

Takeovers Executive of the SFC publicly criticises CM Asset Management (Hongkong) Company Limited in relation to breaches of the dealing disclosure requirements under Rule 22 of the Takeovers Code

Disciplinary action against CM Asset Management (Hongkong) Company Limited

1. The Executive publicly criticises CM Asset Management (Hongkong) Company Limited (**CMAM**) for breaching Rule 22 of the Code on Takeovers and Mergers (**Takeovers Code**) as a result of its failure to disclose its dealings in the shares of Mengke Holdings Limited (**Mengke Holdings**) (now known as Champion Alliance International Holdings Limited) between 2 August 2018 and 30 October 2018 under Rule 22. CMAM accepts that it breached the Takeovers Code and agreed to the disciplinary action taken against it under section 12.3 of the Introduction to the Takeovers Code.

Background and relevant provisions of the Takeovers Code

Background

2. CMAM, a wholly-owned subsidiary of China Minsheng Financial Holdings Corporation Limited (stock code 00245), conducts asset management and securities consulting business, including acting as the investment manager of Shareholder Value Fund (**SVF**). At all relevant times, SVF held more than 5% of Mengke Holdings' issued share capital.
3. On 2 August 2018, an offer period commenced for Mengke Holdings when it announced a possible sale of the 75% interest held by its controlling shareholder to two potential buyers (**Rule 3.7 Announcement**). The Rule 3.7 Announcement contained a clear reminder to Mengke Holdings' "associates" (as defined in the Takeovers Code, and includes any person who owns or controls 5% or more of any class of relevant securities of Mengke Holdings) that they should disclose their dealings in Mengke Holdings' relevant securities in accordance with Rule 22 of the Takeovers Code.

Rule 22

4. Rule 22.1(a) of the Takeovers Code provides that "*[d]ealings in relevant securities by an offeror or the offeree company, and by any associates of either of them, for their own account during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.*"
5. 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.*"
6. Immediately prior to the commencement of the offer period, SVF owned or controlled 9.028% of the issued share capital of Mengke Holdings. Given its role as the investment manager of SVF, CMAM also owned or controlled over 5% of Mengke Holdings' issued share capital at the relevant time. As a result, CMAM was Mengke Holdings' associate and was required under Rule 22 of the Takeovers Code to disclose publicly its dealings in Mengke Holdings' relevant securities during the offer period.

Breaches of Rule 22 of the Takeovers Code

7. Between 2 August and 30 October 2018, CMAM, acting as the investment manager of SVF, executed a total of 26 trades in Mengke Holdings' shares (**Relevant Dealings**), decreasing SVF's shareholding in Mengke Holdings from 9.028% to nil. CMAM and SVF made relevant disclosures under Part XV of the Securities and Futures Ordinance (**SFO**). However, both failed to file disclosures in respect of the Relevant Dealings in accordance with Rule 22 of the Takeovers Code.
8. The Executive became aware of CMAM's and SVF's dealings in Mengke Holdings' shares during the offer period as a result of CMAM's and SVF's disclosures under Part XV of the SFO.
9. CMAM explained that it was not aware at the time that Mengke Holdings was in an offer period and therefore did not fulfil the dealing disclosure requirements under the Takeovers Code. Upon discovering the oversight, CMAM and SVF took immediate steps to submit relevant public disclosures as required under Rule 22.

Apology by CMAM and remedial action taken

10. CMAM sincerely apologised for the oversight of the dealing disclosure requirements under the Takeovers Code. It has implemented a number of enhancements and remedial measures to ensure future compliance with the Takeovers Code and to prevent the recurrence of similar incidents, including the following:
 - (a) CMAM has enhanced its workflow for the daily monitoring of dealing disclosures under Rule 22 of the Takeovers Code which came into force in March 2019. This includes daily reviews of announcements published on the website of The Stock Exchange of Hong Kong Limited (SEHK) for all securities under its existing portfolio, checking whether any stock position will render CMAM being treated as an "associate" under the Takeovers Code and regular reviews of the Offer Period Tables published on the website of the Securities and Futures Commission (**SFC**);
 - (b) CMAM is recruiting an additional staff in its Operations Team to support CMAM in fulfilling its disclosure obligations;
 - (c) CMAM completed training sessions for all its relevant staff members on the obligations under Rule 22 of the Takeovers Code in April 2019. The training was delivered by the Manager-in-Charge of the compliance team;
 - (d) CMAM introduced a mandatory examination on Rule 22 requirements for all relevant staff members and new joiners. All current relevant staff have completed and passed the mandatory examination;
 - (e) CMAM will provide regular and ongoing training on the dealing disclosure requirements under the Takeovers Code to relevant staff involved in portfolio management, trading, operations, risk management and compliance; and
 - (f) CMAM has subscribed to relevant alerts from the SFC, including the

Takeovers Bulletin, and SEHK to keep abreast of the development of the takeovers regime in Hong Kong.

Executive's comments

11. The disclosure obligations in Rule 22 of the Takeovers Code are intentionally onerous to reflect the fact that a high degree of transparency is essential to the efficient functioning of the market in an offeree company's shares (and an offeror company's shares in the case of a securities exchange offer) during the critical period of an offer or possible offer. Timely and accurate disclosure of information in relation to dealings by associates plays a fundamental role 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."

12. Whilst the Executive recognises CMAM's cooperation in its review of this matter, the Executive considers the breaches merit the present disciplinary action. The fact remains that during the relevant period, CMAM failed to report multiple dealings in breach of Rule 22 and General Principle 6. CMAM accepts that the breaches suggest material deficiencies in its compliance systems and that adequate systems should have been in place to prevent the breaches.
13. 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. In particular, associates with a 5% or more interest in the offeree company or offeror company must report their dealings in the relevant securities of the offeree company (and of the offeror company in the case of a securities exchange offer) during an offer period in accordance with Rule 22 of the Takeovers Code. In case of doubt as to the application of Rule 22, the Executive should be consulted.

11 July 2019