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GETTING READY FOR PISCES: A NEW LIQUIDITY MECHANISM FOR PRIVATE COMPANIES

The UK's new PISCES regime is expected to become operational later this year. A draft regulatory framework was published by the FCA for consultation in December 2024 and is due to be finalised in May 2025 and, later in the year, operators are likely to publish details of how their platforms will operate. In this briefing, we summarise the key features and benefits, particularly from the perspective of private companies and their existing shareholders, based on the draft regulatory framework and how we expect platforms will operate in practice.

1 What is it?

A PISCES platform represents a new type of regulated trading platform designed to facilitate the intermittent trading of existing shares in private companies within a multilateral system. The idea is loosely modelled on Nasdaq Private Markets, where blocks of shares in private US companies are frequently traded.

(Technically PISCES – short for the Private Intermittent Securities and Capital Exchange System - refers to the regulatory regime under which the new trading platforms will operate. Where we refer to "PISCES" or "it", generally we mean a platform operating under the PISCES regime.)

2 What are the key benefits?

- Offers a route to liquidity for existing investors in private companies without having to wait for an IPO or M&A deal. Although a PISCES platform cannot be used for a primary fundraising, the increased prospect of liquidity should also help attract primary investors.
- Enables a more orderly process and better price formation than if multiple shareholders were to sell separately.
- Helps incentivise and retain employees who hold or may in future acquire shares or options.
- Helps a company rationalise or broaden its shareholder base.
- Offers individual and institutional investors an opportunity to acquire shares in private companies that ordinarily would be difficult to acquire.
- Helps private companies prepare to become listed, particularly by requiring key information to be disclosed in a semi-public environment.

3 When is PISCES likely to be useful?

All UK companies and overseas companies that do not already have shares admitted to trading on a public market in the UK or overseas will be eligible to participate. In practice, PISCES is likely to appeal most to start-ups and high growth companies and those with a large shareholder base, particularly where this includes employees.

PISCES platforms are likely to be useful for smaller, more frequent sales – as an alternative to existing venues like Asset Match and JP Jenkins. But for larger secondary market sales – like those done recently by Revolut and Monzo – there is unlikely to be sufficient demand via a PISCES platform, so a company will probably still need to engage an investment bank to broker a private sale through a book-building process or "tender offer".

Private equity houses will likely continue to favour other mechanisms to achieve an exit. Where a PE house is looking to buy, they will also probably prefer a bilateral process outside a PISCES platform to conduct due diligence and negotiate suitable rights under the company's articles and shareholders agreement.

4 When will PISCES become available?

As noted above, the PISCES regime is expected to be in place by May 2025. At that point, FCA-authorised firms interested in operating a PISCES platform will need to apply to the FCA for relevant permissions. We may therefore see the first platforms become operational in H2 2025. Eligible companies will then be able to apply for their shares to be admitted to intermittent trading on their chosen platform.

5 Who is likely to operate a PISCES platform?

The London Stock Exchange is expected to be one of the first organisations to offer a PISCES platform. Globacap have also said they intend to operate one, and a number of other organisations are reported to be considering it.

6 Who will be able to sell shares via a PISCES platform?

If a company decides to participate in a PISCES platform, in principle any existing shareholder will be able to sell shares unless they are subject to contractual restrictions. In practice, a company will need to decide which classes of shares can be sold, and whether to set any minimum or maximum price (see below).

In relation to employees, a company will need to decide which employees should be permitted to sell and what proportion of their holding they can sell. Companies will want to provide employees with sufficient information to make an informed decision but without advising them what to do. Careful thought will be needed about how such matters are communicated internally.

7 Who will be able to buy shares via a PISCES platform?

Initially, only institutional investors, employees of participating companies and investors who meet the definition of high net-worth individuals (HNWIs) and self-certified or certified sophisticated investors under the Financial Promotion Order will be able to buy shares on a PISCES platform. Later on, retail investors may also be permitted.

Most PISCES platforms are likely to use an intermediated model in which brokers place orders on behalf of their clients. As well as conducting the usual KYC checks, brokers will ensure that would-be buyers meet the eligibility criteria set by the platform operator and any set by the company and, where relevant, that they are HNWI or sophisticated investors.

Companies will not be able to buy back their own shares via a PISCES platform, although again this may be permitted later on. However, the draft legislation does envisage that an employee benefit trust will be eligible to buy shares.

8 Will a company be able to set additional conditions on who can buy its shares?

Yes, provided the relevant PISCES platform allows this and the conditions are designed to promote or protect the company's legitimate commercial interests. Companies should be able to exclude competitors, restrict trade execution sizes and/or specify that only particular investors or types of investors can buy. In practice, any conditions will need to be objective and specific so an intermediary can determine whether a would-be investor qualifies.

9 When will trading happen?

Trading will happen in intermittent trading windows – for example, quarterly, biannually or yearly. Subject to the PISCES operator's rules, companies will have the flexibility to decide the length of time between trading windows and the duration of each trading window.

10 Will eligible investors be able to see price and volume data?

Yes. To support efficient price discovery, details of the last traded price and volume traded during any previous PISCES trading event will have to be disclosed as part of the company's "core information": see below. During a trading event, eligible investors will have access on a real-time basis to (i) current bid and offer prices, and the depth of trading interests at those prices; and (ii) the price, volume and time of transactions executed on the platform.

11 Will a company be able to set a minimum and/or a maximum price at which its shares can be traded?

Yes in principle, although this will depend on the rules of the relevant platform. Platform operators will have no obligation to ensure that any price parameters are fair or reasonable or to check the methodology used: investors will need to form their own view.

12 If a company allows its shares to be transferred during trading windows on a PISCES platform, will it be able to restrict transfers at other times?

Yes. Although shares will need to be free of restrictions during a PISCES trading window, in principle normal restrictions may apply again once the window closes. However, companies will need to look at the detailed rules in this area once the PISCES regime has been finalised and platforms have been established.

In most cases, a company will need to amend its articles before it first participates in a PISCES platform – for example, to modify the rules on transfers of shares and pre-emption rights. Any shareholders' agreement may also need to be amended.

13 Will a participating company have to identify and disclose "inside information" in line with UK MAR or equivalent rules?

No. Before the start of each trading window, a participating company will have to make available on its chosen PISCES platform certain "core" information about itself and the shares to be traded (see box right).

CORE INFORMATION TO BE DISCLOSED (DRAFT RULES)

- Overview of corporate and organisational structure and description of activities and products
- Overview of management structure and details of directors and senior management
- Financial statements and audit reports
- Capital structure, ownership, and key provisions of the articles of association and any shareholders agreement
- Share capital and rights and restrictions attached to shares
- Summary of any employee share schemes
- Details of directors' transactions in company shares and their intentions for the trading event
- Material litigation and investigations
- Material contracts or agreements
- Previous share capital raises, including the date, issue price and amount raised
- Material risks relating to the company and its shares
- Significant changes since the end of the last financial period
- Major shareholders – i.e. broadly a person who (i) holds over 10% of the shares or voting rights in the company; or (ii) has the right to appoint a majority of the board; (iii) exercises, or has the right to exercise, significant influence or control over the company
- Nature and basis of any price parameters applied, and whether they were set by the company or a third party, such as an auditor or valuer
- Material sustainability characteristics, including climate-related risks and opportunities and any transition plan
- Forecast financial information for at least the next 12 months, and any business strategy or objectives of the company for at least the next 12 months
- Details of the traded price and volume on the last PISCES trading event, and details of any future trading events

Core information need not be provided where the company has a legitimate reason for withholding it - for example, where its disclosure would be likely to prejudice the company's legitimate interests or contractual arrangements with other parties prevent disclosure.

Platform operators will be able to require participating companies to disclose certain additional information – for example, using a "sweeper model" – under which a company would have to disclose all other information the board considers relevant to investors – and/or an "ask model" – under which eligible investors would be able to ask the company to provide specific additional information (for example, via a Q&A function), subject to certain conditions.

Platform operators will specify how long before the start of a trading window the required information, together with any additional information the company chooses to provide, must be made available. However, a participating company will not have to identify or disclose on a continuous basis all "inside information" in the way that listed companies are required to do under the UK Market Abuse Regulation. Disclosures will not have to be approved by a platform operator.

14 Could a company be liable to compensate investors if it publishes information on a PISCES platform that is misleading?

Yes. A participating company will be liable to compensate an investor who suffers loss as a result of a false or misleading statement in the information published on a PISCES platform. In respect of most of the mandatory, "core" information, a company will be liable if, broadly, it fails to take reasonable care to ensure the information is accurate (i.e. on a "negligence" basis). But in respect of the forecast financial information and details of the company's business strategy and objectives that are required as part of the core information, and any additional information the company provides voluntarily, a company will be liable only if its directors knew the information to be untrue or misleading or were reckless as to whether it was (i.e. a "fraud" or recklessness basis).

Given the liability risks, a company will need to be confident that participating in PISCES will provide significant benefit to existing shareholders.

15 Will information published on a PISCES platform remain private?

All disclosures will have to be made available – using a "controlled data room" type of model - to all persons entitled to access the relevant trading event, which could include individuals and institutions considering whether to purchase shares. While platform operators are likely to require eligible investors to agree to confidentiality undertakings, enforcing these agreements could be difficult. Companies should probably assume that any information they make available on a platform could sooner or later come into the public domain.

16 Will a company become subject to the Takeover Code simply because its shares are traded on a PISCES platform?

No.

17 What about tax?

Transfers of shares made via a PISCES platform will be exempt from stamp duty and stamp duty reserve tax.

Where arrangements are in place for a company's shares to be traded on PISCES, they will qualify as "readily convertible assets", even if a trading window is not open at the time an employee acquires shares in their employer. This means that the company will have to operate PAYE in respect of any income tax due in respect of shares acquired by employees and (employee's and employer's) National Insurance contributions will also be payable on the amount subject to income tax. HMRC has also confirmed that a PISCES trading window can be specified event that allows tax-favoured Enterprise Management Incentive and Company Share Option Plan options to be exercised, provided this is made clear when the option is first granted. For share valuation purposes, transactions executed via PISCES will be treated as prima facie evidence of the shares' market value.

18 Overall, will PISCES be a valuable addition to UK capital markets?

Although PISCES platforms will not by themselves solve all the problems facing UK capital markets, we believe they will play a useful role in offering a new route to liquidity for existing investors in private companies, including employees, either as an alternative or a stepping stone to IPO, and should help companies stay and grow in the UK. Evidence from the US and other markets suggests that, although larger stakes will continue to be sold via bilateral negotiation or a bank-facilitated book-building process, smaller stakes will attract demand from some institutions, specialist investors and suitably qualified retail investors.

If you are interested in discussing PISCES further, please get in touch with one of the authors or your usual Slaughter and May contact.

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