

**PCP 2009/3 – amendments to Rule 5**

**Response of the Takeovers Joint Working Party of the City of London Law Society Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law**

Below are the views of the Takeovers Joint Working Party of the City of London Law Society Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law (the "Working Party") on PCP 2009/3.

**Q.1 Do you agree that Rule 5.2(c)(iii) should be amended as proposed?**

The benefit of retaining the competition limb of Rule 5.2(c)(iii) is that it may allow the target board more time to put together a defence to a hostile bid. Absent the competition limb, the state of siege on the target is increased: the target board will only have 21 days to mount a defence, as a hostile bidder will be able to acquire interests in shares (or obtain irrevocable undertakings in respect of shares) to take it beyond 30% as soon as Day 21 has passed. Likewise, the time for any potential competing bidder to mount a bid will be limited and the proposed amendment may therefore prevent a higher competing offer from being made in circumstances where the target board has decided the existing offer does not represent a fair price.

The disadvantage of retaining the limb is that it seems arbitrary that the speed with which a hostile bidder can gain control of a target is determined by whether the bid falls within the statutory provisions for a possible competition reference. This is even more the case given the scope for uncertainty in this area (as discussed in the consultation paper). A bidder may also be able to take advantage of the lack of clarity on competition: the uncertainty may push the share price down, enabling the bidder to acquire shares in the market at a lower price.

On balance, the working party believes that, given there are arguments both for and against the proposed amendment, Rule 5.2(c)(iii) should not be amended as proposed at this stage. Instead it may be preferable for any amendments to be considered as part of a wider review of Rule 5.