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Considerations for Professional Sports Teams Contemplating Going Public

JORGE E. LEAL GARRETT* AND BRYAN A. GREEN**

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I. INTRODUCTION

In the past, professional sports teams have utilized numerous mechanisms to raise the capital needed to stay competitive in the sports team industry. For a professional sports team, the majority of the revenue generated

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comes from local income.¹ Like in any business, when an owner of a sports team faces a situation that requires raising additional capital, an owner typically turns to the ordinary revenue generating techniques—owner investment or borrowed funds. Needless to say, both of these options impose numerous restrictions on how an existing owner can run his or her business. Because of the increased costs of maintaining a professional sports team, these primitive measures may no longer provide the amount of capital needed to survive in this competitive industry. As a result, in the years to come, professional sports teams may have an increased interest in going public to raise the capital needed to stay competitive.² Selling shares of stock to the public could provide professional sports teams the means of overcoming their financial hurdles while opening the door to numerous ancillary benefits.³

In recent years, there has been a movement towards a professional sports industry that permits public ownership of professional sports teams.⁴ Internationally, for instance, British soccer teams have endorsed the modern trend of going public.⁵ In the United States, the major sports leagues changed their outdated league policies against public ownership to policies permitting an owner to sell shares of stock to the public—subject to some restrictions.⁶ As a result of this movement, numerous professional sports teams have given serious consideration to going public. Among them have been the Minnesota Twins, the Chicago White Sox, the Pittsburgh Pirates, the San Francisco Giants, and the Philadelphia Phillies of Major League

1. Ryan Schaffer, *A Piece of the Rock (or the Rockets): The Viability of Wide-spread Public Offerings of Professional Sports Franchises*, 5 VA. SPORTS & ENT. L.J. 201, 202 (2006) (discussing the role of locally generated income and its status as the major revenue source (e.g., ticket sales and concession sales) for many, if not most, professional sports teams).

2. *See generally id.* (noting the importance of capital in the operation of a professional sports team and elaborating on many factors that owners must consider when debating whether or not to “go public”).

3. *See id.* (discussing many of the benefits that selling publicly traded shares of stock could bring for a professional sports team).

4. *See* Brian R. Cheffins, *Playing the Stock Market: “Going Public” and Professional Team Sports*, 24 J. CORP. L. 641, 643-46 (1999) (pointing out a number of reasons a professional sports team would contemplate a public offering and discussing the advantages that go with such a move).

5. *See id.* at 644 (noting how various professional sports entities have gone public and how that has pressured other related teams and entities to follow suit).

6. *Id.* at 643 (describing the gradual shift of many sports leagues away from rejection of publicly traded teams to a, perhaps, hesitant acceptance of them).

Baseball (MLB); and the Sacramento Kings of the National Basketball Association (NBA).⁷

This article focuses primarily on the positions and stances that the National Football League (NFL), MLB, NBA, and the National Hockey League (NHL) take on public ownership financing. As history shows, in the United States, public ownership is no new concept. Numerous professional sports teams have endeavored to raise capital using this form of business structure.⁸ The NFL's Green Bay Packers, the NBA's Boston Celtics, the NHL's Florida Panthers, and MLB's Cleveland Indians have all engaged in some form of public offering.⁹ Interestingly, no team exists today as a true sports team corporation.¹⁰

II. A TRUE SPORTS TEAM CORPORATION

In the past, owners of professional sports teams have utilized a variety of business organizations when structuring their business. A critical distinction to note is the difference between a true professional sports team publicly traded company—a “sports team corporation”—and a professional sports team owned by a large publicly traded corporation.¹¹ The primary difference being that for a sports team corporation, the professional sports team constitutes “the primary source of revenue and profits for the corporation that owns [it]”¹² On the other hand, when a sports team is owned by a large publicly traded corporation, the revenue raised from the professional sports team generates only a small segment of the corporation's profits.¹³ To better illustrate this distinction, consider the following example. Fox Group owns the Los Angeles Dodgers.¹⁴ When potential investors evaluate the possibility of investing in the Los Angeles Dodgers, their decision to invest primarily evaluates Fox Group's ability to generate profits, because it

7. *Id.* at 642-43 (identifying some of the professional sports teams from a multitude of sports that either have opened themselves to public trading or have contemplated such a move).

8. *See* Schaffer, *supra* note 1, at 202 (discussing examples of professional sports teams electing to go public).

9. *Id.* at 204.

10. Krikor Meshefejian, *Professional Sports Franchises as Publicly-Traded Companies: A Cost-Benefit Analysis (Part 2 of 3)*, ILL. BUS. LAW JOURNAL October 9, 2006, http://iblsjournal.typepad.com/illinois_business_law_soc/2006/10/professional_sp.html (discussing the pros and cons of a professional sports team deciding to go public as a true professional sports team corporation).

11. Schaffer, *supra* note 1, at 205 (highlighting the critical differences between a professional sports team that is owned by a publicly traded corporation and a professional sports team that is itself a publicly traded corporation).

12. *Id.*

13. *Id.*

14. Cheffins, *supra* note 4, at 645.

is the business front that generates the majority of the revenue for the corporation.¹⁵ In contrast, when a sports team corporation owns a team, the investors primarily are investing on the basis of the team's ability to raise revenue—though they might also invest for other non-economic reasons, such as love for the game.¹⁶

III. ADVANTAGES OF GOING PUBLIC

In order to systematically evaluate whether going public will become the next trend for professional sports teams, examining the advantages and disadvantages of going public is essential. Because the investment involves a professional sports team, a number of caveats exist that apply only in the context of professional sports. As is the case for any business that contemplates a public offering, the primary benefit of going public is the ability to generate revenue rapidly.¹⁷ Generally, when a business considers the possibility of going public, it opts to do so because it needs the additional capital and has exhausted all other possibilities or has determined that those other options are not feasible alternatives. But why would a professional sports team need additional capital?¹⁸ What would the additional capital be used for?¹⁹ Additionally, what ancillary benefits does public entity status afford a professional sports team?²⁰

A. PROFESSIONAL SPORTS TEAM FACILITIES

In Britain, because most British soccer clubs bear the costs of owning, constructing, and maintaining their own stadiums and facilities, a number of British teams have sold shares of stock to the public to raise the capital needed to improve their existing stadiums or to build new ones.²¹ This has

15. *Id.* at 647.

16. *See id.* at 648 (mentioning some of the motivating factors that investors often consider when deciding whether to invest in a publicly traded professional sports team).

17. Robert L. Frome, *Going Public*, N.Y. L.J. April 1, 1992, at 62, 62; Eugene J. Stroz, Jr., Comment, *Public Ownership of Sports Franchises: Investment, Novelty, or Fraud?*, 53 RUTGERS L. REV. 517, 521 (2001) (noting examples of professional sports teams that have gone public in the United States and describing the federal securities laws that affect those professional sports teams that go public).

18. *See* discussion *infra* Part III.A-B.

19. *See* discussion *infra* Part III.A-B, E.

20. *See* discussion *infra* Part III.C-E.

21. Schaffer, *supra* note 1, at 211 (noting that a big difference between British professional soccer teams and American professional sports teams is that British teams generally own and maintain their own facilities, while in the United States, professional sports facilities are often owned by the public). In addition to stadium and facility concerns factoring into the financial status of British soccer clubs, on-hand capital is critically important for the teams to participate in the international player transfer and loan market. This system—

proved to be an advantageous way to get ahead of the competition. Interestingly, in the United States, professional sports teams do not generally face the same problems of maintaining or owning their own professional facilities.²² For a majority of professional sports teams, public funding covers the majority of expenses involved in maintaining existing facilities and building new ones.²³ Nevertheless, as times change, the luxury of having publicly funded stadiums and facilities may be subject to opposition.²⁴ As the economy tightens, as it has in recent years, the plausibility heightens that United States professional sports teams will find themselves in need of raising additional revenue to cover the expenses involved in renovating existing facilities or building new facilities.²⁵

Major League Soccer (MLS) has already seen its individual teams begin to look for alternative methods of financing new stadiums and facilities. Soccer-specific stadium development is a priority for MLS going forward.²⁶ Expansion teams are essentially required to demonstrate either an existing stadium or feasible plans for the development of a soccer-specific stadium.²⁷ In a league that already has a unique structure, stadium and facilities development often requires creativity on the part of management. In MLS, the league itself—a limited liability company formed under Delaware law—owns all the teams. The league grants certain investors the manage-

relatively unique to soccer—allows teams to sell or loan players under contract to other teams and vice versa. See Bryan A. Green, *Can Major League Soccer Survive Another Antitrust Challenge? Emerging Threats to Its Single Entity Treatment*, 9 INT'L SPORTS L. REV. 79, 90-91 (2009). The process provides a way for teams to, in effect, cash-in on developed young talent. *Id.* Not only does it provide a way for some teams to add talent, but it also serves as a means to quickly raise financial capital. If a team comes on tough financial times, it can sell some of the players under contract in order to raise capital quickly. Alternatively, other teams must have the capital ready to invest in new talented players. See generally *id.* In this way, selling stock and going public can provide a great way to have the financial reserves that allow a team to be a participant in the international player transfer and loan market.

22. Cheffins, *supra* note 4, at 649-50 (describing the differences in facilities and stadium ownership between British soccer teams and American sports franchises as having much to do with the fact that most venues in the United States are paid for mostly by taxpayers).

23. *Id.*

24. *Id.* at 650 (noting that United States taxpayers are becoming increasingly resistant to accepting new taxes in order to finance and build new facilities and stadiums for professional teams that are owned and controlled by already very wealthy people).

25. See generally *id.*

26. See Green, *supra* note 21, at 89-90 (discussing the advantages that go along with stadium and facility ownership, such as “a near guaranteed stream of revenue,” in the context of evaluating the unity of interests of the league and its investors).

27. *Id.* (highlighting the importance that MLS is placing on team-owned stadiums as a means to both generate additional revenue and significantly decrease the overhead costs that stadium rental fees place on team and league finances).

ment rights for each team.²⁸ As a result of this unique structure, the financing of new stadiums has forced investors and developers to get creative, steering them into an innovative role in the professional sports industry. For a league that is pushing its teams to explore and find new and affordable ways to achieve soccer-specific facilities, offering public stock sales could be exceptionally advantageous.

During the twentieth century, an estimated \$20 billion was spent in the United States building new professional sports stadiums and other professional sports facilities.²⁹ Of this amount, the government willingly financed almost \$15 billion—evidently the majority.³⁰ So why do the vast majority of local governments endeavor in such expensive financial projects? The answer revolves around the “symbiotic relationship” between a local government and its local professional sports team.³¹ A city benefits from the revenue that a sports team brings, and a sports team benefits from the luxury of utilizing a government-subsidized facility.³² Because of the number of benefits that a team can bring to a city, local governments will often take extreme measures in financing new stadiums or renovating existing ones in order to keep their local professional teams or lure a new team with an attractive, better deal.³³

Arguably, professional sports teams have leverage when it comes to negotiating with local governments.³⁴ If the city fails to provide a satisfactory venue for the professional sports team, the “loyal fans [will be] left disappointed and disenchanted, and communities [will] lose a tourist attraction, an employer, and a source of tax revenue.”³⁵ In effect, this places a

28. *Id.* at 82 (explaining the different roles of investor-operators and passive investors in the structure and functioning of MLS).

29. Marc D. Oram, Comment, *The Stadium Financing and Franchise Relocation Act of 1999*, 2 VA. J. SPORTS & L. 184, 195 (1999) (discussing franchise relocation issues, and also noting the criticisms of public financing of professional sports teams’ facilities).

30. *Id.*

31. See Esmael Adibi, *Economics of Professional Sports the California Angels Case*, 1 NEXUS 93 (1996) (describing the symbiotic relationship between a professional sports team and the city where the team is located and noting how both become dependent on each other in one way or another).

32. *Id.*

33. See generally Matthew J. Mitten & Bruce W. Burton, *Professional Sports Franchise Relocations from Private Law and Public Law Perspectives: Balancing Marketplace Competition, League Autonomy, and the Need for a Level Playing Field*, 56 MD. L. REV. 57 (1997) (discussing the quantifiable economic benefits that a local city receives from its professional sports team, such as increased business investment and development in the areas around the stadium and other facilities).

34. See *id.* (noting that citizens generally like having professional sports franchises in their city, and as a result, city officials (especially elected ones) go into negotiations knowing that the will of the citizens is important).

35. Oram, *supra* note 29, at 189 (describing the effects on communities when sports franchises choose to relocate and noting that doing so is a form of “legalized extortion” due

significant amount of pressure on the local government to ensure that its local teams remain content and prosperous. For example, the State of Connecticut offered the New England Patriots a stadium deal that would provide the team a newly built \$374 million stadium that would be “entirely publicly financed, rent-free and tax-free.”³⁶ Surprisingly, the New England Patriots turned down the offer. Nevertheless, this example illustrates the demands that a professional sports team could make on a local government when looking for a new deal.³⁷

At first glance, this may appear to be a successful and beneficial arrangement, especially for a professional sports team owner. Nevertheless, evidence shows that the subsidizing of “commercial pursuits of wealthy team owners is fostering resistance.”³⁸ With changes in the economy, Americans are beginning to realize that these significant resources could probably better serve other purposes.³⁹ In addition, as the economy continues to battle one of the worst recessions in U.S. history, local governments are realizing that the monetary resources could be better spent on other necessities. As a result, professional sports teams may eventually need to find alternative ways to finance and build their own facilities and stadiums. One such feasible alternative could certainly prove to be offering shares to the public. The Green Bay Packers, although not a true sports team corporation, provides an illustration of how the sale of shares to the public can be used to generate sufficient revenue to renovate a team’s facilities.⁴⁰

B. PROFESSIONAL COMPETITIVE ADVANTAGE

Another inducement for selling shares to the public might be the need to maintain or acquire a professional competitive advantage.⁴¹ When it comes to sports, having quality players translates to a successful team, which in turn translates to additional revenue. One of the reasons British soccer teams raise revenue by public offerings is to remain competitive on

to the leverage that the effects on the communities provide sports teams when negotiating with local governments for new facilities).

36. *Id.* at 192 (highlighting the desperation in the attempt by Connecticut to lure the New England Patriots out of Massachusetts).

37. *See generally id.* (evidencing the great lengths that local governments must often go to in order to keep, lure, or otherwise appease professional sports franchises).

38. Cheffins, *supra* note 4, at 650 (noting the frustration that many taxpayers feel when asked to finance new facilities for professional sports teams via the payment of higher taxes).

39. *Id.* (discussing the taxpayers’ gradual shift away from willingly accepting new taxes in order to pay for new facilities for professional sports franchises).

40. *Id.* at 646. *See* discussion *infra* Part VI.

41. *See* Schaffer, *supra* note 1, at 213 (noting that teams in financial struggles may find public offerings of stock as a great means to raise the capital necessary to chase and sign free agents that will in turn raise the team’s competitiveness).

the field.⁴² In order to remain competitive, British soccer teams must have sufficient capital to participate in soccer's international player transfer and loan system. International soccer teams commonly buy or lease players that are currently under contract with other teams.⁴³ In this way, a team's financial resources are critical to attracting, recruiting, and buying quality players. If sufficient revenue is not raised, a team is simply outbid by a higher bidder.

Although players in professional sports in the United States are acquired and transferred differently, comparable arrangements are used and team owners are faced with similar financial limitations when seeking talent for their teams.⁴⁴ Consequently, the idea of going public to raise revenue to acquire talent in the United States is not far-fetched.⁴⁵ For example, in the United States, a player in free agency status is likely to follow the contract with the most zeros in it and sign a contract with the highest bidder.⁴⁶ A sale of shares to the public could be a strategy "through which owners of teams falling behind in revenue have the opportunity to stay competitive in the market for free agents."⁴⁷ If teams do not have the capital to remain competitive from a recruiting standpoint, the talent for their teams will inevitably drop, which in turn can result in further financial constraints and struggles. For example, in the 2003-2004 NHL season, the Detroit Red Wings, one of the top teams in the NHL, spent approximately \$78 million on player salaries while the Nashville Predators only spent approximately \$22 million.⁴⁸ How can a professional team with limited resources find the ability to compete with such a significant disparity?

42. *Id.*

43. *See* Green, *supra* note 21, at 90-91 (discussing and explaining the uniqueness of the international player transfer system for soccer); *see also id.* (describing in more detail the factors that play a role in an international soccer's player transfer and loan market/system).

44. *See* Schaffer, *supra* note 1, at 213 (noting one such comparable arrangement being the leagues that force their teams to work within a salary cap).

45. *See* Cheffins, *supra* note 4, at 653.

46. A player is in free agency status when his or her previous contract with a team has expired. Under those conditions, the player is not obligated to play for any specific team, so he or she may then sign a contract with any team bidding for his or her services.

47. Schaffer, *supra* note 1, at 214. The NBA, in particular, has seen several teams trade away their existing talent for deals that provide them financial flexibility and relief going forward. They make the trade-off of sacrificing competitiveness *now* for financial relief in the future that will hopefully allow them to be competitive when it comes to luring and signing free agents *later*. Offering public stock sales would eliminate the need for teams to do "salary dump" trades in which talented players are essentially traded not for talent, but for financial relief.

48. *Id.* at 202.

Today, “the single greatest factor accounting for the differing ability of teams to spend money remains locally generated revenue[.]”⁴⁹ Indeed, the disparity in the ability to pay more can be partially attributable to thriving local economies that provide certain teams a competitive financial advantage. The opportunity to sell shares of stock would allow an owner of a professional sports team the opportunity to “tap into an important source of capital without ceding any control of the organization” and therefore placing him or her on a more equal playing field with teams in larger economic markets.⁵⁰ Theoretically, the recruiting of better talent should translate to greater on-court or on-field success. Such playing success will likely trigger a greater source of income for the team—revenue generated from increased ticket sales, advertisements, team apparel and merchandise, etc.

Consequently, as salary disparities continue to grow, some teams may find the sale of stock a feasible option in order to acquire the capital needed to remain competitive and cover the escalating salaries set by the market. Note, however, that this advantage is premised on the underlying assumption that teams located in thriving economic markets will not follow the same path of going public. Arguably, if they choose to do so, they are likely to neutralize the advantage of raising capital by also going public given their ability to raise even more revenue by virtue of the number of fans that they have and the size of the local markets. This would allow them once again to have a financial advantage when it comes to paying a greater number of higher and inflated player salaries.

C. OWNER LIQUIDITY

Among the arguable advantages of going public is the incentive of having access to a larger market of purchasers, which in turn enhances the ability of a current owner to liquidate part of his or her investment, if the need arises.⁵¹ In many ways, shareholders of closely held corporations or limited liability companies are restricted by the number of buyers available in the market. Additionally, even assuming willing buyers exist, the present owner is likely to have to sell complete ownership of his or her team.⁵² If the seller chooses to sell his or her entire interest, the existing owner is no

49. *Id.* (noting the disparity in spending and payrolls that exists for various teams in many of the different professional sports leagues).

50. *Id.* at 203 (highlighting how professional sports teams in smaller markets—i.e., cities with smaller populations, such as Memphis or Kansas City—have a more difficult time competing financially with teams that are located in huge markets, such as Boston, New York, or Los Angeles).

51. *See* Stroz, Jr., *supra* note 17, at 538 (noting how the leagues and owners themselves are the best oversight of investing when it comes to the professional sports industry).

52. *Id.* at 522.

longer the owner of an investment he or she loves. If the seller sells a partial interest, he or she is now sharing control of the team with another investor. Unlike a group of many shareholders who owns a small interest in a corporation, a private investor is likely to want control over his or her investment.⁵³ The option to go public and the ability to transfer shares provide existing owners a middle ground. Under public entity status, the present owner has a greater amount of liquidity of his or her investment while sacrificing little control.⁵⁴

Critics argue that these types of wealthy individuals who make such lucrative investments are unlikely to face such financial constraints. Alternatively, even assuming these financial pressures exist, critics further argue that a plentiful market exists of “wealthy . . . individuals [who] are often eager to invest in a team which becomes available for sale, since they are attracted to such investments by love of the game, publicity, ego gratification, civic duty, and other considerations that make professional sports a special kind of business.”⁵⁵ These critics, however, fail to acknowledge that professional sports teams do not generate significant amounts of profit each year.⁵⁶

From 1995 through 2001, the MLB commissioner acknowledged that the majority of the teams in the league suffered significant losses amounting to approximately \$1.4 billion.⁵⁷ Over that period of time, the New York Yankees and the Cleveland Indians were the only teams making a profit.⁵⁸ As similar losses continue to escalate, these wealthy individual owners may begin to question whether the losses are worth their love for the game and may find themselves in need of an escape from their investment.⁵⁹ Additionally, as the economy struggles to recover, ownership interests in professional sports teams may be the type of investment of which a wealthy individual will want to dispose. But because many professional sports team

53. See generally *id.* (discussing some of the factors that must be considered for an owner that is contemplating offering a public sale of stock in the team).

54. Schaffer, *supra* note 1, at 215 (asserting that many professional sports team owners are not as liquid as they once were several years ago; therefore, they may be more willing and interested in liquidating part of their investment in the team(s) while still maintaining control).

55. Cheffins, *supra* note 4, at 655 (downplaying the likelihood that an owner of a professional sports team would be entirely unable to sell his interest in the team if he or she so desired).

56. Schaffer, *supra* note 1, at 215.

57. *Id.* Note that MLB is one of the few professional sports leagues that does not have a salary cap, so its teams are essentially free to spend themselves into financial crises.

58. *Id.*

59. *Id.* (questioning how willing owners of professional sports teams would be to accept financial losses stemming from their ownership interests when such losses would force them to look for an escape from their interest).

owners have ulterior motives for their investment and are not necessarily in it for the profits, they are likely to seek a partial escape that provides the option to maintain majority control over how his or her team is run.⁶⁰ As a result, going public may provide a partial escape plan or the opportunity to liquidate some of their investments while retaining majority control.⁶¹ In 1998, the option to go public gave the owner of MLB's Cleveland Indians the opportunity to liquidate a portion of his investment.⁶² Essentially, going public may provide owners the supplementary capital needed to neutralize some of the losses from operations.⁶³

Even assuming that a market of private owners awaits the opportunity to become a professional sports team owner, it is important to note that the market fails to provide existing owners the opportunity to liquidate a portion of their ownership while also retaining complete control. As previously discussed, in a closely held corporation or a limited liability company, if a professional sports team owner wants to liquidate part of his or her investment, the team owner is likely to have to sell the entire ownership interest in the team. This is because it is unlikely that a team owner will find a private purchaser who is willing to buy in and not want some control in exchange. Alternatively, if the existing owner takes his or her team public, the team owner could structure the initial public offering in a manner where he or she can liquidate some of his or her investment while still retaining majority control.⁶⁴

D. FAN INDUCEMENT

Another factor to consider is that selling of shares of a professional sports team may induce the capitalization of the number of fans, which in turn could generate additional revenue.⁶⁵ Arguably, owners who purchase stock in a sports team will become more loyal to the team given their financial stake in the sports team.⁶⁶ Additionally, because of the ability to transfer shares freely, a person purchasing stock could sell his or her stock to a disinterested party who may initially not have any interest in the sports

60. See Cheffins, *supra* note 4, at 655 (downplaying the desires of professional sports team owners to entirely give up and sell their interests in the teams due to the teams' potential financial struggles).

61. *Id.* at 653 (discussing the possibility of professional sports team owners selling only part of their stake in a team in an attempt to lessen the financial blow to them individually as a result of the team's financial struggles while also maintaining control).

62. *Id.* at 653-54.

63. *Id.* at 653 (highlighting perhaps the most important factor that would lead a professional sports team owner to open the team for public stock sale).

64. Cheffins, *supra* note 4, at 655.

65. Schaffer, *supra* note 1, at 217.

66. *See id.*

team.⁶⁷ This hypothetical purchaser, due to his or her new financial stake, might become a team supporter, since the investment in part rests on the ability of the team to succeed.⁶⁸ Following similar logic, once having a financial stake in a corporation, a person is then likely to “purchase products from that company as a matter of habit” and as a show of his or her newfound support.⁶⁹ For example, a professional sports team stockholder-owner in the NBA’s Dallas Mavericks might purchase a Mavericks’ T-shirt instead of a plain polo or normal T-shirt. In the end, although these arguably ancillary benefits are important to take into consideration, they are unlikely to be a determining factor when an owner of a team contemplates a public offering.

E. OTHER REASONS

Other reasons for going public may be to raise revenue to expand into new areas of investment and raise additional capital for other related ventures.⁷⁰ Once a company has more access to capital, it has the ability to venture into new investments. British soccer teams have endorsed this model by investing in unrelated sports investments.⁷¹ Indeed, a “sports team corporation” could potentially transform into a sports team owned by a large publicly traded parent corporation, where the sports team only generates a small portion of the revenue.⁷²

IV. DISADVANTAGES OF GOING PUBLIC FOR A PROFESSIONAL SPORTS TEAM

A. GENERALLY

As with any business decision, the ability to raise revenue quickly comes at a price. Most importantly, when a company goes public, the company loses some of its ability to govern itself as it wishes.⁷³ When a compa-

67. See *id.* (discussing one of the potential indirect benefits that a professional sports team may experience if it opens itself up to a public sale of stock).

68. See *id.* (noting the interconnectedness between financial investments of the owners and the on-field success that a professional sports team has).

69. See *id.* (discussing the role of being a fan and how a partial ownership stake can bring one closer to the team from a fan standpoint as well as a financial one).

70. Cheffins, *supra* note 4, at 652 (mentioning reasons for teams to consider and choose to open themselves up for a public offering and sale of stock).

71. See *id.*

72. Schaffer, *supra* note 1, at 205 (discussing the different financial and ownership structures that could exist and still provide the public an opportunity to buy publicly traded stock shares, thereby gaining some form of ownership interest in the team).

73. See generally *id.*; Cheffins, *supra* note 4, at 662-63; Alan K. Austin & Teresa L. Remillard, *An Overview of Initial Public Offerings*, in CREATIVE CORPORATE FINANCING

ny goes public, it enters the gates of corporate law. Because of the nature of a corporation, a number of corporate formalities and restrictions are imposed on how the existing owner can govern his or her company.⁷⁴ These corporate formalities are often perceived to be a negative aspect of going public.⁷⁵ It is important to note, however, that a corporation's governing structure can be manipulated in a manner to minimize the burdens imposed by corporate law.⁷⁶ A public share offering can also be structured to ensure that the existing owner retains majority control and is rooted in the decision-making process.⁷⁷ If the existing owner structures the initial public offering in a manner where the existing owner becomes the majority shareholder, he or she "will remain well equipped to translate their wishes into corporate action."⁷⁸ The Green Bay Packers once again illustrate the ability to successfully conform to the traditional corporate structure while remaining efficient.⁷⁹

Arguably, a company that goes public is subject to the risk of a "hostile takeover."⁸⁰ Similarly, this risk too can be virtually eliminated if the public offering is structured in a way that places the existing owner in a position where he or she retains majority control. In the context of professional sports, this is not likely to be an issue, because professional sports team league policies often impose ownership and control restrictions.⁸¹ Nevertheless, an existing owner will inevitably suffer some loss of control and flexibility by going public. However, it is unlikely that such a small sacrifice will deter professional sports teams from the opportunity to generate millions and millions of dollars.

TECHNIQUES 467, 472-73 (PLI Corp. L. & Practice Course Handbook Ser. No. B4-6775, 1986) (discussing the aspect of "control" and management when it comes to considering whether to open a professional sports team to public trading).

74. See Cheffins, *supra* note 4, at 662-65 (highlighting the management aspects of team ownership and publicly traded stock shares in the team).

75. See *id.*

76. *Id.* at 665.

77. *Id.* at 666 (noting a strategy for opening a professional sports team to public trading, while still retaining a majority interest in the team and therefore maintaining effective control of the management and functioning of the team).

78. *Id.* at 665-66.

79. Genevieve F.E. Birren, *NFL vs. Sherman Act: How the NFL's Ban on Public Ownership Violates Federal Antitrust Laws*, 11 SPORTS LAW. J. 121, 134 (2004) (discussing William Sullivan's suit against the NFL claiming the NFL anti-public ownership policy was against federal antitrust laws).

80. Stroz, Jr., *supra* note 17, at 522 (warning of the possibility of a hostile takeover—a potential major negative impact of a professional sports team going public).

81. *Id.* (discussing the response and defense to the possibility of hostile takeovers that exists in many professional sports leagues).

B. CORPORATE LAW AND THE SECURITIES EXCHANGE COMMISSION

An important consideration is that every company going public will enter the realm of securities regulation. The company will face additional costs, time commitments, restrictions, and requirements imposed by the Securities Act of 1933 and the Securities Exchange Act of 1934.⁸² Generally, the Securities Act of 1933 governs the registration process and the initial public offering, while the Securities Act of 1934 supplements the 1933 Act by providing protection to investors in the secondary market. Both Acts are tightly regulated by the Securities Exchange Commission (SEC).⁸³ Any violation is subject to SEC enforcement proceedings and, under certain circumstances, private causes of action.⁸⁴

1. *Expenses and Time Commitments*

The numerous expenses incurred during an initial public offering will usually amount to at least fifteen percent of the proceeds generated.⁸⁵ The Cleveland Indians incurred approximately \$6.2 million in expenses out of the \$60 million the team raised from their initial public offering.⁸⁶ Most of the expenses incurred during an initial public offering are paid to investment bankers, attorneys, and accountants; all of whom have a hand in ensuring that the initial public offering runs smoothly in accordance with the complicated securities regulations.⁸⁷ During the initial public offering process, the federal securities laws require the company to divulge a significant amount of information.⁸⁸ Going public entails a number of time commitments that take time away from key personnel.⁸⁹ As such, the cost of

82. 69 AM. JUR. 2D *Securities Regulation* § 1 (2010) (warning of the limits and restrictions imposed by various federal laws that would greatly affect a professional sports team that made the move to make a public offering of stock in the team).

83. *Id.*

84. *Id.* (discussing the potential problems that could arise due to regulation under the SEC).

85. Schaffer, *supra* note 1, at 219 (noting the estimated financial burden that a professional sports team should expect and be willing to accept should they decide to go public).

86. *Id.* (pointing to the Cleveland Indians of MLB as an example of the substantial expense involved in making a public offering of stock).

87. *Id.* (explaining why a public offering of stock carries with it a substantial financial burden for the team as well).

88. Cheffins, *supra* note 4, at 658 (outlining the information that must be made public due to federal laws regulating publicly traded companies).

89. *See id.* at 661-62 (highlighting the extensive time commitment that is required of upper management when the group or professional sports team decides to make a public offering of stock and cautioning as to the effects that such commitments may bring to a team).

having key personnel away from the daily running of the business should be taken into consideration when contemplating a public offering.⁹⁰

Some argue that in anticipation of going public, a professional sports team will need to strengthen the company's management team and elect a board of directors "with a track record that will inspire confidence."⁹¹ Some also advise that a company going public should improve their systems of internal controls to ensure that a perception of fairness is conveyed to potential investors.⁹² These costly expenses, however, are not necessarily required in the context of a professional sports team going public. The reason being, as later discussed, is that fans of a professional sports team are not typically traditional investors who review the company's financial and business information prior to making the investment.⁹³ Instead, the potential purchaser is a "fan-as-investor" that is unlikely to even care who is running the company or what internal controls are in place.⁹⁴ Although a corporation benefits from quality management and internal controls, in the context of a professional sports team going public, the company should not be concerned that a fan-as-investor will refrain from purchasing stock simply because the corporation failed to hire a top chief executive officer (CEO).

2. *Ongoing Disclosure Requirements*

Once a company surpasses the hurdles of going public, federal securities laws impose numerous ongoing restrictions and obligations, primarily disclosure requirements, that can open the door to private causes of action or enforcement proceedings by the SEC.⁹⁵ Reporting requirements are generally in form of a 10K (a report filed annually), a 10Q (a report filed quarterly), and, under certain circumstances, an 8K (a report filed when the company undergoes certain material changes).⁹⁶ A limited list of examples of ongoing disclosure requirements includes the disclosure of current company information, detailed financial information, executive salaries, and

90. *See generally id.*

91. *Id.* at 663 (advising as to the important role and effect that the board of directors and other high ranking officials can have on the success of a public offering).

92. Cheffins, *supra* note 4, at 663 (encouraging consideration of the importance of perceived fairness in the process and offering).

93. *See infra* Part IV.D. (noting the differences between typical investors in corporations and investors in a professional sports team corporation).

94. *See Stroz, Jr., supra* note 17, at 539 (highlighting the status of potential investors in professional sports teams as fans of them or fans of the game as opposed to merely financial investors yearning to maximize profit).

95. 69 AM. JUR. 2D *Securities Regulation* § 585 (2010) (discussing the ongoing obligations and restrictions that any publicly traded corporation faces and warning as to the ramifications that may result if those requirements are not adhered to).

96. *Id.* §§ 586-88.

possible risks facing the industry—forward looking information.⁹⁷ Once public, the company is subject to an audience overlooking the performance of the company. Because the disclosure requirements are complex and extensive, the services of accountants and attorneys will once again be required to ensure that there are no securities violations. Consequently, these costs should also be accounted for when contemplating a public offering.

In the context of professional sports, the numerous disclosure requirements raise issues related to the information that must be divulged. Professional sports teams are typically accustomed to maintaining the privacy and confidentiality of information.⁹⁸ This happens to be one of the primary reasons league policies initially fostered an anti-public ownership policy.⁹⁹ As a private company, a sports team is required only to divulge a very limited amount of information. Once public, a professional sports team must be prepared to divulge detailed information.¹⁰⁰ Arguably, the amount of information open to the public could potentially harm a team's bargaining power.¹⁰¹ For example, disclosure would allow a player in free agency status to look up the team's financial information and determine exactly what amount the team pays to other players on the team, and what amount the team can afford to pay him or her. The media will also have more access to information, which subjects the team or the teams' owners' decisions to public scrutiny.¹⁰²

C. CORPORATE FIDUCIARY DUTIES

Once a professional team goes public, the corporation's leaders become accountable to shareholders by virtue of corporate fiduciary duties.¹⁰³

97. See *id.* at § 568; see also FEDERAL SECURITIES EXCHANGE ACT OF 1934 § 1.01 (A.A. Sommer, Jr. ed., 2008) (discussing many of the disclosure requirements that a professional sports team would need to follow in order to comply with federal law following the offering of a public sale of stock in the team).

98. Cheffins, *supra* note 4, at 659 (discussing the common resistance of many professional sports teams and leagues to the disclosure of much of the information that would be required if a team were to go public).

99. *Id.* (stating that resistance to disclosing confidential information that would be required to be made public if the professional sports team offered a public sale of its stock as being a primary reason for leagues prohibiting such offerings).

100. *Id.*

101. See *id.* (noting the negative effects that disclosing confidential financial information could have on a professional sports team, particularly in the arena of player contract negotiations).

102. See *id.* (adding that public scrutiny and criticism would increase should a professional sports team's confidential financial information be made public).

103. Krikor Meshefejian, *Professional Sports Franchises as Publicly-Traded Companies: Fiduciary Issues and an Alternative Solution (Part 3 of 3)*, ILL. BUS. LAW JOURNAL, November 6, 2006, [http://iblsjournal.typepad.com/illinois_ busi-](http://iblsjournal.typepad.com/illinois_busi-)

Generally, the corporation's leaders will owe a duty of care and a duty of loyalty to the shareholders of the corporation.¹⁰⁴ Essentially, the duty of care imposes an obligation on the directors of the corporation to inform themselves of material information prior to making any decision.¹⁰⁵ Under the duty of loyalty, "[c]orporate officers and directors are not permitted to use their position of trust and confidence to further their private interests."¹⁰⁶ Generally, if a corporation complies with the duty of loyalty, the decisions made by the directors will be left unquestioned, as long as the decision is considered to be a reasonable business decision that is not grossly negligent.¹⁰⁷ Additionally, if the owner is the majority shareholder, which will generally be the case, he or she will owe additional fiduciary duties to the minority shareholders.¹⁰⁸

In the professional sports context, it is foreseeable that the fan-as-investor could resort to using these corporate tools when he or she is discontent with a decision the team owners have made.¹⁰⁹ For example, a fan-as-investor could allege a violation of the duty of care when the team decides to extend an offer to a player for a significant amount of money or when the team decides not to relocate to a new city even though it would likely raise significant revenue. The real issue becomes not the obligations that these fiduciary duties impose, but rather the divergence of interests that may arise.¹¹⁰ Because a professional sports team is different from other types of investments, the business interests may differ from that of a traditional corporation.¹¹¹ Corporate law dictates that a public corporation's ultimate purpose is to generate and maximize profits for its shareholders.¹¹²

ness_law_soc/2006/11/professional_sp.html (noting the role of corporate fiduciary duties when it comes to considering whether a professional sports team should go public).

104. See generally *id.* (elaborating on the fiduciary duties that would arise when a professional sports team opened itself up to a public offering of stock).

105. *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1983) (discussing the duty to remain informed when making corporate business decisions)).

106. *Guth v. Loft*, 5 A.2d 503, 510 (Del. 1939) (discussing the duty of loyalty for corporate officers).

107. *Smith*, 488 A.2d at 872 (stating a form of the business judgment rule).

108. See *id.* (comparing and contrasting the role and duties of the majority shareholder with that of the minority shareholders in a corporation).

109. See *Frome*, *supra* note 17, at 539 (discussing the potential impact, role, and characteristics of the fan-as-investor).

110. *Meshefejian*, *supra* note 10 (noting that as a fan investor strives to better the talent on the field or court, the financial interests start to diverge, because that often involves spending and investing more money into the team).

111. See *id.* (comparing and contrasting a typical corporation with a professional sports team corporation).

112. See *id.* (stating and outlining a fundamental rule in corporate law—that profits should be maximized for the shareholders).

On the other hand, although a professional sports team is interested in generating profits, it may also be interested in maintaining its success as a winning team, a good reputation, and the ability to please its fans.¹¹³ The problem, however, is that success as a winning team does not entirely translate into success in terms of increased revenue. As a result, the issue becomes what “form of success will be applied to a sports franchise that has gone public.”¹¹⁴ Would a court construe a publicly traded professional sports team as an organization with the ultimate goal of maximizing profits for its shareholders or some other more relaxed purpose?¹¹⁵ For example, a foreseeable corporate business decision could be to raise ticket prices for the games. If the corporate leaders decide not to raise ticket prices to ensure that costs remain affordable, will the courts be willing to scrutinize these types of business decisions as grossly negligent when it is evident that a profit is lost? Consequently, a new type of conflict evolves between shareholder greed for maximizing profits and other non-profit based interests. Arguably, these issues are not likely to arise considering the fact that the majority of investors will be the fan-as-investors who are less likely to question the business judgment of their favorite team.¹¹⁶ Nevertheless, a possibility exists that a discontent fan-as-investor would be willing to utilize these corporate tools and bring suit. Alternatively, it is also conceivable that a traditional investor could decide to purchase stock for the sole purpose of maximizing profit.

D. IS THERE A MARKET?

The premise of a public offering is the short term goal of rapidly generating capital. The problem is that a professional sports team selling shares to the public is unlikely to attract the attention of the true investor as opposed to the fan-as-investor.¹¹⁷ The fan-as-investor is essentially a fan of the professional sports team who purchases the team’s stock, not with an interest to make a profit, but instead as a fan showing his or her support for his or her favorite sports team.¹¹⁸ A typical investor understands that an

113. *See id.* (stating that investors in a sports team corporation often want to maximize talent and performance as opposed to finances and profits).

114. *Id.* (citing Schaffer, *supra* note 1, at 204).

115. Meshefejian, *supra* note 10 (questioning whether a professional sports team corporation should or would be treated differently under the eyes of the law than a typical corporation).

116. *See* Stroz, Jr., *supra* note 17, at 538 (downplaying the role of the business judgment rule and the duty to maximize profits for professional sports team corporations).

117. *Id.* at 539.

118. *Id.* (explaining the meaning and significance of the fan-as-investor role).

investment in a sports team is considered a “second-rate investment.”¹¹⁹ This is because purchasers of a professional sports team’s stock are unlikely to see a return on their investment.¹²⁰ Along the same lines, because owners will generally retain the majority control of the corporation, purchasers of stock are unlikely to have any significant power over or input on how the business transacts.¹²¹ Although a true investor understands these implications, a professional sports team runs the risk that a fan-as-investor who purchases stock may find his or her investment disappointing when he or she discovers that the stock is unlikely to yield a profit and entails no voting power.¹²² To protect itself legally, a sports team going public would need to disclose in the initial public offering documents that the investment is, in many ways, a worthless investment.¹²³

Nevertheless, a sports team corporation could conceivably turn a profit for its shareholders. Historically, this optimism is limited to a special set of circumstances. In the past, it appears that teams only yield return to investors “during the consideration and completion of a sale of the organization.”¹²⁴ The stock of MLB’s Cleveland Indians rose significantly during Dick Jacobs’ decision and announcement that he was contemplating selling his ownership in the team.¹²⁵ This event triggered the price of the stock to escalate yielding investors a return on their initial investment.¹²⁶ Nevertheless, the sale of the team to a new owner is not an everyday transaction. Traditional investments are much more likely to yield a sooner opportunity to profit. As a result, true investors are unlikely to purchase this type of stock. Instead, the market will be open to purchasers who are not interested in the stock as a “pure investment,” but instead as a representation of his or

119. See Michael J. Santoli, *How to Own Your Sports Team*, WALL ST. J., Sept. 27, 1996, at B17 (discussing the reasons why an investment in a professional sports team is considered to be a bad investment for normal investors who are concerned with the financial soundness of their investments and want to generally maximize their profits).

120. *Id.* See Schaffer, *supra* note 1, at 223 (essentially calling investments in professional sports teams bad investments).

121. See Santoli, *supra* note 120, at B17; see also Schaffer, *supra* note 1, at 223.

122. See Santoli, *supra* note 120, at B17; see also Schaffer, *supra* note 1, at 223 (outlining further problem areas that exist for publicly traded professional sports teams due to the unique role of investors in such corporations).

123. See MATTHEW BENDER & CO., *The Securities Act of 1934 and the SEC, 1-1 Federal Securities Exchange Act of 1934 § 1.01* (2008) (providing the disclosure requirements required prior to an initial public offering).

124. Schaffer, *supra* note 1, at 223.

125. See *id.* (using the Cleveland Indians as an example of what can happen when a majority owner of a publicly traded professional sports team announces that he or she plans to sell his or her interest in the team).

126. *Id.* (noting that the value of stock shares rose when the owner of the Cleveland Indians announced that he wanted to sell his shares).

her support for the team.¹²⁷ Nevertheless, as worthless as the investment may appear, it is indisputable that sports teams selling shares to the public are likely to find a significant number of fans-as-investors willing to make a purchase. The corporation, however, should be aware that a fan-as-investor may be surprised to find his or her investment a disappointing venture.

V. LEAGUE POLICIES AND FEASIBILITY

In the United States, all professional sports leagues have rules and regulations governing “the transfer of ownership of teams.”¹²⁸ In the past, the major sports leagues imposed policies discouraging professional sports teams from going public.¹²⁹ League leaders, however, have begun to turn away from these traditional notions and are beginning to move towards a more flexible approach. In 1997, MLB changed their policy permitting baseball teams the opportunity to offer shares of stock to the public, subject to some restrictions.¹³⁰ MLB found it desirable to impose the restriction that owners could not distribute any more than forty-nine percent of a team by public offering.¹³¹ It was evident the underlying policy of MLB was to permit shares of stock to be sold to the public, but subject to the caveat that majority ownership remain in private hands.¹³² In 1998, MLB’s Cleveland Indians took advantage of this new opportunity and offered shares to the public for the first time.¹³³ Similarly, like MLB, the NHL permits public ownership, but requires a review of an owner’s proposal to go public and requires a bylaw imposing a one shareholder ultimate voting control.¹³⁴ The NBA likewise fosters a team’s ability to sell shares to the public.¹³⁵ Thus, MLB, the NHL, and the NBA provide sports team owners the opportunity to go public, but impose restrictions that ensure that a one-man decision remains without public shareholder interference.

Unlike MLB, the NHL, and the NBA, the NFL has been reluctant to follow the trend of permitting public ownership.¹³⁶ Article 3.5 of “[t]he NFL Constitution prohibits corporate ownership of franchises, and [seven-

127. *Id.* at 224.

128. *Id.* at 208.

129. *See* Schaffer, *supra* note 1, at 223 (noting the resistance within professional sports leagues to publicly traded professional sports team corporations).

130. *Id.* *See* Cheffins, *supra* note 4, at 643.

131. Schaffer, *supra* note 1, at 208.

132. *Id.* (discussing the reasons that MLB elected to permit limited public ownership of teams in the league).

133. *Id.*

134. *Id.*

135. Meshefejian, *supra* note 10.

136. Schaffer, *supra* note 1, at 209; *see* Constitution and Bylaws of the National Football League, arts. 3.2-3.5 (2006).

ty-five percent] of NFL owners must approve all transfers of ownership interests in NFL clubs.”¹³⁷ Because of these firm restrictions, a strong argument exists that the NFL’s prohibition on public ownerships could be a violation of the Sherman Antitrust Act.¹³⁸ Incidentally, the issue arose in 1987, when the owner of the New England Patriots, William Sullivan, determined that a public offering could help him and his team overcome some of the financial difficulties the team was facing.¹³⁹

After being denied by the NFL, Sullivan sued the NFL claiming that the NFL’s prohibition against public ownership was a violation of the Federal Sherman Antitrust Act.¹⁴⁰ The Sherman Act prohibits “[e]very contract, combination . . . or conspiracy, in restraint of trade or commerce”¹⁴¹ The Sherman Act attempts to encourage a successful business economy based on the ability of businesses to compete against each other.¹⁴² Sullivan argued that the NFL’s policy against public ownership was “an illegal restraint on trade in the market for ownership of a National Football League franchise”¹⁴³ Although the United States Court of Appeals for the Fifth Circuit wrote an opinion that appeared to look favorable on Sullivan’s allegations, the case was dismissed on other grounds, leaving the issue open for future challenges. In years to come, we are likely to see a similar challenge to the NFL’s prohibition against public ownership. The NFL believes that access to public ownership would afford certain teams additional revenue, placing privately funded teams at a disadvantage.¹⁴⁴ They argue that if one team were to go public, all teams would need to go public in order to remain competitive.¹⁴⁵ Additionally, the NFL believes that allowing public ownership would provide certain teams an unfair advantage due to a team’s location.¹⁴⁶ Inevitably, a team’s local market differs from city to city and team to team, with some having to share a market—e.g., the Oakland Raiders and the San Francisco 49ers of the NFL, and other teams simply located in smaller cities with less thriving economies.¹⁴⁷ The business of competing

137. Schaffer, *supra* note 1, at 209.

138. *Id.* (discussing the antitrust implications of the approach to publicly traded teams by the NFL).

139. *Id.* (noting that the antitrust problems presented by the NFL’s stance towards publicly traded teams have already surfaced).

140. *Sullivan v. NFL*, 34 F.3d 1091, 1096 (1st Cir. 1994).

141. 15 U.S.C. § 1 (2006).

142. *See id.*

143. Schaffer, *supra* note 1, at 209.

144. Birren, *supra* note 79, at 132 (explaining the root of the resistance to publicly trade sports team corporations by many, if not most, of the NFL owners).

145. *See id.* (noting the potential advantages of going public and the implications it could have on other teams in the league).

146. *See id.* at 133.

147. *Id.*

in professional sports would shift to a business competing for public income.¹⁴⁸ To avoid such an inequitable result, the NFL owners find it prudent to impose a policy prohibiting public ownership of NFL teams.

VI. EXAMPLES

The Green Bay Packers (the Packers) were the first team to endeavor to sell shares of stock to the public in 1923.¹⁴⁹ Because of their success, the Packers conducted four additional public offerings.¹⁵⁰ Albeit the NFL's anti-public ownership constitution, the Packers have the ability to offer shares of stock to the public by virtue of a grandfather clause that allows them to function as a semi-public corporation.¹⁵¹

Importantly, the Packers do not constitute a sports team corporation; instead the business entity is constructed to be a "community ownership" scheme "where non-marketable securities are sold and the public owns a majority of the stock."¹⁵² Shareholders receive no dividends, no ticket privileges, limited voting power, no tax deductions, no protections under federal securities law, and only non-transferable shares.¹⁵³ The arrangement is essentially an opportunity to "become a part of the Packers' tradition and legacy" and receive a stock certificate in exchange.¹⁵⁴ Although the Packers are not an actual publicly traded sports team corporation, the offerings conducted by the Packers illustrate the benefits that a public offering can provide a professional sports team contemplating going public. The latest Packers public offering provided the team approximately \$24 million in capital.¹⁵⁵ This amount "doubled the team's financial reserves" and afforded

148. *Id.* (highlighting the desire to keep the competition on the field and not in the financial world).

149. Schaffer, *supra* note 1, at 206.

150. *Id.*

151. Birren, *supra* note 79, at 122 (discussing the impact and effect of the "grandfather" clause in the NFL rules).

152. Schaffer, *supra* note 1, at 206 (explaining the unique situation, status, and structure of the Green Bay Packers).

153. Cheffins, *supra* note 4, at 646; *see also* Scott C. Lascari, *Essay: The Latest Revenue Generator: Stock Sales by Professional Sports Franchises*, 9 MARQ. SPORT L.J. 445, 449 (1999) (discussing professional sports teams in the United States that have held public offerings).

154. Cheffins, *supra* note 4, at 646 (quoting Richard Sandomir, *Packer Faithful Embrace an Unusual Stock Sale*, N.Y. TIMES, Nov. 21, 1997, at C22); *see also* Lascari, *supra* note 153, at 449 (quoting GREEN BAY PACKERS, INC., 1997 COMMON STOCK OFFERING DOCUMENT 2 (Nov. 14, 1997)).

155. Schaffer, *supra* note 1, at 214.

the Packers the opportunity and means to renovate and modernize the team's existing stadium and facilities numerous times.¹⁵⁶

Notably, the Packers' offerings illustrate that a market for a sale of shares of stock of a professional sports team clearly exists. Like the community ownership structure that the Packers use, a sports team corporation's stock is essentially just as bad of an investment in the sense that it provides limited voting power and ultimately yields zero return on the investment. Even having discussed that a share of stock in the Packers is essentially a worthless investment, the Packers have been able to raise millions of dollars selling shares of stock to the public. A sports team corporation, unlike community ownership, has the ability to provide additional incentives for those who purchase stock—e.g. season ticket privileges and possible dividend distribution. Arguably, if the Packers were able to sell these types of shares, an inference can be made that other teams intending to go public would have even greater success.

The Cleveland Indians were the first MLB team to take advantage of MLB's favorable stance on going public.¹⁵⁷ In 1998, the Cleveland Indians raised approximately \$60 million by selling four million shares of stock.¹⁵⁸ Dick Jacobs, the owner of the team, structured the sale in a manner where he retained 99.88% control of the team.¹⁵⁹ By structuring the transaction in this manner, Jacobs essentially remained in the same position as he was before, except his team was now in possession of \$60 million.¹⁶⁰ Likewise, because it was structured in a manner to avoid dilution of control, he simultaneously maneuvered to comply with MLB ownership guidelines.¹⁶¹ In 1999, Jacobs announced that he was interested in selling his ownership in the Cleveland Indians.¹⁶² For the first time since the initial public offering, the value of the stock increased in value.¹⁶³ Jacobs sold his company to Larry Dolan, who cashed out existing minority shareholders using a cash-out-merger.¹⁶⁴ The cash-out-merger forced existing shareholders to sell

156. *Id.* Cheffins, *supra* note 4, at 646 (discussing the motivations and results of the Packers offering a public sale of stock in the team).

157. Schaffer, *supra* note 1, at 208.

158. *Id.* at 204.

159. *Id.* at 216.

160. *See id.* (noting the positive effect of the Cleveland Indians' public offering).

161. *See id.*

162. Stroz, Jr., *supra* note 17, at 528.

163. *Id.*

164. *See generally* 19 AM. JUR 2D *Corporations* § 2179 (2008) (explaining that a cash-out-merger occurs when the majority shareholder of a corporation eliminates the minority shareholder in a coercive manner). In a cash-out-merger, "the target corporation is merged into a wholly-owned [sic] subsidiary of the acquirer and the minority shareholders in the target corporation are forced to surrender their shares, either for the price of a prior ten-

their shares in the Cleveland Indians for a cash consideration of \$22.61, making each investor a profit on their investment.¹⁶⁵ The Cleveland Indians' offering illustrates the benefits that a public offering can provide an owner who intends to keep his or her investment. The possibility to offer shares to the public can provide an existing owner the opportunity to essentially acquire a significant amount of money without diluting his or her control.

In 1996, H. Wayne Huizenga, the owner of the Florida Panthers decided to take the team public as a sports team corporation.¹⁶⁶ The Panthers required a minimum purchase of one hundred shares during their initial public offering—clever in the sense that they attempted to induce buyers other than fans-as-investors—and restricted shareholder voting rights—complying with NHL mandates and ensuring Huizenga retained complete control.¹⁶⁷ Eventually, the corporation owning the Florida Panthers diversified and the hockey business only accounted for a small portion of the corporation's business.¹⁶⁸ In 2001, the team was sold back to a private investor.¹⁶⁹

Lastly, the Boston Celtics, like the Panthers, went public in 1986, offering their fans the opportunity to purchase an interest in the team.¹⁷⁰ Much like the stock of the other professional teams that have gone public, the Boston Celtics' stock came with few privileges.¹⁷¹ Notably, however, the Boston Celtics were one of the few teams who actually paid dividends to their shareholders.¹⁷² Like the Florida Panthers and the Cleveland Indians, the Boston Celtics provided their investors access to the secondary market.¹⁷³ Like the others, in 2002, the Boston Celtics was sold to private investors. As of now, with the exception of the Green Bay Packers, who are not considered to be a true sports team corporation, no professional sports team in the United States currently sells shares of stock to the public.¹⁷⁴ Nevertheless, these examples illustrate the number of benefits that public

der offer or for a price determined by a special court appraisal proceeding." *Abbey v. Montedison S.p.A.*, 539 N.Y.S.2d 862, 865 (N.Y. Sup. Ct. 1989).

165. Stroz, Jr., *supra* note 17, at 528-29 (discussing the benefits that a public offering of stock in a professional sports team can have).

166. *Id.* at 526.

167. *Id.* at 526-27.

168. *Id.*

169. Schaffer, *supra* note 1, at 204.

170. Stroz, Jr., *supra* note 17, at 525.

171. *See id.* (contrasting the situation of the Boston Celtics with that of other professional sports teams that went public).

172. *Id.*

173. *Id.* at 525-526 (discussing the role of the secondary market to the attraction of investors in the Boston Celtics and other professional sports team corporations).

174. Meshefejian, *supra* note 10.

entity status can afford a professional sports team contemplating a public offering.

VII. CONCLUSION

If professional sports teams' owners can overlook the numerous restrictions that arise from going public, primarily the federal securities laws and the inability to solely govern one's team's affairs, then venturing into public entity status is a viable venue to rapidly generating working capital in these difficult economic times. With the exception of the NFL, current league policies make it permissible for professional sports teams to go public. As history shows, a market exists of fans-as-investors who are willing to purchase sports teams' stock, regardless of the fact it is considered to be essentially a worthless investment. If proper disclosure is made, a sports team corporation can effectively comply with the SEC disclosure requirements and still have the ability to yield a significant profit.

On the other hand, if professional sports team owners perceive the securities laws and the unresolved legal issues regarding corporate law a significant risk, it is possible that many teams will be deterred from jumping into such business ventures. Be that as it may, in the near future as the economy continues to tighten, it is likely that more professional sports teams will seriously contemplate the possibility of going public. Aside from the corporate disadvantages of going public, the opportunity to go public appears to provide a professional sports team owner access to a sleeping giant of additional capital.