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Going … Going … Public? Taking a United States Professional Sports League Public

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GOING ... GOING ... PUBLIC? TAKING A UNITED STATES PROFESSIONAL SPORTS LEAGUE PUBLIC

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ABSTRACT

The four major American professional sports leagues—the MLB, NBA, NHL, and NFL—are wildly popular, but the leagues fail to capitalize fully on their success because they are organized in a largely inefficient manner. By organizing as unincorporated non-profits, leagues forgo their ability to raise capital via investors, forcing taxpayers to bear the burden of league investments such as new stadium construction. Further, the current organizational model creates a collective action problem, as self-interested team owners focus their support on actions that benefit their own franchise and leave ineffective commissioners in power.

A solution to these problems is for a professional sports league to incorporate and organize as a publicly traded company. The application of the corporate model to the sports world is not a new concept—several individual franchises have "gone public" over the years. But, because of concerns arising from the fiduciary duties of care and loyalty, the corporate model is much more viable for an entire league rather than an individual team.

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INTRODUCTION

Professional sports dominate today's world. Entire networks, radio channels, and websites dedicate twenty-four seven coverage to the latest trade, hiring or firing of coaches, or injury. Even the slightest of scandals sends the media into a frenzy, as fans demand details about their favorite or least favorite athletes.[1] The near-communal watching of large-scale sporting events such as the Super Bowl has become somewhat of a national pastime.[2] The National Football League (NFL) practically "owns a day of the week."[3]

Yet, in America's four major professional sports leagues—the NFL, Major League Baseball (MLB), the National Basketball Association (NBA), and the National Hockey League (NHL)—it is the team owners that benefit financially from the rising popularity of sports in today's world.[4] Owners have virtually infinite power to operate their teams in the manner that most pleases them,[5] often to the dismay of fans.[6] Moreover, despite the popularity of each

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[1] *See, e.g.*, Eric Wilbur, *#Deflategate, and the Stupidity Surrounding It, Has Reached Its Fever Pitch*, BOSTON.COM (Jan. 23, 2015), http://www.boston.com/sports/columnists/wilbur/2015/01/deflategate_stupidity_has_reached_its_fever_pitch.html [https://perma.cc/ZT43-AT3B].

[2] *See* Henry D. Fetter, *Super Bowl: More Proof That Football Is America's Real Favorite Pastime*, ATLANTIC (Feb. 5, 2012), http://www.theatlantic.com/entertainment/archive/2012/02/super-bowl-more-proof-that-football-is-americas-real-favorite-pastime/252500/ [https://perma.cc/G2ZR-VF62].

[3] CONCUSSION (Columbia Pictures 2015). *Concussion* portrays Dr. Bennet Omalu's advocacy concerning the long-lasting effects resulting from repeated concussions. *Id.* In the film, a fellow doctor warns Omalu not to take on the NFL: "You're going to war with a corporation that owns a day of the week." *Id.*

[4] League profits are distributed among team owners. *See* MARK CONRAD, THE BUSINESS OF SPORTS: A PRIMER FOR JOURNALISTS 14 (2d ed. 2011).

[5] Owners have "complete decision-making authority within the team" and are "able to hire and fire all staff, including players, if they so desire." 1 ENCYCLOPEDIA OF SPORTS MANAGEMENT AND MARKETING 1067 (Linda E. Swayne & Mark Dodds eds. 2011).

[6] Such complete authority often results in resentment from fans in light of an owner's poor decision-making. *See, e.g.*, Ian Begley, *Knicks Fans Organize Protest*, ESPN (Mar. 6, 2014), http://espn.go.com/new-york/nba/story/_/id/10561854/new-york-knicks-fans-stage-protest-madison-square-garden-game [https://perma.cc/M38R-Q2H6] (describing a planned protest of New York Knicks owner James Dolan for a "systematic and consistently recurring lack of responsible decision-making"); Jason Epstein, *Redskins Fans* Really *Don't Like Dan Snyder*, NAT. REV.: RIGHT FIELD (Dec. 12, 2014, 12:19 PM), http://www.national

league, a significant portion of the financial responsibility for large-scale investments, such as new stadiums, is placed upon the local taxpayer, not the wealthy owner.[7]

This Note examines whether professional sports leagues should become publicly traded corporations. In doing so, Part I first discusses the popular proposal among academics that individual sports franchises should incorporate and "go public,"[8] ultimately rejecting such a proposal due to legal concerns surrounding the ability of a publicly traded franchise's board of directors to comply with the necessary fiduciary duties. Part II explains how the concerns surrounding directors' fiduciary duties in the context of individual sports franchises pose no such problem in the context of a publicly traded sports league. Finally, Part III examines the benefits of an incorporated sports league. These benefits include: the promotion of more efficient behavior via elimination of the collective action problem that currently plagues each of the major professional sports leagues, a massive influx of capital via initial public offering (IPO), and additional future opportunities for capital infusion through the issuance of new shares. Such capital infusions may remove the burden on local taxpayers to pay for increasingly expensive new stadiums and grow the opportunity for leagues to expand into new markets in our increasingly globalized world.[9]

I. PUBLICLY TRADED INDIVIDUAL SPORTS FRANCHISES

Nearly all of the scholarship examining the application of the corporate model to sports has revolved around the concept of a

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review.com/right-field/394693/redskins-fans-really-dont-dan-snyder-jason-epstein [https://perma.cc/AZF3-LWBU] (discussing how Washington Redskins fans are so disgruntled with owner Dan Snyder that 82 percent of poll respondents would support a plan to move the Redskins to Los Angeles if it meant Washington could start over with a new expansion team within three years); *'Free the birds': Orioles Fans Walk Out in Protest*, ESPN (Sept. 21, 2006), http://sports.espn.go.com/mlb/news/story?id=2597721 [https://perma.cc/MJM7-VCRH] (describing a demonstration involving a mass exodus of fans from a Baltimore Orioles baseball game in protest of owner Peter Angelos).

[7] KEVIN J. DELANEY & RICK ECKSTEIN, PUBLIC DOLLARS, PRIVATE STADIUMS: THE BATTLE OVER BUILDING SPORTS STADIUMS 25–26 (2003).

[8] *See generally infra* note 10.

[9] *See infra* Section III.B.

publicly traded sports team, rather than a league.[10] This is likely the result of the fact that there is some precedent for a publicly traded sports franchise, as, over time, several major American sports franchises have conducted IPOs.[11] Most notably, the Cleveland Indians listed four million shares on the NASDAQ in 1998, ultimately raising more than sixty million dollars.[12] The Boston Celtics operated as a publicly owned franchise for almost twenty years, from 1986 to 2002.[13] Other teams have flirted with community-based ownership, such as the Green Bay Packers who raised almost twenty-four million dollars in 1997 through the issuance of more than one hundred thousand shares.[14]

However, despite the relative success of the above franchises in issuing shares, other franchises have not followed suit.[15] These

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[10] *See, e.g.*, Robert Bacon, Comment, *Initial Public Offerings and Professional Sports Teams: The Regulations Work, but are Owners and Investors Listening?*, 10 SETON HALL J. SPORTS L. 139, 140–41 (2000) (arguing that the 1933 and 1934 Securities and Exchange Acts deter individual team IPOs due to fears concerning public disclosure of financial information); Brian R. Cheffins, *Playing the Stock Market: "Going Public" and Professional Team Sports*, 24 J. CORP. L. 641, 658, 660, 662 (1999) (suggesting that, while going public may be a popular notion in sports, owners are likely to be hesitant due to disclosure requirements, the cost of establishing an IPO, and the loss of autonomy that comes with running a public corporation); Jorge E. Leal Garrett & Bryan A. Green, *Considerations for Professional Sports Teams Contemplating Going Public*, 31 N. ILL. U. L. REV. 69, 70–71 (2010); Zachary A. Greenberg, Note, *Tossing the Red Flag: Official (Judicial) Review and Shareholder-Fan Activism in the Context of Publicly Traded Sports Teams*, 90 WASH. U. L. REV. 1255, 1292 (2013) (predicting that, despite the drawbacks of disclosure and several unresolved legal issues, the "sports team corporation model ... should continue to gain momentum" due to the "limitless opportunity for capital infusion into the franchise"); Ryan Schaffer, Note, *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, 231 (2006) (concluding that public offerings of individual sports teams are viable and focusing on the benefit of a publicly traded team's ability to finance their team through equity, rather than through debt).

[11] *See* Bacon, *supra* note 10, at 146–52.

[12] SCOTT R. ROSNER & KENNETH L. SHROPSHIRE, THE BUSINESS OF SPORTS 35 (2d ed. 2011).

[13] GIL FRIED & TIMOTHY D. MONDELLO, SPORT FINANCE 183 (3d ed. 2013).

[14] *Id.* at 182.

[15] Chad Fraser, *3 Pro Sports Stocks That Could Score You Big Profits*, STREET (Oct. 1, 2015, 11:35 AM), https://www.thestreet.com/story/13307581/1/3-pro

franchises are correct to not follow, as the fiduciary constraints that the law places on board members of publicly traded corporations make the corporate model incongruous to an individual franchise.[16]

A. The Duty of Care

A corporation's directors have a duty of care to act in the corporation's best business interests.[17] In making a decision, directors must "act ... on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company."[18] However, the business judgment rule typically protects the directors' ultimate decision from examination.[19] Courts will generally defer to directors' exercise of business judgment, rather than "second-guess" the decision ex post.[20] This is because the directors' "function is to encounter risks and to confront uncertainty, and a reasoned decision at the time made may seem a wild hunch viewed years later against a background of perfect knowledge."[21]

Despite the business judgment rule's power as an affirmative defense, courts have found that directors violate their duty of care when they "openly eschew ... stockholder wealth maximization."[22] In the seminal case of *Dodge v. Ford Motor Company*, Henry Ford, as director, sought to use company profits to expand production and cut prices rather than release dividends to stockholders.[23]

-sports-stocks-that-could-score-you-big-profits.html [https://perma.cc/G4L3-T8XR] (noting that as of the date of writing, only four teams have traded publicly in the U.S.).

[16] Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984), *overruled on other grounds by* Brehm v. Eisner, 746 A.2d 244, 254 (Del. 2000) (presuming that corporation's directors must act in the best interest of the company); *see also infra* Section I.A (explaining why the corporate model is incongruous to an individual franchise).

[17] *Aronson*, 473 A.2d at 812.

[18] *Id.*

[19] Lori McMillan, *The Business Judgment Rule as Immunity Doctrine*, 4 WM. & MARY BUS. L. REV. 521, 526 (2013).

[20] *Id.* at 527.

[21] Joy v. North, 692 F.2d 880, 886 (2d. Cir. 1982).

[22] eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 35 (Del. Ch. 2010).

[23] *See* Dodge v. Ford Motor Co., 170 N.W. 668, 671 (Mich. 1919).

The court found that it was unlawful for directors "to shape and conduct the affairs of a corporation for the merely incidental benefit of shareholders and for the primary purpose of benefiting others," and that it would be a breach of the directors' fiduciary duties to "sacrifice the interests of shareholders."[24]

A more recent case, *eBay Domestic Holdings, Inc. v. Newmark*, furthered the doctrine of shareholder primacy.[25] There, Craig Newmark and James Buckmaster were majority shareholders and board members of Craigslist, Inc.[26] Feeling that it was not in the firm's "culture" to focus on maximizing profits, Newmark and Buckmaster adopted a corporate policy that specifically stated the corporation's purpose was not to maximize the company's value.[27] The court held that such a policy breached Newmark and Buckmaster's fiduciary duties to Craigslist's shareholders, stating that, as a corporation, Craigslist must operate primarily for the benefit of its stockholders.[28] Therefore, any plan that "openly eschews" shareholder primacy breaches the fiduciary duty of care.[29]

Consequently, any sports franchise seeking to incorporate would have to operate in a profit-maximizing capacity.[30] Although one may think that winning games and making money are closely intertwined (after all, it would make sense that the more games a team wins, the more fans it draws, and the more tickets and merchandise it sells), it may not be that simple.[31] Academics are split on whether sports franchises typically act in a win-maximizing or profit-maximizing capacity.[32]

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[24] *Id.* at 684.

[25] *See eBay*, 16 A.3d at 35.

[26] *Id.* at 6.

[27] *Id.* at 35.

[28] *Id.* at 34.

[29] *Id.* at 35.

[30] If a sports franchise incorporated and operated with a plan that "openly eschew[ed]" shareholder primacy it would violate *eBay*. *See id.*

[31] PAUL DOWNWARD & ALISTAIR DAWSON, THE ECONOMICS OF PROFESSIONAL TEAM SPORTS 30 (2002).

[32] *Compare* Mohamed El-Hodiri & James Quirk, *An Economic Model of a Professional Sports League*, 79 J. POL. ECON. 1302, 1305 (1971) (stating the goal of most team owners is profit maximization), *with* RODNEY D. FORT & JAMES QUIRK, PAY DIRT: THE BUSINESS OF PROFESSIONAL TEAM SPORTS 279 (1997) (finding that "the profit maximization model is inapplicable"), *and* Peter J. Sloane, *The Economics of Professional Football: the Football Club as a Utility Maximiser*,

Similar to the directors of Craigslist, team owners seem unlikely to admit that the team's primary interest is profit.[33] Even when asked specifically about the business goals of a team, owners are likely to defer, such as when Baltimore Orioles owner Peter Angelos stated, "I … didn't go into it thinking that this could be run like you run a widget factory. I consider myself a trustee to an asset. I don't think we own the Orioles. I think the people of Baltimore do."[34] Similarly, Los Angeles Angels owner Arte Moreno has stated that he is more concerned with winning than making a profit, even admitting that he dropped concession prices due to concerns that it is "unaffordable to come to a ball game."[35] Former Oakland Athletics owner Walter Haas, Jr. was "more of a philanthropist than a businessman" and sought primarily to operate his team in a manner that would create a kind of civic pride among Oaklanders.[36] In each of these scenarios, owners expressed that they had forgone maximizing the franchise's profit—actions that would be per se duty of care violations under *Dodge* and *eBay*.[37]

There have been a number of specific situations when owners of a sports franchise would have violated their duty to maximize the corporation's profits had their franchises been organized as a publicly traded corporation.[38] One such situation is where an owner

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18 SCOTTISH J. POL. ECON. 121, 135 (1971) (arguing that in some scenarios, owners are likely to pursue utility maximization over profit-maximization); *see also* Rodney D. Fort & James Quirk, *Owner Objectives and Competitive Balance*, 5 J. SPORTS ECON. 20, 29 (2004) (concluding that it is extremely difficult to discern whether an owner is operating in a profit-maximizing or win-maximizing capacity).

[33] Tom Van Riper, *Today's Sports Owners: It's Not About Winning, It's About Business*, FORBES (Mar. 2, 2013, 1:26 PM), http://www.forbes.com/sites/tomvanriper/2013/03/02/todays-sports-owners-its-not-about-winning-its-about-business/print/ [https://perma.cc/D8QA-7WQ5].

[34] Hyman et al., *The Orioles' New Owners*, BALT. SUN (Oct. 5, 1993), http://www.baltimoresun.com/sports/horse-racing/bal-mckay100593-story.html [https://perma.cc/D236-JHLP].

[35] Brian Shactman, *Billionaire Baseball Owner Putting Wins Over Profit*, CNBC (Mar. 7, 2013, 2:56 PM), http://www.cnbc.com/id/100534102 [https://perma.cc/UN84-MHG6].

[36] MICHAEL LEWIS, MONEYBALL: THE ART OF WINNING AN UNFAIR GAME 57 (2003).

[37] Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919); eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 34 (Del. Ch. 2010).

[38] *See Dodge*, 170 N.W. at 684 (explaining the fiduciary duty to maximize corporate profits).

elects to stay in their current city rather than move to a more profitable location.[39] For example, former Oakland Athletics owner Walter Haas, Jr. purchased the Athletics in 1980 largely to keep the team in Oakland.[40] When Haas decided to sell the Athletics in 1994, he offered a below market price to any potential buyer willing to keep the Athletics in town.[41]

Other owners have been similarly unwilling to move their team. For example, there was no NFL team in Los Angeles—the second-largest market in the country—for twenty years prior to the recent relocation of the St. Louis Rams and planned relocation of the San Diego Chargers.[42] Even then, only three NFL teams were even interested in moving to Los Angeles,[43] and four of the six least valuable NFL franchises were uninterested.[44] Other than the Rams and the Chargers, of the more than 130 professional sports franchises in the four major professional sports leagues, only three—the Washington Nationals (relocating from Montreal), the Oklahoma City Thunder (relocating from Seattle), and the

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[39] For an interesting discussion on which cities could financially best support additional sports teams, see *The Cities With Too Few Sports Teams*, HUFFINGTON POST (Aug. 21, 2016, 2:36 PM), http://www.huffingtonpost.com/smartassetcom/the-cities-with-too-many-_b_8020750.html [https://perma.cc/CJ7J-6XR3].

[40] Dwight Chapin, *Bay Area Saddened by Walter Haas Death*, S.F. GATE (Sept. 21, 1995), http://www.sfgate.com/news/article/Bay-Area-saddened-by-Walter-Haas-death-3129783.php [https://perma.cc/JRB7-XR3A].

[41] *Id.*

[42] Ken Belson, *Rams Moving to Los Angeles Area, and Chargers Could Join Them*, N.Y. TIMES (Jan. 12, 2016), http://www.nytimes.com/2016/01/13/sports/football/rams-moving-to-los-angeles-area-and-chargers-could-join-later.html [https://perma.cc/3J7H-MB4U] [hereinafter Belson, *Rams Moving*]; Sam Farmer & Nathan Fenno, *Double Teamed: Chargers make move to Los Angeles official,* L.A. TIMES (Jan. 12, 2017), http://www.latimes.com/sports/nfl/la-sp-chargers-move-la-20170111-story.html [https://perma.cc/TDA3-EEWL]. The Rams's value approximately doubled upon their move to Los Angeles. Ken Belson, *Team Locations Keep N.F.L. Moving Up Financially*, N.Y. TIMES (Jan. 12, 2017), https://www.nytimes.com/2017/01/12/sports/football/chargers-los-angeles-san-diego-nfl.html [https://perma.cc/YGS8-E93C].

[43] Belson, *Rams Moving*, *supra* note 42.

[44] *See* Ken Belson, *NFL to Weigh Three Teams' Proposals on Moving to Los Angeles*, N.Y. TIMES (Aug. 9, 2015), http://www.nytimes.com/2015/08/10/sports/football/nfl-to-weigh-three-teams-proposals-on-moving-to-los-angeles.html?_r=0 [https://perma.cc/GWD7-74VZ].

Winnipeg Jets (relocating from Atlanta)—have moved within the past ten years, despite the presence of open, larger markets.[45]

Other owners are willing to spend far above market value in order to ensure they sign certain players.[46] For example, infamous former New York Yankees owner George Steinbrenner, in his pursuit to acquire the most talented free agents, was well-known for his willingness to spend huge sums on players with no concern for whether he was signing players for amounts greater than their actual market value.[47] Ultimately, incorporating would remove the ability of those owners to act in such a manner.[48] They could no longer base their actions upon a philanthropic commitment to their particular city; rather, their decisions would be required to adhere to the best interests of the corporation.[49] While it is certainly likely that a portion of a team's stockholders would be made up of local fans excited to own a part of their favorite team, diversified stockholders are interested in one thing: a profitable portfolio.[50] They would not hesitate to bring a claim for breach of fiduciary duty should an owner fail to act in a profit-maximizing capacity.[51]

B. The Duty of Loyalty

Board members owe their corporation a duty of loyalty, meaning they have a duty to act with "constant, unqualified fidelity" to

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[45] ROSNER & SHROPSHIRE, *supra* note 12, at 240; *see also The Cities With Too Few Sports Teams*, *supra* note 39.

[46] The highest-paid free agents are the most likely to be overpaid. Duane W. Rockerbie, *Marginal Revenue Product and Salaries: Moneyball Redux* 13, 15 (Univ. Lethbridge, MPRA Paper No. 21410, 2010), https://mpra.ub.uni-muenchen.de/21410/1/MPRA_paper_21410.pdf [https://perma.cc/Q9EF-CQ9A].

[47] Joe Nocera, *Was Steinbrenner Just Lucky?* N.Y. TIMES (July 16, 2010), http://www.nytimes.com/2010/07/17/business/17nocera.html [https://perma.cc/QM7S-QQZ4].

[48] Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919).

[49] Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984), *overruled on other grounds by* Brehm v. Eisner, 746 A.2d 244, 254 (Del. 2000).

[50] *See* Gagliardi v. Trifoods Int'l, Inc., 683 A.2d 1049, 1052 (Del. Ch. 1996).

[51] So-called "professional plaintiffs"—investors looking to make money via shareholder litigation—have long plagued corporate law. These investors jump on any opportunity to sue a corporation for a breach of their fiduciary duty. *See* Jessica Erickson, *The New Professional Plaintiffs in Shareholder Litigation*, 65 FLA. L. REV. 1089, 1137–38 (2013).

their corporation.[52] Two common ways in which directors may breach their duty of loyalty are by usurping a corporate opportunity or by engaging in self-dealing.[53] The corporate opportunity doctrine holds that a director may not take for himself any interest acquired "for the benefit of the corporation."[54] Further, when a corporation has a reasonable expectancy in an opportunity and has the financial ability to undertake the opportunity, a director may not seize the opportunity for himself.[55]

Self-dealing, as the name implies, occurs when directors find themselves on both sides of a transaction.[56] Specifically, it occurs where there is a transaction "between a corporation and [one] or more of its directors" or "between a corporation and any other ... organization in which [one] or more of its directors ... have a financial interest."[57] A self-dealing transaction is presumptively a breach of the duty of loyalty.[58] A self-interested deal may be sanitized by approval by a majority of disinterested directors,[59] an approval by a majority of shareholders,[60] or when the entire deal is intrinsically fair.[61]

Had former Los Angeles Dodgers owner Frank McCourt been subject to a duty of loyalty, his actions in usurping a corporate opportunity almost certainly would have breached that duty.[62] In 2011, McCourt, on behalf of the Dodgers, negotiated a television agreement with Fox, giving Fox the right to televise Dodgers games.[63] From the agreement, McCourt received a $385 million loan, using eighty million dollars of that loan to pay off debts associated with his divorce.[64] He also received five million dollars designated explicitly

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[52] Bayer v. Beran, 49 N.Y.S.2d 2, 5 (N.Y. Sup. Ct. 1944).
[53] *See* DEL. CODE ANN. tit. 8 § 144(a)(1)–(2) (2010) (describing the duty of loyalty).
[54] Guth v. Loft, 5 A.2d 503, 510 (Del. 1939).
[55] Broz v. Cellular Info. Sys., Inc., 673 A.2d 148, 154 (Del. 1996).
[56] *See* tit. 8 § 144(a) (describing self-dealing transactions).
[57] *Id.*
[58] Bayer v. Beran, 49 N.Y.S.2d 2, 6–7 (N.Y. Sup. Ct. 1944).
[59] Tit. 8 § 144(a)(1).
[60] § 144(a)(2).
[61] § 144(a)(3).
[62] Broz v. Cellular Info. Sys., Inc., 673 A.2d 148, 154–55 (Del. 1996).
[63] Edvard Pettersson, *Los Angeles Dodgers Owner, Ex-Wife Settle Divorce Dispute*, BLOOMBERG (June 17, 2011, 9:13 PM), http://www.bloomberg.com/news/articles/2011-06-17/los-angeles-dodgers-owner-mccourt-settles-divorce-dispute-with-ex-wife [https://perma.cc/E5F3-453K].
[64] *Id.*

for his personal use.[65] Thus, McCourt benefited to the tune of eighty-five million dollars merely from his position as Dodgers owner.[66] This money should have belonged to the Dodgers, and McCourt's usurpation of the loan—had the Los Angeles Dodgers been a publically traded corporation—would have almost certainly been a violation of the corporate opportunity doctrine.[67]

Similarly, in the early 1990s, the New York Yankees partnership obtained a loan worth one-hundred million dollars, which was against the franchise's lucrative cable contract.[68] The partnership then agreed to distribute the proceeds of the loan among its seventeen partners.[69] Majority owner George Steinbrenner used his portion of the proceeds to bail out American Ship Building Company, of which he was the controlling stockholder.[70] Because Steinbrenner stood on both sides of the deal, the transaction would have been a breach of loyalty unless Steinbrenner took the necessary steps to sanitize the deal.[71]

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[65] *Id.*

[66] *See id.*

[67] Again, an officer usurps a corporate opportunity when he has taken advantage of a business opportunity and:

> (1) the corporation is financially able to exploit the opportunity;
> (2) the opportunity is within the corporation's line of business;
> (3) the corporation has an interest or expectancy in the opportunity; and
> (4) by taking the opportunity for his own, the corporate fiduciary will thereby be placed in a position inimicable to his duties to the corporation.

Broz, 673 A.2d at 155. The Dodgers—like other sports franchises—frequently deal in television contracts and have an expectancy in the profits resulting from such deals. McCourt usurped the team's opportunity to profit.

[68] Jack Curry, *BASEBALL; Steinbrenner Defends Loan from TV Contract*, N.Y. TIMES (Jan. 16, 1992), http://www.nytimes.com/1992/01/16/sports/baseball-steinbrenner-defends-loan-from-tv-contract.html [https://perma.cc/76QY-RZS5].

[69] *Id.*

[70] Allan Sloan, *Steinbrenner Waits for his Shipbuilding Firm to Come In*, WASH. POST (Jan. 21, 1992), https://www.washingtonpost.com/archive/business/1992/01/21/steinbrenner-waits-for-his-shipbuilding-firm-to-come-in/c1afc17e-daa3-4b4d-91a5-0ce89e002bfb/ [https://perma.cc/8WRR-N3A3].

[71] Had the Yankees been a public corporation, Steinbrenner could have sanitized this self-interested transaction by gaining approval by a majority of disinterested directors, approval by a majority of the team's stockholders, or proving that the entire transaction was "intrinsically fair"—meaning the deal was both

II. THE CORPORATE MODEL AND PROFESSIONAL SPORTS LEAGUES

A. Current Organization

No American professional sports league has organized itself as a publicly traded corporation.[72] Rather, each of the four major professional sports leagues have remarkably similar governance structures.[73] Each league operates as an unincorporated non-profit association.[74] Additionally, an elected commissioner acts as president of each league.[75] Commissioners have a significant level of job security, holding their positions on average for more than fifteen years, nearly fifty percent longer than the average corporate Chief Executive Officer (CEO).[76] The commissioner answers primarily to the league's board of governors—termed the Executive Council in the MLB,[77] the Executive Committee in the NFL,[78] and the Board of Governors in the NHL and NBA.[79] In the NBA, NFL, and NHL, those boards are made up of one representative, usually the owner,[80] from

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procedurally and substantively fair. *See* DEL. CODE ANN. tit. 8 § 144(a)(1)–(3) (2010); *see also* Sinclair Oil Corp. v. Levien, 280 A.2d 717, 720 (Del. 1971).

[72] *See* CONSTITUTION AND BYLAWS OF THE NATIONAL BASKETBALL ASSOCIATION art. 2 (2012) [hereinafter NBA CONSTITUTION]; CONSTITUTION AND BYLAWS OF THE NATIONAL FOOTBALL LEAGUE art. 2 (2006) [hereinafter NFL CONSTITUTION]; CONSTITUTION OF THE NATIONAL HOCKEY LEAGUE art. 2 [hereinafter NHL CONSTITUTION]; MAJOR LEAGUE CONSTITUTION art. 2.1 (2005) [hereinafter MLB CONSTITUTION].

[73] *See* NBA CONSTITUTION, *supra* note 72, art. 2; NFL CONSTITUTION, *supra* note 72, art. 2; NHL CONSTITUTION, *supra* note 72, art. 2; MLB CONSTITUTION, *supra* note 72, art. 2.1.

[74] *See* NBA CONSTITUTION, *supra* note 72, art. 2; NFL CONSTITUTION, *supra* note 72, art. 2.2; NHL CONSTITUTION, *supra* note 72, art. 2.2; MLB CONSTITUTION, *supra* note 72, art. 2.1.

[75] *See* NBA CONSTITUTION, *supra* note 72, art. 24; NFL CONSTITUTION, *supra* note 72, art. 8; NHL CONSTITUTION, *supra* note 72, art. 6; MLB CONSTITUTION, *supra* note 72, art. 2.

[76] Eric Chemi, *Looking for Job Security? Try Running a Major Sports League*, BLOOMBERG (Sept. 15, 2014, 3:48 PM), http://www.bloomberg.com/bw/articles/2014-09-15/roger-goodell-and-job-security-sports-commissioners-dont-quit [https://perma.cc/T6SV-444J].

[77] *See* MLB CONSTITUTION, *supra* note 72, art. 3

[78] *See* NFL CONSTITUTION, *supra* note 72, art. 6.

[79] *See* NBA CONSTITUTION, *supra* note 72, art. 18; NHL CONSTITUTION, *supra* note 72, art. 5.

[80] *See* Gregor Lentze, *The Legal Concept of Professional Sports Leagues: The Commissioner and an Alternative Approach from a Corporate Perspective*, 6 MARQ. SPORTS L.J. 65, 69 (1995).

each team.[81] Somewhat differently, the MLB's board is made up of the league commissioner and eight "Club [M]embers," who are representatives from four franchises in each of the National and American leagues.[82] Club members are hand-picked by the commissioner and confirmed by a majority vote of the franchise owners.[83]

There is, however, some question as to whether the four major professional leagues actually qualify as non-profit unincorporated associations (NUAs), or whether they are better labeled as joint ventures.[84] This is an important—and unresolved—question,[85] as classification as a joint venture would require owners to exhibit different fiduciary duties than would classification as a NUA.[86] Members of joint ventures owe to each other a duty of loyalty[87] and a duty of care.[88] With NUAs, however, laws are somewhat split.[89] The Revised Uniform Unincorporated Nonprofit Associations Act (RUUNAA), which has been adopted by four states and the District of Columbia,[90] mandates that managers owe duties of loyalty and care to the organization.[91] Differently, thirteen states follow RUUNAA's predecessor, the Uniform Unincorporated Nonprofit Associations Act (UUNAA), which does not discuss fiduciary duties.[92]

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[81] *See* NBA CONSTITUTION, *supra* note 72, art. 18(b); NFL CONSTITUTION, *supra* note 72, art. 6.1; NHL CONSTITUTION, *supra* note 72, art. 5.1–5.3.

[82] MLB CONSTITUTION, *supra* note 72, art. 3.1.

[83] *See id.*

[84] *See* Nadelle Grossman, *What is the NBA?*, 25 MARQ. SPORTS L. REV. 101, 126 (2015) ("[T]he NBA may be a partnership, even though there is some basis to conclude it is a NUA.").

[85] *See id.* at 112.

[86] *See id.* at 112–13.

[87] *See* Meinhard v. Salmon, 164 N.E. 545, 546 (N.Y. 1928) ("Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior."); REVISED UNIF. P'SHIP ACT § 404(b) (UNIF. LAW COMM'N 1997).

[88] REVISED UNIF. PARTNERSHIP ACT § 404(c).

[89] *See* REVISED UNIF. UNINCORPORATED NONPROFIT ASS'N ACT § 23 (UNIF. LAW COMM'N 2009); *see also* Elisabeth S. Miller, *Doctoring the Law of Nonprofit Associations with a Band-Aid or a Body Cast: A Look at the 1996 and 2008 Uniform Unincorporated Nonprofit Association Acts*, 38 WM. MITCHELL L. REV. 852, 853 (2012); Grossman, *supra* note 84, at 124.

[90] *See* PERI H. PAKROO, STARTING AND BUILDING A NONPROFIT: A PRACTICAL GUIDE 16 (Marcia Stewart ed., 6th ed. 2015).

[91] REVISED UNIF. UNINCORPORATED NONPROFIT ASS'N ACT § 23(a) (2008).

[92] *See* Miller, *supra* note 89, at 853, 867.

Other states have no statutory law for NUAs, instead relying on common law.[93] New York—the state in which all four of the power four leagues are headquartered—falls into this third category.[94] There, the common law views NUAs as merely contractual relationships, imposing no fiduciary duties.[95] As a result, depending upon whether one classifies the four major professional sports leagues as joint ventures or as NUAs, the managers within the leagues may or may not owe fiduciary duties to the league at large.[96] The remainder of this Note will assume that the leagues are correct in classifying themselves as NUAs, but it is important to remember that managers may already owe the league fiduciary duties.

B. Fiduciary Duties and a Public Professional Sports League

The four major professional sports leagues are remarkably profitable and, like other profitable entities, have ambitious goals for future revenues.[97] In 2013, the NFL made $10.5 billion,[98] and NFL commissioner Roger Goodell recently announced the league had set a goal of $25 billion in annual revenues before 2027.[99] Similarly, the MLB and new commissioner Rob Manfred recently announced they hope to reach $15 billion in annual revenues sometime in the next few years.[100] The focus on revenues and the setting of financial goals—as well as the job requirements of expertise in

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[93] *Id.* at 853.

[94] Here, New York law is controlling. Each of the four leagues are headquartered in New York, and thus New York has more ties to the leagues' transactions than any other state. *See* Grossman, *supra* note 84, at 124.

[95] *Id.* at 128.

[96] *Id.* at 126.

[97] *See* Monte Burke, *How The National Football League Can Reach $25 Billion In Annual Revenues*, FORBES (Aug. 17, 2013, 6:30 AM), http://www.forbes.com/sites/monteburke/2013/08/17/how-the-national-football-league-can-reach-25-billion-in-annual-revenues/ [https://perma.cc/HTY5-AL8S]; Eric Fisher, *MLB Setting 'A Big Goal' of $15 billion in Revenue*, SPORTS BUS. J. (Jan. 19, 2015), http://www.sportsbusinessdaily.com/Journal/Issues/2015/01/19/Leagues-and-Governing-Bodies/MLB-owners.aspx [https://perma.cc/WB4U-GYHR].

[98] Chris Isidore, *NFL: Richer than Ever, Despite Controversy*, CNN MONEY (Sept. 11, 2014, 4:50 PM), http://money.cnn.com/2014/09/11/news/companies/nfl-revenue-profits/index.html?iid=EL [https://perma.cc/DG7S-GJSB?type=image].

[99] Burke, *supra* note 97.

[100] *See* Fisher, *supra* note 97.

the areas of economics, negotiation, and lobbying—make the commissioner and his surrounding officers' job descriptions appear much like those of a CEO and a corporation's board of directors.[101]

1. The Duty of Care

While individual team owners may be somewhat likely to breach their fiduciary duty of care to the corporation by prioritizing winning over finishing in the black,[102] the league office suffers from no such temptation.[103] Team owners are automatically biased toward adopting policies that benefit their team, whereas the commissioner and his league office act as a neutral governing body.[104]

Additionally, like the board of directors of any corporation, one of the league office's primary focuses is profit.[105] In order to keep the owners who elected the commissioner happy, the league office must pursue policies and plans that will maximize returns to the owners.[106] Even when a league office is under intense public scrutiny, such as the NFL and Commissioner Roger Goodell in 2014 and 2015, it appears that all that matters to owners is profit.[107]

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[101] Kevin Allen & Erick Brady, *A Commissioner's Job Description Changes With the Times*, USA TODAY (Aug. 13, 2014, 9:19 PM), http://www.usatoday.com/story/sports/mlb/2014/08/13/commissioner-bud-selig-adam-silver-roger-goodell-gary-bettman/14016343/ [https://perma.cc/3RZE-7A2A].

[102] *See supra* notes 29, 47–51 and accompanying text.

[103] *See* David Falk, *Are Professional Sports Leagues' Control Over Their Member Teams and Owners in Doubt?*, 43 RUTGERS L.J. 337, 338–39 (2012) (noting that the league is structured to "promote and foster" all teams rather than prioritizing one team over another) (internal quotations omitted).

[104] *See infra* notes 130–37 and accompanying text.

[105] *See* TREVOR SLACK & MILENA M. PARENT, UNDERSTANDING SPORT ORGANIZATIONS: THE APPLICATION OF ORGANIZATION THEORY 40 (2d ed. 2006).

[106] Leagues have revenue sharing schemes that distribute league profits amongst teams. *See* CONRAD, *supra* note 4, at 15, 147–48, 171.

[107] NFL commissioner Roger Goodell's actions regarding the suspension of Ray Rice for domestic violence and his handling of the "DeflateGate" scandal brought Goodell an incredible amount of criticism. *See* Juliet Macur, *Ray Rice Ruling Highlights Roger Goodell's Missteps*, N.Y. TIMES (Nov. 28, 2014), http://www.nytimes.com/2014/11/29/sports/football/ray [https://perma.cc/6E56-AEJX]; Sally Jenkins, *DeflateGate Exposed Roger Goodell as Unfit to Serve His Office*, WASH. POST (Sept. 3, 2015), https://www.washingtonpost.com/sports/redskins/deflategate-exposed-roger-goodell-as-unfit-to-serve-his-office/2015/09/03/6b1a0688-5267-11e5-8c19-0b6825aa4a3a_story.html [https://perma.cc/R2ME-H6HV]. Still, all thirty-two league owners support Goodell, primarily because of the

Further, the policies league owners pursue indicate that they already operate in a profit-maximizing manner.[108] For example, one of the primary functions of a league office is to promote competitive balance amongst the league's teams.[109] The rationale behind creating a competitively balanced league stems from the "uncertainty of outcome" hypothesis, which theorizes that more competitive leagues engender greater interest, leading to an increase in revenue.[110] In order to create a balanced environment, each of the four major professional sports leagues has adopted a revenue sharing system whereby revenues of the most profitable teams are partially redistributed to less profitable teams in order to increase the ability of poorer teams to sign high-caliber, talented players.[111] Additionally, each of the four major professional sports leagues, with the exception of the MLB, employs a salary cap, which limits the amount of money any one team may spend on player salaries.[112]

In total, a league office acts as a profit-maximizer, not a win-maximizer.[113] As a result, unlike individual team owners, league offices already operate in a manner that adheres to the fiduciary duty of care.[114]

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overall success of the league under his reign. *See* Ben Volin, *Why Do NFL Owners Still Back Rodger Goodell as Commissioner?,* BOS. GLOBE (July 25, 2015), https://www.bostonglobe.com/sports/2015/07/24/commissioner-roger-goodell-job-money-bank/Fp5z6XtINLsEcoMQzBO1QI/story.html [https://perma.cc/FB8Z-A9WF].

[108] *See, e.g.*, James T. McKeown, *The Economics of Competitive Balance: Sports Antitrust Claims After* American Needle, 21 MARQ. SPORTS L. REV. 517, 521–26 (2011).

[109] *See id.*

[110] *See* DOWNWARD & DAWSON, *supra* note 31, at 21 (internal quotations omitted).

[111] *See* John Vrooman, *Theory of the Perfect Game: Competitive Balance in Monopoly Sports Leagues*, 34 REV. INDUS. ORG. 5, 6 (2009).

[112] *See id.* at 7. The NFL and NHL use a hard cap, where every team is forbidden from surpassing a set number for player salaries. *See id.* at 21–22. On the other hand, the NBA uses the more lenient soft cap, which allows teams to surpass the salary cap in a number of different, well-defined scenarios. *See id.* at 19. For more information on the NBA's salary cap exceptions, see Jorge Castillo, *NBA Free Agency: Salary Cap Exceptions Explained*, WASH. POST (July 3, 2010), http://www.washingtonpost.com/wp-dyn/content/article/2010/07/02/AR2010070202011.html [https://perma.cc/Z54R-38ZB].

[113] *See supra* notes 102–05 and accompanying text.

[114] *See* eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 34 (Del. Ch. 2010) (stating that fiduciary duties are satisfied by promoting value).

2. Duty of Loyalty

Whereas individual franchises that go public may expose themselves to liability stemming from a breach of their duty of loyalty,[115] a public league office is much more unlikely to face liability stemming from a breach of its duty of loyalty.[116]

First, as discussed above, directors of NUAs in some states already owe a duty of loyalty to the organization as well as to the other members of the NUA.[117] Armed with knowledge of potential liability in the event that they are in a jurisdiction that holds that NUAs must operate as fiduciaries, leagues already have incentive to act in accordance with a duty of loyalty.[118]

Second, due to the immense public scrutiny that league commissioners face,[119] leagues may already be acting in accordance with a duty of loyalty.[120] Under scrutiny from the twenty-four-hour sports media and millions of sports fans,[121] leagues must already be careful about partaking in any action that may garner negative press.[122] On the other hand, team owners, comparatively, live much

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[115] *See* Lentze, *supra* note 80, at 85; *see also supra* notes 102–04 and accompanying text.

[116] *See* Lentze, *supra* note 80, at 80 (noting that the league office is both independent and impartial).

[117] *See supra* notes 84–94 and accompanying text.

[118] *See supra* notes 84–94 and accompanying text.

[119] *See, e.g.*, Sean Gregory, *Roger Goodell's Worst Words*, TIME (Dec. 10, 2014), http://time.com/3629318/roger-goodell-nfl-rice-testimony/ [https://perma.cc/9BBC-2ZNN] (describing the NFL and Commissioner Goodell as under "the most intense public scrutiny the NFL has ever seen"); Matt Norlander, *David Stern Greeted by Boos at His Final NBA Draft As Commissioner*, CBS SPORTS (June 27, 2013), http://www.cbssports.com/nba/eye-on-basketball/22550795/david-stern-greeted-by-boos-at-his-final-nba-draft-as-commissioner [https://perma.cc/A9VY-RVC9] (reporting that former NBA Commissioner David Stern, who held the position for thirty years, was booed by fans at his final NBA draft despite the fact that his reign as commissioner was "undeniably successful").

[120] *See infra* notes 121–25 and accompanying text.

[121] *See* HANDBOOK OF SPORTS AND MEDIA 70 (Arthur A. Raney & Jennings Bryant eds., 2009) (describing how the media's constant coverage of sports has resulted in the "Benign Viewer Factor," meaning that, in today's world, everyone has some knowledge of the latest current events in sports because "knowledge of sport is one of the important currencies of interpersonal communication.").

[122] Shaun Powell, *The Perils of Power*, SPORTS ON EARTH (Sept. 26, 2012), http://www.sportsonearth.com/article/39035706/ [https://perma.cc/FVL2-DLCL] (noting that league commissioners have become "public pin cushion[s]" for criticism).

more private lives,[123] meaning it is simply easier for their actions to fly under the radar.[124] Therefore, due to the careful watch of the public eye, league commissioners are simply much less able to participate in the sort of self-interested transactions or usurping of corporate opportunities as compared to individual team owners, lest they subject themselves to twenty-four-hour scandal coverage by the sports media.[125]

III. The Benefits of a Professional Sports League Going Public

A. Corporate Governance

1. Elimination of the Collective Action Problem

By organizing as a corporation with a unified board of directors, sports leagues could rid themselves of the collective action problems that hamper their success.[126] A collective action problem occurs when "it is in individuals' self-interest not to contribute to a group activity even though all of the individuals would be better off if everyone were to contribute."[127] Consequently, "each individual is made worse off by pursuing her own self-interest."[128] In the context of professional sports leagues, the requirement that

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[123] Some owners prefer remaining in the background; others are quite the opposite. *Compare* Peter Bella, *Rocky Wirtz: The Quiet Man Deserves His Due*, CHI. NOW (June 15, 2015, 10:51 PM), http://www.chicagonow.com/interesting-chicago/2015/06/rocky-wirtz-the-quiet-man-deserves-his-due/ [https://perma.cc/68LT-ZKGU] (describing Chicago Blackhawks majority owner Rocky Wirtz as "faceless and nameless"), *with* Tim MacMahon, *Cuban Era Has Been Anything but Boring*, ESPN (Jan. 5, 2010), http://sports.espn.go.com/dallas/columns/story?columnist=macmahon_tim&id=4793301 [https://perma.cc/5ZU8-JMXN] (discussing Dallas Mavericks owner Mark Cuban's rise as a prominent public figure and love of the limelight).

[124] *See* Bella, *supra* note 123 (noting that despite an owner having "put excitement back into Chicago hockey," he remains relatively unknown and under the radar).

[125] *See* HANDBOOK OF SPORTS AND MEDIA, *supra* note 121, at 70–71.

[126] James B. Perrine, *Media Leagues: Australia Suggests New Professional Sports Leagues for the Twenty-First Century*, 12 MARQ. SPORTS L. REV. 703, 785 (2002).

[127] Christopher R. Leslie, *The Significance of Silence: Collective Action Problems and Class Action Settlements*, 59 FLA. L. REV. 71, 72–73 (2007).

[128] *Id.* at 73.

most actions, such as accepting a new broadcasting deal or expanding the league, require a supermajority vote of the owners creates a collective action problem because (1) franchise owners have an incentive to "hold-out" from supporting initiatives that benefit the league at large but harm their individual franchise, and (2) unsophisticated owners may lack the business acumen to identify and make efficient business decisions.[129]

First, franchise owners are likely to be swayed by the economic interests of their individual franchise, which may not be congruent with the economic interests of the league as a whole.[130] For example, Baltimore Orioles owner Peter Angelos sternly fought the plan to relocate a MLB franchise to neighboring Washington, D.C., fearing that the new franchise would pull from the Orioles's fan base.[131] Angelos conceded to the relocation—and the Washington Nationals came into existence—only once he received an enormously one-sided offer: the creation of a new sports television channel to televise Orioles and Nationals games in which the Orioles would retain an initial 90 percent ownership interest, with the Nationals's interest slowly increasing on a yearly basis until it reaches a mere 33 percent.[132] Considering the fact that the MLB owned the Nationals at the time of their relocation,[133] the league was effectively paying Angelos a portion of the league's potential revenues.[134] Angelos's actions represent the ability of a single voting

[129] Roger G. Noll, *Major League Sports*, *in* THE STRUCTURE OF AMERICAN INDUSTRY 381–82 (Walter Adams ed., 6th ed. 1982).

[130] Chi. Prof'l Sports Ltd. P'ship v. Nat'l Basketball Ass'n, 95 F.3d 593, 604 (7th Cir. 1996) (Cudahy, J., concurring) ("There is, however, no reason to expect that the current team owners will necessarily make ... decisions efficiently, given their individual economic interests in the financial health of their own teams.").

[131] Steve Fainaru, *Angelos, Selig Last Men Standing in D.C.'s Way*, WASH. POST (June 29, 2004), http://www.washingtonpost.com/wp-dyn/articles/A13386-2004Jun28.html [https://perma.cc/Q78U-2SNZ] (quoting ex-MLB executive council member Claude Brochu: "[Angelos] could say, 'Don't screw me,' and I think everybody would listen to what he would have to say, just because he would be a partner.").

[132] Jonah Keri, *For The Birds*, GRANTLAND (Feb. 5, 2014), http://grantland.com/features/baltimore-orioles-offseason-spending-al-east/ [https://perma.cc/UP4Y-W8XJ].

[133] *Id.*

[134] Jayson Stark, *MLB Lays Out Incentive Plan for Angelos*, EPSN (Sept. 28, 2004), http://www.espn.com/mlb/columns/story?id=1888266 [https://perma.cc/2MGZ-GYYR] (noting that MLB will make up the difference in the event of revenue shortfall).

member to "hold … out" and prevent or otherwise hinder a league from taking an efficient action.[135] The only actions that a league will ultimately adopt are those that benefit a supermajority of owners, rather than those that, on average, benefit the league as a whole.[136] As a result, holding out impedes innovation and leads leagues to adopt conservative agendas due to an inability to upset the status quo.[137]

Second, members of each league's board of governors, with the exception of the MLB, are made up of one representative, usually the owner,[138] from each team.[139] However, there is no guarantee that the board of governors will be comprised of educated, rational businessmen who are likely to make good decisions.[140] Consequently, each innovative idea "must appeal to some entrepreneurs of below-average vision and ability."[141] Compounding the problem is that franchise owners tend to be "risk-averse billionaires."[142] Together, a lack of business acumen and an overly conservative approach leads to inefficiency, as leagues miss out on new, innovative ideas.[143]

A solution to this collective action problem is a single, unified board of directors acting for the betterment of the league at large.[144] No board member would be tempted to hold the league hostage for his own franchise's interests because no board member

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[135] Noll, *supra* note 129, at 382.

[136] Stephen F. Ross, *The Misunderstood Alliance Between Sports Fans, Players, and the Antitrust Laws*, 1997 U. ILL. L. REV. 519, 551 (1997).

[137] *See* Noll, *supra* note 129, at 382.

[138] *See* Lentze, *supra* note 80, at 69.

[139] *See id*.

[140] Noll, *supra* note 129, at 381.

[141] *Id.* at 382.

[142] Felix Gillette & Ira Boudway, *Roger Goodell at the 50-50 Yard Line*, BLOOMBERG (Sept. 18, 2014, 6:37 PM), http://www.bloomberg.com/bw/articles/2014-09-18/roger-goodells-nfl-commissioner-job-security-is-up-to-team-owners [https://perma.cc/3CDZ-P374] (describing why NFL owners will refuse to remove Roger Goodell despite his shortcomings).

[143] *Id.*

[144] Perrine, *supra* note 126, at 783 ("[A] single firm will establish the objectives of the enterprise and have the power to direct the actions required to obtain these goals. The absence of multiple firms in the management hierarchy ... will greatly reduce the 'below-average visionary' and 'holdout' problems common to innovation in traditional leagues.").

would have an economic interest in any one team.[145] Additionally, the board, presumably made up of corporate professionals with the requisite vision and ability to direct a large-scale corporation, would not be held back by owners who do not possess such expertise; therefore, the league would be much more likely to adopt more efficient policies, rather than retain the status quo.[146]

2. CEO Accountability to the Board

Today, league commissioners have an immense amount of job security, with their average tenure being far greater than the average large company CEO.[147] This job security is not necessarily well-deserved, as evidenced by Roger Goodell's tumultuous nine-year reign as NFL Commissioner.[148]

Part of the problem may be that sports commissioners have too much power.[149] While a board of directors oversees the actions of their CEO, a league's owners do not oversee the actions of their commissioner.[150] This places the Commissioner in an unusual scenario, for although "the Commissioner acts as an employee of the league, [he] is not under the control and supervision of [his] own employer."[151] Further, because each league's board of governors

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145 Even if a team owner was voted onto the league's board of directors, it would be difficult for that owner to avoid a duty of loyalty violation, as he would often be swayed towards participating in self-interested transactions that benefit his team to the exclusion of others. *See supra* notes 56–57 and accompanying text.

146 *See* Gagliardi v. Trifoods Int'l, Inc., 683 A.2d 1049, 1052 (Del. Ch. 1996) ("Shareholders' investment interests, across the full range of their diversifiable equity investments, will be maximized if corporate directors and managers honestly assess risk and reward and accept for the corporation the highest risk adjusted returns available that are above the firm's cost of capital.").

147 *See* Chemi, *supra* note 76.

148 *See* Macur, *supra* note 107. After a series of mishandled scandals, popular sports writer Bill Simmons declared, "Roger Goodell is the worst sports commissioner of my lifetime." Bill Simmons, *The Goodell-Must-Go Bag*, GRANTLAND (Sept. 11, 2014), http://grantland.com/the-triangle/roger-goodell-need-to-step-down/ [https://perma.cc/YU3H-3FH4]. After posing to himself the question of how Goodell managed to keep his job, Simmons wrote, "I don't know, I don't know, I seriously don't know." *Id.*

149 Simmons, *supra* note 148.

150 Lentze, *supra* note 80, at 68–71.

151 *Id.* at 72.

suffers from a collective action problem in which owners have incentive to "hold out" or may lack business acumen,[152] it is difficult to meet the supermajority of votes necessary for commissioner removal.[153] Again, as a result, leagues are conservative and elect to retain the status quo.[154]

Adopting a corporate structure, with the commissioner as CEO, would mitigate some of the negative consequences of the current model.[155] Lacking a collective action problem, the league's board of directors would make well-informed, unified decisions in pursuit of established goals.[156] Additionally, when crafting its bylaws, the league could elect to give its board of directors the power to remove the commissioner by a simple majority vote.[157] The league's board of directors would then have the power to hold the commissioner personally accountable for any missteps.[158] With a unified vision and an accountable, competent commissioner, the league would be better able to successfully pursue the type of efficient behavior that shareholders prefer.[159]

B. Limitless Opportunity for Capital

A primary reason that companies choose to go public is the large amount of capital available through an IPO.[160] In 2014, 244 IPOs brought in gross revenue of 74.4 billion dollars, with nine IPOs each bringing in over one billion dollars.[161] In recent years,

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[152] *See* Noll, *supra* note 129, at 382.

[153] *See, e.g.*, NFL CONSTITUTION, *supra* note 72, § 6.5(B),(E).

[154] *See* Noll, *supra* note 129, at 382–83.

[155] *Id.* at 382–84.

[156] *Id.* at 381–82.

[157] Corporations have wide authority in crafting the manner in which they elect their officers. *See* DEL. CODE ANN. tit. 8 § 142(b) (2010) ("Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors or other governing body.").

[158] *See id.*

[159] Through their power to hold the commissioner accountable, shareholders incentivize the commissioner to "honestly assess risk and reward," which in turn maximizes shareholders' interests. *See* Gagliardi v. Trifoods Int'l, Inc., 683 A.2d 1049, 1052 (Del. Ch. 1996).

[160] CARL S. SCHNEIDER ET AL., GOING PUBLIC: PRACTICE, PROCEDURE AND CONSEQUENCES 2 (1999).

[161] 2015 IPO Report, WILMERHALE 2 (2015), https://www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/Documents/2015-WilmerHale-IPO-Report.pdf [https://perma.cc/6644-G9NS].

the IPOs of companies such as Alibaba ($25 billion), Visa ($17.9 billion), Facebook ($16 billion), and General Motors ($15.8 billion) were some of the largest of all time.[162] Further, a publicly traded professional sports league would have ongoing access to capital beyond the time of the IPO.[163] The benefit of liquidity makes investors more likely to invest, and, if the league needed a substantial sum of money for an acquisition or investment, the league would have the option of conducting a secondary offering.[164]

1. Stadiums

The sports world has experienced an explosion of new, luxurious sports stadiums.[165] Since the early 1990s, 90 percent of all American sports teams have replaced their stadiums, and, on average, five new facilities are built each year.[166] As stadiums continue to be built at an unprecedented rate,[167] teams seek to "one-up" other new stadiums, leading to a rapidly increasing cost as each team seeks to establish the new "gold standard" of stadiums.[168] To illustrate the rapid growth in the cost of new stadiums, plans from the late 1990s estimated the total cost of new stadiums for the Baltimore Ravens and Cleveland Browns to be $229 million and $315 million, respectively.[169] In comparison, the new home of the Dallas Cowboys opened in 2011 at a cost of $1.2 billion,[170] and the

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[162] Laura Lorenzetti, *The 7 Biggest U.S. IPOs Ever—including some surprises*, FORTUNE (Oct. 22, 2014, 4:46 PM), http://fortune.com/2014/10/22/these-are-the-7-biggest-u-s-ipos-ever/ [https://perma.cc/HV8G-D33F].

[163] *See* SCHNEIDER ET AL., *supra* note 160, at 2.

[164] *See* GAIL CLAYTON HUSICK & J. MICHAEL ARRINGTON, THE INITIAL PUBLIC OFFERING: A PRACTICAL GUIDE FOR EXECUTIVES 169, 174 (Wilson, Sonsini, Goodrich, & Rosati, P.C. 1998).

[165] ROBERT C. TRUMPBOUR, THE NEW CATHEDRALS: POLITICS AND MEDIA IN THE HISTORY OF STADIUM CONSTRUCTION 2 (2007).

[166] *See* Aaron Gordon, *America Has a Stadium Problem*, PAC. STANDARD (July 27, 2013), http://www.psmag.com/business-economics/america-has-a-stadium-problem-62665 [https://perma.cc/23CM-T77Y].

[167] *See id.*

[168] Martin J. Greenberg, *Sports Facility Financing and Development Trends in the United States*, 15 MARQ. SPORTS L. REV. 93, 103–04 (2004).

[169] Aaron Kuriloff & Darrell Preston, *In Stadium Building Spree, U.S. Taxpayers Lose $4 Billion*, BLOOMBERG (Sept. 5, 2012, 12:01 AM), http://www.bloomberg.com/news/articles/2012-09-05/in-stadium-building-spree-u-s-taxpayers-lose-4-billion [https://perma.cc/GX4F-ERGD].

[170] *See id.*

new Minnesota Vikings stadium opened in 2016 at a cost of $1.1 billion.[171]

In order to finance the building of a new stadium, team owners turn to the public, on average requesting that the local municipality bear between 30 and 60 percent of the total cost.[172] Team owners and the public officials who support public financing of the stadium propagate two central rationales for allowing the team to use public funds: (1) without funding for a new stadium, the team will leave for a new city, and (2) a new stadium will kick-start economic rejuvenation in the areas surrounding the new location.[173]

Whereas the threat of relocation if public officials are unwilling to strike a deal may be real,[174] the prediction that a new stadium will bring economic benefits to the city is largely false.[175] Officials and team owners often try to persuade the public that a new stadium

[171] Kim Slowey, *Minnesota Vikings Show Off New $1.1B U.S. Bank Stadium*, FORBES (July 22, 2016, 3:03 PM), https://www.forbes.com/sites/kimslowey/2016/07/22/minnesota-vikings-show-off-new-1-1b-u-s-bank-stadium/#110e20de21ee [https://perma.cc/K9Eb-S96V].

[172] *See* DELANEY & ECKSTEIN, *supra* note 7, at 25–26.

[173] *See* JOANNA CAGAN & NEIL DEMAUSE, FIELD OF SCHEMES: HOW THE GREAT STADIUM SWINDLE TURNS PUBLIC MONEY INTO PRIVATE PROFIT 33–35 (1998).

[174] Other than the recent relocation of the St. Louis Rams, three professional teams—the Montreal Expos (to Washington), the Charlotte Hornets (to New Orleans), and the Seattle Supersonics (to Oklahoma City)—have relocated at least partly due to a denial of public assistance in financing a new stadium since the turn of the century. *See* CONRAD, *supra* note 4, at 203; *see also Quebec Says No to Expos*, ORLANDO SENTINEL (Sept. 4, 1998), http://articles.orlandosentinel.com/1998-09-04/sports/9809040377_1_montreal-expos-baseball-stadium-bouchard [https://perma.cc/AN7L-3LZR]; Lori Montgomery & Thomas Heath, *Baseball's Coming Back to Washington*, WASH. POST (Sept. 30, 2004), http://www.washingtonpost.com/wp-dyn/articles/A60095-2004Sep29.html [https://perma.cc/5626-7XHJ]; Jessica Kowal, *As Sonics Pack to Leave Town, Seattle Shrugs*, N.Y. TIMES (Nov. 13, 2006), http://www.nytimes.com/2006/11/13/us/13seattle.html [https://perma.cc/SW5Z-8G26]. Having between two and four vacant cities that could support a team is the optimal number for a sports league, as that number is enough to worry fans of a potential move, but it is not enough to incentivize the formation of a competing league. *See* John Siegfried & Andrew Zimbalist, *The Economics of Sports Facilities and Their Communities*, 14 J. ECON. PERSPECTIVES 95, 98 (2000).

[175] *See* Pat Garofalo & Travis Waldron, *If You Build It, They Might Not Come: The Risky Economics of Sports Stadiums*, ATLANTIC (Sept. 7, 2012), http://www.theatlantic.com/business/archive/2012/09/if-you-build-it-they-might-not-come-the-risky-economics-of-sports-stadiums/260900/ [https://perma.cc/D58W-P8NL].

will provide economic growth by funding studies estimating a high economic impact.[176] However, economists have nearly unanimously found that there is no causal connection between a new sports stadium and economic growth.[177] In fact, one study found that out of thirty cities with new stadiums, twenty-seven of those stadiums had no impact, with the final three *negatively* affecting the local economy.[178]

Further, there is cause for concern that taxpayers may be less willing to fund new stadiums in the future.[179] There is evidence to suggest that, after being fooled once, the public becomes doubtful as to the legitimacy of the economic growth argument.[180] Specifically, one study found that in cities with two new sports stadiums, advocators pushed the economic growth argument regarding the first stadium, but they abandoned the argument when pushing for the second stadium.[181] This suggests that local taxpayers are catching on to the fact that a new stadium will not bring economic growth.[182] Additionally, this removes one of the new stadium advocates' two central arguments for why the public should provide assistance in financing the construction of the new stadium.[183]

One recent trend may be illustrative of the future of the economic growth argument.[184] In recent years, taxpayers in several U.S. cities have rejected hosting the Olympic Games mostly due to the significant financial burden it would place on the taxpayers in order to construct the facilities necessary for the Games.[185]

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[176] *See* CAGAN & DEMAUSE, *supra* note 173, at 35. For an in-depth look at the common flaws in such economic impact studies, see DELANEY & ECKSTEIN, *supra* note 7, at 27–30.

[177] DELANEY & ECKSTEIN, *supra* note 7, at 27.

[178] CAGAN & DEMAUSE, *supra* note 173, at 35.

[179] *Id.* at 34–36.

[180] *See id.* at 34–36.

[181] *Id.* at 34–36.

[182] *Id.*

[183] *See id.* at 34–36.

[184] *See infra* notes 185–86 and accompanying text.

[185] *See* Victor A. Matheson, *Why Democracies Don't Want the Olympics Anymore*, WASH. POST (July 29, 2015), https://www.washingtonpost.com/postevery thing/wp/2015/07/29/why-democracies-dont-want-the-olympics-anymore/ [https://perma.cc/AH68-C4RD]. Specifically, voters were split as to whether they supported New York and Chicago's bids for the 2012 and 2016 Games, and support for Boston's bid for the 2024 games was just 40 percent. *Id.*

Public disapproval of financing such stadiums due to taxation concerns may signal to future public officials that voters could be similarly unlikely to support new stadiums for their local teams.[186] Without voter and public official support for public financing, team owners would have to look elsewhere to find the large amount of capital necessary to construct a new stadium.

A solution to this problem would be to finance new stadiums using the capital obtained from an IPO.[187] First, this would remove payment for the stadium from the hands of the taxpayer—who may not be a sports fan at all, much less a fan of the team—to the hands of those who have made the voluntary choice to invest in the league.[188] Second, this may lead to a more efficient use of stadiums.[189] No longer would owners, who know that the public will bear a significant portion of the cost,[190] replace usable or repairable stadiums with an entirely new facility.[191] Rather, a corporate league office would focus on maximizing its return on investment when constructing a new sports stadium.[192] Consequently, the focus would likely shift to building long-lasting stadiums rather than the overly expensive and short-lived stadiums of today.[193]

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[186] *See id.*

[187] Greenberg, *supra* note 10, at 1261 ("Although not a sports corporation in its purest form, the Green Bay Packers illustrate the efficacy of utilizing a public offering to raise capital sufficient for stadium construction and renovation.").

[188] DELANEY & ECKSTEIN, *supra* note 7, at 25–26.

[189] With privately owned stadiums, directors will be obligated to run them in a profit-maximizing fashion. *See generally*, eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1 (Del. Ch. 2010).

[190] *See* Kuriloff & Preston, *supra* note 169.

[191] In addition to the increased rate of construction, the lifespan of the average sports stadium appears to be shrinking. *See* Harry Dole, *Alarming Decrease in Longevity of Pricy Modern Sports Stadiums*, RANT SPORTS (Dec. 13, 2012), http://www.rantsports.com/nfl/2012/12/13/alarming-decrease-in-longevity-of-pricey-modern-sports-stadiums/ [https://perma.cc/H6DK-VHQB]. Remarkably, the Atlanta Falcons have plans for a new stadium after just twenty-five years in the Georgia Dome, and Washington Redskins owner Dan Snyder has said it is time the team looks at building a new stadium after just seventeen years at current home FedEx Field. *Id.*; *see also The Short Life of an NFL Stadium*, CNN MONEY (Sept. 8, 2014, 12:20 PM), http://money.cnn.com/2014/09/08/news/companies/nfl-stadiums/ [https://perma.cc/6ZGM-MKT7].

[192] League offices are profit-maximizers. *See* Volin, *supra* note 107.

[193] *See generally* Dole, *supra* note 191; Volin, *supra* note 107.

2. Worldwide Expansion

An increasingly globalized world has exposed American sports to new fans all over the planet.[194] As a result, expansion to and involvement in the international market is a top priority of the four major professional sports leagues, with each league adopting methods to expand its popularity and grow its fan base overseas.[195] For example, in the 2013 NBA season, teams played games in Brazil, the United Kingdom, China, the Philippines, Spain, Taiwan, and Turkey.[196] The NBA Finals were broadcasted in 215 countries and forty-seven languages.[197] Similarly, NFL teams played games in London and are interested in playing games in Mexico, Germany, Canada, China, and Brazil in the near future.[198] The MLB has played season-opener games in Monterrey, Mexico (1999), San Juan, Puerto Rico (2001), Tokyo, Japan (2000 and 2004), and has even opened a Tokyo office.[199] The MLB has also created the World Baseball Classic—a kind of "World Cup" of baseball—which has been widely considered a success.[200]

Additionally, three of the four major professional sports leagues have found themselves in a de facto arms race as to which league will be the first to open a permanent franchise located outside the United States or Canada.[201] The NFL hopes to open a

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[194] *See generally infra* notes 202–05 and accompanying text.

[195] *See* Benjamin D. Goss, *Taking the Ballgame Out to the World: An Analysis of the World Baseball Classic as a Global Branding Promotional Strategy for Major League Baseball*, 1 J. SPORT ADMIN. & SUPERVISION 75, 77–78 (2009).

[196] Jeré Longman, *Globalization Sweeps Away Misgivings About Foreign Teammates*, N.Y. TIMES (Oct. 14, 2013), http://www.nytimes.com/2013/10/15/sports/international/globalization-sweeps-away-misgivings-about-foreign-teammates.html?pagewanted=all&_r=0 [https://perma.cc/U8PH-J23Y].

[197] *Id.*

[198] Ryan Wilson, *NFL Could Expand International Series to Mexico, Germany,* CBS SPORTS (Mar. 26, 2015), http://www.cbssports.com/nfl/eye-on-football/25124431/nfl-could-expand-international-series-to-mexico-germany [https://perma.cc/8GNW-2X5F].

[199] Goss, *supra* note 195, at 77, 82. After the opening of the Tokyo office, multiyear Asian sponsorships of MLB rose by 40 percent. *Id.* at 82.

[200] Mike Berardino, *Despite Successes, World Baseball Classic Still Finding Its Footing*, BASEBALL AM. (Feb. 28, 2013), http://www.baseballamerica.com/today/majors/international-affairs/world-baseball-classic/2013/2614790.html [https://perma.cc/EA7L-LFJJ].

[201] *See generally id.*; Goss, *supra* note 195; Wilson, *supra* note 198.

London franchise by 2022.[202] MLB Commissioner Rob Manfred has listed Monterrey, Mexico as a potential destination,[203] and others speculate that the easing of relations between the United States and baseball-obsessed Cuba may lead the MLB to expand to Cuba.[204] NBA Commissioner Adam Silver has gone as far as to say it is the NBA's "manifest destiny" to expand to Europe, although he admits expansion overseas is not in the NBA's immediate future.[205]

Despite each leagues' immense popularity in the United States, garnering enough interest to validate placing an expansion team overseas will be a difficult task.[206] Mark Reeves, International Commercial Director for the NFL, has equated the task of engendering enough overseas support to justify expansion into Europe to "pushing [a] boulder up [a] mountain."[207] However, this is a boulder that a publicly traded NFL, with an immense amount of capital gained through an IPO, could likely push singlehandedly.[208] The NFL, or any of the power four leagues, would have access to enough capital to build the kind of state-of-the-art stadium that would stir the surrounding communities' interest in the new team.[209] Start-up costs could be borne not by the taxpayers of the international expansion location (who, it seems, would be unwilling to finance

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[202] Wilson, *supra* note 198.

[203] Jerry Crasnick, *Commissioner Rob Manfred Sees Expansion in MLB's Future*, ESPN (July 14, 2015), http://espn.go.com/mlb/story/_/id/13256319/rob-manfred-sees-expansion-mlb-future [https://perma.cc/NRA6-2D3X].

[204] *See* David Lengel, *Will a US-Cuba Deal Open Up an MLB Gold Rush?*, GUARDIAN (Dec. 18, 2014, 9:51 AM), http://www.theguardian.com/sport/blog/2014/dec/18/will-a-us-cuba-deal-open-up-a-gold-rush-in-the-mlb [https://perma.cc/8MY9-GN62].

[205] Owen Gibson, *NBA Commissioner Adam Silver Wants to Launch Four European Franchises*, GUARDIAN (Jan. 15, 2015, 7:28 PM), http://www.theguardian.com/sport/2015/jan/15/nba-commissioner-adam-silver-european-franchises?CMP=share_btn_tw [https://perma.cc/F8QU-6D8U] ("We're not there yet. I know that as much growth as we've seen, we have a long way to go before we can sustain four franchises in Europe.... On the other hand, I believe it's our manifest destiny to expand.") (internal quotations omitted).

[206] *See* Jack Bechta, *How NFL Can Expand Abroad*, HUFFINGTON POST (Oct. 25, 2012, 9:33 AM), http://www.huffingtonpost.com/2012/10/25/how-nfl-can-expand-abroad-london_n_2016085.html [https://perma.cc/4MDG-CMFN].

[207] *Id.*

[208] *See generally id.*; Greenberg, *supra* note 10.

[209] *See generally* Bechta, *supra* note 206; Greenberg, *supra* note 10.

building a stadium for a sport they know little about), but by the league itself.[210]

Further, current league policies reduce the incentive for potential owners to undertake a risky venture like opening a team overseas.[211] Expansion and relocation fees—amounts new teams pay equally to each already-existing team in the league—have grown rapidly.[212] The St. Louis Rams's relocation cost them $550 million in such fees, and the San Diego Chargers' planned relocation may cost them $650 million.[213] Additionally, potential new owners will be cautioned by the failings of the four major leagues' only overseas expansion effort—NFL Europa.[214] NFL Europa, a ten team developmental league that the NFL opened in 1991,[215] operated at a loss for fifteen straight years before shutting down in 2007.[216] Considering the combination of the immense expansion fee and the uncertain success of an American sports league team in an international market, a sports league may find itself hard-pressed to find a potential owner willing to purchase an international expansion team.[217] Again, this problem can be solved

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[210] *See* Bechta, *supra* note 206; DELANEY & ECKSTEIN, *supra* note 7, at 25.

[211] *See generally infra* notes 212–13 and accompanying text.

[212] *Leveling the Playing Field: Relevant Product Market Definition in Sports Franchise Relocation Cases*, 2000 U. CHI. LEGAL F. 245, 274 (2000). An expansion fee "represents compensation to existing teams for more extensive sharing of the monopoly profits from broadcasting." ROGER G. NOLL & ANDREW ZIMBALIST, SPORTS, JOBS, AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS 84 (1997).

[213] *Rams Headed Back to Los Angeles; Chargers Have Option to Join*, ESPN (Jan. 13, 2016), http://www.espn.com/nfl/story/_/id/14558668/st-louis-rams-relocate-los-angeles [https://perma.cc/YPV7-LM6L] (stating that the move cost the Rams $550 million in relocation fees); Judy Battista, *Chargers' Move to Los Angeles Fraught With Uncertainty*, NFL (Jan. 12, 2017), http://www.nfl.com/news/story/0ap3000000773166/article/chargers-move-to-los-angeles-fraught-with-uncertainty [https://perma.cc/28JB-VYER] (stating that the Chargers's relocation fee may be up to $650 million).

[214] *NFL Europa Closes*, NFL (Aug. 3, 2007, 2:28 PM), http://www.nfl.com/news/story/09000d5d801308ec/article/nfl-europa-closes [https://perma.cc/AYV9-G89B].

[215] *Id.*

[216] Len Pasquarelli, *NFL Europa Failed to Produce Players, Profits*, ESPN (June 29, 2007), http://espn.go.com/nfl/columns/story?columnist=Pasquarelli_len&id=2920635 [https://perma.cc/X8UX-E8F8].

[217] *See generally NFL Europa Closes*, *supra* note 214; *Rams Headed Back to Los Angeles; Chargers Have Option to Join*, *supra* note 213.

through financing the expansion team by a publicly traded sports league.[218] As discussed above, these leagues—unlike an individual potential new owner—believe that expansion is their "manifest destiny,"[219] and they are much less likely to be concerned with an expansion fee or the riskiness of international expansion.

Conclusion

This Note outlines the various reasons why a professional sports league would stand to benefit from organizing as a publicly traded corporation. While individual franchises have flirted with the concept of going public—including several launching IPOs—the corporate model is much more applicable to an entire league rather than a singular franchise. Unlike a publicly traded team, which may be more likely to breach their duty of care by operating as a win-maximizer, leagues are focused entirely on profits. Further, the constant attention and scrutiny garnered by professional sports limit the ability of leagues to breach their duty of loyalty by engaging in self-interest doctrines or by usurping corporate opportunities.

While in the current model leagues suffer from a collective action problem and a lack of commissioner accountability, a publicly traded sports league solves those problems. By creating a unified board of directors with a singular, clear vision for the future of the enterprise, leagues will become more flexible and better able to make the efficient decisions necessary to best serve the interests of the league.[220]

Additionally, a publicly traded league would gain an immense amount of capital via its IPO.[221] This capital would allow the league to finance building new stadiums for its franchise, which is of particular importance as evidence suggests that taxpayers will begin to refuse to provide owners with funds for new stadiums in the future. It would also allow leagues to accomplish an important—and expensive—goal: overseas expansion.[222]

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[218] *See generally* Greenberg, *supra* note 10.

[219] Gibson, *supra* note 205.

[220] *See* Perrine, *supra* note 126, at 783.

[221] *See* Greenberg, *supra* note 10, at 1261–63.

[222] *See generally* Greenberg, *supra* note 10; *NFL Europa Closes*, *supra* note 214; Pasquarelli, *supra* note 216; *Rams Headed Back to Los Angeles; Chargers Have Option to Join*, *supra* note 213.

While a novel idea, it is somewhat difficult to imagine one of the four major professional sports leagues abandoning their current model.[223] This is not because the corporate model is not a viable (or better) option, but because owners and commissioners stand to lose a substantial amount of power via the internal checks and balances—as well as shareholder elections—that the corporate model provides.[224] Still, as leagues and owners look to maximize efficiency and capital in order to finance future initiatives, it is a viable alternative.

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[223] *See generally* Greenberg, *supra* note 10.
[224] *See generally id.*