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THE LATEST REVENUE GENERATOR: STOCK SALES BY PROFESSIONAL SPORTS FRANCHISES

SCOTT C. LASCARI

I. Introduction

For years, professional sports teams have engaged in a variety of strategies to increase revenues and thereby compete with and thrive against other teams and other sports leagues. To accomplish this goal, teams have moved from one city to another,\(^1\) have convinced their home cities to build or help finance new stadiums,\(^2\) have renegotiated their stadium and arena leases,\(^3\) and have potentially circumvented their league’s rules and policies.\(^4\) Another trend has now appeared on the horizon: selling stock in professional franchises.

Selling the stock of a professional sports franchise is not a recent venture. In fact, the Green Bay Packers of the National Football League (NFL) sold their first share of stock back in 1923.\(^5\) Moreover, numerous


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1. Examples include the Dallas Stars (formerly the Minnesota North Stars) and Colorado Avalanche (formerly the Quebec Nordiques) of the National Hockey League (NHL), as well as the Oakland (formerly Oakland and Los Angeles, respectively) Raiders, the St. Louis (formerly Los Angeles) Rams, the Baltimore Ravens (formerly Cleveland Browns) and the Tennessee (formerly Houston) Oilers of the National Football League (NFL).

2. Examples include the Cincinnati Reds and Milwaukee Brewers of Major League Baseball (MLB), the Miami Heat and Washington Wizards of the National Basketball Association (NBA), the Washington Redskins of the NFL, and the Florida Panthers and Washington Capitals of the NHL.

3. Examples include the New Jersey Devils of the NHL and the San Diego Chargers of the NFL.

4. Examples include the Dallas Cowboys and New England Patriots of the NFL, each of whom benefited from advertising deals with their stadiums, which would potentially contradict the NFL’s rules on revenue sharing.

sports franchises have indirectly sold their stock on the market as part of larger corporations for years. For example, ITT Corporation owns both the New York Knicks of the National Basketball Association (NBA) and the New York Rangers of the National Hockey League (NHL) (New York Stock Exchange (NYSE) symbol: ITT); Turner Broadcasting controls both the Atlanta Braves of Major League Baseball (MLB) and the Atlanta Hawks of the NBA (American Stock Exchange symbol: TBS.B); Walt Disney Company possesses complete control over the Anaheim Mighty Ducks of the NHL and partial control over the Anaheim Angels of MLB (NYSE symbol: DIS); the Tribune Company owns the Chicago Cubs of MLB, the television station (WGN-TV) that broadcasts a majority of Cubs' games, and the newspaper (the Chicago Tribune) that covers Cubs' games (NYSE symbol: TRB); COMSAT Corporation controls both the Colorado Avalanche of the NHL and the Denver Nuggets of the NBA (NYSE symbol: CQ), which make up about 13% of the company's overall value; and Rupert Murdoch's News Corp. (NYSE symbol: NWSPR) recently purchased the Los Angeles Dodgers of MLB.

Increasingly, however, teams are approaching the public directly with stock offers. Since the type of "stock" and the corresponding risks and benefits vary from one franchise to the next, each leads the potential purchaser to ask: Is this a sound investment or scam?

II. An Analysis of Stock Sales

Considering the number of direct and indirect sports stock participants, it would be a daunting task to analyze each stock sale related to professional sports franchises. This article does not purport to accomplish such a goal. Rather, this article reviews the stock sales of four professional sports franchises in four different professional sports leagues and analyzes the viability of this latest revenue generator.

A. The Green Bay Packers

We begin our discussion with the Green Bay Packers of the NFL for two reasons. First, the Packers initiated the process of stock sales by

8. For example, the Toronto Maple Leafs of the NHL are a publicly traded company in Canada. See Kevin B. Blackistone, Boston Celtics Courting Investment Community, THE DALLAS MORNING NEWS, Dec. 9, 1986, at 1D.
professional franchises back in 1923. Second, the Packers sit on one end of the revenue generator's spectrum.

1. The History

Stock sales and the Green Bay Packers go back over 75 years, to 1923. That year, the Packers sold 1,000 shares of stock for $5.00 per share and the understanding that each buyer would simultaneously purchase at least six season tickets. The stock sale coincided with the organization of the corporate predecessor to the Packers' present company, Green Bay Packers, Inc. (the "Corporation"). On January 26, 1935, that predecessor entered into receivership and was reorganized as a Wisconsin, nonprofit, stock corporation. At the same time, the Corporation raised $15,000.00 in new capital through the sale of three hundred shares of stock.

The Packers' third stock sale occurred in 1950, when the Corporation's officers amended its bylaws. Through those amendments, the Corporation was permitted to sell up to a cumulative level of 10,000 shares of stock; individual investors were prohibited from owning more than 200 shares; and the size of the Board of Directors increased from 15 to 25 members. The Packers sold the newly authorized individual shares of stock for $25.00 each, and sales generated roughly $118,000.00 in new Corporation capital. As of November 1, 1997, 4,627 shares of stock, known as the Original Shares, were outstanding.

On November 13, 1997, therefore, the Corporation's stockholders approved amendments to the Articles of Incorporation, thereby authorizing the issuance of up to 10,000,000 shares of common stock. In addition, the Corporation reclassified the Original Shares on a 1,000-for-1 basis, leaving 4,627,000 shares outstanding prior to the 1997 sale. Without further
amendments to the bylaws, the Corporation could now sell up to 5,373,000 shares of stock.

2. The Fourth Stock Sale

In November of 1997, the Green Bay Packers announced that they would hold their fourth stock sale in the Corporation’s history. The Corporation announced that it elected to sell the additional shares of stock after considering the great changes in NFL economics following the 1950 sale. Since 1985 alone, the Packers spent $50 million improving Lambeau Field (the Packers home stadium), adding on to its administrative building, and constructing an indoor practice facility known as the Don Hutson Center. In addition, each facility requires continuous maintenance and modification, and Lambeau Field itself, already forty years old, rapidly progresses toward the time when it must be replaced in its entirety.

Unlike other clubs whose owners have substantial assets upon which they can draw to provide the needed capital for facilities, the Packers do not have a ready source of capital for significant capital improvements or an ‘owner’s contribution’ to a public/private partnership to renovate or replace the [Packers’] facilities.

As a result, individual purchases of Packers’ stock constitute contributions to the Corporation’s capital assets. All proceeds from the stock sale were to be deposited in a segregated capital improvements fund established by the Corporation. Any and all withdrawals from that fund may be used only for stadium and other capital improvements and are subject to NFL oversight.

Each share of stock offered during the fourth sale carried a purchase price of $200.00 plus a handling fee of $15.00 per shareholder account. The Packers’ intended to sell up to 400,000 shares initially, although the Corporation was authorized to offer up to 1,000,000 shares and reserved the right to increase the size of the offering at any time and without further notice. The public offering was to last until January 31, 1998.
subject to extension, or until it became fully subscribed, whichever oc-
curred first. The stock could only be sold or otherwise delivered to
natural persons, and each stock certificate could be registered, at most,
in the names of two people. Buyers could not purchase more than 200
of the offered shares, and any stockholder already owning 200,000 shares
could not purchase any of the 1997 shares. In addition, all potential
purchasers had to represent that they had not: 1) been involved in any
litigation in which it was alleged that they committed fraud, 2) been con-
victed of a felony, or 3) participated in sports gambling such as
"bookmaking."

What did stock purchasers receive for their money? On the one
hand, “[p]urchasers of Common Stock will [. . .] become a part of the Pack-
ers’ tradition and legacy[. ]” and are entitled to receive a stock certifi-
cate. The Packers will also notify all stockholders of the team’s annual
meeting, but stockholders will only receive copies of the team’s annual
report upon request. At the annual meeting, stockholders may cast
one vote per owned share and may do so only on matters submitted to
stockholder vote. Amendments to the Corporation’s Articles of Incor-
poration, for example, require a two-thirds vote of all stockholder
shares.

On the other hand, buyers cannot and should not purchase shares of
Packer stock with the intention of making a profit. The Corporation re-
peatedly warned prospective purchasers that the stock did not constitute
a standard investment, and shares cannot earn a financial return. In fact,
the Corporation’s Restated Articles of Incorporation specifically state
that no shareholder may receive a dividend or any other monetary profit
by virtue of being a stockholder. Rather, the Corporation must place
any and all profits within a capital reserve or otherwise donate them to
certain charitable causes. Further, the Original Articles of Incorpora-
tion provide that if the Green Bay Packers’ franchise is ever sold, follow-

26. See Stock Offering Document, supra note 11, at 6. The Packers eventually
changed the last day of the stock offering from January 31, 1998, to March 16, 1998.
27. See id.
28. See id. at 6, 7. As of November 14, 1997, around 1,900 stockholders held the Original
Shares, with two stockholders retaining the maximum 200,000 Original Shares.
29. Id. at 7.
30. Id. at 3.
31. See Stock Offering Document, supra note 11, at 5.
32. See id. at 8.
33. See id.
34. Id. at 2.
35. See id.
ing the payment of all expenses, any remaining funds go to the Sullivan–Wallen Post of the American Legion “to build ‘a proper soldier’s memorial.’”36 Moreover, stock purchases do not constitute charitable contributions and do not, therefore, entitle shareholders to tax deductions or other economic benefits.37 In sum, it is virtually impossible for anyone to realize a profit from the purchase of Green Bay Packers’ stock.38

Aside from the inability to profit from the stock, purchasers are not protected by either federal or state securities laws, and the shares are not registered under the Securities Act of 1933 or under any Blue Sky Law (state securities law).39 Similarly, the shares were not approved by the Securities and Exchange Commission (SEC),40 and the offer was not valid outside of the United States.41

Further, investors cannot sell, assign, pledge, or otherwise transfer their share(s) of stock to anyone except to the Corporation and at a price substantially less than the issuance price.42 Should any stockholder propose to improperly sell or otherwise transfer shares to a third party, the Corporation reserves the right, but not the obligation, to repurchase the stock for $2.50 per share.43 Shares may only be transferred to members of the stockholder’s immediate family by gift or following death.44 All of these provisions coincide with the NFL’s Constitution and Bylaws, which prohibit the selling, assignment, or other transfer of interests in NFL memberships without the prior approval of the NFL, except to immediate family members by gift or through death.45 In addition, transfers to family members may only occur upon approval of the Executive Committee.46 Along with each permissible transfer or separate registration of the Common Stock, the Corporation may impose a fee, currently $6.00 but subject to future adjustments.47 The Corporation may also re-

36. History, supra note 5.
37. See Stock Offering Document, supra note 11, at 4, 5.
38. See id. at 1.
39. See id. at 4.
40. See id.
41. See id. at 7.
42. See Stock Offering Document, supra note 11, at 4. An entity, on the other hand, may transfer shares of common stock to certain individuals meeting the Corporation’s approval. See id. at 8.
43. See id. at 2, 4.
44. See id. at 5. Immediate family refers to the spouse, child, mother, father, brother(s), sister(s), or any lineal descendant of the stockholder. See id.
45. See id.
46. See History, supra note 5.
47. See Stock Offering Document, supra note 11, at 8.
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deem shares of stock if: 1) the Board of Directors cannot locate a stockholder, 2) the Corporation expends reasonable time and effort attempting to locate the missing stockholder, and 3) five years have elapsed since the stockholder's last contact with the Corporation.\(^4\)

In addition to the Packers' restrictions on the stock's privileges and transferability, NFL Rules specifically prohibit stockholders of NFL clubs from engaging in conduct detrimental to the NFL's welfare. Conduct detrimental to the NFL's welfare includes: 1) having a financial interest in another NFL club or professional football organization; 2) loaning money to any NFL football official, to other NFL clubs, or to any player, coach, or employee thereof; 3) paying any NFL player or coach; 4) acting as an agent for any NFL player; or 5) publicly criticizing any NFL football official, any NFL club, its management, or any player, coach, or employee thereof.\(^4\) Should the NFL Commissioner rule that a stockholder engaged in conduct detrimental to the NFL, the Commissioner may fine an offending shareholder up to $500,000.00 and/or require that shareholder to sell his or her share(s) of stock.\(^5\) If the Commissioner finds that a stockholder bet on the outcome or score of any NFL game, the Commissioner may fine the stockholder up to $5,000.00 and/or require the stockholder to sell his or her stock.\(^5\)

3. Results of the Sale

Prior to the stock sale, the Packers conceded to the NFL's demands and reluctantly released their estimate of total anticipated stock sales. According to a survey taken in July of 1996, the public would purchase upwards of 1,000,000 shares of Packer stock.\(^5\) Based on that estimate, the Packers' initially offered 400,000 shares and reserved the right to increase the number of offered shares.\(^5\)

The only problem: "there is a limit to Packermania."\(^5\) On March 17, 1998, the Packers announced that they had sold roughly 120,000 shares

\(^{48.}\) See id. at 5.
\(^{49.}\) See id.
\(^{50.}\) See id. The current Commissioner of the NFL is Paul Tagliabue.
\(^{51.}\) See id.
\(^{52.}\) See Tom Silverstein, Packers Happy with Stock Sale, but 120,000 Shares Sold Falls Short of Goal, MILWAUKEE J. SENTINEL, Mar. 18, 1998, at C1.
\(^{53.}\) See STOCK OFFERING DOCUMENT, supra note 11, at 1, 6. Under the intended offering, holders of the new shares of common stock would possess less than an 8% interest in the team. See id. at 5. For the Corporation to issue more than the 1,000,000 authorized but unissued shares, 70% of the stockholders would need to approve. See id. at 7.
\(^{54.}\) Silverstein, supra note 52, at C1.
of stock, taking in more than $24 million. Over the course of the 17-week sale, 182,000 people requested stock applications over the phone, with an unidentified number doing the same via the Packer’s Internet site. After the sale, however, only between 33% and 50% of those requesting offering documents, roughly 75,000 people, ordered at least one share of stock. Despite the tempered sales, the final results pleased Packer officials. The $24 million influx doubled the team’s financial reserves and virtually assured that the team would remain afloat for the next twenty-five years. Not a bad result considering the Packers needed NFL approval and were under SEC scrutiny to ensure that buyers knew that they were not purchasing a profitable stock. This result does mean, however, that the Packers cannot contribute as much as they had hoped to a new stadium in twenty to twenty-five years.

B. The Boston Celtics

We continue with a quick discussion about the Boston Celtics of the NBA. In 1986, the Celtics became the first NBA team to sell team stock to the public (NYSE symbol: BOS).

1. The Sale

The Boston Celtics publicly sold their first shares of stock in 1986, under the name Boston Celtics Limited Partnership (the “Partnership”), for $17.50 per share. The offering represented a 40% ownership stake in the team, the reigning NBA champion at the time of the offering.

As of February 26, 1998, the Celtics remained the only NBA team whose stock was trading on the open market. Approximately 5.3 million shares are presently outstanding, with about 50,000 shareholders owning a single share.

55. See id.
56. Id. at C7.
57. See id. Purchasers of the stock were located in all 50 states, Guam and the United States Virgin Islands. Wisconsin residents purchased the most shares (64,300) followed by Illinois (9,600), Minnesota (4,300), California (3,700), and Florida (2,900). Residents in Texas, home of the Dallas Cowboys, purchased 2,550 shares. See id.
58. Id.
59. See Silverstein, supra note 52, at C7.
60. See Nawrocki, supra note 6, at 1.
61. See Blackistone, supra note 8, at 1D.
62. See Nawrocki, supra note 6.
63. See Boston Celtics L.P. (last modified Jan. 29, 1999) <http://biz.yahoo.com/profiles/bos.html>; see also Nawrocki, supra note 6.
2. Benefits of Purchase

The benefits of purchasing Boston Celtic stock differ in some respects from those granted by the Green Bay Packers. Like the Packers, shareholder privileges include stock certificates and annual reports, which the Partnership automatically distributes to stockholders. Similarly, Celtic stockholders possess no true power over how the Partnership is run. The biggest difference between the Celtics and the Packers lies in their additional privilege granted to Celtic stock owners: an annual dividend. A dividend results from the distribution of current or accumulated earnings to a corporation's shareholders on a pro rata basis, based on the number of shares the stockholder owns. Companies typically distribute cash dividends, though they may come in other forms. Dividends also represent a return on investment, something the Packers stock does not. The General Partner determines the amount of any and all future Celtics distributions based, among other things, on the available resources and needs of the Partnership. For example, the Partnership paid a $1.50 dividend on July 21, 1995.

The revenue earned by the Partnership arises principally from the sale of Boston Celtics home game tickets, as well as the licensing of television, cable network, and radio broadcast rights. The Partnership can determine a large portion of its revenue and expenses at the commencement of each NBA season, based on season ticket sales and player and broadcasting contracts. In general, the Partnership typically experiences a loss in the first quarter, which ends on September 30th of each year. The explanation is not poor management but simply that the NBA season begins in November, almost two months later, meaning the Partnership collects little revenue but still incurs substantial general and administrative expenses. After the first quarter, the Partnership recognizes roughly one-third of its revenues in the second quarter, one-half in the third quarter, and the remaining portion in the fourth quarter.

64. See Blackstone, supra note 8, at 1D.
66. See BLACK'S LAW DICTIONARY 478 (6th ed. 1990). Another common form of dividend is additional shares of stock in the company.
68. See id. at 10.
69. See id. The Partnership recognizes actual revenue and expenses on a game-by-game basis. See id.
70. See id.
The Partnership similarly recognizes any and all playoff revenues and expenses during the fourth quarter.\footnote{See id. at 10.}

To make Boston Celtic stock more attractive to purchasers, the Partnership engaged in a variety of activities, including investment opportunities outside the NBA. As one example, the Partnership moved the team's home games from the Boston Garden to the larger Fleet Center, thereby gaining 4,200 additional seats and increased ticket revenues.\footnote{See 1996 3rd Quarter Form 10-Q, supra note 67, at 11. Boston Celtics fans wait about 15 years for season tickets to become available, although the team does sell 2,000 tickets on a game-by-game basis. See Boston Celtics Limited Partnership, supra note 65. It therefore appears that revenues from the sale of game tickets will not, at least in the short term, be lacking.} The Partnership also “owned and operated [Boston] Radio Station WEEI-590 AM until its sale on June 30, 1994. . .”\footnote{See id. at 9.} In addition, the Partnership “owned and operated. . .Television Station WFX T–Channel 25 of Boston, Massachusetts until its sale on July 7, 1995.”\footnote{See id. at 11.} As of March 1996, the Partnership had not engaged in any negotiations relating to, nor made any commitments in connection with, any possible acquisitions.\footnote{See id. at 11.}

C. The Florida Panthers

We continue our review with an analysis of the Florida Panthers of the NHL. Florida Panther Holdings, Inc. (the “Company”) represents a more conventional investment, along with the accompanying benefits and risks. Stock was first issued by the Company as an initial public offering in November of 1996 at $10.00 a share.\footnote{See Mark Weaver, The Daily Double (visited Feb. 26, 1997) <http://www.fool.com/Ddouble/1997/Ddouble970226.html>.}

1. The Sales

of $10.00 per share. The stock hit the market with momentum to start, however, opening at $11.50. The only problem is that fans of the team could not buy individual shares. Instead, all investors were required to buy at least a block, or 100 shares, and were not allowed to purchase more than 1,000 shares. The net proceeds of the IPO approximated $66.3 million, of which $45 million was used to repay the company's outstanding debt under the two term loans used to pay the Florida Panther's franchise cost; the remaining $21.3 million was to be used for general working capital.

In the summer of 1997, the Panthers announced that they would be offering 6,780,135 shares of Class A common stock on the NYSE (Stock symbol "PAW"). Following the second offering, the Company would have over 34 million shares of stock outstanding. The sale proceeds were to be used to repay $76.1 million in debt that was assumed to purchase a number of resort facilities, for possible future acquisitions, and for working capital and other general corporate purposes. In the end, the Panthers stated that they were seeking to operate in two business sections: (1) leisure and recreation and (2) sports and entertainment.

To accomplish that goal, the Company acquired all of the Partnership interests in the Florida Panthers Hockey Club in exchange for 4,149,710 shares of Class A common stock and 255,000 shares of Class B common stock. The Company also acquired all of the outstanding shares of Decoma Investment, Inc. I and II, and approximately 78% of the partnership interests in Decoma Miami Associates, Limited—all for 870,968 shares of Class A common stock—which operates the Miami Arena, the

78. See id. In addition to the 2.7 million shares of Class A stock sold to the public, the Company sold 4.6 million shares in a "Concurrent Offering" to a select group of individuals. See id.
80. See Larry Lebowitz, Panthers Stock: $1,000 Minimum; For IPO, You Must Buy 100 Shares, FORT LAUDERDALE SUN-SENTINEL, Sept. 26, 1996, at 1D.
81. See 1996 Form 10-Q, supra note 77, at 6.
83. See id. at 6.
84. See id. at 18.
85. See id. at 2-3.
86. See id. at 5-6. All of these shares were received by W. Wayne Huzienga, owner of the Florida Panthers, in exchange for a $41,000,000.00 note owed to him by the Company. See id. at 6.
former home stadium to the Panthers as well as the current home of the NBA’s Miami Heat. Further, on December 22, 1996, the Company entered into agreements resulting in direct and indirect ownership in both the Hyatt Regency Pier 66 Resort and Marina (for 4,450,000 shares of Class A common stock) and the Radisson Bahia Mar Beach Resort and Yachting Center (for 3,950,000 shares of Class A common stock). The Company has also purchased the Boca Raton Resort & Club; a majority stake in the Rolling Hills Golf Course in Davie, Florida for $8 million in cash, a $288.5 million partnership stake in the Arizona Biltmore resort in December of 1997, for $125 million in cash, $100 million in Panthers’ stock, and $63.5 million in debt, and the Company received an option to buy all of the resort. The Arizona Biltmore resort will continue to be managed by the company’s partner in the deal, Grossman Co. Properties. In a statement, Wayne Huizenga said that the latest purchase “validated ‘our strategy of expansion from east to west operating premier, one-of-a-kind properties.’”

On July 8, 1997, the Company entered into a merger agreement with Gary V. Chernoff and ResortHill, Inc., by which the Company will acquire approximately a 68% interest in the Registry Hotel at Pelican Bay.

Moreover, the Company owns and operates Arena Development Company, Limited, formed for the purpose of developing the Broward County Civic Arena, as well as Arena Operating Company, Ltd., which will manage and operate the arena. Broward County is funding all of the construction costs of the Broward County Civic Arena, and the

87. See 1997 PROSPECTUS, supra note 82, at 6, 7.
88. See Antonio Fins, Panthers Buy Rolling Hills Golf Course to Serve Hotels, FORT LAUDERDALE SUN-SENTINEL, Sept. 10, 1997, at 1D. The course is well-known; it is where the movie Caddyshack was filmed. It lies close to the Miami Dolphins practice facility and is used by the players. The purchase includes a 27,000 square foot clubhouse, banquet, and meeting rooms plus seven acres of undeveloped land next to the course. See id. The golf course is just a “short ride” from the Bahia Mar and Pier 66 hotels. See id.
89. The Biltmore is located in the heart of Phoenix and is recognized as one of the finest and most exclusive resorts in the region, complete with two golf courses, five swimming pools, a 92-foot water slide, health spa, conference center, and five restaurants. See Acquisition; Huizenga Buys Stake in Biltmore, TUCSON CITIZEN, Dec. 24, 1997, at 7C. 90. See id.
91. Id.
92. See 1997 PROSPECTUS, supra note 82, at 5.
93. The Broward County Civic Arena is the new home stadium for the Florida Panthers.
Company is only responsible for development costs exceeding $184.7 million.95

Aside from the other investments, the Company also owns a twin-pad ice rink facility in Coral Springs, Florida, known as "Incredible Ice." In addition, the Company operates an ice skating rink facility in Pompano Beach, Florida pursuant to a lease. Both operations are open to the public and derive revenues from, among other things: (1) fees charged to the public, (2) food and beverage sales, and (3) retail sales.96

The Company has also said that it may "consider making additional acquisitions of certain resort-related, sports-related or other types of businesses" or commercial properties.97 Such acquisitions, however, would mean a dilution of the Company's stock since such acquisitions would be made in exchange for shares of the Company's stock.98

2. The Benefits and Risks of Purchase

The success of the Company depends, at least in part, on the success of the Florida Panthers, their ticket revenue, the increase in players' contracts, etc.99 Just like the Boston Celtics, the Company recognizes all hockey-related revenues and expenses over the course of the season on a per game basis.100 As a result, most of the Company's earnings and expenses are recorded in the second and third quarters; all playoff revenues and expenses will fall within the fourth quarter. In the Broward County Civic Arena, the Company retains 95% of the revenue derived from the sale of general seating to the Panthers' home games and 100% of certain other hockey-related advertising and merchandising revenue.101 The Company also receives the first $14 million of net operating income102 derived from the Broward County Civic Arena and 80% of all net operating income in excess of $14 million.

Nevertheless, the Company has warned that there is no assurance it will ever achieve a profitable level of operations or that profitability can be sustained on an ongoing basis; that the company may require substantial capital infusions on a continuing basis to finance operations and ex-
penses; and that the Company may have to restructure its debt, sell material assets or operations, or obtain additional debt or equity.\textsuperscript{103} As to the resort facilities, the Company notes that the resort facilities are all subject to the operating risks that are common in the highly competitive resort and hotel industry, and that the resort business is generally a seasonal business.\textsuperscript{104} As for the Panthers themselves, the Panthers must compete with other major league sports, college athletics, other sports-related entertainment, and other entertainment and recreation activities.\textsuperscript{105} Other risks associated with the hockey team include landing talented players, avoiding uninsured injuries, uncertain labor relations, NHL stability and success, television contracts, and the completion and success of the team’s new home arena.\textsuperscript{106} Further, since the Miami Heat of the NBA are moving to the Dade Arena and since the Panthers are moving to the Broward County Civic Arena, the income derived from the Decoma Company’s Miami Arena will depend upon the signing of other tenants. Losses may result, depending upon the Company’s ability to locate other tenants.\textsuperscript{107}

More like the Packers, however, the Panthers do not intend to pay any dividends with respect to its common stock, at least in the near future.\textsuperscript{108} The reason is simply that the NHL Bylaws preclude any of its member clubs from paying cash dividends, unless doing so “will not impair the member’s ability to (i) meet its projected expenses for the ensuing... [year] without the use of borrowed funds, other than short-term borrowings, and (ii) maintain adequate reserves to fund the future payment of all deferred player compensation and other deferred obligations for past services.”\textsuperscript{109} The Bylaws further prevent the granting of a 5% or more security interest in any of the Panther’s assets or in any direct or indirect ownership of the company without prior NHL approval, which shall be withheld in the NHL’s sole discretion.\textsuperscript{110}

One of the risks associated with purchasing a more diversified company is the risk of potentially more, and significantly larger, problems. Such is indeed the case with the Florida Panthers. In one action, the Miami Sports and Exhibition Authority sued major components of the
company alleging a restraint of trade in the South Florida sports and entertainment facility market. The Company, however, believes that the suit is without merit and intended to vigorously defend against it.\textsuperscript{111} In another action, the Company sued the Miami Sports and Exhibition Authority seeking declaration of its rights under a license agreement, negotiated by an independent contractor which was retained to enter into agreements to use the Miami Arena. The District Court granted preliminary injunctive relief, holding that the Authority unreasonably withheld consent to an amended agreement between the parties.\textsuperscript{2} Also in January of 1997, the Company, through Arena Development, filed a lawsuit claiming that Broward County’s Prevailing Wage Ordinance did not apply to the construction of the Broward County Civic Arena. On February 21, 1997, the 17th Judicial Circuit ruled against the Company’s complaint, finding the Wage Ordinance to be applicable. The company has appealed, but the Fourth District Court of Appeals of Florida affirmed the trial court’s judgment and held that the prevailing wage ordinance did apply.\textsuperscript{3} The Company had stated that an unsuccessful appeal may cost approximately $4.5 million.\textsuperscript{4} In yet another lawsuit, disabled minors and one of their fathers brought an action against the Panthers and other groups, claiming that the Broward County Civic Arena, as planned, would violate the Americans with Disabilities Act (ADA).\textsuperscript{5} A United States District Court denied Defendants’ motions to dismiss.\textsuperscript{6}

In still another matter, a class action lawsuit was filed against the Company in January of 1997. In that suit, the Plaintiffs claim that the Company and some senior officers of the Company issued an extraordinary amount of negative comments and information regarding the Company’s two to three year potential, and gave a false impression of the Company’s intended direction, in conjunction with the November 13, 1996, IPO.\textsuperscript{7} For example, the prospectus stated the stock “should not be purchased with the expectation that the market performance of the company will be comparable to the past performance of other companies

\textsuperscript{111} See 1997 Prospectus, supra note 82, at 13.
\textsuperscript{114} See 1997 Prospectus, supra note 82, at 17.
\textsuperscript{116} See id.
with which Mr. Huzienga has been involved[,]" that "prospective purchasers should be aware that investments in sports franchises have not historically provided high rates of return compared to other investments of similar risk[,]" and that the Company would experience serious problems generating cash flow until the Panthers moved to the Broward County Civic Arena for the 1998-99 hockey season. As a result, the Class sold their shares, believing this constituted a long-term investment, while the Defendants made significant purchases of the Company's stock at an artificially depressed price, close to $10.00 per share. Then, on December 22, 1996, the Company announced that it would purchase two different resort properties and thereby become a leisure-time sports and entertainment company. On December 23, 1996, the Company's stock price rose 28%, and it rose another 33% on December 24, 1996, reaching a record high of $17.00 per share. Therefore, the Class claimed that the Defendants acted fraudulently and deceitfully with respect to the Class, resulting in substantial suffering on the part of the Class members. As with other lawsuits against it, the Company has stated that it "intends to vigorously defend against this lawsuit."

D. The Cleveland Indians

We conclude our review with an analysis of the Cleveland Indians of MLB. Cleveland was the last of these teams to come on the scene with respect to stock sales, but the documentation shows that the Indians learned lessons from their predecessors. On March 27, 1998, it was announced that the Cleveland Indians would issue two classes of stock, with Indians owner and Chairman Richard E. Jacobs maintaining control over voting interest of the team. The team's announcement cited the need "to raise cash for skyrocketing salaries, new stadiums, stadium improvements, and other ventures." Through the offering, the Indians are "the first free-standing team in professional baseball to go public."

118. These quotes were in capitalized, large, bold print in the original prospectus. See id. ¶ 26.
119. See id. ¶ 27.
120. See id. ¶¶ 5, 51.
121. See id. ¶¶ 33, 34.
122. See Class Action Complaint, supra note 117, ¶ 40.
123. See id. ¶¶ 47, 52.
124. 1997 PROSPECTUS, supra note 82, at 10.
125. See Jones & Rogers, supra note 7, at 1.
126. Id.
127. Id. at page 2.
What follows is a close look at the offering put forth by Cleveland Indians Baseball Company, Inc. (the “Company”).

1. The Offering

As a starting point, the Company offered 4,000,000 Class A Common Shares to the public. “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.”128 The initial public offering price per share was between $14.00 and $16.00, and the shares are listed on NASDAQ as “CLEV.”129 Upon completion of the Offering, the Company’s business will entail owning and operating the Indians, managing Jacobs Field (the Indians’ home ballpark), and conducting related activities.130

In order to succeed, the Company’s strategy includes “dedication to a strong player development system, effective player personnel management, attention to quality and customer service and an integrated approach to marketing and licensing arrangements.”131 The Company feels that the team’s long-term performance is crucial to the Company’s success, so “efforts to improve the Company’s revenues and income from period to period may be secondary to actions that management believes will enhance long-term value.”132 In addition, the Company warns that both the Commissioner and the President of the American League have authority to take actions in the best interests of MLB, actions that may not necessarily be in the best interests of the Company.133

2. The Benefits and Risks

First, the benefits, or lack thereof. In the foreseeable future, the Company does not intend to pay dividends to holders of either Class A or Class B Common Stock.134 Rather, the Company intends to retain all future earnings for reinvestment into the business.135 “Any future determination to pay cash dividends will be at the sole discretion of the Com-

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129. Id.
130. See id. at 13.
131. Id. at 3.
132. Id. at 10.
133. See 1998 PROSPECTUS, supra note 128, at 10.
134. See id. at 15.
135. See id. at 19.
pany's Board of Directors."\textsuperscript{136} The Indians do not say anything about the receipt of annual reports.

Turning to voting rights, each of the 4,000,000 Class A Common Shares offered for sale to the public are entitled to a single vote.\textsuperscript{137} Following the offering, Mr. Jacobs is the beneficial owner of 2,281,667 Class B common Shares, each share being entitled to 10,000 votes.\textsuperscript{138} Consequently, Mr. Jacobs retained 99.88\% of the Company's total voting control, meaning that he still controls the management and policies of the Company, including the election of the entire Board of Directors, except for certain charter amendments.\textsuperscript{139} Even if Mr. Jacobs elected to sell the team, MLB Ownership Guidelines require that an individual or group of no more than 20 individuals maintain at least a 10\% economic interest in the Company and a 90\% voting interest in the Company at all times.

We turn now to the risks. As with the other corporations, the Company's success depends somewhat on the team's performance. As an example, the Company generally recognizes revenues and expenses on a game-by-game basis. Since the MLB regular season typically begins in late March or early April, the Company's first quarter will generally include limited revenues\textsuperscript{140} and will reflect a loss attributable to fixed costs incurred during the quarter.\textsuperscript{141} Generally, any post-season revenues will be contained in the fourth quarter.\textsuperscript{142}

Whether the Indians will continue to bring people in the gates and participate in the post season will, moreover, depend on the team's ability to find or obtain, develop, and then retain talented players.\textsuperscript{143} The likelihood of the team succeeding will also depend, in large part, on serious or untimely injuries to key players. To protect against this risk, however, the Company is insured against having to pay players' salaries in the event of a player's death, and the Company has obtained insurance policies for substantially all of its players that are under multi-year contracts.\textsuperscript{144}

Another source of the Company's revenue includes the exclusive right to operate all Jacobs Field's concessions and to receive all revenues

\begin{enumerate}
\item[136.] \textit{Id.}
\item[137.] \textit{See id. at 8.}
\item[138.] \textit{See 1998 PROSPECTUS, supra note 128, at 8.}
\item[139.] \textit{See id.}
\item[140.] Revenue recognized in the first quarter consists primarily of spring training and exhibition games revenues, merchandise sales, concessions, and catering revenues. \textit{See id. at 21.}
\item[141.] \textit{See id. at 4.}
\item[142.] \textit{See id.}
\item[143.] \textit{See 1998 PROSPECTUS, supra note 128, at 9.}
\item[144.] \textit{See id.}
\end{enumerate}
therefrom.\textsuperscript{145} The Company also controls various forms of advertising signage, enabling it to coordinate the sale of advertising on the radio, on the Indians' internet site, in game programs, and throughout Jacobs Field by selling space on the main and ancillary scoreboards, outfield walls, and concourses of Jacobs Field.\textsuperscript{146} In the future, the agreement addressing the naming of Jacobs Field expires in 2013, which may produce additional revenue for the Company.\textsuperscript{147} As for merchandising, MLB Properties manages the licensing of the names, logos, mascots, uniforms, stadiums, and other marks of all MLB clubs.\textsuperscript{148} After payment of an agency commission to MLB Properties for its services, the net revenues from such licensing is divided equally among the clubs, not proportionately according to sales.\textsuperscript{149}

Further, the Company warns that "future increases in the [Cleveland Indians] Club's revenues, operating income and net income, if any, are likely to be substantially less than those realized over the past five years."\textsuperscript{150} One reason: the revenue sharing rate, which applies to a club's net local revenue, was 12\% in 1997 and 16\% in 1998 and will be 17\% in 1999 and 20\% in 2000. Once the pool of all clubs' contributions is accumulated, 75\% of the pool is redistributed to the teams equally on a pro rata basis. "The remaining 25\% is distributed to teams whose total revenue was below the average revenue for all clubs based on the extent to which that team's revenue was below the average."\textsuperscript{151} In addition, "[a]lthough the Company has generated net income in the recent past, the Company has also had periods of significant losses."\textsuperscript{152} Another reason for lesser revenue is the fact that MLB players' salaries have risen significantly over the past few seasons,\textsuperscript{153} and there is no reason to think that the present trend will change. Moreover, clubs that have an actual season payroll above a specified threshold minimum for that season may be subject to a luxury tax, although no more than five teams can pay a

\begin{itemize}
\item \textsuperscript{145} See id. at 37.
\item \textsuperscript{146} See id. at 38.
\item \textsuperscript{147} See id. at 44.
\item \textsuperscript{148} See 1998 PROSPECTUS, supra note 128, at 51.
\item \textsuperscript{149} See id.
\item \textsuperscript{150} Id. at 4.
\item \textsuperscript{151} Id. at 48. Moreover, while the Colorado Rockies and Florida Marlins, as expansion franchises, were exempt from the revenue sharing system for the 1996 and 1997 seasons, the each began participating in revenue sharing during the 1998 season. The newest expansion teams, the Arizona Diamondbacks and the Tampa Bay Devil Rays, will also begin participating in the revenue sharing starting in the 2000 season. See id.
\item \textsuperscript{152} Id. at 10.
\item \textsuperscript{153} See 1998 PROSPECTUS, supra note 128, at 11.
\end{itemize}
luxury tax during any given season. The amount of the tax is the difference between the club's actual payroll and the threshold minimum. In 1997, the Indians paid a $2.1 million luxury tax.

In addition, the Company must compete for entertainment and advertising dollars with other sports and recreational activities, not the least of which include professional football (Cleveland Browns of the NFL), professional basketball (Cleveland Cavaliers of the NBA and the Cleveland Rockers of the WNBA), and professional hockey (Cleveland Lumberjacks of the IHL). That is not to say that the Company is not being proactive in reducing costs and competing. As a small example, "[t]he Company is in the process of identifying and modifying all significant hardware and software applications that will require modification to ensure Year 2000 Compliance."

Depending on the Company's success, the Company's operations may require the periodic infusion of capital. Although the Company intends to finance its operations with cash flow from operations, shortfalls may require the sale of additional debt or equitable securities, potentially diluting the value of outstanding stock based on a greater supply.

Another risk associated with the Company rests in labor relations. For example, MLB has experienced seven work stoppages since 1972, including a cancellation of the 1994 World Series. Moreover, the current labor agreement is set to expire on October 31, 2000 or the last day of the 2000 World Series, whichever is later. The players do have the unilateral option to extend the agreement for one additional year.

Similar to the Panthers, another identified risk is that associated with litigation. In fact, the Indians' prospectus noted that "[t]he Company and MLB are involved in various lawsuits arising out of the ordinary course of business." However, the Company does not discuss these

154. See id. at 48.
155. See id.
156. See id.
157. Id. at 33.
159. Upon completion of the Offering, only 4,139,376 Class A Common Shares, out of 27,000,000 authorized Class A Common Shares, will be outstanding. See id. at 15. In addition, the Company has reserved 700,000 Class A Common Shares for a Stock Option Plan, which distributes shares to officers and key employees of the Company who contribute to its management, growth, and profitability. See id. at 54.
160. See id. at 11.
161. See id.
162. Id. at 44.
matters in detail, but simply states that it does not expect the outcome of these matters to have a material impact on the Company’s financial condition.163

3. The Future

Unlike the Florida Panthers, the Company’s opportunities for expansion beyond professional baseball is limited. The “Governing Documents [of MLB] intend that the Company be a single-purpose entity.”164 Thus, if the Company’s management determined that it is beneficial to expand into other areas of business, those Documents require the Commissioner to approve any such plans before they are placed into effect. This would not only delay but also has the potential to significantly hinder the entire expansion process. That is not to say that the Company would not consider expansion. “As part of its strategy, the Company may consider acquisitions of sports-related or non-sports related businesses as well as commercial properties that complement the Company’s existing operations or that provide the Company with the opportunity to leverage the capabilities of the management team.”165 Nevertheless, at the time of the offering, the Company was not negotiating the acquisition of any business or property.166

III. Conclusion

So are the stock sales of professional organizations sound investments or scams? When phrased in that respect, the question is truly a difficult one that cannot be answered either way. Most stock sales by professional sports teams are less of a financial investment and more of a show of support for the team selling the stock. In fact, individuals typically will get more out of framing the stock certificate and displaying it on their wall than they will from future financial returns. In that respect, stock sales resemble personal seat licenses: the team generates revenue from individuals making a one time investment with little or no expectation of future returns. The only hope for investors determined to profit off of owning a sports team as part of their stock portfolio would be investing in more diversified operations, such as the Florida Panthers. But, as with other types of financial instruments, along with the possibility of financial gains come the possibility of financial losses. So what is

163. See 1998 PROSPECTUS, supra note 128, at 44.
164. Id. at 12.
165. Id. at 39.
166. See id.
the future trend regarding stock sales by professional organizations? The Packers' Corporation decided to offer additional shares of stock after considering the great changes in NFL economics since the 1950 sale. So long as this method of revenue generation is successful, we can expect teams to join this trend as a new and creative way to gain money and thereby compete. Teams must, however, keep in mind the hard lesson learned by the Packers: "there is a limit to Packermania."167

167. Silverstein, supra note 52, at Cl.