

UK Financial Services See Hope In Customs Union Plan

By William Shaw

Law360, London (April 5, 2019, 5:00 PM BST) -- The U.K. government's move toward a permanent customs arrangement with the European Union has again left financial services out of the equation, but it has offered some hope for a transition deal that would allow banks to tackle their biggest concerns about leaving the EU.

Theresa May began crisis talks this week with opposition leader Jeremy Corbyn over her troubled plans for Brexit, with the Labour Party insisting on a permanent arrangement to protect the free movement of goods between Britain and the EU.

This blueprint, which goes further than May's previous proposals for a temporary customs mechanism, would once again omit key services such as finance and law.

Attorneys say it is unlikely to prevent banks and insurers from transferring staff and services out of London to avoid upheaval when Britain leaves the EU, which could take place as soon as April 12. But they sense that Britain is edging closer to a deal that could avoid an acrimonious split and give financial services the opportunity to push future trade negotiations in their favor.

"If the political parties arrive at an agreement, and the House of Commons agrees it, then there is going to be an implementation period until at least the end of 2020," said Azad Ali, a partner at Fieldfisher LLP. "That would give more time for work-around solutions such as the relocation of firms, as well as time for industry to lobby for the U.K. and EU to achieve a better outcome for U.K. financial institutions."

But there is little to indicate this week that the cross-party Brexit talks will offer succor to the financial services industry.

Investors withdrew some £236 million (\$309 million) from U.K. equity funds in February alone, according



Attorneys say a permanent customs arrangement would be unlikely to prevent banks and insurers from transferring services out of London to avoid upheaval created by Brexit. (AP)

to data released on Thursday by the Investment Association, a trade group. That takes the amount taken out of such funds since the Brexit referendum in June 2016 to £11.5 billion.

The exodus of businesses from London is also continuing. British ship insurer UK P&I Club said in March that it has won approval from the Dutch financial regulator to continue serving EU customers through its Rotterdam-based subsidiary. Insurance giants including Lloyd's of London, Tokio Marine and American International Group have made similar moves into Europe.

Financial services companies are indifferent about the prospect of a customs union. Banks and insurers instead want continued single market access, which would preserve the passporting rights that allow them to sidestep regulatory regimes in individual EU member states. A customs union would present problems in Britain's relationship with Ireland, as it would not enable lawyers in Belfast to travel easily into Dublin to serve financial services customers there after Brexit.

Attorneys say that companies in London will be pressing ahead with contingency plans regardless of any move toward securing free movement of goods.

"But on the other hand, frankly, if that becomes the solution that most MPs can coalesce around, and that actually stands a chance of forming a deal ... then you would have to say that for a financial services provider that is a good thing," said Jeremy Jennings-Mares, partner at Morrison & Foerster (UK) LLP. "The worst thing is a no-deal Brexit, at least in the short term."

Support in Parliament has been edging toward a softer Brexit. MPs on Monday rejected membership of the European Free Trade Association and the European Economic Area, a proposal known as "common market 2.0" — but only by 21 votes. This plan would have allowed a comprehensive customs arrangement and continued membership of the single market, and support for the proposal in Parliament has created some optimism.

In a further move away from a hard Brexit, Prime Minister Theresa May on Friday wrote to Donald Tusk, President of the European Council, seeking a delay until June 30 while she seeks a domestic political consensus on the way forward.

But persuading Brexiteers in Parliament to rally around any plans that could keep Britain closely aligned with the EU single market — which banks and insurers see as the biggest prize — could prove extremely hard. Critics see the single market as emblematic of the EU's federalist ambitions for an "ever closer union," making it unpalatable to the politicians seeking a clean break.

"The single market is a concept that is only really applicable in international law to the EU, whereas harmonized customs arrangements are quite common in international trade agreements," said Christopher Hobson, a solicitor at Fieldfisher. "It's not something that's done on an arms-length basis with trading partners."

Meanwhile, lawyers are continuing to advise their financial services clients to prepare for the worst amid the fast-changing political situation in the U.K.

“You have to work on a daily, if not hourly, basis,” Dechert LLP partner Monica Gogna said. “Today the conversation surrounds a customs deal, and if it surrounds the customs deal then there is no single market access.”

--Additional reporting by Najiyya Budaly. Editing by Ed Harris.