

VII. *The Uncertain Fate of Europe's Financial Capital*

A. Introduction

In June 2016, the United Kingdom of Great Britain and Northern Ireland (UK), in an historic move termed “Brexit,” voted to leave the European Union (EU), one of the largest central trading zones in the world.¹ The decision shocked the public and private sector and “highlight[ed] the power of anti-elite, populist and nationalist sentiment at a time of economic and cultural dislocation.”² With a narrow margin in favor, the UK’s populace plunged the country into an era of uncertainty.³ Following the vote, commentators questioned whether London would be able to maintain its title as the financial capital of Europe.⁴ Although historically the epicenter of financial services, the uncertain consequences of Brexit have made firms, financial institutions, and individuals question possible continental alternatives.⁵ The motivation behind this consideration is the need to ensure continued

¹ See Anushka Asthana et al., *UK votes to leave EU after dramatic night divides nation*, GUARDIAN (June 24, 2016, 2:51 AM), <https://www.theguardian.com/politics/2016/jun/24/britain-votes-for-brexit-eu-referendum-david-cameron> [<http://perma.cc/H6ZC-VBJP>].

² Steve Erlanger, *Britain Votes to Leave E.U.; Cameron Plans to Step Down*, N.Y. TIMES (June 23, 2016), <https://www.nytimes.com/2016/06/25/world/europe/britain-brexit-european-union-referendum.html>. See also Sara Hobolt, *The Brexit Vote: A Divided Nation, a Divided Continent*, 23 J. EUR. PUB. POL’Y 1259, 1259 (2016) (identifying globalization as a key dividing factor in the Brexit vote).

³ Robert Ford & Matthew Goodwin, *Britain after Brexit: A Nation Divided*, 28 J. DEMOCRACY 17, 17–18 (2017) (arguing that the Brexit vote challenged long-term viability of the EU); *EU Referendum Results in Full*, BBC NEWS (June 24, 2016), https://www.bbc.com/news/politics/eu_referendum/results [<http://perma.cc/EY8D-V2ZH>] [hereinafter *Referendum Results*].

⁴ See Chuck Jones, *Brexit for Investors: The Good, the Bad and the Uncertainty*, FORBES (June 27, 2016, 6:02 PM), <https://www.forbes.com/sites/chuckjones/2016/06/27/brexit-the-good-the-bad-and-the-uncertainty/#799ebc3f2d26> [<http://perma.cc/YH9F-6L58>] (“Since London is a major financial center there is a high probability that financial firms will move jobs out of London to other countries.”).

⁵ See *Relocating Post-Brexit: The Top 5 Alternatives for London Professionals*, FIN. MONTHLY (Mar. 27, 2017), <https://www.finance-monthly.com/2017/03/relocating-post-brexit-the-top-5-alternatives-for-london-professionals> [<http://perma.cc/7FV5-754A>] [hereinafter *Relocating*].

benefits of the EU's single-market economic system.⁶ As negotiators work on a withdrawal agreement governing future interactions between the two entities, continental European cities are making their cases as possible alternatives for those businesses and individuals affected by "financial flight" out of London.⁷ Various cities are looking to benefit from a possible shift in power, with many currently serving as headquarters for large financial institutions and offering similar attractive qualities as London.⁸ To stave off the financial exodus from London, the UK will need to negotiate a withdrawal agreement that maintains many of the privileges and protections provided by the EU—a need seemingly at odds with the UK's desired independence.⁹ Regardless of the outcome of the negotiations, the Brexit process has undoubtedly challenged London's ability to maintain its status as the financial capital of Europe with a final determination only coming after the UK's formal departure.¹⁰

This paper briefly reviews the history of the EU, the UK's membership, and the Brexit referendum before discussing the factors affecting London's future. First, this Section B discusses the negotiation process and its surrounding political turmoil. Section C then shifts

⁶ Piotr Skolimowski & Carolyn Look, *London Will Be Weakened as Financial Center after Brexit Warns Bundesbank Exec*, INS. J. (Feb. 15, 2018), <https://www.insurancejournal.com/news/international/2018/02/15/480747.htm> [<https://perma.cc/DD9Q-HZXN>].

⁷ See James Moore, *Brexit Means London's Financial Star Is Falling. Which of Its Rivals Is Best Placed to Rise?*, INDEPENDENT. (Aug. 6, 2017, 8:17 AM), <https://www.independent.co.uk/news/business/analysis-and-features/brexit-financial-centres-city-of-london-frankfurt-dublin-paris-luxembourg-financial-services-banking-a8471886.html>.

⁸ See *id.*

⁹ See DEP'T FOR EXITING THE EUROPEAN UNION, THE FUTURE RELATIONSHIP BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION, 2018, Cm. 9593, 7 (UK) ("[T]he Government is determined to build a new relationship that works for both the UK and the EU."). See also Silla Brush & Alexander Weber, *London's Fight to Remain a Financial Hub after Brexit*, BLOOMBERG (Apr. 17, 2018, 7:00 PM), <https://www.bloomberg.com/news/articles/2018-04-17/london-s-fight-to-remain-a-financial-hub-after-brexit-quicktake>.

¹⁰ See Will Martin, *Here's What a No Deal Brexit Would Mean for the British Economy*, BUS. INSIDER (Jul. 28, 2018, 4:33 AM), <https://www.businessinsider.com/no-deal-brexit-impact-uk-economy-2018-7> ("Whether a no-deal scenario had a good, bad, or little impact on the economy in the long run would depend on many things, including how successful the UK was at striking new trade deals and whether there was an exodus of financial institutions from the UK.").

the focus to consequences of departure from the single-market system and Section D addresses some of the continental European alternatives, before ultimately concluding that London's future is still highly uncertain.

B. Brexit and the European Union: Relevant History

1. Brief History of the European Union

The European Economic Community (EEC) was established in 1957 by the Treaty on the Functioning of the European Union—commonly referred to as the Treaty of Rome, and aimed to “ensure economic and social progress . . . by common action to eliminate the barriers which divide Europe.”¹¹ In its first two decades, the EEC demonstrated improved economic growth.¹² In the 1970s, the EEC expanded when the UK passed the European Communities Act 1972.¹³ As time passed, the role and prevalence of the EEC grew.¹⁴ In 1992, the EEC marked “a new stage in the process of European integration” and established “a European Union” by signing the Treaty of the European Union (TEU), commonly referred to as the Treaty of Maastricht.¹⁵ The EU has faced significant challenges in the 2010s, most notably, Brexit.¹⁶

2. Brief History of the Brexit Referendum

In January 2013, Prime Minister (PM) David Cameron announced that the British people would have the opportunity to vote

¹¹ Consolidated Version of the Treaty on the Functioning of the European Union, Sept. 5, 2008, 2008 O.J. (C 115) 47 [hereinafter TFEU] (codifying the formation of the EEC).

¹² See *The History of the European Union*, https://europa.eu/european-union/about-eu/history_en (last visited Sept. 17, 2018) [<http://perma.cc/B97V-PFS7>].

¹³ European Communities Act 1972, c. 68 (Eng.). See also Miklos Kiraly, *Brexit in Context: Some Historical Remarks on the Relationships Between the United Kingdom and Continental Europe*, 2016 ELTE L.J. 39, 47 (2016).

¹⁴ See *The History of the European Union*, *supra* note 12.

¹⁵ Consolidated Version of the Treaty on European Union, Sept. 5, 2008, 2008 O.J. (C 115) 13 (codifying the formation of the EU).

¹⁶ See *The History of the European Union*, *supra* note 12.

on the UK's continued membership in the EU.¹⁷ Three years later, in June 2016, the British people, by a narrow margin of 51.9% in favor of leaving and 48.1% in favor of remaining, voted to exit the EU.¹⁸ In 2017, PM Theresa May officially notified the President of the European Council (EC) that the UK would be invoking the withdrawal provision of the TEU.¹⁹ This letter initiated the following Article 50 procedures for the UK's voluntary and unilateral withdrawal: (i) the EC is required to provide guidelines for negotiating a withdrawal agreement; and (ii) EU treaties would cease to apply to the UK once negotiators finalized an agreement or within two years of the date of notification.²⁰ As of March 29, 2019, the UK will no longer be a member of the EU, barring any extension by the EC.²¹ In June 2018, the UK passed the European Union Withdrawal Act 2018 repealing the European Communities Act 1972.²² The UK does maintain the ability to re-apply for membership to the EU in the future.²³

C. Brexit Uncertainty: Negotiations and Political Turmoil

The UK's post-Brexit status directly affects the ability of London to remain the financial center of Europe, as this status will govern the future interactions between London-based financial firms and the EU.²⁴ Unclear strategies, stalled negotiations, and political

¹⁷ *David Cameron promises in/out referendum on EU*, BBC NEWS (Jan. 23, 2013), <https://www.bbc.com/news/uk-politics-21148282> [<http://perma.cc/MFH3-7WCZ>] (“It is time for the British people to have their say.”).

¹⁸ *Referendum Results*, *supra* note 3 (listing the total count and percentages of the Brexit referendum vote).

¹⁹ Letter from Prime Minister Theresa May, U.K., to President Donald Tusk, Eur. Council (Mar. 29, 2017) (declaring the UK's intent to leave the EU).

²⁰ TEU, *supra* note 15, art. 50, at 43; Agnes Kertesz, *Brexit's Legal Framework*, 2016 ELTE L.J. 93, 96–97 (2016) (analyzing the withdrawal requirements under Art. 50).

²¹ Kertesz, *supra* note 20, at 100; Ovidiu-Horia Maican, *Legal Aspects of Brexit*, 6 JURID. TRIB. 252, 253 (2016).

²² European Union Withdrawal Act 2018, c. 16 (Eng.).

²³ TEU, *supra* note 15, art. 50, at 43 (stating the process for voluntary departure from the EU).

²⁴ See Matthias Lehmann & Dirk Zetzsche, *Brexit and the Consequences for Commercial and Financial Relations Between the EU and the UK*, 27 EUR. BUS. L. REV. 999 (2016); see also Jim Brunson, *Brussels Rejects UK's Financial Services Brexit Plan*, FIN. TIMES (July 22, 2018), <https://www.ft.com/content/0df20cc6-8c43-11e8-b18d-0181731a0340>.

opposition are muddying the post-Brexit landscape.²⁵ The results of any negotiated withdrawal agreement, influenced by uncertainty, will undoubtedly challenge London's status as the financial capital of Europe, evidenced by the fact that institutions have already implemented contingency plans.²⁶

Prime Minister May's letter invoking article 50 of the TEU initiated the negotiation process and started the countdown towards the March 29, 2019 deadline.²⁷ Although the EC published a draft withdrawal agreement in March 2018, a final withdrawal agreement was not due until October 2018, giving the parties time to ratify the final version before the official exit date.²⁸ The draft withdrawal agreement included multiple levels of revision and titles for continued negotiation.²⁹ Although both parties agreed on provisional articles clarifying rights and border issues, the negotiations seemed far from finished as the end of October neared.³⁰ Political division throughout various

²⁵ See Horst Eidenmüller, *Negotiating and Mediating Brexit*, 44 PEPP. L. REV. 39, 55 (2016) ("So far, neither the EU nor the UK seem to have a clear game plan, let alone a sophisticated strategy."). See also Kertesz, *supra* note 20, at 93; *Brexit: UK Upper House Votes to Stay in EU Single Market*, DEUTSCHE WELLE (Sept. 5, 2018), <https://www.dw.com/en/brexit-uk-upper-house-votes-to-stay-in-eu-single-market/a-43708954> [<http://perma.cc/V668-VF6F>] ("The changes the House of Lords approved to the Brexit blueprint include requiring the government to negotiate staying in the European Economic Area, the EU's single market.").

²⁶ See Julia Kollewe, *London Stock Exchange Rolls Out No-deal Brexit Plans*, GUARDIAN (Aug. 2, 2018), <https://www.theguardian.com/business/2018/aug/02/london-stock-exchange-rolls-out-no-deal-brexit-plans> [<http://perma.cc/7M-N3-9HV6>] ("The London Stock Exchange has started implementing contingency plans in case the UK crashes out of the EU without a transition deal.").

²⁷ See Letter from Theresa May to Donald Tusk, *supra* note 19.

²⁸ Fact Sheet, European Comm'n, http://europa.eu/rapid/press-release_MEMO-18-1361_en.htm [<http://perma.cc/5MQK-ZXSM>] (last visited Sept. 20, 2018) ("A final version of the Withdrawal Agreement should be agreed by the EU and the UK by October 2018 to allow for the timely ratification by the European Parliament, the Council (Article 50) and the UK, according to its own constitutional requirements.").

²⁹ Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, TF50 (Mar. 19, 2018), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691366/20180319_DRAFT_WITHDRAWAL_AGREEMENT.pdf.

³⁰ Alex Hunt & Brian Wheeler, *Brexit: All You Need to Know about the UK Leaving the EU*, BBC NEWS (Oct. 16, 2018), <https://www.bbc.com/news/uk->

levels of the UK government only added to the uncertainty surrounding the negotiations.³¹ In June 2018, the Brexit Secretary resigned, pushing PM May to “enforce collective cabinet responsibility, implying that any minister who objected publicly to her proposals would have to resign.”³² London’s mayor Sadiq Khan criticized PM May’s “abject failure” by calling for “a public vote on any deal or a vote on a no-deal, alongside the option of staying in the EU.”³³ Continental leaders, such as German Chancellor Angela Merkel, raised concerns of PM May’s ability to negotiate a withdrawal agreement.³⁴ Both parties sparred as the EU rejected proposed UK plans and PM May threatened to walk away without an agreement.³⁵ Finally, despite the positive reception to PM May’s late-October speech before the EU27 in Brussels, “Remainer” members of the British Parliament threatened to require a public vote on any EU-approved deal, capitalizing on recent protest marches in favor of a second referendum.³⁶

politics-32810887 [http://perma.cc/XTR6-UEVC] (describing three provisional agreements on money owed, the Northern Ireland border, and the return of UK citizens living abroad).

³¹ See *Britain’s New Brexit Plan Is Savaged—by Its Own Brexit Secretary*, ECONOMIST (July 9, 2018), <https://www.economist.com/britain/2018/07/09/britains-new-brexit-plan-is-savaged-by-its-own-brexit-secretary>.

³² *Id.*

³³ Thibault Larger, *London Mayor Calls for Second Brexit Referendum*, POLITICO (Sept. 16, 2018, 11:47 AM), <https://www.politico.eu/article/sadiq-khan-london-mayor-calls-for-second-brexit-referendum/> [http://perma.cc/YMT2-LWBU].

³⁴ See Daniel Boffey & Pippa Crerar, *Angela Merkel Admits Collapse of Brexit Talks Cannot Be Ruled Out*, GUARDIAN (Sept. 4, 2018, 3:56 PM), <https://www.theguardian.com/politics/2018/sep/04/eu27-to-offer-theresa-may-a-carrot-and-stick-approach-to-brexit-chequers-plan-irish-border> [http://perma.cc/3US9-DQFX] (“We don’t want these negotiations to collapse. But we also can’t fully rule that out because we still have no result.”).

³⁵ Kate McCann, *Britain Is Willing to Walk Away Without a Deal, Theresa May Warns EU Leaders in Salzburg*, TELEGRAPH (Sept. 20, 2018, 6:00 AM), <https://www.telegraph.co.uk/politics/2018/09/20/britain-willing-walk-away-without-deal-theresa-may-warns-eu> [http://perma.cc/7TY5-VUJ8].

³⁶ Natasha Clark, *Killing Brexit Second Brexit Referendum Plot to Be Launched by Remainer MPs After Theresa May Gets a Deal*, SUN (Oct. 28, 2018, 2:10 PM), <https://www.thesun.co.uk/news/7602324/second-brexit-referendum-theresa-may-deal> [http://perma.cc/SK7W-KLDM]; Heather Stewart, *Is Theresa May Any Closer to a Brexit Deal after Brussels Summit?*, GUARDIAN (Oct. 19, 2018 7:52 AM), <https://www.theguardian.com/politics/>

D. Brexit and the Single Market: Effects on the Financial Services Industry

European Union member states benefit from involvement in three economic zones: the Single Market, the Customs Union, and the European Economic Area (EEA).³⁷ A negotiated agreement, or lack thereof, will affect the UK's ability to participate in these economic zones.³⁸ Each of these systems affects member states differently, and the continued involvement of the UK in each, or all three, will have a significant effect on London's ability to maintain its status as the financial capital of Europe.³⁹ The Single Market aims to "break down all barriers to trading across the 500 million-person area" by ensuring free movements of goods, services, capital, and labor.⁴⁰ The Customs Union ensures the "impos[ition] of common tariffs."⁴¹ Through these systems, the EU creates a "fair internal market" that is "committed to a common regulatory framework."⁴² The Single Market provides the greatest benefit to member states, and although the UK has proposed "goods only" access, the EU's Chief Negotiator, Michael Barnier stated, "there will be no damage to" or breaking the Single Market to accommodate Brexit.⁴³

2018/oct/19/is-theresa-may-any-closer-brexit-deal-after-brussels-summit [http://perma.cc/Q55Z-78SG].

³⁷ See Jonty Bloom, *Free Trade Area, Single Market, Customs Union—What's the Difference?*, BBC NEWS (Aug. 14, 2017), <https://www.bbc.com/news/business-36083664> [http://perma.cc/PC88-FXH7] (distinguishing between the various economic zones associated with the EU).

³⁸ Eidenmüller, *supra* note 25, at 52; Lehmann & Zetsche, *supra* note 24.

³⁹ Delphine Strauss, *What Is the EU Single Market and How Does Brexit Affect It?*, FIN. TIMES (July 5, 2018), <https://www.ft.com/content/1688d0e4-15ef-11e6-b197-a4af20d5575e> [http://perma.cc/P2AA-8YC5].

⁴⁰ Ben Chapman, *EU Single Market: What is it, and Why Should We Care if the UK Leaves It?*, INDEPENDENT (Mar. 13, 2017, 10:07 AM), <https://www.independent.co.uk/news/uk/politics/single-market-brexit-eu-trade-deals-what-is-uk-leave-european-union-why-a7627061.html> [http://perma.cc/2XKF-L5CD] ("It aims to break down all barriers to trading across the 500 million-person area by ensuring the 'four freedoms', sacrosanct to Brussels policy-makers: free movement of goods, services, capital and—most controversially—labour.").

⁴¹ Strauss, *supra* note 39.

⁴² *Id.*

⁴³ James Randerson, *Michael Barnier: EU Won't Break the Single Market for Brexit UK*, POLITICO (July 6, 2018, 5:20 PM), <https://www.politico.eu/>

The EEA is a collaboration between the EU's twenty-eight member states and Iceland, Norway, and Lichtenstein that allows members to trade within the Single Market but outside of the Customs Union.⁴⁴ Although the non-EU members have some control over their trade deals, members must "implement all EU laws" that govern the operation of the Single Market system.⁴⁵ The UK was a signatory to the Agreement on the EEA.⁴⁶ Recent votes in the UK's House of Lords showed interest in remaining in the EEA, adding another level of uncertainty to what Brexit would ultimately entail.⁴⁷ Restricted access to these economic zones will have a significant impact on financial services in London, as the UK has been one of the "principal benefactors of the single market."⁴⁸ "Even with the best will in the world, there is no substitute outside the EU for freedoms, rights and obligations" intrinsic to the single market.⁴⁹

1. Passporting: Effects on Cross-border Financial Services

"[O]ne of the largest if not the largest benefit for the UK being in the EU" is passporting.⁵⁰ Passporting is the system that allows financial institutions to operate freely within the EU without main-

article/michel-barnier-brexit-customs-eu-wont-break-the-single-market-for-brexit-uk [http://perma.cc/C4FP-J3YM].

⁴⁴ Chapman, *supra* note 40.

⁴⁵ Paolo Vergano & Tobias Dolle, *The Trade Law Consequences of Brexit*, 7 EUR. J. RISK REG. 795, 796 (2016) ("As an EU Member State, the UK benefits from a harmonised internal and external market regime."); Chapman, *supra* note 40 ("[T]hey still have to implement all EU laws in relation to the operation of the single market . . .").

⁴⁶ Agreement on the European Economic Area, 1994 O.J. (L 1) 3.

⁴⁷ *UK Upper House Votes to Stay in EU Single Market*, *supra* note 25.

⁴⁸ Rafal Kierzenkowski et al., *The Economic Consequences of Brexit: A Taxing Decision* (OECD Econ. Pol., Working Paper No. 16, 2016), <https://www.oecd-ilibrary.org/docserver/5jm0lsvdkf6k-en.pdf?expires=1540678499&id=id&accname=guest&checksum=0F43C20B23E301E594E63F98917B2168> [http://perma.cc/RW9L-72PP]; Toby Clarence-Smith, *The Impact of Brexit on the Financial Services Sector*, TOPTAL, <https://www.toptal.com/finance/market-research-analysts/brexit-and-its-effect-on-the-uk-european-and-global-financial-sector> [http://perma.cc/XVS6-2T24].

⁴⁹ Skolimowski & Look, *supra* note 6.

⁵⁰ Jones, *supra* note 4.

taining a physical location in the foreign member state.⁵¹ Passporting affects numerous banking and financial services sectors.⁵² The British Banker's Association has identified nine passporting regimes utilized by financial institutions in the UK.⁵³ These passporting regimes rely on the Single Market structure, and entities outside of these systems experience significant disadvantages.⁵⁴ London is a center for financial firms that engage in cross-border transactions through passporting, and for the law firms, underwriters, and issuers that facilitate these transactions.⁵⁵ Should the UK lose its passporting ability, it is likely that many of these firms will need to relocate or raise significant capital to ensure continued access to the Single Market.⁵⁶

The cross-listing of capital markets transactions exemplifies the benefits of passporting.⁵⁷ Directive 2003/71/EC (Prospectus Directive) codifies this passporting regime for capital markets transactions.⁵⁸ Under this directive, the prospectus for a capital markets transaction approved by the competent authority of one member state may be passported to another EU member state.⁵⁹ By not requiring the re-

⁵¹ Lehmann & Zetzsche, *supra* note 24, at 21–22 (“By virtue of a so-called European passport, the effect of a license granted by the financial firm’s home Member State is extended to all EU and EEA Member States.”).

⁵² See BRITISH BANKER’S ASS’N, BREXIT QUICK BRIEF #3, 1–2 (2016).

⁵³ *Id.* at 2–3 (identifying the various passporting regimes and explaining their relevance).

⁵⁴ Jill Treanor, ‘Significant’ Risk to UK Firms if Passporting Rights Lost After Brexit, *GUARDIAN* (Sept. 20, 2016, 8:20 AM), <https://www.theguardian.com/politics/2016/sep/20/passporting-rights-brexite-uk-firms-fca-eu> [<http://perma.cc/C7PW-2GXV>].

⁵⁵ BRITISH BANKER’S ASS’N, *supra* note 52, at 2–3 (“[Passports] are especially important for the UK, which is the largest exporter of financial services inside the single market, exporting over £20 billion of services to customers in the rest of the EU in 2014 and helping provide hundreds of billions of euros in finance.”).

⁵⁶ Brush & Weber, *supra* note 9 (“[B]anks may need to find an extra \$50 billion of capital to support new European units were they to lose privileged access to the single market.”).

⁵⁷ Michaela Hohlmeier & Christian Fahrholz, *The Impact of Brexit on Financial Markets—Taking Stock*, 6 *INT. J. FIN. STUD.* 65, 3 (2018) (“Financial and capital markets play a central role for financing business activities and innovation and thus are of decisive importance for the creation of jobs and economic growth. A large range of EU regulations and directives regulate entities, business activities, and services offered in these markets.”).

⁵⁸ Council Directive 2003/71, art. 1, 2003 O.J. (L 345) 64 (EC).

⁵⁹ *Id.* art. 13, at 76.

approval of prospectuses within EU member states, companies can list transactions on multiple regulated exchanges within the Single Market.⁶⁰ Cross-listing capital markets transactions also allows companies to take advantage of the Prospectus Directive language provisions.⁶¹ The offeror must write the prospectus in the language of the home member state, but where an offer is available on a regulated market in more than one member state, the issuer may write the prospectus in the language accepted by the competent authorities or customary in the sphere of international finance.⁶² If it is written in English, companies can take advantage of exemptions in U.S. securities laws to sell to qualified institutional buyers.⁶³ European Union negotiators have expressed their desire not to maintain passporting for the UK post-Brexit.⁶⁴ Loss of access to passporting regimes will reduce London's ability to compete in cross-border financial services, thereby challenging its ability to maintain its financial capital status.⁶⁵

2. *Equivalence: Regulatory Impact on London Financial Firms*

One of the main concerns for institutions in the UK is “how Britain's future relationship with the EU will affect their operations in Europe.”⁶⁶ Put simply, how will the UK adjust to a changed relation-

⁶⁰ *See id.*

⁶¹ *Id.* art. 19, at 78.

⁶² *Id.*

⁶³ Turner Swan et al., *Investing in Foreign Securities Offerings and Avoiding Rule 144A Pitfalls: Tips for the International Investment Manager*, 16 *INV. LAW.* 17, 17–23 (2009) (“Rule 144A under the Securities Act of 1933, as amended (the 1933 Act), adopted in 1990, provides a non-exclusive safe harbor from registration for the resale of restricted securities to certain large institutions, defined in the rule as ‘qualified institutional buyers,’ commonly referred to as ‘QIBs.’”).

⁶⁴ Jan Strupczewski & Gabriela Baczyńska, *EU Holding Line Against Passporting for British Banks after Brexit*, *REUTERS* (Jan. 31, 2018, 11:41 AM), <https://www.reuters.com/article/uk-britain-eu-financials/eu-holding-line-against-passporting-for-british-banks-after-brexit-idUSKBN1FK116> [<http://perma.cc/BW6H-4R68>].

⁶⁵ *See* Fernando Basilio, *Brexit: Implications on U.S. Business Enterprises*, 18 *HOUS. BUS. & TAX L.J.* 292, 307 (2018).

⁶⁶ *Brexit Could Deprive British Law Firms of Business in Two Ways*, *ECONOMIST* (Nov. 25, 2017),

ship with the uniform regulatory structure of the EU?⁶⁷ Although EU regulations cover a variety of topics, changes in banking relationships will have the greatest effect on financial institutions.⁶⁸ For example, the debate over the strictness of banking regulation pitted the UK against other EU members, with Britain arguing for lighter banking regulations.⁶⁹ In response to these debates, the EU passed an important banking compromise that regulated and increased the minimum capital requirements for financial institutions.⁷⁰ Now, with the UK's pending withdrawal, the future of banking regulation is uncertain.⁷¹ The EU has thus far refused to offer a "mutual recognition" of UK regulations and instead has worked to tighten equivalence rules.⁷² Equivalence is the regulatory "regime for third-party countries (provided for in financial services legislation) that may be discretionarily activated or revoked by the Commission" and allows for banking interactions with third-party countries that lack passporting ability.⁷³ Even if the UK were able to secure equivalence for its banking and financial institutions, there are many disadvantages including scattered laws, inconsistent application across financial services, and the fact that equivalence can be revoked at any time.⁷⁴ Without passporting or equivalence, the UK will be at a significant disadvantage to compete with financial

<https://www.economist.com/britain/2017/11/25/brexit-could-deprive-british-law-firms-of-business-in-two-ways> [<http://perma.cc/7CWX-UC9B>].

⁶⁷ Jean Pisani-Ferry et al., *Europe After Brexit: A Proposal for a Continental Partnership* 3 (M-RCBG Assoc. Working Paper Series, Paper No. 64, 2016), <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/tuckerfinal.pdf> [<http://perma.cc/SW46-BN6X>].

⁶⁸ *See id.* *See also* Andy McSmith, *15 EU Laws and Regulations We will Miss in Post-Brexit Britain*, INDEPENDENT (June 25, 2016, 6:45 PM), <https://www.independent.co.uk/news/uk/politics/brexit-15-eu-laws-we-will-miss-in-britain-a7103031.html> [<http://perma.cc/A8TF-3MYC>].

⁶⁹ McSmith, *supra* note 68 ("When EU states argued over how tightly to regulate the banks, the UK was usually on the side of light regulations with the Germans leading the other side.").

⁷⁰ Council Directive 2013/36, art. 1, 2013 O.J. (L 176) 350 (EU) (establishing the rules and regulations governing capital requirements in the EU).

⁷¹ *See* Brush & Weber, *supra* note 9.

⁷² *See id.*

⁷³ European Parliament Briefing PE 614.495, Third Country Equivalence in EU Banking and Financial Regulation (Apr. 2018), [http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/614495/IPOL_IDA\(2018\)614495_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/614495/IPOL_IDA(2018)614495_EN.pdf) [<https://perma.cc/H2TE-7CY4>].

⁷⁴ Brush, *supra* note 9 (describing continued issues with equivalence).

institutions that benefit from these privileges, thereby weakening London's ability to maintain its financial capital status.⁷⁵

E. Brexit and the Financial Center of Europe: Continental Alternatives

As uncertainty mounts from stalled negotiations, political turmoil, and a looming exit date, "U.K.-headquartered financial services firms need to ensure post-Brexit access to EU markets to safeguard the future of their businesses."⁷⁶ As firms search for continental alternatives, numerous cities are preparing for a temporary or permanent shift.⁷⁷ Current cities topping the list include Frankfurt, Paris, Dublin, Amsterdam, and Luxembourg.⁷⁸ In addition to mutual EU membership, each city offers distinct advantages and disadvantages for specific financial services institutions.⁷⁹ Commentators have argued that financial flight has weakened London as the financial capital by tracking movement out of the city, focusing on firms that are increasing services at continental offices or moving employees abroad.⁸⁰ Alternatively, some commentators argue that this shift is minimal and speculative, and conclude that London will retain its status.⁸¹

⁷⁵ See John Glover, *What U.K.'s Brexit 'Equivalence' Plan Means for Banks: QuickTake*, BLOOMBERG (July 13, 2018, 11:42 AM), <https://www.bloomberg.com/news/articles/2018-07-13/what-u-k-s-brexit-equivalence-plan-means-for-banks-quicktake> ("For the U.K. financial industry, the approach [equivalence] has significant shortcomings.").

⁷⁶ Gavin Finch, *Brexit Delivers Blow to British Finance as Investments Slide*, BLOOMBERG (July 8, 2018, 7:01 PM), <https://www.bloomberg.com/news/articles/2018-07-08/brexit-deals-blow-to-financial-sector-as-u-k-investments-slide> (quoting Omar Ali, EY's UK financial services leader).

⁷⁷ See Danica Kirka, *As Brexit Talks Stall, European Cities Hunt for London Jobs*, ASSOCIATED PRESS (Nov. 8, 2017), <https://www.apnews.com/0ea8577c3e834c8db101c9d651a90cdf/As-Brexit-talks-stall,-European-cities-hunt-for-London-jobs> [<http://perma.cc/YHG7-5EW9>].

⁷⁸ See Moore, *supra* note 7; see also *Relocating*, *supra* note 5.

⁷⁹ *Relocating*, *supra* note 5.

⁸⁰ Silvia Amaro, *Bank Jobs Are Moving out of London—and Brexit Hasn't Even Kicked In Yet*, CNBC (Dec. 18, 2017, 10:58 AM), <https://www.cnbc.com/2017/08/29/bank-jobs-are-bleeding-out-of-london--and-brexit-hasnt-even-kicked-in-yet.html> [<http://perma.cc/B2QY-JD2G>].

⁸¹ Mathew Elliot, *Europe's Post-Brexit Financial Capital Will Be... London*, POLITICO (Dec. 11, 2017, 8:09 PM), <https://www.politico.eu/article/brexit-economy-europe-financial-capital-will-be-london/> [<http://perma.cc/8FJF-RNRZ>].

Frankfurt “[h]as long fancied itself as London’s chief European rival” partially because it is home to the European Central Bank and Deutsche Bank.⁸² Numerous banks are relocating or creating jobs in Frankfurt in preparation for the completion of Brexit.⁸³ For example, Deutsche Bank has stated its intention to move or create approximately four thousand jobs in Frankfurt, Goldman Sachs has started moving positions and services to Frankfurt to be closer to clients, JP Morgan will be using Frankfurt as one of its continental European “anchors,” and Standard Chartered is planning to create a subsidiary in Frankfurt.⁸⁴ Although Frankfurt offers business benefits such as predictable regulators and high English proficiency, the cultural appeal of the city and the “provincial attitude” makes it less attractive than London.⁸⁵

Paris tops the list for its status as a “world city” offering high quality of living.⁸⁶ Paris also has its own disadvantages including difficult regulators, high tax rates, and limited use of English.⁸⁷ Many London-based firms, including JP Morgan, HSBC, and Citigroup, are considering Paris as an alternative.⁸⁸ HSBC has stated that after the UK leaves the Single Market, at least one thousand of its UK jobs will be unlawful and that the company plans to move those jobs to Paris.⁸⁹ Wells Fargo echoed similar concerns and plans to relocate some of its UK business to Paris.⁹⁰

Dublin competes with continental European cities as “the most desirable city for London Bankers” because of its high English comprehension and proximity to London.⁹¹ Unfortunately, Dublin has

⁸² Moore, *supra* note 7.

⁸³ Suzi Ring, *Brexit Deal Too Late to Stop Some EU Firms from Moving Business*, BLOOMBERG (Mar. 19, 2018, 8:01 PM), <https://www.bloomberg.com/news/articles/2018-03-20/brexit-deal-too-late-to-stop-some-eu-firms-from-moving-business>.

⁸⁴ Amaro, *supra* note 80.

⁸⁵ Moore, *supra* note 7.

⁸⁶ *Id.*

⁸⁷ *Id.* (“Another criticism is the ‘difficulty of interaction with the tax authorities,’ along with ‘high corporate and personal tax rates, restrictive labour laws and limited use of English.’”).

⁸⁸ Amaro, *supra* note 80.

⁸⁹ *Id.*

⁹⁰ Laura Noonan et al., *Wells Fargo Eyes Paris and Dublin as Post-Brexit Hubs*, IRISH TIMES (June 3, 2018, 6:39 PM), <https://www.irishtimes.com/business/financial-services/wells-fargo-eyes-paris-and-dublin-as-post-brexit-hubs-1.3518309> [<http://perma.cc/6D55-4LE7>].

⁹¹ *Relocating*, *supra* note 5.

one of the highest maximum income tax rates at fifty-two percent.⁹² As a possible offset, Dublin offers a “[t]ax relief programme to support foreign companies in relocating staff.”⁹³ Wells Fargo is considering a greater concentration of services and employees in Dublin as it is already the base for the company’s commercial lending services.⁹⁴ Bank of America, Barclays, and JP Morgan are also considering moving employees or creating new jobs in the Irish capital.⁹⁵

Amsterdam is similar to Dublin in both high English comprehension as well as maximum income tax rate.⁹⁶ Further, Amsterdam is a digital capital where “80 percent of Europe’s population is reachable within a 50 millisecond network reach.”⁹⁷ NEX Group, a UK-based business focused on electronic markets, announced that Amsterdam would be the base of its continental operations.⁹⁸ Banks, including RBS and UBS, plan to move or create jobs in Amsterdam, but the numbers are lower than moves to other cities.⁹⁹

Finally, Luxembourg is a top contender with its history of low taxes, reputation for asset management and private banking, and “modern and continuously updated legal and regulatory framework.”¹⁰⁰ Although a central location for continental Europe, Luxembourg has lower English proficiency because the small Grand Duchy speaks multiple languages, including German, French, and Luxembourgish.¹⁰¹ Even so, twenty financial firms have stated interest in Luxembourg as a post-Brexit location, with Jupiter Fund Management choosing

⁹² *Id.*

⁹³ Moore, *supra* note 7.

⁹⁴ Noonan et al., *supra* note 90.

⁹⁵ Amaro, *supra* note 80.

⁹⁶ *Relocating*, *supra* note 5.

⁹⁷ Shellie Karabell, *Where Will London’s Finance Sector Go After Brexit? Amsterdam Says ‘Choose Us!’*, FORBES (Nov. 27, 2017, 2:56 PM), <https://www.forbes.com/sites/shelliekarabell/2017/11/27/where-will-londons-finance-sector-go-after-brexit-amsterdam-says-choose-us/#1614739446b6> [<http://perma.cc/5G3C-TKUS>] (quoting Michiel Eielts, Managing Director, Benelux, of Equinox).

⁹⁸ John Detrixhe, *Amsterdam Has Won the Trust of Another London Financial Firm Preparing for Life after Brexit*, QUARTZ (Nov. 20, 2017), <https://qz.com/1133623/nex-group-is-preparing-for-brexit-by-moving-some-operations-to-amsterdam/> [<http://perma.cc/EJD9-UHZB>].

⁹⁹ Amaro, *supra* note 80.

¹⁰⁰ *See* Moore, *supra* note 7.

¹⁰¹ *See Relocating*, *supra* note 5.

Luxembourg as its preferred location and others confirming the city as their European hub.¹⁰²

These examples of financial flight may not be determinant of London's future status as the financial capital of Europe.¹⁰³ "[T]he UK capital employs around 750,000 financial industry workers, and the announcements of the moves so far are marginal in the grand scheme of things."¹⁰⁴ Furthermore, critics argue that London offers more than just involvement in the EU, with its sophisticated legal system, educated workforce, and interest from the U.S.¹⁰⁵ Even with some financial flight from London, the move to various continental alternatives may only "[r]einforce the view that financial services previously based in London will fragment across different European cities, rather than transfer to a sole centre."¹⁰⁶

F. Conclusion

As Brexit negotiations continue, the final provisions governing the UK's departure from the EU—and London's future as the financial capital of Europe—are all but determined.¹⁰⁷ Continued political division, stalled negotiations, and the specific provisions contained in any withdrawal agreement will challenge London's ability to

¹⁰² Hannah Brenton, *Luxembourg Picked by More Than 20 Finance Firms After Brexit Vote*, LUX. TIMES (Jan. 3, 2018), <https://luxtimes.lu/luxembourg/32995-luxembourg-picked-by-more-than-20-finance-firms-after-brexit-vote> [<http://perma.cc/CCE8-LY49>] ("Luxembourg has clocked in more than 20 "top-ranked" finance firms over the course of the last year, which have chosen to set up shop or move activities to the Grand Duchy.").

¹⁰³ See Detrixhe, *supra* note 98. See also Gavin Finch, *London Brexodus Underway as Financial Firms Relocate 1,000 Staff*, BLOOMBERG (Mar. 28, 2018, 7:46 AM), <https://www.bloomberg.com/news/articles/2018-03-28/london-brexodus-underway-as-financial-firms-relocate-1-000-staff> ("Financial-services companies will have moved more than 1,000 people to Frankfurt by the end of April in preparation for Britain's departure from the European Union . . .").

¹⁰⁴ Detrixhe, *supra* note 98.

¹⁰⁵ Elliot, *supra* note 81 ("Be it our sophisticated legal system or our highly educated workforce, it's clear London owes its success to a variety of factors . . .").

¹⁰⁶ Noonan et al., *supra* note 90.

¹⁰⁷ See Stewart, *supra* note 36.

maintain its status.¹⁰⁸ Movement of firms and individuals out of London into continental alternatives indicates that financial institutions are concerned with the possible effects of any final withdrawal agreement, but may not signify a mass exodus.¹⁰⁹ The risk to firms operating in London is high, as preclusion from the benefits of the economic zones will significantly affect the ability of firms to provide services and the ability of some employees to maintain their current positions.¹¹⁰ Continental cities will continue to promote themselves to firms looking to secure their business, though which of these cities will benefit most is unclear.¹¹¹ Until the UK reaches a final agreement—or withdraws without one—the full effects of Brexit on London’s status as the financial capital of Europe will remain uncertain.¹¹²

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¹⁰⁸ See Clark, *supra* note 36 (“A new group of politicians from across the parties is set to table a ‘killer’ amendment when the PM brings her deal back to the Commons.”); see also Kollwe, *supra* note 26 (“The London Stock Exchange has started implementing contingency plans in case the UK crashes out of the EU without a . . . deal.”).

¹⁰⁹ See Detrixhe, *supra* note 98; Finch, *supra* note 76.

¹¹⁰ See Skolimowski & Look, *supra* note 6 (“[T]here is no substitute outside the EU for the freedoms, rights and obligations that come with being part of the single market.”); Treanor, *supra* note 54.

¹¹¹ See Kirka, *supra* note 77. See also Noonan et al., *supra* note 90 (“Such moves reinforce the view that financial services previously based in London will fragment across different European cities, rather than transfer to a sole centre.”).

¹¹² See Martin, *supra* note 10 (“Whether a no-deal scenario had a good, bad, or little impact on the economy in the long run would depend on many things, including how successful the UK was at striking new trade deals and whether there was an exodus of financial institutions from the UK.”).

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