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.
- 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.

 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

- 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 is 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