



HM Treasury

# Draft Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System Sandbox) Regulations 2025

## **Policy note**

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# Chapter 1

## Background

### Introduction

1.1 This document provides commentary on the provisions in the draft Private Intermittent Securities and Capital Exchange System (PISCES) Sandbox Statutory Instrument (“the SI”), in order to aid the reader in reviewing the SI.<sup>1</sup>

1.2 This is a draft SI and should not be treated as final. It is being published for technical checks, such as any significant errors or oversights in the legal drafting that would mean that the provisions in this SI would not achieve the desired outcomes explained in this note, or that would lead to significant unintended consequences. The drafting approach, and other technical aspects of the proposal, may change before the final instrument is laid before Parliament.

1.3 Any comments should be provided to [PISCES@hmtreasury.gov.uk](mailto:PISCES@hmtreasury.gov.uk) by 9 January 2025.

### Overview – PISCES Sandbox

1.4 As set out in Chapter 2 of the consultation response, PISCES will be established in an FMI sandbox.<sup>2</sup> The Financial Services and Markets Act (FSMA) 2023 allows the Government to establish FMI sandboxes, which includes provision to temporarily modify or not apply certain legislation, to support market operators to trial new or developing FMI technology or practices. It also allows the Government to confer powers on the regulators to do the same in connection with technical standards and rules.

1.5 This SI will create the PISCES Sandbox, which will be overseen by the FCA. The SI sets the framework for potential PISCES operators to apply to enter the sandbox, and sets requirements that those operators and other persons will be subject to when interacting with a PISCES platform. Those persons operating or interacting with a PISCES platform will be subject to new requirements set out in this SI and all existing legislation that would otherwise apply, subject to the modifications made in the schedules to the SI, and FCA rules.

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<sup>1</sup> Draft Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System Sandbox) Regulations 2025, <https://www.gov.uk/government/consultations/private-intermittent-securities-and-capital-exchange-systems-piscs-consultation>.

<sup>2</sup> Private Intermittent Securities and Capital Exchange System (PISCES): Consultation response, November 2024, <https://www.gov.uk/government/consultations/private-intermittent-securities-and-capital-exchange-systems-piscs-consultation>.

# Chapter 2

## Commentary on draft SI

### Interpretation (regulation 2)

2.1 Regulation 2 defines several key terms used in the SI. For example, it defines the concept of “intermittent”, to reflect that trading on PISCES should not resemble continuous trading on public markets. Instead, PISCES trading events should be of limited duration and take place intermittently (for example, monthly, quarterly, annually or even on an ad-hoc basis).

### Persons who may apply for approval to operate a PISCES (regulation 3)

2.2 Regulation 3 makes provision for the PISCES Sandbox, setting out who can apply to operate a PISCES platform and who can participate in the activities connected to the trading of shares on an approved PISCES platform (which will take place under temporarily modified and disapplied legislation).

2.3 Regulation 3(2) defines PISCES as a multilateral system which facilitates a secondary market for the intermittent trading of shares and which should accommodate at least one of the possible features detailed in the consultation response, such as company discretion on the frequency of trading events, who company information is disclosed to, or which investors can buy shares in the company through PISCES.

2.4 Regulation 3(4) limits the types of persons that can apply to the FCA to operate PISCES, namely:

- Persons with a Recognised Investment Exchange Exempt Person Status under FSMA 2000,
- Firms with an FCA permission to ‘arrange deals in investments’, ‘operate an MTF’ or ‘operate an OTF’ under part 4A FSMA 2000.

### Persons who may participate in the FMI sandbox arrangements (regulation 4)

2.5 Regulation 4(1) provides that where existing shareholders, new investors, companies, intermediaries and other persons are carrying on activities related to a PISCES platform, they are participating in the sandbox. This means that they may be subject to regulatory requirements and the schedule of temporarily modified and disapplied legislation in this SI and FCA rules related to the sandbox. These other persons will not need to apply to the FCA to interact with a PISCES

platform, but they will need to be aware of and comply with their regulatory obligations while participating in the sandbox.

**2.6** Regulation 4(2) defines the types of companies allowed to have their shares traded on a PISCES platform.

**2.7** Regulation 4(3) provides the following categories of investor can buy shares (Regulation 4(3)(a) to (h)), including:

- professional clients as defined in MiFIR;
- sophisticated investors and high net worth individuals as defined in the Financial Promotion Order;
- employees, directors and others appointed by the company, who are listed as 'qualifying persons' in Regulation 4(4). Those taking orders from employees, may rely on a certified list of employees supplied by the company to confirm their eligibility to trade on PISCES (regulation 4(7)). Employees may buy shares directly or via share incentive plans and employment benefit trusts.

**2.8** The intention is for these definitions to capture the full range of investors eligible to participate on PISCES, from pension funds to family offices.

**2.9** Regulation 4(4) defines a 'qualifying person' as employees, directors and others appointed by the company, for the purpose of buying shares in a company on PISCES. This includes employees directly employed or appointed by a PISCES company, as well as employees within the wider group of the same company where their role is related to the business of the company traded on PISCES.

**2.10** Regulation 4(5) defines the persons who are considered to be an intermediary for the purposes of PISCES. This includes authorised persons as well as appointed representatives where they act as a financial intermediary in relation to PISCES transactions. In line with current arrangements, the authorised principal of appointed representatives would be responsible for anything which the appointed representative has done or omitted as respects business for which the principal has accepted responsibility in writing.

**2.11** Regulation 4(6) places an obligation on the financial intermediaries, as defined in Regulation 4(5), to check the eligibility of a potential investor when taking an order to trade.

**2.12** The requirement to undertake an eligibility check falls on the firm who is interacting with the end client, whether that firm is a regulated intermediary (e.g. a broker or investment bank), or the operator of a PISCES (regulation 4(8)). Where that order is transacted through a chain of intermediaries, those intermediaries and operators that are not dealing directly with the end client are not required to separately verify the client's eligibility (for example where a broker places an order on a PISCES platform via a member firm, only the broker conducts the eligibility check).

**2.13** The firm carrying out the eligibility check must have a reasonable belief that their client, the person making the investment decision and placing the order to invest, meets the criteria set out in this regulation at the time the order is executed. For example, where a family office trust or a fund wishes to buy shares on PISCES, those managing the trust or fund would be the 'end client' for the purpose of the eligibility check. The firm would not need to consider whether the trust's beneficiaries or the fund's clients are retail investors.

## **PISCES application procedure and requirements (regulation 5)**

**2.14** Regulation 5 requires entities wishing to operate a PISCES platform to apply to the FCA for approval. As part of this, it specifies a non-exhaustive list of the information that a prospective PISCES operator's approval application must contain. The FCA may specify further information to be provided as part of an application to be a PISCES operator.

**2.15** The conditions under which the PISCES activities are approved will be set out via the PISCES Approval Notice (PAN) issued to each PISCES operator by the FCA. The Approval Notice will act as a 'visa' detailing the permitted activities and the restrictions in place.

## **Determination of application to operate a PISCES (regulation 6)**

**2.16** Regulation 6 sets out the process for the FCA to consider an application from a prospective PISCES operator, including the power for the FCA to place conditions, limitations or restrictions on a firm, as it considers appropriate, as part of its approval.

## **Sandbox arrangements (regulation 7)**

**2.17** Regulation 7 sets out to whom legislation under the PISCES Sandbox may be applied, as well as for whom the legislation may be modified or disapplied. It applies to any person directly or indirectly providing services to a PISCES operator or carrying out related activities. Further, it also applies to the FCA for the purposes of implementing and operating the PISCES Sandbox. Regulation 7 is intentionally wider than the list of participants in regulation 4(1) to ensure that modified law applies to a person whether or not they intentionally participate or are eligible to do so. Unless a provision in legislation is expressly referenced as modified or disapplied in the Schedule, it will apply to a person engaged in an activity in connection with the PISCES Sandbox as if they were engaged in the same or comparable activity outside of the PISCES Sandbox.

**2.18** Regulation 7 also gives the Treasury the power to direct the FCA to impose restrictions on the overall PISCES Sandbox, should it consider these to be necessary or beneficial for the operation of the sandbox.

## **Liability for disclosed information (regulation 8)**

2.19 Regulation 8 allows a person to claim compensation for false or misleading statements by a PISCES company. Schedule 2 then sets out the PISCES liability regime in more detail for information disclosed through the PISCES operator's arrangements. In particular, it establishes a general recklessness/dishonesty threshold for claims based on information disclosed by a PISCES company. However, for information required under the FCA's mandated core disclosures, a negligence standard will apply. The FCA will consult on the proposed mandated core disclosures in due course. Overall, the intention is for a stricter 'negligence' liability standard to apply to more certain information, such as past financial information, while applying a more lenient 'recklessness' standard to less certain information, such as forward-looking information. The FCA will consult on more detailed rules specifying what constitutes forward-looking information as part of their consultation.

## **Making of FCA rules (regulation 9)**

2.20 Regulation 9 gives the FCA broad powers to make rules it considers necessary or expedient to implement and operate the PISCES Sandbox. These powers will enable the FCA to make new rules, modify existing (or new) rules, or direct how and to whom existing rules may apply or be waived. Regulation 9 also provides several examples of the areas where the FCA will be able to make rules at its discretion.

## **Modifications of technical standards (regulation 10)**

2.21 Regulation 10 allows the FCA to apply, modify or disapply technical standards that it considers necessary or expedient to implement and operate the PISCES Sandbox.

## **Supervision of the FMI sandbox (regulation 11)**

2.22 Regulation 11 requires the FCA to supervise the PISCES Sandbox. As part of this, the instrument gives the FCA certain supervisory powers over PISCES operators, including information requesting powers, as well as a more general power of direction.

## **Date of the report on the FMI sandbox arrangements (regulation 12)**

2.23 Regulation 12 is a placeholder for the date by which the Treasury will be required to submit a report to Parliament with an assessment of the Sandbox.

## Modification, suspension and cancellation of a PISCES Approval Notice (regulation 13)

2.24 Regulation 13 provides the FCA with a power of direction over PISCES operators to modify, suspend or cancel their Approval Notice where there is a breach of any of its obligations as an operator or where the FCA otherwise deems it appropriate.

## Termination (regulation 14)

2.25 Regulation 14 is a placeholder for the end date of the PISCES Sandbox, which will last for five years. Subject to Parliamentary approval under the process set out in FSMA 2023, the Treasury will be able to extend the length of the PISCES Sandbox via further legislation if more time is needed to assess whether the modified regulations are achieving the intended outcomes. Alternatively, the Treasury can make permanent amendments to legislation, subject to Parliamentary approval, before the end of the sandbox. In any case, the Treasury is committed to providing certainty and clear communications to PISCES operators and market participants.

## Schedules

2.26 The draft SI includes some of the modifications that will be made to particular legislation (from the list of relevant enactments) for the purposes of the PISCES Sandbox. This instrument does not contain a full list of proposed modifications to existing legislation. For example, the draft SI does not include all modifications that will be necessary to the Financial Services and Markets Act 2000.

2.27 The draft modifications that are being published are intended to show how the final SI will approach making modifications to legislation, rather than giving the precise modification that the Government intends to make. However, the Government would welcome feedback on the modifications provided.

2.28 This instrument includes the following modifications:

- **Part 2: Modifications to the RRRs:**<sup>3</sup> Modifications to paragraph 9ZD of the Schedule to the Regulations allow Recognised Investment Exchanges (RIEs) to operate a PISCES platform. Modifications to paragraphs 3E and 3H disapply provisions setting out direct regulatory requirements for RIEs, for example in relation to fee structures. The FCA will set direct regulatory requirements for RIEs operating a PISCES platform in its rulebook.
- **Part 3: Modifications to UK MiFIR:** Modifications to Articles 2.1(14) and 2.1(14A) exclude PISCES from the definition of a “multilateral trading facility” or “MTF”. This reflects the position that while PISCES will operate as a multilateral system, it will be subject to its own

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<sup>3</sup> The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (“RRR”).

standalone regulatory requirements within the PISCES Sandbox. The modifications to Article 23 allow investment firms with FCA approval to operate a PISCES platform to operate an internal matching system which executes client orders in shares on a multilateral basis.

- **Part 4: Modifications to Companies Act 2006:** The draft SI modifies Section 756 of the Companies Act to ensure that where existing shares are traded on PISCES, this will not constitute an indirect offer to the public by the company. It also modifies Sections 791 to 828 to give PISCES companies powers to be able to require information from investors they believe to have interests in their shares. However, unlike PLCs, this power is not extended to shareholders holding at least 10% of the paid-up share capital, as this was not deemed to be a proportionate requirement for private companies, and therefore Sections 803-807 are disapplied. Section 819 is modified to limit the burden on PISCES companies that cease to be public companies.
- **Part 5: Modifications to the Financial Services and Markets Act 2000 (FSMA 2000):** In line with the Digital Securities Sandbox regulations,<sup>4</sup> these modifications disapply mandatory consultation and cost-benefit analysis requirements for the FCA, to provide greater flexibility and efficiency for the PISCES Sandbox arrangements. The final instrument will include any further necessary modifications to FSMA 2000, in particular to enable the FCA to retain and where relevant extend supervisory and enforcement powers to related PISCES Sandbox activities. As part of this, a breach of a PISCES operator's Approval Notice, including any conditions, limitations or restrictions, and any directions issued under the sandbox, will be treated as a breach of a 'relevant requirement' for the purposes of disciplinary powers under FSMA 2000.

**2.29** In addition to further modifications to FSMA 2000, the final version of the SI will include various modifications to other relevant enactments, as well as to various pieces of secondary legislation made under FSMA 2000.

**2.30** In particular, the final SI will:

- modify the Financial Promotion Order to ensure that shares on PISCES are considered 'shares in an unlisted company', meaning that the exemptions for high net-worth individuals and self-certified sophisticated investors can be used in relation to PISCES trading events;
- modify the Financial Promotion Order to create a new exemption for the purposes of the PISCES Sandbox to exempt any disclosures that

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<sup>4</sup> The Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023, <https://www.legislation.gov.uk/uksi/2023/1398/made>.

are required or permitted by the FCA or the rules of the PISCES operator from the financial promotion restriction. This will cover the core information and other information that participant companies should include in disclosures, which will be set out in FCA rules;

- modify the MiFID Org Regulation to make clear that any Article 3 MiFID exempt firm operating a PISCES platform will be treated within the PISCES Sandbox as if it were a MiFID firm; and
- modify the Prospectus Regulation and Public Offers and Admissions to Trading Regulations 2023 to ensure that placing shares on PISCES does not trigger a requirement to produce a prospectus.

### **HM Treasury contacts**

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

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