

THE TAKEOVER PANEL

HILLSDOWN HOLDINGS PLC ("HILLSDOWN")/

S & W BERISFORD PLC ("BERISFORD")

The full Panel met today to consider an appeal by Charterhouse Japhet PLC, advisers to Berisford, against a ruling by the executive that, despite the fact that Kleinwort Benson Limited, advisers to Hillsgdown, had made gross purchases of Berisford ordinary shares carrying more than 15% of the voting rights, Hillsgdown should not be required under Rule 11 of the Code to make an offer in cash for all the Berisford ordinary shares. The case arose from the fact that in calculating their permissible purchases for the purposes of this Rule, Kleinwort Benson overlooked two sales made by Hillsgdown in February, before the present offer was made, an error for which Kleinwort Benson expressed their regret to the Panel.

The Panel was satisfied that the action by Kleinwort Benson which brought them within the scope of Rule 11 was totally inadvertent; it noted too that the scale of the excess was small (some 0.2% voting equivalent) and that the Code provided a clear discretion to the Panel to mitigate the application of this Rule in appropriate cases. The Panel concluded that to apply Rule 11 strictly in the circumstances of this case would involve so disproportionate an effective penalty on Hillsgdown as to be in conflict with the spirit of the Code. The Panel therefore confirmed the executive's ruling.

The Panel wishes nevertheless to stress the importance it attributes to Rule 11 in all circumstances and the duty which it sees as clearly attaching to financial advisers to ensure that mistakes are not made in this context. It accordingly ruled that the 381,001 shares (the amount by which relevant gross purchases exceeded the amount which Rule 11 allows without requiring a cash offer) should be held in baulk for all purposes until the offer becomes unconditional as to acceptances or

lapses. The Panel further emphasises that its ruling in this case is not to be regarded as establishing any precedent. Any future cases arising in this area will be considered solely in the light of the circumstances of the particular case.

8 May 1986