

“Private IPOs”: Is PISCES the Future of Private Share Listings?

November 21, 2024

On November 14, 2024, the Chancellor of the Exchequer, Rachel Reeves, delivered her first Mansion House speech, outlining the UK government’s economic priorities. In her speech, Chancellor Reeves highlighted the need for reforming the United Kingdom’s capital markets, including by committing to legislation for PISCES, a new trading venue for shares in companies that are not listed on a stock exchange, by May 2025, as a means “to support companies to scale and grow.” PISCES (short for the Private Intermittent Securities and Capital Exchange System) was first unveiled in 2022 as part of the Edinburgh Reforms, which were focused on modernizing financial markets and unlocking investment in the United Kingdom.¹ In March 2024, HM Treasury published a consultation paper seeking industry feedback on the initial structure of PISCES (available [here](#)). On November 14, 2024, the UK government published its response to the consultation paper (available [here](#)) (the “Response”), along with the draft statutory instrument.² PISCES, if adopted, would create a unique platform where shareholders can sell existing shares in an unlisted company in a regulated environment and could represent a landmark step towards wider spread adoption of alternatives to traditional initial public offerings (“IPOs”) and other forms of liquidity events for owners of privately held companies in the form of “private IPOs.”

What Is PISCES?

PISCES is envisioned as a new secondary trading platform operated by firms approved by the Financial Conduct Authority (“FCA”), whereby existing shareholders, including employees, of eligible private companies would be able to sell their shares in certain intermittent trading windows (for example, monthly, quarterly or annually). The platform would be supported by a bespoke regulatory framework, discussed below, to ensure a secure and transparent trading environment while retaining the privacy and control associated with remaining outside public markets. While PISCES would provide

¹ We discussed the Edinburgh Reforms in our Debevoise In Depth, available [here](#).

² Draft Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System Sandbox) Regulations 2025, available [here](#).

access for institutional and professional investors to a universe of growing companies, it could not be used by companies to raise capital through the issuance of new shares or to trade other securities, such as bonds. If ultimately adopted, PISCES would represent the world's first regulated market allowing for the trading of shares of privately held companies.

PISCES would operate under the FCA's financial markets infrastructure sandbox, a regulatory space that allows the Treasury, working with the FCA, to make temporary flexible adjustments to the existing legislative framework to trial new technologies or practices. The Response sets the initial duration of the PISCES sandbox to five years and notes that the UK government would monitor, along with the FCA, the outcomes during the initial period with the ability to terminate the sandbox regime early or make the sandbox regime permanent, subject to Parliamentary approval.

Once implemented, firms seeking to run a PISCES platform will need approval from the FCA by demonstrating their ability to satisfy regulatory rules, which the Response notes will facilitate a flexible and competitive environment, while also maintaining sufficient investor protections. In particular, operators would have the ability to design platforms around features, such as price parameters, trading volumes and duration and frequency of trading windows. To facilitate holding and settlement of shares, PISCES market operators would also decide whether a company should have its shares recorded on a central securities depository or whether to permit alternative settlement methods, such as to impose transfer restrictions where necessary. PISCES would not fall within any existing category of regulated trading venue, such as a regulated market or a multilateral trading facility (MTF); it would represent a new, stand-alone category of trading venue. Consequently, the Takeover Code would not apply to a company solely by virtue of its securities being traded on PISCES.

Investor Eligibility

PISCES is designed to primarily serve institutional and professional investors. Initially, new investors would be restricted to those that meet specific criteria, and trading on the platform would not be available to retail investors, given the limited levels of disclosure and investor protection compared to those required by public markets. The categories of investors permitted to buy shares on the platform would include institutional investors, employees of the company participating in PISCES and investors who can meet the definition of high net worth individuals and self-certified or certified sophisticated investors under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005. The obligation to confirm the eligibility of an investor to participate in a

PISCES transaction would fall to the person taking an order to trade, which may be satisfied by reliance on a company-supplied employee list.

All existing shareholders would have the opportunity to sell their shares on PISCES, subject to any restrictions in the company's organizational documents, any shareholder or similar agreements and the terms of employee equity awards (if applicable). The different standards applicable to buyers and sellers may mean that those eligible to sell shares may not be able to also buy shares on the platform. PISCES operators would also have the discretion to only market their platform to particular types of eligible investors (for example, professional investors) and allow companies trading on PISCES to restrict ownership of their shares to certain investor types.

Company and Transaction Requirements

To be traded on PISCES, a company's shares must not be subject to any transfer restrictions and must not be admitted for trading or listed on a market in any jurisdiction. In addition to precluding primary issuances of shares, PISCES would also preclude share buybacks by companies. Otherwise, there would be no restrictions or requirements relating to the jurisdiction or form of incorporation of the company or minimum market capitalization or free float. Companies would even be permitted to have multiple classes of shares admitted to trading.

The Response proposes certain modifications to the Companies Act 2006 to allow for the shares of privately held companies to trade on PISCES and ensure that such trading would not constitute an indirect offer to the public by the company. However, the Response does not propose placing any additional corporate governance requirements on companies listed on PISCES, although individual operators may decide to impose their own standards, and such matters could be included in the FCA's disclosure regime applicable to PISCES.

As announced at the end of October, transactions on PISCES will also be exempt from Stamp Duty and Stamp Reserve Tax. However, decisions regarding the interaction between PISCES and certain tax-advantageous employee share schemes, such as Enterprise Management Incentives, and the tax treatment of shares traded on PISCES more generally are still under discussion.

Disclosure and Liability

The lynchpin of the PISCES framework is the establishment of a carefully tailored disclosure and liability regime that would balance the interests of investors with the objective of offering less burdensome disclosure obligations compared to public company listings. The FCA will be tasked with creating a new and bespoke disclosure regime, including what core and other information participant companies should disclose, for companies wishing to trade on PISCES on the basis of market feedback on the nature and content of disclosures. While the specific disclosure requirements remain uncertain, participant companies are not expected to be required to disclose all “inside information” in the manner required on public markets. Further, regardless of its content, disclosure by companies trading on PISCES will be made within a “private perimeter,” meaning that information about participant companies would be accessible to eligible investors participating in a specific PISCES trading event but would not be required to be made public or even available to other participants on the PISCES platform not involved in such trading event, thereby balancing the need for transparency with confidentiality.

The Response also proposes to introduce a PISCES disclosure liability regime with a “negligence” liability standard applicable to more certain types of information (for example, historical financial information), while a more lenient “recklessness” standard is expected to apply to less certain information (for example, forward-looking statements). The FCA is proposed to retain its role in enforcing the market abuse regime as it will apply to PISCES and will be given rulemaking powers concerning the detection and prevention of abusive trading behaviors on PISCES. It will also consider and consult on arrangements where PISCES operators play a more central role in preventing and detecting manipulative and abusive activities and behaviors on their respective platforms.

Private IPOs: A (Potential) Alternative Path to Liquidity

The proposed establishment of PISCES comes at a time when companies and their shareholders are increasingly looking for alternatives to traditional exit opportunities, such as IPOs, M&A transactions and continuation fund vehicles. As the public equity markets (particularly in the United Kingdom and Europe) have struggled in recent years, including with historically low levels of IPOs, large private equity firms have threatened to bypass the traditional IPO process due to increased regulation, high execution costs and volatile market conditions in search of a more efficient process. The so-called “private IPO” has been suggested as a potential structure to allow companies to

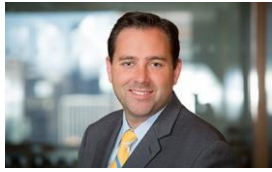
rationalize their shareholder base, increase liquidity for investors and potentially improve their valuation, while avoiding the costs and scrutiny of a public listing.

What constitutes a “private IPO” remains elusive, but it is generally considered to be a company-managed secondary sale of existing shares to a group of new investors with the expectation of opportunities for such investors to sell in the future, all on an unregulated basis and outside of public trading markets. As such, the boundary between a sale to minority investors and “private IPO” is often distinguished by the number of investors and the frequency of liquidity events. While examples of such a “private IPO” structure are limited, it has become increasingly common for shares of private companies to trade on secondary markets, such as Forge, although trading activity on such platforms remains low due, in part, to the lack of electronic clearing and standardized and regulated processes. In addition, large private companies, such as SpaceX, have conducted recurring company-managed employee tender offers, whereby new investors are given access to purchase shares tendered by employees on a private basis. These transaction types allow companies to retain control over their shareholder base and provide opportunities for shareholders to monetize their investments. As proposed, PISCES would appear to strike a balance between appropriate safeguards and market structure and the flexibility and reduced execution costs that private markets offer. The disclosure and other requirements applicable to PISCES could also potentially provide an “on ramp” for private companies to develop the disclosure procedures needed to list on public markets, while also providing for a more robust price discovery process.

Significant questions remain, however, as to whether “private IPOs” will ultimately be considered a viable transaction type. For example, companies looking to establish liquid secondary markets for their shares will likely still need to establish and maintain internal controls and procedures sufficient to produce reliable and accurate information to investors and would still need to fit the profile of an attractive equity investment. In addition, certain investors may be unwilling to hold positions in companies not listed on “true” public markets due to investment allocation policies or a lack of trading liquidity. Consideration would also need to be given to existing rules and regulations around disclosure and, in the United States, registration requirements for offers and sales of securities. However, to the extent “private IPOs” will ultimately represent a legitimate liquidity option for investors, PISCES potentially offers the blueprint for how such a market could be operated and, most importantly, regulated.

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Please feel free to contact us if you would like to discuss this development or other aspects of private IPOs. We would also be happy to give our presentation on private IPOs to clients and friends of the firm.



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