THE NFL OPENS ITS DOOR TO PRIVATE EQUITY

Introduction

On August 27, 2024, NFL owners approved an update to the NFL investment and ownership rules (the "**PE Investment Rules**") to allow private equity investment in teams. From its inception, the NFL has limited team ownership to a select "chosen" group of individuals, making NFL owners the most exclusive club in US professional sports. Over the last five years, however, there's been a confluence of factors that have energized the NFL to allow private equity off the sidelines and into the field of play. The average NFL team is now worth US$6.49 billion[1], with no team valued at less than US$5.25 billion.[2] Lofty valuations, coupled with the US$700 million debt limit imposed on teams[3], significantly limit the number of individuals able to write equity checks in excess of a billion dollars, making ownership highly illiquid. What's more, the average age of controlling owners continues to increase; the average controlling owner in the NFL is 72.[4] As a result, controlling owners are now, more than ever, appreciating the need to establish an attainable exit strategy and estate plan for their next of kin.

The natural suitors for controlling owners are deep pocketed private equity sponsors with strong brands investing in sports.[5] Investment in the NFL presents a lucrative investment opportunity for private equity due to: (a) the proven consistent and noncyclical revenue streams of professional sports, (b) a media rights deal valued at US$111 billion which runs through 2033[6] and consistently increasing fan viewership on both linear and streaming platforms and (c) the growing ambition of NFL owners to modernize their facilities for

1 CNBC's Official NFL Team Valuations 2024: Here's How the 32 Franchises Stack up – cnbc.com

2 CNBC's Official NFL Team Valuations 2024: Here's How the 32 Franchises Stack up – cnbc.com

3 NFL Raises Debt Limit to US$1.4 Billion for New Buyers – sportico.com

4 Soaring Sports Team Values Create New Pressure for Owners on Taxes, Succession – cnbc.com

5 NFL's Chosen Private Equity Investors Already Have Big Sports Ties – frontofficesports.com

6 NFL's Next Big Media Rights Payday is Years Off — and Subject to a Shifting Industry – cnbc.com

multi-use purposes to enable them to earn revenue when their team is off the field.

This article highlights notable features of the PE Investment Rules in comparison to the investment and ownership rules of other US men's professional sports leagues.

Key differences between the NFL and other leagues

Lower Cap on Percentage Ownership and Higher Minimum Investment. The PE Investment Rules, when compared to other US men's professional sports leagues, have more conservative caps on a team's private equity ownership percentage and the ownership percentage of a single private equity fund in a team. While the NHL, the NBA and MLS cap a team's private equity ownership at 30%, and MLB at 20%, the NFL caps a team's private equity ownership at 10%. And, while the NHL, the NBA and MLS cap the ownership percentage of a single private equity fund in a team at 20%, and MLB at 15%, the NFL caps the ownership percentage of a single private equity fund in a team at 10%.[7] Additionally, the PE Investment Rules provide that a private equity fund's minimum ownership of a team must be at least 3%, which is well in excess of the investment floors of the NHL and MLS, which require, in each case, an investment of at least US$20 million[8]. Notably, the NBA and MLB have not publicly disclosed minimum investment requirements.

Investment by Sovereign Wealth Funds. Unlike the NBA[9] and NHL[10], which permit direct passive investment by sovereign wealth funds ("**SWFs**"), the PE Investment Rules prohibit SWFs from directly investing into teams. However, SWFs can indirectly invest in NFL teams as limited partners in private equity funds. The PE Investment Rules specify that no single investor in a private equity fund can own more than 7.5%[11] of such fund, and there is no explicit restriction on the identity of ultimate beneficial owners. Therefore, an SWF is indirectly able to own up to 0.75% of an NFL team.

In practice, however, it will be interesting to see how the NFL digests an SWF's potential indirect investment in a team. Notably, the NFL conducts extensive due diligence during its investment approval process, and it is reported that the PE Investment Rules provide the NFL with an information right to obtain the identity of a private equity fund's limited partners. Given the approval process is highly subjective, if the NFL is even slightly concerned about the potential political or brand risks that an ultimate beneficial owner may present to the NFL, then the NFL may condition its approval on such ultimate beneficial owner being removed from the ultimate beneficial owner group.

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[7] Arctos Makes Second Investment in 76ers, Devils at Higher Valuation – sportico.com

[8] NFL Private Equity Rules Let League Force Sales, Share in Upside – sportico.com

[9] Adam Sliver: No Plans to Let Sovereign Wealth Funds Control NBA Teams – espn.com

[10] One Year Ago, Qatar Broke Into US Team Sports. No One Followed – sportico.com

[11] Impact of NFL's Private Equity Decision Could Be Felt by Year's End – sportsbusinessjournal.com

Permitted Investor List and Creditworthiness Requirements. In line with its conservative approach, and similar to the NBA[12], the NFL preapproved a set list of four private equity funds / consortiums to invest in its teams. The list is comprised of Arctos Partners, Ares Management, Sixth Street and a consortium group consisting of Blackstone, Carlyle, CVC Capital Partners, Dynasty Equity and Ludis for initial investments (the "**Permitted Investors**"). The Permitted Investors initially intend to commit a combined US$12 billion of capital over an unspecified term ("**Initial Capital**"), which on average is approximately US$500 million of additional liquidity per team.[13] With each of the Permitted Investors able to invest in up to six teams, a maximum of 24 teams can benefit from the Initial Capital. As a result, a minimum of seven eligible teams cannot benefit from the Initial Capital, with most teams who receive a portion of the Initial Capital remaining under the 10% private equity investment cap. Notably, the Green Bay Packers are not eligible to benefit from private equity investment due to its distinctive community-based ownership structure.[14]

The Permitted Investors, depending on the applicable private equity fund's governance structure, will likely need to exit its team investments between six and 10 years from the date of initial investment. In light of the current liquidity issues the NFL faces, the ever-increasing valuations of teams and the limited list of Permitted Investors, it is more than likely that the NFL will need to expand the list of Permitted Investors in the coming years.

The PE Investment Rules include certain creditworthiness requirements for private equity funds investing in teams. Private equity funds must have US$2 billion in capital commitments and are only allowed to invest up to 20% of such capital commitments in a single team.[15] The PE Investment Rules' capital commitment requirement is more restrictive than those required by MLS, which requires a private equity fund to have US$500 million of capital commitments[16], and the NBA, which requires a private equity fund to have at least US$750 million in assets. In contrast, the NFL's cap on a private equity fund's capital commitment into a single team is less restrictive than the 10% cap set by MLS[17] and more restrictive than the 25% cap set by the NBA. All other US men's professional sports leagues have not publicly disclosed specific creditworthiness requirements.

Lock-ups. The PE Investment Rules subject private equity investments to a six-year minimum holding period.[18] Similar restrictions are seen in the NHL, which subjects all investments to a five-year minimum holding period, and the MLB, which subjects investments in multiple teams to a five-year holding

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[12] NBA Private Equity Ownership Rules: Can PE Own Stakes in Teams? – sportico.com

[13] NFL Owners Vote in Favor of Private Equity Investment; Select Firms Commit US$12 Billion – cnbc.com

[14] Private Equity Ownership Is Coming to the NFL – wsj.com

[15] NFL Opens Door to Private Equity – sportsbusinessjournal.com

[16] MLS Private Equity Rules Include US$500M Floors, Voting Limits – sportico.com

[17] Global Soccer Private Equity Ownership Rules: Can PE Own Teams? – sportico.com

[18] NFL's Private Equity Rules Tighter Than NBA, MLB or NWSL – sportico.com

period. Notably, the NBA and MLS have not publicly disclosed any holding period requirements on investments by financial investors.[19] With the typical private equity fund life lasting seven to 10 years, private equity sponsors need to be creative in their exit strategies to ensure liquidity for their limited partners.

Noteworthy provisions

Although not directly disclosed or confirmed by the NFL, it has been reported that the PE Investment Rules include protective and other favorable provisions for the NFL.[20] In particular, the PE Investment Rules may include a call right in favor of the NFL to force a private equity fund to sell its stake to an approved third party if certain triggers are met; which triggers may include one or more of the ultimate beneficial owners of a private equity fund presenting political or brand risks for the NFL. Additionally, the Permitted Investors granted the NFL an information right to review the limited partners in the private equity funds investing in the league, and will subject their limited partners to the representations and warranties contained in the NFL team governing and investment documents.[21]

Further, there are confirmed reports[22] that the PE Investment Rules require a private equity fund to share a slice of the profits with the NFL upon a liquidity event, which is a bellwether in US professional sports. Such profits would be divided up among the NFL owners similarly to how the NFL currently allocates revenue from media rights and national sponsorships.

Conclusion

The NFL is the pinnacle of US professional sports, and its successes, achievements and proven ability to quickly adapt to consumers' interests have resulted in increasing valuations for its teams. With the NFL's goal in adopting the PE Investment Rules being to provide liquidity to current owners and capital infusions to teams for capital expenditures, together with ensuring team governance and controls aren't affected, the changes are not expected to negatively impact the fan experience and culture of the NFL. The PE Investment Rules, when combined with the already existing strict ownership rules, demand thoughtful consideration, especially as the dust settles after the PE Investment Rules are initially put into practice and when the first private equity fund seeks its exit. Stay tuned for what will be a dynamic and fluid market for years to come.

[19] Private equity in the NFL? How team ownership might shift – espn.com

[20] NFL Private Equity Rules Let League Force Sales, Share in Upside – sportico.com

[21] NFL Private Equity Rules Let League Force Sales, Share in Upside – sportico.com

[22] NFL Wants a Cut of Private Equity Investment Profits – cnbc.com

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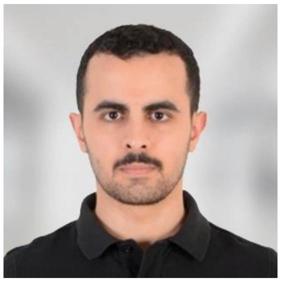

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