information and give confidential treatment under Article 22.4(4)(b) to the information exchanged. If the matter has not been resolved within 45 days after commencing consultations under Article 12.16 or 90 days after the delivery of the request for consultations under Article 12.16, whichever is earlier, the complaining Party may request in writing the establishment of an arbitral panel. The Parties shall report the results of their consultations to the Commission.

3. The Parties shall establish by January 1, 2005, and maintain a roster of up to 10 individuals who are willing and able to serve as financial services panelists, up to four of whom shall be non-Party nationals. The roster members shall be appointed by mutual agreement of the Parties, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.

4. Financial services roster members shall:

- (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, either Party; and
- (d) comply with a code of conduct to be established by the Commission.

5. Where a Party claims that a dispute arises under this Chapter, Article 22.9 (Panel Selection) shall apply, except that, unless the Parties otherwise agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 4.

6. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 12.18: Investment Disputes in Financial Services

1. Where an investor of one Party submits a claim under Article 10.15 (Submission of a Claim to Arbitration) to arbitration under Section B of Chapter Ten (Investment) against the other Party and the respondent invokes Article 12.10, on request of the respondent, the tribunal shall refer the matter in writing to the Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 12.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Commission. The decision shall be binding on the tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of an arbitral panel under Article 22.6 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 12.17. Further to Article 22.13 (Final Report), the panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

Article 12.19: Definitions

For purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or **cross-border supply of financial services** means the supply of a financial service:

- (a) from the territory of one Party into the territory of the other Party,
- (b) in the territory of a Party by a person of that Party to a person of the other Party, or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

- (a) Direct insurance (including co-insurance):
 - (i) life
 - (ii) non-life
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency;
- (d) Service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

- (e) Acceptance of deposits and other repayable funds from the public;

- (f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (g) Financial leasing;
- (h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;
- (i) Guarantees and commitments;
- (j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
 - (i) money market instruments (including checks, bills, certificates of deposits);
 - (ii) foreign exchange;
 - (iii) derivative products including, futures and options;
 - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (v) transferable securities;
 - (vi) other negotiable instruments and financial assets, including bullion;
- (k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (l) Money broking;
- (m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
- (n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

- (p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means “investment” as defined in Article 10.27 (Definitions), except that, with respect to “loans” and “debt instruments” referred to in that Article:

- (a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 10.27 (Definitions);

investor of a Party means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality;

new financial service means a financial service not supplied in the Party’s territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party’s territory;

person of a Party means “person of a Party” as defined in Article 2.1 (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; and

tribunal means an arbitration tribunal established under Article 10.18 (Selection of Arbitrators).

Annex 12.5

Cross-Border Trade

Insurance and insurance-related services

1. For the United States, Article 12.5(1) applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.19 with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
 - (ii) goods in international transit;
- (b) reinsurance and retrocession, services auxiliary to insurance as described in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as described in subparagraph (c) of the definition of financial service.

2. For the United States, Article 12.5(1) applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 12.19 with respect to insurance services.

3. For Chile, Article 12.5(1) applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.19 with respect to:

- (a) insurance of risk relating to:
 - (i) international maritime transport and international commercial aviation, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom; and
 - (ii) goods in international transit.
- (b) brokerage of insurance of risks relating to subparagraph (a)(i) and (a)(ii).
- (c) reinsurance and retrocession; reinsurance brokerage; and consultancy, actuarial, and risk assessment.

4. Chile's commitments regarding sale and brokerage of insurance for international maritime transport, international commercial aviation, and goods in international transit shall apply one year after the entry into force of this Agreement or when Chile has made and implemented the necessary amendments to its pertinent legislation, whichever occurs first.

Banking and other financial services (excluding insurance)

5. For the United States, Article 12.5(1) applies with respect to the provision and transfer of financial information and financial data processing as described in subparagraph (o) of the definition of financial service and advisory and other auxiliary financial services, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

6. For Chile, Article 12.5(1) applies with respect to:

- (a) provision and transfer of financial information as described in subparagraph (o) of the definition of financial service.
- (b) financial data processing as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, as required.⁵
- (c) advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

Notwithstanding subparagraph (c), in the event that after the date of entry into force of this Agreement Chile allows credit reference and analysis to be supplied by cross-border financial service suppliers, it shall accord national treatment (as specified in Article 12.2(3)) to cross-border financial service suppliers of the United States. Nothing in this commitment shall be construed to prevent Chile from subsequently restricting or prohibiting the supply of credit reference and analysis services by cross-border financial service suppliers.

7. It is understood that a Party's commitments on cross-border investment advisory services shall not, in and of themselves, be construed to require the Party to permit the public offering of securities (as defined under its relevant law) in the territory of the Party by cross-border suppliers of the other Party who supply or seek to supply such investment

⁵ It is understood that where the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Chilean law regulating the protection of such data.

advisory services. A Party may subject the cross-border suppliers of investment advisory services to regulatory and registration requirements.

Annex 12.9

Specific Commitments

Section A: Right of Establishment with Respect to Certain Financial Services

1. In lieu of Article 12.4 with respect to banking and other financial services (excluding insurance):

- (a) Each Party shall permit an investor of the other Party
 - (i) that does not own or control a financial institution in the Party's territory to establish in that territory a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions, and
 - (ii) that owns or controls a financial institution in the Party's territory to establish in that territory such additional financial institutions as may be necessary to permit the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions.

The right of establishment shall include the acquisition of existing entities.

- (b) Neither Party may restrict or require specific types of juridical form with respect to the initial financial institution that the investor seeks to establish pursuant to subparagraph (a)(i).
- (c) Except with respect to the imposition of numerical or juridical form restrictions on establishment of the initial financial institution described in subparagraph (a)(i), a Party may, consistent with Article 12.2, impose terms and conditions on establishment of additional financial institutions described in subparagraph (a)(ii) and determine the institutional and juridical form through which particular permitted financial services or activities are supplied.
- (d) A Party may, consistent with Article 12.2, prohibit a particular financial service or activity.⁶

⁶ The Parties understand that a Party may not prohibit all financial services or a complete financial services subsector such as banking.

2. For purposes of this Annex:
 - (a) an “investor of the other Party” means an investor of the other Party engaged in the business of providing banking and other financial services (excluding insurance) in the territory of that Party.
 - (b) “numerical restrictions” means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of the Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test.

3. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section II, referring to social services, Chile, with respect to the establishment by an investor of the United States of an *Administradora de Fondos de Pensiones* under *Decreto Ley* 3.500, shall:

- (a) apply subparagraph 1(a) of Section A of this Annex, and
- (b) not apply an economic needs test.

No other modification of the effect of the non-conforming measures referring to social services is intended or shall be construed under this paragraph.

4. The specific commitments of the United States under paragraph 1 are subject to the headnotes and non-conforming measures set forth in Sections A and B of Annex III with respect to banking and other financial services (excluding insurance).

5. The specific commitments of Chile under paragraphs 1 and 3 are subject to the headnotes and non-conforming measures set forth in Annex III of Chile with respect to banking and other financial services (excluding insurance).

Section B: Voluntary Savings Plans; Non-Discriminatory Treatment of U.S. Investors

1. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section II, referring to social services, with respect to voluntary savings pension plans established under *Ley* 19.768, Chile shall extend the obligations of Article 12.2(1) and (2) and of Article 12.3 to financial institutions of the United States, investors of the United States, and investments of such investors in financial institutions established in Chile. The specific commitment contained in this paragraph shall enter into force by March 1, 2005.

2. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex III, Section II, referring to social services, Chile, as required by its domestic law, shall not establish arbitrary differences with respect to U.S. investors in *Administradoras de Fondos de Pensiones* under *Decreto Ley* 3.500.

Section C: Portfolio Management

1. Each Party shall allow a financial institution (other than a trust company or insurance company), organized outside its territory, to provide investment advice and portfolio management services, excluding (1) custodial services, (2) trustee services, and (3) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in the Party's territory. This commitment is subject to Article 12.1 and to the provisions of Article 12.5(3) regarding the right to require registration, without prejudice to other means of prudential regulation.

2. Notwithstanding paragraph 1, a Party may require the collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme or the funds that it manages.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** means:

- (a) in the United States, an investment company registered with the Securities and Exchange Commission under the *Investment Company Act of 1940*; and
- (b) in Chile, the following fund management companies subject to supervision by the *Superintendencia de Valores y Seguros*:
 - (i) *Compañías Administradoras de Fondos Mutuos (Decreto Ley 1.328 de 1976)*;
 - (ii) *Compañías Administradoras de Fondos de Inversión (Ley 18.815 de 1989)*;
 - (iii) *Compañías Administradoras de Fondos de Inversión de Capital Extranjero (Ley 18.657 de 1987)*;
 - (iv) *Compañías Administradoras de Fondos para la Vivienda (Ley 18.281 de 1993)*; and
 - (v) *Compañías Administradoras Generales de Fondos (Ley 18.045 de 1981)*.

Section D: Expedited Availability of Insurance Services

Each Party should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as: not requiring product approval for insurance other than sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing

limitations on the number or frequency of product introductions. This Section does not apply to the specific category of Chilean government-supported insurance programs, such as climate insurance.

Section E: Insurance Branching

1. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex III, Section II, referring to insurance market access, excluding any portion of those nonconforming measures referring to financial conglomerates and social services, no later than four years after the date of entry into force of this Agreement, Chile shall allow U.S. insurance suppliers to establish in its territory through branches. Chile may choose how to regulate branches, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk patrimony and their investments.⁷

2. Recognizing the principles of federalism under the U.S. Constitution, the history of state regulation of insurance in the United States, and the *McCarran-Ferguson Act*, the United States will work with the National Association of Insurance Commissioners (NAIC) in its review of those states that do not allow initial entry of a non-US insurance company as a branch to supply life, accident, health (excluding worker's compensation) insurance, non-life insurance, or reinsurance and retrocession to determine whether such entry could be provided in the future. Those states are Arkansas, Arizona, Connecticut, Georgia, Hawaii (branching allowed for reinsurance), Kansas, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont, and Wyoming.

⁷ The Parties understand that for this purpose, Chile may establish the following requirements among others:

- (a) that the capital and reserves that foreign insurance companies assign to their branches must be effectively transferred and converted into domestic currency in conformity with Chilean law;
- (b) that the increases of capital and reserves that do not come from capitalization of other reserves will have the same treatment as initial capital and reserves;
- (c) that in the transactions between a branch and its parent or other related companies each shall be considered as independent entities;
- (d) that the branch owners or shareholders meet the solvency and integrity requirements established in Chile's insurance legislation;
- (e) that branches of foreign insurance companies that operate in Chile may transfer liquid profits only if they do not have an investment deficit in their technical reserves and risk patrimony, nor a deficit of risk patrimony.

Annex 12.11

The Parties recognize that Chile's implementation of the obligations of paragraphs 2 and 9 of Article 12.11 may require legislative and regulatory changes. Chile shall implement the obligations of these paragraphs no later than two years after the date of entry into force of this Agreement.

Annex 12.15

Authorities Responsible for Financial Services

The authority of each Party responsible for financial services shall be:

- (a) for Chile, the *Ministerio de Hacienda*; and
- (b) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance services.