

CLIENT ALERT



## The Close of the PISCES Consultation Period – An Opportunity for Private Market Growth

APRIL 19, 2024

### BACKGROUND

On 6 March 2024, HM Treasury published a [consultation paper](#) (the Consultation Paper) on the proposed creation of the Private Intermittent Securities and Capital Exchange System (PISCES), a new trading platform that will offer private companies the ability to trade their securities intermittently. The aim of PISCES is to facilitate growth in the private market and to allow private companies an easier transition to public markets, as they will gain exposure to a wider breadth of investors within a bespoke regulatory environment that draws on existing public market regulations. PISCES will operate within a financial market infrastructure (FMI) sandbox, allowing the system and accompanying regulations to be trialled in a controlled setting for a proposed period of five years before the scheme is made permanent.

FMI sandboxes were introduced under the Financial Services and Markets Act 2023 to allow for the testing of new financial technologies. The use of a sandbox for the PISCES trial will allow the UK government to temporarily modify the relevant legislation needed to facilitate the intermittent trading of securities via a multilateral system, so that the necessary market abuse and disclosure regulations will only apply during the relevant trading window.

This is another example of the sandbox system (the first example being the UK Digital Securities Sandbox) being used to temporarily modify existing legislation to encourage innovations in UK markets with the ultimate aim of attracting increased investment.

This marks a welcome broadening of the investment regime in the UK's private market. Should PISCES proceed, certain types of investors will benefit from access to a broader range of companies while still enjoying the safety of trading in a more regulated environment.

The consultation period closed on 17 April 2024, with the government to now begin reviewing the responses with the aim of announcing new legislation at the end of 2024.

### KEY FEATURES OF PISCES

The Consultation Paper outlines the proposed framework for trading through PISCES. These key features of this framework are:

- **Private / non-traded companies only:** PISCES can only be used for trading shares in private companies or in public companies whose shares are not publicly traded either in the UK or abroad.
- **Shares to be sold subject to articles of association:** Existing shareholders of PISCES trading companies will be able to sell their shares subject to the company's articles of association and any other relevant agreements (including shareholder agreements and employee-based agreements through which shares are held). This means that the rights and obligations of shareholders contained in such agreements will apply to any incoming shareholder following the sale.
- **Shares to be freely transferable - company constitution amendments may be necessary:** Companies will need to undertake the necessary steps to ensure that the shares to be admitted are freely transferable, including by making amendments to their articles of association, if necessary.
- **No new capital raises:** PISCES is designed to be a secondary market for existing shares and may not be used to raise new capital via share issuances.
- **No investment by general retail investors:** Institutional and professional investors (such as pension funds or private equity firms) will be offered access to PISCES, but the government has indicated that retail investors may only be considered for access if they fall into certain categories, such as self-certified sophisticated investors, high-net-worth investors or employees of a company participating in PISCES. It is not proposed that general retail investors will be granted access.
- **Intermittent trading windows:** Subject to any specific PISCES operator rules, companies will have the flexibility to determine the length between trading windows (i.e. weekly, monthly, biannually etc.) and the duration of each trading window.
- **Customised regulatory regime:** the PISCES disclosure and market abuse regimes will be based on existing UK Market Abuse Regulations (MAR), with modifications to account for the need to not apply overly extensive regulations to private companies. Under the PISCES disclosure regime, PISCES operators will be able to establish a private perimeter wherein information disclosures will be made only to potential investors, rather than to the public. The PISCES market abuse regime will focus only on the key risk features in MAR, including unlawful disclosure of inside information, market manipulation, and insider dealing.
- **Limited admission requirements:** Currently, the PISCES proposals do not indicate that there will be any minimum admission requirements, such as thresholds on the size of companies wishing to trade their shares. However, there may be certain corporate governance requirements or other standards of company conduct included as an admission criterion. It is currently proposed that any specific corporate governance requirements will be at the discretion of the PISCES operators.

## OUR THOUGHTS ON THE CONSULTATION

The consultation period is designed to seek input from interested parties on how the proposed PISCES framework will impact private companies, including venture capital undertakings. Traditionally, restrictions on share transfers are included in the articles of association for such companies as a means of investor protection, but the PISCES framework means that such protections would need to be loosened in order for a company to trade on PISCES. This may mean that, at least in the early stages, PISCES will only be used by larger, well-established private companies who have a broader investor pool, meaning that there is less need to maintain individual investor protections. Companies wishing to make use of PISCES should consider whether a decrease in investor protection mechanisms is suitable for their business model before taking steps to trade their shares. Interested companies should also consider the impact of PISCES trading on any future public offerings they may wish to make, as such trading could mean that a company's shareholder pool is significantly broadened, which would introduce complications for an IPO process.

## NEXT STEPS

Depending on the outcome of the consultation, the government expects that the necessary legislation for PISCES, including the creation of the sandbox, will be in place by the end of 2024. Prior to this, the FCA intends to seek

consultation on the approvals process for participation in the PISCES sandbox and any accompanying FCA rules needed.

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