REPORT TO THE SPECIAL COMMITTEE OF THE NATIONAL BASKETBALL PLAYERS ASSOCIATION CONCERNING THE LEADERSHIP AND BUSINESS PRACTICES OF THE NBPA

EXECUTIVE SUMMARY

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This Report presents the results of the investigation commissioned by a Special Committee of the National Basketball Players Association (the "NBPA" or the "Union") concerning the current leadership of the NBPA.

Our investigation has concluded that the facts do not show that the Union's Executive Director, G. William ("Billy") Hunter, engaged in criminal acts involving embezzlement or theft of Union funds. Nevertheless, in our judgment, the facts do show that, at times, Mr. Hunter's actions were inconsistent with his fiduciary obligations to put the interests of the Union above his personal interests. Further, Mr. Hunter did not properly manage conflicts of interest. We also find that the NBPA's Board of Player Representatives never properly approved Mr. Hunter's current employment contract with the Union as required by the Union's Constitution and By-Laws, that Mr. Hunter was aware that his current contract was never properly approved and that he knowingly failed to disclose this information to the Executive Committee and the Player Representatives. Based on the findings of this report, the NBPA should consider whether Mr. Hunter should remain as the Union's Executive Director and whether new and more effective controls should be enacted to govern the NBPA, its Foundation and its Executive Director, whoever that may be.

Executive Summary

A. Background

On April 15, 2012, NBPA President Derek Fisher called for an inquiry into the Union's business practices. Although the NBPA's Executive Committee did not proceed with the inquiry Mr. Fisher proposed, its members nevertheless recognized the need for a review of some kind.

Shortly thereafter, *The New York Times*, *Bloomberg News* and *Yahoo! Sports* published articles about Mr. Hunter and the NBPA. (Exs. 1-3) These articles discussed, among

other things, allegations of nepotism, conflicts of interest and the potential misuse of Union funds. For instance, *Bloomberg* reported that the Union employed Mr. Hunter's daughter Robyn and his daughter-in-law Megan Inaba; that Mr. Hunter's son Todd worked for the Union's outside financial advisor, Prim Capital Corp.; and that Mr. Hunter's daughter Alexis worked for law firms that Mr. Hunter had engaged to represent the Union, namely, Howrey LLP and Steptoe & Johnson LLP. The *Yahoo! Sports* story claimed that Mr. Hunter had considered using NBPA funds to invest in a failing bank—Interstate Net Bank or "ISN Bank"—at a time when Mr. Hunter's son Todd served on its Board of Directors. The *New York Times* article featured an interview of Mr. Hunter, who responded to the allegations.

These articles generated significant additional media attention. On April 25, the United States Attorney for the Southern District of New York issued a subpoena to the Union calling for the production of financial and other business records. The issuance of the subpoena led to further media coverage of the Union's practices and Mr. Hunter's involvement in them. (Exs. 4 and 5)

This combination of events—Mr. Fisher's request, the news articles and the subpoena—led the NBPA Executive Committee to decide that, to enable the Union to move forward with the trust of its members and confidence in its Executive Director, the Union must conduct a comprehensive and independent investigation. On April 26, the Executive Committee created a six-member Special Committee to oversee both the independent internal investigation and the Union's response to the subpoena. James Jones, NBPA Secretary-Treasurer, was selected to serve as chairman.

The following day, the NBPA announced that the Special Committee had retained the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP to conduct the internal

investigation and respond to the subpoena. The NBPA press release states: "Paul, Weiss will report directly to the Special Committee. NBPA Executive Director Billy Hunter has pledged his full cooperation with the internal inquiry, although he has recused himself from the process to ensure that it is an independent one." (Ex. 6)

Shortly thereafter, Deloitte Financial Advisory Services LLP was retained by Paul, Weiss to assist with the internal investigation and work under its direction. Neither Paul, Weiss nor Deloitte has any pre-existing professional relationship with the NBPA or its employees, including Mr. Hunter, the members of the Special Committee, or their representatives.

B. Summary of Conclusions

In keeping with the Special Committee's instructions, our investigation initially concentrated on the issues the media raised. Over the course of the investigation, however, we also considered questions brought to our attention by NBPA members, Union employees and others whom we interviewed, as well as other matters that emerged through our review of Union documents. We focused primarily on certain decisions that Mr. Hunter made as the NBPA's Executive Director, but we also considered, to a lesser extent, the actions of other individuals both inside and outside of the Union.

Our first objective was to identify potential criminal wrongdoing. After an exhaustive review of tens of thousands of pages of documents, including years of Union financial records and emails, and after evaluating statements made by more than three dozen witnesses, we conclude that the evidence does not show that Mr. Hunter embezzled or stole money from the NBPA. But our inquiry was not confined to criminal misconduct. We have concluded that, at times, Mr. Hunter took actions that were inconsistent with his fiduciary obligations to the NBPA, displayed poor judgment, paid little attention to the appearance of

impropriety that his conduct could foreseeably create and did not properly manage conflicts of interest. We cannot say that he alone was responsible in all instances for these missteps, for we believe that the NBPA lacked important systemic controls involving basic principles of corporate governance, including the management of self-dealing transactions, and that other Union representatives did not always satisfy their own responsibilities. Yet as the chief executive officer of the Union, Mr. Hunter stands responsible for ensuring that such controls be put in place. In this important task he failed.

The federal laws that govern labor unions, and the laws of the State of Delaware (where the NBPA is incorporated) that govern officers and directors, impose certain duties on Mr. Hunter as the Union's Executive Director. Specifically, in that capacity, Mr. Hunter occupies a position of trust, and thereby owes duties of loyalty, candor and care to the NBPA. Each is important. The duty of loyalty obligates Mr. Hunter to put the Union's interests ahead of his own, and prohibits him from using his office to obtain benefits for himself, his family or his friends at the expense of the Union, and certainly not without the well-informed disinterested consent of others in the organization following full disclosure of the facts. The duty of loyalty requires Mr. Hunter to make decisions regarding the NBPA objectively, unburdened by personal considerations, to obtain advance permission from independent officers and directors and to abstain from participating in decisions in which his relationships could impair his objectivity. The duty of candor is closely related; it requires Mr. Hunter to be honest in his dealings with the Union and to disclose to the NBPA all material information about business decisions that could potentially provide benefits to him, his family or his friends. The duty of care obligates Mr. Hunter to discharge his responsibilities as Executive Director in good faith, and with a reasonable degree of diligence, attention and skill.

Evaluating Mr. Hunter's adherence to these fiduciary obligations requires inspection of his approach to actual or perceived conflicts of interest, a term we use throughout this Report to refer both to actual conflicts of interest in which parties are obviously adverse by reason of their differing interests, as well as situations that needlessly create the appearance of divided loyalties. We sought to determine whether Mr. Hunter was aware of conflicts that arose during his tenure, and whether he appropriately managed such conflicts, including by disclosing them to the NBPA's Executive Committee and/or Board of Player Representatives (the Union's officers and directors, respectively) and implementing sufficient internal controls.

Our inquiry disclosed certain instances in which, in our judgment, Mr. Hunter acted in a manner inconsistent with his fiduciary obligations to the NBPA. As a result, at times he entangled the Union in actual or potential conflicts of interest, failed adequately to disclose those conflicts and took inappropriate advantage of his position as Executive Director. Of most concern, Mr. Hunter:

- Never told the Union's Executive Committee or Player Representatives that his current employment contract, which was executed in 2010, was not properly approved under the Union's By-Laws, even though by at least November 2011 outside counsel to the Union had told Mr. Hunter that the necessary approval had not occurred and remained necessary;

- Obtained the Union's agreement to pay him $1.3 million for accrued but allegedly unused vacation time (146 days) without adequate independent review of underlying records and without securing independent advice for the Union on its obligation to make the payment;

- Involved family and friends in Union business as employees or vendors without full disclosure and the disinterested approval of the Union's officers and directors; and

- Created an atmosphere at the NBPA that discouraged challenges to his authority, including by allowing the Union's former General Counsel, Gary Hall, to stop former Secretary-Treasurer Pat Garrity from speaking freely about conflicts of interest to the Executive Committee.

Of somewhat lesser concern, but still important, are instances in which Mr. Hunter made decisions that reflect poor judgment, display insensitivity to conflicts of interest, call into question his stewardship of Union resources or raise serious doubts about his interest in the policies and procedures that protect the Union in the orderly conduct of its affairs. For example, Mr. Hunter:

- Considered what would have been a risky investment of millions of dollars in ISN Bank, a failing financial institution, without disclosure to the Executive Committee that his son Todd was then a director of the bank, and spent more than $80,000 in due diligence expenses before abandoning the transaction;

- Approved a payment by the Union of approximately $28,000 to cover personal legal fees incurred by Charles Smith, the former Executive Director of the National Basketball Retired Players Association ("NBRPA");

- Made questionable choices when charging travel expenses to the Union, which at a minimum create the appearance that he has taken undue advantage of the discretion he possesses to travel to destinations of his choosing;

- Pursued speculative and, for the Union, atypical business ventures as potential investments;

- Spent Union funds on luxury gifts for Executive Committee members, including nearly $22,000 for a watch he gave to Derek Fisher in June 2010;

- Failed to observe principles of proper governance at the Union, including by neglecting to ensure that the NBPA's By-Laws were followed and appropriate systems were put in place to safeguard against possible misuse of Union funds, conflicts and similar risks; and

- Ran the NBPA Foundation (the "Foundation"), a separate entity through which the Union supports various charitable organizations, without regard for its by-laws or governance standards applicable to non-profit entities.

Conflicts of Interest

Mr. Hunter's Current Employment Contract

Mr. Hunter's existing employment contract with the Union is dated June 23, 2010. (Ex. 10) According to Mr. Hunter, although his prior employment contract, from 2005, did not end until July 2011, he sought a new agreement in early 2010 because he did not want to enter the upcoming collective bargaining negotiations against the NBA without his own new contract. Mr. Hunter got what he wanted. In June 2010, Mr. Hunter and Derek Fisher, on behalf of the Executive Committee, signed a new multi-year contract that increased Mr. Hunter's annual salary from $2.3 million to $3 million starting in July 2011. This agreement was worth a total of at least $12 million (and up to $18 million) depending on whether the contract extends to 2015 or 2017.

There was nothing wrong with Mr. Hunter seeking a new contract before the expiration of his old one, or with the reason he requested a new one. Nor does every provision of the resulting contract appear facially unreasonable or unfair to the Union. We are concerned about the circumstances surrounding the negotiation of the contract, and the failure to comply with the Union's By-Laws on contract approval. Although others involved in these matters bear some blame, we believe Mr. Hunter should have ensured that the contract negotiation process was fair and that the Union's interests were adequately protected. This he did not do.

Mr. Hunter's interest in obtaining another multi-year, multi-million dollar agreement placed him on the opposite side of the bargaining table from the Union: his interests and the Union's interests were adverse. In contrast to many Executive Committee members, who lack legal training and extensive experience in contract negotiations, and have limited time for Union matters during the NBA season, Mr. Hunter possessed superior knowledge and sophistication about legal and financial matters, especially owing to his distinguished

background as an attorney and his long tenure as Executive Director. Even were that not the case, Mr. Hunter had a duty to recognize that a conflict infected his contract negotiations against the Union. To manage that conflict, the Union needed unbiased and independent advice from professionals acting solely in the Union's interests without the fact or appearance that Mr. Hunter could influence the exercise of their judgment.

This surely could not be a surprise to Mr. Hunter. One of his primary responsibilities as Executive Director is to assure that the NBPA's members are adequately represented in their contract negotiations with NBA teams. In addition, he must have known that his new contract would involve a significant and ongoing financial liability for the NBPA. Mr. Hunter should have appreciated that in the contract negotiations the Union was entitled to independent professional advice.

Instead, our inquiry shows that the late Gary Hall, then the Union's General Counsel, served as the only lawyer in the contract negotiations. It is not unusual for a general counsel to represent an organization in negotiating contracts with its employees, but in such cases the organization reasonably expects that it will receive the general counsel's undivided loyalty. Here, Mr. Hall's allegiance to the Union was compromised by his close 30-year personal relationship with Mr. Hunter, who considered Mr. Hall his best friend and as close as a brother. More troubling, the facts show that Mr. Hunter alone hired Mr. Hall (without a search for other candidates); Mr. Hunter alone determined his salary; and Mr. Hunter alone supervised him. This meant that Mr. Hunter—the supposedly adverse party—controlled the position, the income, and the duties of the lawyer supposedly negotiating against him. And the record shows, as more fully explained below, that in the past Mr. Hall had wrongly protected Mr. Hunter when

Pat Garrity attempted to bring legitimate concerns about Mr. Hunter's conduct and conflicts to the Executive Committee.

It is thus not surprising that Mr. Hall appeared to some as biased in Mr. Hunter's favor. Derek Fisher and James Jones each felt that, during the negotiations for Mr. Hunter's employment agreement, Mr. Hall seemed to be representing Mr. Hunter more than the Union. According to Mr. Jones, Mr. Hall "made the case" that Mr. Hunter deserved a salary increase—in other words, Mr. Hall, the Union's lawyer, was Mr. Hunter's advocate. Mr. Fisher considered the negotiations to be "one-sided," and reported that the interests of the Executive Committee were not represented "in a fair manner." In addition, in April 2010 Hall sent the Executive Committee an email that purportedly contained comparative salary information for the current and former Executive Directors of the NFLPA. We do not know the source of Hall's information, but it may have been incorrect. The numbers Hall provided to the Committee for DeMaurice Smith and Gene Upshaw are higher than the salary information that was publicly reported in the LM-2 forms for the NFLPA at the time.

These facts show that the blame for the one-sided negotiations does not rest on Mr. Hunter alone. Mr. Hall had a professional obligation to assure that his client the Union had the benefit of independent legal representation and accurate information. And as the Union's President, Mr. Fisher also owes fiduciary duties to the NBPA. If he believed that Mr. Hall was not adequately representing the Committee's interests during the negotiations, he should have said so and sought a different lawyer. But these lapses do not excuse Mr. Hunter's own obligation to assure a fair process of contract negotiation.

One provision of that contract says that the Executive Committee "had the unrestricted opportunity to be represented by independent legal counsel of [its] choice" in the

contract negotiations. Although this provision is perhaps very narrowly true in the most technical sense that the Executive Committee had the "opportunity" to select independent counsel, arguably that statement was not really true in these circumstances, because no one gave the Executive Committee the meaningful chance. No one advised the Executive Committee to hire independent outside counsel. It is difficult not to wonder whether that provision was included in the contract as an insurance policy to defend against the awkward circumstance of Mr. Hall negotiating with Mr. Hunter. Had the Committee been represented by independent counsel, the Committee might have been advised that it should consider a contract extension of a shorter duration, perhaps only one year, so that the NBPA's members could evaluate Mr. Hunter's performance in the upcoming collective bargaining negotiations with the NBA before agreeing him to give him another multi-year contract at a significant salary increase.

The circumstances surrounding the negotiation of the contract are troubling and would be relevant in any ultimate determination on the propriety and enforceability of the contract. But the failure to comply with the Union's By-Laws in approving it is of more immediate concern. Article V, Section 1 of the NBPA's Constitution and By-Laws (the "By-Laws") states:

> The Executive Director shall be appointed by the Board of Player Representatives and the Executive Committee of the Players Association. The appointment of an Executive Director, and the terms of his employment contract, must be approved by two-thirds (2/3) of the combined total of all Board of Player Representatives and Executive Committee members. (Ex. 7)

The Executive Committee apparently approved Mr. Hunter's contract on or about the time of its execution, though no record of such a vote appears in the minutes of the Committee's meeting of June 23, 2010. Mr. Hunter and Mr. Fisher each signed and dated the contract that same day. Yet the By-Laws unambiguously require two-thirds of the combined

total membership of the Executive Committee and the Board of Player Representatives—a supermajority—to approve the contract. The record is clear that the Board of Player Representatives did not vote to approve Mr. Hunter's contract, nor did anyone tell the Player Representatives that they were required to consider whether they wanted to approve it. Mr. Hunter should have been aware of the provisions of the By-Laws governing the proper procedure for approval of his contract. The record shows, however, that Mr. Hunter did nothing to alert the Union's Board of Player Representatives or the Executive Committee to these procedures, even after he was told that the contract had not been properly approved.

This happened in November 2011, when Steve Wheeless, a partner in the law firm of Steptoe & Johnson whom Mr. Hunter had retained to assist the Union during the NBA-imposed lockout, sent an email to Mr. Hunter discussing a plan (later abandoned) of restructuring the Union as part of its collective bargaining strategy. (Ex. 15) In the email, labeled "HUNTER EYES ONLY," Mr. Wheeless recommended that Mr. Hunter take steps necessary to "ratif[y Mr. Hunter's] employment contract as required by the prior By-Laws, <u>which was never done</u>" (underlining in original). Despite this recommendation—made sixteen months after the contract should have been submitted to the Board of Player Representatives—Mr. Hunter still did not bring the matter to the attention of the Union's Board of Player Representatives or the Executive Committee. Although no reasonable explanation exists why this was not done in June 2010, no plausible basis could exist for not doing so once Mr. Hunter was told of the flaw in November 2011. It is obvious that any fear Mr. Hunter may have had that he would lose a vote to ratify the contract would not justify a failure to comply with the By-Laws. Mr. Hunter's silence in these circumstances placed the Union at risk by raising the prospect of a challenge to actions he took pursuant to a contract that lacked proper authorization.

When interviewed, Mr. Hunter acknowledged that the Board of Player Representatives never voted on his contract and that he should have addressed Wheeless's observation that the Board had not approved his contract. Mr. Hunter told us that he planned to put the ratification of his contract on the agenda for the Union's February 2012 meetings, but, he said, he did not do so because he anticipated that, as a result of poor attendance at All-Star Weekend, a quorum of the Board of Player Representatives would be lacking. He also said that he deferred dealing with the problem in the months following the February meetings in part because of Mr. Fisher's call for a review of the Union's business practices, and the initiation of this investigation. By Mr. Hunter's own admission, he did not mention this issue to any NBPA members until after we brought it to his lawyer's attention in October 2012.

No serious question exists, then, that Mr. Hunter's current employment contract has not been properly approved as required by the Union's By-Laws. We believe that the Board of Player Representatives and the Executive Committee should decide, going forward, whether or not Mr. Hunter should continue to occupy the position of Executive Director, and they should focus on that decision during their meetings scheduled for All-Star Weekend in February 2013. We believe that the officers and directors have two choices: (1) decline to ratify Mr. Hunter's contract retroactively, and search for a new Executive Director; or (2) permit Mr. Hunter to continue running the NBPA and properly approve a contract for him. To the extent that the Player Representatives and the Executive Committee choose the second option, however, we recommend that they consider negotiating a new agreement with Mr. Hunter, instead of simply ratifying the contract he signed in 2010, because in our view the agreement is the product of a flawed negotiating process for which Mr. Hunter bears much responsibility.

Payments to Mr. Hunter for Unused Vacation Days

In early 2009, Mr. Hunter received two disbursements from the Union that totaled approximately $1.3 million, which compensated him for 146 vacation days that he had supposedly accrued as Executive Director but purportedly had not used. These payments also resulted from a flawed bargaining process.

The employment contracts that Mr. Hunter signed in 1999 and 2005 awarded him five and seven weeks of paid vacation per year, respectively, and did not limit the number of unused days he could carry forward from one year to the next. This contrasts with the policy applicable to all other Union employees, whose ability to accrue vacation time was strictly limited to ten days. In certain circumstances, it is not an unreasonable business decision for an organization to free its chief executive of limitations applicable to other employees. For us the question is whether in negotiating the employment contracts the parties reasonably contemplated that scores of vacation days would be accrued as contingent liabilities on the Union's balance sheet, without any cap, based solely on Mr. Hunter's self-reporting of his vacation time. Such an outcome is, to be kind, unusual and inconsistent with best practices.

Mr. Hunter's vacation time was recorded on a hand-written log that his executive assistant maintained based solely on his own determination of which workdays spent out of the office should be counted as vacation, sick or personal days. (Ex. 22) Strictly monitored, such a reporting practice might not be inappropriate. But here the practice was not monitored, and the self-reporting at times was demonstrably wrong. Equally important, the process for payment, though something that Mr. Hunter did not initiate, was rife with the stigma of self-dealing for which Mr. Hunter showed no appreciation.

In April 2008, the NBPA's Director of Finance, Theresa Messer, informed Mr. Hunter that his vacation accrual amounted to 124 days, worth more than $1 million, and that

this amount was "a huge unsecured liability on [the Union's] balance sheet" that was continuing to grow at a rate of $26,500 per month. Ms. Messer suggested that the Union make a payment to Mr. Hunter to reduce this liability. For Ms. Messer to raise this issue was right; a significant contingent liability on the Union's books needed fixing.

In October 2008, Mr. Hunter requested that the Executive Committee authorize such a payment, and it was subsequently given to him in two installments in January and March 2009.

Hunter's request for payment of his unused vacation time starkly placed his personal monetary interest against the Union's interest. Mr. Hunter knew or should have known that the Committee members did not receive independent advice to evaluate his claim that he deserved the payment. Had the Committee members received independent advice, from their own attorney or compensation consultant, they would have learned that Hunter's request was far from ordinary. Such an advisor would have recognized that it was unlikely that the employment contracts had been negotiated with the expectation that so many unused vacation days would accrue at such a tremendous cost to the Union, and that the agreements were silent on whether Mr. Hunter was entitled to a monetary payment as opposed to being told to use the accrued, unused vacation days. At a minimum, an independent professional would have instantly recognized that the request raised legitimate issues that gave the Union negotiating leverage over the amount of the excess compensation that Mr. Hunter demanded.

An independent advisor would likely also have appreciated that it was necessary to review the records that Mr. Hunter's assistant maintained to assess their accuracy. No one conducted such a contemporaneous review. Our own review of the by-now-dated records proved that they were, to some extent, unreliable and inaccurate. We identified several erroneous entries

that, upon review, Mr. Hunter conceded were mistakes. We also discovered multiple potentially inaccurate entries that stemmed from Mr. Hunter's at times questionable self-reporting of his vacation time. For example, in December 2006 and January 2007, Mr. Hunter spent approximately two weeks at his home in Oakland, California during the Christmas and New Year's holiday period. By email, he told a friend:

> I spent Christmas and New Year's Eve in Oakland with Janice and Alexis. Robyn, Todd, [and] Megan were here in NYC. The weather on the west coast [was] not too good so I was sequestered most of the time at home. Did get to see a lot of movies over the holidays and view a lottttt of television. God willing, next Christmas will be spent in Jamaica or some similar spot. (Ex. 26)

Yet he did not report taking a single vacation day during this period. (Ex. 22) Even after reviewing this email, and being asked to consider whether his reporting of vacation time was accurate, Mr. Hunter did not concede that any changes were necessary to the vacation log for this time period.

If Mr. Hunter knowingly chose not to report taking vacation on days that he spent enjoying leisure at home and not working on any Union business, and thereafter sought reimbursement with the intent that the Union would rely on his reporting to reimburse him, then he could be found to have defrauded the Union in the amount of tens of thousands of dollars. Our analysis of whether Mr. Hunter did so was ultimately inconclusive, however, largely because of the passage of time and the incomplete nature of the relevant records. At the same time, and for the same reasons, we cannot establish that his reporting for the days he spent away from the office was accurate and appropriate, much less that the records support his request for a huge payout of accrued vacation time.

A number of the Committee members who approved the payment to Mr. Hunter for unused vacation time reported that they felt that they had no choice but to accede to

Mr. Hunter's request, although, according to one former member of the Committee, "no one loved the idea." Had they received independent advice, they would likely have learned that they had options for negotiating with Mr. Hunter, and it was possible that a compromise could have been reached in which Mr. Hunter received a significantly smaller payment than the one he had requested.

Employee Hiring and Vendor Retention Decisions

As news stories published in April 2012 alleged, Mr. Hunter has engaged in a pattern of involving his family and friends in Union business. He hired his daughter Robyn, his nephew Hal Biagas and his best friend Gary Hall to work directly for the Union, and permitted Megan Inaba to remain a Union employee after she became his daughter-in-law. Mr. Hunter has also chosen to retain or continue to use as Union vendors companies that employ his children. This last category includes Prim Capital, where Mr. Hunter's son Todd is a Director. Although the NBPA's relationship with Joe Lombardo, Prim's owner and Managing Director, predates Todd's employment, Mr. Hunter expanded Prim's role with the Union and authorized substantial fee increases for Prim after Todd joined the firm in 2002. Another example in the same category is Mr. Hunter's retention of two law firms that employed his daughter Alexis as an attorney, including one for critical work relating to collective bargaining and the lockout in 2011. Each of these decisions by Mr. Hunter presented actual or potential conflicts of interest and Mr. Hunter should have obtained the unbiased and independent review of the Union's officers or directors before making such decisions. He did not do so.

Each of the foregoing has its own story, and so our objections to them vary with the facts. Yet all share common objectionable features. Each of Hunter's relatives employed by the Union currently reports directly and only to him and he alone determines their compensation. He has the final say on whether the Union uses key vendors such as Prim Capital and Steptoe &

Johnson, and how much they are paid. Of particular note is that Mr. Hunter and his son communicated about Prim Capital's request for fee increases, which Mr. Hunter admitted to us was inappropriate.

When asked to explain the decision to involve his family in Union business, Mr. Hunter asserted that the Union's By-Laws did not prohibit the hiring of his relatives, and claimed that each of them was well-qualified, talented and loyal. We do not contest that Mr. Hunter's relatives were qualified for their jobs, and our analysis suggests that they were not paid excessive compensation. We accept that the NBPA By-Laws are silent on whether the Executive Director may hire family members. Yet silence in by-laws does not supplant the ordinary operation of federal and Delaware law on self-dealing transactions and the proper management of conflicts of interests. A law degree is not needed to recognize that hiring relatives raises issues when a person occupies a position of trust and owes duties to others. Common sense is enough to see that nepotism is a problem. It appears that an unacceptable pattern of nepotism in the Union's hiring and procurement decisions emerged over many years. Over time, it seems to us, Mr. Hunter developed a blind spot for how his decisions to involve family and friends in Union business would be perceived, and failed to see the adverse consequences these decisions could have on the operation and culture of the Union.

Doubtless Mr. Hunter has arguments that try to justify each such decision. No matter the explanation, when viewed collectively, his choices created the appearance that he operated the Union in part for the benefit of his family and friends. It was not possible to determine precisely when a tipping point was reached, but at some point in time, NBPA employees concluded that Mr. Hunter was running the Union as a "family business" and, in the word of one, felt "surrounded" by Hunter family members.

The appearance of favoritism has damaged the Union. Mr. Hunter's pattern of involving friends and family in Union business contributed to a deep rift among the NBPA staff. Multiple witnesses reported that the Union's employees have grown divided into two camps: those who are loyal to the Hunter family and those who are regarded as opposed. It appears that the NBPA's office is currently unable to operate as effectively as it should owing to unnecessary hostility and mistrust between the rival sides. In addition, staff morale has been hurt because multiple employees have come to believe, rightly or wrongly, that Hunter family members get preferential treatment from him. Such is the inevitable result of nepotism, and the reason that proper corporate governance rules so strongly frown on the practice.

That is not all. Nepotism in a public organization attracts unwanted attention. When Mr. Hunter's hiring and vendor decisions eventually came to light in the press, the allegations of nepotism undermined the Union's reputation, led to this investigation and may also have contributed, at least in part, to the ongoing federal criminal investigation. These negative consequences were both costly and foreseeable. Mr. Hunter admitted that he anticipated that certain of his decisions concerning family members might result in public criticism. He should have also recognized that involving so many relatives and friends in Union business would inevitably be perceived as—and turned out to be—inconsistent with his obligation to put the Union's interests first.

As set forth in the recommendations below, to address nepotism concerns, we encourage the Union to adopt a more comprehensive conflicts of interest policy. In addition, the Union should consider not continuing to use the services of Prim Capital, not only because Prim employs Mr. Hunter's son, but also because in our opinion Prim failed to cooperate fully with the investigation.

In the course of this investigation, after initially agreeing to cooperate, Prim subsequently refused to comply with requests for documents and information concerning important questions. For example, Prim refused to disclose the amount of fees it may have made from referring NBPA members, and possibly the NBPA itself, to certain financial institutions, even though its Chief Operating Officer had informed us that such data could easily be compiled in a spreadsheet and provided to us. As a result of Prim's refusal to give us highly relevant information, we are not able to provide analysis or findings about the propriety of Prim's relationship with the Union. Because Prim is the Union's financial advisor, it is important that the Union have full trust in Prim and a complete understanding of its relationship with Prim. We believe that in failing to cooperate fully with our investigation, Prim has not acted appropriately.

Even more alarming than Prim's abrupt refusal to cooperate with this investigation is that on January 15, 2013, two days before this Report was released, we received directly from Prim a document resembling a letter agreement for services between Prim and the Union, which was purportedly executed in early March 2011. We had never seen this document previously. When interviewed, neither Mr. Hunter nor any Prim employees reported that a contract between Prim and the Union had been signed in 2011. During the course of our investigation, Theresa Messer, the NBPA's Director of Finance, told us that the last known existing contract between Prim and the Union was a 2005 agreement, which had expired after one year, according to its terms, and we analyzed the Union's relationship with Prim in light of that document. Indeed, when asked during his interview whether he would agree that there was currently no written contract in place with Prim, Hunter stated, "I'm not aware of one," and added, "I would say if [the 2005 agreement] doesn't continue, we have an oral contract."

When we brought the document that we received from Prim two days ago to the attention of Ms. Messer, who manages the Union's use of Prim and meets with Prim representatives regularly, she was shocked to see it, and confirmed that she had not been aware of its existence. She explained that in prior years, in response to requests from the Union's outside auditors, who believe that the Union should have valid contracts with key vendors, she has asked Prim for its most up-to-date agreement with the Union. No document other than the 2005 contract was ever provided in response.

Unlike each of the previous agreements between Prim and the Union, which allowed for termination by either party without cause, the 2011 letter calls for a five-year term, stretching from the date of execution, that "cannot be cancelled or revoked while in effect for any reason by the NBPA," at a cost of $602,000 per year. In our opinion, this provision is highly unusual and inconsistent with normal business practices. In addition, although the By-Laws require contracts for greater than $25,000 to be approved by the Executive Committee, we are aware of no evidence to suggest that the letter was approved by the Executive Committee.

For these reasons and others, we have significant concerns about the validity of this document. Although we were not able to investigate these concerns before the release date of this Report, we will continue to do so and will quickly provide our findings to the Special Committee. We have already discussed this matter with the U.S. Attorney's Office.

Mr. Hunter's Stifling of Criticism

The presence of an unchecked dominant personality can interfere with the effective functioning of an organization. Recognizing the need for accountability, wise managers do not discourage communications of concern about their leadership.

At the NBPA, not only did Mr. Hunter allow or ignore conflicts of interest, he suppressed criticism of such conflicts and other threats to his authority. We are especially

distressed by Mr. Hunter's response to former NBPA Secretary-Treasurer Pat Garrity's legitimate questions about conflicts of interest involving Mr. Hunter and his family. Prior to All-Star Weekend in 2009, Mr. Garrity learned that Mr. Hunter had hired his daughter Robyn without a formal search and that Mr. Hunter's son Todd had been a director of ISN Bank when the Union was considering a multi-million dollar investment in the bank. Mr. Garrity also had concerns about the vacation payment Mr. Hunter had requested.

To act on these concerns, in early February 2009 Mr. Garrity sent a series of emails to Mr. Hunter and other members of the NBPA staff requesting additional information about Robyn's hiring and ISN Bank. (Ex. 36) Mr. Hunter tried to deflect Mr. Garrity's valid inquiries about conflicts of interest by accusing Garrity of "manufacturing issues," and by stating that he was "not inclined to respond to [a] fishing expedition." To his credit, Mr. Garrity responded by sending another email to Mr. Hunter requesting time to discuss his concerns with the Executive Committee privately during its All-Star Weekend meeting. According to Mr. Garrity, he met with Mr. Hunter the night before the scheduled meeting and raised the three issues he wanted to discuss with the Committee the next day. In response, Mr. Hunter asserted that Mr. Garrity, being retired, was no longer entitled to be involved in the Committee's supervision of Union business. According to Mr. Garrity, Mr. Hunter nevertheless agreed to let him speak to the Committee.

Mr. Hunter claimed that he does not recall speaking with Mr. Garrity that night. Regardless, whether Mr. Garrity's recollection of Mr. Hunter's agreement is correct or not, what matters is what happened next. When Mr. Garrity attempted to speak to the Committee the next day, Mr. Hunter's friend Mr. Hall shouted him down. Echoing Mr. Garrity's recollection of what Mr. Hunter had told him, Mr. Hall insisted that Mr. Garrity was prohibited from addressing

the Committee because he had retired, even though no Union By-Law or rule bars retired players from speaking to the Committee. Mr. Hall threatened to call security if Mr. Garrity did not leave the meeting voluntarily, and Mr. Garrity ultimately left without engaging in the discussion with the Committee that he had sought. Mr. Hunter reported to us that, rather than intervene on Mr. Garrity's behalf, he remained "mute" during the confrontation, and admitted that he approved Mr. Hall's efforts to prevent the Executive Committee from hearing Mr. Garrity's concerns. One witness stated that in a conversation a few hours after the meeting, Mr. Hunter bragged about shutting down Mr. Garrity's attempt to speak to the Committee (Mr. Hunter claims no recollection of this remark).

By standing by as Mr. Hall silenced Mr. Garrity, Mr. Hunter put his personal interest in discouraging criticism of his conduct ahead of the Union's interests in hearing and addressing the concerns of a person who had served the NBPA faithfully and diligently for many years. Mr. Hunter's conduct in this episode also reflected poor judgment. Had Mr. Hunter allowed Mr. Garrity to explain his concerns to the Executive Committee without interference, the Union might have begun to address years earlier many of the issues this Report now covers. When we interviewed him, Mr. Hunter conceded that he should have permitted Mr. Garrity to speak to the Committee and that doing so might have obviated the need for this investigation. According to Derek Fisher, the episode had a chilling effect on future challenges to Mr. Hunter's authority by Committee members.

Questionable Uses of Union Resources

Mr. Hunter's actions have also called into question his stewardship of Union resources, reflected poor judgment or raised serious doubts about his interest in policies and procedures to protect the Union's interests.

Mr. Hunter's Consideration of a Union Investment in ISN Bank

In 2007 and 2008, Mr. Hunter considered making a multi-million dollar investment of Union money in ISN Bank, a failing financial institution based in Cherry Hill, New Jersey. At the time, Mr. Hunter's son Todd was a director of the bank and Joe Lombardo, who has served as the Union's chief outside financial advisor at Prim Capital for over a decade, had a financial interest in the bank. This potential transaction, although ultimately abandoned, is of notable concern because it was fraught with conflicts of interest that Mr. Hunter failed to disclose.

Starting in 2005, Mr. Hunter devoted substantial time and energy to developing plans for the Union to establish, acquire or invest in a bank or other financial institution. One of the banks he considered was ISN, which had focused on loans for home construction projects and by late 2007 was financially crippled due to the collapse of the housing market that caused national and international turmoil within a year. Mr. Lombardo had previously organized a group of investors in the bank and guaranteed their investment, and thus stood to lose a substantial amount of money if ISN failed—as much as $1 million, according to him.

In December 2007, the president and other representatives of ISN Bank came to the Union's headquarters to make a pitch for an NBPA investment. Mr. Lombardo and Todd Hunter were present. The materials ISN Bank provided at that meeting warned that the bank was teetering on the edge of collapse, that the FDIC was preparing to impose a cease-and-desist order on it, and that even the capital infusion of $5 to $7 million requested from the Union could not ensure the bank's survival. Mr. Lombardo stated that he told Mr. Hunter that because his son Todd and another Prim employee were on the board of ISN Bank, Mr. Hunter needed to be cautious and "lawyer up." A few weeks later, Roger Klein, a partner at Howrey who was serving

as outside counsel to the Union in connection with the potential deal, advised Mr. Hunter that the potential investment was "toxic."

Nevertheless, in early 2008 Mr. Hunter authorized the expenditure of Union funds for additional due diligence for a Union investment in ISN Bank. He subsequently received a report confirming Mr. Klein's advice, which stated that ISN Bank had "a number of significant problems with respect to regulatory relations, management, capital, profitability, loan quality, deposits, and litigation." On April 1, 2008, Mr. Hunter informed the Executive Committee that it would be "foolhardy" to pursue the deal any further. By that time, however, he had already spent more than $80,000 in Union funds on fees for the lawyers and consultants who evaluated the potential investment.

Prior to spending Union funds to investigate the investment, Mr. Hunter never disclosed to the Executive Committee the conflicts of interest enmeshed in the potential ISN Bank deal: that Prim Capital's Mr. Lombardo had a financial interest in the bank, that Todd sat on the bank's board of directors, and that both would likely have personally benefitted from a Union investment. Mr. Hunter claimed that Mr. Klein had advised him that it was not necessary to disclose the conflicts of interest until after preliminary due diligence had been conducted. The record is unclear whether Mr. Klein in fact gave such advice to Mr. Hunter. In any event, we respectfully disagree with such guidance. To us, the exceptionally risky nature of the investment—known before any significant Union resources were committed to evaluating the deal—heightened the need for Mr. Hunter to make the Executive Committee aware of the conflicts of interest early in the process. The far better practice would have been for Mr. Hunter to alert the Committee to the conflicts before spending substantial Union funds on due diligence to confirm what Mr. Klein had already told him. At a minimum, an unbiased observer would

legitimately ask whether Mr. Hunter would have taken the next steps absent his son's presence on the ISN board.

Mr. Hunter's Payment of Charles Smith's Legal Fees

Mr. Hunter authorized a payment of fees for personal legal services provided to Charles Smith, the former Executive Director of the NBRPA. In 2010, the NBRPA board of directors dismissed Mr. Smith, after which he sought a settlement for wrongful termination. In May 2011, Mr. Hunter agreed to commit between $8,000 and $10,000 of Union funds to Mr. Smith's legal battle with the NBRPA. In December 2011, Mr. Hunter authorized a payment of approximately $28,000 to a law firm on Smith's behalf, disregarding concerns raised by the Finance Department that it was not appropriate for the Union to pay Mr. Smith's personal legal fees.

The payment was returned to the NBPA in March 2012, shortly after Mr. Hunter learned that a reporter was preparing to publish a story about it. When interviewed, Mr. Hunter claimed that he had supported Mr. Smith with Union funds because Mr. Smith had done a good job providing medical and educational programs to retired players. However true this assessment may be, we fail to see how this justifies Mr. Hunter's decision to make the Union contribute to Mr. Smith's personal legal expenses. And although Mr. Hunter claimed that Mr. Smith had agreed to reimburse the Union, we are skeptical of this assertion and did not find support for it in the evidence available for review. Significantly, the Finance Department did not treat the payment as a loan; instead, the Finance Department regarded it as a legal expense, reported it as taxable income to Smith and issued the appropriate IRS form.

Mr. Hunter's Travel Expenses

It was challenging to review Mr. Hunter's travel expenses because, in contravention of the NBPA's Travel and Entertainment Policy, he did not consistently submit

expense reports, receipts or other supporting documentation for his business travel, and also because he has enjoyed substantial and largely unregulated discretion on where or when he can visit different cities. Nevertheless, we discovered a pattern of visits by Hunter on alleged Union business to the San Francisco Bay Area, where only two NBA teams are located but where Mr. Hunter happened to live for decades and still maintains a residence.

The records reviewed during this investigation indicate that, during the time period from February 2007 through July 2012, approximately one-third of the flights Mr. Hunter charged to the Union either started or ended in the Bay Area. Mr. Hunter asserted that his personal and professional background in the Bay Area led him to conduct more Union business there than in other places. He also acknowledged that he used Bay Area airports as a "hub" for his business travel to other Western cities because of his residence in Oakland. This practice, however, has resulted in the Union paying for more flights than would be necessary if he traveled directly to his ultimate destination. Mr. Hunter attempted to justify this practice by claiming that he did not charge the Union for hotel stays or food when traveling to the Bay Area, which in his view might have resulted in a net cost savings for the Union.

Overall, the incomplete records available to us and the passage of time do not allow us fairly to conclude that Mr. Hunter's practice constitutes either an abuse of travel expenses or an appropriate practice.

Mr. Hunter's Consideration of Speculative Business Deals

Typically, to protect its assets, an organization places some constraints on the ability of its executives to spend money on pursuing investments, and on the types of investments deemed suitable for its aims. The NBPA does not appear to have such limits. Again, even when an organization does not have clear rules, a fiduciary must use reasonable

business judgment and common sense. We found instances in which these principles seem to have eluded Mr. Hunter.

Mr. Hunter devoted substantial time, energy, and Union funds to consider investments for the NBPA in a variety of business ventures, many of which appear both atypical for players' unions and risky for any enterprise. By his own account, a desire to make the NBPA "more than a traditional sports labor association" animated Mr. Hunter to seek out such speculative pursuits. We were surprised to hear Mr. Hunter tell us that no potential deal would be so risky on its face that he would not consider it for the Union.

As noted above, Mr. Hunter focused for several years on a Union investment in a bank or other financial institution. He also considered investments in real estate developments, restaurants, an energy drink and Pride Fighting Championships, a mixed martial arts fighting league based in Japan. The evidence suggests that he viewed himself as a venture capitalist in the market for a blockbuster deal. Mr. Hunter's own words show that his pursuit of risky investments came at a significant cost, both in terms of time and money. In a September 2009 email to a friend, he wrote:

> Yesterday, I spent the entire day reviewing a proposal from a nationally chartered community bank…. I have been slow to pull the trigger because the more I learn about banking the less I seem to know. I need to spend more time familiarizing myself with the cost(s) associated with the daily administration of a bank, since there are many nuances that cause me concern…. My situation is compounded by the expense of doing business. Since I know so little about the business and cannot devote my day to learning about it – I must rely on others for advice and instruction at significant cost. Over the past two months, I have spent nearly $100K in legal fees on one deal and am [nowhere] near the finish line. (Ex. 43)

Based on records reviewed in the course of this investigation, during the August 2007 to December 2010 time period, Mr. Hunter spent at least $300,000 in Union funds to conduct due

diligence on non-traditional investments, and although he often informed the Executive Committee that he was considering such opportunities, it appears that he failed to disclose to the Committee many of the costs related to exploring them. We recommend that the Board of Player Representatives and the Executive Committee give careful consideration to the costs and risks of the Union's pursuit of potential investments and set standards governing the kinds of transactions that are appropriate for the Union and its Executive Director to consider.

Mr. Hunter's Gifts to Executive Committee Members

Corporate executives who have unfettered authority to use corporate funds to provide personal gifts of their choosing may have the temptation to use such gifts to advance their personal agendas, or may be wasteful or unnecessarily extravagant with the organization's money. This is why corporate policies often regulate the giving and receipt of gifts. Here, the Union has no policies that apply to gifts the Executive Director may bestow on Executive Committee members. Here, again, the absence of policies does not displace the duties of loyalty, candor and care.

Over the past ten years, Mr. Hunter has spent more than $100,000 in Union funds to purchase luxury items as gifts for members of the Executive Committee. On some occasions, he gave presents such as alligator belts, gold cuff links and Louis Vuitton bags to members of the Committee, and he established a tradition of giving expensive watches (each costing more than $13,000) to NBPA Presidents when they retired from serving the Union.

In June 2010, Mr. Hunter gave Derek Fisher a $22,000 Patek Philippe watch. At that time, Mr. Fisher was finishing the first year of a four-year term as President, and had not expressed plans to retire. According to Mr. Hunter, he told Mr. Fisher in June 2010 that, if a lockout occurred the following year, Fisher "might never get his watch," and asked whether Fisher preferred to "take his chances" on the results of the collective bargaining or accept the

watch at a time when it was guaranteed. Mr. Hunter also claimed that "it would have been harder to give him the watch leading up to the lockout; politically it would have been different. … Players would have objected, they wanted to hold back money." Mr. Hunter asserted that when presented with a choice, Mr. Fisher opted to accept the watch right away.

Mr. Fisher, however, did not agree with this account. To the contrary, he stated that he did not recall discussing the timing or reasons for the gift with Mr. Hunter. According to Mr. Fisher, he did not have an understanding at the time he received the watch as to whether it had been purchased with Union funds, although Mr. Hunter disagreed with that claim. Mr. Fisher also maintained that he was uncomfortable with the gift at the time he received it, and that, with the benefit of hindsight, he felt the watch may have been a gesture aimed at winning his loyalty to Mr. Hunter during the upcoming collective bargaining negotiations. In our view, Mr. Hunter should bear the brunt of the responsibility for any curious appearance that arises from this gift, and Mr. Fisher's decision to question Mr. Hunter's conduct and call for an internal inquiry into Union business practices in April 2012 fortifies this opinion.

Although Union policies did not prohibit Mr. Hunter from giving a gold-watch good-bye to outgoing Presidents, his purchases of such luxury gifts raise concerns about whether he spent Union funds in a prudent manner or for the benefit of all NBPA members. We recommend that the Union develop guidelines to govern such expenditures.

Governance Deficiencies

Proper governance matters. Mr. Hunter has not recognized the imperative of proper corporate governance for the NBPA. He has failed to ensure that the Union operates in accordance with its By-Laws. For example, the By-Laws require the Executive Committee to approve contracts for amounts greater than $25,000, but Mr. Hunter admitted that he has rarely, if ever, sought such approval. In addition, Mr. Hunter has failed to rectify concerns raised by the

Union's auditor, Calibre CPA Group, PLLC ("Calibre"), during annual audits. Among other things, Calibre has repeatedly recommended that the Union maintain minutes of all Executive Committee and Player Representative meetings, including those that take place by telephone, but the Union did not follow that recommendation adequately until recently, after this investigation began.

Mr. Hunter has also failed to ensure proper governance at the NBPA Foundation. We do not question that the Foundation has donated money to worthy organizations and has supported important causes; for example, the NBPA recently pledged $500,000 in Foundation funds to relief efforts in the wake of Hurricane Sandy. We have also seen no evidence that Mr. Hunter has misappropriated Foundation funds. Nevertheless, Mr. Hunter has administered the organization throughout his 16-year tenure in a manner inconsistent with its By-Laws and incompatible with statutes and standards governing non-profit organizations, including guidance from the New York Attorney General's Office, which has jurisdiction over the Foundation.

The Foundation, which today holds approximately $26 million in assets, has no properly appointed directors or officers, and has not held annual, if any, board meetings. It neither creates nor maintains adequate records. The Foundation operates without clear policies and procedures for grant applications or approvals, does not conduct sufficient due diligence on grant applicants and does not have a conflict of interest policy. Mr. Hunter typically makes decisions concerning the use of Foundation funds largely on his own, with little effective supervision, even though he may not have been properly authorized to do so. Indeed, Mr. Hunter described his process for disbursing Foundation funds as "ad hoc," and on certain occasions, he has made gifts to organizations of which he is a director or that have personal connections to him, without disclosing those affiliations and recusing himself from the decision-making

process. In sum, Mr. Hunter's virtually unlimited control of the Foundation has resulted in little transparency or accountability.

Mr. Hunter's Future with the Union

Among the most significant conclusions of this Report are that Mr. Hunter's 2010 contract was never properly approved under the Union's By-Laws and that Mr. Hunter knowingly kept this information from the Executive Committee and the Player Representatives. As a result, we believe that the Board of Player Representatives and the Executive Committee must now decide:

Should Mr. Hunter remain as Executive Director?

The Player Representatives and the Executive Committee could decide that it is possible for Mr. Hunter to rectify the problems he has created and serve as an effective Executive Director in the future despite the issues of the past. Should they decide to permit Mr. Hunter to continue leading the Union, they may wish to retain independent counsel to negotiate a new employment contract with him in light of the tainted negotiation process that resulted in the agreement signed in 2010. Of course, they could also decide if they wish to approve Mr. Hunter's current contract without any changes.

But the Union need not keep Mr. Hunter. If the NBPA's Player Representatives and Executive Committee members decide for any reason that the Union deserves a fresh start, they are free to do so. They may choose not to ratify or renegotiate Mr. Hunter's employment agreement, appoint an acting Executive Director and authorize a search for a new Executive Director. Although we cannot guarantee that a court would agree, in our judgment the Union has no obligation to accept Mr. Hunter's current contract as valid or enforceable. We believe that the circumstances of the contract's formation and the lack of proper approval cast serious doubt on Mr. Hunter's ability to enforce it.

Litigation Risk

That does not mean that Mr. Hunter will leave without resistance. A decision by the Player Representatives and Executive Committee members not to keep Mr. Hunter could lead to litigation between the NBPA and Mr. Hunter. In that event, we think that the Union would have powerful arguments that Mr. Hunter's current contract was never properly approved as required by the By-Laws and applicable law. Mr. Hunter has admitted that the Player Representatives never voted on the contract, and has acknowledged that he believed, in accordance with advice from Steptoe & Johnson, that the contract needed to be brought to the Player Representatives for ratification, and that he planned do so in early 2012. In addition, the Union may have claims against him on the grounds that certain of the conduct highlighted in this Report constitutes breaches of his fiduciary duties of loyalty, candor and care, coupled with claims for the return of at least a portion of the compensation he has received under his existing contract and other money that could be placed at issue.

We understand that, in a legal proceeding, Mr. Hunter might contend, as he did at one point during his interview, that his contract was somehow implicitly approved. If successful, Mr. Hunter could claim that he has the right to retain his job as Executive Director or, in the alternative, to receive a payout of the remaining portion of his contract, which may currently equal approximately $7 million, plus benefits. According to Mr. Hunter, even though the Player Representatives did not vote on his contract, its execution was announced at their meeting in June 2010 and they did not disapprove it. To begin with, it is not clear that an announcement of Mr. Hunter's employment contract was ever made at that meeting: One witness present for the meeting of the Player Representatives stated that the contract was *not* discussed, and there is no mention of the contract in the meeting minutes. More important, and for a number of reasons, we do not believe that an argument based on *implied* consent by the Player Representatives,

supposedly given to a highly sophisticated lawyer, fiduciary and longtime Executive Director, will be persuasive. The Player Representatives were never told that they were required to vote on the contract, which makes the very idea of implied consent stand on its head. Moreover, if Mr. Hunter were to attempt to rely on an implicit approval argument, the Union could contend in response that he has "unclean hands," because he failed to notify the Player Representatives and the Executive Committee that his contract had not been properly approved after Steptoe & Johnson brought the problem to his attention in November 2011. Again, while the results of any litigation can never be guaranteed, we believe the Union's side of this argument is far stronger.

C. Recommendations

Regardless of the NBPA's decision with respect to Mr. Hunter's future, the Union needs reform and renewal in many areas. In the course of our investigation, in addition to identifying specific problems attributable to Mr. Hunter's actions, we also identified multiple internal control deficiencies and corporate governance weaknesses that Mr. Hunter should have addressed and that the Union should now address. We urge the Union to consider the following proposals, among others presented in this Report.

Executive Director

- The Board of Player Representatives and the Executive Committee should properly appoint an Executive Director and properly approve his employment contract.
- The Board of Player Representatives and the Executive Committee should have the benefit of independent legal and financial advice, especially when negotiating any employment contract with an Executive Director.
- The Executive Director should not be permitted to accrue an excessive amount of paid vacation time, if any.
- The Board of Player Representatives and the Executive Committee should exercise greater supervision over the Executive Director and should define his duties and responsibilities, including his ability to pursue investment opportunities, with greater specificity.

Conflicts of Interest

- The Union should adopt a more comprehensive and stringent conflicts of interest policy.
    - o The Union should consider including in such a policy a bright-line anti-nepotism rule prohibiting the employment of immediate family members of NBPA employees, directors or officers. Such a rule allows for more efficient management and easily ascertainable lines of authority and avoids perceptions of favoritism and undue influence.
    - o Such a rule would prohibit the Union from continuing to employ Robyn Hunter and Megan Inaba if Mr. Hunter is retained as Executive Director.
    - To the extent that the Union adopts an anti-nepotism rule, it should also consider prohibiting the use of Union vendors who employ immediate family members of NBPA employees, directors or officers, or outlining procedures for disclosing and managing such conflicts of interest.
- The Union should consider not using the services of Prim Capital.
    - Mr. Hunter's actions have contributed to the appearance that the Union's decision to continue to use Prim Capital is influenced by his son Todd's employment at that firm. One way to curtail this ongoing problem would be for the Union to look for another financial services provider.
    - Further, Prim has refused to provide the Union with requested information about supplemental fees it may receive as a result of its relationship with the NBPA, and in our opinion has not cooperated fully with this investigation.
    - When choosing whether to retain Prim or a new financial services provider, the Union should request and evaluate proposals from at least three potential vendors.

Corporate Governance

- The NBPA should revise its By-Laws to make certain that they conform to the law of Delaware (where the Union is incorporated) and to ensure that the Executive Committee is properly constituted. The Union should ensure that the By-Laws are followed carefully.

- The NBPA should adopt all of the recommendations made by its outside auditor, Calibre.

- The NBPA should set clear rules that govern the giving of gifts purchased with Union funds to officers or directors.

NBPA Foundation

- The Foundation should carefully follow its by-laws and observe laws and standards applicable to New York non-profit organizations. In particular, the Foundation should:

  - Properly appoint officers and directors, hold board meetings and keep records of such meetings.

  - Adopt clear policies and procedures for evaluating grant applicants and conduct due diligence on potential grant recipients.

  - Adopt a conflicts of interest policy.

D. Status of Investigation by the U.S. Attorney's Office

Although this internal investigation is complete, we understand that the U.S. Attorney's criminal investigation remains ongoing. The NBPA has previously announced that it will cooperate fully with that inquiry, and it will continue such cooperation. Accordingly, Paul, Weiss has been in direct communication with the U.S. Attorney's Office throughout this investigation.

We first met with the government on April 30, 2012, just days after the Special Committee retained us. Since then, in response to the government's subpoena to the Union, we have produced nearly 29,000 pages of documents, including internal Union governance documents, financial records and emails. These documents have been given both to the U.S. Attorney's Office and the U.S. Department of Labor, which is assisting in the investigation. That document production is not yet complete, and we will need to provide more Union documents to the government to satisfy outstanding requests.

In recent months, we have had multiple telephone conversations with the government about the matters under review. On January 9, 2013, we met with the prosecutors supervising the investigation for nearly four hours. During that meeting, we provided an oral summary of the key findings and conclusions of this Report, and said that, to promote transparency and accountability at the Union, we believed it important for the Report to be distributed to every member of the NBPA and also released to the public. The prosecutors regard making the Report available to every NBPA member and the public as evidence of the Union's cooperation. The prosecutors also informed us that they are looking forward to reviewing this Report in its entirety, and it is our hope that its release will hasten the conclusion of the government's investigation. Nevertheless, the prosecutors made it clear that their inquiry would continue after the Report is released.

Finally, we do not know the full scope of the issues the government may be considering. The prosecutors, who possess subpoena power that we do not have, may have access to documents we have not reviewed and may have interviewed witnesses to whom we did not speak. We can make no predictions about the eventual results of the government's investigation, or whether either the U.S. Attorney's Office or the Department of Labor will agree with the conclusions we reach in this Report.

* * *

The balance of this Report proceeds as follows. Section I describes our investigative work. Sections II and III discuss the basic factual background and the legal and policy framework, respectively, in which we conducted this review. Section IV analyzes the most significant questions raised during the course of the investigation, primarily those relating to conflicts of interest, nepotism and the potential misuse of Union funds. Section V discusses

deficiencies in the governance of both the NBPA and the NBPA Foundation, as well as related management weaknesses. Section VI sets forth recommendations for how the NBPA's officers and directors may respond to this Report and strengthen the Union going forward.

We note that this Report should not be viewed as making any findings or reaching any conclusions about matters that are not specifically addressed below. Even after thorough investigation, certain matters remain unclear. In addition, this Report is not a financial audit. Although Deloitte was retained to assist with certain financial analyses, the firm was not charged with providing audit, compilation, review or attestation services as described in the pronouncements on professional standards issued by the AICPA or any successor standards setting body and has not expressed an opinion or other form of assurance with respect to the NBPA's system of internal control over financial reporting or its compliance with laws, regulations, or other matters.

This Report stresses our belief that the Executive Committee must receive, when needed, independent professional advice, which may include legal advice, financial advice, accounting advice or advice in other areas. This is especially essential in situations in which members disagree with the Executive Director, or require advice on governance issues, or learn of the potential for conflicts. We wish equally to stress, however, that Paul, Weiss does not seek and will not accept an engagement request from the Executive Committee, the Board of Player Representatives or the Union to be regular outside counsel, for our firm does not wish to call into question the independence of this Report or to permit any impression that an interest in additional legal fees motivates our strong emphasis on the importance of having independent outside counsel to assist the Executive Committee or Players Representatives when appropriate. We are available to meet with or otherwise assist the members of the Special Committee, the

Executive Committee and the Board of Player Representatives, as well as any other interested players, as they review and seek to respond to this Report, including before and during the Union's February 2013 meetings. We also expect to continue to assist the Union in responding to the ongoing investigation by the U.S. Attorney's Office. Our role should and will be limited to assisting and advising the Union, its officers and directors, and its members in addressing the current difficulties.

Finally, we understand that there are often significant constraints on the amount of time Player Representatives and Executive Committee members may have for the Union during the NBA season. Nevertheless, we urge them, to the extent possible, to devote more time and energy to fulfilling their responsibilities to the Union. The NBPA would function more effectively if the Player Representatives and the Executive Committee spent more time reviewing the Executive Director's actions and asserting their authority.