By email: PISCES@hmtreasury.gov.uk

17 April 2024

Re: Private Intermittent Securities and Capital Exchange System (PISCES): Consultation

The BVCA is the industry body and public policy advocate for the private equity and venture capital (private capital) industry in the UK. With a membership of over 600 firms, we represent the vast majority of all UK-based private capital firms, as well as their professional advisers and investors. In 2022, £27.5bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Over 55% of the businesses backed are outside of London and 90% of the businesses receiving investment are small and medium-sized enterprises (SMEs).

We are grateful for the opportunity to comment on the proposals for the Private Intermittent Securities and Capital Exchange System (PISCES). We welcome the Government's focus on innovative ways to support private markets in the UK and are pleased to see the Government's ambition to support private companies to scale up and facilitate investor access to exciting private companies. However, there has been a mixed response from our members on the need and viability of an intermittent trading venue for shares in private companies (which, from our perspective, are existing and prospective portfolio companies in our members' funds).

We recognise that private capital firms/funds are just one of many shareholders and investors that might benefit from an innovative intermittent trading venue. For example, there may be demand from: (i) small companies with low liquidity that have listed on AIM/Aquis but are finding it too expensive or burdensome for their needs; (ii) mid-sized companies with greater capital needs that are looking for a broader shareholder base than might be available through traditional private funding routes; (iii) larger companies that want to provide liquidity to existing shareholders, or are considering PISCES as a helpful stepping stone before a full listing on a regulated market; and (iv) private companies that have a large employer shareholder base to whom they are looking to provide liquidity. We think it will be important to have a few large companies that are willing to use PISCES to be lined-up for launch, as initial success will generate broader interest.

With this in mind, we remain committed to providing the Government and the FCA with constructive feedback to help ensure the project has the greatest chance of success, which we hope will contribute to and benefit the UK's wider investment ecosystem. This is the spirit in which we have provided technical comments on the consultation questions below and we will monitor the development of PISCES via the FCA sandbox with interest.

Our discussions with private capital firms point to various considerations that we recommend HM Treasury and the FCA keep in mind during the design and development of the PISCES framework:

- Liquidity: Several BVCA member firms queried where a reliable source of secondary equity for companies on PISCES might originate. We think it will be important that as wide as possible a class of individual investors is eligible to purchase shares (see our response to Q2 and Q3.).

- Incentives for exciting companies: If the platform is to succeed, investors will need to have access to the most exciting companies with strong growth potential. It may be the case that the most interesting and exciting companies (from an investor perspective) can typically already find investment elsewhere, whilst maintaining control of their share capital tables. For this reason, we recommend the rules allow

PISCES operators to offer companies a high degree of control over the trading of their shares (see our response to Q6) and that the regulatory and disclosure requirements for PISCES will need to be as competitive and streamlined as possible. We suggest that HM Treasury may also need to consider additional incentives for PISCES platforms to gain traction.

- Volume and scale: Private capital firms may have limited interest in their funds using PISCES to make small incremental increases in their existing investments in companies or making small investments in new companies. Operators may wish to consider developing protocols to allow the use of PISCES for larger block trades which may stimulate greater interest amongst private capital firms.

- Pricing mechanisms: Reasonable people with the appropriate expertise, and robust and credible methodologies, may come to different conclusions about the value of assets that are not traded on a regular basis. This unavoidable potential for pricing discrepancies might impact other liquidity options and make the risk / reward of using PISCES unattractive. It will be important that companies can set price parameters for trading to protect against unrealistically low valuations of shares (see Q6).

Please do not hesitate to get in touch if you have any questions or if you would like to discuss any part of this response in more detail (please contact Tom Taylor (ttaylor@bvca.co.uk) or Nick Chipperfield (nchipperfield@bvca.co.uk).

We have responded to the consultation questions on which our members have specific views.

Yours faithfully

Tim Lewis

Chair, BVCA Regulatory Committee

Chapter 2: Legal Framework

1. Do you have any comments on this arrangement? Do you think five years is an appropriate timeline for the PISCES Sandbox?

We would welcome a PISCES Sandbox, which should allow the tailoring of existing regulation to the new regime in a way that is appropriate to private companies.

We consider that five years is acceptable but is a long initial period for trialling the new regime. While we recognise the importance of a robust trial, we suggest that a shorter pilot of three years might be more appropriate.

We are mindful that, at the end of the pilot period, the Government may choose not to establish a permanent regime or establish a permanent regime with new or changed requirements such that companies that have used the PISCES Sandbox may not wish to continue. We consider that companies should not be under any obligation to provide an exit or continued liquidity to investors that have previously purchased shares via a PISCES platform. Existing shareholders and investors purchasing shares on PISCES should be aware that they are investing in a private company and that there is no assurance that a company would continue to offer liquidity via PISCES or any successor regime.

2. Do you agree that this should be a market targeted at wholesale market participants, namely professional investors?

We agree that all shareholders in a private company, including employee and other individual shareholders, should be able to sell their shares on PISCES. However, it should be for the company to define the classes of existing shareholders that are able to sell shares during a trading window (subject to any rights those shareholders have under the company's articles of association or any shareholder agreements). This may mean that only some shares in a class are able to be sold in a particular trading window or that existing shareholders are only able to sell some of their shares in a trading window. HM Treasury may wish to consider further how any such restrictions might interact with a director's duties, for example, if they were to favour a class of shareholder for liquidity, etc.

We also agree that all investors that meet the definition of eligible counterparties and professional clients under the 'onshored' MiFID regime should be able to purchase shares on PISCES. This should include investors that are treated as professional investors on request in accordance with paragraph 5, Part 3, Schedule 1 to UK MiFIR.

More generally, we note that retail investors, including restricted investors, high net worth individuals and sophisticated investors can currently invest in illiquid EIS schemes and/or many crowdfunded investment structures. However, retail investors would not automatically be able to invest on this more transparent / highly regulated venue under the current proposals.

3. Do you have views on whether sophisticated and/or high net-worth investors should be allowed access to shares traded on PISCES?

We consider that self-certified sophisticated investors and high net worth individuals should be allowed access to shares traded on PISCES (subject to the company's ability to permission investors' eligibility for participating in a trading window).

It will be important that as wide a class of individual investors as possible are eligible to purchase shares. This may be particularly important where only small numbers of shares are available in a trading window, e.g., where a small number of employees wish to sell shares. In such cases, the size of available executions may be too small to be of interest to institutional investors. Individual investors will generally only be able to submit bids through an authorised person and suitability and appropriateness requirements will apply.

However, eligible individual investors will only be able to participate in practice if there is a thriving group of authorised firms that are willing and able to accept individuals as clients and can access PISCES on their behalf.

4. Should employees have the opportunity to purchase shares in their company on PISCES? If so, could this be facilitated by the company?

Yes, employees should have the opportunity to purchase shares in their company on PISCES. Companies should be able to facilitate this, e.g., by arranging access to an authorised person that is a participant in a PISCES platform and that is willing to accept the employees as clients for the purposes of buying shares on PISCES (in a similar way as when employees wish to sell shares on PISCES).

Chapter 3: Requirements on a PISCES operator

5. Are there any aspects of the model set out here that as a potential operator would act as a barrier to operating PISCES, or as a potential participant company or investor to participating in PISCES?

We suggest that some companies would be unwilling to use PISCES if there is a risk that they would become subject to the Takeover Code. Therefore, the Takeover Panel should make clear that a company whose shares are admitted to trading on PISCES would not become subject to the Takeover Code when it would otherwise not apply to them. In summary, the Code currently applies to UK private companies:

- whose securities are or have been in the past 10 years admitted to trading on a 'UK multilateral trading facility' as defined in paragraph (14A) of Article 2(1) of the 'onshored' Markets in Financial Instruments Regulation (UK MiFIR) (as amended by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018);
- where dealings or prices at which persons were willing to deal in any of their securities have been published on a regular basis for a continuous period of at least six months in the past 10 years, including via an electronic price quotation system;
- UK private companies whose securities have been subject to a marketing arrangement as described in section 693(3)(b) of the Companies Act 2006 during the past 10 years (this covers companies that have been afforded facilities for dealings in their shares to take place on a recognised investment exchange, without prior permission for individual transactions from the authority governing that investment exchange, and without limit as to the time during which those facilities are to be available).

As already noted, eligible individual investors will only be able to participate in practice if there is a thriving group of authorised firms that are willing and able to accept individuals as clients and can access PISCES on their behalf.

The FCA's conduct of business rules may operate as a barrier to authorised firms acting as intermediaries accepting or dealing with employee shareholders or other individuals eligible to deal on PISCES. In particular, shares traded on PISCES may be regarded as a *non-readily realisable security* (unless they are regarded as 'regularly traded' under the rules of a recognised investment exchange or other exchange). If so, FCA COBS 4.12A (Promotion of restricted mass market investments) may operate as a barrier to authorised firms communicating with clients or potential clients (including employee shareholders and high net worth or sophisticated clients) that are retail clients in relation to trading shares on PISCES (at least where the retail client may be a buyer of shares on PISCES, although the rules are not explicitly limited to buyers). If COBS 4.12A applies, authorised firms would be required to include certain risk warnings on promotions, prohibited from offering certain incentives and restricted from communicating a *direct offer financial promotion* in relation to the shares unless certain conditions are met.

Given the scope for unintended complexity in the application of the COBS 4 regime to the operation of PISCES, we recommend that HM Treasury work with the FCA to develop a concise and practical regime

for financial promotions related to PISCES trading activity and taking into account its unique characteristics. In our view, the sandbox process could facilitate the development and enhancement of this regime with key stakeholders. An alternative approach, if it is made clear that companies and authorised firms utilising PISCES are not subject to the Takeover Code, might be to confirm that financial promotions coming from authorised firms (exempt from the Takeover Code) are "excluded communications" for the purposes of COBS 4.12A. This would mean that the COBS 4.12A requirements would not apply to authorised firms communicating financial promotions related to PISCES to permitted retail investors.

Individual investors (even if they are high net worth or sophisticated investors) may be deterred from buying shares on PISCES if they are required to submit orders specifying the price at which they are willing to buy shares (limit orders). Operators should be able to establish trading protocols that allow buyers to bid for shares at prices established through the auction mechanism (market orders).

Companies, investors, and operators will also have to consider whether there are any barriers to their use of PISCES arising from either:

(i) the terms contained in the company's articles of association and/or shareholders' agreement(s); and/or
(ii) the laws of countries outside the UK.

6. In particular, do you have any views on the examples of where a PISCES operators might have flexibility to run their platform in Table 3.A?

It will be important that operators are able to offer companies a high degree of control over the trading of shares (as is suggested in Table 3.A). The absence of this control could be a barrier to some companies participating in PISCES and deter those companies that wish to maintain control of their share capital table and can find new investors elsewhere.

It will be critical to many companies that they are able to set price parameters for trading. Otherwise, they run the risk that an auction will establish an unrealistically low (or even high) valuation for their shares which may adversely affect the company's ability to raise future capital. Operators should not play a role in reviewing the price parameters set by companies.

In addition, it will be essential, at least for some companies, to be able to define which investors can purchase shares in a trading window (either as a described class or by name) – as is suggested in Table 3.A (permissioned auctions) in the consultation paper. Some companies will have legitimate concerns about which investors or potential investors will have access to disclosed information and about which investors will be able to exercise voting rights, and thus influence over the company, if they purchase shares in a trading window.

Companies should also be able to set a cap on the size of the holding that an investor will be able to acquire in a trading window (where the cap takes into account the size of any existing shareholding of the investor or its associated companies). Some companies will have legitimate concerns that an investor may be able to obtain control or significant influence through a trading window in circumstances where other shareholders did not have an opportunity to sell shares. The inability to set a cap of this kind could be a barrier to some companies participating in PISCES.

Companies should also have the flexibility to delay or cancel planned trading windows at their option (and the absence of this flexibility could be a barrier to some companies participating in PISCES). This will be particularly important if (as is proposed) the disclosure regime does not allow companies to delay the disclosure of inside information, e.g., inside information relating to pending discussions of a sale of the company. Otherwise, the company may be forced into premature disclosure of information that may disrupt negotiations. Even if the company were able to delay the disclosure of inside information, a

company may consider it inappropriate to hold a trading event in such circumstances. Existing shareholders and investors purchasing shares on PISCES should be aware that they are investing in a private company and that there is no assurance that a company would continue to offer liquidity via PISCES at the published intervals (or at all).

7. Under what circumstances should it be possible for companies to restrict access to trading events, noting that this is not possible in public markets (see paragraph on permissioned auctions in Table 3.A)?

For the reasons mentioned above (Q 6.), we consider that it will be essential, at least for some companies, to be able to define which investors can purchase shares in a trading window (either as a described class or by name).

8. Are there any further matters that should be considered in the design of PISCES, either to make the PISCES a more attractive proposition, or to mitigate any particular risks that may arise?

As mentioned above (Q 6.), companies should also be able to set a cap on the size of the holding that an investor will be able to acquire in a trading window (where the cap takes into account the size of any existing shareholding of the investor or its associated companies).

9. Do you agree that PISCES operator should be able to establish a private perimeter where disclosures are only accessible to those eligible to participate on PISCES? Do you have views on the requirements that should be placed on PISCES operators related to this?

PISCES operators should establish a private perimeter of this kind. It will be important to many companies that they are able to control which investors or potential investors have access to disclosed information about the company and the pre- and post-trade transparency on trading in the trading window.

The private perimeter should operate in relation to each trading window, i.e., an investor participating in one trading window should not have access to the information posted in relation to another trading window, even in the same company (unless the company agrees).

Operators should be required to maintain and implement appropriate rules to give effect to the perimeter. In practice, those rules may need to include requirements for participants and the clients on whose behalf they are acting to agree to confidentiality terms that are enforceable by the company (as operators may have limited incentives to enforce those rules themselves). However, it should be left to operators to determine what is necessary to address legitimate concerns of companies.

10. Do you agree PISCES operators should be required to ensure full pre- and post-trade transparency to investors within the private perimeter?

As the consultation paper suggests, pre-trade transparency will need to be calibrated according to the trading protocol of the platform.

Operators should only be required to provide post-trade transparency to those investors that submitted bids or offers, unless the company otherwise agrees. Companies may wish to minimise the risk that investors will register interest solely to obtain access to pricing information.

11. Should any pre and post trade data or price data be made available publicly outside the private perimeter?

Operators should not be required to make this data available outside the private perimeter. Operators may wish to publish some data (e.g., aggregate and anonymised data that does not identify companies or investors to advertise the success of the platform). The rules applicable to operators should require them to inform companies and investors of the use that will be made of data so that companies and investors can assess whether this is acceptable to them.

Chapter 4: Requirements on companies with shares traded on PISCES

15. Do you agree that any additional corporate governance related requirements on private companies beyond those required by the 2006 Act should be at the discretion of the PISCES operator?

Yes. The regulatory regime should not require operators to impose additional corporate governance requirements on private companies using PISCES. Operators that choose to require companies to comply with additional requirements will need to be able to demonstrate to companies that any proposed requirements of this kind support the market in their shares.

16. Would you be content with the proposed requirements placed on companies whose shares are admitted to trading on PISCES?

The consultation paper states that shares traded on PISCES must be freely transferable. We agree that it should be a requirement that the shares be freely transferable to an eligible investor which acquires the shares in a trading window.

However, a company may wish to ensure that any purchaser of shares on PISCES is subject to the same restrictions on subsequent transfers as the transferor or in some cases other restrictions (e.g., in the case of employee shares transferred to a non-employee). This may be particularly important for companies to which the Takeover Code does not apply and that has its own rules on transfers established in the articles of association or through a shareholder agreement to which a purchaser may need to agree to be bound (e.g., pre-emption rights and 'drag-along' arrangements). Any such restrictions or requirement to agree to be bound by a shareholder agreement should be disclosed to investors as part of the disclosure in advance of the trading window.

17. Do have any comments on the proposed modifications to the 2006 Act described in paragraphs 4.7-4.11?

The BVCA supports the proposals to ensure that the potential for trading shares on PISCES does not result in placements being regarded as offers to the public and to ensure that companies participating in PISCES can identify their shareholders.

19. Do you agree that share buy-backs should not be permitted on PISCES, given the risks set out above?

Companies should be able to use PISCES for share buy-backs. Companies wishing to use PISCES for share buy-backs will be aware of the risks of deterring investors from participating in the buy-back and will take that into account (in the same way as when proposing a buy-back outside PISCES). Investors that have concerns will be free not to participate in a proposed buy-back and the rules will need to ensure fair treatment between shareholders.

20. Do you have any views on the proposed disclosure requirements? Are there other disclosures that should be mandated to help investors make informed investment decisions, for example corporate governance, major shareholdings, or financial information?

The burden of disclosure will likely be one of the more significant barriers to companies participating in PISCES. However, we consider that it should be left to companies, assisted by their advisers, to determine what information is required to be disclosed to investors having regard to the minimum requirements set out in the regime.

Therefore, we would not propose changes to the proposed minimum requirements. We agree that those minimum requirements should include information on major shareholdings, based on the information that the company can obtain using its proposed powers, but limited to shareholdings above a minimum threshold based on DTR5.

However, the company should also disclose any restrictions on transfers to which a purchaser will be subject and any requirement for a purchaser to become a party to a shareholder agreement (see above).

21. How long before the trading window opens should disclosures need to be published? Should this be determined by the operator or participant companies?

Operators should set a disclosure deadline before the trading window opens as necessary to ensure fair and orderly trading. However, companies should be able to disclose information in advance of the disclosure deadline and to supplement or update disclosures up to the disclosure deadline.

We agree that, if inside information arises or is identified between the publication of the company's disclosures and the trading window, the operator should prevent the trading event from taking place or suspend trading if trading has begun. In practice, operators will require companies to notify them should they identify such information.

Therefore, the disclosure deadline should not be set too long before the trading window opens as this would increase the risk of a trading window being cancelled or trading having to be suspended as a result of new information becoming available.

Chapter 5: PISCES market abuse regime

22. What market abuse risks do you foresee in the context of PISCES? To what extent do you think they would be mitigated by the proposed market abuse regime?

We agree with the objective to enhance the attractiveness of trading on PISCES by increasing market integrity and investor protections while not imposing disproportionate burdens on companies (or investors).

23. Do you agree with the proposed scope for the PISCES market abuse regime? Are there material market abuse risks that would not be captured by this scope?

We agree that:

- the prohibition of insider dealing should only apply to trading of shares on PISCES and the PISCES market abuse regime should not apply to trading outside PISCES in shares admitted to trading on PISCES or related financial instruments;
- the prohibition of the unlawful disclosure of inside information should only apply from the disclosure of information by a company prior to a trading event to the end of the trading event;
- the prohibition on the dissemination of false or misleading information should apply to disclosures of information both during and outside trading windows where it impacts on the trading of shares during the PISCES trading window;
- the prohibition of other manipulative behaviour should apply to trading of shares on PISCES.

However, the regime should recognise that some persons who may be subject to the prohibitions on disclosing or disseminating information may not be aware that a company's shares are admitted to PISCES or of the timing of proposed trading windows. The regime should provide appropriate defences in such a case (lack of awareness is not a defence under the current market abuse regime).

The consultation paper does not comment on the potential application of the criminal law on insider dealing. It should be made clear that a PISCES platform is not a UK multilateral trading facility or organised trading facility for the purposes of the conditions for the application of Part V of the Criminal Justice Act 1993. It would also be helpful for the FCA to make clear that the Market Conduct Principle will apply in line with the scope of the PISCES market abuse regime.

24. Do you agree with the proposed PISCES market abuse offences?

See our response to Q 23.

25. Do you agree with the proposed arrangements for monitoring and enforcement against market abuse on PISCES?

We agree that companies participating in PISCES and their advisers should not be required to maintain insider lists.

Chapter 6: Further policy issues

26. Do you agree that the existing exemptions in the FPO are sufficient to allow the promotion of shares traded on PISCES to eligible investors as described in this paper?

In many cases, companies should be able to rely on exemptions in the FPO to communicate financial promotions to, for example, investment professionals, high net worth individuals, existing shareholders and for the purposes of an employee share scheme. As is noted in the consultation document, the exemption in Articles 67 of the Financial Promotion Order may also be of assistance to the extent that the rules established by a PISCES operator require or permit those communications.

27. Are there particular features of PISCES that require the FPO to be modified in the sandbox to clarify how it applies to the promotions of shares that are traded on PISCES?

Please see our response to Q 5.

28. Do you agree that it should be up to the PISCES market operators to decide whether a company should have their shares placed on a CSD in order to participate on their platform?

Many companies will not wish to admit their shares to a CSD, especially where a purchaser may be subject to subsequent restrictions on transfers (see above). Operators should be able to agree alternative settlement arrangements with companies.

29. Are there any aspects of the model that would dissuade you from investing through PISCES?

Some of our members may have limited interest in their funds using PISCES to make small incremental increases in their existing investments in companies or making small investments in new companies. However, operators may develop protocols allowing the use of PISCES for larger block trades which may be of more interest to our members.

30. Are there any further matters that should be considered in the design of the PISCES to encourage investors to use such a platform?

The consultation paper does not discuss whether operators will be required to publish details of which companies have had their shares admitted to trading on their PISCES platforms or the timing of trading windows. We consider that companies should be able to decide whether they wish their use of PISCES to be disclosed publicly.