UK Finance-AFME response to HMT's Private Intermittent Securities and Capital Exchange System (PISCES): Consultation

April 2024

Submitted via email to HM Treasury and PISCES@hmtreasury.gov.uk 17 April 2024

Dear HM Treasury,

We enclose the collective responses of the member firms of UK Finance and the Association for Financial Markets in Europe ("**AFME**") to the consultation by HM Treasury ("**HMT**") on the Private Intermittent Securities and Capital Exchange System ("**PISCES**"), produced with advisory support from White & Case LLP.

UK Finance and AFME members are grateful for the opportunity to share our views and recommendations on PISCES. We welcome the innovative and collaborative approach that the UK government is taking to make the UK capital markets more attractive and we recognise that private capital markets are an important part of this eco-system. We are, therefore, supportive of any innovations that aim to give private companies greater flexibility to access broad investment and, ultimately, transition towards the public markets. HMT's proposals for PISCES are an ambitious blueprint in this respect.

Given the innovative nature of the PISCES model and its novel position within the existing capital markets eco-system, our members believe that it would be helpful for the overall positioning of PISCES to be clearly expressed and agreed before further granular rules are proposed. In our members' view, this would greatly aid the process for arriving at a PISCES framework that is both attractive and proportionate. Questions to consider as part of this analysis include the types of companies PISCES is likely to appeal to, the incentives for companies and shareholders to use PISCES rather than the existing private placement market and the relative benefits of PISCES for institutional shareholders (including private equity).

Additionally, our members consider that:

- the financial markets infrastructure "sandbox" environment is appropriate for initially testing PISCES and we also agree with HMT's proposal not to allow general retail investors access as purchasers on launch of PISCES;
- it will be critical to offer companies and their shareholders flexibility on PISCES in respect of auction structure, pricing parameters, settlement procedures, disclosure, confidentiality and intermediation; and
- it would be helpful to establish parameters for the form and content of the platform's disclosure requirements so that there is broad agreement from the outset, when practice and customs are forming.

If you have any questions on our submission, please do not hesitate to get in touch.

Kind regards,

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

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

Our members have no significant concerns with the proposed PISCES "sandbox" arrangements, which we consider will be a useful way to test and prove the PISCES platform (including from an operational perspective). We also consider five years to be an appropriate timeline.

We would, however, note that the PISCES consultation envisages that firms with permission under Part 4A of the Financial Services and Markets Act 2000 ("**FSMA 2000**") to "arrange deals in investments" will be able to apply to operate PISCES in the "sandbox". Our members note that this position will need to be reconciled with the recent guidance from the Financial Conduct Authority ("**FCA**") on the scope of the regulatory perimeter with respect to "arranging deals in investments" following the FCA's Policy Statement 23/11. Our members would welcome clarification that the only way a firm with permission under Article 25(2) of the FSMA 2000 (Regulated Activities) Order 2001 (SI 2001/544) can operate a multilateral system, without being authorised as a trading venue, is by operating a PISCES platform under the "sandbox".

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

The majority of our members agree that PISCES should be targeted at transactions by professional investors (as per the definition of such persons in the MiFID II Directive (2014/65/EU) ("**MiFID II**")) only – as well as intermediaries acting for such persons – during the initial "sandbox" phase. Such professional investors should be well-positioned to understand the risks of investments in unlisted companies,[1] which should in turn allow the "sandbox" phase to focus on testing and proving the operational parameters of the PISCES platform, without the potential complications from involving retail investors generally.

Our members also note that it will be important from the outset for certain categories of retail investors to be able to **sell** shares on the platform (as opposed to buying them), given that many founders or shareholders of early-stage and pre-IPO businesses are individuals (who may fall under the self-certified sophisticated investor or high-net worth individual categories for financial promotion purposes, but will be retail investors for MiFID II client classification purposes). Our members do not see significant issues with allowing such persons to sell shares on the platform during the "sandbox" phase, and these shareholders may well provide an important source of shares available for PISCES investors. We also do not see it as an issue if such persons could only be sellers and not buyers, at least initially. Such persons should, however, be required to confirm by attestation in order to use the PISCES platform that they have taken all professional and tax advice as they deem necessary and appropriate, are not relying on the company for advice relating to any sales and acknowledge the risks

[1] References to "unlisted companies" in this response are to companies that are not currently traded on public markets (such as regulated markets, multilateral trading facilities or organised trading facilities) and may be eligible for trading on PISCES.

around the price that sales may achieve (which could differ from the price which might have been realised "off-platform" in a private placement sale).

A limited number of our members, however, consider that:

- both self-certified sophisticated investors and high-net worth individuals (as per the definitions in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529) (the "**FPO**") should be allowed to **purchase** shares on PISCES and we note that our understanding is that this is currently permitted by at least one similar trading platform in the UK; and
- allowing certain employees of a company admitted to trading on PISCES to participate as **buyers** of shares in such entity should be kept under review. This might potentially be permitted (for instance, for high-net worth individuals in sufficiently senior positions within a company, giving appropriate attestations along the lines set out above) after a certain period of testing time has elapsed to verify and fine-tune the platform's operational parameters, rather than only after the full "sandbox" phase has been completed (after five years). Such members consider that employees might be an important source of demand on the platform and PISCES could prove an appropriate venue to provide liquidity for such employees, given they are not typically involved in shareholder contractual arrangements and may not otherwise have a ready market to buy shares. We would, however, note in respect of the above that many of our members have also flagged that there will, at the very least, be differing considerations and profiles depending on an employee's specific role, seniority and proximity to and visibility of the financial condition and prospects of a company.

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

As per our response to Q.2 above, the majority of our members do not think it is appropriate to extend access to purchase shares (as opposed to selling shares) on PISCES to retail investors during the "sandbox" period and that PISCES purchases should be limited to professional investors (as per the MiFID II definition) and intermediaries acting for such persons. In particular, these members have reservations about the broadness of the self-certified sophisticated investor and high-net worth individual categories (per the FPO definitions) in this context and the fact that, in some respects, the thresholds for obtaining these could be met by a wide and varied range of retail persons.

We would note, however, as per our response to Q.2 above, that a limited number of members consider both self-certified sophisticated investors and high-net worth individuals should be allowed to purchase shares on PISCES and we note that our understanding is that this is currently permitted by at least one similar trading platform in the UK.

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

As per our responses to Q.2 and Q.3 above, the majority of our members do not consider it appropriate to extend access to purchase shares (as opposed to selling shares) on PISCES to retail investors during the initial "sandbox" phase.

A limited number of our members, however, consider that allowing certain employees of a company admitted to trading on PISCES to participate as **buyers** of shares in such entity

should be kept under review. This might potentially be permitted (for instance, for high-net worth individuals in sufficiently senior positions within a company, giving appropriate attestations along the lines set out above) after a certain period of testing time has elapsed to verify and fine-tune the platform's operational parameters, rather than only after the full "sandbox" phase has been completed (after five years). Such members consider that employees might be an important source of demand on the platform and PISCES could prove an appropriate venue to provide liquidity for such employees, given they are not typically involved in shareholder contractual arrangements and may not otherwise have a ready market to buy shares. We would, however, note that many of our members have also flagged that there will, at the very least, be differing considerations and profiles depending on an employee's specific role, seniority and proximity to and visibility of the financial condition and prospects of a company

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?

Price parameters

Our members agree with the proposed approach of using price parameters to assist in price discovery, but consider that further consideration should be given to how companies could be encouraged to set parameters which will encourage investment activity, in the absence of the regular and continuous liquidity that aids price formation in public markets.

Further consideration will also need to be given to how any price discovery mechanics work in practice, based on the overall structure adopted for the PISCES platform. If an auction model is used, this could be structured in a number of ways, including a Dutch auction model whereby the offer price decreases until bids are received to sell the total volume of shares. This would avoid a situation where multiple prices for shares are accepted during the same trading window. Alternatively, a "block trade" model could be used whereby the offer price increases until a single bidder or specific number of bidders (pre-specified by the company) are left. These are illustrative examples only and the precise models offered may also depend on the types of investors and sellers permitted to use the platform.

Overall, our members are of the view that flexibility should be offered to companies to customise the auction procedures they use (and, potentially, flexibility for a company to change this across different trading windows). This would help ensure PISCES is competitive with other similar trading platforms that offer multiple options for auction structuring.

Permissioned auctions

The proposed disclosure requirements in the form of a modified version of the UK Market Abuse Regulation ("**MAR**") regime will, in our view, require disclosure of items that companies and shareholders may consider sensitive, particularly given their existing fully private status. Examples of such aspects include (without limitation) details of private shareholder contractual arrangements. Our members have concerns that some companies and shareholders may be reluctant to use the PISCES platform if they consider that such information will be freely available to anyone who signs-up to the platform and, therefore, could be improperly used by competitors or others (for example, by competitors to gain access to confidential information or make tactical investments to disrupt future sale or exit plans).

As such, our members expect that many companies and shareholders will want the option to pre-select or "screen" and admit potential new investors (who are not already shareholders) to trading windows on an individually approved basis, rather than allow all such persons to have automatic access, and to provide disclosures to such approved persons only once they are inside the "private perimeter" of the trading window.

In terms of how this could work in practice, we envisage that general access to the platform would be the first step and involve the investor agreeing to a set of standard terms and conditions and completing "know-your-customer" requirements (which should be the responsibility of the platform operator to confirm and approve). This access would allow the investor to view the companies on the platform and see when their next trading windows are due to open, but would not (unless the company permits it) give them access to "private perimeter" disclosures. Instead, as a second stage, investors would need to specifically request access to each trading window, be individually approved by the company and agree to a further set of confidentiality and investor confirmations before they could access a particular trading window and view the disclosures made by the company (similar to the way in which confidentiality obligations are agreed when public companies provide materials to potential investors through digital roadshow providers).

This two-stage process will, in the view of our members, balance access to the platform with the need for companies and shareholders to preserve some control over who can access their disclosures. As discussed above, in the absence of this second stage protecting sensitive disclosures, our members have concerns that some companies and shareholders may be reluctant to use the platform. We do not consider, however, that these procedures should be able to be used to prevent access to an auction or trading window by existing shareholders, as this would allow companies to block shareholders from secondary trading in a way that they cannot currently in the private placement market.

Intermediated vs non-intermediated models

Our members are broadly supportive of a PISCES model that facilitates intermediated trading by professional persons on behalf of their clients. Our members would note, however, that where intermediaries are permitted to play a role in trading, the platform's procedures will need to be carefully considered in this light, including with respect to trade reporting, confidentiality and information flows in the context of permissioned auctions.

Maximum/minimum trading volume

Consistent with the principle of giving companies flexibility as to how they use PISCES, our members agree with the proposal to allow participant companies flexibility to set a minimum and maximum execution size for a trading window.

Frequency of trading

Our members also agree with the proposed approach of allowing PISCES operators and participant companies flexibility as to the frequency and duration of trading windows. Whilst there would be benefits to offering shareholders and potential investors regular and predictable access to liquidity events, this needs to be carefully balanced against allowing companies to structure trading windows in a way that suits their needs and is not overly burdensome (particularly if their involvement is required through the applicable disclosure regime). Therefore, we believe this area should be regulated with a principles-based approach;

whilst the frequency and duration of trading windows should not be subject to rigid parameters or any requirement for companies to pre-agree a schedule, the frequency and duration of trading windows that are chosen by companies should not overall amount to continuous trading.

Our members further note that if companies structured trading windows that were either very frequent (e.g. weekly) and / or very long in duration (e.g. lasting months), the proposed prohibition on trading windows operating while the disclosure of inside information is being delayed may begin to cause practical issues.

As a related point, we consider it should not be possible for the same investor to simultaneously buy and sell the same class of security in the same trading window, in order to reduce the potential for abuse.

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?

See our response to Q.5 above.

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)?

See our response to Q.5 above. Our members expect that many companies (and their shareholders) will want to have the flexibility to "screen" and admit potential new purchasers (who are not shareholders already) to trading windows on an individually approved basis and not just on a category basis.

As per our response to Q.5 above, we would therefore support the concept of a permissioned auction, whereby potential new investors would be required to identify themselves through an initial indication of interest process at the beginning of a trading window, with the participating company then able to review and decide which investors should be permitted to participate in the trading window and access "private perimeter" company disclosure. Should any company wish to make the trading window (and, thus, their disclosures) available to all, then it could also do so. We do not consider, however, that these procedures should be able to be used to prevent access to an auction or trading window by existing shareholders as this would allow companies to block shareholders from secondary trading in a way that they cannot currently do in the private placement market.

Our members are of the view that the different position for unlisted companies compared to that applying to publicly traded companies, both as regards the confidential nature of company information and the broader range of rights and arrangements between shareholders that often exists, justifies such a different approach being taken to restrict permitted access to trading events on PISCES.

Separately, our members note that issues may arise where a particular company admitted to trading on a PISCES platform also: (i) has shares permitted to trading on another PISCES platform or another unlisted company trading platform, particularly if those platforms have diverging disclosure requirements; or (ii) is undertaking a simultaneous offering of shares in the private placement market. This would result in multiple markets for the same security with potentially asymmetrical disclosures and would be particularly concerning where any such

trading windows were opened simultaneously. HMT may wish to consider whether – during a trading window and the associated disclosure period – companies are restricted by the PISCES rules from selling the class of shares trading on PISCES (or any substantially similar share class) on another PISCES platform, another similar trading platform or via a private placement.

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?

Admission and disclosure requirements

In order to meet their proposed requirements under the MAR-based ongoing disclosure regime for PISCES, our members consider that companies on PISCES should provide a focused initial disclosure document / set of information that would then be updated periodically for new financial and other relevant inside information. This could include the following: key risk factors, financial information, summary business description, details on share capital, articles of association, shareholder arrangements and share ownership / major investors, as well as any other information required to comply with the modified MAR disclosure obligation.

In order to ensure consistency of disclosure (especially at the outset of the PISCES platform, when market practice and customs will still be forming), our members strongly consider it would be helpful to establish parameters for the form and content requirements as far as possible. We would be very happy to work with the relevant bodies to help further develop more detailed disclosure requirements.

We would expect that companies will seek ongoing specialist legal advice on the proposed MAR disclosure framework and market abuse regime and would need to dedicate resource to producing and updating disclosures. Our members are conscious that some may, therefore, view these proposed "public-style" disclosure requirements as burdensome, particularly given shareholders are able to sell shares in the private placement market without them. Whilst every company will have its own perspective, our members considered "pre-IPO" companies that are later-stage in growth, larger in scale and more sophisticated may view these requirements as more manageable; whilst early-stage or smaller companies may be focused on growth and may find private placement market norms more manageable.

In our members' view, the proposed disclosure framework may be viewed differently by different companies and it will be important to ensure that the overall positioning of PISCES is clearly expressed and agreed before further granular rules are proposed. We consider that this would greatly aid the process for arriving at a PISCES framework that is both attractive and proportionate.

Confidentiality protections

In order to protect participating companies from the risk of unauthorised disclosure of confidential information by PISCES investors, our members are of the view that PISCES operators should consider including the ability to exclude investors from their PISCES platform or otherwise sanction investors if they breach confidentiality obligations while using the PISCES platform.

This power would be in addition to the two-stage process for gaining access to "private perimeter" disclosures that our members have proposed in our response to Q.5 above and the direct confidentiality obligations we expect would be put in place between participating companies and potential investors at this second stage (similar to the way in which such obligations are agreed when public companies provide materials to potential investors through digital roadshow providers).

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?

See our responses above to Q.5 and Q.7 above regarding permitted access to "private perimeter" company disclosures for approved investors only, rather than for all investors eligible to participate on PISCES.

See also our response above to Q.8 above regarding confidentiality protections at both the PISCES operator / platform rules level and directly between investors and companies.

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

Our members consider that it is important to calibrate the pre- and post-trade transparency requirements applicable to PISCES platform trading, taking into account its unique characteristics, rather than applying the current MiFID regulatory technical standards (RTS 1) requirements without appropriate modifications. Further consideration would need to be made as to whether a waiver / deferral regime is justified for PISCES, given the intermittent nature of trading. For example, members note that calibrating a post-trade deferral regime could be challenging in a PISCES environment (at least in line with the existing MiFID/R rules) due to the limited trading data that would be available and may not provide practical advantages given the intermittent nature of the platform. The utility of applying pre-trade transparency requirements may depend on the mechanism that is chosen for setting prices on PISCES.

Our members consider that it would be helpful for the purposes of encouraging investment for transparency data to be available to everyone on the PISCES platform (and not just investors who have been "approved" by that specific company) – overall valuations of companies based on the most recent prices could also potentially be made available.

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

As per our response to Q.10 above, whilst our members do not think that trade data should be made available outside the PISCES private perimeter, they do consider that PISCES operators will most likely want the ability to publish a potentially limited subset of information more widely to the public (on an aggregated or anonymised basis) in order to attract other potential investors to participate on PISCES.

12. Are you content with the proposed model for transaction reporting?

Our members agree in principle with the proposed bespoke model for transaction reporting.

13. Are you content that PISCES operator or regulated intermediaries could check that potential investors meet the eligibility criteria (see chapter 2)?

Consistent with our members' support for flexibility for either an intermediated or non-intermediated model, they are of the view that checks should be performed either by the intermediary or PISCES operator, as the case may be, to verify that potential investors meet the necessary eligibility criteria. We would also expect that potential investors will provide appropriate declarations, acknowledgements and representations as to their investor status under both the terms and conditions imposed by PISCES operators and at the point of accessing disclosure from participating companies.

14. Do you have any views on how a PISCES operator or regulated intermediary will ensure that ineligible investors do not trade on PISCES?

See our response to Q.13 above.

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?

Our members agree that any additional corporate governance requirements should be a matter for PISCES operators to determine, although we also note that corporate governance requirements may not be appropriate and may be difficult to implement on PISCES due to the broad range of shareholder rights, governance arrangements and arrangements between shareholders that can exist for unlisted companies.

Furthermore, the consultation refers to the corporate governance differences between private and public companies under the Companies Act 2006 ("**CA 2006**"), but a large proportion of privately owned business groups have non-UK holding companies to which the CA 2006 does not directly apply. Any governance requirements made by a PISCES operator will need to bear this in mind.

In our members' view, it will be critical for any material governance arrangements in place to be disclosed within the "private perimeter" and that investors are able to evaluate them as part of their investment decision.

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

Yes. Given the UK government's overall objective to increase the competitiveness of the UK's capital markets eco-system, our members broadly agree with the proposed requirements, including that overseas-incorporated companies should be eligible for admission to trading on PISCES. This is, in our opinion, crucial to the success of PISCES as many privately owned business groups use overseas-incorporated entities and other similar trading platforms also appear to facilitate trading in shares in non-UK companies.

As per our response to Q.15 above, the consultation refers to the corporate governance differences between private and public companies under the CA 2006, but a large proportion of privately owned business groups have non-UK holding companies to which the CA 2006

does not apply. Assuming these entities will be eligible for PISCES, any governance requirements made by a PISCES operator will need to bear this in mind.

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

Our members agree with the proposed modifications to the CA 2006 described in paragraphs 4.6 to 4.11 of the consultation paper. We would note, however, that any modification to Section 756 of the CA 2006 to clarify that an offer of new shares outside PISCES should not be treated as an indirect offer to the public may also be relevant for inclusion in the UK Prospectus Regulation Rules (further noting that the wider public offer and admission to trading regime is currently being consulted on by the FCA). We also note that the modified Section 793 CA 2006 disclosure of interest powers proposed in paragraphs 4.9 to 4.11 of the consultation paper may in practice not be required if PISCES operates on the basis of permissioned auctions (as outlined in our response to Q.7 above), with participating companies able to review the identities of potential investors before approving their access to an auction or trading window.

Furthermore, the consultation paper refers to the corporate governance differences between private and public companies under the CA 2006, but a large proportion of privately owned business groups have non-UK holding companies to which the CA 2006 does not directly apply. This should be borne in mind generally when the legal framework is being set for the platform.

18. Are there any other modifications to 2006 Act that would in your view be needed to facilitate the operation of PISCES? If so, please provide details.

Although it is not a CA 2006 issue directly, our members consider it important to note that the vast majority of privately owned business groups have contractual arrangements in place between shareholders giving a wide range of rights and governance arrangements (including without limitation, drag-along, tag-along, right of first refusal and information rights). The consultation paper does not seek views directly on how these rights will need to be dealt with by companies, shareholders and buyers in the context of the PISCES platform.

Given many of these contractual rights are designed to restrict shareholders' ability to dispose of shares and give rights to shareholders in the event that disposals are contemplated, it may be worth exploring: (i) whether unlisted companies / their shareholders would be willing to waive these rights (which in most cases cover the entire issued share capital) to facilitate PISCES sales by other shareholders; (ii) whether it might be appropriate in some cases for investors buying through PISCES to sign up to these contractual arrangements to preserve their integrity for existing shareholders; or (iii) whether PISCES buyers would accept not being party to arrangements which give existing shareholders additional contractual rights and protections (for example, tag-along rights in the event of a significant sale).

In our view, the answers to these questions are likely to vary: for example (on a non-exhaustive basis) some shareholders may see value in allowing a block of shares to trade "freely" among investors or employees on PISCES, separate from the other shares which remain subject to contractual arrangements between the major shareholders, whilst others may be reluctant to waive their pre-negotiated rights to allow sales on PISCES and instead focus on seeking a full exit privately in the conventional manner. Again, consistent with our view that PISCES should

offer flexibility, our members are generally of the view that companies and shareholders should be able to decide how this is handled.

HMT may also wish to explore with the institutional shareholder community (including private equity investors) the extent to which they may be reluctant to lose control over part or whole of the company's capital structure to new and unknown shareholders, disclose details of their ownership arrangements or to release or modify their contractual control arrangements, which typically cover the whole of a company's capital table.

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

Our members do not agree that share buy-backs should be automatically prohibited on PISCES, given these could provide a further source of liquidity for the platform. We do, however, acknowledge that there are several potential questions which merit further consideration before a decision is taken, including risks that share buybacks could inhibit the price discovery process and risks around controlling shareholders using their influence to ensure their shares are bought back at higher prices than other 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?

See our response to Q.8 above. The existing ongoing disclosure regime under MAR for in-scope companies operates alongside regimes for the production of a prospectus (or similar document) on initial admission and the ongoing disclosure of financial and certain non-financial information.

In order to meet their proposed requirements under a MAR-based disclosure regime for PISCES, our members consider that it would be helpful for companies on PISCES to provide an initial disclosure document / information set that would then be updated periodically for new financial and other relevant inside information.

In our members' view, it would be helpful to establish parameters for the form and content of such disclosure requirements as far as possible. This will be particularly relevant, in our view, at the outset of the PISCES platform, when market practice and customs will still be forming. We would be very happy to work with the relevant bodies to help further develop more detailed disclosure requirements.

Our members consider that the disclosure for participating companies could include the following items:

- key risk factors (possibly in a shorter form of headings);
- existing annual financial information for the most recent two years (in the form required to be prepared by applicable law and regulation);
- summary business description;
- directors and key management (including any shareholder director appointment rights);
- details on share capital and material terms of the articles of association and shareholder arrangements;

- information on share ownership / major investors; and
- any other company-specific information required to meet the applicable modified-MAR disclosure standard.

As per our response to Q.8 above, different companies may view the proposed disclosure framework differently and it will be important to ensure that the overall positioning of PISCES is clearly expressed and agreed before further granular rules (on disclosure and other areas) are proposed. In our members' view, this would greatly aid the process for arriving at a PISCES framework that is both attractive and proportionate. Further consideration will also need to be given to how the proposed disclosure requirements interact with users' ability to trade on other PISCES or similar trading platforms using information accessed through a PISCES platform.

In addition, our members believe that the existing definitions under MAR will need to be further considered and refined in the context of PISCES: for example, the concept of "inside information" is based on information that has "not been made public", but PISCES does not envisage company disclosures will be made fully public in the manner that occurs in the public markets. There may also be practical difficulties associated with determining the price sensitivity of a specific piece of information in the absence of a continuous public market trading price. Given companies will not be familiar with "public-style" disclosure reporting, it may be helpful to consider whether (in addition to the rules) guidance would also be useful to further clarify the approach to required disclosures and to assist companies to comply with the rules.

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

In our members' view, disclosures should be made available to potential investors for a minimum of three to five business days before a trading window opens. It would then be open to the company to determine how long it wanted the trading window open, with a minimum period of two business days. Of course, if companies wanted to keep their trading window open longer, this should be possible. In order to ensure consistency for potential investors, we also consider that the minimum (and any maximum) timing requirements for disclosures should be specified by the PISCES operator and apply equally to all participating companies.

If companies are unable to delay disclosure of inside information and disclosures cannot be updated / new disclosures cannot be released once made for a particular trading window (as the consultation paper suggests), this may require companies to undertake advance planning steps to attempt to minimise the risk of new developments occurring during the trading window. Our members do not have significant objections to this approach – however, given PISCES is not intended to be a continuous trading environment like the public markets, but rather trading windows, we note it would require companies to suspend / terminate a trading window if a material new factor were to arise (even potentially if "orders" have already been placed). This would be a point of difference to the public markets, where trading by shareholders can be conducted when a company is delaying disclosure of inside information.

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?

Our members agree that the relevant market abuse risks for PISCES are those identified in the consultation paper and that these risks would be mitigated by the MAR offences proposed

to be applied to PISCES. This approach has the advantage of using existing and well-understood concepts from the MAR regime, although refinements (for example, to definitions) will likely be needed in the context of PISCES. We do, however, note that the proposed market abuse regime may be viewed differently by different companies, given it does not currently apply to sales in the private placement market. In order to ensure the regime is proportionate and attractive, it will be important to ensure that the overall positioning of PISCES is clearly expressed and agreed before further granular rules are proposed.

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?

Our members agree with the proposed scope for the PISCES market abuse regime. We note that if participant companies are unable to delay disclosure of inside information as indicated in paragraph 5.11 of the consultation paper, companies may wish to have the ability to decide to cancel or withdraw from a trading window (for example, because there is a transaction under negotiation during the trading window that the company is not yet in a position to disclose). We note that this would lead to a different position than for publicly traded companies currently within the scope of MAR where it would be possible for investors to buy / sell while a company is delaying disclosure (provided the investors themselves are not in possession of inside information).

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

Our members agree with the proposed PISCES market abuse offences in view of the intermittent trading windows envisaged on PISCES and the nature of over-the-counter transactions in unlisted companies outside PISCES.

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

Our members agree with the proposed arrangements for monitoring and enforcement.

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?

This will depend on the categories of investors permitted to access PISCES and purchase shares on the platform. If limited to professional investors, we would expect there to be overlap with the exemption in the FPO for investment professionals. If self-certified sophisticated investors and high-net worth individuals were permitted to participate, this should also not be an issue to the extent these categories track the equivalent exemptions for such persons in the FPO. If employees of a company admitted to trading on PISCES were permitted to access PISCES and purchase shares, it is unlikely exemptions will be available under the FPO (unless the employee falls in, for example, the self-certified sophisticated investor or high-net worth individual categories).

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.26 above.

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?

A model where trades are settled in dematerialised form via CREST or another central securities depository ("**CSD**") will, in our members' view, be useful for many market participants who will see benefits in being able to deposit assets into custody and settle trades in a CSD. As trading volumes increase overall, it may also (from an administrative perspective) become increasingly desirable for as many trades as possible to be settled in the efficient and secure environment of a CSD. As such, our members agree that the PISCES platform should facilitate settlement within a CSD as far as possible.

In our members' view, however, it will also be important to give companies and shareholders flexibility as to how they approach trading and settlement. Many private company shares are currently held in certificated form and a large proportion of private business groups use overseas-incorporated entities (for example, where a private equity investment has been made into the group) and there are currently difficulties associated with holding many overseas-incorporated company shares in, for example, CREST. Although there may be other options available to such companies (such as issuing depositary receipts or interests), it will be important to also allow for flexibility at least initially to enable trades to be settled directly between the seller and the buyer (with the involvement of the company, for example, to update the share register) without the involvement of a CSD. This would be aligned with how the majority of private company investments are currently made, noting that there is also a wider ongoing desire to move towards fully dematerialised shareholdings and transfers in the UK (including as recommended by HMT's digitisation taskforce).

Our members further note that this type of settlement optionality is offered by a similar competitor platform in the UK, which segments its markets into dematerialised trading (settled through CREST and routed through regulated stockbrokers) and a more bespoke trading segment, which allows companies to have their own settlement rules and procedures (as well as customised auction procedures that can be limited to existing shareholders and/or potential purchasers). The latter, even though not dematerialised, could also be facilitated with the assistance of a broker who acts as a central administrative point of contact.

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

Our members had questions around the interaction between prices established for a company's shares on PISCES and any public IPO process that a company may commence. In particular, companies may not wish to participate in PISCES trading windows for a period prior to a public market IPO if PISCES trade prices in this period could adversely affect or restrict an optimal informed, accurate and efficient public IPO price discovery process. Whilst related considerations might be relevant to all private companies undertaking pre-IPO equity funding ahead of a public IPO, in private placements companies will typically undertake iterative and more drawn-out investor interactions and marketing processes, assisted by their private placement advisers, to facilitate broader, deeper and more controlled price negotiation and discovery. As a further consideration, our members flagged that if shareholdings become highly fragmented across a large number of individuals, this also may raise practical burdens in the context of the company seeking a full public market listing later on.

A related point arises as a result of case law in the Netherlands relating to the World Online IPO that suggests that where shareholders sell shares in the recent period prior to a public market IPO and the company is aware of this and the price of such a sale, the price should

usually be disclosed in the IPO prospectus. Given the involvement of companies with the PISCES platform, they will be aware of such pricing information and, therefore, the case suggests they would need to disclose it in their IPO prospectus unless a sufficient period of time had passed (which may extend beyond six months). This could put pressure on price discovery in the context of a public IPO and, therefore, be another reason for companies to consider whether to participate in PISCES for an extended period ahead of a planned public market IPO.

On the assumption that financial advisers and the financial advisory / private side teams at investment banks will not be directly involved in the platform (please see our response to Q.30 below), our members consider that it would be helpful for HMT and any eventual PISCES operator to explore whether and how companies seeking to admit themselves to trading on PISCES could be given visibility on the above potential implications for any future public market IPO.

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

Our members are of the view that providing relief from any UK stamp duty / stamp duty reserve tax payable by purchasers on shares bought in PISCES should be strongly considered by HMT in order to help incentivise use of the platform as an alternative to the private placement market.

Further to the above, in order to help incentivise use of PISCES, it will be important to generally reduce frictions for companies and shareholders using the platform as far as reasonably possible. As such, we consider that HMT should ensure that an analysis has been performed to ensure any eligibility or procedural requirements that are incremental (and may entail additional time and cost) to those typically seen in the private placement market or other unlisted company trading platforms have clear benefits and are justified for inclusion in the context of PISCES. In particular, we consider it will be important to ensure that the tax regime applicable to trading on PISCES is no more onerous (including for inheritance tax purposes) than that which applies to recognised growth markets, such as AIM and Aquis Growth Market.

Separately, members are generally of the view that they do not see a direct role for financial advisers or financial advisory / private side teams at investment banks on the PISCES platform and they should not be directly built-in to the platform's function – including through any requirement for a financial adviser or financial advisory / private side team at an investment bank to scrutinise disclosures or oversee adherence to rules (akin to a Listing Rules sponsor or NOMAD on AIM). Our members note, in this context, that whilst a financial adviser or financial advisory / private side team at an investment bank might choose to, or be invited to, assist a company using PISCES in preparing disclosure or informing potential investors of trading windows (and the public side / trading desk of an investment bank might, in some cases, act privately as a trading intermediary to an investor client of such bank), the expectation is that any assistance would be limited and undertaken pursuant to a private relationship, without any public or formally required role.

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