FCA Publishes Consultation Paper on PISCES

December 23, 2024

On December 17, 2024, the UK Financial Conduct Authority (the "FCA") published Consultation Paper CP24/29 (the "Proposal"), which sets out its proposed approach, objectives and regulatory framework for the Private Intermittent Securities and Capital Exchange System ("PISCES"), a new trading platform, to be operated by various market participants, intended to facilitate trading shares of private companies. The publication follows HM Treasury's consultation paper on PISCES published in March 2024 (available here) and the UK government's response published on November 14, 2024 (available here).[1]

The proposals are part of the FCA's wide-ranging reforms to the UK's capital markets aimed at increasing their competitiveness. PISCES is envisioned as a means to give employees, early investors, venture capital firms, private equity firms and other investors a path to liquidity for their investment in a private company that does not include a traditional listing on a public market or an M&A transaction. The deadline for comments on the Proposal is February 17, 2025. The FCA, in close partnership with HM Treasury, aims to launch PISCES by May 2025, following publication of the final rules.

Key Proposals

The foundation of the Proposal is a tailored disclosure regime, supported by various guardrails unique to the PISCES market and its participants, with significant authority to be granted to operators in respect of oversight and disciplinary measures for rule infractions.

Core Disclosures

The Proposal provides that companies would be required to disclose a standardized set of core information sufficiently in advance of the relevant PISCES trading event to

[1] We have analyzed this consultation paper and response in detail in our Debevoise In Depth, available here.

those potential investors who have the ability to participate in the event. Such core information would not be comparable to the level of information disclosed by public companies, but is expected to correspond to the type of information investors would typically expect to receive in connection with an investment in a private company.

The proposed core information includes:

- business and management overview;
- financial information, including:
  - financial statements for the past three years or for as long as the company has been in existence, whichever is shorter;
  - if relevant, the auditors' reports relating to the financial statements; and
  - if the latest disclosed financial statements relate to a period more than 12 months before the start of the PISCES trading event, interim financial statements or management accounts to at least 12 months before the start of the trading event;
- capital structure, ownership and rights, previous share capital raises and share information;
- major shareholdings, including details on persons:
  - holding, directly or indirectly, more than 10% of shares or voting rights;
  - holding the right, directly or indirectly, to appoint a majority of the board of directors; or
  - exercising, or having the right to exercise, significant influence or control over the company;
- material risk factors specific to the company and its shares;
- material litigation and contracts;
- summary of any employee share option scheme;
- material sustainability characteristics;

- directors' transactions, including any trading intention in a PISCES trading event (within a reasonable time after a trading event and before the next trading event);
- significant changes, including financial position, significant acquisitions or disposals and significant related party transactions;
- forward-looking information;
- details of the nature and basis of any price parameters (i.e., any minimum or maximum prices) applied to a trading event, and whether they were prepared by the company or an independent third party;
- details of the traded price and volume of the last trading event; and
- whether any commitments have been made to hold future PISCES trading events and, if so, indications of when or how often those will be.

While PISCES operators would not be expected to monitor companies' compliance with disclosure obligations, they would be required to notify the FCA if they suspect or have reasonable grounds to believe that disclosures include misleading statements.

Companies trading on a PISCES platform would be permitted to omit certain core disclosure information if they provide an explanation in their disclosure. Reasons for legitimate omissions include situations when the company has no access to such information or the disclosure could prejudice the company's legitimate interests. While the FCA notes that there is a risk that companies could misuse legitimate omission rules, it also expects investors to take a company's decision to withhold information into account when making their investment decisions.

Additional Disclosure Arrangements

In addition to specified core information, the Proposal would mandate that PISCES operators ensure appropriate disclosure arrangements for their market's efficient and effective functioning, but with flexibility to adapt to different PISCES business models.

Such additional disclosure arrangements may include rules requiring disclosure of:

- other categories of information not otherwise listed as core disclosure information;
- information considered by the board of directors of a company to be relevant to investors (a so-called "sweeper-model" requirement); or

- information in response to specific investor requests (an "ask-model").

Liability Regime

A key distinguishing feature of PISCES, as compared to publicly regulated markets, is a higher standard for disclosure-related liability. Under the Proposal, core information would be subject to a negligence standard, and forward-looking statements and other additional information provided through PISCES disclosure arrangements would be subject to a recklessness or dishonesty standard. The FCA has rule-making authority to specify the definition of a "forward-looking statement" for the PISCES regime, which is expected to include financial forecasts and details of a company's business strategy for the upcoming 12 months.

Trading Events

The Proposal sets forth provisions on how PISCES operators will organize and run trading events. PISCES platforms would operate as multilateral systems, but they would not be trading venues as defined under UK MiFIR. PISCES operators would not be subject to the regulations that apply to multilateral trading facilities, but would be subject to a bespoke regulatory regime to be set out in the FCA's new PISCES sourcebook.

Before any PISCES trading event, PISCES operators would ensure that the following information is made publicly available in a timely manner:

- the timing and length of the upcoming PISCES trading event;
- the date from when and the length of time that the relevant PISCES disclosure information will be available;
- the relevant shares available for trading in the PISCES trading event;
- any restrictions imposed by the PISCES operator on the members, participants or investors that may participate on their platform (for example, if access is limited to institutional investors); and
- whether or not the PISCES trading event is permissioned (a choice of "yes" or "no" as to whether there are any restrictions on who can buy the given company's shares).

The Proposal highlights that on PISCES platforms, private companies would have a higher degree of control over the trading of, and disclosure of information on, their shares than is currently possible for shares admitted to trading on public markets.

Price Parameters and Data Transparency

PISCES operators would be required to make certain pricing information available to all investors that can trade in the trading event. Such information would include the current bid and offer prices, the interest at these prices and the information on the transactions executed on the platform, in as close to real time as possible.

Restrictions on Access to Trading Events

The Proposal provides that access to a trading event could be limited by a company, but only if there is a legitimate commercial interest of the company that requires promotion or protection. Examples of legitimate criteria would include restrictions on competitors of the company, investors from certain jurisdictions or particular types of investors (for example, employees or existing shareholders).

In addition, a company may not set new restrictions on the sale by an existing investor of their shares in a trading event (other than pre-existing contractual restrictions applicable to an investor that is an employee). Any applicable trading restrictions would need to be non-discriminatory in nature and made known to investors who request access to a trading event in a timely manner.

Market Risk

As acknowledged by the Proposal, trading on PISCES will involve higher risks for investors than trading in public markets. As such, the Proposal contemplates that PISCES operators apply a market risk warning as part of any disclosure information that companies disseminate on the applicable PISCES platform, noting, among other things, that the investment is of a high risk and the investors may lose all their money. The mandated risk warning would also note that the company disclosures are subject to a different liability regime and that UK MAR does not apply to shares traded on PISCES.

Prohibitions on Manipulative Trading Practices

PISCES operators are proposed to be subject to existing obligations applicable to trading venue operators to ensure fair and orderly trading on their platform. The FCA did not specify types of manipulative trading practices that PISCES operators should prohibit in the Proposal. Instead, the Proposal states that PISCES sandbox applicants should provide a comprehensive assessment of their rules and arrangements for detecting and preventing manipulative trading practices. Such assessment should identify the risks of manipulative trading practices and the proportionate implementation of measures to mitigate those risks. The FCA also proposes that operators should consider interventions to protect market integrity if they become aware of manipulative trading practices on their platforms, such as postponing, suspending or terminating a trading event.

Ultimately, though, without a MAR-like civil market abuse regime, the Proposal recognizes that PISCES will be more susceptible to market abuse as compared to public markets. In particular, the Proposal notes that certain investors trading on PISCES may in fact have more information than others, and such investors will not be prohibited from trading on such information on PISCES under a civil or criminal market abuse regime.

Comments

The Proposal attempts to strike a balance between a self-regulatory approach embedded in the rules to be adopted by each of the PISCES operators and a regulatory framework to be set out in the statutory instrument. The FCA proposes to implement PISCES through a Financial Market Infrastructure sandbox, enabling the framework to be tested and fine-tuned over a five-year period in order to balance innovation with appropriate regulatory oversight, ensuring that the platform meets the needs of companies and investors while maintaining market integrity.

At the same time, important details of the PISCES regime remain subject to rules to be adopted by specific PISCES operators. The approach to disclosure of various categories of information required by the PISCES regime remains to be tested, and it is unclear at the moment whether PISCES, as currently proposed by the FCA, will be utilized by companies and investors.

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Please do not hesitate to contact us with any questions.

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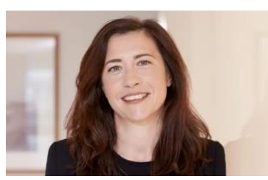

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