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The American Market & Sports IPOs: Does Manchester United Signal a Change?

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Introduction 0
I. Why Sports Teams Go Public 4
a. Advantages to Going Public for Sports Teams 5
b. Disadvantages to Going Public for Sports Teams 11
II. JOBS Act Advantages for Sports IPOs 15
a. Manchester United and the JOBS Act 17
b. Other Recent IPOs and the JOBS Act 20
III. Dual-Class Voting Structure and Maintaining Owner Control 21
IV. Changing Landscape of League Restrictions 25
V. Manchester United Since the IPO 28
Conclusion 31

"At the end of the day, sports are a business," - Taylor Dent[1]

Introduction

In August 2012, the Manchester United football club offered its stock publicly on the New York Stock Exchange. By most accounts in the media, it was a terrible investment. And yet, eight months out from the initial offering, the MANU stock has performed tremendously, outperforming market benchmarks like the S&P 500 by a wide margin throughout 2013. By utilizing U.S. legislation like the JOBS Act and options like the dual-class voting structure available in the U.S., Manchester United was able to earn over $230 million without forfeiting any significant control of the company. Manchester United's success will encourage other sports teams, both domestic and foreign, to go public in the U.S. as well.

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[1] *Doubles Players Take ATP to Court*, CANADIAN PRESS (Sept. 22, 2005), http://www.tsn.ca/story/print/?id=135298.

Only a small minority of sports teams in the United States are currently directly traded on a public stock market.[2] Instead, most are owned by privately-held corporations, publicly-quoted corporations or unincorporated partnerships that have a few investors.[3] At first glance, the difference between a publicly traded team (sometimes called a "stock market team"[4]) and a team owned by a publicly traded company may seem negligible. After all, in both cases stock is traded on a public market and owned by numerous diverse investors. However, consider the following example: the Anaheim Mighty Ducks[5] hockey team was owned for many years by Walt Disney Corporation, a publicly traded company.[6] Yet, the Ducks cannot be considered a stock market team because "neither fans nor investors will see much correlation between the corporations in question and the teams in question."[7] Buying Disney stock would not give the investor any sense of control over the sports team, as it was just one of many Disney subsidiaries.[8] Conversely, investors of a stock market team can have a direct effect on the management of the franchise.

Sports teams considering an initial public offering (IPO) face numerous deterrents. Most U.S. major sports leagues have rules in place to prevent or at least hinder efforts to go public.[9]

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[2] Brian Cheffins, *Sports Teams and The Stock Market: A Winning Match?* 32 U. Brit. Colum. L. Rev. 271, 272 (1998).

[3] *Id.* at 272.

[4] Robert Bacon, *Initial Public Offerings and Professional Sports Teams: The Regulations Work, But Are Owners and Investors Listening?*, 10 SETON HALL J. SPORT L. 139, 147, n.24 (2000).

[5] When the team was sold in 2005, the name was changed to Anaheim Ducks. *Anaheim's Ducks decide to drop 'Mighty' from name*, ASSOCIATED PRESS, (Jan. 27, 2006), http://sports.espn.go.com/nhl/news/story?id=2308588.

[6] Cheffins, *supra* note 2, at 273.

[7] *Id*.

[8] "For professional sports franchises with general corporate ownership, both financial performance and performance on the field will barely register when it comes to the financial results of the parent company." Ryan Schaffer, *A Piece of the Rock (or The Rockets): The Viability of Widespread Public Offerings of Professional Sports Franchises*, 5 VA. SPORTS & ENT. L.J. 201, 205 (2006). Other examples of teams owned by publicly traded companies include: the Chicago Cubs, owned by the Tribute Company; the Los Angeles Dodgers, owned by Rubert Murdoch's News Corp.; the Philadelphia 76ers and Philadelphia Flyers owned by Comcast Corporation; the New York Knicks and New York Rangers, owned by Cablevision Systems; the Atlanta Thrashers, Atlanta Hawks, and Atlanta Braves, owned by AOL Time Warner; and the Anaheim Angels, which were also owned by Walt Disney Corporation. *Id.*

[9] *See generally* Cheffins, *supra* note 2.

The actual earnings from Sports IPOs tend to be less than initially anticipated.[10] Once public, teams may also have to disclose financial information, which can create tension between "on the field" success and financial success. Yet those teams that decide to go public do obtain some distinct advantages. Although the IPOs typically do not earn as much as is initially forecasted, average proceeds are often in the multi-millions of dollars,[11] which can be used to build new stadiums, renovate older stadiums, pay players' salaries and contribute to operating costs. Additionally, in the U.S., many sports teams can take advantage of decreased disclosure requirements as well as the ability to retain nearly all of the ownership stock and voting control through certain voting structures.

On August 10, 2012, the Manchester United Football Club (Manchester United) of Manchester, England, owned by the Glazer family, conducted a much-publicized IPO on the New York Stock Exchange.[12] The price of the initial offering was set at $14, much lower than the estimated $16-20 range that had been initially forecasted.[13] The offering consisted of 16.6 million shares[14] and earned the club a total of $233 million, far below the anticipated $1 billion the club had hoped to earn from the IPO.[15] There was also much negative media coverage

[10] Bacon, *supra* note 4, at 140.
[11] For example, the Manchester United IPO earned $233 million. Ajay Makan, "*Chaotic IPO will leave Glazers satisfied*" Financial Times, (Sept. 18, 2012), http://www.ft.com/cms/s/0/31edc158-0191-11e2-81ba-00144feabdc0.html#ixzz27c7NkArz. The most recent Green Bay Packer IPO sold over 268,000 shares at $250 a piece, which is roughly $67 million. "Community, Shareholders" Green Bay Packers, http://www.packers.com/community/shareholders.html [hereinafter *GB Packers Community, Shareholders*].
[12] Makan, *supra* note 11.
[13] *See* Chris Smith, *Manchester United IPO: History Says Don't Buy*, FORBES, (Aug. 10, 2012) http://www.forbes.com/sites/chrissmith/2012/08/10/manchester-united-ipo-history-says-dont-buy/; Makan, *supra* note 11; Travis Hoium, *Manchester United's IPO Misses Wide Left*, AOL DAILY FINANCE, 8/14/12, http://www.dailyfinance.com/2012/08/14/manchester-united-ipo-misses-wide-left/.
[14] Smith, *supra* note 13.
[15] Makan, *supra* note 11.

surrounding the offering leading up to the sale, regarding the financial soundness of an investment in Manchester United.[16]

Although the IPO was touted as a way for the team to reduce the large amount of debt being carried by the franchise,[17] only approximately half of the proceeds from the IPO were be used to pay down Manchester United's debt,[18] a decision that was remarked upon quite harshly from fans and investors alike.[19] The rest of the proceeds, $110 million, went directly to the Glazer family itself as profit.[20] By going public in the U.S., Manchester United also qualified as an Emerging Growth Company under the recent U.S. Jumpstart Our Business Startups Act (JOBS Act) of 2012 and therefore was not subject to the standard disclosure requirements faced by most publicly traded companies in the U.S. Numerous other corporations made the move to go public in 2012 as well; however, not all were eligible for the advantages offered by the JOBS Act.

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[16] Roger Bennett, *Great club ... terrible investment?*, ESPN, (Aug. 2, 2012), http://espn.go.com/sports/soccer/story/_/id/8227588/manchester-united-ipo-great-american-swindle-roger-bennett; Hoium, *supra* note 13; Smith, *supra* note 13.

[17] In 2005, the Glazer family conducted a leveraged buyout of Manchester United, costing £790 million or almost $1.5 billion and saddled the franchise with debt. *Glazer wins control of Man United*, BBC NEWS, 5/12/2005, http://news.bbc.co.uk/2/hi/business/4540939.stm. *See also* Michael Moritz, *Manchester United opens window on murky world of leveraged buy-outs*, THE TELEGRAPH, 1/27/2010, http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/7083750/Manchester-United-opens-window-on-murky-world-of-leveraged-buy-outs.html.

[18] This arrangement was stated within the Manchester United Prospectus, which noted that half of the shares would be sold by the "selling shareholder" as known as the Glazer Family:

> In this offering, we are selling 8,333,334 Class A ordinary shares and the selling shareholder named in this prospectus is selling 8,333,333 Class A ordinary shares. In connection with the sale by us, our net proceeds from the sale of our Class A ordinary shares in this offering at the initial public offering price of $14.00 per share will be approximately $110.3 million, after deducting estimated underwriting discounts and commissions. … We will not receive any proceeds from the sale of any Class A ordinary shares by the selling shareholder.

Manchester United Prospectus, SEC Filings, 42, http://www.sec.gov/Archives/edgar/data/1549107/000104746912008161/a2210672z424b4.htm [HEREINAFTER Manchester United Prospectus].

[19] Mark Potter, *Manchester United fans group slams Glazers' IPO plan*, REUTERS, (July 31, 2012), http://www.reuters.com/article/2012/07/31/us-manchesterunited-ipo-fans-idUSBRE86U0DC20120731. *See also* Makan, *supra* note 11.

[20] Makan, *supra* note 11.

Although the fans may disagree, from the Glazer family's perspective the IPO was a success. The Glazers walked away with $110 million in their pockets, reduced the debts of Manchester United by a similar amount, and gave up merely 2% of the voting share of the company.[21] Even though there will be administrative fees down the road as a result of having shareholders, these costs will almost certainly be paid for by the company, rather than by the Glazers.[22]

This article will argue that sports franchises that decide to IPO will do so in the U.S., as demonstrated by the recent Manchester United IPO. Part I will discuss why sports teams choose to go public. Part II will examine the JOBS Act of 2012 and the impact it can have on sports IPOs. Part III will offer a discussion on the dual-class voting structure available in U.S. markets and the advantages of such a structure to sports teams. Part IV will survey the changing landscape of league restrictions in the U.S., including charges of antitrust violations. Finally, Part V will provide a review of the early market reaction to the Manchester United stock. This article will show that the advantages of the U.S. Market as utilized by Manchester United indicate that sports teams looking to go public in the future will choose to do so in the U.S.

I. Why Sports Teams Go Public

There are numerous risks and rewards that result from an IPO for stock market teams. Teams can go public to relieve debt pressures, secure funding for stadiums and players, and provide exit options for owners. In the case of Manchester United, the team's need to relieve debt pressures was even greater due to the introduction of the Union of European Football

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[21] Bennett, *supra* note 16.

[22] This is solely my opinion based on the fact that the Glazers purchased Manchester United by conducting a leveraged buyout, placing on the risk and debt from the sale on the team rather than the owners as well as the decision to keep half of the IPO proceeds even though Manchester United's debt exceeds £400mil. *See* Manchester United Prospectus, *supra* note 18, at 29.

Associations (UEFA) Financial Fair Play Rules. The downsides associated with going public include concerns about whether winning will take priority over financial success, legal disclosure obligations, and league restrictions with regard to public offerings.

a. Advantages to Going Public for Sports Teams

The ability to offer stock on a public market can provide sports teams with a potentially huge source of funding.[23] Sports teams will sometimes pursue a public offering to raise funds for stadiums.[24] Although the need to pay for stadiums out of the team's pocket is typically considered a European problem,[25] as North American cities have historically been willing to subsidize the cost of the stadium to keep the team in the city,[26] times may be changing.[27] A growing number of cities in the U.S. have become either unwilling or unable to provide teams with the funding for new stadiums or even renovations to older stadiums.[28] Although the economy is beginning to slowly recover from the recession of 2008, cities may not be so quick to return to their pre-recession habits of funding multi-million dollar stadium projects and may

[23] While a majority of the funding for sports teams in U.S. comes from local ticket sales and broadcast fees, these sources of funding are not easy to increase. Schaffer, *supra* note 8, at 202-03. Going public provides a creative source of additional capital. *Id.* Many major sports teams have encountered financial difficulties over the years that could be abated by a public offering of stock. For example, eighteen of thirty NHL teams posted a loss in the 2010-2011 season. If the five top-earning teams are removed from the calculations, the remaining twenty-five NHL teams lost $86 million during the 2010-2011 season. This disparity in wealth throughout the league was a driving factor behind the most recent lockout in the 2012-2013 season. Kurt Badenhausen, *The NHL's Problem: Only Three Teams Are Making Real Money*, FORBES, (Sept. 18, 2012), http://www.forbes.com/sites/kurtbadenhausen/2012/09/18/nhl-lockout-is-all-about-the-benjamins-and-who-doesnt-have-them/.

[24] Bacon, *supra* note 4, at 140-42. European teams also may need to IPO to raise funds for player salaries and costs. Cheffins argues this is a result of a lack of "farm leagues," drafts, free agency, and trades in the U.K. as well as the "transfer fees" that must be paid when a team acquires a player from another team. Cheffins, *supra* note 2, at 276. North American teams don't have to make these "one-off" cash outlays. *Id.*

[25] U.K. teams typically use the floatation proceeds to build and improve stadiums. This is because the stadiums are owned by the teams in the U.K., versus in the U.S. where the cities typically own the stadiums. Cheffins, *supra* note 2, at 275.

[26] 3 of 4 U.S. "stock market teams" have *not* used their IPOs to build stadiums. Bacon, *supra* note 4, at 153.

[27] *See* Bacon, *supra* note 4, at 143.

[28] Bacon, *supra* note 4, at 143.

continue to refuse or limit sports teams' access to public funds.[29] If this source of funding dries up, North American teams may find it necessary to go public to finance construction on their own.[30] Alternatively, if teams are forced to expend internal funds for stadiums, they may find they lack the ability to pay player's salaries and thereby look to go public for that reason.

Although many companies that go public may cite debt concerns as a motivating factor, debt control has become a forefront issue for football clubs in Europe. In 2010, UEFA passed the Financial Fair Play (FFP) rules which will govern the allowable debt that can be carried by a club participating in UEFA competitions.[31] Because clubs earn large amounts from participating in and even more for winning UEFA competitions,[32] clubs will not break these rules lightly.[33] UEFA has stressed that the provisions are not "anti-debt"; so long as the clubs can service their

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[29] "Jockeying between major sports franchises and governments over the financing of new stadiums is nothing new, but the chilly reception the Atlanta proposal has gotten from the public and many state lawmakers is surprising some in this business-friendly state . . . Similar dynamics are playing out in Miami and Birmingham, Ala., as fans and taxpayers appear to be more circumspect about spending public money on stadiums used primarily by privately owned teams." Bill Barrow, *In Ga., Stadium Opposition Signals Public Shift*, ASSOCIATED PRESS, (Jan. 19, 2013), http://abcnews.go.com/Sports/wireStory/ga-stadium-opposition-signals-public-shift-18258244.

[30] We already see an example of this with the Green Bay Packers. Because the team had already issued stock publicly before the NFL banned the practice, the team was grandfathered in and allowed to continue. Proceeds from Green Bay's two most recent public offerings in 1997 and 2011 have been used to build or renovate Lambeau Field, where the Packers play. Andrew Brandt, *Buying A Piece of the Packers*, FORBES, 12/8/11 http://www.forbes.com/sites/sportsmoney/2011/12/08/buying-a-piece-of-the-packers/. The IPO in 1923 and offering in 1935 were used to bail the team out of financial difficulties, while the 1950 offering was used to reclassify stock in order to limit the amount of shares an individual shareholder could hold. *Shareholder History & Financial History*, Green Bay Packers, http://prod.static.packers.clubs.nfl.com/assets/docs/2011shareholder-history.pdf [hereinafter *GB Packers Shareholder History*].

[31] Ryan Murphy, *Playing Fair in the Boardroom: An Examination of the Corporate Structures of European Football Clubs*, 19 MICH. ST. U. COLL. L. J. INT'L L. 409, 413 (2010-2011).

[32] *Clubs Benefit from Champions League Revenue*, UEFA, (June 13, 2012), http://www.uefa.com/uefa/management/finance/news/newsid=1840934.html. Many of the clubs that will be most limited by these rules pushed for their implementation. Owners of major football franchises like Chelsea F.C., are concerned by the trending of continually training to outdo other teams and have asked UEFA to "save them from themselves." Daniel Geey, *The UEFA Financial Fair Play Rules: A Difficult Balancing Act*, 9 ESLJ 50 (2011).

[33] There is a question of whether UEFA will actual ban a team that violates the FFP rules from competitions. However, club may be unwilling to risk the possibility of being excluded from UEFA competitions. UEFA has banned teams in the past for failing to comply with its rules. Owen Gibson, *Manchester City and PSG cannot 'cheat' financial fair play, Uefa warns*, THE GUARDIAN, (Feb. 4, 2013), http://www.guardian.co.uk/football/2013/feb/04/manchester-city-financial-fair-play ("[UEFA General Secretary Gianni] Infantino pointed to the fact that Uefa has excluded 34 clubs from competition under its existing rules, including Besiktas and Málaga, as evidence it would not hesitate to act if required.").

debt, FFP rules will not be implicated.[34] However, if the team's profits cannot cover their interest payments on the debt, clubs will have reason to be concerned about the FFP rules.[35]

An important aspect of the FFP rules is the "break-even requirement" which states that "UEFA determines that a club has broken even for the year when the relevant expenses exceed the relevant income by less than €5 million for the prior year."[36] These regulations will be phased in between 2012 and 2014.[37] As they are phased in, Manchester United will have to be more diligent about servicing its debt load than it was previously required to be.[38] Because participants and winners earn significant payouts from UEFA competitions,[39] as well as bragging rights, elimination from the competitions would disappoint Manchester United's fans and cost the team millions of pounds in revenue.

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[34] Geey, *supra* note 32, at 51. This distinction was implemented for clubs like Manchester United in particular, that carry a very large debt load.

[35] *Id.* For a discussion on how Manchester United has been working to increase its revenue since the IPO, see *supra* Section V.

[36] Murphy, *supra* note 31, at 414. This change will be gradual – beginning with a €45 million gap for the 2013/14 and 2014/15 seasons, decreases to €30 million for 2015/16 and 2016/17 seasons, and will continue until it gets to €5 million. *Id.* at 414 (citing UEFA Fair Play Regulations art. 61). UEFA recently issued warnings to two clubs, Manchester City and Paris Saint-Germain, that they will not be allowed to cheat the FFP rules. This warning stems from the fact that neither team would have passed the break-even test if it had been in place this year. These two teams are not alone – in fact, forty-six other clubs would failed the break-even test as well. Gibson, *supra* note 33.

[37] "The UEFA Club Licensing and Financial Fair Play Regulations, which were approved in May 2010 after an extensive consultation period and updated in the 2012 edition, are being implemented over a three-year period, with clubs participating in UEFA club competitions having their transfer and employee payables monitored since the summer of 2011, and the break-even assessment covering the financial years ending 2012 and 2013 to be assessed during 2013/14." *Financial Fair Play*, Union of European Football Associations http://www.uefa.com/uefa/footballfirst/protectingthegame/financialfairplay/index.html.

[38] Teams, including Manchester United, Liverpool, Tottenham Hotspur and Arsenal, are pushing for the FFP rules to be implemented outside of UEFA competitions in the Premier League, which is the top football league in Britain. Sunni Upal, *Bring in Financial Fair Play! Liverpool Urge Premier League to Adopt UEFA's Tough Regulations*, DAILYMAIL, (Jan. 17, 2013), http://www.dailymail.co.uk/sport/football/article-2263861/Liverpool-urge-Premier-League-adopt-UEFAs-Financial-Fair-Play-regulations.html.

[39] In the UEFA Champions League alone, "€754.1m prize money [is] allotted to the 32 teams who figured from the group stage onwards consisted of €413m in fixed amounts plus €341.1m from the market pool. All of the 32 participating clubs received a minimum €7.2m in accordance with the distribution system, comprising a participation bonus of €3.9m and €3.3m from the six €550,000 match bonuses given per group game. Additionally, performance bonuses were paid in the group stage: sides received €800,000 for every win and €400,000 for every draw, with Madrid the only club to net the maximum €4.8m. The 16 clubs that reached the round of 16 were each assigned an additional €3m, the eight quarter-finalists an extra €3.3m, and the four semi-finalists a bonus of €4.2m." "Clubs Benefit from Champions League revenue." Geey, *supra* note 32.

Interestingly, many of the clubs that will be most limited by these rules are actually the same clubs pushing for their implementation.[40] Although at first glance it may seem odd that these major franchises would request to be limited by outside forces, it actually makes a great deal of sense. Owners of major football franchises are concerned by the trend of continually trying to outdo and outspend other teams and have asked UEFA to "save them from themselves."[41] This fear of being outspent by a rival franchise may have deterred sports teams from going public, where the team would be more limited as they tried to balance their books and uphold their fiduciary duties to shareholders.[42] With the implementation of the FFP rules, clubs will no longer be able to continually outspend one another, allowing those that chose it to pursue the benefits of public offerings.

As the American public becomes more aware of debt and financial practices as a result of the recession, provisions such as the FFP Rules could be on the horizon in the U.S. If the FFP rules achieve UEFA's goals of improving football standards in Europe, protecting the integrity of UEFA competitions, improving the transparency, economic and financial capabilities, and credibility of clubs, among other things,[43] law makers, league officials and fans alike may look

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[40] Geey, *supra* note 32.
[41] *Id*.
[42] "Those [teams] that do try to balance the books are hard-pressed to win bidding wars for players against owners who want success at all costs: free-spending Manchester City, for example, is owned by Mansour bin Zayed Al Nahyan, an Emirati sheikh." *Losing Their Shirts: Do Sports and Stockmarkets Mix?,* THE ECONOMIST, Sports Investments, (Sept. 8, 2012), http://www.economist.com/node/21562207.
[43] "Article 2 – *Objectives***.** 1 These regulations aim: a) to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club; b) to ensure that clubs have an adequate level of management and organisation; c) to adapt clubs' sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities; d) to protect the integrity and smooth running of the UEFA club competitions; e) to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe.
2 Furthermore, they aim to achieve financial fair play in UEFA club competitions and in particular: a) to improve the economic and financial capability of the clubs, increasing their transparency and credibility; b) to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with players, social/tax authorities and other clubs punctually; c) to introduce more discipline and rationality in club football finances; d) to encourage clubs to operate on the basis of their own revenues; e) to encourage responsible spending

towards enacting similar provisions in the U.S.[44] If that happens, sports teams may have to quickly balance their debts and equities, a feat that can be accomplished through a public offering.[45]

There is another motivating factor at play in sports IPOs that is not typically found in average IPOs – the effect of fans. This "fan investor" desires the team's stock not because it is necessarily a financially-sound investment, but because the fan wishes to own part of the team.[46] As a result, share prices can be driven up far higher than the team's financials would initially suggest, encouraging sports teams to conduct a public offering. Robert Bacon rejects the idea of the fan effect, arguing that investors have taken notice of sports' stocks poor performance and will not invest, as evidenced by the IPO of the Green Bay Packers in 1997, the proceeds of which fell short of initial predictions.[47] However, Bacon is mistaken. It is important to note that although the Green Bay Packers might have aimed much higher, they did in fact raise $24

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for the long-term benefit of football; f) to protect the long-term viability and sustainability of European club football." UEFA Club Licensing and Financial Fair Play Regulations, Edition 2012, UEFA.

[44] If the trend in the UK football leagues is any indication, U.S. teams themselves may request the leagues to impose these rules.

[45] *See* Marco Pagano, Fabio Panetta, and Luigi Zingales, *Why DO Companies Go Public? An Empirical Analysis*, 53 J. OF FIN. 27, 29 (1998) ("Independent companies are more likely to go public after major investments and abnormal growth. The IPO is followed by a reduction in leverage and investment. So their decision to go public can be interpreted as an attempt to rebalance their balance sheet after larger investment and growth."). This study finds that the equity capital raised from an IPO is typically used to reduce leverage rather than finance new growth and investment. The Manchester United IPO fits this model well. These findings would also seem to indicate that the JOBS Act's goal of job creation through IPOs from EGCs might be unrealistic.

[46] Investors receive "emotional satisfaction" from the purchase and stock certificates can serve as conversation pieces. Bacon, *supra* note 4, at 153; Schaffer, *supra* note 8 at 222 ("Some of the most important benefits for a fan-investor are psychic rather than tangible. It is the feeling of ownership of a treasured civic asset, of being part of the history and tradition of the team that they love. … Often, there is additional psychic pleasure in being able to pass on that membership to family members and friends. The same fan passed up the t-shirt and game ball when buying his fifteen-year-old son a birthday gift, instead buying him fifteen shares of the Boston Celtics, stating: 'I hope he'll never sell it because it's sentimental.'").

[47] Bacon, *supra* note 4 at 148. Bacon argues that fans should buy memorabilia instead. *Id.* at 165. Another aspect of the Green Bay Packers' IPOs that supports the fan effect idea is the location of shareholders. In the 1997-98 stock sale, 120,010 shares were sold, with 64,300 to Wisconsin residents, 9600 to Illinois residents, 4300 to Minnesota residents and 2800 to Michigan residents. 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, 130 (2004) (citing Packers Stock and Financial History, available at http://www.packers.com/history/stock_history/). This amounts to over 2/3rds of the shares were purchased by residents who live geographically close to Green Bay Wisconsin and have a higher likelihood of being fans of the Packers. However, it is also important to note that the Green Bay Packers also focused their marketing efforts towards people in the local area. *Id.*

million in the 1997 public offering while giving nothing to shareholders beyond a certificate and personal satisfaction.[48] Furthermore, the Green Bay Packers have continued to offer stock since Bacon's prediction, with a very successful offering in 2011.[49]

Finally, it is well known that Manchester United managed to raise $233 million from its IPO, even if those earnings were far below initial projected numbers.[50] It did so without giving up significant voting rights.[51] This suggests that perhaps some savvy investors avoided the Manchester United IPO and instead the sale was driven by fans, violating Bacon's prediction.[52] Even though various news outlets have repeatedly cautioned investors against sports IPOs,[53] the fact that the sales continue to earn millions of dollars seems to indicate that the "fan effect" remains in play. Although these fan investors may be misguided, as long as teams are able to continue to raise substantial funds without any significant loss of voting rights, ownership, or

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[48] GB Packers Shareholder History, *supra* note 30.

[49] GB Packers Community, Shareholders, *supra* note 11.

[50] Makan, *supra* note 11. Another consideration is that the entire IPO market did not fare well in 2012. Without the Facebook IPO, which had proceeds around $16 billion, the U.S. IPO market proceeds were the lowest they have been since the height of the financial crisis. Thomas Zadvydas, *After Tough Year for IPOs, Bankers Expect Active 2013*, THE DEAL PIPELINE, (Jan. 8, 2013), http://www.thedeal.com/content/tmt/after-tough-year-for-ipos-bankers-expect-active-2013.php. This slow-down in the market may have depressed the Manchester United IPO proceeds.

[51] *See infra* Section III for an in depth look at the dual-class voting structure.

[52] *Manchester United IPO's on NYSE*, CBC NEWS, BUSINESS, (Aug. 10, 2012), http://www.cbc.ca/news/business/story/2012/08/10/manchester-united-ipo.html.

[53] *See* Smith, *supra* note 13 ("If you are planning to buy Manchester United stock, you may want to think again. … Shares in Manchester United might be a nice piece of merchandise for lifelong fans of the Red Devils, but history suggests that there is little reason to believe that it is actually a good investment."); Kim Peterson, *The Manchester United IPO Stinks*, MSN MONEY, (Aug. 8, 2012), http://money.msn.com/top-stocks/post.aspx?post=7638d1df-b3cb-483d-adae-4c943adbabcc ("Think the Facebook IPO was bad? Get a load of Manchester United, which will go public Friday. This is a first-class stinker."); Damian Reece, *Manchester United's glory days on the stock market are behind it*, THE TELEGRAPH, (July 4, 2012), http://www.telegraph.co.uk/finance/comment/damianreece/9375912/Manchester-Uniteds-glory-days-on-the-stock-market-are-behind-it.html ("Ultimately the float seems to be an attempt by the Glazers to raise some cash to pay down its £423.2m of debt – hardly an appealing prospect for investors. While Man Utd may continue as a force on the pitch, its glory days as a stock market darling appear behind it."); David Larrabee, *Manchester United IPO: Yellow Card*, ENTERPRISING INVESTOR, CFA INSTITUTE, (Aug. 8, 2012) http://blogs.cfainstitute.org/investor/2012/08/08/manchester-uniteds-ipo-gets-a-yellow-card/ ("While the team's iconic brand and loyal following are probably unsurpassed in professional sports, the valuation attached to United's shares and the risk factors associated with ownership suggest that investors are likely better off sitting this one out on the sidelines.").

other adverse effects to the primary owners, some sports teams will continue to offer stock publicly.

b. Disadvantages to Going Public for Sports Teams

There are also market factors at play that discourage sports teams from going public. One concern is that the goal of obtaining success "on the field" can be at odds with financial success.[54] When the team remains in private hands, the owners are perfectly within their rights to favor "on the field success." However, once there are shareholders in the mix, directors of the company must consider the desire of the investors for profit or face the legal consequences.[55] For this reason, fans have expressed fears that IPOs will harm their team's ability to win. According to Brian Cheffins, fans fear that because "[i]nvestors will demand a hard-nosed attitude toward money matters, team executive will feel compelled to sacrifice playing success, if this is required to save costs and increase profits available to shareholders."[56] Although Cheffins notes that there is no actual evidence of this,[57] the sentiment remains with fans.[58] Fans also fear increased ticket and merchandise prices resulting from a need to increase shareholder profits,

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[54] For example, while not publicly traded, London professional football club Arsenal has consistently focused on financial stability and success to the detriment of their on the field success over the past few years. *Arsenal Chief Executive Denies 'Ruining the Club' with Financial Focus*, THE GUARDIAN, (Oct. 25, 2012), http://www.guardian.co.uk/football/2012/oct/25/arsenal-chief-executive-denies-ruining-club.

[55] In most cases, owners do not owe fiduciary duties to fans, however these duties will arise to shareholders once the team goes public. Schaffer, *supra* note 8, at 227. The Board of Directors will owe "the duty of loyalty [which] involves conflicts of interest for decision-makers, [and] . . . the duty of care [which] involves the procedure by which the board makes decisions." *Id.* In most cases where the Board does not have a conflict of interest and has gathered some information, the courts will uphold the decision under the "business judgment rule." *Id.* at 227-28. The business judgment rule "gives directors broad discretion to take actions which, after careful consideration, they deem to be in the best interests of the company." *Id.* If the original owners remain the majority shareholders after the IPO, they may also owe fiduciary duties to the minority shareholders. *Id.*

[56] Cheffins, *supra* note 2, at 288.

[57] *Id.* at 289.

[58] It is also possible that this fear drives the "fan-investor" phenomenon; fans may believe that if they are the shareholders of their team, they can encourage "on the field" success.

which Cheffins has also found no evidence of in practice.[59] Nonetheless, fans have maintained these fears.[60]

Even if teams find they are able to balance on and off the field success, they still must face other consequences of IPOs like legal disclosure obligations.[61] Disclosure obligations subject teams to unwanted publicity about financials, which can take the focus away from the team itself.[62] As previously discussed, the most financially-sound decision may be at odds with the decision that helps a team win. Publicly traded teams may avoid making decisions that do not benefit the financial health of the organization, perhaps to the detriment of the team's ability to win, because these decisions are made public.[63] Recent legislation, in the form of the JOBS Act, changes these disclosure rules for some and may negate this downside of IPOs, at least in the short term.[64]

American disclosure obligations have been noted to deter teams from going public in the U.S.[65] Before the JOBS Act, if a company wanted to issue stock it had to either register with the

[59] Cheffins, *supra* note 2, at 289. In fact, Cheffins has found that fans have benefitted, because when you alienate customers, profits fall and shareholders lose – so really, the publicly traded team may need to cater more to the fans then when it is privately held. *Id.*

[60] In their article entitled "Do Football Clubs Benefit from Initial Public Offerings?" Dirk Baur and Conor McKeating discuss the effect of an IPO on a football club. They note that there are two distinct reasons for a team to IPO: to maximize either profits or wins. Those that look to maximize profits will use the profits from the IPO to reduce debt or otherwise financially restructure the team. Those that look to maximize wins will spend the profits on productive assets, either players or stadia. Baur and McKeating's research indicates that most teams are profit-maximizers, as there is no change in performance after their IPOs. Their conclusion is that IPOs do not improve "on-the-pitch" performance, excepting for lower division clubs in large leagues. Dirk Baur & Conor McKeating, *Do Football Clubs Benefit from Initial Public Offerings?*, 6 INT'L J. SPORT FIN. VOL. 1, 40 (Feb. 2011). This indicates that while the IPO does not necessarily improve the performance of the team, the fan's fear that the IPO will harm the team is not shown.

[61] There are also costs associated with IPOs. For example, a $5 million IPO might cost ~$700k. Cheffins, *supra* note 2, at 280. There are administrative burdens, like maintain registers of shareholders for proxy and voting purposes as well as paperwork associated with disclosure requirements, that continue after IPO is complete. *Id.* at 281. These costs however are not specific to Sports IPOs, but rather are faced by all publicly traded companies.

[62] *Id.* at 280.

[63] This is not necessarily a bad thing; however it is certainly a factor to consider when examining the limited number of stock market teams.

[64] *See infra* Section II for further discussion of the JOBS Act.

[65] Cheffins, *supra* note 2, at 280.

Securities and Exchange Commission (SEC) or it had to meet a registration exemption.[66] The most commonly used of these exemptions are Rule 506[67] and Rule 144A.[68] Rule 506 allows the company to make an offering to an unlimited amount of accredited investors plus 35 non-accredited investors.[69] Rule 144A allows a company to resell stock to qualified institutional buyers (QIBs) without registration.[70] Neither of these exceptions allowed for general solicitations.[71] Companies were also very hesitant to violate these rules, as doing so would provide investors with a right of recession, or ability to avoid the purchase.[72] As a result, companies often would only engage in private offerings and were very restrictive with their publicity.[73] Because privately-held companies in the U.S. are subject to very little disclosure obligations, IPOs do not appear very attractive.[74]

Finally, many North American sports leagues have restricted their teams' ability to go public. Over the past few decades only a handful of teams throughout North American sports leagues have been publicly traded.[75] Each league has varying levels of restrictions, with no

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[66] Latham & Watkins, *The JOBS Act, Part Deux: Frequently Asked Questions About Title II of the JOBS Act*, Client Alert No. 1439, 1, 12/13/2012, www.lw.com/thoughtLeadership/faq-jobs-act-title-II [hereinafter *FAQ about Title II of JOBS Act*].

[67] 17 C.F.R. § 230.506 (2011).

[68] 17 C.F.R. § 230.144A (2011).

[69] *FAQ about Title II of JOBS Act*, *supra* note 66; 17 C.F.R. § 230.506 (2011) ("(2) Specific conditions (i) Limitation on number of purchasers. There are no more than or the issuer reasonably believes that there are no more than 35 purchasers of securities from the issuer in any offering under this section. NOTE: See § 230.501(e) for the calculation of the number of purchasers and § 230.502(a) for what may or may not constitute an offering under this section.") ; 17 C.F.R. § 230.501(e) (2011) ("(e) Calculation of number of purchasers. For purposes of calculating the number of purchasers under §§ 230.505(b) and 230.506(b) only, the following shall apply: (1) The following purchasers shall be excluded … (iv) Any accredited investor.").

[70] *Id.* A qualified institutional buyer is one of a number of specifically delineated entities, listed in 17 C.F.R. § 230.144A(a)(1) (2011).

[71] *Id.*

[72] *Id.*

[73] *Id.* ("No one wants to violate Securities Act Section 5, which would give investors a right of rescission or "put" remedy. This harsh result has led to very restrictive publicity practices in private offerings in order to minimize the risk that the offering would fail to qualify as exempt from registration.").

[74] Cheffins, *supra* note 2, at 279-80.

[75] *Id.* at 272-73.

major sports league completely permitting public offerings.[76] Courts have acknowledged that policies limiting public ownership do contribute to the leagues' ability to function effectively as it avoids a conflict of interest between shareholder goals and the league.[77]

The National Hockey League (NHL) has limited public offerings by mandating that one shareholder within the organization must have ultimate voting control.[78] Additionally, "teams cannot pay cash dividends unless they maintain adequate cash reserves and can meet the following year's expenses without long-term debt financing."[79] These rules limit both the amount of shares NHL teams could offer as well as the attractiveness of an investment that has a cash dividend restricted in such a manner.

The National Football League (NFL) has a non-codified but pervasive blanket prohibition on teams being publicly traded. The NFL rules prohibit corporate ownership of franchises as well.[80] To block potential IPOs, the NFL makes a change in ownership to a multitude of shareholders extremely difficult, as it requires three-quarters of all owners to approve all transfers of ownership interests.[81] The only team able to get around these rules and issue shares to the public is the Green Bay Packers, because the team had been doing so prior to the

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[76] *Id.* at 279 ("North American professional sports leagues have policies regulating the transfer of ownership of teams, and owners typically have been discouraged from selling a stake in their teams to the public.").
[77] Sullivan v. Nat'l Football League, 34 F.3d 1091, 1102 (1st Cir. 1994) ("Finally, we accept the NFL's claim that its public ownership policy contributes to the ability of the NFL to function as an effective sports league, and that the NFL's functioning would be impaired if publicly owned teams were permitted, because the short-term dividend interests of a club's shareholder would often conflict with the long-term interests of the league as a whole. That is, the policy avoids a detrimental conflict of interests between team shareholders and the league.").
[78] Cheffins, *supra* note 2, at 279.
[79] Bacon, *supra* note 4, at 144 n. 27 (citing Scott C. Lascari, *The Latest Revenue Generator: Stock Sales by Professional Sports Franchises*, 9 MARQ. SPORTS L.J. 445 (1999)).
[80] Cheffins, *supra* note 2, at 279. This practice is very typical across the other major sports leagues in the U.S. See note 5 for a current list of teams owned by publicly traded companies. *See also* PRINCIPLES AND PRACTICE OF SPORT MANAGEMENT (Lisa Masteralexis et al. eds., 4th ed. 2012) ("The NFL has the most strict ownership rules. It is the only league to prohibit corporate ownership of its franchises, which it has done since 1970."). The NFL also used to ban cross-ownership, or ownership of more than one sports franchise. *Id.* It has relaxed those rules, now allowing "an NFL owner to own other sports franchises in the same market or own an NFL franchise in one market and another franchise in another market, provided that market has no NFL team." *Id.*
[81] *Id*.

introduction of these NFL rules and was therefore grandfathered in.[82] There have been many challenges to the NFL rules, with the NFL facing many allegations of antitrust violations for this ban against public offerings as well as other NFL rules.[83] As a result, it is not clear that the NFL would be able to successfully challenge a team's public offering in court.

Major League Baseball (MLB) also limits the amount of ownership share that can be issued to the public, requiring that there be at least one majority shareholder in the organization.[84] The MLB also restricts voting rights.[85] Additionally, the MLB is the only major North American sports league to have a federal antitrust exception granted by the Supreme Court of the United States as it was found not to be a business in *Federal Base Ball Club of Baltimore v. National League of Professional Base Ball Clubs*.[86] This is problematic, as challenges to limits on public offerings have been based in antitrust law, finding a league violated antitrust law by controlling individual teams' ability to sell stock to the public.[87] This makes it harder for baseball teams to challenge going public restrictions in court, at least on an antitrust basis.

Once a sports team has determined that going public is in its best interest, it must decide where its stock will be traded. The combination of the JOBS Act, a dual-class voting structure and the recently successful Manchester United IPO makes the U.S. markets an apparent choice.

II. JOBS Act Advantages for Sports IPOs

[82] Bacon, *supra* note 4, at 145. The Packers have issued stock in 1923, 1935, 1950, 1997, and 2011. GB Packers Community, Shareholders, *supra* note 11. See also Birren, *supra* note 47, at 139.
[83] *See, e.g.* Sullivan v. Nat'l Football League, 34 F.3d 1091 (1st Cir. 1994), Murray v. Nat. Football League, 1996 WL 363911 (E.D. Pa. June 28, 1996), Am. Needle, Inc. v. Nat'l Football League, 130 S. Ct. 2201 (2010), St. Louis Convention & Visitors Comm'n v. Nat'l Football League, 154 F.3d 851 (8th Cir. 1998). *See also infra* Section IV: Changing Landscape of League Restrictions for further commentary on *Sullivan* and *American Needle*.
[84] Bacon, *supra* note 4, at 145.
[85] *Id*.
[86] *Fed. Baseball Club of Baltimore v. Nat'l League of Prof'l Base Ball Clubs*, 259 U.S. 200 (1922). *See also* Birren, *supra* note 47, at 124.
[87] *See infra* Section IV: Changing Landscape of League Restrictions for further commentary on *Sullivan* and *American Needle*.

The JOBS Act was enacted in 2012 to "increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies."[88] It creates the concept of Emerging Growth Companies (EGCs) which are defined as issuers of stock with less than $1 billion in gross annual revenue.[89] The JOBS Act revises the Securities Act of 1933 ('33 Act) and the Securities Exchange Act of 1934 ('34 Act)[90] to ease IPO restrictions for small businesses.[91] An EGC will retain its status for five years unless its gross annual revenue exceeds $1 billion, more than $1 billion in non-convertible debt is issued over a three year period, or the issuer is considered a large accelerated filer under 17 CFR 240.12b–2.[92] EGCs are also exempt from requirements for executive compensation shareholder approval of both say-on-pay rules and golden parachute compensation. [93]

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[88] JUMPSTART OUR BUSINESS STARTUPS ACT, PL 112-106, April 5, 2012, 126 Stat 306 (hereinafter "JOBS Act").
[89] 15 U.S.C.A. § 77b(a)(19).
[90] JOBS ACT, *supra* note 88.
[91] "[The JOBS Act] is a legislative package that we believe will help jump-start our economy by creating new growth opportunities for America's small businesses, for start-up companies, and for entrepreneurs." 158 CONG. REC. H1234-01 (March 7, 2012) (statement by Rep. Bachus).
[92] 15 U.S.C. § 77b(a)(19) ("The term 'emerging growth company' means an issuer that had total annual gross revenues of less than $1,000,000,000 … an issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of--
"(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;
"(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title;
"(C) the date on which such issuer has, during the previous 3–year period, issued more than $1,000,000,000 in non-convertible debt; or
"(D) the date on which such issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.").
[93] 15 U.S.C. § 78n–1(2) Treatment of Emerging Growth Companies (A) In General.--An emerging growth company shall be exempt from the requirements of subsections (a) and (b). JOBS Act, PL 112-106, April 5, 2012, 126 Stat 306. Subsections (a) and (b) of § 78n–1 contain both say-on-pay rules (§ 78n-1(a)) and golden parachute executive compensation rules (§ 78n-1(b)):

> (a) Separate resolution required. (1) In general: Not less frequently than once every 3 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to *shareholder vote to approve the compensation of executives*, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

a. Manchester United and the JOBS Act

The legislative record on the JOBS Act does not indicate that Manchester United was the type of company the law was aimed towards. Instead, a sponsor of the bill explained,

> …As a *small business owner*, I know that it's tough to get access to capital. If a company doesn't have the resources it needs to grow and expand, then it's virtually impossible to hire new workers. … H.R. 3606, [] would make it easier for companies to access capital markets and ease the overwhelming regulations that these *young businesses* encounter.[94]

Throughout its legislative record, the JOBS Act is continually touted as a bill aimed to help small businesses and start-ups.[95]

As a company with less than $1 billion in revenue[96] that had not gone public in the U.S. before December 2011, Manchester United qualifies as an EGC.[97] Manchester United is not the picture of "emerging growth," as it is neither small nor young. Formed in 1892,[98] self-described as "one of the most popular and successful sports teams in the world,"[99] most would not consider

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> (b) Shareholder approval of golden parachute compensation. (1) Disclosure: …[T]he person making such solicitation shall disclose in the proxy or consent solicitation material, … any agreements or understandings that such person has with any named executive officers of such issuer … concerning *any type of compensation ... that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may ... be paid or become payable to or on behalf of such executive officer*.
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> 15 U.S.C. § 78n-1 (emphasis added).

[94] 157 CONG. REC. H9801-01 (Dec. 16, 2011) (statement by Rep. Dold) (emphasis added). Furthermore, the House Report on the JOBS Act says, "[t]o encourage small companies to go public in the U.S., to spur economic growth, and to create jobs, Representatives Fincher and Carney introduced H.R. 3606 on December 8, 2011." H.R. 406, 112th Cong. (2012). H.R. 3606 would go on to become the JOBS Act.

[95] For example, Rep. Hurt described the JOBS Act as a bill that "collectively reduces burdens that prevent small businesses from accessing the capital necessary to hire and expand, and it encourages our entrepreneurs to get their start-ups off the ground." 158 CONG. REC. H1234-01 (March 7, 2012).

[96] "Total revenue for the years ended June 30, 2009, 2010 and 2011 was £278.5 million, £286.4 million and £331.4 million, respectively." Manchester United Prospectus, *supra* note 18, at 3.

[97] Manchester United Prospectus, *supra* note 18, at 7.

[98] Murphy, *supra* note 31, at 437.

[99] Manchester United Prospectus, *supra* note 18, at 1. Manchester United also had a total indebtedness of £423.3 million as of March 31, 2012. Manchester United Prospectus, *supra* note 18, at 29.

Manchester United to be the "start-up" company that the JOBS Act was looking to aid.[100] Nonetheless, Congress chose to set the limits very high. [101]

So although it may not have been Congress' intent to include companies like Manchester United in the EGC category, it does open up a great window of opportunity for many sports organizations. For example, in 2010, Forbes released a list of financial information for Major League Baseball teams, including annual revenues for 2009.[102] Atop this list was the New York Yankees, with revenues of $441 million[103] – less than half of the maximum revenue allowed to an EGC. This demonstrates that as of 2009, all MLB teams would be eligible for EGC status if they chose to go public in the U.S. – no team would be excluded, as none were already public as of December 8, 2011.[104] Similarly, all NHL teams would be eligible for EGC status if they were

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[100] According to its sponsors, the JOBS Act "will create jobs and grow the economy." 158 CONG. REC. H906-05 (Feb. 17, 2012) (statement by Rep. Carney). It is unclear how the IPO of Manchester United will do either. Instead, by instituting such high maximum thresholds, Congress invited many businesses to IPO in the U.S. and profit from the system without providing much, if any, benefit to the American public.

[101] Congress did consider two amendments to the JOBS Act that would have lowered the gross annual revenue cap to $750k and require EGCs to comply with say-on-pay and golden parachute shareholder votes, however both were voted down. 158 CONG. REC. D204-01 (March 7, 2012). (Himes amendment "sought to lower the gross annual revenue cap from $1,000,000,000 to $750,000,000 for emerging growth companies to remain eligible for the regulatory on-ramp and strike the public float requirement for the on-ramp" was voted down by 81 votes and Ellison amendment "sought to require Emerging Growth Companies to fully comply with say-on-pay and golden parachute shareholder votes" was voted down by 75 votes. Rep. Himes testified in front of the House regarding the $1 billion maximum stating,

> [M]y belief is that this is far too expansive a definition of emerging growth companies. It's not just my belief. We heard in the hearing which we held on this bill from Mr. LeBlanc that something more like $250 million to $500 million in revenues would be appropriate. I offered in committee the notion similar to this amendment that we make the cap $750 million in revenues. … It's hard to know-a billion dollars in revenue is an abstraction. Let me give you an example. I have a list of the IPOs that have occurred in the last couple of years. Currently, what I think of as a fine company, Spirit Airlines, with some $800 million in revenues, would qualify as an emerging growth company. They went public in May of 2011.Spirit Airlines is an established airline with 2,400 employees. They clearly are a company that has the capability to comply with the full array of protections that are there for investors and others. … I think $750 million in revenue is a more appropriate benchmark and, therefore, I propose this amendment.

158 CONG. REC. H1234-01 (March 7, 2012).

[102] *The Business of Baseball*, FORBES, (April 7, 2010), http://www.forbes.com/lists/2010/33/baseball-valuations-10_The-Business-Of-Baseball_Revenue.html.

[103] *Id.*

[104] JOBS ACT, *supra* note 88. The Green Bay Packers are the only major North American sports team that would be excluded by this provision, as they are currently public in the United States and have been since 1923. GB Packers Community, Shareholders, *supra* note 11.

to go public in the U.S., as the team with the highest revenues is the Toronto Maple Leafs with $200 million in revenue in 2012.[105]

One downside to the JOBS Act for sports teams is that the EGC status is not permanent. Even if the sports team remains below the $1 billion maximum gross annual revenue and meets the other qualifications, after five years the team will lose its EGC status and will be forced to comply with disclosure obligations mandated by the '33 and '34 Act.[106]

Although the team could elect to go private at that point and avoid disclosure, the process of going private is not as simple as going public under the JOBS Act.[107] In order to take a company private, the shareholders must be limited to three hundred or eliminated altogether.[108] The most common ways to do this are through: a cash-out merger, a tender offer, a reverse stock split that leaves minority shareholders with fractional shares, or a sale of all or substantially all of the assets of the company.[109] However each of these methods requires planning and implicates many regulations, as well as fiduciary duties, that teams will not wish to violate.[110] Going public, especially for a company that can take advantage of the JOBS Act, is much easier and cleaner than is often the case when going private. As such, many sports teams may not be

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105 *NHL Team Values: The Business of Hockey*, FORBES, http://www.forbes.com/nhl-valuations/list/ (last visited Mar. 11, 2013).

106 JOBS ACT, *supra* note 88.

107 It can also be legally messy. For example, throughout the 1960's the New England Patriots (then the Boston Patriots) were privately owned by ten shareholders, with the owner of the franchise William Sullivan as the president. Coggins v. New England Patriots Football Club, Inc., 492 N.E.2d 1112, 1114 (1986). By the mid-1970s, however, Sullivan had been ousted from the presidency and began buying up shares from other shareholders in order to regain control of the corporation. *Id.* He was ultimately successful and proceeded to create a new corporation (New Patriots) and merge the existing corporation (Old Patriots) into it. *Id.* at 1115. As a result, the voting stock of the Old Patriots was extinguished and non-voting stock was cashed out for $15 a share. *Id.* This resulted in a number of lawsuits. In *Coggins*, shareholders who voted against the merger sought its undoing. In another suit, Sarrouf v. New England Patriots Football Club, Inc., 492 N.E.2d 1122 (1986), non-voting shareholders challenged the $15 per share price and sought to have the court determine fair value of their shares. Finally, in Pavlidis v. New England Patriots Football Club, Inc., 737 F.2d 1227, 1229 (1st Cir. 1984), a class of shareholders who initially voted to accept the $15 share price offer brought suit arguing they had been induced to accept the offer by a misleading proxy statement. Although in this case the Patriots were not publicly traded, each of these suits could result from a going private transaction.

108 Gregory R. Samuel & Sally A. Schreiber, *Going Private Transactions*, 40 TEX. J. BUS. L., 85, 89 (2004).

109 Samuel & Schreiber, *supra* note 108, at 89.

110 *Id.* at 91.

swayed by the JOBS Act alone, knowing that in five years it will either have to go private or be subject to the disclosure rules of the ’33 and ’34 Acts.

Although some teams may be so strapped for cash in the present that they will ignore these future disclosure obligations, others which are able to better consider the long term effects of going public in the U.S. may be deterred by this five-year EGC status limit. When the JOBS Act is considered in combination with the dual-class voting structure of the U.S., however, teams may be more willing to go public.

b. Other Recent IPOs and the JOBS Act

Numerous non-sports teams have also taken advantage of the JOBS Act. Throughout 2012, sixty-one companies went public as EGCs under the JOBS Act, while thirty large ineligible companies went public without the benefits of the JOBS Act.[111] Interestingly, the shares of U.S. companies that went public using the JOBS Act outperformed shares in companies that did not or could not utilize the JOBS Act.[112] On average, shares in companies utilizing the JOBS Act have risen 28.9% from their initial offer price, whereas non-JOBS Act companies’

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[111] Olivia Oran, *IPO VIEW – U.S. Jobs Act Companies Outperform Other IPOs, Data Shows*, Reuters (Jan. 25, 2013), http://www.reuters.com/article/2013/01/25/jobs-act-ipos-idUSL1N0ARB2C20130125. Some of the companies that filed as emerging growth companies, in addition to Manchester United, were Legal Zoom, LifeLock, Tumi and Bright Horizons. Becky Yerak, *JOBS Act Intended to Help Workforce Grow, But Investor Advocates Have Concerns*, THE CHICAGO TRIBUNE, (Dec. 9, 2012), *available at* http://articles.chicagotribune.com/2012-12-09/business/ct-biz-1209-emerging-companies--20121209_1_jobs-act-investor-advocates-growth-companies. An issue that has arisen regarding emerging growth companies is the idea of “blank-check” or special-purpose acquisition companies. These are basically shell companies that file without any employees or operations, but are created in order to allow current privately held companies to go public through a reverse merger. Emily Chasan, *Meet the JOBS Act’s Jobs-Free Companies*, THE WALL STREET JOURNAL, (June 4, 2012), http://online.wsj.com/article/SB10001424052702303506404577443980893828956.html. Many have cited concerns that these “blank check” companies will actually result in investor fraud, rather than job creation. For example, the very first company to file under the JOBS Act as an EGC, Caribbean Pacific Marketing, was a “blank check” company. Interestingly, Caribeean Pacific Marketing was not even a company prior to its filing. Instead, it hoped to use the funds from the IPO to start the business. The company was shortly thereafter charged by the SEC with fraud, stemming from inaccuracies in the prospectus. Though it is unclear whether the advantages of the JOBS Act influenced the company to commit fraud, it is clear that emerging growth companies may not all be the job creators that the JOBS Act was supposed to aid. Floyd Norris, *Fraud Case Delayed By 2 Months*, NY TIMES, (Nov. 1, 2012), http://www.nytimes.com/2012/11/02/business/sec-charges-company-that-filed-under-jobs-act-with-fraud.html?pagewanted=all&_r=1&.

[112] *Id.*

shares have only risen 13.1%.[113] Although there may be other factors at play, like the relative newness of the JOBS Act and the positive trends of the U.S. stock markets,[114] this data shows both that companies are utilizing the JOBS Act and that their stocks have not been held back as a result.

One of the most anticipated IPOs of 2013 is that of Gilt Groupe, an online luxury retailer. Although valued at $1 billion in May 2012, with revenues in 2011 of $370 million, it would qualify under the JOBS Act.[115] Conversely, some of the biggest IPOs of this past year, specifically Facebook, did not take advantage of the JOBS Act. Facebook was ineligible for the JOBS Act as a result of its revenues, which totaled over $3.7 billion in 2011.[116]

Like sports teams, other corporations might not be swayed to go public in the U.S. by the JOBS Act alone, particularly due to its five-year time limit on certain disclosures. However, like Manchester United, other companies may find that when the JOBS Act benefits are combined with the dual-class voting structure in the U.S., that the U.S. market is the preferred market location for initial public offerings.

III. Dual-Class Voting Structure and Maintaining Owner Control

Before going public, sports teams are typically owned and managed by a relatively small number of individuals. On the whole, these owners will want to preserve their existing power when going public. A dual-class voting structure allows the pre-IPO owners to retain their voting strength by allowing new stock to have significantly less voting power per share.

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[113] *Id.*
[114] *Id.*
[115] Spencer E. Ante and Dana Mattioli, *Gilt's Flash Hunt: New Chief for IPO*, THE WALL STREET JOURNAL, (Nov. 8, 2012), http://online.wsj.com/article/SB10001424127887323894704578107303377319238.html.
[116] Facebook, Inc., Prospectus (May 18, 2012).

A dual-class voting structure provide companies with an opportunity to raise capital without altering the control of current owners.[117] A class of "super-voting" stock[118] is distributed to current owners, while creating another class of stock with diminished voting rights to be sold in the public offering.[119] Because public investors are aware of this inequitable structure from the outset, a dual-class voting structure is not considered to be disenfranchising when used in a initial public offering.[120] Instead, under the efficient capital markets hypothesis,[121] the market should take this aspect of the shares into account and adjust the price of the share accordingly.[122]

Often, it is the founder and/or creator that wishes to maintain creative control over the company that employs a dual-class voting structure. This structure has been utilized in recent IPOs like Google, Facebook, and LinkedIn, where the owners of the company argue they need to protect the company's public mission[123] and focus on long term goals without being subject to short-term market fluctuations and changes of course that can result.[124] However, there is no indication in the Manchester United IPO that the pre-IPO owners, the Glazer family, provide Manchester United with such unique and integral leadership that it must be protected at the

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[117] R. FRANKLIN BALOTTI AND JESSE A. FINKELSTEIN, DUAL CLASS COMMON STOCK, DEL. L. OF CORP. AND BUS. ORG.S. § 6.49 (2013).

[118] Usually, this new class of stock has disproportionately high voting rights, lower dividend and liquidation rights than the common stock, and is subject to substantial transfer restrictions, except that it can be converted into common stock at any time. *Id*. at 117.

[119] *Id*.

[120] Douglas C. Ashton, *Revisiting Dual-Class Stock*, 68 ST. JOHN'S L. REV. 863, 884 (1994). In contrast, a dual-class voting structure is not typically allowed in companies already public as it strips current shareholders of their voting rights. *Id.* at 866, n. 12 ("In 1988, the SEC announced the adoption of Rule 19c- 4 under the Securities Exchange Act of 1934. Exchange Act Release No. 25,891 [1987-1988 Transfer Binder] Fed. Sec. L. Rep. (CCH) P 84,247, at 89,208 - 09 (July 7, 1988), . . . This rule prohibits the common stock of a company from being or remaining listed on an exchange if the company issues securities or takes other actions that would have the effect of nullifying, restricting, or disparately reducing the per share voting rights of existing common stock shareholders. Id. An initial public offering of securities, however, is presumed not to be a disenfranchising action. [] Rule 19c-4(a)(1).").

[121] "The weak form of the efficient capital market hypothesis, which has been subject to rigorous empirical scrutiny, has established that current price movements fully reflect any information contained in previous stock prices, thus the history of securities prices does not yield exploitable trading opportunities." ASHTON, *supra* note 109, at 934-35.

[122] Ashton, *supra* note 120, at 935.

[123] James Surowiecki, *Unequal Shares*, THE NEW YORKER, (May 28, 2012), http://www.newyorker.com/talk/financial/2012/05/28/120528ta_talk_surowiecki.

[124] *See The Two Sides Of Dual-Class Shares*, INVESTOPEDIA, (Jan. 8, 2012) http://www.investopedia.com/articles/fundamental/04/092204.asp#axzz2Bs5Nenvp.

expense of the public investors. Nor is there a great concern that public investors will change Manchester United in such a way that conflicts with its public mission. It is more likely that the Glazer family is simply unwilling to relinquish any significant amount of control. However, because motivation is not relevant under U.S. law, the Glazer family was free to impose a dual-class voting structure on the IPO.

Although there does not appear to be anything extraordinary about the Glazers' leadership of Manchester United to suggest a dual-class voting structure was necessary,[125] many sports teams would and should find this option attractive. As previously stated, one fear about taking a sports team public is that "on the field" success will be sacrificed for financial success by those investors uninterested in the team's record at the end of its season.[126] While there is reason to question this fear, as it is clear that teams that are successful "on the field" can earn additional revenues, perhaps secure better sponsorships and other financial benefits that stem from success, the dual-class voting structure can put current owners and fans at ease and cause them to be more willing to go public. Because the managers' fiduciary duties to not require them to always put profit over the team's "on the field" success, those managers put in place by the existing owners, who retain control under this structure, may be more willing to balance the two concerns as compared to managers elected by investors solely looking to profit.

In the Manchester United IPO, the Glazer family was able to retain 98% of the voting share[127] of the stock while issuing approximately 10% of the shares.[128] They were able to do this

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[125] Bennett, *supra* note 16 ("Andy Green, a football finance blogger, explained, 'Larry Page and Sergey Brin built Google from nothing into one of the world's greatest companies with their unique vision. There is nothing unique about the Glazers that necessitates their control of United has to be uniquely preserved.'").
[126] *See supra* Section I(b): Disadvantages of Going Public for Sports Teams, for a discussion regarding fears about the effects of public ownership on "on the field" success.
[127] "Upon the closing of this offering, the shares owned by our principal shareholder will represent 98.7% of the voting power of our outstanding capital stock." Manchester United Prospectus, *supra* note 18, at 31.
[128] In the IPO, Manchester United issued 16,666,667 of 163,685,700 total shares. Manchester United Prospectus, *supra* note 18, at 8.

because under the dual-class voting structure, Class B shares, owned by the Glazer family, received ten votes per share, while Class A shares, the only shares available to public investors, only received one vote per share.[129] Of the 16.6 million Class A shares issued,[130] American billionaire George Soros purchased a 7.85% stake, or approximately 3.1 million shares.[131] This gives Soros a 1.9% stake in the club,[132] however there is no immediate concern regarding Soros' acquisition, although large. Because Class A shares have such a diminished voting power, Soros essentially comes away with no voting power and, additionally, no immediate financial benefits as Manchester United does not issue dividends.[133]

Many markets around the world do not allow this type of voting-right inequity. Neither the U.K. nor Hong Kong markets allow a dual-class voting structure and as a result neither was chosen as the forum for the Manchester United IPO.[134] The fact that Manchester United chose not to IPO in the U.K. or Hong Kong, both of which were more natural markets for the team than

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[129] The Glazer Family owns all Class B stock. Class A stock was issued in the IPO. "The rights of the holders of our Class A ordinary shares and our Class B ordinary shares are identical, except with respect to voting and conversion. Each Class A ordinary share is entitled to one vote per share and is not convertible into any other shares of our capital stock. Each Class B ordinary share is entitled to 10 votes per share and is convertible into one Class A ordinary share at any time." Manchester United Prospectus, *supra* note 18, at 8.

[130] Smith, *supra* note 13.

[131] *Manchester United: George Soros invests in football club*, BBC NEWS, (Aug. 21, 2012), http://www.bbc.co.uk/news/business-19328750.

[132] *Id*.

[133] *Id*.

[134] "[Manchester United] passed over the Hong Kong Stock Exchange because it would not give the team a waiver to allow two classes of shares, with different voting rights. The London Stock Exchange also does not allow such share structures, perhaps the reason this natural home was skipped over by the Glazers." Steven M. Davidoff, *In Manchester United's I.P.O., a Preference for American Rules,* NYTIMES DEALBOOK, (July 10, 2012), http://dealbook.nytimes.com/2012/07/10/in-manchester-uniteds-i-p-o-a-preference-for-u-s-rules/. Interestingly, Hong Kong had been the top venue for IPOs in the world from 2009-2011. However, when Manchester United moved to NY and another pulled its listing, NY regained its holding as the top venue for IPOs. Anuj Gangahar, *Equities: AIA Stake Sale Boosts First-quarter Hopes*, EUROMONEY, http://www.euromoney.com/Article/3135679/Category/15/ChannelPage/0/Equities-AIA-stake-sale-boosts-first-quarter-hopes.html?type=CategoryArticle&ArticleId=3135679&CategoryID=15&PageID=0; *see also Deloitte Releases Statistics on Hong Kong and Mainland IPOs in 2012*, DELOITTE, (Jan. 1, 2013), http://www.deloitte.com/view/en_CN/cn/Pressroom/pr/98b4f30f818fb310VgnVCM3000003456f70aRCRD.htm

the U.S.,[135] strongly indicates that the dual-class voting structure was high on Manchester United's list of priorities.[136]

IV. Changing Landscape of League Restrictions

Over the past two decades, sports leagues have faced many antitrust challenges from players, teams within the leagues, suppliers, and others. Antitrust challenges have fought restrictions against going public, exclusive manufacturing and sale licenses, and required central contracting with league, among other things. Many of these challenges have weakened the position of the leagues to control the individual actions of sports teams. Alone, these are likely not enough to compel sports teams to challenge the league restrictions in court. However, with the availability of the dual-class voting structure and the JOBS Act, teams may determine that it is in their best interest to fight the leagues on these restrictions.

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[135] Manchester United had also considered Singapore, as the country had initially indicated that it would allow for a dual-class voting structure. However, as the final determination on this was delayed while Asian markets continued to cool, Manchester United chose to IPO in the U.S. Davidoff, *supra* note 122. After the IPO was completed in the U.S., Singapore Exchange (SGX) "clarified in a recent release that dual class voting shares are 'not allowed' after rumors that the famous English soccer team Manchester United was planning on listing on SGX using a dual class structure." Norman P. Ho, *A Tale of Two Cities: Business Trust Listings and Capital Markets in Singapore and Hong Kong*, 11 J. INT'L BUS. & L. 311, 328-329 (2012) (citing The Capital Structure of Listed Companies in Singapore, *Singapore Stock Exchange, Dual-Class Voting Shares*, http://www.sgx.com/wps/wcm/connect/sgxen/Misc/regulations/Regulators/The+Capital+Structure+of+Listed+Companies+in+Singapore; Michelle Quah, *Man U IPO Kicks up Interest in Dual-Class Shares*, THE BUSINESS TIMES-SINGAPORE COMPANIES, (Sep. 6, 2011), http://www.businesstimes.com.sg/sub/premiumstory/0,4574,455019-BTMarkets IPOWatch,00.html?). Manchester United was one of three major floatations to pull out of the Singapore market in 2012, the others being India's Reliance Communications and motor-sport group Formula One. As a result, the Singapore market is still working to recover. Chun Han Wong, *Mapletree Debut Sparks Hope for Singapore IPOs*, THE WALL STREET JOURNAL, (Mar. 7, 2013), http://online.wsj.com/article/SB10001424127887323628804578345672375308546.html.

[136] "[Manchester United] might have fared better in Asia, where it has a large and growing fan base that would have been drawn to the shares, said Ronald Wan, a Hong Kong-based managing director at China Merchants Securities, which oversees about $1.5 billion. 'U.S. investors are not as enthusiastic about soccer as those in former British colonies like Singapore and Hong Kong,' he said. 'Market reactions might be slightly better if the deal was done in Asia.'" Lee Spears & Tariq Panja, *Manchester United Little Changed Following the IPO*, BLOOMBERG, (Aug. 10, 2012), http://www.bloomberg.com/news/2012-08-09/manchester-united-raises-233-3-million-pricing-ipo-below-range.html.

In 1994, in *Sullivan v. National Football League*, an antitrust claim was brought by then-owner of the New England Patriots, William Sullivan, regarding the NFL policy against public offerings by teams.[137] Sullivan argued that the policy depressed competition and forced him to sell the team at a much lower price to a private buyer than if he had been able to list the team publicly.[138] The NFL defended its policy, arguing that "NFL's functioning would be impaired if publicly owned teams were permitted, because the short-term dividend interests of a club's shareholder would often conflict with the long-term interests of the league as a whole."[139] It was the NFL's position that this rule helped to avoid a conflict of interest between the league and team shareholders.[140] Sullivan in return proposed options to the outright ban on public offerings, suggesting sales of nonvoting stock, restricting individuals' holdings, and allowing the NFL to control dividends, among other things.[141]

The *Sullivan* court determined that a reasonable jury could find that the NFL policy against public offerings harmed team owners by restricting the sale of teams to private buyers.[142] This ruling will be key in any future challenges to league restrictions on public offerings of stock. The court also found that the teams of the NFL did not constitute a single enterprise, a

[137] Sullivan v. Nat'l Football League, 34 F.3d 1091 (1st Cir. 1994).
[138] *Id.* at 1103 ("'But for' the NFL's policy, Sullivan claims, he would have been able to offer 49% of the Patriots to the public for $70 million, pay off his debts, and retained ownership of a much more valuable and profitable team.").
[139] *Id.* at 1102 ("Finally, we accept the NFL's claim that its public ownership policy contributes to the ability of the NFL to function as an effective sports league, and that the NFL's functioning would be impaired if publicly owned teams were permitted, because the short-term dividend interests of a club's shareholder would often conflict with the long-term interests of the league as a whole. That is, the policy avoids a detrimental conflict of interests between team shareholders and the league.").
[140] *Id.*
[141] *Id*. at 1103 ("The record contains evidence of a less restrictive alternative to the NFL's ownership policy that may yield the same benefits as the current policy. Sullivan points to one proposal to amend the current ownership policy by allowing for the sale of minority, nonvoting shares of team stock to the public with restrictions on the size of the holdings by any one individual. Dividend payments, if any, would be within the firm control of the NFL majority owner. Under such a policy, it would be reasonable for a jury to conclude that private control of member clubs is maintained, conflicts of interest are avoided, and all the other "benefits" of the NFL's joint venture arrangement are preserved while at the same time teams would have access to the market for public investment capital through the sale of ownership interests.").
[142] *Id.* The Court also concluded that jury instructions had been erroneous and that the lower court had erroneously refused to send some evidence to the jury for consideration, and thus ordered a new trial. *Id*. The case eventually settled. Cheffins, *supra* note 2, at 279.

finding necessary for an antitrust challenge, because the individual teams "compete with each other, both on and off the field, for things like fan support, players, coaches, ticket sales, local broadcast revenues, and the sale of team paraphernalia."[143] The court ruled that actual competition among the teams need not be demonstrated, as long as potential for competition exists.[144] This is important, as the type of competition identified in *Sullivan* was "competition for the sale of ownership interests"[145] which is not easy to show evidence of when the leagues prohibit this type of competition to varying degrees.[146]

Some of the language of *Sullivan* was reiterated under *American Needle, Inc. v. National Football League* in 2010.[147] In *American Needle*, manufacturers of sportswear for various professional sports teams brought an antitrust suit against the NFL for granting an exclusive licensing agreement to a competitor.[148] Although the case does not reference the ability of NFL teams to conduct public offerings, it does further establish the proposition that sports leagues and teams do not operate as a single enterprise and therefore are subject to antitrust law.[149]

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[143] *Sullivan*, 34 F.3d at 1098. "NFL member clubs compete in several ways off the field, which itself tends to show that the teams pursue diverse interests and thus are not a single enterprise under § 1." *Id.* at 1099.
[144] *Id.* at 1100.
[145] *Id.*
[146] *Id.*
[147] Am. Needle, Inc. v. Nat'l Football League, 130 S. Ct. 2201, 176 L. Ed. 2d 947 (2010).
[148] *Id.*
[149] *Id.* This line of case law is counterbalanced by *Fraser v. Major League Soccer, LLC*, which was not overruled or discussed in the *Sullivan* decision. In *Fraser*, the District Court in the District of Massachusetts found that Major League Soccer, or MLS, was a single entity and therefore could not violate antitrust law. *Fraser v. Major League Soccer, L.L.C.*, 97 F. Supp. 2d 130, 139 (D. Mass. 2000). This finding was in regards to MLS negotiation of player contracts, not public offerings from teams. *Id.* Although the MLS is not currently considered a major sports league in the U.S., the popularity of soccer is rising in North America and the league could develop into a major league. However, there are two reasons why *Fraser* should not be very concerning to team owners.

First, the findings of *Fraser* with regard to the MLS as a single entity does not affect the courts' determination that the NFL is not a single entity, as evidenced by the fact that *American Needle* was decided four years after *Fraser*. Second, the MLS exists as a limited liability corporation and owns all of the teams in the league, with the teams operating as franchises. "[T]he central league office owned each team, maintained all league sponsorship and broadcasting agreements, and required that all employment agreements with players be entered directly with the league rather than with the individual franchises." Nathaniel Grow, *American Needle and the Future of the Single Entity Defense Under Section One of the Sherman Act*, 48 AM. BUS. L.J. 449, 497 (2011). As such, the legal analysis that the court used to determine that the MLS was a single-entity will likely not be applicable to the other major leagues, which are much less unified and are not operated as franchises.

The NFL line of cases is so important because the NFL is the only league with a total, although not codified, bar to public ownership. All of the other major sports leagues allow at least some opportunities for public offerings, albeit with restrictions. Affirmative findings that the NFL cannot restrict public offerings would benefit legal challenges for other leagues as well.

V. Manchester United Since the IPO

In order to determine the short team effects[150] of the IPO on August 10, 2012, the stock price of the Manchester United shares, the financial opportunities available to the team, and the "on the field" success of the team should be examined. As demonstrated below, all three indicate that the IPO has not harmed, and even perhaps has helped, the team in the short run.

After opening at $14, a price much lower than initially hoped for,[151] the Manchester United stock rose slightly for two days before it began to fall.[152] Traded under the stock symbol MANU, the press called the IPO "a disappointment."[153] By September 13, it reached its lowest point, at $12.00.[154] However, since late October 2012, the MANU shares have begun to climb, surpassing the $17.00 mark on January 24, 2013.[155] As a result of the late-January share price

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[150] Because the Manchester United IPO occurred so recently, long term effects cannot be effectively judged at this time.
[151] Smith, *supra* note 13. *See also* Introduction, for a discussion about the pricing of the Manchester United IPO.
[152] *Manchester United PLC*, GOOGLE FINANCE, http://www.google.com/finance?q=NYSE%3AMANU&ei=T7n9UJiDJuKj0AGcrwE, (last visited Mar. 9, 2013).
[153] Hoium, *supra* note 13.
[154] *Manchester United PLC, supra* note 140.
[155] *Id*.

increase, Manchester United's enterprise value[156] has reached $3.3 billion, making it the most valuable team in the world.[157]

158

As indicated in the graph above, the MANU stock has outperformed the S&P 500 (in red), the Dow Jones (in green) and the NASDAQ (in brown) since mid-December 2012. Although the Manchester United stock has dropped off from its high on February 19, 2013 of $18.82,[159] it has remained well above the above-mentioned benchmarks of the market.[160] As the share price

[156] Enterprise value is "A measure of a company's value, often used as an alternative to straightforward market capitalization. Enterprise value is calculated as market cap plus debt, minority interest and preferred shares, minus total cash and cash equivalents." *Enterprise Value – EV*, INVESTOPEDIA, http://www.investopedia.com/terms/e/enterprisevalue.asp#ixzz2JJBNoHwa.

[157] Mike Ozanian, *Manchester United Becomes First Team Valued At $3 Billion*, FORBES, http://www.forbes.com/sites/mikeozanian/2013/01/27/manchester-united-becomes-first-team-valued-at-3-billion/?223. The next most valuable team is the NFL Dallas Cowboys, at $2.1 billion. *Id.*

[158] Comparing Manchester United plc with S&P 500, Down Jones Industrial Average and NASDAQ, YAHOO FINANCE, http://finance.yahoo.com/echarts?s=MANU+Interactive#symbol=manu;range=1y;compare=%5Egspc+%5Edji+%5Eixic;indicator=volume;charttype=area;crosshair=on;ohlcvalues=0;logscale=off;source=undefined; (last visited March 11, 2013). This graph measures the changes in the MANU stock from its IPO on August 10, 2012 until March 11, 2013, when this note was completed.

[159] *Id.*

[160] *Id.*

increases, so does investor confidence in the brand, which can affect other aspects of the sports franchise, such as other financial opportunities. Although the initial downturn was certainly cause for concern, if the share price continues to rise, this should encourage owners of other sports franchises to seriously consider an IPO in the U.S.

Manchester United has made headlines in early 2013 with news of new sponsorships in both China and Japan.[161] The team signed a three-year sponsorship deal with Wahaha Group Co., the largest beverage producer in China, making it the official soft drinks partner in China,[162] a three-year deal with China Construction Bank, entitling the bank to produce official Manchester United credit cards in China,[163] and a three-year deal with Kansai Paint Co. Ltd. to make the company the official paint partner of Manchester United.[164] These sponsorships project confidence in the brand of Manchester United and argue in favor of IPO success.

The "on the field" success of the Manchester United team has continued since the IPO as well. As of March 8, 2013, Manchester United leads the English Premier League with 71 points.[165] With over two-thirds of the season completed,[166] Manchester United appears poised to remain in the top four positions in the Premier League, which would allow them to qualify for the UEFA Champions League. This is the goal of every team in the Premier League. If the team remains on course, fans will be hard-pressed to find fault with the August IPO.

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[161] This is in addition to the huge jersey sponsorship deal from Chevrolet, announced days before the IPO, reported to be worth over $600 million. Ben Klayman, *GM signs Man United deal day after marketing executive exit*, REUTERS, (July 31, 2012), http://www.reuters.com/article/2012/07/31/us-gm-manu-idUSBRE86T1HE20120731.
[162] Ramy Inocencio, *Manchester United teams up with first two Chinese sponsors*, CNN, (Jan. 16, 2013), http://www.cnn.com/2013/01/16/business/china-manchester-united-new-sponsors/.
[163] *Id.*
[164] Keith Weir, *Manchester United broadens sponsorship palette with Japanese paint maker*, REUTERS, (Jan. 18, 2013), http://uk.reuters.com/article/2013/01/18/uk-soccer-manchesterunited-sponsor-idUKBRE90H0SI20130118.
[165] *Manchester United*, YAHOO EUROSPORT, http://uk.eurosport.yahoo.com/football/manchester-united/ (Mar. 8, 2013).
[166] *Manchester United 2012-2013 Fixtures and Results*, YAHOO EUROSPORT, http://uk.eurosport.yahoo.com/football/manchester-united/results/2012-2013/ (last visited Mar. 8, 2013).

With an increasing share price, lucrative sponsorship agreements, and impressive "on the field" success, there is no indication that the Manchester United IPO has in anyway hurt the team. It is likely that other sports franchises may see the Manchester United IPO as having improved the success of the franchise. If so, this could sway owners considering an IPO for their franchise in the future.

Conclusion

As the economy begins to recover slowly from the recent recession of 2008, things may never return to normal for sports teams. Cities will likely be much more resistant to handing out millions of dollars for new stadiums or even repairs on older stadiums. This may force teams to look within themselves in order to raise the necessary funds, leading to more sports IPOs. Additionally, if players' salary demands continue to rise, teams may be forced to look beyond revenues to public offerings to satisfy these demands. Finally, as the public becomes more conscious of debt and financial practices after the recession, North American teams might face legislation like that of the UEFA Financial Fair Play Rules, driving teams to IPO in order to balance out their debts and equities. All of these factors will cause sports teams to look to the public for funds, which could lead to a rise in sports IPOs.

Once teams decide to go public, they will choose to do so in the U.S. because of the JOBS Act, the dual-class voting structure and the developments in antitrust law regarding sports league restrictions. It is possible that North American teams will be hesitant to wade into the publicly traded arena even with the JOBS Act, the dual-class voting structure and changing landscape of antitrust legislation. This may require a few more foreign teams, like Manchester United who are not held back by league restrictions, to IPO in the U.S. and make the option look more attractive to owners. However, as long as both the JOBS Act and the dual-class voting structure remain in place, and some teams are willing to challenge their respective leagues in court, sports IPOs in the U.S. will rise in the coming years.