

SFC publicly censures Templeton Asset Management Ltd.
in relation to breaches of the dealing disclosure requirements in
Rule 22 of the Takeovers Code

Disciplinary action against Templeton Asset Management Ltd.

1. The Executive publicly censures Templeton Asset Management Ltd. ("Templeton") under section 12.3 of the Introduction to the Code on Takeovers and Mergers ("Takeovers Code") for breaching Rule 22 of the Takeovers Code as a result of its failure to disclose its dealings in the shares of Denway Motors Limited ("Denway") between 26 January 2010 and 15 April 2010.
2. At all relevant times Templeton was a substantial shareholder of Denway holding over 10% of its issued share capital.

Background and relevant provisions of the Takeovers Code

Background

3. Templeton operates as a global investment manager, managing, either as adviser or sub-adviser, more than 60 different funds and other client accounts with assets valued at approximately US\$49 billion (as of 31 October 2010).
4. Rule 22.3 of the Takeovers Code provides that *"[i]f a person manages investment accounts on a discretionary basis, relevant securities so managed will be treated, for the purpose of this Rule 22, as controlled by that person and not by the person on whose behalf the relevant securities are managed."* This means that Templeton, in its capacity as investment adviser or sub-adviser to its client accounts, and not its clients, will be treated as interested in any shares and other interests in shares managed by it on a discretionary basis.
5. On 22 January 2010 an offer period commenced for Denway when Denway and Guangzhou Automobile Group Co. Ltd ("GAC") announced, amongst other things, (i) a proposed privatisation of Denway by GAC by way of scheme of arrangement ("Scheme") with the consideration in the form of H shares in GAC; (ii) the proposed listing of GAC ("Listing"); and (iii) the Scheme and the Listing were conditional on each other ("Rule 3.7 Announcement").
6. On each of 23 February 2010, 23 March 2010 and 26 April 2010, refresher announcements were issued by Denway and GAC updating shareholders of the status of the Scheme in accordance with Rule 3.7 of the Takeovers Code ("Refresher Announcements").
7. On 19 May 2010 Denway and GAC announced, amongst other things, the detailed terms of the Scheme ("Rule 3.5 Announcement").
8. The offer period for Denway lasted until 25 August 2010 when the Scheme became effective.

9. Each of the Rule 3.7 Announcement, the Refresher Announcements and the Rule 3.5 Announcement contained a clear reminder to associates of Denway (as defined under the Takeovers Code) that they should disclose their dealings in Denway in accordance with Rule 22 of the Takeovers Code.

Relevant provisions under the Takeovers Code

Rule 22

10. Rule 22.1(b)(i) of the Takeovers Code provides that “[d]ealings in relevant securities by an offeror or the offeree company, and by any associates, for the account of discretionary investment clients during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.”
11. The Takeovers Code defines an “Associate” to include “a person who owns or controls 5% or more of any class of relevant securities ... issued by an offeror or the offeree company, including a person who as a result of any transaction owns or controls 5% or more.”
12. Immediately prior to the commencement of the offer period for Denway on 22 January 2010, Templeton held 13.96% of the issued share capital of Denway. Given that at all relevant times Templeton held over 5% of the issued share capital of Denway, it was an associate of Denway and was required under Rule 22 of the Takeovers Code to disclose publicly its dealings in Denway during the offer period.

Rule 3.8

13. Rule 3.8 of the Takeovers Code provides that “When an offer period begins, the offeree company must announce, as soon as possible... In the announcement, the offeree company, the offeror or potential named offeror should remind their respective associates to disclose their dealings in any securities of the offeree company, or in the case of securities exchange offer, any securities in the same class as the securities that are offered as consideration under an offer...”.
14. As already mentioned in paragraph 9 above each of the Rule 3.7 Announcement, the Refresher Announcements and the Rule 3.5 Announcement included the requisite reminder to associates of Denway of their disclosure obligations under Rule 22 of the Takeovers Code.

Breaches of Rule 22 of the Takeovers Code

15. Between 26 January 2010 and 15 April 2010 Templeton executed 6,439 trades in the shares of Denway increasing its shareholding in Denway from 13.96% to 15.47%. Despite the provisions of Rule 22 of the Takeovers Code and the reminders set out in the Rule 3.7 Announcement and the Refresher Announcements, Templeton failed to file disclosures with the Executive in respect of its dealings in accordance with Rule 22 of the Takeovers Code.
16. Upon enquiry by the Executive, Templeton confirmed that it had complied with Part XV of the SFO (“SDI”) but it had not made the required disclosures in accordance with Rule 22 of the Takeovers Code. Templeton accepted that there had been breaches of Rule 22 and explained that the obligations under Rule 22 had been overlooked as a result of inadvertent lapses and that it had

been unaware of the reporting requirements under Rule 22 of the Takeovers Code.

17. If Templeton had made appropriate disclosure in accordance with Rule 22, a total of 6,439 trades would have been disclosed over a period of 34 days between 26 January 2010 and 16 April 2010. The transacted price of each trade would have been publicly disclosed on the business day following the date of trade.

Apology by Templeton and Remedial Action Taken

18. Templeton apologises for the breaches and submits that it takes its obligations to make proper and timely disclosure very seriously as shown by its past timely filings under SDI. Templeton acknowledges that whilst inadvertent and unintentional, its failure to make the relevant disclosures under the Takeovers Code is a significant oversight on its part and its non-compliance with Rule 22 is a serious matter.
19. Templeton has explained that in the normal course of business of managing funds and advisory accounts on a global basis, it purchases shares for the benefit of its clients and that the purpose of investing in Denway was to realise the best rate of return for clients' investments in its funds and managed accounts. Templeton confirmed that the reported transactions were effected solely for investment purposes and not with a view to obtaining control of the issuer.
20. Templeton submits that it has reacted promptly after being notified of the breaches and sought the advice of local counsel and implemented a number of measures to ensure future compliance with the Takeovers Code. These measures include (i) the proper and ongoing training of personnel to monitor its holdings and make such reporting as may be required under Rule 22; (ii) the engagement of a local counsel to conduct searches on the announcements published on the Stock Exchange's website to identify whether any of the issuers they are invested in have made announcements under the Takeovers Code; and (iii) instructing Templeton's internal trading and compliance team to monitor on a daily basis their trading activities in Hong Kong listed companies and public announcements made by such issuers for potential Rule 22 reporting. Templeton has confirmed that as a result of these measures, Rule 22 disclosures will be made in the future prior to 10:00 am Hong Kong time on the business day following the date of a reportable transaction. Templeton will also send out regular email reminders to portfolio management personnel regarding the reporting obligations under the Takeovers Code and requesting immediate notification should such personnel become aware of a transaction that is subject to the Takeovers Code.
21. In this regard the Executive notes that in July 2010 Templeton duly complied with the disclosure obligations under Rule 22 of the Takeovers Code following a dealing in Denway shares.

Implications of Templeton's failure to comply with Rule 22 of the Takeovers Code

22. The disclosure obligations under Rule 22 of the Takeovers Code are intentionally more onerous than those under SDI in that (i) Rule 22 requires filing to be made by 10:00 am on the business day following the dealing; (ii) there are no *de minimis* thresholds; and (iii) Rule 22 requires the disclosure of prices paid

or received for each underlying trade whilst SDI only requires the disclosure of the highest and the average price paid or received.

23. The high degree of transparency required under the Takeovers Code is essential to the efficient functioning of the market in an offeree company's shares during the critical period of an offer. Timely and accurate disclosure of information in relation to dealings by associates and any party who may have the ability to exercise a material influence over the outcome of an offer plays a fundamental part in ensuring that takeovers are conducted within an orderly framework and that the integrity of the markets is maintained. This is in line with General Principle 6 which provides that:

“All persons concerned with offers should make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of a false market. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market.”

24. Templeton, as an associate of Denway, failed to make timely disclosure of details of its dealings in the shares of Denway during the offer period. The Executive considers Templeton's failure to report its dealings during the offer period as required by Rule 22 to be serious breaches of General Principle 6 as well as Rule 22 of the Takeovers Code and to merit the present disciplinary action. However, the Executive recognises Templeton's co-operation in the Executive's review of this matter and additional controls implemented to ensure future compliance with the Takeovers Code.
25. Templeton accepts that it has breached the Takeovers Code as described and has agreed to the disciplinary action being taken against it under section 12.3 of the Introduction to the Takeovers Code.
26. Finally the Executive wishes to take this opportunity to remind practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers and mergers in accordance with the Takeovers Code and particularly, associates with a 5% or more interest in the offeree company or offeror company must report their dealings in the offeree company (or offeror company in the case of a securities exchange offer) during an offer period in accordance with Rule 22 of the Takeovers Code.

14 December 2010