

The Life of PISCES

You don't need a horoscope to predict the imminent arrival of PISCES – a market for unlisted company shares. Is this a liquidity boon? Or a potential governance headache?

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Listing a company's shares on a stock exchange offers access to capital and a wider shareholder base that is not otherwise available. But these benefits come with significant cost and additional regulatory burdens. It is certainly not an appropriate or feasible choice for many organisations.

The UK's stock markets have been struggling to attract and retain issuers for some time. The dearth of IPOs has become systemic, and delistings are now relatively commonplace. A net decline in the number of London-listed businesses indicates ever-fewer companies now see full listing as a good fit.

Private businesses seeking external investors have, until now, had limited other options, particularly if existing owners prefer not to lose overall control by selling out to private equity or trade buyer. There are schemes that enable sophisticated individuals to buy minority stakes but, by their nature, those new shareholders will generally want to liquidate their investments within a relatively small number of years. Pressure to create an exit event in the short-term may not align with the longer-term business strategy which can create tension. So this is not a perfect solution for all private businesses.

A markets solution

To address this gap, the FCA is now creating PISCES platforms (see box, right) as another option for unlisted company share trading, enabling them to access a market for their shares. For investors, the ability to sell their stake overcomes a major barrier to investment in otherwise illiquid shares.

The combination of lower costs and burdens for companies compared to full listings – while providing flexibility for shareholders to buy and sell to their own timetable – makes PISCES an important new tool in creating additional momentum for UK growth.

Assessing the opportunity

Firstly, directors will want to think about whether PISCES is the right platform for their company's shares to be traded. Considerations will start with the strategic rationale for creating a wider market for the company's securities. Does the business already have a diverse shareholder base of founders, early-stage investors and employees who would appreciate greater share ownership flexibility? Could creating a market for the shares take pressure off the board

to generate a full sale of the business in order to enable shareholders to cash-out their investment?

Board assurance

If the board chooses PISCES, it will need to assure itself that it can meet the disclosure requirements. It will need confidence in the processes, procedures and resources available to the company to publish accurate and complete information to the market.

Higher-standard governance arrangements may be needed, particularly if lines between management and board are currently blurred and more informal than investors might demand. Directors will need to work out how to develop stronger governance and oversight if current arrangements are not robust enough to meet the new expectations.

Additional disclosures will inevitably expose the business to greater scrutiny and, to some extent, may compromise the degree of privacy that it currently enjoys. Directors will need to ensure they are comfortable with that partial loss of privacy as a non-financial cost of trading on PISCES, although they should be relieved to see that a PISCES operator's rules can exempt them from disclosure of anything that is commercially sensitive where publication would, for example, prejudice their legitimate interests.

Sensibly, companies will also be able to exclude disclosure requirements which are not relevant to them. An example might be in relation to employee share schemes if they have no such schemes in place.

What is PISCES?

PISCES stands for **Private Intermittent Securities and Capital Exchange System**, a new form of market for trading unlisted company shares to be launched later this year. It will allow founders, early-stage investors, and employees to trade their shares.

Different PISCES operators will set up separate PISCES markets, offering choice for companies. Boards will also be able to select how frequently they want trading events to occur, whether to offer CREST for managing settlement, and whether to set upper and lower share price limits. Companies will be subject to lighter-touch disclosure requirements compared to a full listing regime.



New costs

There will inevitably be an expense associated with joining PISCES, including adviser, registrar and PISCES operator platform fees. Like any business proposal, directors will want to be convinced that the benefits outweigh the costs. Those benefits might include the greater flexibility to incentivise employees through share-based schemes that result in liquid assets rather than having to create artificial mechanisms for colleagues to realise the cash value of their shares or needing them to wait for a full exit event.

Choosing the right PISCES operator

Secondly, directors will need to explore which PISCES operator best fits with their vision and objectives. Prospective PISCES operators are currently able to apply to be part of the FCA's sandbox phase. The flexibility provided by the FCA Rules for PISCES operators means that not all will necessarily take the same approach.

In particular, PISCES operators will be able to determine the disclosure arrangements they put in place and what company information they will mandate within the 'core' disclosure framework set by the FCA. Comparing the rules of individual PISCES market operators may help inform a company's choice of platform, but other factors will also come into play.

Asset Match, which already operates a leading online platform for trading unquoted securities, has confirmed that it is applying to be a PISCES operator as part of the FCA's sandbox. It has extensive experience of running periodic share auctions for companies on its platform, and this track record is likely to bring comfort to early adopters who want assurance that their provider is reliable, with robust technology to deliver trades in a convenient and timely manner for both buyers and sellers.

"The PISCES regulatory framework effectively rubber stamps the model of periodic liquidity we have operated for 13 years, so we'd like to think we are ahead of the curve and companies can lean on that experience," says Ben Weaver of Asset Match. "There will be several PISCES operators, including Asset Match, so companies wishing to explore whether this is the right path for them should look at the available options and do their due diligence before making their selection."

Appointing a registrar

Assuming the company wishes its shares to be traded in CREST, the central securities depository that can be used for electronic settlement, it will no longer be practical to



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maintain shareholder records in-house – and a CREST-enabled registrar will be needed to maintain the share register and record share issues and changes of ownership. As well as comparing costs between the available registrar firms, directors will want to consider how their shareholders will be able to engage with the registrar and how they will access their records. With increasing expectations that personal investments can be fully managed via a smart phone or other device, the registrar's digital capabilities will be an important issue.

Jai Baker is Head of Business Development for Avenir registrars, which believes it is leading the way on the use of technology to offer convenience for shareholders. He stresses companies joining PISCES should prioritise digital capability among the factors they consider when it comes to choosing a registrar. "PISCES represents a step-change in how private markets operate, and digital capability will be essential to unlocking its full potential," he says. "From CREST compatibility to seamless investor communications, companies will need a registrar that's built for this new environment... [that's] designed its systems to support fully digital registers, of any size."

Additional legal support

Of course, some legal advice will also be required, including to ensure the company's articles are PISCES-compliant. Penny Paddle, a Partner at global legal practice, Spencer West, who specialises in corporate transactions and corporate governance says, "The majority of private or unlisted public companies are likely to have either Articles of Association or Shareholders' Agreements in place that contain provisions, such as pre-emption rights which will need to be removed. Prior to applying to trade their shares through a PISCES operator, it will be important for companies to have these documents legally reviewed and updated to ensure PISCES compliance, the wider details of which will become clearer once platforms launch."

Planning for disclosures

Directors will be responsible for making various disclosures in advance of each trading event. The period between trading events is a choice that companies will be free to make, with more regular events potentially increasing the disclosures burden. Others may feel that keeping disclosures up-to-date on a more frequent basis could be more manageable than occasionally conducting substantial reviews with lots of changes.

The degree of detail to be incorporated will be subject to the particular PISCES operator's own rules, but the core requirements will include:

- business overview (including any material sustainability issues)
- management overview
- financial information (not subject to any particular mandatory accounting standards or any audit requirement beyond normal company law requirements)
- material provisions of any shareholder agreement
- if relevant, employee share schemes on an aggregated basis without identifying individual directors' remuneration details
- directors' transactions and trading intentions prior to a trading event
- an overview of material contracts excluding those in the ordinary course of business
- previous share capital raises (last three years)
- key material risk factors
- major shareholders
- valuations and price parameters
- contact details.

But there will be no requirement under the new regime to make forward-looking statements.

Managing governance requirements

While the FCA has tried to reach a balanced and proportionate disclosure regime within the PISCES rules, the sandbox phase will provide an opportunity to learn what is working as intended (or not) so adjustments can be made.

One of the problems identified with listed markets is that new requirements have tended to be additive – creating, over time, a substantially more burdensome regime. With PISCES reserved as a market for more sophisticated investors who are aware of the risks and able to interpret and understand the current position of the company prior to each trading event, it is to be hoped that the PISCES experience does not

suffer the same fate and become increasingly onerous for companies to comply with.

Inevitably, however, there will be compliance issues and the disclosure requirements, in particular, will require directors to have adequate assurance that the information presented is accurate and complete.

Without appropriate governance arrangements in place, the board is going to struggle to meet those expectations. Boards will therefore need to think about what resource they have in place to support them, and whether it is sufficient, both in terms of capacity and capability.

There is undoubtedly a role here for governance professionals. The company's chosen trading frequency will likely create fluctuations in demand for company secretarial resource and, accordingly, an outsourced model may offer a more efficient and effective model to provide that flexibility. Alternatively, the function could be incorporated into the role of an existing employee provided they have the knowledge and experience, or can be trained, to deliver the elevated level of governance that will be required.

A new dawn for UK markets?

PISCES offers an exciting alternative for privately-owned businesses to transition to a more fluid and flexible ownership model with shareholders who remain enthusiastic owners rather than ones that feel trapped with no opportunity to sell their stake. In providing a route to liquidity, PISCES should facilitate increased investment and growth in UK businesses.

The PISCES checklist

1. The rationale for trading on PISCES:
 - to broaden your shareholder base
 - to provide liquidity for investors
2. Can you meet the enhanced disclosure requirements?
3. How frequently will trading events be offered, and will CREST trading be enabled?
4. Additional costs and choice of key partners:
 - PISCES operator
 - share registrars
 - legal advisers
 - governance resource

