

UK Finance-AFME response to HMT's PISCES statutory instrument

9 January 2025

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

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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 latest questions issued by HM Treasury (“**HMT**”) on the draft legislation for the Private Intermittent Securities and Capital Exchange System (“**PISCES**”), produced with advisory support from White & Case LLP.

UK Finance and AFME members remain grateful for the opportunity to share our further views on the detailed legislation for PISCES. We continue to be supportive of the PISCES initiative and the objective of giving private companies greater flexibility to access broad investment and, ultimately, transition towards the public markets. We also very much continue to welcome the collaborative approach that the UK government is taking towards this ambitious initiative.

Overall, we consider that the draft PISCES statutory instrument effectively reflects HMT’s stated intentions. We have noted some areas where further clarity might be considered, primarily to aid potential future operators, the Financial Conduct Authority and market participants. These include the ability of ex-employees to use the platform, the scope of companies permitted to use the platform and their connection to the public markets, the drafting of the disclosure liability standards and additional drafting clarifications. We also note that it may be possible to clarify certain elements in guidance and/or policy statements without alterations to the statutory instrument.

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

Kind regards,

UK Finance

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HMT Questions on PISCES statutory instrument (“SI”)

Defining PISCES & those in scope of the PISCES requirements and modified legislation

1. Does the draft legislation make clear the distinction between PISCES trading and public market trading on a trading venue or MTF? (See Reg 3, and Schedule 1 Part 3).

Our members do not have any significant concerns with the proposed drafting.

2. The draft legislation describes who can operate a PISCES platform, and other persons who will be subject to the requirements set out in the legislation and FCA rules (see, Reg 3, Reg 4 and Reg 7). Is it clear when such persons should be caught by the SI and when they wouldn't? Is there anyone who should be able to benefit from these modified requirements who doesn't?

Our members do not have any significant concerns, but please see our response to Q.3 below on clarifying the basis of participation for persons included under Regulation 4(1)(b) and also our response to Q.4 in respect of clarifying the participation of ex-employees of PISCES companies.

Eligibility criteria

3. Do the criteria capture the right eligible investors able to purchase shares on PISCES as described in the consultation response and policy note? (See Reg 4(3); paras 2.5-2.13 of the policy note; and pages 14-17 of the consultation response). To note, Financial Promotion Order definitions of High Net Worth Individual and Sophisticated Investor may be modified under the PISCES Sandbox legislation so it can be used to determine a person's eligibility to buy shares on a PISCES platform.

Yes – in our members' view, these cover the intended categories. However, as discussed on our call on 18 December 2024, we understand that the intent of the drafting of Regulation 4(1)(b) is that: (i) a person who meets the definition of “Piscas investor” may participate to buy shares and a person who “holds admitted Piskas shares” may participate to sell shares; and (ii) these two categories may not completely overlap (i.e. some persons may be permitted to sell shares only and not to buy). Although the drafting does appear to achieve the intended effect, it may be useful for this to be made more explicit on this fundamental matter, either in the draft SI or separately. This would help give potential operators and market users clarity.

4. Related to the above, does our definition of ‘qualifying individual’ in relation to a PISCES company capture the different types of employees or employee contracts? (See Reg 4(4)).



In our members' view, yes. As discussed on our call on 18 December 2024, our members consider it important that ex-employees of PISCES companies are able to use the platform, consistent with other similar markets (e.g. Nasdaq Private Market). We note that Regulation 4(1)(b) provides a route for ex-employees who hold shares to participate as sellers (but not buyers). This contrasts with the position permitted for a current employee of a PISCES company who is able to both buy and sell (as a "Qualifying individual"). Additionally, Regulation 4(3)(g) to (h) allow trustees of share plans to participate (it appears, as both buyer or seller). As a potentially important source of liquidity, our members consider it would be useful for the position and rationale across this area to be more explicitly confirmed, either in the draft SI or separately.

As separate points:

- the SI does not make completely clear whether a company is eligible for PISCES if: (i) it has another class of shares that are traded on a public market; or (ii) if shares in another company in the PISCES company's group are admitted to trading on a public market; or (iii) its shares were previously admitted to trading on a public market although they are no longer admitted to trading, due to the reference to '*if the shares of the company have been admitted to trading*' in Regulation 4(2).
- in our members' view, permitting shares of private subsidiaries of publicly traded groups to trade on PISCES would run counter to the "private company" rationale of PISCES – however our members do not think this should be restricted where the business of the public group is to own and operate investments (e.g. a publicly listed private equity firm with numerous unrelated private company investments); and
- the term "share" in the context of "admitted PISCES share" is currently undefined in the SI and it may be worth considering whether there is a suitable definition (e.g. under the Companies Act 2006) which would give additional certainty around scope – we assume the reference is intended to be broad and, for example, there is no intention to exclude any specific types of shares (e.g. preference or deferred shares).

5. Is the draft legislation clear enough on the meaning of 'immediate group' and 'employment/services are connected with PISCES company business'? (See Reg 2 and Reg(4(4)).

The meaning of "immediate group" is clear. We would suggest that the following clarification is made to Regulation 4(4)(b): "... *who is employed by, or is a director or other officer of, a company within the immediate group of the PISCES company and whose work is in connection with the PISCES company's business;*" This will provide appropriate additional flexibility and be more consistent with the wording in Regulation 4(4)(d). Our members do not see a need to further define the term "business" in this context.



Employee Share Schemes

6. Leaving aside tax considerations, does the SI adequately cater for their participation in PISCES?

Our members do not have significant concerns, subject to our point around the scope of participation by ex-employees being further clarified (see response to Q.4 above).

Eligibility check

7. Does the eligibility check obligation fall/work on the financial intermediary or operator who holds the direct relationship with the end-client? (See Reg 4(6)- (8)).

Our members do not have significant concerns with the proposed wording.

Overseas investors and companies

8. Do you have views on whether the eligibility check is compatible with overseas investors? Are we clear on the eligibility of overseas companies?

Our members do not have significant concerns with the proposed drafting. It may be worth keeping under review during the sandbox period whether there are other types of vehicles that express an interest to participate beyond companies with shares incorporated under section 1(1) of the Companies Act 2006– for example, funds structured as partnership interests.

Liability and disclosure

9. Does the drafting achieve the desired effect, i.e. for core information to be subject to a negligence standard, while other information, including forward-looking information, subject to a recklessness standard? (See Regulation 8 and Schedule 2).

As discussed on our call on 18 December 2024, we would query the rationale for imposing an additional “reasonable reliance” test in Regulation 8(3)(a) and (b). The wording in Regulation 8(1)(b) already makes it clear that compensation is payable to a person who buys, holds or sells on PISCES and suffers loss “as a result” of any untrue or misleading statement. Our members are of the view that this causative link should be sufficient to trigger compensation. Although we understand the intentions behind bridging the gap between liability in public and private markets, in our members’ view PISCES investors should be entitled to rely on the disclosures made as a whole. The additional need for reasonable reliance is not therefore needed and, may cause additional disputes as to whether or not there was reasonable reliance on an erroneous disclosure.

We would also query whether the appropriate standard of liability for disclosures not required under the core disclosure rules should be recklessness (per Schedule 2, Part 3, 6(1)). Whilst we recognise the benefits of applying the recklessness standard in relation to forward-looking information, which carries inherent uncertainty, for other factual information our members believe a single negligence standard should apply to any statement made as part of the



disclosure set. This would ensure a consistent approach to disclosure, with the single defined exception for forward-looking information.

We would also query whether the following addition to the test for dishonesty in Schedule 2, Part 3, 6(3) would be more appropriate and easier to police in practice: "... ~~it is~~ *would be regarded as dishonest by a reasonable PISCES investors*".

Share Transfer Restrictions

10. As mentioned in the consultation paper and policy note, share transfer restrictions affecting an orderly market need only be removed at the time of transfer on PISCES (and can apply as normal outside it). Trading events on PISCES can also be subject to limitations in any event as to who can participate at the company's instigation (this refers to the 'permissioned trading event' concept). We do not think this needs to be covered by the PISCES legislation. Do you foresee any issues with this approach?

Our members agree that the rules can be made by the FCA. As mentioned in our previous PISCES consultation response, these are important areas for further engagement prior to finalisation of the rules.

Financial Promotions Order

11. Are there any questions with the approach taken towards the application of the Financial Promotion Order as outlined in the consultation paper and policy note or considerations we should take into account?

Our members do not have any further significant concerns.

Other

As mentioned on our call on 18 December 2024, our members are also keen to ensure that the rules and parameters for PISCES platforms sit coherently with those being developed by the FCA for "public offer platforms" ("**POPs**") given both address investments in private companies. Whilst we understand the intended distinctions between the platforms (in terms of the most likely user companies, primary vs. secondary capital and so on), we consider it will be helpful for these to continue to be communicated and reinforced to the wider market to ensure that the relative positioning and relationship between the two is clear and appreciated.

About UK Finance

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms across the industry, it seeks to enhance competitiveness, support customers and facilitate innovation. Our primary role is to help our members ensure that the UK retains its position as a global leader in financial services. To do this, we facilitate industry-wide collaboration, provide data and evidence-backed representation with policy makers and regulators, and promote the actions necessary to protect the financial system. UK Finance's operational activity enhances members' own services in situations where collective industry action adds value. Our members include both large and small firms, national and regional, domestic and international, corporate and mutual, retail and wholesale, physical and virtual, banks and non-banks.

Capital Markets & Wholesale, led by Conor Lawlor, focuses primarily on policy and regulatory initiatives spanning primary markets, M&A, secondary markets, post trade and liquidity management. Our work in these areas includes bringing technical experts from across our membership together to form new views, drive thought leadership, and develop policy positions relevant to the UK reform agenda. Further information is available at: www.ukfinance.org.uk

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About AFME

AFME (Association for Financial Markets in Europe) promotes fair, orderly, and efficient European wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) through the GFMA (Global Financial Markets Association). For more information, please visit the AFME website: www.afme.eu.

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