Initial Public Offerings And Professional Sports Teams: The Regulations Work, But Are Owners And Investors Listening?

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I. INTRODUCTION

For years, the public has complained about laws and government programs that just do not work.[1] However, one

1. *See generally* Edward W. Lempinen, *Agencies For Disabled In Disarray*, The S.F. CHRON., Aug. 4, 1997 at A1. Lempinen discusses consumer complaints of

set of government regulations actually does work to protect the public from harm, but is the public listening?

Professional sports team owners in the United States are searching for new ways to pay exorbitant player salaries and finance stadium construction.[2] One method of financing attempted in recent years is the offering of public ownership in professional sports franchises.[3] Selling stock in sports teams is a relatively unique concept,[4] but leading commentators have suggested that it may be the wave of the future.[5] However, attempts by sports franchises to sell stock to the public have resulted in mediocre success for team owners and poor investment returns for shareholders.[6]

The less than enthusiastic public response to sports team stock offerings is likely a direct result of federal securities regulations. Specifically, provisions of the Securities and Exchange Acts of 1933 and 1934 require disclosure of voting, dividend and investment return information that should lead

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state regulation and control of California's developmentally disabled. *See id. See also* Leonard Orkin and Gabrielle V. Davis, *National Nanny of the Millennium; Sweepstakes Marketing; Honesty in Sweepstakes Act of 1999*, DIRECT MARKETING, May 1, 1999 at 64 (discussing increased regulation due to customer complaints about sweepstakes marketing); Kathy J. Vaca, et al., *Review of Nursing Home Regulations*, MEDSURG NURSING, June 1998 at 165 (discussing complaints of ineffective regulation of nursing homes).

2. *See* Mike Dougherty, *Free agency: Key Story of 1970s*, GANNETT NEWS SERVICE, Sept. 8, 1999 at ARC. Dougherty details the increase in salaries to present day averages of $1.7 million per player a year in Major League Baseball (MLB) and $3 million a year in the National Basketball Association (NBA). *See id.* Dougherty also cites the salaries of Patrick Ewing of the NBA ($18.5 million a year) and Kevin Brown of MLB ($105 million over 7 years). *See id.*

3. *See* Don Hunt and Brian Edwards, *Know the Score: There's Good Reason not to be a Fan of a Sports Team's Stock*, CHICAGO TRIBUNE, November 11, 1998 at 1.

4. Only five professional sports teams in the U.S. have offered stock to the public and only four of these teams are actually publicly traded on U.S. exchanges. *See* Allison Romano, *For Fans, Value of Owning Stock Comes in Sentiment, not Dollars*, CHICAGO DAILY HERALD, June 9, 1999 at 5.

5. Sports consultant and analyst Dean Bonham has stated, "We're going to see more sports franchises go public this year than ever has gone public in the history of professional sports." *Pirates Join Pro Clubs Looking at Stock Sales*, HOUSTON CHRON., Feb. 8, 1998 at 9.

6. *See generally*, Scott C. Lascari, *The Latest Revenue Generator: Stock Sales by Professional Sports Franchises*, 9 MARQ. SPORTS L.J. 445 (1999). Lascari discusses and dissects public offerings conducted by the Green Bay Packers, Boston Celtics, Florida Panthers and Cleveland Indians whose offerings sold shares below the number expected by team owners and have provided poor returns on shareholders' investments. *See id.*

the public to invest their hard earned money elsewhere.[7] Moreover, the requirements of the '33 and '34 Acts effectively deter owners from conducting stock offerings by requiring disclosure of previously confidential team information, resulting in reduced autonomy, increased public pressure and unprecedented government scrutiny.[8]

The professional sports stock offerings discussed in this article illustrate the effectiveness of the federal securities regulations in protecting investors. Part II of this comment will give an historical account of the league rules concerning professional sports offerings and explore stock sales conducted by the Green Bay Packers, Boston Celtics, Florida Panthers and Cleveland Indians. Part III will discuss the general intent of federal securities regulations and detail specific provisions of the '33 and '34 Acts affecting disclosure and liability. Part IV will then apply the securities regulations to professional sports stock offerings and detail the effectiveness of the '33 and '34 Acts in protecting sports investors. Part V will propose and explore feasible alternatives for owners and investors in lieu of public stock offerings. Part VI will conclude that federal securities regulations effectively deter the sale of sports stocks and, in the face of enticing financial alternatives, few public offerings will occur in the future of professional sports. The novelty of public stock offerings in sports teams has worn off and investors, aware of the results of previous sports offerings, are listening.

II. HISTORY & BACKGROUND

A. *Why Owners Consider Going Public*

Recent stock offerings by professional sports teams represent an attempt by team owners to find new avenues of financing without detracting from their personal fortunes. Owners must constantly increase revenue growth just to keep pace with escalating player salaries and franchise

7. *See infra*, notes 94-123 and accompanying text.

8. *See* Brian R. Cheffins, *Playing the Stock market: Going Public & Professional Team* Sports, 24 J. CORP. L. 641, 658-59, 662-64 (1999).

operating costs.[9] The two constant sources of franchise revenues, media contracts and stadium-based revenues,[10] will likely be unable to provide the necessary financing owners desire to renovate or build new stadiums and still pay players' salaries.[11]

The steady stream of television revenues historically enjoyed by professional sports franchises emanating from long-term national media contracts are inevitably being diluted by the need for revenue-sharing among league teams.[12] Furthermore, the continuous availability of new sports and sporting events to television networks will undoubtedly lead to a decrease in the media revenues currently enjoyed by the four dominant sports leagues.[13]

Owners, unable to squeeze additional revenues out of existing stadiums, want to tap the huge revenue potential offered by building new state-of-the-art facilities, thus compounding the media revenue problem.[14] The actual physical construction of present arenas, the current number of luxury boxes, concession booths, merchandising spaces and inadequate seating capacities physically cap the revenue-generating ability of many current stadiums.[15] Moreover, recent attempts by franchise-less cities to acquire

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9. *See* Cheffins, *supra* note 8, at n. 84. Cheffins cites to the quintupling of average salaries in the NBA and MLB between 1983 and 1995. *See id.*

10. Stadium revenues are revenues produced by advertising, concessions, naming rights, parking, retail space rental, luxury boxes and the sale of seat licenses. *See* Meredith J. Kane, *Stadium Financing Increasingly Using Private Fund Sources Varying Combinations with Public Monies*, NEW YORK L.J., Jan. 19, 1999 at S4 (col. 3).

11. *See* Cheffins, *supra* note 8, at 653. Cheffins expresses doubt that ticket prices, media deals and other revenues from merchandising and licensing can provide sufficient revenue growth necessary to meet escalating salaries. *See id.*

12. *See* Kane, *supra* note 10, at S4. Kane discusses revenue-sharing agreements with respect to national media contracts that are presently in force in the NFL, NHL, NBA and MLB. *See id.*

13. *See* Sam Donnellon, *Numbers, Experts Suggest Sports Becoming a Turnoff*, The HOUSTON CHRON., Nov. 15, 1998 at 17. Donnellon describes the erosion caused by new and additional sports such as the X-Games, soccer and women's sports. *See id. See also*, *Midway Home Entertainment Signs Exclusive Four Year Deal with Arena Football League*, BUSINESS WIRE, Aug. 20, 1999 at 16:47. The article details recent television contracts with the AFL. *See id.*

14. *See generally* Kane, *supra* note 9. Kane explains that new stadiums can create greater revenues than older venues are able to provide. *See id.*

15. *See* Jonathan Rand, *Voters Tell Owners to Pay for Stadiums*, The KANSAS CITY STAR, Mar. 29, 1998 at C8; *see also*, Kane, *supra* note 10, at S4.

teams often include lucrative stadium deals, which allow owners to retain the dominant share of stadium-generated revenues from parking, concessions and luxury boxes.[16] However, due to recent public outcry, the ability of franchises to successfully relocate is becoming increasingly more difficult.

Historically, cities and states have subsidized wealthy owners' stadium construction projects by burdening taxpayers.[17] Stadium financing usually involves the use of public bonds, franchise tax breaks, assumption of franchise debt, or taxes on consumer goods.[18] Ultimately, whether through increased taxes, increased costs of living or decreased social services, taxpayers have been predominately responsible for financing the building of sports facilities to accommodate professional franchises.[19] However, many communities have recently shown displeasure with this use of their tax dollars and refused to subsidize the building of professional sports facilities.[20] For example, Los Angeles, Minnesota and Pittsburgh have recently limited public financing or refused to subsidize owners' building of stadiums altogether.[21] Although some cities have continued

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16. *See* Lynn Reynolds Hartel, *Community-Based Ownership of a National Football League Franchise: The Answer to Relocation and Taxpayer Financing of NFL Teams*, 18 LOY. L. A. ENT. L.J. 589, 601 (1998). Hartel discusses deals offered to the Browns and the Rams, which included 100% of luxury box rentals, rent-free stadium use, stadium-naming rights, one-half of non-football stadium revenues, guaranteed ticket sales, relocation costs and the building of practice facilities. *See id.*

17. *See* Kerry M. Fraas, *"Bankers Up!" Professional Sports Facility Financing and Other Opportunities for Bank Involvement in Lucrative Professional Sports*, 3 N.C. BANKING INST. 201, 207-10 (1999).

18. *See* Hartel, *supra* note 16, at 601. Hartel describes various methods of financing and taxation. *See id. See also* Kane, *supra* note 10, at S4. The article details the available public bond financing vehicles and subsequent effects to teams and cities. *See id.*

19. *See* Hartel, *supra* note 16, at 601.

20. *See* Cheffins, *supra* note 8, at 650. Cheffins states: "There is widespread (although by no means universal) voter antipathy to new taxes to build sports facilities, and voters have recently defeated funding initiatives in a number of U.S. cities." *Id.*

21. *See* Hartel, *supra* note 16, at 603-04. Hartel discusses the reluctance of Los Angeles to publicly finance a stadium in the downtown area that led to the institution of a citywide referendum to approve public subsidization of stadiums. *See id. See also*, Steven Kutz and Gregg Wirth, *Catching the Fever*, INVESTMENT DEALERS' DIG. Jan. 5, 1998 at 12. Kutz and Wirth describe Minnesota's imposition of a ceiling on the city's contribution to the baseball stadium and the city of

to finance stadiums,[22] team owners are now considering stock sales to fund arena construction as an alternative to public financing.[23] In fact, it is currently estimated that twenty-one of twenty-nine professional sports teams have recently considered selling shares to the public.[24] More importantly, one leading sports consultant predicts a number of sports franchises will act on these considerations and sell shares to the public in the next one to three years.[25] Thus, while owners are obviously expressing an interest in public issuance of shares in their franchises, the first and most immediate consideration for the owners is complying with each individual league's rules on public ownership.

B. League Rules

The rules of the National Hockey League (NHL) and National Basketball Association (NBA) generally permit the sale of stock to the public.[26] Although the NHL maintains some restrictions on dividend payouts,[27] the league still

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Pittsburgh refusing to allow an increase in sales taxes to fund stadiums for the Steelers and Pirates. *See id.* A later provision in Pennsylvania involving state subsidies was approved. *See* Cheffins *supra* note 8, at 651; *see generally*, Jonathan Rand, *Voters Tell Owners to Pay for Stadiums*, KANSAS CITY STAR, Mar. 29, 1998, at C8.

22. *See* Cheffins, *supra* note 8, at 650. Cheffins details the publicly financed construction for the Denver Broncos and San Diego Padres. *See id.*

23. *See* Cheffins, *supra* note 8, at 649-51. *See generally*, Hartel *supra* note 16, at 592-93. Hartel proposes public ownership as a solution to taxpayer financing and discusses advantages owners find in this form of financing. *See id.*

24. *See* Becky Yerak, *More Public Companies, Investors Grab up Ownership of Sports Teams*, THE DETROIT NEWS, Aug. 1, 1999 at C1 (relying on a 1998 Sports Business Journal survey). *See also*, Hunt and Edwards, *supra* note 3, at 1. The article points to initial public offerings (IPOs) being considered by the Pittsburgh Pirates, Minnesota Twins and Calgary Flames. *See id.*

25. *See Pirates Join Pro Clubs Looking at Stock Sales*, *supra* note 5, at 9. "I predict another eight to 10 franchises will successfully go public in the next 36 months." Yerak, *supra* note 24, at C1 (quoting Dean Bonham, president of a sports consulting firm that conducts analysis of sports franchises and franchise assets for corporate clients). Bonham is also the former president of the Denver Nuggets organization. *See id.*

26. The public offerings conducted by the NHL's Panthers and the NBA's Celtics are described by Lascari and Cheffins and are evidence of the league rules allowing sales of stock to the public. *See* Cheffins, *supra* note 8, at 656-59; *see also*, Lascari, *supra* note 6, at 452-54.

27. NHL teams cannot pay cash dividends unless they maintain adequate cash reserves and can meet the following year's expenses without long-term debt financing. *See* Lascari, *supra* note 6, at 458.

allows stock offerings limited only by the requirement that the league review the proposal and that voting control is maintained by a dominant shareholder.[28]

Major League Baseball (MLB) also allows public ownership of franchises.[29] MLB recently adopted this policy to allow public ownership but still requires at least one majority shareholder and imposes restrictions on voting rights.[30] The only real bar to public ownership in professional sports is found in the National Football League (NFL).

The NFL has an unwritten policy prohibiting public offerings.[31] The policy stems from the NFL Constitution, which effectively prohibits ownership by corporate entities and requires that any sale of ownership must be approved by seventy-five percent of current owners.[32] It is generally believed that these League prohibitions are an unreasonable restraint of trade and would not pass muster under the Sherman Antitrust Act.[33]

Reinforcing the likely demise of the NFL's ownership rules and policies is the ruling of the federal district court in *Sullivan v. National Football League*.[34] The *Sullivan* court considered a challenge to the NFL's ownership policy by the owner of the New England Patriots after the League refused to approve the team's sale of stock to the public.[35] The district court action definitively found that the NFL rules violated the Sherman Antitrust Act.[36] Although the case was vacated and remanded by the First Circuit Court of Appeals, the underlying antitrust evaluation performed by the federal

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28. *See* Cheffins, *supra* note 8, at 657; *see also*, Lascari, *supra* note 6, at 454-57.

29. *See* Cheffins, *supra* note 8, at 643.

30. *See* Cheffins, *supra* note 8, at 643. Cheffins details the 1997 vote where MLB owners voted to change the existing policy of discouraging public ownership but required owners going public to maintain at least a fifty-one percent interest in the franchise and voting power over team decisions. *See id.*

31. *See* Cheffins, *supra* note 8, at 656.

32. *See* Cheffins, *supra* note 8, at 656-57.

33. *See generally*, Hartel, *supra* note 16. Hartel discusses the NFL's ownership policies and argues that the policies would likely fail any antitrust challenge. *See id.*

34. *See* Sullivan v. National Football League, 34 F.3d 1091 (1st Cir. 1994).

35. *See id.*; *See also*, Cheffins, *supra* note 10, at 656-57.

36. *See Sullivan*, 34 F.3d at 1095.

district court for the District of Massachusetts was effectively upheld.[37] The First Circuit, in affirming the lower court's analysis, found the evidence brought forth by Sullivan was sufficient to show a competitive harm.[38]

Thus, the NFL's uncodified policy against public ownership likely violates antitrust laws. More importantly, future attempts by NFL owners to conduct initial public stock offerings (IPOs) will likely be approved by the NFL or, on the basis of *Sullivan*, the League could be compelled to allow such offers by franchises.[39]

The current rules of the NBA, NHL and MLB allow owners to conduct public offerings with the permission of their respective leagues, albeit with considerable restrictions on voting power and ownership quotas. NFL team owners wishing to conduct public stock sales will likely gain approval either through league acquiescence or judicial intervention.

C. *Publicly Traded Teams*

It is important to differentiate between teams that are publicly traded and teams that are part of a publicly traded corporation. Although it is estimated that between sixty-six and eighty public corporations currently own interests in professional sports teams,[40] these corporations do not exist solely to operate these franchises. Instead, the sports franchise is one of many assets under the corporate umbrella used to provide an overall return to investing shareholders. For example, the New York Knicks, New York Rangers, Atlanta Braves, Atlanta Hawks, Anaheim Mighty Ducks, Anaheim Angels, Chicago Cubs, Colorado Avalanche, Denver Nuggets, Seattle Supersonics, Philadelphia 76ers, Montreal

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37. *See* Hartel, *supra* note 16, at 605.

38. *See Sullivan*, 34 F.3d at 1104.

39. *See* Hartel, *supra* note 16, at 606. Hartel argues that the antitrust analysis conducted by the First Circuit will be the primary authority upon which to base challenges to the NFL policies. *See id.*

40. "At last count, in 1998, there were 86 public corporations with ownership interests in hockey, baseball and basketball teams." Yerak, *supra* note 24, at C1 (quoting economics professor Andrew Zimbalist); *see also Pirates Join Pro Clubs Looking at Stock Sales*, *supra* note 25, at 9 (citing Team Marketing Report estimate that sixty-six publicly traded companies presently own parts of North American sports teams).

Canadians, Toronto Blue Jays and Los Angeles Dodgers are all owned by large corporations with diverse multinational interests.[41]

Inapposite to ownership by a corporate parent, sports franchises offering ownership in the team directly to the investing public are considered "stock market teams."[42] Stock market teams are those generating revenues and profits solely from the operation of the sports team and are not just one of a significant number of corporate assets.[43] Currently, there are four professional major league teams likely to be considered stock market teams that have offered or are offering shares to the general public.[44] The following section will examine the make-up and results of the public offerings conducted by the Green Bay Packers, Boston Celtics, Cleveland Indians and Florida Panthers.

1. Green Bay Packers (NFL)

The Green Bay Packers are the one exception to the NFL's uncodified policy of prohibiting public offerings. Even though the organization is not considered a stock market team per se, it will be discussed here because it is the only NFL team to offer stock to the public.[45]

In 1923, the Packers were organized as a non-profit public corporation under Wisconsin law prior to the enactment of the NFL rules prohibiting public ownership.[46]

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41. *See* Lascari, *supra* note 6, at 446; Cheffins, *supra* note 8, at 647-48 (both articles combined give an exhaustive list of major professional sports teams and current corporate affiliations).

42. Cheffins, *supra* note 8, at 645.

43. *See* Cheffins, *supra* note 8, at 646.

44. *See generally,* Cheffins, *supra* note 8, at 644-48. Although other professional sports teams have conducted IPOs, the discussion here will be limited to United States based teams in the NHL, NBA, NFL and MLB. For example, English soccer clubs and Canadian Football League teams have sold shares to the public. *See* Cheffins, *supra* note 8, at 644.

45. The team is not expressly considered a "stock market team" because the stock is bought directly from the team and is not available on the open market. Further, shareholders can only sell the stock directly back to the Packer organization. *See* Allison Romano, *For Fans, Value of Owning Stock Comes in Sentiment, Not Dollars,* CHICAGO DAILY HERALD, June 9, 1999 at 5; *see also* Cheffins, *supra* note 8, at 646.

46. *See* Hartel, *supra* note 16, at 593-94 and n. 23; Cheffins, *supra* note 8, at 646.

This exception to NFL rules allowed the Packers to make an offer of stock to the public in 1997.[47] The purpose of the offering was to provide financing for the renovation of the team facilities at venerable Lambeau Field.[48] Initially, the Packer organization counted on selling 400,000 shares at $200 per share.[49]

However, the final result of the organization's public offering was the sale of approximately 120,000 shares for a total receipt of $24 million.[50] The reason for the mediocre response to the Packer offering can be partially attributed to the underlying limitations on stock ownership and transferability such as limited voting power and no chance of making a profit.[51] Disclosure of this information concerning profitability was required by the NFL and was closely watched by the Securities and Exchange Commission.[52] Therefore, after reading the disclosure information, investors wanting to earn an actual return on their investment understandably invested elsewhere resulting in a lackluster response to the Packer offering.[53] However, the Packer organization still managed to obtain $24 million in financial capital without giving up any future profits, voting power or control.

2. Boston Celtics (NBA)

The Celtics organization conducted a public offering in 1986 and, as such, gives the best insight into sports stock investments over a significant period of time.

Similar to the Packer offering, and most sports franchise

47. *See* Cheffins, *supra* note 8, at 646.
48. *See* Cheffins, *supra* note 8, at 646.
49. *See* Lascari, *supra* note 6, at 448-492.
50. *See* Lascari, *supra* note 6, at 448-492.
51. *See* Hartel, *supra* note 16, at 594-95. Hartel discusses the diluted voting power of shareholders. *See id.* *See also,* Lascari, *supra* note 6, at 453. Lascari examines the possibility of profits considering the lack of dividends, lack of tax deductibility, and provisions that only allow transfer of shares within families. *See id.* More importantly, any profits realized by the Packer organization had to be put into a reserve account or donated to charity and not paid out as dividends. *See id.*
52. *See* Lascari, *supra* note 6, at 452.
53. The Packers intended to sell approximately 400,000 shares, but only sold 120,000. *See* Lascari, *supra* note 6, at 451.

offerings, those investing in the Celtics received virtually no say in corporate operations.[54] However, the Boston offering actually gave investors a reasonable opportunity to profit from their investment. First, stock ownership in the Celtics entitles the shareholder to receive an annual dividend, which is determined and distributed by a general partner.[55] Unlike the Packer's stock provisions, the Celtics organization does not need to retain or donate profits, but can offer investors a return on their investment by paying out dividends.[56] Second, the Celtics' offering does not contain restrictions on transfers of stock.[57] Thus, shareholders can sell their shares for a profit should the shares appreciate in value.

Even though the Celtics' offering allows investors the opportunity to profit from their investment in stock that has been the best performing sports stock, the returns earned by shareholders have been less than stellar. In fact, since the initial offering price of $18.50 a share thirteen years ago, the highest price obtained has been approximately $21,[58] with a low of around $8 per share.[59] More importantly, since the initial offering, the annual return for shareholders on their investment has been less than ten percent, compared to the average return of eighteen percent for the Standard and Poors' 500 for the same time period.[60] The return for Celtics' investors has clearly been anemic at best.[61]

In spite of the relatively inadequate returns for Celtics' shareholders, the controlling ownership group, the Gaston family, received a windfall. The Gaston family retained control of the Celtics by giving up only forty percent of the voting stock. In return, the Gaston family received

54. . *See* Lascari, *supra* note 6, at 453; *see also,* Hunt and Edwards, *supra* note 3, at 1. Hunt and Edwards explain that although there are approximately 90,000 investors in the Boston Celtics Limited Partnership, sixty percent of the organization is owned by the Gaston family. *See id.*

55. *See* Lascari, *supra* note 6, at 453.

56. *See* Lascari, *supra* note 6, at 453.

57. Shares of the public partnership are traded on the New York Stock Exchange. *See* Cheffins, *supra* note 8, at 646.

58. *See* Romano, *supra* note 45, at 5.

59. *See* Hunt and Edwards, *supra* note 3, at 1.

60. *See* Dean Bonham, *Betting On Team Stock A Goofy Fiscal Play,* THE COMMERCIAL APPEAL (Memphis), Dec. 6, 1998 at C1.

61. *See id.*

approximately $48 million for the family coffers.[62] The Celtics' offering exemplifies how the wealthy owners of a professional sports franchise can receive a financial windfall without relinquishing control of their team.

3. Florida Panthers (NHL)

The Florida Panthers of the National Hockey League have conducted the most controversial and entertaining sports team IPO. The 1996 offering made by team owner Wayne Huizenga[63] netted $71.4 million based on the sale of 7.3 million shares, or about fifty percent of the company.[64] These proceeds were advertised as, and tabbed for, partial financing for a new arena and for the repayment of franchise debt.[65] However, the SEC filings made prior to the offering also mentioned that Huizenga could use the proceeds to purchase other assets.[66]

Fortunately for the Panther organization and Huizenga, Broward County decided to publicly fund the new stadium for the Panthers, which freed up the stock offering proceeds for other purposes.[67] Huizenga immediately used a portion of the stock sale proceeds to buy and develop resort hotel properties as an extension of the Panther organization.[68] Thus, in reality the Panthers are no longer a stock market team because hockey operations account for only approximately ten percent of corporate operations.[69]

The purchase of non-hockey assets has also led to an extremely volatile stock price. After the initial pricing of $10 a share, the stock price rose to $20 a share before

62. *See* Romano, *supra* note 45, at 5.

63. Huizenga also owns the Miami Dolphins and Florida Marlins. *See* Edward Wyatt, *Wayne's Brave New World*, HOUSTON CHRON., Mar. 29, 1998 at 3.

64. The general public bought 2.7 million shares in the first offering, the Panther organization personnel bought 4.6 million shares, and several members of the board of directors later purchased another 345,000 shares. *See id.*

65. *See id*; *see also* Lascari, *supra* note 6, at 454-57. Lascari describes the first and second offerings of stock by the Panther organization as well as the subsequent resort property acquisitions. *See id.*

66. *See* Wyatt, *supra* note 63, at 3.

67. *See* Wyatt, *supra* note 63, at 3.

68. *See* Lascari, *supra* note 6, at 455-56.

69. *See* Wyatt, *supra* note 63, at 3.

plummeting back to roughly $10.[70] However, analysts' expectations concerning the performance of the stock have become increasingly favorable since Huizenga began to add the resort property operations to the fold.[71]

The problem with the Panther organization's diversification is that many shareholders have filed class action lawsuits claiming they were misled by the offering and the subsequent use of proceeds to purchase non-hockey related ventures.[72] Notwithstanding the outcome of these lawsuits, Huizenga was able to acquire $70 million, which he used to expand his non-hockey-related empire without having to give up ownership or voting control of the Florida Panthers franchise.

4. Cleveland Indians (MLB)

In June of 1998, the owner of the Cleveland Indians, Richard Jacobs, offered 4.6 million shares of stock to the general public at $15 a share.[73] At the time of the offering the Indians were one of the most successful clubs in MLB.[74] Indeed, the team had recently earned their second World Series appearance and had completely sold out all home games for the third consecutive year.[75]

The Indians' offering prospectus stated that, "substantially all of the proceeds will be used to acquire partnership interests in Cleveland Indians Baseball Company Limited Partnership from entities controlled by Richard E. Jacobs."[76] However, Indians vice president, Ken Stefanov, touted the offering as a way for the franchise to expand into other areas.[77] The actual result was a windfall

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70. *See* Bonham, *supra* note 60, at C1.

71. *See* Wyatt, *supra* note 63, at 3.

72. *See* Wyatt, *supra* note 63, at 3; *See also* Lascari, *supra* note 6, at 459-60.

73. *See* Peter Galuszka, *Sports IPOs: One-Hit Wonders?*, BUSINESS WEEK, June 22, 1998 at 208E10.

74. *See* Stefan Fatsis, *Cleveland Indians Are Put on the Block by Jacobs, and Stock Price Soars 64%*, THE WALL STREET J., May 14, 1999 at B2. Fatsis describes the Indians as one of the premier franchises of the 1990s. *See id.*

75. *See* Scott Reeves, *Field of Dreams: Cleveland Indians' IPO Scores Only with True Fans*, BARRON'S, May 4, 1998 at 30.

76. Lascari, *supra* note 6, at 461 (quoting Cleveland Indians Baseball Co., Inc., 1998 Prospectus 1 (1998)).

77. *See* Sean Horgan, *Taking Stock in the Team: Three Professional Sports*

to Jacobs of $60 million dollars based on the sale of 4 million shares of class A stock at $15 a share.[78]

Despite the amount of money shareholders invested into the Indians, Jacobs retained majority ownership of the team.[79] In addition to retaining ninety-nine percent of the voting stock, Jacobs also decides who is elected to the board of directors and makes all decisions concerning the operation of the organization.[80]

More importantly to investors, until a recent announcement discussing the sale of the team, the return on shareholder investment had been substandard.[81] In addition to not receiving dividends,[82] Indians' shareholders have also had to endure a stock price that hit a low of $5.37 a share in October 1998.[83] The stock then soared to $16.25 on speculation that the team would be sold.[84] The recent consideration of sale and subsequent rise in stock price prompted some to proclaim that this is the only way for the stock to become more valuable.[85]

The Cleveland Indians public stock offering has provided investors with inferior investment returns and a complete lack of voting power. However, the sale did transfer $60

Franchises Have Gone Public as a Way of Raising Money, THE INDIANAPOLIS STAR/THE INDIANAPOLIS NEWS, Mar. 15, 1999 at C01.

78. *See* Cheffins, *supra* note 8, at 645.

79. Jacobs retained sixty-seven percent of the common stock. *See* Fatsis, *supra* note 74, at B2.

80. Jacobs retained the B class stock, which entitled him to 10,000 votes for each of his 2,281,667 shares of Class B stock. *See* Hunt and Edwards, *supra* note 3 at 1. Each of the 4 million Class A shares issued received one vote per share. *See id.; see also*, Lascari, *supra* note 6, at 461-62.

81. *See* Fatsis, *supra* note 74, at B2. Fatsis explains the stock price rose sixty-four percent to $16.25 on May 13, 1999 upon announcement that the Indians were looking for a potential buyer. *See id.* Based on these numbers and the offering price of $15, shareholders have earned approximately an eight percent return. Numbers prior to the recent sale announcement show a return of roughly negative thirty-seven percent from the initial offering price.

82. *See* Lascari, *supra* note 6, at 461-62.

83. *See* Fatsis, *supra* note 74, at B2.

84. *See* Fatsis, *supra* note 74, at B2.

85. *See* Fatsis, *supra* note 74, at B2. (citing comments by Paul Much, consultant with Chicago investment firm Houlihan Lokey Howard & Zukin). The sale of the Indian's stock to Larry Dolan for $320 million was approved by the league on January 19, 2000. See Selig can Block Trades, Redistribute Wealth, (visited Jan. 19, 2000) <http://www.espn.go.com/mlb/news/2000/0119/300929.html>. The only obstacle remaining for the completion of the sale is the shareholder vote scheduled for February 7, 2000. See id.

million to an already wealthy professional sports team owner.

D. Current Status of Sports IPOs

The public offerings conducted by the Packers, Celtics, Panthers and Indians demonstrate that sports IPOs are extremely beneficial to owners. Not only can owners finance team operations, but the influx of capital can also partially replace the need for taxpayers to finance the renovation or building of sports facilities. Unfortunately, three of the four owners discussed above have not used the cash for these reasons. Instead, the owners have personally retained the offering proceeds, or used the money to expand their interests outside of the world of sports.

In return for the capital invested into the franchises, shareholders have received poor returns on their investment, little or no actual voice in the operation of the company, and, if the Indians are any indication, little chance of their stock appreciating in value without a sale of the team. However, investors do achieve a measure of emotional satisfaction and possess stock certificates that make for interesting conversation pieces.

So why would investors put hard-earned money into stock offerings of public sports entities? In reality, investors will probably refuse to invest in these offerings in the future. The disclosure requirements contained in the Securities and Exchange Acts of 1933 and 1934 require companies to disclose information that is designed to enhance the investor's knowledge of the company's operations and risks.[86] Provisions imputing liability to the offering corporation for misstatements or omissions[87] and the realization by investors of the limited profit potential of professional sports franchises to shareholders, will likely preclude investment.

Further, '33 and '34 Act provisions requiring disclosure of financial information, management decisions and organization plans on an ongoing basis will likely chill further enthusiasm for owners considering a public offering.[88] This is especially true in light of the plethora of

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86. *See* JAMES D. COX, ET AL., SECURITIES REGULATION, 4, 8 (1997).
87. *See* JESSE H. CHOPER, ET AL., CORPORATIONS, 315 (1995).
88. *See id.* at 317 (discussing the applicable '33 and '34 Act provisions); *See*

financing alternatives available to owners that do not require disclosure of profit and financial information, which has long been kept secret from the public.

III. SECURITIES REGULATION[89]

Following the stock market crash of 1929 and the mass issuance of worthless securities around the same time, Congress enacted the Securities and Exchange Acts of 1933 and 1934 (Acts).[90] These Acts were attempts by the government to achieve the broad goals of market efficiency and investor fairness in the wake of issuers of securities taking advantage of investors' lack of knowledge.[91] The government hoped to protect the investing public from unscrupulous stock issuers by requiring that certain information be disclosed concerning the company and the issuers of the securities.[92] The theory behind requiring disclosure to protect the public was eloquently posed by Justice Brandeis: "Sunlight is said to be the best of disinfectants: electric light the most efficient policeman."[93] A brief discussion of the '33 and '34 Acts highlights Congress's efforts to protect investors.

A. *The Securities and Exchange Act of 1933*

The government's first effort to bring pertinent stock information into the light was the '33 Act.[94] The '33 Act was intended to protect the public by regulating the initial distribution of securities by corporations.[95] To accomplish this task the '33 Act essentially requires an affirmative mandatory release of information prior to the sale of securities, which is referred to as "registering" with the

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also, COX, ET AL., *supra* note 86, at 4 (discussing the applicable '34 Act provisions).

89. Due to the diverse nature of state securities laws, referred to as "Blue Sky" laws, the discussion here will deal strictly with the federal securities regulations.

90. *See* COX, ET AL., *supra* note 86, at 3.

91. *See* CHOPER, ET AL., *supra* note 87, at 313.

92. *See* COX, ET AL., *supra* note 86, at 3.

93. COX, ET AL., *supra* note 86, at 3 (quoting L.D. Brandeis, Other People's Money 61 (1914)).

94. 15 U.S.C. §§77a-77aa.

95. *See* CHOPER, ET AL., *supra* note 87, at 314.

SEC.[96] Corporations wishing to sell securities to the public are required to submit a registration statement to the Securities and Exchange Commission (SEC) detailing the company's business, management and financial affairs.[97] The SEC reviews the information filed and the majority of the information is distributed to potential investors via a prospectus.[98]

The required disclosure of financial information is particularly extensive and must detail the corporation's revenues, earnings, capital structure and certified financial statements for current and previous years.[99] Additionally, the corporation must provide management's assessment of the past and present financial performance and explain any unusual changes in profits or revenues.[100] Finally, the corporation must include a section detailing general and specific areas of risk the company may encounter.[101] This section is vital in conveying information to investors concerning possible areas of losses, business markets and any unique risks the firm may encounter.[102]

Further, corporations are forced to use extreme caution in preparing the registration and prospectus materials due to the Act's imposition of liability upon the corporation for omissions or material misrepresentations.[103] Specifically, Section 11 of the '33 Act allows purchasers of securities to recover damages for materially false or misleading information contained in the registration statement[104] and Section 12 allows investors to rescind their investment in the corporation for inappropriate sales based on false or

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96. *See* COX, ET AL., *supra* note 86, at 4.

97. *See* COX, ET AL., *supra* note 86, at 4.

98. *See* COX, ET AL., *supra* note 86, at 4. A prospectus is officially defined as any communication offering any security for sale. *See* ALAN PALMITER, SECURITIES REGULATION AND EXPLANATIONS, 159 (1998) (citing Section 2(10) of the '33 Act).

99. *See* COX, ET AL., *supra* note 86, at 4.

100. *See* COX, ET AL., *supra* note 86, at 4.

101. *See* COX, ET AL., *supra* note 86, at 4.

102. *See* COX, ET AL., *supra* note 86, at 4.

103. *See* CHOPER, ET AL., *supra* note 87, at 315. Material information is that information which would be considered important by a reasonable person in deciding whether or not to enter into a transaction. *See* PALMITER, *supra* note 98, at 160.

104. *See* PALMITER, *supra* note 98, at 159.

misleading information.[105]

In addition to imposing strict liability upon the issuing corporation, the '33 Act also allows the imputation of liability to corporate officers and board members for misrepresenting or failing to properly disclose material information.[106] Further, Section 15 imputes liability to persons who control any person found liable under Section 11 or Section 12.[107] More importantly to the corporation, the government can also impose criminal penalties for willful violations of the Act.[108]

The aforementioned provisions of the '33 Act force offering entities to provide pertinent information and allow investors access to all material corporate information prior to the initial offering of a security. The availability of this information affords prospective investors an opportunity to make informed decisions concerning corporate offerings. Further, the provisions work to preclude corporations and corporate officers from taking advantage of inside information.[109] Moreover, the civil liability provisions of the '33 Act provide investors with avenues of redress against corporations and corporate officers when there is a failure to provide investors with the required information.[110]

B. The Securities and Exchange Act of 1934

The second effort by the government to regulate the disclosure of information is designed to inform the public of events occurring after the initial offering.[111] Primarily, the '34 Act requires registered companies[112] to continuously disclose

105. *See* PALMITER, *supra* note 98, at 159.

106. *See* PALMITER, *supra* note 98, at 159. *See also* COX, ET AL., *supra* note 86, at 4.

107. *See* PALMITER, *supra* note 98, at 159.

108. Criminal penalties can include imprisonment for up to five years and fines of up to $10,000, per offense. *See* PALMITER, *supra* note 98, at 160.

109. *See* CHOPER, ET AL., *supra* note 87, at 314-15.

110. *See* CHOPER, ET AL., *supra* note 87, at 315-16.

111. 15 U.S.C. §§78a-78hh.

112. Specifically, a corporation is required to enter the '34 Act's continuous disclosure system if (1) it lists its securities on a national securities exchange (§12(b)); (2) any class of its equity securities is held by at least 500 persons and the corporation has gross assets over a specified level (currently $5,000,000)(§12(g)); or (3) the corporation files a '33 Act registration statement that becomes effective (§15(d)).

CHOPER, ET AL., *supra* note 87, at 317.

material information.[113]

The continuous disclosure provisions require registered companies to submit annual reports (Form 10-K), quarterly reports (Form 10-Q), and special reports concerning material developments occurring within the corporate environment (Form 8-K).[114] Arguably the best known and most important of these reports is Form 10-K, or the annual report.[115]

The annual report consists of a basic information package, which includes audited financial statements and management's discussion of past, present and future performance information.[116] In addition, the management discussion section is of particular importance to investors because it regularly discusses the corporation's profit projections and predictions, and also expounds upon significant future corporate events.[117]

Equally significant to investors is the information provided in Form 8-K.[118] Corporations are required to use Form 8-K to inform the public of any significant events materially effecting the corporation or its operations.[119] The information must be filed with the SEC and generally must be disclosed within five to fifteen days of the occurrence of the event.[120]

The actual intent of these three forms is not to directly inform the general public, but rather to keep professional investors apprised of corporate affairs.[121] The underlying theory is that by keeping professional investors informed, insiders are unable to take advantage of proprietary information and the markets will therefore operate

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113. *See* COX, ET AL., *supra* note 86, at 8.
114. *See* COX, ET AL., *supra* note 86, at 8-9.
115. *See* 15 U.S.C.A. §§78m
116. *See* CHOPER, ET AL., *supra* note 87, at 317-18. This text section also notes that the "basic information package" is not required with Form 10K, but is actually made available to the shareholders due to the proxy requirements of Rule 14a-3 of the Act. *Id.*
117. *See* CHOPER, ET AL., *supra* note 87, at 317-18.
118. *See* 15 U.S.C.A. §§78m
119. *See* CHOPER, ET AL., *supra* note 87, at 317-18. Choper discusses changes in control, acquisitions, asset allocations, insolvency and director resignations as examples of material developments. *See id.*
120. *See* COX, ET AL., *supra* note 86, at 9.
121. *See* CHOPER, ET AL., *supra* note 87, at 317-18.

efficiently.[122] In turn, investing in an efficient marketplace thereby protects the average investor.[123]

C. *Combined Effect of the '33 and '34 Acts*

The federal securities laws combine to require publicly traded corporations to disclose detailed financial and operational information concerning stocks offered to and owned by the public. In addition, the '33 and '34 Acts protect investors from unscrupulous and worthless investments by requiring corporations to continuously disclose information relevant to unusual occurrences and corporate fitness.[124] These requirements provide investors with the tools necessary to make informed decisions in an efficient marketplace and deter secretive or unprofitable corporations from selling securities to the public.

More importantly, the federal securities laws expand upon common law notions of fraud and impose liability on corporations and corporate designees for unfairly profiting from informational advantages.

IV. SECURITIES REGULATION AND SPORTS IPOS

Owners of professional sports teams face interesting and preclusive dilemmas when considering public stock offerings due to the protective nature of the '33 and '34 Acts. The stringent disclosure requirements, loss of autonomy and possible civil liability for improper disclosure work to deter owners from conducting IPOs and will likely work to preclude most owners from attempting public offerings.

Moreover, the disclosure provisions of the Acts provide investors with important information concerning the risks and rewards involved in public offerings. The availability of this information, combined with the performance of previous sports IPOs, will likely deter investors from purchasing shares.

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122. *See* CHOPER, ET AL., *supra* note 87, at 317-18.
123. *See* CHOPER, ET AL., *supra* note 87, at 311-14.
124. *See* COX, ET AL., *supra* note 86, at 3-4, 8-9.

A. *Disclosure of Financial Information*

Owners of professional sports franchises have enjoyed almost complete privacy when it comes to their organization's profits and financial affairs.[125] The ability to keep franchise accounting and financial information secret from the general public has allowed team owners to cry poverty in attempts to move franchises, build stadiums and offer stock to the public.[126] Additionally, the ability of owners to keep the organization's profitability and financial condition secret is likely to be extremely beneficial in contract negotiations with players, sponsors and vendors.

Another important consideration for owners is continuous disclosure. Professional teams that go public will have to immediately disclose any information that could be considered important to the stockholder.[127] For example, franchises may be required to provide timely disclosure of management changes, player trades, acquisitions and even injuries to key personnel in accordance with SEC procedures.[128] An illustrative example is the recent IPO conducted by the Cleveland Indians.

Fearing a failure to properly disclose, the Indians prospectus included:

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125. *See* Cheffins, *supra* note 8, at 658.

126. *See* Wyatt, *supra* note 63, at 3. Wyatt details Wayne Huizenga's claim that the Florida Marlins and Florida Panthers are not profitable sports teams. *See id.* Huizenga was subsequently able to convince Broward County to finance the building of a new stadium for the Panthers. *See id.* Wyatt also mentions George Steinbrenner's alleged financial woes as being an attempt to get a new stadium. *See id. See also*, Hartel, *supra*, note 16, at 605. Hartel cites to alleged financial and debt problems as leading to Sullivan's attempt to offer shares in the New England Patriots in 1987. *See id.*

127. *See* TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976). Information is material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information available." *Id.*

128. *See* Cheffins, *supra* note 8, at 660. Cheffins discusses the effect on the share price of a publicly traded English soccer team when false reports concerning the coach's departure were reported. *See id.* Franchises *may* be required to disclose this information, but until there is a challenge by shareholders, the amount of information actually required is yet to be determined. *See id.* However, analogous information has been deemed necessarily disclosed by non-sports corporations. *See generally*, SEC v. Texas Gulf Sulphur Co., 401 F.2d 833 (2d Cir. 1968) (en banc); Virginia Bankshares, Inc. v. Sandberg, 501 U.S. 1083 (1991); Flynn V. Bass Bros. Enterprises, Inc., 744 F.2d 978 (3rd Cir. 1984).

> a history of the team, detailed financial data, and an explanation why the Indians did not intend to pay dividends to shareholders in the immediate future . . . plenty of warnings about the vagaries of the baseball business and . . . more than twenty reasons why investing in the Indians might be a bad idea. The risks identified ranged from player injuries to labor strife. . . .[129]

The ability of owners to keep information concerning profits, salaries, activities and corporate decisions from the public is destroyed by the disclosure requirements of federal securities regulations once the team goes public.[130] Thus, owners offering shares of stock to the public will have to disclose previously unreleased financial data and announce pertinent organizational events, resulting in the loss of important bargaining power and privacy protection.[131] Owners will be very reluctant to give up this information in the face of reasonable financing alternatives.

B. Accountability & Autonomy

Owners of teams considering public offerings, reluctant to release detailed information concerning the franchise, will also find themselves subject to increased public attention and scrutiny. Although the professional sports leagues discussed above have stringent provisions requiring owners to maintain voting control of publicly traded teams, investors in the franchises can still put pressure on team owners to run profitable franchises.[132]

Investors will have influence with management because owners want to ensure that there is demand for the stock and that the stock retains its value.[133] Consistent value and

129. Cheffins, *supra* note 8, at 659.

130. *See supra* notes 95-100 and accompanying text.

131. *See* Cheffins, *supra* note 8, at 659. Cheffins discusses the importance of secrecy to professional sports leagues as evidenced by league policies discouraging public ownership to protect franchise financial information. *See id.* "There's a complete loss of privacy for officers and directors because of disclosure laws." Jan Norman, *Taking Company Public Can Be a Long, Wild Ride*, SUN-SENTINEL (Fort Lauderdale), May 15, 1995 at 11 (quoting Harold Hurwitz, partner at Coopers & Lybrand).

132. "Owners give up some control for the money their stock offerıng raises. Investors want dividends, a rising stock price, or both." Norman, *supra* note 131, at 11 (quoting Harold Hurwitz of Coopers & Lybrand).

133. *See* Cheffins, *supra* note 8, at 662-63.

high demand for shares will enable team owners to raise additional capital when necessary and allow owners to receive financial windfalls when they liquidate their own shares.[134] More importantly, even though team owners such as George Steinbrenner, Al Davis, and Jerry Reinsdorf may enjoy the public eye, the vast majority of owners will not want to worry about or explain in detail to the media every dip in stock price or blip in profits.[135]

Owners of publicly traded teams must also give up some of their autonomy and decision-making control based on self-regulatory listing agency requirements.[136] For example, the New York Stock Exchange requires listed companies to have a certain number of outside or independent board members and requires the establishment of internal compliance departments.[137] Restrictions of this kind effectively encroach upon the discretion of the owner in operating and governing the corporation even though the owner retains majority ownership and voting control.

The flexibility and freedom owners of private sports franchises have enjoyed are severely limited by going public. Owners of professional sports teams are familiar with media scrutiny involving trades, salaries, and win-loss records. However, going public with their franchise introduces an entirely new level of public scrutiny and infringement on the owner's autonomy. Owners are not used to being told what to do and will be very reluctant to allow others to infringe upon the management and control of their team.[138]

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134. *See* Cheffins, *supra* note 8, at 662-63.

135. *See* Norman, *supra* note 131, at 11. Norman describes how private companies can operate with worries for incidental fluctuations while public entities are subject to investor demands for performance: "Owners of private companies can make long-term decisions without worrying about short-term profits." *Id.* (quoting Rich Lough, stock specialist with Coopers & Lybrand).

136. Self-regulatory agencies include the New York Stock Exchange (NYSE), American Stock Exchange (ASE) and the National Association of Securities Dealers (NASD). *See* CHOPER, ET AL., *supra* note 87, at 320.

137. *See* Cheffins, *supra* note 8, at 663. Cheffins discusses the National Association of Securities Dealers' (NASDAQ) requirements that listed companies utilize at least two outside directors and an audit committee. *See id.*

138. *See* Cheffins, *supra* note 8, at 665. "Such individuals are accustomed to acting on their own initiative, so they will resent the prospect of having to explain themselves to outside directors, securities analysts, and others who follow their companies." *Id.* (citing Brian R. Cheffins, *UK Football Clubs and the Stock Market: Past Developments and Future Prospects* 18 COMPANY LAW. 66, 104 (1997)).

C. Liability

Arguably one of the most important concerns to owners of professional sports franchises considering a public offering is liability to shareholders. Investors suspecting corporate officers and directors of fraud, insider trading, failure to disclose, or distribution of misleading information can seek redress in the courts or, alternatively, intervention by government agencies, regulatory bodies, or both.[139]

The imputation of liability to corporate insiders and those supervising corporate insiders puts unprecedented pressure on owners to ensure compliance.[140] Every decision made by an owner must now be made with one eye on the applicable securities regulations and one eye on corporate operations. Wealthy team owners can no longer make decisions based solely upon personal objectives, but must now consider the minority shareholder's interest in deciding the future of the corporation.

Owners considering going public need only look at the legal battles of Wayne Huizenga and the Gaston family to acquire an appreciation for the time, cost, and publicity involved in litigating with shareholders.[141] The threat of litigation is very real and extremely costly to owners for voluntary and involuntary missteps. Few, if any, owners will be willing to subject themselves to such judicial scrutiny in the face of reasonable alternatives.

The combination of mandatory disclosure, civil liability and loss of autonomy is likely to dissuade most owners from going public. For the most part, owners will be unwilling to subject themselves to such drastic changes in the way they run their teams when feasible financing alternatives are available.[142] After all, the owners are already wealthy and are more likely to give up the team than to give up the

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139. *See supra* notes 103-110 and accompanying text.

140. *See* Cheffins, *supra* note 8, at 662-64.

141. Shareholders have filed three class-action lawsuits based on buying of shares by insiders and failure of the organization to disclose plans to expand the business. *See* Wyatt, *supra* note 63, at 3. Investors in the Boston Celtics offering filed suit claiming the corporation improperly forced them to exchange their shares for less valuable shares in the reorganization process. *See* Cheffins, *supra* note 8, at 668.

142. *See* Cheffins, *supra* note 8, at 668.

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V. FEASIBLE ALTERNATIVES TO PUBLIC OFFERINGS

A. *Financing Alternatives for Owners*

The days of relying on taxes and municipal bonds to finance professional sports teams are slowly coming to a close. In the 1970's, ninety percent of stadium financing came from taxes and tax-free bonds compared to only sixty percent in the 1990's.[143] Today, owners will likely forego public stock offerings and make up the difference by way of a multitude of private funding and sponsorship vehicles. The primary means of financing for professional sports teams in the next decade will likely be a combination of public and private financing.[144] In fact, the majority of recent stadium financing deals has included significant contributions from banks, advertisers and team revenues.

First and foremost, banking institutions are making significant contributions through private and syndicate loans.[145] The most recently publicized example of loan financing was the $405 million line of credit issued to Major League Baseball.[146] Bank syndicates also contributed loans of $60 million to the Vancouver Grizzlies, $90 million to the Baltimore Ravens, and put together a $185 million package for the San Francisco Giants.[147]

In addition to loans, banks are also arranging for the issuance of bonds backed by the assets of the teams.[148] Examples include $25 million to the New York Giants, $95 million to the Baltimore Ravens and another $60 million to the Vancouver Grizzlies.[149] In fact, in 1997 alone, $1.85

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143. *See* Fraas, *supra* note 17, at 207.

144. *See* Fraas, *supra* note 17, at 201-07. Fraas generally discusses the plethora of financing vehicles and entities available to sports franchises. *See id.*

145. *See* Fraas, *supra* note 17, at 220-23.

146. *See* David Weidner, *Banks Stepping up to the Plate to Fund Big-League Stadiums*, AMERICAN BANKER, May 4, 1998 at 1.

147. *See id.*

148. *See* Kane, *supra* note 10. Kane explains that assets securing the bonds usually include broadcast rights, operations revenues, and physical assets. *See id.*

149. *See* Kutz and Wirth, *supra* note 21, at S4.

billion stemming from bond sales was provided to professional sports franchises.[150]

Meanwhile, sponsors are standing in line to purchase stadium naming and advertising rights.[151] Undoubtedly one of the largest recent deals was the sale of the naming rights to the combined home of the Lakers, Kings, and Clippers.[152] Staples purchased this right for $100 million dollars.[153] In addition, the Pittsburgh Pirates received $30 million from PNC Bank and the Baltimore Ravens pulled in $104 million from PSInet for the naming of their respective stadiums.[154] More importantly, corporations believe this method of sports advertising works and this source of funding is expected to expand in the next decade.[155] Therefore, with the average naming deal worth $50 to $100 million, expect to see a dramatic increase in the commercialization adorning the walls, scoreboards and playing surfaces of your favorite sports arenas.[156]

In one of the most creative financing packages, the State of Maryland utilized a creative and effective financing tool to help finance the construction of Camden Yards.[157] The state government provided $400 million of the total stadium funding, with the majority of the receipts coming from the sale of lottery tickets.[158]

Regardless of the vehicle or means employed, it is quite obvious that wealthy owners have a virtual cornucopia of financing options available to them. In the wake of such

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150. *See* Weidner, *supra* note 146, at 1.

151. *See* Chris Stetkiewicz, *Cash Keeps Pouring in to Sponsor Sports Stadiums*, (visited September 3, 1999) <http://www.news.excite.com/new/r/990903/11/leisure-stadiums>. The article cites to predictions that thirty-five naming rights deals will be completed in the next three years that will be worth approximately $3 billion. *See id.*

152. *See id.*

153. *See id.*

154. *See id.*

155. "There are great business building opportunities there. . . . To reach their major clients, I don't think anything can transcend live action sports out in the marketplace." Stetkiewicz, *supra* note 151 (quoting Carl Schloessman of Envision, which brokered Staples deal).

156. *See* Fraas, *supra* note 17, at 228.

157. Camden Yards is the new MLB facility in Baltimore, Maryland. *See* Fraas, *supra* note 17, at n. 62.

158. *See* JOANNA CAGAN AND NEIL DEMAUSE, FIELD OF SCHEMES: HOW THE GREAT STADIUM SWINDLE TURNS PUBLIC MONEY INTO PRIVATE PROFIT, 25-26 (1998).

opportunities encompassing hundreds of millions of dollars, it is doubtful owners will subject themselves to the rigors of securities regulation and the decreased autonomy associated with IPOs.

B. Investment Alternatives for the Public

Leading investment commentators do not consider professional sports stocks a wise investment.[159] In fact, many investment professionals consider professional sports stocks to be merely a unique piece of memorabilia or of strictly sentimental value.[160]

It is undisputed that there are a number of favorable investment vehicles available to the public that can provide better returns than sports stocks.[161] A few of the more popular include mutual funds, bonds, insurance products and money market funds.[162] These vehicles, which are tied to the stock market, are especially enticing considering that for the last four years the stock market has gained over twenty percent per year.[163] Compared to the performance of the Boston Celtics' shares, the best performing of all the sports stocks with an annual return of 9.7 percent, investors

159. *See* Christopher K. Hepp, *Taking Stock in a Team Is One for Love, Not money: Cool Investment: Pro Sports Franchise Unsuitable as Core Retirement Holding*, NATIONAL POST, Dec. 29, 1998 at C07. *See also*, Rick Bloom, *Rick Bloom's Strategies: Buying into Sports Offerings May Not be a Good Bet*, THE DETROIT NEWS, Aug. 6, 1998 at B6; James F. Peltz, *When Sports Teams Step up to Plate, Don't Expect Home Run*, LOS ANGELES TIMES, May 12, 1998 at D1.

160. "These stocks are stocking-stuffers. . . . They are bought based on emotional attachments rather than economics and investment value." Romano, *supra* note 45, at 5 (quoting Allen Sanderson, an economist at the University of Chicago); "Oh my, no . . . [t]his is not an investment. It's a novelty kind of thing. The stocks are not much more than certificates that are cool to hang on your wall at home." Hepp, *supra* note 159, at C07 (quoting Rodney Fort, professor of economics at Washington State University); "They are more analogous to a merchandise purchase, like buying a T-shirt." Hepp, *supra* note 159, at C07 (quoting Dean Bonham, present of the Bonham Group).

161. *See* Peltz, *supra* note 159, at D1. Peltz states that index mutual funds are a more sensible investment. *See id. See also*, Romano, *supra* note 45, at 5. Romano's article suggests ownership of diversified corporations, which own professional sports teams as part of a portfolio of assets, instead of buying stand-alone sports stocks. *See id.*

162. *See*, *It's Best to Let your Nest Egg Incubate*, THE FLORIDA TIMES-UNION (Jacksonville), Oct. 3, 1999 at G-6.

163. *See* Jerry Langdon, *401(K) Asset Strategy Lacking*, GANNETT NEWS SERVICE, July 21, 1999 at ARC.

can clearly earn a greater return by using other investment vehicles.[164]

Moreover, alternatives are available for fans that want to purchase team souvenirs or memorabilia to support their favorite team.[165] Team merchandise such as hats, pennants and T-shirts are always available at stadium merchandise stands and purchasing tickets or food can effectively show support and increase the team's revenues.[166]

The alternative investments available to investors can provide greater returns on their money. More importantly, the excess money earned from a superior investment can be used to purchase souvenirs, which support the franchise and provide sentimental value for the fan.

VI. CONCLUSION

Public stock offerings in the professional sports context allow owners to acquire millions of dollars to be used for various purposes. However, provisions of the federal securities regulations require team owners to give up autonomy, control and privacy to utilize this form of financing. More importantly, this information is available to the general public to help decide whether or not to buy sports stocks. Thus, the government has done its job in enacting rules that effectively protect investors and deter sports team IPOs.

Although federal regulations will deter sports offerings and the majority of owners will utilize other financing tools, there will always be team owners who are willing to trade privacy and autonomy for $60 million dollars. Investors who are listening will ignore these stock offerings of professional sports teams, put the money in mutual funds or bonds and support their favorite team by buying tickets, hats and hot dogs.

Robert Bacon

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164. *See supra*, notes 161-62 and accompanying text.
165. *See* Peltz, *supra* note 159, at D1.
166. *See* Peltz, *supra* note 159, at D1; *See also*, Hepp, *supra* note 159, at C07; Hunt and Edwards, *supra* note 3, at 1; Reeves, *supra* note 75, at 30.