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Managers' Transactions: From Signal Effect to Market Transparency

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Abstract: *As of 3 July 2016, the Market Abuse Regulation (MAR) lays down a uniform, EU-wide obligation for managers of listed issuers to disclose transactions conducted on their own account regarding financial instruments of said issuers. Compared to the previous legal regime, the regulatory approach relating to this reporting obligation has changed considerably: it no longer serves to provide investors with information from which they may potentially draw conclusions regarding the price performance of the financial instruments concerned. Rather, the purpose of disclosure is to create the highest possible market transparency. Despite this change, the currently sparse doctrine largely interprets Art 19 MAR in relation to the intended signal effect according to the previous legal regime.[1] This article considers the new legal framework from the viewpoint of Austrian and German law, and shows that in assessing the new rules, the change in objectives has to be taken into account.*

Keywords: *directors' dealings; reporting obligation; signal effect; market transparency; market integrity; de minimis threshold; information overload*

I. Introduction

Pursuant to Art 19(1) MAR,[2] persons discharging managerial responsibilities in listed issuers,[3] as well as persons closely associated with them, must inform the issuer[4] and the competent authority within three business days about transactions conducted on their own account relating to shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto

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1 This applies in particular to Rolf Sethe's and Alexander Hellgardt's comprehensive and impressive commentary on Art 19 MAR. See Rolf Sethe & Alexander Hellgardt, *Art 19 MAR*, *in* Wertpapierhandelsrecht Kommentar, for example at 60, 62, 71, 103 (Heinz-Dieter Assmann/Uwe H. Schneider/Peter O. Mülbert eds, 7th ed. 2019).

2 Regulation (EU) No 96/2016 of the European Parliament and the Council of 16 April 2016 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ 12.6.2014 L173/1.

3 As a result of the inclusion of debt instruments under the reporting obligation, issuers now include not only stock corporations, but also limited liability companies or partnerships with legal capacity. The following explanations refer to stock corporations; they apply *mutatis mutandis* also to issuers of other forms of companies.

4 The reporting obligation for emission allowance market participants will not be addressed in this contribution.

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("managers' transactions"; "directors' dealings").[5] The issuer must disseminate the notification (para 3 leg cit) and publish it on their website.[6]

The reporting obligation under Art 19 MAR is broader in scope than the previous provisions of section 48d(4) of the Austrian Stock Exchange Act of 1989 (Börsegesetz; BörseG)[7] and section 15a of the German Securities Trading Act (Wertpapierhandelsgesetz; WpHG).[8] This is due to the fact that the objectives associated with the disclosure of transactions have changed: whereas previously investors were to benefit, above all, from the signal effect that such reports could have,[9] the current legal framework aims to make the market as transparent as possible.

In the following, it will be shown that legal problems relating to disclosure under Art 19 MAR are to be answered exclusively according to the transparency objective now pursued. To this end, the conceptual background and general objectives of the disclosure of managers' transactions must first be briefly addressed (chapters II.A and II.B). It is then considered which concrete objectives the reporting obligation of Art 19 MAR pursues (chapter II.C). On the basis of these objectives, practical application questions of the provision are discussed (chapter III) and the civil law consequences of a breach of the reporting obligation are shown (chapter IV). The paper concludes with a summary assessment of the reporting obligation (chapter V).

II. Conceptual Principles

A. Publicity of the Capital Market

The reporting requirement for managers' transactions is part of the disclosure requirements under capital market law. Their aim is to make market events transparent by disclosing various types of information, thus strengthening investors' confidence in the capital market. The disclosure regulations cover a wide variety of aspects of market events; market participants are informed, for example, about shareholder shareholdings (publicity of shareholdings), about non-publicly known price-sensitive information concerning the issuer (*ad hoc* publicity) or about the conclusion of transactions by managers (publicity of managers' transactions).[10] The provision of the respective information serves very different subgoals.[11]

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5 Both in the English and German language versions of the Regulation, Art 19 MAR is entitled "Managers' Transactions" and not the customary term "Directors' Dealings". This designation illustrates that there are differences in content from the previous reporting obligation. However, it cannot be used to derive a different substance of the reporting obligation, so that the term "Directors' Dealings" may continue to be used.

6 C-Rule 73 (Austrian Corporate Governance Code; ÖCGK). Furthermore, managers' transactions are also disclosed on the competent authorities' (Austrian Financial Market Authority – FMA; German Federal Financial Supervisory Authority – BaFin) website.

7 The Bundesgesetzblatt für die Republik Österreich (BGBl) No. I 2004/127.

8 The German Bundesgesetzblatt (BGBl) No. I 2004, 2630.

9 See chapter II.B.1.

10 See Holger Fleischer, *Directors' Dealings*, ZIP 1217, 1218 (2002).

11 For the subgoals of the managers' transactions reporting obligation see chapter II.B.

B. Objectives of the Reporting Obligation

Various objectives are generally attributed to the disclosure of managers' transactions, irrespective of the concrete objectives of Art 19 MAR:[12] a disclosure is said to be a highly valuable source of information to investors (1); it also aims at the equal treatment of investors (2). It furthermore contributes to market transparency in the form of shareholding transparency (3) and serves the objective of market integrity (4).

1. Source of Information

A guiding principle of the reporting requirement is that reporting may be a valuable source of information for investors because it could have a signal effect for the investor audience:[13] As managers tend to act on a better information basis than other investors due to their proximity to the issuer, their transactions may reflect assessments of the company and the market that are based on an advantage of information.[14] If executives sell shares, for example, this could indicate a future negative performance of the issuer. Conversely, a purchase could signal that the manager considers the share to be undervalued and expects it to rise. If such transactions are reported, the information base of other investors will improve.[15] This enables them to participate in the manager's advantage of information.[16]

However, the suitability of the reporting obligation to achieve this objective must be qualified in two respects: it should first be noted that a concrete business transaction of a manager does not have to be based on an advantage of information. An executive can trade the issuer's financial instruments for many reasons, for example to obtain quickly needed liquidity.[17] Since only the transaction itself must be reported, but not the motivation underlying it, there is a risk that investors will assume a non-existent information advantage, thus misinterpreting the report. Moreover, the value of the signal effect of reports generally depends on the fact that the only transactions to be reported are those in which a possible information advantage can be exploited at all. If transactions are also to be disclosed which cannot be based on any information advantage, for example in cases where the manager acquires a financial instrument without actively taking action (e.g. an acquisition by inheritance), this significantly weakens the signal effect of reports. This is because investors must first eliminate irrelevant reports from all available reports and then identify those which are potentially price-sensitive as an advantage of information has actually been exploited.

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[12] For these see chapter II.C.

[13] See Fleischer, *supra* note 10, at 1220; Susanne Kalss & Martin Oppitz & Johannes Zollner, Kapitalmarktrecht at 19/5 (2nd ed. 2015); Christoph Kumpan, *Die neuen Regelungen zu Directors' Dealings in der Marktmissbrauchsverordnung*, AG 446, 448 (2016); This is expressly confirmed in the German government's draft for the introduction of section 15a dWpHG, BT-Drucks. 14/8017, 87 f. For a critical account, see Gunnar Schuster, *Kapitalmarktrechtliche Verhaltenspflichten von Organmitgliedern am Beispiel des § 15a WpHG*, 167 ZHR 193, 199 (2003).

[14] Fleischer, *supra* note 10, at 1220; Franz Hartlieb & Zurab Simonishvili, *Directors' Dealings nach der Marktmissbrauchsverordnung*, ZFR 61, 61 et seq (2015); Kumpan, *supra* note 13, at 448.

[15] Fleischer, *supra* note 10, at 1220; Hartlieb & Simonishvili, *supra* note 14, at 61 et seq.

[16] Studies have shown that investment strategies that track executive transactions generate on average higher returns than the market; see Fleischer, *supra* note 10, at 1220; Markus Pfüller, *§ 15a, in* Wertpapierhandelsgesetz Kommentar, 25 (Andreas Fuchs ed, 2nd ed. 2016); for a critical account, see Stefan Grundmann, *Marktmissbrauchsregime, in* Großkommentar Handelsgesetzbuch, Band 11/1, mn 531, (Claus-Wilhelm Canaris/Mathias Habersack/Carsten Schäfer eds, 5th ed. 2016).

[17] Sethe & Hellgardt, *supra* note 1, at 10.

2. Equal Treatment of Investors

Assuming that transactions by managers are based on an advantage of information, the reporting obligation also serves to ensure equal opportunities for investors in terms of information:[18] Due to the requirement of disclosing managers' transactions as soon as possible, the knowledge advantage of managers over the investing public is limited to a relatively short period of time. This reduces the information asymmetry between managers and other investors.[19]

Whether and how effectively the reporting obligation can contribute to this goal depends, however, to a large extent on how it is designed. In particular, reporting provisions which oblige disclosure *after* the transaction has been carried out (post-trading disclosure) cannot completely diminish information asymmetry, but merely reduce it.[20] Although the transaction has to be reported to the investor public relatively quickly – typically within several days of its conclusion – managers are, however, able to make use of their privileged access to information during this period. For a complete reduction of the asymmetry, a reporting obligation before the execution of the transaction (pre-trading disclosure) or even a ban on managers' transactions would be more suitable: With the former, a possible information advantage is already priced into the market before the execution of the transaction.[21] With the latter, the transaction is forbidden per se, and managers cannot then benefit from an information advantage anyway.[22]

Moreover, the suitability of the reporting requirement to reduce information asymmetry also depends on which transactions have to be reported. This objective is more important if only those transactions are to be reported in which an information advantage can be exploited at all; conversely, the significance decreases – for the same reasons as with the signal effect of the reports –[23] if transactions are to be disclosed in which the privileged information basis of a person obliged to report cannot be exploited at all.

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18 Fleischer, *supra* note 10, at 1220.

19 Kumpan, *supra* note 13, at 448; see also Martina Stegmaier, *§ 19 Offenlegungspflichten, in* Handbuch zum Marktmissbrauchsrecht, 7 (Andreas Meyer/Thomas Rönnau/Rüdiger Veil eds, 2018).

20 See Moritz Diekgräf, Directors' Dealings 138 (2017); Pfüller, *supra* note 16, at 26.

21 If managers had to report planned trades before they were executed, the information about the intended transaction and the conclusions that the investors draw from it would be priced into the market - assuming a (largely) efficient capital market - before the manager concludes the transaction. If, for example, the manager reports the intended purchase of shares, this can signal to the market that the manager considers the share to be undervalued. Investors will therefore try to profit from the undervaluation and acquire shares of the issuer themselves. The rising demand for the shares of the issuer in question increases their price. As a result, the share would no longer be undervalued at the time when the manager is allowed to carry out the reported transaction. The manager would therefore have to pay the "true" value of the share and would have no (or only a reduced) arbitrage opportunity; see Fleischer, *supra* note 10, at 1228.

22 In fact, this prohibition model, which is typical for insider law, has also found its way into the managers' transaction regime for the first time with the MAR: In principle, transactions conducted on the manager's own account are permitted and only have to be disclosed by the manager. During a period of 30 calendar days before the (obligatory) publication of an interim or annual report, however, such transactions are completely prohibited (Art 19 para 11 MAR).

23 See chapter II.B.1 above.

3. Market Transparency in the Form of Transparency of Shareholdings

The disclosure obligation is also intended to ensure market transparency in the form of transparency of shareholdings,[24] i.e. investors should be informed about the extent of the instruments held by a manager in the issuer. In order to achieve this goal,[25] however, additional regulations are needed. For example, the notification of a purchase of shares can only make a meaningful contribution to the objectives of shareholding publicity if it is known how many shares the manager already holds. This requires accompanying reporting obligations, such as the obligation to disclose the portfolio of financial instruments already held by the issuer when assuming the function of a board member or a corresponding annual report as part of the issuer's annual financial statements. Without this information, the reporting obligation with respect to managers' transactions can only be used to verify that a manager has or no longer has a certain number of financial instruments of the issuer. However, this is not so much an element of shareholding transparency as part of general market transparency.

4. Market Integrity

Finally, the reporting obligation serves the integrity of the capital market: greater transparency of managers' transactions constitutes a preventive measure against market abuse, particularly insider dealing.[26] Managers would, due to the transparency, refrain from transactions with dubious external effects in advance.[27] Additionally, full and proper market transparency is a prerequisite for the confidence of market actors. Moreover, it constitutes an additional means for competent authorities to supervise markets.

However, the reporting obligation is not able to prevent insider dealing by managers within this scope: insider trading is subject to the prohibition of insider trading, so there is no reporting obligation. A reporting obligation could therefore only prevent the exploitation of insider information if a manager was prepared to violate the ban on insider trading sanctioned under criminal law, but nevertheless felt obliged to comply with the reporting obligation in the transaction.[28] Whether a manager would do this seems doubtful. Rather, it may be assumed that an executive violating the insider trading prohibition will also violate the reporting obligation.[29] In this case, however, the obligation to report neither increases the probability of the transaction being discovered nor the authority's ability to control it.

The disclosure obligation therefore covers transactions on the basis of information that is below the threshold of insider information. The use of such information is not prohibited, even if the

[24] See, e.g., Fleischer, *supra* note 10, at 1220; Frank A. Schäfer, *§ 16 Directors' Dealings, in* Handbuch börsennotierte AG, at 16.2 (Reinhard Marsch-Barner/Frank A. Schäfer eds, 4th ed. 2018).

[25] For more information on the objectives of publicity of shareholdings, see Kalss & Oppitz & Zollner, *supra* note 13, at 18/7.

[26] Kumpan, *supra* note 13, at 448; Stegmaier, *supra* note 19, at 6; see also Grundmann, *supra* note 16, mn 531.

[27] See Fleischer, *supra* note 10, at 1220; Kumpan, *supra* note 13, at 448; Schäfer, *supra* note 24, at 16.2.

[28] Mårten Knuts, *The Optimal Scope of Disclosure by Association Regime under MAR*, ECFR 495, 504 (2016); see also Philipp Maume & Martin Kellner, *Directors' Dealings unter der EU-Marktmissbrauchsverordnung,* ZGR 273, 276 (2017); Pfüller, *supra* note 16, at 28.

[29] Equally Sethe & Hellgardt, *supra* note 1, at 14.

manager has an information advantage over the investor public.[30] Also in this regard the obligation to report does not promote the prevention of insider dealing.

However, the obligation to disclose managers' transactions contributes to the integrity of the capital market insofar as managers could refrain from using information situated within the grey area of insider information, being unsure about the legality of the transaction and thus fearing a discovery of the possible insider dealing due to the reporting obligation.[31] Moreover, from the point of view of the investing public, executive transactions often seem to be based on insider knowledge, especially when they become known sometime after the transaction has been concluded.[32] Timely disclosure ensures transparency in this respect, as it avoids speculation about the legality of the transaction and thus strengthens investors' confidence in the capital market.

C. Change of the Significance of the Objectives According to MAD and MAR

For the first time, the European regulator provided for a reporting obligation for managers in the form of Art 6(4) of the now repealed Market Abuse Directive (MAD).[33] Persons discharging managerial responsibilities and persons closely associated with them were required to inform the competent authority of all transactions conducted on their own account relating to shares of the issuer, or to derivatives or other financial instruments linked to them. The disclosure was to create greater transparency in order to prevent market abuse and to provide investors with valuable information.[34]

Accordingly, these objectives were also central to the implementation of the Directive's provisions in Austrian law (section 48d para 4 BörseG 1989) and German law (section 15a WpHG).[35] The German legislator underlined particularly clearly that – due to the abstract information advantage of managers – the disclosure of those transactions, on the one hand, strengthens market integrity and, on the other hand, provides the investor audience with information with a signal effect.[36] This also indirectly promoted equal treatment of investors.[37] The regulations were interpreted in accordance with precisely these objectives: according to the prevailing view,[38] only those legal

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30 An exception can be found in the scope of application of Art 19 (11) MAR; in this case, the transactions of executives are prohibited, regardless of whether they are based on insider information or on a generally permitted information advantage.

31 See also Schuster, *supra* note 13, at 199.
This is explicitly confirmed by the (German) government draft for the introduction of section 15a dWpHG, BT-Drucks. 14/8017, 87: "*Der Anschein des Insiderwissens ist diesen Transaktionen also immanent*".

33 Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ 12.4.2003 L96/16. This Directive had repealed Council Directive of 13 November 1989 coordinating regulations on insider dealing (89/592/EEC), OJ 18.11.1989 L334/30, on insider trading and introduced a regulation for market manipulation.

34 Recital 26 MAD.

35 See Susanne Kalss & Johannes Zollner, *Directors' Dealings – Der neue § 48d Abs 4 BörseG*, GeS 106, 106 (2005).

36 BT-Drucks. 14/8017, 87 f.

37 For the connection between the signal effect and the equal treatment of investors, see chapter II.B.2.

38 See e.g., Michael Erkens, *Directors' Dealings nach neuem WpHG*, Der Konzern 29, 35 (2005); Kalss & Oppitz & Zollner, *supra* note 13, at 19/25; Pfüller, *supra* note 16, at 125 et seq; Sorika Pluskat, *Die durch das Anlegerschutzverbesserungsgesetz geänderte Regelung der Directors' Dealings vor dem Hintergrund der Richtlinie zur Durchführung der Marktmissbrauchsrichtlinie*, BKR 467, 471 (2004); *id*, *Die Neuregelung der Directors' Dealings in der Fassung des Anlegerschutzverbesserungsgesetzes*, DB 1097, 1099 et seq (2005); Julia von Buttlar, *Directors' Dealings: Änderungsbedarf aufgrund der Marktmissbrauchsrichtlinie*, BB 2133, 2137 (2003); for

transactions were to be reported in which managers could use an information advantage at least hypothetically. In contrast, the reporting obligation could only make a very limited contribution to other objectives, such as transparency of shareholdings in particular.[39] Neither Austrian nor German law contained any accompanying provisions that enabled investors to trace the initial holdings of financial instruments to the respective manager.[40]

With the MAR, the European regulator has re-aligned the reporting obligation, both with regard to the objectives pursued, and with regard to the design of the regulation. It is true that the personal scope of application has not changed; certain managers and persons closely associated with them continue to be subject to the reporting obligation.[41] However, both the financial instruments subject to reporting requirements[42] and the transaction types to be reported have been significantly expanded: the European Commission has issued the Delegated Regulation (EU) 2016/522,[43] Art 10 of which provides for a comprehensive catalogue of legal transactions to be notified.[44] The reporting requirement now applies to any transaction for the account of a manager or closely related person, including transactions that do not reflect the manager's or closely related person's assessment of the issuer (e.g. the acquisition of financial instruments by inheritance, the automatic conversion of instruments already held, or transactions of an asset manager that the manager cannot influence). In addition, transactions with fixed-interest bonds must also be reported. When trading in such instruments, it is again not possible for a manager to benefit from an information advantage.[45] This realignment is reflected in the considerations of the regulator; here, the objective of market transparency and its importance for market integrity is emphasized more strongly than in the past.[46]

Against this background, it is important to note a substantial difference between the current legal situation and the previous law:[47] The reporting obligation no longer serves primarily to provide the investor public with information with a signal effect. Due to the significant expansion of reportable transactions, which now include transactions without any potential signal effect, the interpretation of reports has become more difficult for investors under the current legal regime. Accordingly, the

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a different opinion, see for instance Rolf Sethe, *§ 15a WpHG, in* Wertpapierhandelsrecht Kommentar, 79 (Heinz-Dieter Assmann/Uwe H. Schneider eds, 6th ed. 2012); Daniel Zimmer & Falk Osterloh, *§ 15a WpHG, in* Kapitalmarktrechtskommentar, 47 (Eberhard Schwark/Daniel Zimmer eds, 4th ed. 2019). The main reason given for the contrary view is the risk of circumventing the publicity provisions.

39 See also Schuster, *supra* note 13, at 206.

40 For a critical account, see Kumpan, *supra* note 13, at 452; for the introduction of a corresponding obligation already under the previous legal framework, see Fleischer, *supra* note 10, at 1226; Schuster, *supra* note 13, at 206.

41 See chapter III.A.

42 See chapter III.B.3.

43 Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions, OJ 5.4.2016 L88/1. This delegated regulation was adopted on the basis of the authorisation in Art 19 para 14 MAR.

44 See chapter III.B.

45 See chapter III.B.3.

46 Both recital 26 MAD and recital 58 MAR stress the importance of greater transparency for the prevention of market abuse. Recital 58 MAR also emphasises that full and proper market transparency is a prerequisite for the confidence of market participants and in particular the shareholders of a company.

47 See Diekgräf, *supra* note 20, at 128, 138; Martin Hitzer & Dirk Wasmann, *Von § 15a WpHG zu Art. 19 MMVO: Aus Directors' Dealings werden Managers' Transactions*, DB 1483, 1484 (2016).

incidental effect of promoting equal treatment of investors is also decreasing.[48] The main objective of the reporting obligation under Art 19 MAR is to create extensive transparency regarding the transactions of executives and persons closely associated with them;[49] investors should be informed of market developments in as much detail as possible. This is a prerequisite for the confidence of market participants, in particular the issuer's shareholders, and strengthens the integrity of the capital market. The reporting obligation thus also contributes to capital market integrity, within the framework described in chapter II.B.4.[50]

III. Purposive Interpretation of Art 19 MAR

The European regulator has re-aligned the reporting obligation with respect to managers' transactions both in regard to the objectives and the design of Art 19 MAR. As shown, the main objective of the reporting obligation under this provision is to ensure the greatest possible transparency and thus to strengthen the confidence of market participants in the integrity of the capital market. This changed focus compared to the previous legal regime is to be taken into account when interpreting Art 19 MAR.

The following remarks shed light on some of the key application issues of the reporting obligation in the light of the objective pursued by Art 19 MAR. It shows who is obliged to report (chapter III.A), which type of transactions and which financial instruments are subject to the reporting obligation (chapter III.B), when a transaction has to be reported (chapters III.C and III.D) and how the disclosure is to be transacted (chapter III.E). The latter points are exemplified by the Austrian and German legal regimes.

A. Personal Scope of Application

The reporting obligation under Art 19(1) MAR applies to executives of issuers[51] as well as to emission allowance market participants.[52] The issuer is defined in Art 3(1)(21) MAR. In contrast to

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48 See chapter II.B.2.

49 See also Marco Dell'Erba, *Art 19, in* Market Abuse Regulation, B.19.02 (Marco Ventoruzzo/Sebastian Mock ed, 2017): "*The main purpose of this disclosure obligation consists in the improvement of the transparency of financial markets*."

50 Under the current legal regime, the obligation to notify scarcely contributes to the transparency of shareholdings, due to the same reasons as those applicable to the previous legal framework. See Zimmer & Osterloh, *supra* note 38, at 17 et seq; see also Diekgräf, *supra* note 20, at 136.

51 Issuers are legally defined in Art 3(1)(21) MAR. According to Art 19(4) MAR, the reporting obligation applies to issuers who have requested or approved admission of their financial instruments to trading on a regulated market (lit a). In the case of an instrument only traded on a multilateral trading facility (MTF) or an organized trading facility (OTF), it also applies to issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF (lit b). It is essential here that the issuer was actively involved in the admission of its financial instruments. Since the initiative to include financial instruments in an MTF does not necessarily have to come from the issuer itself, the issuer's financial instruments can also be traded without its approval. The requirement to participate in admission thus prevents the issuer from being subject to the consequential obligations provided for by the MAR and strictly sanctioned, even though it may not have wanted to trade at all.

52 See Art 3(1)(20) MAR. For reasons of simplicity, emission allowance market participants will not be mentioned separately below. The comments on issuers apply to them accordingly. The reporting obligation also applies to

the previous legal framework, the scope of application covers not only issuers of shares but also issuers of debt instruments which are not linked to shares. The issuer may therefore be a German or Austrian limited liability company that issues bonds. At least pursuant to the German-language version of Art 3(1)(21) MAR, which refers to "juristische Personen", partnerships with legal capacity would not be covered.[53] However, it can be assumed that the provision has been translated inaccurately, as the English and French versions use the broader terms „legal entity" and „entité juridique". A systematic look at the English and French versions of Art 3(1)(13) MAR also suggests such an understanding.[54] Here a "person" or "personne" is defined as a „legal person" and „personne morale" and thus applies a narrower term than in fig 21. This is also supported by the fact that, from a teleological point of view, it would not be comprehensible to exclude partnerships from the obligation regime of Art 19 MAR: for investors there is the same need for market transparency as there is with corporations. This indicates that partnerships with legal capacity may also be issuers.[55] Accordingly, the Factsheet of the Vienna Stock Exchange on the Third Market does not contain any provisions regarding the legal form of the issuer and also permits partnerships, foundations and natural persons as issuers.[56]

Art 3(1)(25) MAR determines who is an executive. In accordance with the previous legal regime under Art 6(4) MAD, this provision contains two groups: On the one hand, the reporting obligation applies to members of the administrative, management or supervisory body (lit a). On the other hand, it covers persons who, as senior executives, do not belong to any of the above-mentioned bodies but regularly have access to inside information relating directly or indirectly to the entity and who have power to take managerial decisions affecting the future developments and business prospects of that entity (lit b). Art 3(1)(25) MAR thus contains a formal and a material definition of executives: when examining who falls within the scope of lit a, the formal membership of the bodies mentioned therein must be considered. In contrast, the material legal position of a person is decisive for the scope of application of lit b.

Art 3(1)(26) MAR includes persons closely associated with members of governing bodies and senior executives in the scope of the reporting obligation. These persons are subject to their own reporting obligation.[57] The provision distinguishes between family and economic relationships: the family circle includes spouses, or a partner considered to be equivalent to a spouse, in accordance with national law (lit a), dependent children (lit b) and other relatives who have shared the same household for at least one year upon the date of the legal transaction (lit c). In addition, legal persons, trusts and partnerships whose management duties are performed by a person discharging managerial responsibilities, or by a person named in lit a, b or c who is directly or indirectly controlled by such a person, which was set up for the benefit of such a person or whose

persons discharging managerial responsibilities within any auction platform, auctioneer and auction monitor involved in the auctions held under Regulation (EU) 1031/2010. These will not be discussed in more detail.

53 According to the prevailing view in Austria and Germany, the partnerships in question (OG/OHG and KG) have comprehensive legal capacity, but are not legal entities. Cf. Ulrich Torggler, *§ 105, in* Kommentar zum Unternehmensgesetzbuch, 14 (Manfred Straube/Thomas Ratka/Roman Rauter eds, 2012); Karsten Schmidt, § 105, in Münchener Kommentar zum Handelsgesetzbuch, 7 (Karsten Schmidt ed, 4th ed. 2016).

54 German version: „*'Person' bezeichnet eine natürliche oder juristische Person*".

55 For the same conclusion, see Sethe & Hellgardt, *supra* note 1, at 19.

56 See Wiener Börse, *Fact Sheet „Dritter Markt – MTF der Wiener Börse AG" – Listung von Anleihen (valid as of 2.1.2018)*, 3.

57 See Kalss & Zollner, *supra* note 35, at 112; Thomas Lechner & Christian Temmel, *§ 48d, in* Praxiskommentar Börsegesetz, 169 (Christian Temmel ed, 2011) in each case with reference to the previous legal framework.

economic interests are substantially equivalent to those of such a person (lit d), are subject to the reporting obligation.

B. Material Scope of Application

1. Transactions Conducted on One's Own Account

According to Art 19(1) MAR, every transaction conducted on the account of a manager or a person closely associated with him or her, is to be reported. The English language version of MAR is more precise than the German version, according to which any „Eigengeschäft" must be disclosed.[58] It is irrelevant whether the manager acts in his or her own name or not. Transactions of the manager for the account of third parties are not transactions on his or her own account and are therefore not to be reported. This is confirmed by a systematic look at Art 19(11) MAR, which explicitly refers to "transactions on its own account or for the account of a third party" for the trading prohibition laid down therein and thus to a wider scope of application than the reporting obligation of (1) leg cit.

Third-party transactions on the account of the manager are not subject to the own-account concept of Art 19(1) MAR but must be reported under the conditions of Art 7(b) leg cit and Art 10(2)(o) of the Delegated Regulation (EU) 2016/522.[59] This means that the transactions of an asset manager which are concluded on the account of the manager must also be disclosed. Despite criticism expressed in the legislative process,[60] this also applies if the manager or the person closely associated with him or her cannot influence the asset manager's decision making in connection with his investments.

2. Notifiable Transactions

It is not conclusively regulated which transactions are to be reported. In any case, the purchase and sale of financial instruments are covered (Art 19(6)(e) MAR). Moreover, according to the demonstrative ("also") enumeration of para 7, pledging and lending are subject to reporting (lit a). Finally, an extensive, non-exhaustive list of transactions can be found in Art 10(2) of the Delegated Regulation (EU) 2016/522, which covers, for example, donations made or received, inheritances, lending transactions, the acceptance or exercise of stock options, the subscription to a capital increase or debt instrument issuance or the automatic conversion of financial instruments. This broad catalogue underscores the change in objective, compared to the previous regulation: the

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58 Stegmaier, *supra* note 19, at 1, therefore understands "transaction conducted on one's own account" as all transactions in which the manager is active.

59 See also chapter III.B.2.

60 See European Securities and Markets Authority (ESMA), Consultation Paper – ESMA's draft technical advice on possible delegated acts concerning the Market Abuse Regulation of 11.4.2014 (ESMA/2013/808) marginal note 90: "contrary to many respondents' comments that were asking for the notification requirement not to apply to transactions executed by a third party on behalf of a PDMR (...) where there is no discretion exercised by that PDMR (...), Article 19(7)(b), in conjunction with Recital 58 of MAR, clarifies that transactions executed by a third-party on behalf of the PDMR (...) include transactions executed for the account of the PDMR (...) exercising full discretion (meaning that there is no instruction whatsoever from the PDMR [...]) as regards the investment strategy of the contract".

focus is no longer on enabling investors to make an informed transaction decision by reporting transactions with a signal effect but on the objective of comprehensive market transparency.[61] This must be taken into account in the case of transactions not mentioned, such as the acquisition of shares in the course of a merger: since it is not a question of the possible signal effect but of creating the highest possible market transparency, managers must also report such acquisitions.[62]

3. Financial Instruments

Transactions relating to shares or debt instruments of the issuer, or to derivatives or other financial instruments linked thereto, are subject to the reporting obligation. Shares are corporate instruments; their owners are shareholders and not creditors of the issuer. All types of shares are covered which are provided for by the respective national law; it is irrelevant whether they have a certain structure or confer certain rights (e.g. voting rights).[63] In Austria, for example, ordinary shares, non-voting preference shares, pursuant to section 12a of the Austrian Stock Corporation Act (Aktiengesetz; AktG), and non-voting shares, pursuant to section 26a of the Austrian Banking Act (Bankwesengesetz; BWG) (so-called "bank shares"), are included.[64]

Transactions with debt instruments or derivatives linked to shares or debt instruments must also be reported. Therefore, transactions with profit participation rights, but also with fixed-interest bonds, are included. It is the inclusion of the latter bonds that again illustrates the re-alignment of the reporting obligation; in the case of these instruments it is not possible for managers to exploit any information advantage.[65] In addition, financial instruments associated with these instruments, such as convertible bonds or bonds with warrants on financial instruments of the issuer issued by third parties, are subject to the reporting obligation.[66] Instruments that do not qualify as shares, debt instruments or derivatives may be subject to the reporting obligation as "financial instruments" in accordance with Art 3(1)(1) MAR in conjunction with Art 4(1)(15) of the Market in Financial Instruments Directive (MiFID II).

C. Time of Notification

Art 19 MAR does not explicitly stipulate whether the transaction which creates the obligation (the "titulus") or the corresponding transaction in property law (the "modus") triggers the reporting obligation. Since the investor public must be informed promptly in order to make the market as transparent as possible and to avoid the appearance of insider knowledge,[67] the (earlier) obligation transaction is decisive.[68]

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61 See recital 28 of the Delegated Regulation (EU) 2016/522.

62 For the same conclusion, see Stegmaier, *supra* note 19, at 66.

63 If the issuer is not a stock corporation, but e.g. a GmbH or a partnership, only debt instruments can be traded on the capital market, but not their shares. The transfer of these shares is not subject to the reporting requirement of Art 19(1) MAR. Cf Sethe & Hellgardt, *supra* note 1, at 61.

64 For the structure of such titles, see Franz Hartlieb, Der Schutz besonderer Gläubiger in der Umstrukturierung der AG 73 et seq (2017).

65 See also Hartlieb & Simonishvili, *supra* note 14, at 62.

66 Schäfer, *supra* note 24, at 16.5; see also Kumpan, *supra* note 13, at 451.

67 See BT-Drucks. 14/8017, 87.

68 Hartlieb & Simonishvili, *supra* note 14, at 63; Maume & Kellner, *supra* note 28, at 287; Dörte Poelzig, *Die Neuregelung der Offenlegungsvorschriften durch die Marktmissbrauchsverordnung*, NZG 761, 767 (2016); Christoph Seibt & Bernward Wollenschläger, *Revision des Marktmissbrauchsrechts durch Marktmissbrauchsverordnung und Richtlinie über strafrechtliche Sanktionen für Marktmanipulation*, AG 593, 601

However, this rule does not apply without exception. According to Art 10(2)(i) of the Delegated Regulation (EU) 2016/522, "conditional transactions" are to be reported "upon the occurrence of the conditions and actual execution of the transactions". It follows from the wording, in particular from the link between the occurrence of the condition and the actual execution of the transactions,[69] that the provision only covers the execution ("modus"), subject to a predetermined condition.[70] If an unconditionally effective obligation ("titulus") is concluded, the execution, however, is subject to a precedent condition. It must, therefore, only be reported if the transaction is executed after the occurrence of the condition.[71] The preceding conclusion of the contract is not to be reported as this would be misleading for the investor public, for example, in cases where the condition does not occur and, therefore, the transfer of the financial instruments does not take place.[72]

The dispute as to whether the reporting obligation in a transaction which creates the obligation ("titulus") subject to a preceding condition arises when the transaction is concluded, or only when the condition is fulfilled has not been settled.[73] Here, too, the occurrence of the condition and not the preceding transaction is decisive. There is no reason to make a distinction in this respect between a conditional transaction which creates the obligation ("titulus") and a conditional transaction in property law ("modus"). In both cases the assessment of Art 10(2)(i) of the Delegated Regulation (EU) 2016/522 applies, according to which a reporting obligation (only) arises when the transaction can be legally enforced from the point of view of the contracting parties. This is also supported by the fact that prior notification could be misleading for the market, especially if the condition precedent does not apply.

Due to the realignment of the objectives pursued by the reporting obligation, it is clear that acquisitions by gift or inheritance must also be reported. With regard to the relevant point in time to report, attention must be paid to special features: a binding donation of financial instruments in Austria, for example, requires either an actual transfer of the financial instrument or the incorporation of a notarial deed (section 1(1d) of the Notary Law (Notariatsaktsgesetz; NotAktG)). In Germany, they can either be given immediately as a donation or in the future if the promise to donate is notarised (section 518 of the German Civil Code (Bürgerliches Gesetzbuch; BGB)). In the case where a manager actually transfers or donates shares, the time of the entry of the shares in the recipient's securities account will often be decisive for the notification.[74] If the instruments are not to be transferred until a later date, the obligation to register arises on the day of compliance

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(2014); Stegmaier, *supra* note 19, at 65; equally BaFin, *FAQ zu Eigengeschäften von Führungskräften*, Frage IV.1 (10. Version, 23.11.2018); for a different opinion, see Roman Stenzel, *Managementbeteiligungen und Marktmissbrauchsverordnung,* DStR 2017, 883 (887).

69 This link is also expressed in ESMA, Final Report of 2.3.2015 (ESMA/2015/224), marginal note 109: „In relation to conditional trades the requirement to report arises only with the occurrence of the condition, thus when the trade takes place."

70 BaFin, *supra* note 68, Frage IV.2.

71 BaFin, *supra* note 68, Frage IV.2; Stegmaier, *supra* note 19, at 79.

72 ESMA, Final Report of 2.3.2015 (ESMA/2015/224), mn 109.

73 For the former e.g. Kalss & Oppitz & Zollner, supra note 13, at 19/23; for the latter opinion e.g. Marc Engelhart, *Meldepflichtige und meldefreie Geschäftsarten bei Directors' Dealings (§ 15a WpHG)*, AG 856, 858 et seq (2008); Uwe H. Schneider, *Der pflichtenauslösende Sachverhalt bei „Director´s Dealings" – Der sachliche Anwendungsbereich des § 15a WpHG*, BB 1817, 1819 (2002).

74 BaFin, *supra* note 68, Frage IV.10.

with the notarial deed obligation (section 1(1d) NotAktG) or notarial certification (section 518 BGB). If the parties do not comply with the notarial deed obligation or the notarial certification, the transaction is deemed to be a non-formal obligation.[75] As such, it does not entail any legal obligations and therefore does not have to be reported. In this respect, the regulation is the same as in the case of transactions subject to a preceding condition.[76]

In Germany, the time of acceptance of an inheritance (section 1943 BGB) is decisive for the acquisition of financial instruments by way of inheritance. If the inheritance is subsequently disputed, this can also trigger the obligation to notify.[77] In Austria, it is not necessary to report the submission of the declaration of inheritance because it is not certain at this point that the manager will receive the financial instruments available in the estate. Rather, the decisive point in time is the allocation of the financial instruments by a legally binding order of inheritance. If the manager receives financial instruments subject to the reporting obligation as a legacy, the acquisition under property law must be considered for factual reasons.[78]

D. De Minimis Threshold

Transactions on the managers' account whose total volume does not exceed the threshold of € 5,000 per calendar year need not be reported, pursuant to Art 19(1)(ii) in conjunction with (8) MAR. This threshold previously took into account the fact that low-volume transactions have little or no signal effect on the investor public.[79] Now it serves above all to protect the investor public from an information overload caused by (too) many reports and the responsible authorities from work overload.[80] The threshold value of € 5,000 is calculated by adding all transactions without netting. The effects of opposing transactions, such as the purchase and sale of financial instruments, must therefore not be netted, but added together.[81]

According to Art 19(8) MAR, the obligation to report shall apply "to any subsequent transaction once a total amount of EUR 5,000 has been reached". According to para 1 subpara 2 leg cit, the report shall be made "once the total amount of transactions has reached the threshold set out in paragraph 8 (…) within a calendar year". Contrary to the ambiguous wording, already the transaction with which the threshold is exceeded must be reported.[82] Otherwise, an individual

75 See Heribert Löcker, *§ 943, in* Online-Kommentar zum ABGB, 8 (Andreas Kletečka/Martin Schauer eds, 2016); regarding the notarial deed form, see Marie-Therese Fritzer, Form der Schenkung 5 et seq, 265 et seq (2018).

76 The parallel to transactions subject to a preceding condition can also be seen in § 1 (1) d NotAktG: „Die Giltigkeit der nachbezeichneten Verträge und Rechtshandlungen ist durch die Aufnahme eines Notariatsactes über dieselben bedingt"; see also Fritzer, *supra* note 75, at 42, 88 et seq.

77 BaFin, *supra* note 68, Frage IV.7.

78 In the event of the testator's death, the legatee receives a claim under the law of obligations against the estate (section 684 of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch; ABGB)). However, the manager will often only become aware of this at a later point in time - namely in the course of the probate proceedings. If the focus were on the time the manager receives the claim, he or she would often not be able to fulfil his or her duty to report within the prescribed period.

79 See Hartlieb & Simonishvili, *supra* note 14, at 63.

80 Recital 58 MAR; Kumpan, *supra* note 13, at 454.

81 Kumpan, *supra* note 13, at 454.

82 Stephan Semrau, *Art 19, in* Kommentar zur Marktmissbrauchsverordnung, 54 (Lars Klöhn ed, 2018); BaFin, *supra* note 68, Frage III.2.

high-volume transaction would not have to be reported, although its disclosure is important for market transparency.[83]

It is not clear from Art 19(8) MAR whether, in calculating the threshold, the manager's own affairs and those of persons closely associated with him or her must be added together or whether the threshold must be calculated individually for each person covered by the personal scope of the provision. The European Securities and Markets Authority (ESMA)[84] and the Federal Financial Supervisory Authority of Germany (BaFin)[85] take the latter view.[86] This is convincing in light of the MAR concept, according to which transactions of closely related persons are not to be reported by the respective manager, but are subject to a reporting obligation of their own. It would be systematically incomprehensible to deviate from this approach when calculating the threshold value and to add the transactions of a manager as well as transactions of persons closely related with him or her.[87] The fact that Art 19 MAR does not impose an obligation on closely related persons to inform the manager of their business also speaks in favour of an individual consideration; the manager would, therefore, often not even be able to determine whether a reporting obligation already exists or not.[88] Therefore, if a member of the management board purchases shares of the issuer for € 4,000 and his or her dependent child purchases shares of the issuer for € 2,000, the reporting obligation of Art 19 MAR does not apply to either of them.

E. Reporting Procedure

The reporting obligation under Art 19(1) and (2) MAR applies to managers and natural persons, legal persons, partnerships and trusts closely associated with them *ad personam* in each case.[89] The addressee of the notification is, on the one hand, the issuer. The person responsible for this (e.g. the compliance officer) is generally easy for managers to identify. Closely related persons will often have to rely on the help of the executive or on contact information on the issuer's homepage. On the other hand, managers’ transactions are to be reported to the supervisory authority – the FMA in Austria and the BaFin in Germany. Due to the domicile principle of the MAR, the national supervisory authority (e.g. the FMA) is also responsible if shares of a stock corporation domiciled in Austria (e.g. in Vienna) are listed exclusively or additionally abroad. The report must be submitted using the template contained in the Annex to the Implementing Directive (EU) 2016/523; in Austria, this must be sent by e-mail to marktaufsicht@fma.gv.at, in Germany, the report form must be sent by fax to BaFin.[90] The BaFin's guidelines for Managers’ Transactions contain various examples of reports which can be used as a basis for persons obliged to report.[91]

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83 Matthias Rathammer & Markus Sam, *Ad-hoc- und Directors’ Dealings-Verpflichtungen im MAR Regime*, ÖBA 436, 438 (2016); Semrau, *supra* note 82, at 54.

84 ESMA Q&A (ESMA70-145-111) 7.3.

85 BaFin, *supra* note 68, Frage III.1.

86 Likewise Stegmaier, *supra* note 19, at 94; for a different opinion Kalss & Oppitz & Zollner, *supra* note 13, at 19/39; Maume & Kellner, *supra* note 28, at 289.

87 Likewise Kumpan, *supra* note 13, at 455.

88 Kumpan, *supra* note 13, at 455; Schäfer, *supra* note 24, at 16.16.

89 See Kalss & Zollner, *supra* note 35, at 112; Lechner & Temmel, *supra* note 57, at 169, in each case with regard to the previous legal regime.

90 The fax number can be found in the BaFin guidelines (footnote below).

91 See BaFin, *supra* note 68, at 20 – 31.

Pursuant to Art 19(1)(i) MAR, the reporting period shall not exceed three "business days" from the date of the transaction. In para 2, the same time limit is set at three "working days". This linguistic difference also exists in the German version of the MAR. From the French language version (in each case "trois jours ouvrables") it follows, however, that the terms are not based on a different meaning. It remains unclear whether Saturdays count as business days or working days.[92] Pursuant to Art 2 (2) Regulation (EEC, EURATOM) 1182/71,[93] this is not the case.[94] "Business days" or "working days" as defined in MAR are therefore all days other than Saturdays, Sundays and public holidays.[95]

The issuer is to ensure that the notified information is made public immediately and no later than three business days after the transaction. The issuer's disclosure obligation does not arise on receipt of the notification but on the day on which the reportable transaction is concluded. The reporting deadline of the manager or closely related person and the publication deadline of the issuer are thus identical. The issuer is therefore unable to comply with its obligation in due time if the person obliged to report submits the report at the last possible time. This regulatory technique is questionable from a legal policy point of view and is rightly criticised.[96] The Austrian legislator has reacted to this problem in section 155(2) BörseG: If, first, the issuer proves that the person obliged to report submitted the report to it so late that timely publication was not possible, and if, second, the issuer publishes the report on the business day following receipt of the report, the FMA may refrain from punishing the issuer. In order to prevent the risk of sanctions, issuers may require their executives to report earlier (e.g. within two days) by including this duty into their employment contracts. This option does not apply to closely related persons of the manager who are not employed by the issuer.

IV. Civil Law Consequences of Transgressions

Like the MAD, the MAR does not lay down civil law sanctions for violations of the reporting obligation. However, the realignment of the objectives pursued by the reporting obligation also has an impact here: It has always been controversial whether a breach of the obligation to report gives rise to liability for damages. The predominant doctrine in Austria[97] considered the provision on managers' transactions of the previous law as protective of investors.[98] The purposes of the reporting obligation – improving market transparency and informing the investor public about transactions with a signal effect – justified the assumption that § 48d(4) BörseG did not only pursue

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92 See Katharina Stüber, *Directors' Dealings nach der Marktmissbrauchsverordnung*, DStR 1221, 1224 (2016).

93 Regulation (EEC, EURATOM) no 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, OJ 8.6.1971 L124/1.

94 Sethe & Hellgardt, *supra* note 1, at 131.

95 Likewise BaFin, *supra* note 68, Frage IV.5; Schäfer, *supra* note 24, at 16.19; Semrau, *supra* note 82, at 61.

96 Hartlieb & Simonishvili, *supra* note 14, at 63; Poelzig, *supra* note 68, at 769; Semrau, *supra* note 82, at 64.

97 Kalss & Oppitz & Zollner, *supra* note 13, at 19/74; Lechner & Temmel, *supra* note 57, at 180; for a different opinion, see Christian Herbst & Florian Kusznier*, Die Meldepflichten für Directors' Dealings, in* Handbuch Kapitalmarktrecht: Informationsverhalten am Kapitalmarkt 61, 85 et seq (*Ernst Brandl/Susanne Kalss/Otto Lucius/Martin Oppitz/Gerhard Saria* eds, 2006).

98 In its decision of 15.3.2012, 6 Ob 28/12d (GesRZ 2012, 252 [*Schuhmacher*] = EvBl 2012, 763 [*Csoklich*]) the Austrian Supreme Court also spoke in favour of the protective character of § 48d BörseG. However, the decision did not concern the reporting obligation relating to directors' dealings, but the ad hoc publicity obligation, which was also previously regulated in this provision.

collective interests, but also had individual investors' interests in mind and thus had an investor-protecting character. On the other hand, the prevailing opinion on section 15a WpHG[99] rejected the protective character because the primary objective of the reporting obligation is to promote market transparency and market integrity whereas individual interests are only protected as a side effect.

The protective character of Art 19(1) MAR also depends, to a large extent, on the question of whether this provision is intended to, and can, protect individual interests. In this context, the development of the managers' transaction rules is revealing: As shown,[100] the MAR attaches much greater importance to supra-individual objectives – in particular to the market transparency as a pre-requisite for the confidence of market participants in the capital market[101] – than the predecessor provisions of the MAD. Accordingly, pursuant to Art 19 MAR, information must also be disclosed which cannot have any signal effect because the exploitation of information advantages is not possible. To allow investors to participate in the (presumed) advantage of information of executives is not an independent objective of Art 19 MAR but merely a (possible) side effect of the collective interests primarily pursued by the provision.[102] The reporting obligation is not aimed at individual protection, to the effect that investors must receive information with a signal effect through the reports. It is, therefore, not to be qualified as protective of individual investors.[103] It follows from this that persons obliged to report can only be liable to individual investors on the basis of general principles of tort. In addition, if the pre-requisites of section 1295(2) of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch; ABGB) or section 826 BGB are met, an obligation to pay compensation due to intentional immoral damage is possible.[104]

V. Concluding Remarks

This article has shown that the disclosure of managers' transactions is aimed at maximizing market transparency and thus contributing to the integrity of the capital market. The reporting obligation under Art 19 MAR is therefore not limited to cases in which the person discharging managerial responsibilities, or a person closely associated with them, is hypothetically able to exploit an advantage of information in a particular transaction. Providing investors with reports that have a signal effect, which was previously the focus of attention, is now only a (possible) side effect of the collective interests pursued as a primary objective.

The new regulatory approach expands the number of notifiable facts considerably. From the point of view of the persons subject to the reporting obligation, it should be noted that almost every

99 Pfüller, *supra* note 16, at 200, 201; Sethe, *supra* note 28, at 140; Schuster, *supra* note 13, at 215; Zimmer & Osterloh, *supra* note 38, at 110; for a sceptical assessment, see Fleischer, *supra* note 10, at 1229.

100 See chapter II.C.

101 Recital 58 MAR: „Additionally, full and proper market transparency is a prerequisite for the confidence of market actors and, in particular, the confidence of a company's shareholders".

102 See recital 58 MAR: „The publication of those transactions (…) *can* also be a highly valuable source of information to investors." (Emphasis by the author).

103 For the same conclusion, see Kumpan, *supra* note 13, at 458; Semrau, *supra* note 82, at 106; see, however, Maume & Kellner, *supra* note 28, at 292 f.

104 Marcus Commandeur, *Handelsverbot für Führungskräfte nach Art. 19 Abs. 11 MMVO*, ZBB 114, 123 (2018); Schuster, *supra* note 13, at 215; Zimmer & Osterloh, *supra* note 38, at 110.

receipt and every sale of financial instruments must be reported to the issuer, even if these transactions are not mentioned in the extensive list of Art 10(2) of the Delegated Regulation (EU) 2016/522. Unlike in the past, under the current regulation transactions may not be exempted from the reporting obligation just because they do not send a signal to the investor public. This extension, in conjunction with the accompanying information and documentation obligations pursuant to Art 19(5) MAR, leads to an increase in administrative expenses for executives and issuers. At the same time, they face severe administrative penalties and measures under administrative law[105] should they fail to comply with the reporting obligation. The risk of severe sanctions should, however, provide a particularly effective incentive to comply with the reporting obligation and thus contribute to the overall objective of market transparency.

From the point of view of the market, the redesign has been successful[106] to the extent that a high degree of transparency is achieved through the expansion. The main objective of market transparency takes precedence over other objectives that may be achieved by the reporting obligation. To illustrate, the acquisition of fixed-interest bonds by inheritance does not impair market integrity, nor does the disclosure of this information have any relevant value for the individual investor. Although the obligation to disclose now increases market transparency, the higher total number of reports threatens – especially on large capital markets such as the German one – an information overload which could obscure the individual investor's view of the reports that are important to him or her.

[105] See Sethe & Hellgardt, *supra* note 1, at 197 et seq.

[106] This does not change the fact that the design of Art 19 MAR is deficient in several respects. For example, the German language version contains various translation errors which make it almost impossible to solve legal problems without using the English (and partly also the French) language version. The regulatory technique also complicates the understanding of the reporting obligation, because it only arises in conjunction with various implementing acts.