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Wednesday 17 April 2024

Dear HM Treasury colleagues,

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

We welcome the opportunity to respond to your consultation on the Private Intermittent Securities and Capital Exchange System (PISCES).

The Quoted Companies Alliance *Legal*, *Primary Markets, Secondary Markets, Share Schemes,* and *Tax Expert Groups* have examined the proposals and advised on this response from the viewpoint of small and mid-sized quoted companies. A list of Expert Group members can be found in Appendix A.

In general terms, we are supportive of the proposals detailed in the consultation. We believe that they have the potential to encourage IPO candidates to the UK equity capital markets by introducing an earlier interface between private companies and public markets and we recognise that this initiative is timely given the critical need to stimulate growth in our public markets. However, we would like to see far greater detail of how companies can gravitate from a PISCES market to a public market to reduce the risk that PISCES markets operate as a piece of disconnected market infrastructure and not a welcome addition to powering the UK's growth agenda. We very much hope that the combination of the PISCES facility and the long-awaited changes to the listing and public offer regimes will stimulate growth from the bottom up and reinvigorate our public markets for the benefit of all stakeholders.

The FCA has repeatedly emphasised that rule changes in themselves will not be guaranteed to produce results. There needs to be a broader change in the appetite for risk within the investor community. The proposals announced by Jeremy Hunt in March of this year to encourage investment by UK pension funds in UK listed and unlisted companies are a step in the right direction, but we believe that more is required to encourage investment through the PISCES facility if it is going to be a success. The gap in custom and practice between purchases of shares in private companies and purchases of shares on the public markets is enormous and whilst the proposed "MAR announcement" three days before the PISCES trading window opens will provide some comfort it remains to be seen whether it will be sufficient to meet the risk and compliance requirements of investors who are accustomed to conducting full due diligence before taking positions in private companies. Additionally, we express concerns over the extent of the role of the RAA and

the liabilities which RAAs may incur to investors and others in consequence of them accepting engagements to facilitate investments in private companies.

For all these reasons, we applaud the decision to operate the PISCES facility within the regulatory Sandbox for an initial period. This will allow investors, advisers and the private companies that use the facility to suggest practices and improvements which will shape the final form of the facility and ultimately determine whether it is a success.

If you would like to discuss our response in more detail, please do not hesitate to contact us.

Yours sincerely,

James Ashton
Chief Executive

Q1 Do you have any comments on this arrangement? Do you think five years is an appropriate timeline for the PISCES Sandbox?

Overall, we consider that the proposed five-year period for the PISCES Sandbox is appropriate, particularly given that the new concept of PISCES will likely take time to gain traction.

However, we would suggest that the FCA is able to make interventions within this initial five-year period in order to adjust the regulatory framework to limit detrimental effects and investor harm. We would also suggest that the term of PISCES Sandbox is kept under review and, if appropriate, consideration should be given to shortening the current proposed five-year period if everything is operating effectively.

Moreover, we would urge the Government to clarify and provide information on how it envisages the winding down process for PISCES operators at the end of the Sandbox period. Additionally, further clarity is needed on what happens to the companies if PISCES operators decide to close their venue at the end of the Sandbox period and whether they will simply be able to move from one venue to another.

Q2 Do you agree that this should be a market targeted at wholesale market participants, namely professional investors?

Whilst we consider retail investors to be a vital part of the capital markets ecosystem, we agree that PISCES should be targeted at professional investors, sophisticated and high net-worth individuals (together "sophisticated investors") and employees and officers (including non-executive directors). Given the periodic nature of the proposed disclosure regime, individual retail investors are unlikely to have access to the information required to provide them with a sufficient understanding of companies operating on PISCES and so may not be in a position to make a well-informed investment decision. Investment in PISCES companies is likely to carry greater risks than conventional trading on the exchange. We therefore agree with the Government's more targeted approach which differentiates between PISCES as a sophisticated investor market and the public markets as retail and sophisticated investor markets.

Q3 Do you have views on whether sophisticated and/or high net-worth investors should be allowed access to shares traded on PISCES?

If we are to create the share owning democracy envisaged by the Edinburgh reforms then individuals who can reasonably be considered as having the knowledge to make their own decisions and/or who are of sufficient net worth to be able to absorb any losses that may result from those decisions should be empowered to participate in PISCES offerings notwithstanding the greater risk that they are likely to carry.

We therefore believe that sophisticated and high net-worth investors (HNWIs) should be allowed access to shares traded on PISCES, and we understand from QCA member clients that there is a strong level of interest in PISCES from these investors. Expanding the pool of potential buyers on PISCES in this way should also enhance liquidity thereby increasing the chances of the success of PISCES.

Q4 Should employees have the opportunity to purchase shares in their company on PISCES? If so, could this be facilitated by the company?

Yes – we believe that employees and directors (including non-executive directors) should be provided with the opportunity to purchase (and sell) shares in their own company (or the holding company of their employer) on PISCES.

By definition, an employee or director is likely to have a greater level of understanding of the nature of the company than a typical retail investor – and also may have existing exposure through holdings of shares. Moreover, allowing employee participation would effectively enable companies to replicate elements of the matched bargain model operated by some larger private companies in conjunction with share-based incentive schemes.

We believe that positive benefits will arise from giving employees access to buy and sell shares in their company. Such a facility is likely to increase the take up of share schemes which are designed to motivate employees by enabling them to share in the success of their employer as it grows and develops.

As is the current practice, documentation sent to employee participants should bear an appropriate risk warning and include a recommendation that prior to taking action participants should carefully review the disclosure document issued by the company and, if appropriate, should seek independent advice.

We also believe that Employee Benefit Trusts (EBTs) should be allowed to purchase shares on PISCES. EBTs work in a similar way to share buy-backs with shares being held in the EBT rather than in treasury. We note that it is proposed that share buy-backs will not be possible using the PISCES facility (and we broadly agree with this approach - see our response to Q19). However, there are fundamental differences between EBTs and share buy-backs and we believe that purchases of shares by EBTs should be permitted on PISCES.

Q5 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?

Our members have identified several aspects of the model which could act as potential barriers to potential operators, and/or participant companies and investors in the operation and use of the PISCES facility. In particular, the following areas need clarification:

- Intermediation – if a PISCES company has intermediaries acquiring shares on behalf of investors then indirect ownership issues will need to be considered. It will also be important for intermediaries to have appropriate arrangements in place in relation to voting rights to ensure that the underlying shareholder is able to exercise their rights.
- Auction windows – clarity needs to be provided on whether companies can change the regularity of their auctions. For instance, if a PISCES company opts for monthly, quarterly, or bi-annual auction windows, is the company able to change to a different schedule, and what is the timescale for doing so. Moreover, it is also unclear who decides the frequency of trading and whether there is a maximum frequency of auctions. Table 3.A in the consultation refers to weekly trading windows, which would require significant resource to make disclosures at each auction window.
- Disclosures – further clarity is needed on how the non-public disclosure regime would work in practice and how this information will be protected (as to which, please also see our response to question 9).
- Classes of shares – it is unclear at present whether a company with different classes of shares can elect for only one class of shares to be traded on a PISCES market. For example, a situation could arise where a company may want to trade only certain classes of shares (e.g. with economic rights and reduced voting rights) on a PISCES market, with voting shares traded "off market".
- FSMA Part 4A Permissions – the consultation indicates that PISCES operators could be firms with Part 4A permission to arrange deals in investments or operate an MTF or OTF. There needs to be greater clarity as to whether the regulatory perimeter will be extended to include new regulated activities

relating to PISCES or if guidance will be released by the FCA to explain how it envisages the existing regime will map onto PISCES operators.

Q6 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?

We have no comments.

Q7 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)?

There may be instances where companies would deem it appropriate to restrict access to trading events. Private companies wishing to use the PISCES facility are likely to examine their articles of association carefully and ensure that some basic "safeguards" are incorporated in them so that they do not inadvertently allow investors onto their share register who could cause them detriment. For example, this could include:

- A limit or total bar on investment by industry competitors.
- Limits on participation to meet regulatory ownership requirements specific to their industries.
- Limits on participation which would trigger notification requirements under competition law and under the National Security and Investment Act.

Companies may also wish to impose certain restrictions on investing entities who run contrary to their ESG policies and practices.

Additionally, where a larger number of shares are likely to change hands, companies may wish to impose a limit on the percentage of shares which may be owned by any one holder and its related parties so as not to disrupt the overall ownership structure of the company.

However, we would emphasise that restricting access to trading events will likely be difficult to manage and may negatively impact levels of liquidity so we would counsel that each circumstance would need to be one which is justifiable. In particular, we are sceptical as to whether companies should be permitted to block one or more potential purchasers with no rationale as this could send a very negative message to investors.

Companies may also have pre-emption rights on share transfers and, although we envisage that most companies will adopt a general disapplication of these to PISCES trades, any residual pre-emption provisions would need to be considered where access to the market is restricted on a selective basis.

Q8 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?

Yes – our members have highlighted that there are several matters which need to be considered in the design of PISCES.

Firstly, the tax system for the market needs to be considered. We see this as an area which can be used to encourage the success of the new facility by attracting buyers of shares. Consideration should be given to whether trades on PISCES are to be exempt from stamp taxes and whether there are any income and capital gains tax breaks which can be offered to participants in the facility.

There are also a number of specific employee-shares related aspects to be considered. The following require particular attention.

- Will the adoption of the PISCES facility by a company or even the taking by a company of meaningful steps to enable it to use the facility cause its shares to be categorised as readily convertible assets for PAYE purposes? (i.e. would the RCA test mirror that for IPO or would the test be different?). This needs to be clarified irrespective of whether employees are allowed to purchase shares in their employer group company via PISCES as it may impact the employer's obligations in relation to other arrangements for providing equity to employees.
- The fact that a company will, by definition, need to lift restrictions on share transfers for shares to be traded via PISCES may be problematic if s431(1) ITEPA 2003 elections have not been signed on restricted employment related securities as the exemption in s429 ITEPA 2003 may not be available in all cases, and it may not be desirable to trigger a tax charge by making s430 ITEPA 2003 elections. Consideration might therefore be given to whether or not the exemptions in s429 ITEPA 2003 need to be extended to mitigate this risk, which might deter companies from registering for PISCES.

Q9 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?

Yes – we agree that the PISCES operator should be able to establish a private perimeter and restrict access to those eligible to participate on the market. PISCES operators could implement controls which are broadly similar in nature to those used in virtual data rooms for private M&A and capital raising. This could include watermarking documents downloaded for traceability and /or restricting download and print functionality.

Nonetheless, and whilst the concept of a private perimeter may be the best solution that can be devised to meet the particular circumstances of PISCES, there may be certain issues that arise. In particular:

1. We are uneasy about the concept of an “enlightened” group of investors who, by virtue of their inclusion in the private perimeter, may potentially have a greater level of knowledge than the general body of shareholders (and vice versa, see below). The asymmetry could be addressed by requiring a copy of all information provided to potential investors to be given to all holders of the class of shares to which the PISCES facility applies (and not just to those who are eligible to sell in the facility). Shareholders who are not eligible to participate in the facility would have access on a “for information only” basis. Where there are multiple classes of shares, the information could be restricted to the class to which the PISCES trading facility applies. (Our comments below at question 11 are also relevant here. We appreciate that the risk of sensitive information (for example information which can be used by competitors) leaking outside the perimeter will obviously increase in line with the number of persons who have access to that information notwithstanding that all such persons will be required to accept confidentiality obligations. However, we think the arguments in favour of inclusion of all shareholders (i.e. the entirety of the potential selling and buying audience) favour this broader level of disclosure.

2. Regardless of the existence of the perimeter “fence” it would be a natural assumption that providers of debt finance to private companies and potentially major suppliers will seek to impose an obligation on those companies to furnish them with all disclosures made within the

perimeter. Such a request could be hard to resist and would also extend the general body of persons to whom potentially sensitive information is required to be provided.

3. Potential investors who are contemplating investing directly into the company by subscription will also have a clear interest in disclosures made in connection with PISCES. We suggest that it should be within the company's discretion to provide such information to them and to set the terms on which it is provided.

4. The company may already have existing shareholders, including private equity investors, who have done substantial due diligence into the company before becoming an investor. Would all such information be disclosed to potential investors on PISCES in order to avoid an information asymmetry? Public markets operate on the basis that all market participants have access to the same information which is why MAR requires the disclosure of inside information.

Q10 Do you agree PISCES operators should be required to ensure full pre- and post-trade transparency to investors within the private perimeter?

Yes – we agree that PISCES operators should be required to ensure full pre- and post-trade transparency to investors within the private perimeter. Price, volume and pricing information is all relevant to investors to enable them to assess the value of their holdings and make future investment decisions.

However, there needs to be clear direction as to how this will work in practice and how long the operators will have to provide the post-trade disclosures for. Similarly, transparency to the company and in the perimeter over the identity of the shareholder, including the ultimate beneficiary will be important. Clarity needs to be provided as to whether beneficial holdings over a certain size be disclosable by the beneficiary if a beneficiary holds more than a set percentage (such as under the FCA's DTR5). The consultation proposes allowing the company to investigate who holds shares by applying section 793, but these powers require investigation by the company rather than a positive obligation on the beneficiary to disclose.

Q11 Should any pre and post trade data or price data be made available publicly outside the private perimeter?

This question elicited conflicting responses from QCA members with some taking the view that this information should not be available outside the perimeter and others favouring the broader dissemination of limited information. Those in favour of broader dissemination cited pre- and post-trade data and price data as information which should be made available outside of the private perimeter, in particular to feed into HMRC valuations.

The availability of pricing information (and indeed the trading of shares on the PISCES facility) raises several important employee securities related questions that need to be addressed. In particular:

- If employees/directors are given the opportunity to purchase shares on PISCES will the price paid be accepted by HMRC as being equal to (or at least no less than) the unrestricted market value of those shares and vice versa?
- If employees/directors are allowed to sell through PISCES will the price received be accepted by HMRC as being equal to (or at least no more than) market value?
- Will shares be considered readily convertible assets for PAYE and NICs purposes?

- Will HMRC confirm that being given the opportunity to buy/sell through PICSES is not in itself a taxable benefit?

The valuation information generated by PISCES will be useful not only to PISCES participants but also to parties to private treaty share deals who will be concerned to know the price at which the shares last changed hands.

Furthermore, and as mentioned in our response to question 9 above, we are uneasy about the imbalance in levels of information which PISCES will create amongst investors using the PISCES facility on the one hand and the general body of shareholders on the other.

For this reason, we would suggest that consideration is given to permitting access to the information portal to all shareholders of the company. The information imbalance could in fact be eliminated by permitting all shareholders to access information prepared under the PISCES rules (albeit on a "for information only" basis). This broader dissemination of information would effectively be part of the "price" of having access to the PISCES facility.

Q12 Are you content with the proposed model for transaction reporting?

Broadly, we are supportive of the proposed model for transaction reporting.

However, we would also add that there might need to be ERS reporting on behalf of the company if employees or directors are participating in PISCES (whether as vendors or purchasers). Companies operating on PISCES will need to be able to track and report employee share acquisitions unless these are to be exempted from the ERS reporting and taxation regime.

Furthermore, in terms of other disclosures, private companies often use nominee structures to keep the names of employee shareholders off the register of members for confidentiality purposes. Consideration will need to be given to the extent, if any, that employees using this structure should be permitted to maintain confidentiality. They may not want details of their shareholdings to be disclosed to PISCES investors, particularly where those investors are other employees.

Q13 Are you content that PISCES operator or regulated intermediaries could check that potential investors meet the eligibility criteria (see chapter 2)?

Broadly, we agree that the PISCES operator and/or regulated intermediaries could check that potential investors meet the eligibility criteria. However, if PISCES allows employees to participate in the market then the company will be needed in order to support this assessment by determining if someone is an employee.

Moreover, we believe that clarity needs to be provided on whether the PISCES operator and/or regulated intermediaries will be capped or guided in the amount of fees that they can charge for this service, or whether the fees will be dictated by market forces.

Q14 Do you have any views on how a PISCES operator or regulated intermediary will ensure that ineligible investors do not trade on PISCES?

The PISCES operator can use common practices for client categorisation (particularly for regulated intermediaries).

For company sponsored participants, the company would need to provide the names and contact details of their employees and directors.

Q15 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?

We consider that the Government should give greater consideration to the corporate governance requirements of companies on PISCES. At present, companies on public markets are required to follow a recognised corporate governance code either due to the FCA's Listing Rules (for companies with a Premium Listing on the London Stock Exchange Main Market) or via the market operators (for companies on AIM and the Aquis Growth Market). There are no such requirements for the majority of private companies other than the Wates Principles, which apply only to the largest private companies.

We recognise that a careful balance needs to be achieved with regards to corporate governance requirements given that companies using PISCES will retain their status as private companies. Moreover, consideration also needs to be given to when these disclosures would be made as it would be odd to add the corporate governance reporting to the disclosure statement pre-trading window (unless there is a change that is price sensitive) because this would be outside the usual corporate reporting window.

However, as highlighted in the consultation document, PISCES is intended to "support the pipeline for future IPOs in the UK" and reduce the steepness of the "regulatory step" for companies when they decide to list and are required to comply with the applicable rules of the public markets. As a result, we consider that requiring PISCES companies to follow minimum corporate governance requirements and requiring a proportionate level of expectation around this will help to smooth a company's transition if and when it decides to move to a public market.

In addition to this, it is also likely investors would like to see some level of corporate governance reporting where they can find information about the company's governance arrangements and board dynamics, for instance. Having a certain level of requirements with respect to corporate governance may also increase investor interest in PISCES companies. We would envisage that, as a minimum, there will be expectations around the establishment of committees for audit and remuneration and a list of matters reserved for the board as well as the adequacy of internal financial reporting processes.

As opposed to requiring companies to apply a recognised corporate governance code in full, a proportionate suggestion would be for the market operator to require PISCES companies to have due regard to the principles contained in a recognised corporate governance code insofar as it is considered appropriate in relation to the nature and size of the company. Doing this will ensure the company provides a basic description of its governance arrangements, including in relation to its board and organisational structure.

The QCA Corporate Governance Code (QCA Code) is one example of a corporate governance code that PISCES companies could apply. The QCA Code underwent an update in 2023 and is suitable for both public and private companies[1]. It is currently applied by nearly 900 public companies, including 93% of the companies on AIM, over 75% of Aquis companies and over 25% of Standard List companies[2], making it the recognised

[1] QCA Corporate Governance Code (2023), available at: https://www.theqca.com/product/corporate-governance-code-2023-public/
[2] QCA, August 2023, The QCA Corporate Governance Code: Good Governance and Growing Influence, available at: https://www.theqca.com/news-insights/good-governance-and-growing-influence/

choice for smaller, growing companies. The QCA Code is also applied by some private companies, and we believe that it could play an important role on PISCES. The flexible nature of the QCA Code and its 10 principles would enable PISCES companies to focus on implementing the necessary practices to help them deliver growth, maintain dynamic systems and processes, including those in relation to management teams, and build trust amongst their shareholders and other stakeholders. This means that it would not only improve the governance of companies on PISCES, but would also ensure that an eventual listing on a public market would not result in as much of a hurdle.

Q16 Would you be content with the proposed requirements placed on companies whose shares are admitted to trading on PISCES?

We believe that the requirements have been well calibrated so as not to be unduly onerous (although clearly this will ultimately depend on the detailed provisions of the operators' rules). However, the success of the facility will, to a large extent, depend upon its reception by the institutional investor community and, in particular, whether the disclosure requirements are adequate for its needs.

In a conventional private treaty acquisition of a material number of shares the investor will generally expect a virtual data room to be set up against a wide-ranging list of legal, financial and operational questions and will conduct due diligence using the responses to those questions. Sometimes the deals are predicated on a "no-warranty" basis with the buyer relying on its own diligence. Other times there may be extensive warranties.

We believe that this model is likely to be retained for significant purchases which might result in a change of control of the company with PISCES being used for purchases of less significant numbers of shares.

For larger purchases investors may decide to overlay the PISCES disclosure requirements with their own diligence work. Diligence is time consuming and would therefore need to commence sufficiently far in advance of the trading window to enable it to be completed before any acquisition of shares through PISCES.

The consultation envisages that the shares (or the relevant class) must be freely transferrable, a concept which is relatively alien to private companies whose articles (and/or any applicable shareholders' agreement) typically include pre-emption provision and drag-along and tag-along rights. Guidance will be required as to what level of general disapplication of these provisions will be expected of companies looking to use the PISCES facility.

The relaxation of pre-emption rights and other restrictions will result in the conversion of shares to unrestricted securities which, in turn, gives rise to employment related securities questions around convertible shares, restricted securities (ERS), post-acquisition benefits, and artificial increases in value (see also the discussion in our response to question 8).

In the absence of appropriate derogations, the adverse tax issues which could arise under existing legislation, particularly in relation to employment related securities, could deter private companies from participating in PISCES.

Q17 Do have any comments on the proposed modifications to the 2006 Act described in paragraphs 4.7-4.11?

We have no further comments and believe that the proposed modifications appear to be pragmatic to allow companies to trade on PISCES.

Q18 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.

We cannot envisage any, but the position should be kept under review during the Sandbox period.

Q19 Do you agree that share buy-backs should not be permitted on PISCES, given the risks set out above?

The majority of QCA contributors to this consultation agreed that share buy-backs should not be permitted on PISCES given the complexity of these under both tax and company law provisions.

However, some QCA contributors suggested that the ability to cater for buybacks should be explored within the PISCES Sandbox.

Q20 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?

Yes – at a minimum (and as highlighted elsewhere within our response) we believe that there should be reporting on board and governance arrangements, financial performance (historical and current trading), information on significant changes since the date of financial information last issued, material contracts and litigation.

Please also see our answer to Q15 on corporate governance requirements and Q12 on ERS reporting.

Moreover, we believe that guidance should be provided around the identification and disclosure of inside information given that the concept of "inside information" in the context of a private company is likely to be problematic. On the public markets there is a continuous quoted share price and therefore it is usually clear whether there will be a significant effect of the price of the share which is one of the MAR tests for whether there is inside information. PISCES will be an intermittent trading facility and a whole range of events could occur between trading events which would affect the valuation of the company. Additionally, the price parameters set by the company when the next window opens may not be reflective of the value at which the shares would actually have been trading had trading been continuous.

We recommend that the guidance includes a list of categories of information which is capable of constituting inside information and notes describing how those categories of information should be considered for the purposes of disclosure. Those categories would include, as a minimum, the items identified in the first paragraph of our response to this question.

As regards disclosure of financial information, in a private treaty deal, the last accounts and the last management accounts are usually at the heart of the base valuation. The lag between the year end and the filing of company accounts for private companies can be very substantial so we envisage that companies wishing to use PISCES would in all probability have to present updated numbers which, in itself, could involve significant work and cost.

Q21 How long before the trading window opens should disclosures need to be published? Should this be determined by the operator or participant companies?

We believe that there should be a mandated minimum period of between three and ten business days for the disclosures to be made before the trading window opens, and depending on the length of time between auction windows. Given that these companies will not have traded before and the information needs to be assimilated, at least three business days should be in place.

Q22 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?

Given the illiquid and intermittent nature of PISCES, we think there is limited scope for market abuse. However, we set out below what we consider to be the main challenges and potential issues.

As we mention above, the central challenge for companies operating on PISCES will be in relation to the accuracy and completeness of their pre-trading window disclosures. They will also need to ensure that market participants are trading on information which is available through the PISCES operator and not made available elsewhere.

In contrast to the public markets, there is no equivalent role to a sponsor or Nomad requirement on a PISCES market and companies will be required to seek their own professional advice on disclosure issues. Where companies seek guidance from advisers on what constitutes inside information and how disclosures should be framed, consideration will need to be given to the potential liability of those advisers. Adviser liability here is something which will need to be explicitly addressed in the new rules. If it is not, it is unlikely that advisers will be willing to give firm advice on this aspect.

A further point to consider is that, whilst the definition of inside information may be well understood within the regulated sector, this may not be the case for many private companies in a variety of industries. This, in turn, is likely to increase the risk of incomplete and inaccurate disclosures. For this reason, clear guidance needs to be provided on what constitutes inside information and how it should be disclosed. We note that in the Consultation document there is no reference to publishing guidance on disclosures and we would urge you to make provision for the publication of guidance so that there is a clear understanding across the corporate, investor and advisory community as to the inside information disclosure regime when the facility is launched.

The difference between “PISCES MAR” and MAR could be an additional source of additional confusion (for example, we note the proposal that PISCES MAR will not incorporate the existing delayed disclosure rules – and we comment on this in our response to question 23). To reduce the risk of inadvertent breaches of PISCES MAR we recommend that the disclosure guidance discussed above should be extended to include wider guidance on PISCES MAR.

The guidance, which could be something similar to the FCA's guidance in the Disclosure Guidance and Transparency Rules sourcebook will not only benefit companies but is also likely to become a key reference source for market operators and advisers as they navigate the new regime.

Issues which the guidance could address would include:

- Situations where additional information is already known to some market participants at the time of the pre-trading window disclosure following a legitimate disclosure to them outside of the trading window. For example, employees are within the category of investors eligible to use the PISCES platforms. It is conceivable that an employee may have properly be in possession of additional information which is not included in the formal disclosure. If this situation arises, there will be an increased risk of such employees being liable for insider dealing through no fault of their own if they trade shares using the PISCES facility.

- The position taken by PISCES MAR in relation to matters such as forward-looking statements in disclosures and whether there are safe harbours for companies in respect of such statements (given that prospectus style reporting is not anticipated).

Generally, the proposed PISCES MAR regime will need further clarification before the launch of the PISCES facility.

Q23 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 note that the Government's initial view is that there should not be a concept of delayed disclosure of inside information for the PISCES market abuse regime and that a company's disclosures ahead of each trading window should contain all inside information.

Delayed disclosure and the conditions under which it is possible are a cornerstone provision of MAR and associated ESMA guidance and the absence of this facility could create problems:

- Firstly, for a company that is in the process of negotiating a transaction. Depending on how frequent a company's trading windows are, and whether a company is free to decide not to participate in a trading window, the absence of a delayed disclosure facility could put a company under pressure to negotiate and finalise important transactions outside of trading windows (or to try and maintain such transactions at a stage where it believes that no disclosure is required); and
- Secondly, in the scenario where the company has developed a product, and the immediate public disclosure of that information is likely to jeopardise the intellectual property rights of the company.

Both of these scenarios are currently addressed in the MAR delayed disclosure regime. It is easily conceivable that such scenarios could apply to participating companies on PISCES and in the absence of the MAR regime there is a material risk to participating companies that they could fall foul of PISCES MAR.

The Consultation document confines the scope of PISCES market abuse to apply only from when a company's disclosures are made available to investors prior to the trading window opening, to the end of the trading event. Part of the rationale in the Consultation Paper is that whilst there are market abuse risks associated with off-PISCES trading, any credible market abuse monitoring would impose disproportionate costs on the company. Having separate rules and prohibitions for different time periods, or for on-PISCES and off-PISCES trading significantly heightens the risk of abuse and may create opportunities for market abuse which may be particular to the PISCES proposal.

Take, for example, a company which, prior to the periodic disclosure window, has seen significant developments in its business and which, prior to the trading window, has sold shares to its employees at the prevailing market rate in anticipation of them being sold at a profit by the recipients using the PISCES facility.

At the time that the employees acquire the shares they will in all likelihood be in possession of information relating to the developments in the business which will not be generally known.

When the trading window opens the employees will be able to realise significant gains and will do so with the benefit of “inside information”.

This scenario is different to where shares are held for a long period of time prior to the significant development. The proposed market abuse regime does not seem to account for this scenario, and we recommend considering the extent to which PISCES MAR should address acquisitions of shares made between disclosure periods which are priced so as to generate a profit when the PISCES facility is operated.

Other market abuse risks, such as trading styles, and insider dealing take place at the point of trading and consequently we agree are only relevant during the trading window.

Whilst we agree that initially the scope of the PISCES market abuse regime should be limited to shares on the PISCES platform and not related financial instruments. It may, however, be that as a result of PISCES a market in related financial instruments develops. Should this happen the scope should be revisited when the nature of any such financial instruments is known and better understood.

We agree that the scope for the dissemination of false and misleading information should include the time period outside of trading windows, however, we note that the Consultation paper at paragraph 5.7 suggests that this may be limited to instances where "it impacts on the trading of shares during the PISCES trading window". We do not think that there should be a requirement that the false or misleading information actually impacts on the trading of shares, instead the wording of Article 12(c) MAR should be adopted (as amended as necessary).

In relation to market manipulation, we do think there is a risk of private treaty transactions being used to set the benchmark price at levels which are not aligned with the true value of the company so we would recommend further consideration of whether private treaty deals should in fact be brought within the ambit of PISCES market abuse.

Q24 Do you agree with the proposed PISCES market abuse offences?

On the whole, we agree with the proposed PISCES market abuse offences. However, as stated above, we believe that further clarification will need to be provided on market abuse criminal offences and how they apply to the PISCES platform.

The Consultation paper refers to using the FMI Sandbox powers to temporarily modify or disapply, where necessary, the relevant enactments listed within s17(3) FSMA 2023. This section of FSMA 2023 includes FSMA 2000, the Companies Act 2006 and MAR. However, a number of market abuse activities are governed by legislation not listed in s17(3) FSMA 2023, such as criminal insider dealing (s52 Criminal Justice Act 1993), the criminal offence of making misleading statements (s89 Financial Services Act 2012), and the criminal offence of creating misleading impressions (s90 Financial Services Act 2012). There is no power within FSMA 2023 to modify or disapply these provisions and the Consultation paper is silent on how it is proposed these will apply to PISCES. More clarification is needed on how it is proposed these criminal offences will interact with the PISCES platform.

In light of the above, and without the necessary clarification, there is a risk of inconsistent outcomes or confusion.

Q25 Do you agree with the proposed arrangements for monitoring and enforcement against market abuse on PISCES?

Yes – we agree that the monitoring and reporting requirements contained within MAR should equally apply to PISCES. However, the details of these requirements are not clearly set out in the Consultation and there will be inherent difficulties in applying a regime designed for listed companies to private companies. This will present significant challenges for operators and intermediaries. In practice we believe that the standards of oversight which are to be applied should be established during the Sandbox and should take full account of the challenges which are likely to be faced by operators and intermediaries.

Nonetheless, it is our view that the arrangements for the prevention and detection of market abuse under PISCES MAR should mirror the requirements contained in Article 16 of MAR to:

- establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation; and
- report orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation without delay.

We disagree that companies participating on a PISCES market need not produce insider lists. As noted within the Consultation paper a key risk arises where there is incomplete disclosure on PISCES and certain investors possess additional inside information. This would enable those investors to act on that disparity and potentially obtain an advantage over other platform users. If this were to happen, the insider list would be a key investigative tool for the FCA to identify those investors who had this extra information and to identify possible instances of insider trading. As a result, we believe that maintaining an insider list should be a requirement under the new rules.

Q26 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?

Yes – we agree that existing exemptions in the FPO are sufficient to allow the promotion of shares traded on PISCES to eligible investors, such as HNWIs. However, we note that it is currently unclear as to whether the FPO would apply to marketing shares via PISCES (assuming the company issuing the shares is unauthorised), or if the shares of companies listed on PISCES would be treated as marketed by the FCA-authorised PISCES operator and so FCA rules would need to be complied with (rather than seeking an exemption under the FPO).

We recommend that a specific exemption should be created to deal with the dissemination of information in connection with PISCES trades including drafts of that information (bearing appropriate risk warnings) to eligible investors for marketing purposes. We would not recommend using the Article 67 exemption as it is rarely used in practice as market participants are unsure what would fall within this ambit.

We also note that a change to the exemptions might be required in order to allow employee participation. To the extent that shares are not being acquired under the auspices of an employee share scheme (article 60 FPO), the employees would currently need to meet the exemptions unless there was a change to them.

Q27 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 answer to Q26 above. We also raise several further points:

- If article 70 FPO (or similar new provision) would not be available, is it anticipated that companies would rely on other existing exemptions such as article 19 (investment professionals), article 49 (High Net Worth Companies…) and, subject to the above, sophisticated investor/high net worth individual investor exemptions.
- If certified high net worth/self-certified sophisticated investor exemptions are to apply, articles 48(8) and 50A(8) would need to include shares of companies listed on PISCES.

Q28 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?

Yes – we 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 in the platform. However, it is difficult to see how the model would be workable without shares being placed on a CSD, particularly if a company has frequent trading windows.

Q29 Are there any aspects of the model that would dissuade you from investing through PISCES?

We have no comments.

Q30 Are there any further matters that should be considered in the design of the PISCES to encourage investors to use such a platform?

Yes – these relate to:

- Takeovers – consideration needs to be given to what protections there will be, if any, in relation to a PISCES company being the subject of a takeover offer to ensure a fair process if an offer is made. This is because we assume that a takeover offer on PISCES would not be governed by the Takeover Code. We do recommend that the applicability of the Code is kept under review, particularly where trading windows are frequent, and the number of shareholders exceeds a critical level.
- Tax – in order to encourage institutional investors to use the facility and reflect the inherent risks of investing in private companies, the Government needs to carefully consider the possibility of offering one or more tax breaks to investors. These might include additional income and capital gains tax breaks, and perhaps a total exemption from stamp duty for trades made using the PISCES facility.
- Public disclosure by investor participants – consideration should be given to public disclosure requirements by institutions relating to the extent of their investments made through the facility as a means of encouraging them to invest in the target market of domestic private companies.

Appendix A

The Quoted Companies Alliance *Legal Expert Group*

Mark Taylor (Chair)	**Dorsey & Whitney (Europe) LLP**
Stephen Hamilton (Deputy Chair)	**Mills & Reeve LLP**
Paul Airley	Fladgate LLP
Danette Antao	Hogan Lovells International LLP
Paul Arathoon	Charles Russell Speechlys LLP
Kate Badr	CMS
Naomi Bellingham	Practical Law Company Limited
Ross Bryson	Mishcon De Reya
Caroline Chambers	Simmons & Simmons LLP
Philippa Chatterton	CMS
Paul Cliff	Gateley
Matt Cohen	Stifel
Jonathan Deverill	DAC Beachcroft LLP
Sarah Dick	Stifel
Tunji Emanual	Lexis Nexis
Kate Francis	Dorsey & Whitney (Europe) LLP
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Kate Higgins	Mishcon De Reya
Nicholas Jennings	Locke Lord LLP
Martin Kay	Blake Morgan
Jonathan King	Osborne Clarke
Jennifer Lovesey	KPMG
Nicholas McVeigh	Mishcon De Reya
Catherine Moss	Shakespeare Martineau LLP
Hilary Owens Gray	Practical Law Company Limited
Kieran Rayani	Stifel
Jaspal Sekhon	Hill Dickinson LLP
Patrick Sarch	Hogan Lovells LLP
Gary Thorpe	QCA Director
Robert Wieder	Faegre Drinker LLP
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Colin Aaronson	Grant Thornton UK LLP

Stuart Andrews	Zeus Capital
Mark Brady	Spark Advisory Partners Limited
Andrew Buchanan	Peel Hunt LLP
David Coffman	Novum Securities Limited
Richard Crawley	Liberum Capital Ltd
Dru Danford	Liberum Capital Ltd
David Foreman	Zeus Capital
Chris Hardie	W.H. Ireland Group PLC
Stephen Keys	Cavendish
Nick McCarthy	Shoosmiths LLP
Katy Mitchell	W.H. Ireland PLC
Hayley Mullens	Radnor Capital Partners Limited
Nick Naylor	Allenby Capital
Claire Noyce	Hybridan LLP
Jeremy Osler	Cavendish
Niall Pearson	Hybridan LLP
Mark Percy	Shore Capital Group Ltd
Oliver Pilkington	Shoosmiths LLP
George Sellar	Peel Hunt LLP
James Spinney	Strand Hanson

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Andrew Collins	Charles Russell Speechlys LLP
Sunil Dhall	Peel Hunt LLP
Nick Dilworth	Winterflood Securities Ltd
Fraser Elms	Herald Investment Management Ltd
Richard Fenner	Euroclear UK & International
William Garner	Charles Russell Speechlys LLP
Jon Gerty	Peel Hunt LLP
Alex Giacopazzi	Winterflood Securities Ltd
Mitchell Gibb	Stifel
Keith Hiscock	Hardman & Co
Niall Pearson	Hybridan LLP
Jeremy Phillips	CMS Cameron McKenna Nabarro Olswang LLP
Katie Potts	Herald Investment Management Ltd
Chris Robinson	Peel Hunt LLP
Stephen Streater	Blackbird Plc

Peter Swabey	C/o The Chartered Governance Institute

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Chris Barnes	KPMG LLP
Danny Blum	Eversheds Sutherland
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Michael Carter	Osborne Clarke
Stephen Diosi	Mishcon De Reya
JD Ghosh	MM & K Limited
Andy Goodman	BDO LLP
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Caroline Harwood	BDO LLP
Helen Hopkins	Link Group Service Company Limited
Stuart James	MM & K Limited
Graham Muir	CMS
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Edward Brown	Grant Thornton LLP
Matthew Creevy	KPMG
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Madeline Gowlett	Travers Smith LLP
Caroline Harwood	BDO LLP
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Ian Shaw	Korn Ferry
Tom Wilde	Shoosmiths