Cross-Border Listings Guide - Vienna Stock Exchange

Continuing obligations/periodic reporting

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# Continuing obligations/periodic reporting

[Last updated: 1 January 2024, unless otherwise noted]

The ongoing reporting obligations of an issuer depend very much on whether its shares are listed on the Official Market or included for trading on the Vienna MTF.

*Official Market*

Any issuer whose securities are listed on the Official Market must treat all shareholders that are in the same situation equally. All facilities and information needed for the exercise of the rights of a shareholder must be available in German if the registered seat of the issuer is in Austria - otherwise English is accepted. If shares are listed on a regulated market in Austria (home member state) and in another EEA Member State, any information must be made available in German and in a second language commonly used in financial circles. Security holder data must be protected. Shareholders must receive information about the place, time and agenda of general meetings as well as on the total number of shares and voting rights and the rights of shareholders to participate in general meetings. With each invitation to a general meeting, shareholders must receive a power of attorney form.

In addition, companies listed on the Official Market are subject to a number of ongoing disclosure obligations, some of which are periodic, while others are event-driven. These obligations include the publication of financial statements, ad hoc disclosures of inside information, notices of general meetings and certain related information, dividend distributions, the issuance of new shares and the agreement or exercise of exchange or conversion rights, warrants, redemption and subscription rights. These obligations apply if Austria is the home member state of the company, as well as to non-EEA companies whose shares are only listed in Austria. In the case of companies whose home member state is another EEA Member State, substantially similar obligations should apply under the law of that EEA Member State, since all obligations are based on EU directives/regulations.

A listed company whose home member state is Austria must report of any changes to shares held by members of corporate bodies (management board, supervisory board) and senior management (directors' dealings). The members of the management board (or comparable senior executives) and members of the supervisory board (or a comparable body) must report their own trades, as well as trades by certain relatives and entities controlled by them (for further details on transactions of managers please see below).

Issuers listed on the Official Market must publish all changes to major holdings, that is threshold notices received from their shareholders. Shareholders must notify the issuer within two trading days. Relevant shareholding reporting thresholds for voting shares are 4%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50% ,75% or 90%. Issuers are, in addition, entitled to include a further reporting threshold of 3% of the voting shares in their articles of association. Further, holders of certain financial instruments (such as call options or instruments that entitle or enable them to achieve a respective shareholding) must report their holdings within two trading days if the above thresholds are met. This information must then be published by the respective issuer.

An issuer must also report holdings of treasury shares if the 5% or 10% threshold is reached or crossed, and it must report the total number of voting shares at the end of every month in which the number of voting shares has changed.

A prime market company must publish a calendar of corporate events with the most important events within two months before the start of the respective financial year.

*Vienna MTF*

For an issuer listed on the Vienna MTF, the disclosure obligations are somewhat less strict. However, since the scope of the Market Abuse Regulation now also includes companies whose securities are traded on MTFs, issuers on the Vienna MTF must still immediately publish inside information that affects the company without undue delay, unless an exemption applies. Moreover, issuers must immediately provide the VSE with all information regarding the issuer and its securities as well as any material changes. Material changes include, among others, changes to the legal framework, changes to the company name, capital measures and insolvency. In light of this obligation, it is customary for the applicant that is the investment firm, credit institution or VSE exchange member signing the application, to enter into an agreement with the issuer that assures a prompt supply of information to the applicant.

*Overview of transparency and disclosure obligations by market segment*

The following tables summarizes the ongoing transparency and disclosure obligations for issuers listed in the prime market segment, the standard market segment and the Vienna MTF of the VSE.

Companies listed on the prime market are under the contractually agreed-on obligation to comply with the provisions of the Austrian Stock Exchange Act as well as with higher transparency, quality and disclosure criteria. This ensures greater recognition among investors:

[Link to Table](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2024-update-10th-edition/vienna-continuing-obligations_1.pdf?sc_lang=en)

The standard market segment includes all shares admitted to the Official Market that do not meet the criteria of the VSE’s prime market. A listing does not require any additional transparency or disclosure obligations beyond those set out in the Austrian Stock Exchange Act:

[Link to Table](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2024-update-10th-edition/vienna-continuing-obligations_2.pdf?sc_lang=en)

The Vienna MTF offers companies with low capital requirements the option of raising capital through the capital market. An issuer has a choice of admission to listing on the direct market plus segment or the direct market segment. Accordingly, their ongoing disclosure obligations differ:

[Link to Table](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2024-update-10th-edition/vienna-continuing-obligations_3.pdf?sc_lang=en)

*\*Pursuant to the Vienna MTF rules of the VSE.*

Most ongoing disclosure requirements under Austrian law apply to foreign companies only in certain instances. Where Austrian law does not apply, the European harmonized regime under the Transparency Directive should make sure that similar obligations would apply under the law of some other EEA country where the company is domiciled or where its shares are listed.

*Ad hoc disclosure of inside information*

All companies traded on the VSE are under the obligation to publish all inside information that affects the company without undue delay (ad hoc disclosure).

In relation to shares, the Market Abuse Regulation defines inside information includes information that:

Is of a precise nature.

Has not been made public.

Relates to one or more issuers or one or more financial instruments.

Would be likely to have a significant effect on the prices of those financial instruments (or related derivatives) if it were made public.

According to the Market Abuse Regulation, information would likely have a significant effect on the prices of financial instruments if a reasonable investor would be likely to use it as part of the basis of an investment decision. This definition includes all material non-public information that is price sensitive, including major agreements, acquisitions or divestitures, major losses, unexpected business interruptions or positive effects, insolvencies and loss of key personnel. Under certain circumstances, an issuer may postpone the ad hoc disclosure temporarily, such as in the case of pending negotiations.

*Financial information*

Companies admitted to trading on the Official Market must publish their accounted annual financial statements within four months after the end of the financial year. The annual financial statements must consist of the balance sheet including the income statement, the notes to the consolidated financial statements and the management report. For the presentation of the annual financial statements, the commercial law or the national requirements apply. If the company is a parent undertaking, the annual financial statements must also be compiled at the consolidated company level.

Furthermore, companies admitted to trading on the Official Market are required to publish half-yearly financial reports, which consist of short-form financial statements, an interim company report and a certification by the management.

*ESG Reporting*

As of 1 January 2024, companies that meet two of the following three criteria, (1) revenue higher than €50 million (approximately US$55.25 million)), (2) balance sheet totals higher than €25 million (approximately US$27.63 million), (3) more than 250 employees (FY average), are considered "large" companies and ought to report in accordance with the CSRD for the 2024 financial year. The directive still needs to be transposed into national law. Such sustainability report needs to include all necessary information with respect to the company's business performance, its results of operations, its position and impact of its activities in relation to environmental, social and employee matters, human rights and the fight against corruption and bribery. As part of non-financial reporting, non-financial companies will have to report comprehensively on all six environmental objectives of the EU Taxonomy regulation for the first time.

*Abuse of inside information and market manipulation*

Shares of companies traded on the VSE (as well as other financial instruments, for example corporate bonds or derivatives) are subject to prohibitions on the abuse of inside information and market manipulation (market abuse). These prohibitions apply in relation to all issuers on the Official Market as well as to issuers whose shares are included in trading on the Vienna MTF.

The abuse of inside information is also a criminal offence punishable by a prison sentence of up to five years. Prohibited behaviors include using inside information in relation to:

Buying or selling financial instruments.

Amending, buying or selling orders.

Offering or recommending financial instruments to a third party.

Market manipulation is prohibited in Austria under the rules of the Market Abuse Regulation. In addition, market manipulation also constitutes a criminal offence pursuant to the Austrian Stock Exchange Act. The relevant prohibited market manipulation actions include transactions or buy and sell orders that:

Give false or misleading signals as to the supply of, demand for, or price of financial instruments.

Secure the price of one or several financial instruments at an abnormal or artificial level.

Further, market manipulation also includes trade or buy/sell orders placed under false pretenses or by any other deceitful actions or forms of deception with a volume of more than €1 million (approximately US$1.11 million) if such behavior may affect the price of the relevant financial instrument, as well as giving false or misleading information or making available false or misleading source data or the dissemination of information that gives false or misleading signals to the market related to financial instruments.

Market manipulation (including attempts) is punishable by a prison sentence of up to five years.

*Directors' dealings*

Persons discharging managerial responsibilities at an issuer must comply with certain reporting requirements according to the Market Abuse Regulation. These persons must generally report all trades that they have concluded for their own account with regard to shares (or securities equivalent to shares of the issuer) that are admitted to the Official Market or the Vienna MTF, as well as any related trades in derivatives or affiliated companies of the issuer. Reporting may be postponed until the total volume of the trades executed reaches the amount of €5,000 (approximately US$5,525). The FMA is authorized to raise the threshold set out in Art. 19 par. 8 of Regulation No 596/2014 to €20,000 (approximately US$22,100), if this serves the purpose of administrative simplification and is expedient to the investors' need for information. Should the threshold amount not be reached by the end of the calendar year, the reporting on these trades may be omitted. Relevant transaction must be reported to the FMA no later than three business days after the transaction.

*Short selling prohibition and reporting requirement*

The EU short selling regime came into force on 1 November 2012. The regime, which is established by the EU Short Selling Regulation (Regulation No 236/2012), contains disclosure requirements and restrictions on short selling. The Regulation provides that significant net short positions on shares, sovereign debts and uncovered positions in sovereign Credit Default Swaps (CDS) are reportable to the relevant competent authority.

The reporting must be made to the FMA by using an electronic reporting tool. A notification will be publicly disclosed if the short position reaches 0.5% of the share capital of an issuer concerned and every further 0.1% above this threshold.

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