The City of London Law Society

The Law Society

FCA CONSULTATION PAPER 24/29: PRIVATE INTERMITTENT SECURITIES AND CAPITAL EXCHANGE SYSTEM: SANDBOX ARRANGEMENTS

17 FEBRUARY 2025

Introduction

1. The views set out in this response have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (the **CLLS**) and the Law Society of England and Wales (the **Law Society**).

2. The CLLS represents approximately 20,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 22 specialist committees.

3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.

4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to equity capital markets.

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We continue to support the objectives of PISCES and are broadly in favour of the proposals set out in FCA Consultation Paper 24/29 (the **CP**), subject to the observations set out below, which relate predominantly to the proposed approach to disclosure.

Approach to disclosure

We note the proposed bespoke approach to disclosure, based on a requirement for PISCES companies to disclose a set of core information which is supplemented by an overarching requirement for operators to ensure that their disclosure arrangements are appropriate for the efficient and effective functioning of their market. In the context of the revised PISCES legal framework that does not include a public market style MAR regime, we note our previously expressed concerns relating to the application of a modified MAR disclosure regime to a private market, as set out in the joint response to the HMT PISCES Consultation prepared by the CLLS Regulatory Law Committee and a Joint Working Party of the Company Law Committees of the CLLS and the Law Society. However, we believe that the suite of core disclosures under the revised approach, which are summarised at paragraph 3.14 of the CP, are overly prescriptive and extensive for a market of this type, and may necessitate disclosures that are not useful to the investor community (please see *Core information disclosures* below). Instead, we would suggest that a more targeted approach be adopted, with the implementation of a more succinct set of core information requirements, supported by a modified form of sweeper (see *Modified sweeper* below). We would envisage that these requirements would form the appropriate minimum regulatory standard, with flexibility for market operators to go beyond, but no discretion to go below, the required minimum. Together, we believe that these requirements would result in a more efficient process and ultimately, more useful disclosures for investors.

Further, whilst we recognise that the proposed approach to disclosure of additional information set out in the CP seeks to take into account the differing PISCES business models which could be implemented, we would highlight that it risks creating a divergence in the disclosure standards applied, which could in turn create uncertainty for market participants, and ultimately, lead to investor detriment.

Modified sweeper

In order for PISCES platforms to function in an effective and credible manner, our view is that the introduction of a modified, soft-form of sweeper is necessary – and in this regard, we note the mandatory sweeper set out at paragraph 3.36 of the CP. With a modified sweeper requirement, directors and/or senior managers of a PISCES company would be required to consider whether, in addition to the core information disclosures, there are any matters of which they are aware that would be relevant to an investor's investment decision, and to disclose any such matters. We would not envisage that a more limited sweeper of this type would require PISCES companies to undertake an additional diligence exercise. It would therefore not impose disproportionate obligations on PISCES companies, but would, however, guard against the risk that investors - including a subset of retail investors - are denied access to information which is within the knowledge of directors and/or senior managers and which is material to their investment decision. In this context, we would highlight that good standards of disclosure, which would be supported by the application of a more circumscribed form of sweeper, would bolster the integrity of the PISCES market.

Whilst the ask model set out at paragraph 3.25 of the CP would be appropriate in certain circumstances (for example, in the case of an engaged investor base or an investor with sufficient resources and experience to conduct an in-depth diligence exercise), a modified sweeper model would help to ensure that appropriate disclosure is made in the instances where additional questions may not be asked and material information, which is not otherwise captured by the core disclosures and which is within the knowledge of directors and/or senior managers, is therefore not elicited. This could lead to both investor harm and reputational risk for PISCES in the event that such relevant information is not disclosed ahead of a trading event and investors suffer loss as a result.

Core information disclosures

In respect of the core disclosures, although the policy intention is to capture the type of information a purchaser would typically expect to receive in a private market context, as set out above, the core information requirements arguably go beyond this, resembling prospectus content requirements. Indeed, a number of the core information disclosures appear to be broader than the equivalent UK Prospectus Regulation requirements – for example, the material contracts disclosure requirement is not limited by reference to a look-back period or an ordinary course exclusion. An extensive list of disclosures, which is comparable to a "prospectus lite" approach adopted in public markets, and where a number of the disclosures are not necessarily useful or relevant to investors, risks imposing disproportionate burdens and costs on issuers, thereby undermining a key policy objective. Were a soft-form of sweeper to be implemented, we think that this would correspondingly allow for a reduced mandatory list of disclosure requirements, with a view to the disclosure output(s) being shorter, more succinct and ultimately more useful for investors.

Fair disclosure

In order to ensure the viability of a PISCES platform, not only must disclosure of relevant information be facilitated, but it will also be important to ensure that disclosure is fair. In this context, we note that it is proposed that a PISCES operator's rules must ensure that a company presents its PISCES regulated information in an easily analysable, concise and comprehensible form. Our view is that this formulation is rather subjective and could lead to differing standards and methods being applied across operator portals. Further, there is a concern that, as information is updated periodically ahead of each trading period, over time operator portals could become heavily polluted with information which is no longer relevant. This in turn increases the risk that material disclosures may be missed by investors. In order to minimise this risk, in line with the proposal that PISCES companies would remain responsible for reviewing and assessing the clarity, reasonableness and/or accuracy of disclosures before they are disclosed, we believe that PISCES companies should be required to review and filter the information available on a portal to determine whether it remains material and relevant or to highlight its historic nature.

Legitimate omissions

In respect of the proposals relating to legitimate omissions, we do not think that permitting omissions when, for example, disclosure could prejudice the PISCES company's (or its stakeholders') interests is appropriate or necessary. A less prescriptive approach to core disclosure requirements, as proposed above, would enable PISCES companies to disclose information to investors without compromising company or stakeholder interests. Withholding information could lead to potential legal challenges if omitted information comes to light and it is considered that such omitted information would have been relevant to an investment decision. This could be damaging to public confidence in PISCES.

In addition, any concerns about information sharing with third parties can be addressed through selective investor participation in trading events, as is already anticipated, and by allowing PISCES companies to provide information in a non-downloadable and non-printable format and to withdraw access to the information after the trading event. The rules could also permit, as is common in private market practice, delaying disclosure of sensitive information until later in the process (for example, once an investor has conditionally agreed to participate in the trading event), although we appreciate that this might add a layer of complexity to the process.

Post-trade disclosures

We consider it unnecessary and disproportionate to impose post-trade disclosure requirements. The FCA states (at paragraph 3.52 of the CP) that the post-trade disclosures "will give investors useful transparency about how directors in PISCES companies traded and whether a trading event affected who exercises control over the PISCES company". The FCA's objective in this regard is already met by the core information disclosure requirements proposed in respect of directors' transactions (Rule 2.3.2(7)) and major shareholders (Rule 2.3.2(13)). The proposed rules require that this core information is disseminated sufficiently in advance of trading to permit

investors to analyse and understand the information, and until the end of the trading event. We believe, therefore, that these core information requirements are sufficient in giving investors adequate transparency and, together with the professional and/or experienced nature of the investors eligible to participate in the PISCES sandbox arrangements, mean that we consider that no mandatory minimum post-trade disclosures should be included in the final rules. Further, we would note that PISCES operators could introduce post-trade disclosure requirements on a voluntary basis if they consider it appropriate.