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26 February 2025

Mark Nicol
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Email: cp24-29@fca.org.uk

Dear Sir / Madam,

**CP24/29: Private Intermittent Securities and Capital Exchange System: sandbox arrangements**

The City of London Law Society ("**CLLS**") represents approximately 17,000 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, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its specialist committees.

This response has been prepared by the CLLS Regulatory Law Committee (the "**Committee**" or "**we**"), a list of whose members can be found on the CLLS website. The Committee not only responds to consultations but also proactively raises concerns where it becomes aware of issues which it considers to be of importance in a regulatory context.

**Introduction to response**

The Committee has considered FCA's consultation paper CP 24/29, "Private Intermittent Securities and Capital Exchange System: Sandbox Arrangements", of 17 December 2024 (the **"Consultation"**). The Committee is grateful to FCA for the consultation and their work in putting together such a detailed and wide ranging consultation.

Please note that we do not comment on each question and only set out those questions for which we have comments to provide.

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| 1 | **Do you agree with the proposed response to disclosure?** |
| | The FCA's expectation is that the nature of the PISCES operator's disclosure rules and arrangements will reflect the relative sophistication of its expected market participants. We appreciate the balance that the FCA is seeking to strike between being overly prescriptive and allowing Pisces companies to meet their reasonable disclosure requirements whilst reflecting different business models. Nonetheless, we consider that it should be possible for one set of disclosure requirements to apply to all PISCES companies.<br><br>It would also be preferable for the core disclosures to contain a standard set of requirements for PISCES companies to follow, and for investors to have the ability to ask and receive answers to questions. However, we are concerned with any proposal that a sweeper model could also apply in addition. The sweeper model is not part of the market's approach to private capital raising, and is a discouragement to using PISCES as a result. Lack of standardisation between PISCES operators is also likely to result in different PISCES operators requiring different sets of information to be produced. This may lead to confusion and uncertainty for both investors and also PISCES |

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| | companies. This is particularly the case given the liability regime proposed by HMT in regulation 8 and Schedule 2 to the PISCES Regulations (as currently proposed). By way of practical example, if there were two PISCES companies with ostensibly similar business models but PISCES company A was on a platform using a sweeper model and chose to include additional information under that sweeper-model, but PISCES company B was on a different platform and did not, there may be a presumption applied to PISCES company B that it had not made (and its directors had failed to make) adequate disclosure or that it had omitted information. This could in turn lead to over-disclosure by PISCES companies thereby diluting the usefulness of the core information that is required to be provided.<br><br>The FCA also noted that they would expect PISCES operators to undertake a level of proactive oversight of disclosures (paragraph 3.28 of CP24/29). To reduce uncertainty for PISCES operators in designing their compliance models (which could lead to disparity between operators), it would be helpful if the FCA confirmed that checking the "general completeness of disclosures" would discharge the requirement to "undertake a level of proactive oversight of disclosures". In particular, we would ask that it be made clear that PISCES operators should not be expected or required to approve disclosures as financial promotions as this would give rise to significant uncertainty and potential conflicts of interest for prospective operators. |
| 3 | **Do you agree with the proposed 10% threshold for identifying major shareholders?** |
| | No. It is unclear why the proposed threshold for disclosure of major shareholdings is set at 10%. The language used in item 13 of table (paragraph 3.14 of CP 24/29) would suggest that the FCA is looking to the change of controller regime in Part XII FSMA in suggesting a 10% threshold. Given that many PISCES companies will not be approved persons, we consider that this would give rise to significant uncertainty amongst PISCES companies.<br><br>We would instead suggest that the FCA adopts the PSC register threshold under Companies Act 2006 of 25% and above for disclosure of major shareholdings. PISCES companies will have a clearer understanding of requirements at this level given they should already be familiar with it. |
| 4 | **Do you agree with the proposed approach for PISCES operators to specify their own arrangements for identifying major shareholders rather than using the PSC Register?** |
| | Please see response to Question 3. |
| 6 | **Do you agree with the proposed information included on the core information list?** |
| | Some of the categories of information falling within the core disclosure list would benefit from greater clarity. For example, the obligation to include information about key material risk factors specific to the PISCES company and its shares appears to be too onerous. There is no guidance on what the risk factors ought to be, only on what constitutes materiality. This may result in the PISCES companies seeking to cover all possible risks and adopting a shopping-list approach to disclosure, rather than just key material risks, which would be unhelpful to the investors.<br><br>Similarly, some PISCES companies may not wish to provide details of key customer contracts, key suppliers or strategic partners as this might disclose too much about their business. Furthermore, confidentiality provisions are likely to mean that PISCES companies cannot include anything meaningful in respect of such contracts. |

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| 7 | **Do you agree with the proposed approach to set out options for the disclosure of additional information?** |
| | Please see our response to question 1. We are of the view that including an expectation that a PISCES operator must require the disclosure of additional information (other than where a core disclosure item has been omitted or is clearly deficient) supports the presumption that core disclosure is not sufficient on its own. |
| 9 | **Do you prefer the alternative approach of mandating a sweeper arrangement, to disclose supplementary information?** |
| | No. Whilst we appreciate that a sweeper model may help allow a shorter set of core information disclosure requirements, the proposed alternative sweeper would not remove or reduce the concerns we have referred to in our responses to questions 1 and 7 above. In particular, we anticipate that the inclusion of a mandatory sweeper would risk lowering the threshold for disclosure from "material" (such as in the reference to "material risks" under category 11 of the table in paragraph 3.14 and proposed PS 2.3.2R((11)), to an expectation that PISCES companies disclose "any" information. The scope of this obligation is also likely to cause concern to the boards of PISCES companies tasked with determining what supplementary information they would be expected to disclose. This will provide considerable uncertainty and could lead to an imbalance of information between different PISCES companies and different operators. |
| 11 | **Do you agree with our proposed approach for rules on legitimate omissions of PISCES core disclosure information?** |
| | In respect of the approach to omission of core disclosure information in proposed rule PS 2.3.3R(1) and (2), we see a risk to PISCES companies who are unable to include information for legitimate commercial reasons. PISCES companies may struggle to find the correct balance when including sufficient detail about what information has been omitted. Too little and they risk incurring liability for disclosed information by omission. Including too much and they may risk breaching the confidentiality obligations or publicising the very situation, contract or event that they were seeking to keep confidential. This could similarly cause uncertainty for PISCES operators when reviewing core disclosure statements and intermediaries when seeking to advise PISCES company clients (including, for example, were they to need to approve such disclosures as financial promotions under the gateway). |
| 21 | **Do you agree with the proposed approach to price parameters?** |
| | We consider this to be the key feature of the model. The FCA has not proposed any specific requirements on how PISCES operators should monitor the use of price parameters. At the same time, the FCA expects that arrangements for the use of price parameters should meet the obligations under MAR 5, RRRs and accompanying REC rules. Given the potential for liability in the event that price parameters are intentionally used to manipulate the market, it would be helpful if the FCA included guidance on criteria it would wish to set for price parameters. |
| 22 | **Do you agree with the proposed approach to PISCES permissioned trading events?** |
| | Whilst we agree in principle with the use of PISCES permissioned trading and consider that it would be a necessary feature for many potential PISCES companies (or their main shareholders), care needs to be taken in how this concept is provided for. |

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| | In particular, we note that PS 3.2.2R(1) states that permissioned trading must preserve the legitimate commercial interests of the PISCES company. We would recommend that this be extended to the interests of the shareholder or controlling group. In the context of a private equity ("**PE**") owned business, it may not necessarily be against the commercial interests of the PISCES company itself for its shares to be owned by a competing PE firm, but it could clearly be against the interests of the controlling PE firm for a competitor to have access to the commercial business information of a portfolio company that happens to be PISCES company. If the PE firm owners were not clearly able to assert these kinds of protections, it seems unlikely that they would allow their portfolio companies to be included on a PISCES. |
| 24 | **Do you agree with the proposed approach to PISCES pre- and post-trade transparency data – including the required data and the dissemination and record-keeping of transparency data?** |
| | Given the requirement on a PISCES operator to maintain records of PISCES transparency data for five years, we would be grateful if the FCA could clarify what information on historic pricing is required by the core disclosure rules. There is currently uncertainty whether this would cover details of the traded price and volume on the last PISCES trading event or the last traded price of an admitted PISCES share and the volume of admitted PISCES shares traded at any previous relevant PISCES trading events. |
| 31 | **Do you agree with the proposed approach to manipulative trading practices as described above?** |
| | The FCA proposes to require PISCES operators to put in place rules and measures to detect and prevent manipulative trading practices on their PISCES. The FCA also does not intend to specify types of manipulative trading practices that Pisces operators should prohibit. This could lead to the types of behaviours amounting to an offence varying between different PISCES operators/venues. Moreover, given the obligation on intermediaries to identify and report potential market abuse to the FCA, there must be clarity as to what constitutes the offending behaviour to enable them to properly discharge this obligation (and in turn to take a consistent approach with the different PISCES platforms through which they trade). |
| 33 | **Do you agree with the proposed approach to notification requirements?** |
| | The FCA's proposal includes a requirement for PISCES operators to notify the FCA where they know, or suspect, or have reasonable grounds for knowing or suspecting that disclosures by PISCES companies constitute misleading statements. The FCA should make clear that the PISCES operators are not required to conduct any due diligence checks to satisfy themselves that there are no reasonable grounds for considering whether statements made by the company were misleading. Otherwise, this would impose too burdensome obligation which should be avoided in order to ensure the attractiveness of the model. |
| 41 | **Do you agree with our proposal to impose a requirement for employees that are not hight net worth or sophisticated investors to sign a restricted investor statement?** |
| | No. We consider that this is likely to be too burdensome, particularly with the additional appropriateness assessment that the FCA is additionally proposing. Under the PISCES regulations, a "qualifying investor" will only be able to acquire shares through a PISCES in the particular PISCES company for which they are qualifying. To further restrict the amount of investment for such qualifying investors to 10% of net assets will present a significant hurdle and in practice will likely mean that only the most senior persons in a PISCES company will be able to participate in those arrangements. The application of the appropriateness test in PS 5.5.13 onwards should therefore be sufficient without this additional requirement. |

We hope the above feedback will be useful to you. If you would like to discuss any of these comments then we would be happy to do so. Please contact Hannah Meakin by telephone on +44 (0)20 7444 2102 or by email at hannah.meakin@nortonrosefulbright.com in the first instance.

Yours faithfully

**Hannah Meakin**
*Chair, CLLS Regulatory Law Committee*