

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

By email: cp24-29@fca.org.uk

17 February 2025

Dear Mr Nicol,

RE: CP24/29 Private Intermittent Securities and Capital Exchange System: Sandbox Arrangements

The British Private Equity and Venture Capital Association (BVCA) is the industry body and public policy advocate for the private equity and venture capital (private capital) industry in the UK. We represent the vast majority of all UK-based private capital firms, as well as their professional advisers and a large base of UK and global investors. In 2023, a total of £59.6bn was raised by UK-managed funds to be invested globally, with £20.1bn having been invested by private capital into UK businesses in sectors across the UK economy. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Approximately 58% of the businesses backed are outside of London and 90% of the businesses receiving investment are small and medium-sized enterprises (SMEs).

We are grateful for the opportunity to provide feedback on the FCA's proposals to facilitate the sandbox arrangements for the Private Intermittent Securities and Capital Exchange System (PISCES). The BVCA welcomes the PISCES proposals and is in broad agreement with the FCA's proposed approach to implementing the regime into the FCA Rules via the sandbox arrangement as set out in CP24/29. As an overarching comment, we are keen to ensure that the regime retains a "private markets plus" approach, rather than a "public markets minus" approach. This will help ensure that the regime is nimble, practical and easy to use both for companies and market participants. We set out some detailed comments on specific areas of the consultation below, by reference to the question numbers included in the consultation. Where we have not commented on a specific question that should be taken to mean that we did not have specific points to make and are broadly supportive of the FCA's proposed approach. We are happy to discuss or clarify any of these points further if that would be helpful.

Question 1: Do you agree with the proposed approach to disclosures? Y/N Please give reasons

Yes. The BVCA welcomes the "private markets plus" approach to disclosures, as distinct from a "public markets minus" approach. We consider that this will make PISCES a more attractive facility to market participants. It is also consistent with the purpose of PISCES in facilitating liquidity in unlisted companies rather than seeking to set up a "light" alternative to a full listing, for which we note the Alternative Investment Market ("AIM") of the London Stock Exchange already represents an attractive solution.

That said, the proposed approach to core disclosures is broader than a private company would typically provide during a fundraising, requiring more extensive information – such as sustainability disclosures, detailed risk factors and forward-looking information – that some members felt tipped the balance towards a "public markets minus" approach. We therefore ask the FCA to carefully consider what

information is genuinely necessary to support informed decision-making while ensuring PISCES will be an attractive option for issuers.

We also note there is a lack of clarity on the accounting standards to which a non-UK company would have to prepare its financials if it were to participate on the platform. We suggest there needs to be as much flexibility as possible to avoid the need for non-UK companies to restate/convert financial information, which would help to maintain a lighter touch disclosure regime and help to make PISCES a more attractive option for non-UK market participants.

If sustainability disclosure obligations are included in the final rules on core disclosures, we would encourage the use of industry emerging standards to satisfy this, such as ESG_VC in venture capital to help keep this standardised and proportionate.

Question 2: Do you agree with the proposed approach for only requiring trading intentions from directors in PISCES companies?

Yes. However, the BVCA would welcome a specific additional clarification that the regime is not intended to capture positions held by institutional investors – for example, that a position held by a private equity fund would not be captured solely because a member or employee of the manager of that fund was appointed to the board of directors of the issuer.

Question 3: Do you agree with the proposed 10% threshold for identifying major shareholders?

Yes, however for similar reasons to question 2 above we consider that non-directors should be excluded from this.

An alternative approach for non-director major shareholders could be to rely on the Companies House PSC (Persons with Significant Control) register, avoiding unnecessary repetition of publicly available data. Using the existing PSC thresholds for PISCES purposes would align with established disclosure practices, reducing administrative burdens while still ensuring transparency. This approach would help streamline requirements without imposing additional obligations on issuers.

Questions 6 to 14:

In general, we agree with each of these proposals. However, we set out some specific comments below:

We are supportive of an "ask" model rather than a prescriptive approach to disclosure obligations. An "ask" model must be efficient and time-limited to prevent a slow and disruptive process. The longer the process takes, the greater the likelihood that updates to published information will be required, adding complexity and the potential for delay. Efficiency is key to maintaining a streamlined and effective disclosure system in a "private markets plus" context.

We do not consider that a "sweeper" disclosure obligation would be practical in the context of a "private markets plus" approach as this would risk unintentionally creating a prospectus style regime, through an inevitably cautious interpretation of such an over-arching disclosure obligation by companies and their advisers. A "sweeper" obligation could also pose challenges for firms related to the disclosure of sensitive information that could affect competitive positioning.

Question 17: Do you agree with the information we have specified as forward-looking statements in the core disclosure information? Y/N. Please give your reasons.

In general, we agree with the proposals relating to disclosure liability. However, we would encourage the FCA to be clear with stakeholders that the negligence standard for core disclosures is intended as a back-stop, i.e. liability would only arise in cases of clear negligence – where an issuer fails to take reasonable care in preparing disclosures. So as not to risk creating a prospectus style disclosure obligation inadvertently, we suggest that the goal be to provide investor protection without deterring issuers with excessive legal risk.

Question 18: Do you agree with the proposed approach to the technical requirements for disclosure arrangements?

In general, we agree with this proposed approach but with one significant caveat: the obligation on PISCES operators to notify the FCA where they know or suspect (or even have reasonable grounds for knowing or suspecting) that disclosures by PISCES companies constitute misleading statements is likely to create a significant additional verification burden for operators, which will inevitably make the regime more costly and time consuming for end users. Either removing this obligation entirely or, failing that, limiting it to actual knowledge would significantly reduce the burden on operators to verify materials produced by companies using the platforms. As with our comments in relation to disclosure more generally, our concern here is very much to ensure that the platform adopts a "private markets plus" approach, rather than creating something closer to a streamlined public market, as the latter would be likely to significantly diminish the number of viable use cases.

Question 21: Do you agree with the proposed approach to price parameters?

Yes, we agree. However, we would welcome clarification that companies are not expected or required (but may choose to) to obtain formal external assurance of the validity of the price parameters set.

Question 22: Do you agree with the proposed approach to PISCES permitted trading events?

Yes, we broadly agree with the approach and consider that this is a very important aspect of the proposed regime.

We would like to note that careful consideration will have to be given to the participation of U.S. investors, as buyers on PISCES, as their participation would trigger U.S. securities law issues. If U.S. investors are allowed to participate as buyers on PISCES, it will be essential to ensure that a private placement exemption is available for the sale to such U.S. investors and, therefore, it would be important to clarify the process for ensuring compliance with U.S. securities laws. Furthermore, shares purchased by U.S. investors will be subject to transfer restrictions inside the U.S. and such restrictions on the shares would have to be discussed with the clearing system.

Question 31: Do you agree with the proposed approach to manipulative trading practices?

Yes, we agree. However, we would welcome clarification that operators' systems and controls oversight are not expected to be as stringent as would be the case on a regulated market.

Question 35: Do you agree with the proposed guidance for intermediaries on market manipulation?

Yes, with a caveat. We agree that intermediaries should not be subject to requirements like those under UK MAR. However, we encourage the FCA to ensure that any guidance on expectations for intermediaries nevertheless plays a role in protecting market integrity, and countering the risk of financial crime cannot be translated in practice into an expectation that intermediaries directly diligence every transaction on the platform. This would again risk creating an extensive verification regime that would be more analogous to a "public markets plus" than a "private markets minus" model.

Questions 38 to 44:

We agree in principle with the concept of additional controls to protect retail investors. However, we encourage the FCA to ensure that the requirements imposed on intermediaries do not lead to increased cost and time delay for companies seeking to use the market and are strictly proportionate to the context of a "private markets plus" model. More broadly, we encourage the FCA to carefully consider the total cost to PISCES companies of participating on the PISCES platform, including intermediary fees, platform fees, legal fees etc., especially from the perspective of smaller companies.

As mentioned above, we would again like to note that careful consideration will have to be given to the participation of any U.S. investors, as buyers on PISCES, as their participation would trigger U.S. securities law issues. If U.S. investors are allowed to participate as buyers on PISCES, it will be essential to ensure that a private placement exemption is available for the sale to such U.S. investors and, therefore, it would be important to clarify the process for ensuring compliance with U.S. securities laws. Furthermore, shares purchased by U.S. investors will be subject to transfer restrictions inside the U.S. and such restrictions on the shares would have to be discussed with the clearing system.

Questions 46 to 51:

Yes, we agree with the proposed approach to modifying the application of handbook rules and guidance in principle. However, we encourage the FCA to consider going further in relation to UCITS schemes and NURS schemes and enabling a greater proportion than 10 and 20 per cent (respectively) to be invested in platform traded companies given the enhanced liquidity compared to purely private companies.

If you have any questions or points it would be helpful to discuss further, please contact Nick Chipperfield (nchipperfield@bvca.co.uk) and Tom Taylor (ttaylor@bvca.co.uk).

Yours sincerely,



Tom Taylor
BVCA, Head of Policy (Legal and Regulatory)