



INFORMATION NOTE ON PERIODIC REPORTING UNDER THE STOCK EXCHANGE ACT 2018 (BÖRSEG; BÖRSEGESETZ 2018)

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1 GENERAL

This information note addresses certain thematic areas in relation to the provisions on periodic reporting pursuant to the Stock Exchange Act (BörseG 2018), for which experience has shown there to be difficulty in terms of their practical application. The purpose of this note is to inform issuers about the interpretation of specific requirements that from the FMA's legal perspective are directly derived from the relevant provisions contained in the BörseG 2018 as well as in FMA Regulations issued on the basis of the BörseG 2018. The legal basis remains unaffected by this note. No rights and obligations extending over and above the provisions of the law can be derived from this information note.

2 SPECIFIC FORMAT OF THE ANNUAL FINANCIAL REPORT AND THE HALF-YEARLY FINANCIAL REPORT

Pursuant to Article 124 para. 1 BörseG 2018 the annual financial report comprises of the audited financial statement, the management report, and the declarations by the issuer's legal representatives, stating their names and positions.

Due to the emphasised positioning of the three components in the BörseG, each of the three parts is to be included in a separate chapter in the annual financial report and stated in the table of contents. The same applies for the half-yearly financial report pursuant to Article 125 para. 1 BörseG 2018 for the components listed therein.

If the issuer is obliged to draw up a consolidated financial statement, then the audited financial statement must cover the consolidated financial statement and the annual financial statement of the issuer as the parent undertaking.

Pursuant to Article 150 no. 1 BörseG 2018, all annual financial reports pursuant to Article 124 BörseG 2018 are required to be drawn up in a standardised electronically reporting format ("ESEF format").

3 DECLARATIONS BY THE LEGAL REPRESENTATIVES

The declaration of the legal representatives is one of the three main components of the annual financial report as defined in Article 124 para. 1 BörseG 2018 and the half-yearly financial report as defined in Article 125 para. 1 BörseG 2018 and must be submitted by all legal representatives of the issuer – even if individual legal representatives were not involved in the drawing up of the financial statement due to the division of duties – respectively stating their name and their position (e.g. "*Max*

Muster, Member of the Management Board, responsible for the Divisions for Finances and Participating Interests”).

In the event that the name and position of every individual legal representative is not stated, then the annual financial report fails to comply with the statutory rules.

Regarding the formulation of the declarations, the FMA accepts the usage of the AFRAC Statement¹ “Erklärung aller gesetzlichen Vertreter (Bilanzzeit)” (Declaration of all legal representatives (balance sheet oath), and with regard to the requirement for signatures reference is made to point (9) of the aforementioned AFRAC Statement.

The statutory rules regarding the structure and subject matter of the declarations are to be complied with fully. If the issuer is obliged to draw up a consolidated financial report as part of the annual financial report, then the legal representatives are required to make a declaration for the audited individual financial statement and for the individual management report, as well as for the audited consolidated financial statement and the consolidated management report.

4 AUDIT OPINION

If the issuer is obliged to draw up a consolidated financial statement, then the annual financial report pursuant to Article 124 para. 2 BörseG 2018 must contain both the audit opinion for the audited individual financial statement as well as the audit opinion for the audited consolidated financial statement.

The same applies for the opinion in relation to the adverse audit opinion.

The audit opinion must be published in its entirety together with the annual financial report.

5 HALF-YEARLY FINANCIAL REPORT – AUDITING/AUDIT REVIEW

If the half-yearly financial report was audited or subjected to an audit review, then the audit opinion or the report on the audit review pursuant to Article 125 para. 3 BörseG 2018 is to be replicated in its entirety.

The law (Article 125 para. 3 BörseG 2018) requires as applicable an explicit statement that neither a full audit nor an audit review has occurred. The issuer is therefore obliged to state as applicable that

¹ https://www.afrac.at/wp-content/uploads/AFRAC-Stellungnahme_5_Bilanzzeit_B%c3%b6rseG_B%c3%b6rseG2018.pdf

the half-yearly financial report *„has neither been audited, nor subjected to an audit review”*. It is not sufficient to merely designate the half-yearly financial report as being “unaudited”, since this term does not exclude an audit review having occurred.

Moreover, a report on the audit review shall not be allowed to remain unpublished based on the auditor's material objections.

When conducting the audit review and formulating the reports, the FMA recommends taking into account the relevant expert opinions and recommendations of the Institute of Austrian Auditors (Institut der österreichischen Wirtschaftsprüfer) and the Chamber of Tax Advisors and External Auditors (KSW; Kammer der Steuerberater und Wirtschaftsprüfer) specifically “Fachgutachten des Fachsenats für Unternehmensrechnung und Revision über Grundsätze für die prüferische Durchsicht von Abschlüssen (KFS/PG11)” (*Expert opinion of the Expert Committee for Corporate Accounting and Auditing on principles for the review of financial statements*) and the “Empfehlung des Fachsenats für Unternehmensrecht und Revision zum Umfang einer prüferischen Durchsicht sowie zur Formulierung eines Berichts über die prüferische Durchsicht von Halbjahresfinanzberichten gemäß § 125 BörseG 2018 (KFS/PE16)” (*Recommendation of the Expert Committee for Corporate Law and Auditing on the scope of an audit review and the formulation of a report on the audit review of half-yearly financial reports pursuant to Article 125 BörseG 2018*), as long as the European Commission has not issued a relevant implementing measure.²

6 PUBLICATIONS

The information that is required to be published in accordance with Article 124 BörseG 2018 and Article 125 BörseG 2018 (annual financial report, half-yearly financial report) are considered as “Regulated information” pursuant to Article 118 para. 1 no. 9 in conjunction with Article 1 no. 22 BörseG 2018 and are required pursuant to Article 119 para. 7 BörseG 2018 to be published through an electronic information dissemination system that is widely used at least within the European Union. In accordance with Article 2 para. 2 of the Disclosure and Reporting Regulation³ (VMV 2018) the requirement of a Europe-wide dissemination is deemed to be satisfied, if publication occurs via at least one of the following information dissemination systems: Thomson Reuters, Bloomberg, Dow Jones Newswire.

Regulated information items are generally to be submitted in their entirety to the media, however in the case of annual financial reports pursuant to Article 124 BörseG 2018 and half-year financial reports pursuant to Article 125 BörseG 2018 this requirement shall however be deemed to have been fulfilled pursuant to Article 3 para. 2 VMV 2018, if the announcement in relation to the regulated

² cf. Article 125 para. 5 BörseG 2018

³ FMA Regulation of the Financial Market Authority (FMA) on the dissemination of regulated information and submissions about reports pursuant to Article 17 of Regulation (EU) No 596/2014 on Market Abuse (Disclosure and Reporting Regulation 2018 – (VMV 2018; Verbreitungs- und Meldeverordnung 2018), published in Federal Law Gazette II no. 205/2017, downloadable at www.fma.gv.at

information has been submitted to the media, in which there is a reference to the website from which the corresponding documents are available for downloading (“advisory notice”).

Pursuant to Article 123 para. 1 BörseG 2018 an issuer is obliged to submit the regulated information along with proof of disclosure to the FMA (where Austria is the home Member State), as well as the exchange operating company (where Austria is the home Member State and the issuer's securities are admitted to trade on a regulated market operated by the exchange operating company) and to the OeKB for storage purposes. Pursuant to Article 3 para. 5 VMV 2018 it must particularly be ensured, when submitting the regulated information to the media, that a keyword is visible that is recognisable as a subject line that summarises the significant content of the public disclosure and from which it is possible to identify the name of the party subject to public disclosure obligations.

For example, the following advisory notice would fulfil the listed conditions:

*“Subject: Advisory Notice - Half-yearly financial report of Y-AG with reporting date 30.06.2023:
The half-yearly financial report of Y-AG with the reporting date of 30.06.2023 is available for download on the company’s website at www.mustergesellschaft.at under “Financial Information”:
www.mustergesellschaft.at/financialinformation/halfyearfinancialreport2023.pdf.”*

7 SUBSEQUENT CHANGES TO REPORTS THAT HAVE ALREADY BEEN PUBLISHED

Since in the event of a subsequent change to a report that is subject to regular reporting obligations in turn constitutes “regulated information”, the same disclosure channel - as described in Point 6 - is required to be followed. The announcement must refer to the subsequent change.

It should however be considered whether the requirement for a subsequent change constitutes inside information, which is required to be publicly disclosed by means of ad hoc reporting. The following generally applies in this regard:

8 THE RELATIONSHIP BETWEEN PERIODIC REPORTING AND AD HOC REPORTING

The ad hoc reporting obligation under Article 17 MAR (Market Abuse Regulation - Regulation (EU) No. 596/2014) is triggered where circumstances prevail that are relevant for the financial report to constitute inside information as defined in Article 7 MAR. The public disclosure obligation in accordance with Article 17 MAR in this case exists in addition to the regular reporting obligation and

is not able to be met by merely timely disclosure as defined in Article 124 or Article 125 BörseG 2018 of the respective financial report.

The ad hoc reporting obligation can already be triggered by an individual event (for example a significant deviation of the operative result from the market expectation).

Furthermore, an ad hoc reporting obligation may also be triggered if the information that has already been disclosed subsequently emerge to be incorrect. If for example an annual financial report was published and it subsequently emerges that assets or debts were incorrectly stated in the balance sheet, then it is first necessary to review whether this information meets the criteria for insider information. In the event that it does, this information must be published without delay as an ad hoc report. Where the conditions exist for delaying the disclosure of inside information in accordance with Article 17 (4) MAR, an issuer may delay the public disclosure of the inside information.