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The Circumvention of UEFA's Financial Fair Play Rules Through the Influx of Foreign Investments

Patrick J. Sims[*]

Abstract: European football is undergoing rapid changes spurred on by enormous investments from around the globe. Although regulations exist to curtail teams buying their way to success, foreign investors have become ingenious at circumventing Financial Fair Play rules. The European football governing body needs to reevaluate existing rules and strengthen them by looking to outside examples. This article analyzes the current regulations established by the governing bodies of European football and details how foreign investors are able to circumvent these regulations. Further, this article articulates potential solutions to the current Financial Fair Play rules and how the spirit of the current rules can be ultimately realized.

[*] J.D., Northwestern Pritzker School of Law, 2019; B.S., California Lutheran University, 2016. I would like to thank the editors and staff of Northwestern Journal of International Law and Business for their contribution to this article. I would also like to thank my wife Kyla without whom none of this would have been possible.

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I. INTRODUCTION

Since the introduction of UEFA's[1] Financial Fair Play (FFP) regulations, European football[2] has seen remarkable growth in revenue and profitability.[3] As profitability and popularity continue to grow, so does outside interest in European football. For example, in 2015, American broadcasting company NBC spent $1 billion to secure broadcasting rights to the English Premier League until the 2021/2022 season.[4] This broadcasting deal represents just one of Europe's five main leagues. While most European countries have their own football league, the five most successful leagues come from Spain, England, Italy, Germany, and France.[5]

With the increasing popularity of European football, there has been a growth of foreign investment into different European clubs.[6] Since 2004, UEFA football clubs have seen record high investments coming from outside Europe.[7] There are forty-four clubs in major European leagues that are under foreign ownership.[8] Through these investment, foreign owners are looking to cash in on the modern popularity of UEFA football.[9] With the introduction of FFP, top clubs welcomed additional foreign investments to continue their race to the top.[10]

An integral part of becoming one of the most successful clubs in Europe involves acquiring top talent. Talent acquisition takes place during periods referred to as transfer windows.[11] There are two transfer windows each year each giving teams opportunities to acquire new talent.[12] During a transfer window, European clubs spend large amounts of money acquiring new

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1 Union of the European Football Association.

2 Since this paper will be discussing soccer in Europe, the article will refer to 'soccer' as 'football.' Additionally, 'soccer teams' will be referred to as 'football clubs.'

3 THE UNION OF EUROPEAN FOOTBALL ASS'N, THE EUROPEAN CLUB FOOTBALL LANDSCAPE: CLUB LICENSING BENCHMARK REPORT FISCAL YEAR 2015 (2015)[hereinafter UEFA 2015 REPORT].

4 Richard Sandomir, *NBC Retains Rights to Premier League in Six-Year Deal*, THE NEW YORK TIMES (Aug. 10, 2015), https://www.nytimes.com/2015/08/11/sports/soccer/nbc-retains-rights-to-premier-league-in-six-year-deal.html.

5 *See UEFA rankings for club competitions*, UEFA, https://www.uefa.com/memberassociations/uefarankings/country (last visited Oct. 14, 2017).

6 Repucom, *Emerging Giants* 5 (2015).

7 *See id.; see also* UEFA 2015 Report, *supra* note 3, at 56.

8 UEFA 2015 report, *supra* note 3, at 53.

9 Repucom, *supra* note 6.

10 *Uefa says financial fair play has changed to attract new investors*, THE GUARDIAN (June 29, 2015 4:53 PM), https://www.theguardian.com/football/2015/jun/29/uefa-financial-fair-play-investors.

11 FIFA, REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS (2003), HTTPS://WWW.FIFA.COM/MM/DOCUMENT/AFFEDERATION/ADMINISTRATION/REGULATIONS_ON_THE_STATUS_AND_TRANSFER_OF_PLAYERS_EN_33410.PDF.

12 *Id.*

talent.[13] During the 2017 Summer transfer window, the English Premier League alone spent £1.4 billion, the most it had spent in a single transfer window.[14] It goes without saying, the more money a club is able to spend on players, the more successful it will be.

A profound example of a club spending big to reach the top is the recent success Paris Saint-Germain (PSG) has enjoyed on the pitch[15] and in the transfer market.[16] PSG, as recently as Summer of 2017, spent €222 million, a record amount, on one player: Neymar from FC Barcelona.[17] PSG spent this level of money, through revenues never before seen until their new foreign owners, to portray PSG as the top clubs in the world.[18] While this level of spending helped a club like PSG; some in their pursuit for European success have found themselves in deep financial trouble.[19] The trouble many European clubs found themselves in, due to irresponsible spending, led to the creation of FFP.[20]

In the three years prior to the creation of FFP, UEFA clubs were, on average, operating with net operating losses.[21] Evidenced through the record breaking losses prior to FFP, frivolous spending in a race to the top became the norm for some clubs.[22] Since the implementation of FFP, European clubs continue to post positive revenues.[23] FFP sought to incite discipline and rationality in UEFA clubs spending.[24] UEFA, through FFP, sought to bring

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13 *See generally Premier League Clubs spend £1.4bn to break summer transfer record*, THE GUARDIAN (Sept. 1, 2017 6:03 AM), https://www.theguardian.com/football/2017/sep/01/transfer-window-deadline-day-record-spend#img-1 (discussing the spending of the top five European leagues. Three out of five of the top leagues spent over a billion pounds in the summer of 2017).

14 *Id.*

15 Pitch is the term used in Europe for soccer field. This paper will refer to a 'soccer field' as a 'pitch.'

16 *See* Jason Burt, *Exclusive: Nasser Al-Khelaifi reveals how Neymar and Mbappe can help PSG take on the world*, THE TELEGRAPGH (Sept. 11, 2017 4:34 PM), http://www.telegraph.co.uk/football/2017/09/11/exclusive-nasser-al-khelaifi-reveals-neymar-mbappe-can-help/ (interview with PSG's Qatari owner discussing how the record breaking spending by a club on one player, Neymar, will help the club reach the top and challenge for the top spot of all their respective competitions).

17 *Id.*

18 *Id.*

19 *See* Graham Spiers, *How the mighty Glasgow Rangers have fallen*, THE GUARDIAN (Jan. 18, 2015 5:00 AM), https://www.theguardian.com/football/2015/jan/18/how-the-mighty-glasgow-rangers-have-fallen.

20 *See* UEFA CLUB LICENSING AND FINANCIAL FAIR PLAY REGULATIONS, EDITION 2015 art. 2 (2015) [hereinafter 2015 FFP].

21 *UEFA 2015 Report, supra* note 3, at 107 (UEFA clubs, in aggregate, took losses of €249 million, €336 million, and €382 million in 2009, 2010, and 2011 respectively).

22 *See id.*; *see also* 2015 FFP, *supra* note 20.

23 *Id.*

24 2015 FFP, *supra* note 20, art. 2(1)(c).

club spending in line with their expenses through the break-even analysis.[25]

With the increase in foreign investment,[26] clubs and their new foreign owners have found creative ways to get around FFP.[27] Rich foreign benefactors found ingenious ways to use their incredible wealth to help their newly acquired clubs race to the top through the purchase of new talent.[28] One must ask, have the regulations found in FFP truly been as effective as UEFA hoped? It is now apparent that FFP curbed irresponsible spending in some regard; but are some clubs losing more than others because of FFP? This paper will explore whether FFP allowed foreign investors to pick winners and loser through the increase of their investments.

The paper proceeds by first examining the rise of foreign money in European football in Section II. This section will explore the beginnings of foreign investments and what the investments look like. Next, in Section III, this paper will review FFP regulations and how they are currently managing the financial landscape of European football. Section III will look at the history and objectives of FFP, how FFP has affected the game so far, and how FFP interacts with current European law. In Section IV, this paper will explore how foreign investors and owners are able to circumvent the rules of FFP, and how clubs are undercutting the spirit of FFP through the use of foreign investments. Section V of this paper will identify and posit recommendations of how to amend FFP to ensure the objectives FFP sought to accomplish come to fruition while continuing the competitive nature of European football that has captured the hearts of so many around the world. Last, this paper will conclude with the current outlook of FFP and how it will continue to affect the game.

II. THE RISE OF FOREIGN MONEY

A. The Origin of Foreign Money

The largest share of foreign owners in Europe come from Asian

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[25] *2015* FFP, *supra* note 20, art. 57.

[26] Repucom, *supra* note 6, at 3.

[27] *See* Jack Pitt-Brooke, *Arsene Wenger hits out against FFP as Arsenal manager's patience runs thin*, THE INDEPENDENT (Sept. 7, 2017 10:01 PM), http://www.independent.co.uk/sport/football/premier-league/arsenal-latest-arsene-wenger-scrap-ffp-patience-runs-thin-a7935291.html (one of the top football club managers in Europe discussing how larger clubs use smaller "bridge" clubs to buy players using the smaller club revenue stream then transfer the purchased player to the larger club, completely circumventing FFP legally).

[28] *See* Mark Ogden, *Paris Saint-Germain sponsorship deal eclipse all rivals but opens questions about Financial Fair Play regulations*, THE TELEGRAPH (Nov. 12, 2013 12:58 PM), http://www.telegraph.co.uk/sport/football/european/10443730/Paris-Saint-Germain-sponsorship-deal-eclipses-all-rivals-but-opens-questions-about-Financial-Fair-Play-regulations.html (discussing PSG foreign owners funneling their wealth into the club through a sponsorship deal to increase revenues allowing PSG greater room to spend in the transfer market).

countries.[29] But this is a recent trend.[30] The Russian purchase of Chelsea F.C. marks the beginning of the influx of foreign owners.[31] On July 1, 2003, Russian businessman Roman Abramovich purchased Chelsea F.C., clearing all debts from the club while making the largest purchase of new players any English club had seen up to that point.[32] The purchase of Chelsea F.C. is the first example of a foreign owner using his own wealth to shape a team to compete for top accolades.[33] To date, Mr. Abramovich has spent over a £1 billion on the football club in their pursuit to the top of the football world.[34]

The success seen at Chelsea F.C. is what many foreign investors seek to replicate. The second largest group of foreign owners in Europe are from North America.[35] With thirteen out of twenty clubs in the English Premier League owned by foreign investors, Americans own six of those clubs.[36] The most popular example of a European club owned by American owners is Manchester United after their purchase by the Glazer family.[37] This was one of the more controversial purchases of a European football club by foreign ownership.[38]

The smallest foreign owner group in European football comes from the Middle East;[39] but while maintaining the smallest ownership share, they have made a sizable impact.[40] Middle Eastern ownership accounts for four clubs throughout Europe which are located in different leagues in Europe.[41] From

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29 UEFA 2015 Report, *supra* note 3, at 55.

30 *Id.*

31 *Id.*; *see also* Chelsea, *Club History*, https://www.chelseafc.com/the-club/club-history/2000.html (last visited Oct. 15, 2017).

32 Chelsea, *Club History*, https://www.chelseafc.com/the-club/club-history/2000.html (last visited Oct. 15, 2017); Jeremy Wilson, *How Chelsea Owner Roman Abramovich changed the face of football in England*, THE TELEGRAPH (June 29, 2016 8:00 AM), http://www.telegraph.co.uk/sport/football/teams/chelsea/10149386/How-Chelsea-owner-Roman-Abramovich-changed-the-face-of-football-in-England.html (discussing Mr. Abramovich's £140 million purchase of Chelsea with an additional £100 million spent on new players the same year).

33 *See* Jeremy Wilson, *supra* note 32.

34 *See id*. Chelsea did finally reach the pinnacle of European football in 2012 when they won the UEFA Champion's League crowning them champions of Europe.

35 UEFA 2015 Report, *supra* note 3, at 55.

36 *Id.*

37 Martin Domin, *Glazer family float more of club in New York*, DAILY MIRROR (Aug. 10, 2017 2:27 PM), http://www.mirror.co.uk/sport/football/manchester-united-owners-sell-56m-10963970.

38 *See id.* (discussing fan disapproval in the America Owner's taking assets out of the club while neglecting infuse money into the club).

39 UEFA 2015 Report, *supra* note 3, 55.

40 *See* Repucom, *supra* note 6, at 3.

41 *See* UEFA 2015 Report, *supra* note 3, at 55 (discussing Middle Eastern ownership in the English Premier League, the English Championship League, French League 1, and Spain's La Liga).

the introduction of Middle Eastern investments in 2007[42] to 2014, Middle Eastern ownership has invested $1.5 billion in club activities.[43] The two most notable teams under Middle Eastern ownership that experienced meteoric rise since the introduction of foreign investments are Manchester City and PSG. Sheikh Mansour bin Zayed al-Nahyan of the United Arab Emirates (UAE) royal family purchased Manchester City F.C.[44] Sheikh Mansour purchased ninety percent ownership in Manchester City for £210 million in 2008;[45] he quickly purchased the remaining ten percent a year later. Because Manchester City had new Middle Eastern ownership, they were able to secure a lucrative ten-year deal with UAE airline Etihad worth around £80 million a year.[46] In 2015, seven years after the purchase of Manchester City, many believed the club's value was around £3 billion.[47]

Qatar Sports Investment's (QSI)[48] purchase of Paris Saint-Germaine F.C. (hereinafter 'PSG'), believed to be valued around $130 million, was another prominent Middle Eastern acquisition.[49] QSI is the sports division of the Qatar Investment Authority, Qatar's sovereign wealth fund.[50] During QSI's six-year ownership of PSG, a commenter estimates that PSG have spent a total of over €905 million on new players alone.[51]

European football has seen vast amount of foreign capital invested into different clubs and there are no indications of the investments slowing.[52] In

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42 *See* Repucom, *supra* note 6, at 7 (discussing a $250 million investment from Iranian owners into Arsenal F.C.).

43 *Id.*

44 David Conn, *Last shares give Sheikh Mansour total control of Manchester City*, THE GUARDIAN (Sept. 22, 2009 7:10 PM), https://www.theguardian.com/football/2009/sep/23/manchester-city-takeover.

45 *Id.*

46 Simon Mullock, *Manchester City's new £80-million-per-year sponsorship deal will bank them nearly DOUBLE that of rivals United*, DAILY MAIL (Mar. 7, 2015, 10:30 PM), http://www.mirror.co.uk/sport/football/news/manchester-citys-new-80million-per-year-sponsorship-5290985 (discussing Manchester City negotiating a new deal from their current sponsor Etihad to make them one of the highest paid teams in terms of sponsorship in the English Premier League); *see also* Beatrice Thomas, *Arabtec Signs 3yr Man City Sponsorship Deal*, ARABIAN BUSINESS (May 15, 2014 9:54 AM).

47 Jamie Jackson, *Manchester City owners announce £265 million deal with Chinese investors*, THE GUARDIAN (Dec. 1, 2015, 5:14 AM), https://www.theguardian.com/football/2015/dec/01/manchester-city-265m-deal-chinese-investment-group (discussing an investment in Manchester City by a Chinese investor totaling £265 million, which as of 2015 accounted for thirteen percent of the club).

48 *Qataris complete PSG buyout*, EUROSPORT (June 3, 2012, 4:32 PM), http://www.eurosport.com/football/ligue-1/2011-2012/qatar-completes-psg-buyout_sto3182939/story.shtml [hereinafter PSG buyout].

49 Repucom, *supra* note 6, at 7.

50 PSG buyout, *supra* note 48.

51 Rob Bairner, *Neymar to PSG: how much have Qatar owners spent on transfers since 2011 takeover?*, GOAL (Aug. 4, 2017, 6:51 AM), http://www.goal.com/en/news/neymar-to-psg-how-much-have-qatar-owners-spent-on-transfers/1kpoa9c2p4mpw1vjorclin0tm9.

52 *See generally* UEFA 2015 report, *supra* note 3, at 53 (discussing 2016 was the most

2016, European football saw the highest activity of foreign takeovers which included ten new takeovers, eight of which were Chinese owners.[53] In 2016 alone, Chinese investors became principal owners in three English clubs: Aston Villa, Wolverhampton Wanderers, and West Bromwich Albion.[54]

B. The Structure of Foreign Investments

Mirroring the rise in European football popularity, the methods foreign investors use to invest in the sport are expanding.[55] Foreign investment goes beyond just purchasing a club. Investments into this lucrative pastime also include club sponsorships,[56] player sponsorships,[57] and different media rights.[58] While there do remain many ways for foreign investors to maintain a stake in the sport, club ownership remains the most lucrative and appealing.

When it comes to club structures, some operate as publicly traded companies while other remain closely held private companies.[59] Depending on the structure of the club, the methods a foreign investor will go about purchasing the club will differ. Take for example the publicly traded club Manchester United and their buyout by foreign investors from the United States. The American Glazer family famously, or perhaps infamously, acquired 98% of the stock of English football club Manchester United.[60] The buyout began in March of 2003 when the Glazer family purchased 2.9% of Manchester United's publicly traded shares for approximately £9 million.[61]

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active for foreign acquisition to date).

53 *Id.*

54 Sam Wallace, *Great haul of China is changing European football and up to 30 more billionaires are looking to invest in clubs*, THE TELEGRAPH (Sept. 7, 2016, 6:02 PM), http://www.telegraph.co.uk/football/2016/09/07/great-haul-of-china-is-changing-european-football-and-up-to-30-m/.

55 Repucom, *supra* note 6, at 5-6.

56 *Id.* (discussing the top twenty clubs in Europe now feature some type of sponsorship from a middle eastern company).

57 *See* R.J.E., *Why Neymar is different*, THE ECONOMIST (AUG. 9, 2017), https://www.economist.com/blogs/gametheory/2017/08/football-transfers (discussing Qatar, after signing Neymar to PSG, are looking into making Neymar the ambassador of the 2022 Qatar world cup).

58 Repucom, *supra* note 6, at 6 (discussing Qatar's media company Al Jazeera, through the subsidiary BeIN, purchasing the media rights to all English Premier League games in the Middle East market, additionally, BeIN holding all rights to UEFA Champion League games in Southern Asia).

59 *See generally* Vikram Barhat, *Love sports? Buy your own team–or part of one*, BBC (June 11, 2014), http://www.bbc.com/capital/story/20140610-love-sports-buy-a-team (discussing how some clubs, like Manchester United, are traded publicly and club ownership is open to anyone who can buy one or more share but also looking at how the purchase of privately held clubs are purchased in a "word of mouth" sort of market).

60 *See Glazer gets 98% of Man Utd shares*, BBC (June 28, 2005, 10:29 PM), http://news.bbc.co.uk/2/hi/business/4629401.stm.

61 *Super Bowl hero takes slice of Man Utd*, BBC (Mar. 2, 2003, 6:37 PM), http://news.bbc.co.uk/2/hi/business/2813439.stm.

By October of 2004, the Glazer family owned nearly 30% of Manchester United public shares and then began officially putting together a bid to acquire the club in totality.[62] In April 2005, the Glazers readied an £800 million bid to buyout Manchester United entirely.[63]

The purchase structure of a privately held club will differ from that of a publicly traded club.[64] After two years of negotiation, culminating in 2017, Italian owners sold AC Milan, one of the most prolific teams in Italian football, to foreign investors.[65] The purchase of AC Milan from the former Italian owner cost the new Chinese owners an estimated €740 million.[66] The new owners used a Luxembourg-based company by the name of Rossoneri Sport Investment Lux to buy AC Milan.[67] Yonghong Li controls the new Luxembourg company, but the overall ownership structure of this newly created company has yet to be revealed.[68]

Yonhhon Li's and Han Li's takeover of AC Milan is an example that foreign investments can be based on considerations other than mere club acquisitions. Representatives of the Chinese investors revealed the day after the club acquisition they had begun looking into purchasing a new stadium.[69] The new owners, currently renting AC Milan's home stadium, are looking into acquiring a new stadium in an effort to have larger control over ticket prices and other match-day revenue.[70] In addition to the investment made by the new investors in purchasing the club and looking to buy a new stadium, the new ownership team spent heavily in the transfer market in an effort to drive up revenue.[71] AC Milan, with the help of their new Chinese owners, spent an estimated €151 million on new player before the start of the first

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[62] *See Glazer gets 98% of Man Utd shares*, *supra* note 60.

[63] *Id.*

[64] *See generally* Ben Gladwell, *Silvio Berlusconi sells AC Milan to Chinese investors*, ESPN (Apr. 13, 2017), http://www.espnfc.com/ac-milan/story/3102696/silvio-berlusconi-sells-ac-milan-to-chinese-investors (discussing the one-on-one negotiation between the seller and buyer rather than the buyer acquiring shares through the open market as seen with the Manchester United acquisition).

[65] *Id.*

[66] *Id. (the* €740 million purchase includes €220 million in liabilities currently held by the club as well as €90 million in operating expenses that had been paid by the previous owner which is set to be refunded).

[67] Giulia Segreti & Elvira Pollina, *New Chinese owners of Italy's AC Milan soccer club to invest in stadium: CEO*, REUTERS (Apr. 14, 2017, 5:12 AM), https://www.reuters.com/article/us-acmilan-m-a-ceo/new-chinese-owners-of-italys-ac-milan-soccer-club-to-invest-in-stadium-ceo-idUSKBN17G0SF.

[68] *Id.*

[69] *Id.* (discussing the Italian club looking to either build a new stadium or buy the stadium they currently rent).

[70] *Id.*

[71] James Walker-Roberts, *Will AC Milan challenge in Serie A again after 'summer of dreams'?*, SKY SPORTS (Aug. 01, 2017 1:50 PM), http://www.skysports.com/football/news/11863/10959576/are-ac-milan-primed-to-challenge-in-serie-a-again-after-summer-of-dreams.

season under the new owners.[72]

III. UEFA'S FINANCIAL FAIR PLAY RULES AND REGULATIONS

A. Origin of Financial Fair Play and the Objectives Behind It

UEFA signed and approved the FFP regulations in 2010 and they took effect at the beginning of the 2011/2012 season of European football.[73] Article two of the FFP regulations make it clear that the objective of enacting FFP rules was to increase the integrity and longevity of the game.[74] UEFA holds FFP was not meant to bring parity between small and large clubs, and whether FFP made it harder for smaller clubs to compete was not an issue they sought to address.[75] FFP hurting smaller clubs chances against bigger clubs is not synonymous to making all clubs equal in size. As stated by several chairmen of larger football clubs, FFP has really hurt the competitiveness of smaller clubs.[76] Bruce Buck of Chelsea F.C., stated "[t]he problem with FFP in essence is it goes a long way to preserving the status quo."[77] Mr. Buck also added "[o]ne of the great things about football in this country, and many others, is if you are last in [a lower league] you can still hope one day you will be in the Premier League. That is difficult, if not impossible, with FFP."[78]

FFP states its objective is to improve the standard of all aspects of European football; the aspect of competition it would appear has been left by the wayside with these new regulations.[79] The Chairman of Chelsea F.C. even

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[72] *See id.*

[73] *Financial fair play: all you need to know*, UEFA.COM, http://www.uefa.com/community/news/newsid=2064391.html(last updated Oct. 23, 2017) [hereinafter FFP all you need to know].

[74] 2015 FFP, *supra* note 20, art. 2. Article 2 of FFP states the objectives are to: a) further promote and improve the standard of all aspects of European football competitions; b) to ensure adequate management of football clubs; c) to ensure the infrastructure of football clubs are safe for all constituents; d) to ensure smooth running UEFA club competitions; and e) to develop financial benchmarks for clubs regarding their financial strength. Additionally, article 2 of UEFA's FFP set out the objectives, specifically aimed at UEFA competitions, that set out to: a) increase the transparency and credibility of club's financials; b) increase protection of club creditors; c) increase discipline and rationality in club spending; d) encourage clubs to spend within their means; e) encourage responsible spending to increase longevity of football clubs; f) to protect the longevity of European football.

[75] FFP all you need to know, *supra* note 73.

[76] Glenn Moore, *Financial Fair Play policy unfair on smaller clubs claim chairmen of Chelsea and Southampton*, INDEPENDENT (Oct. 10, 2013 2:54 PM), http://www.independent.co.uk/sport/football/news-and-comment/financial-fair-play-policy-unfair-on-smaller-clubs-claim-chairmen-of-chelsea-and-southampton-8872161.html.

[77] *Id.*

[78] *Id.*

[79] *See id.*(discussing Southampton's difficulty in closing the financial gap between them and larger clubs making it harder to compete. The chairman of Southampton discussed the fact they may need to start focusing on developing youth players that could be sold to larger

hinted that foreign investments may be partly responsible for the disparity between the competitiveness of smaller clubs and larger clubs.[80] Mr. Buck alluded to the fact that third-party sponsorship deals may potentially be useful to boost the revenue of clubs, allowing them to spend big while staying within FFP.[81] Third-party sponsorship deals are exactly one type of financial investment used by foreign owners to pick winners and losers in European football.[82]

UEFA released FFP in 2011 but those rules are no longer in effect today; UEFA updated FFP in 2015.[83] Using the input of many constituents of the FFP regulation, UEFA spent nearly two years developing the updated regulations.[84] UEFA intended FFP's new changes to take into account clubs who have recently gone through an "economic shock" and give them some leeway.[85] Additionally, the new 2015 FFP regulations will exclude expenditures for youth and women's football programs.[86] The President of UEFA stated that even though the FFP regulations have been updated, "the overall objectives of [FFP] remain the same."[87] The previous General Secretary of UEFA, Gianni Infantino, explained he hopes that the new FFP revisions will serve to entice new investors in European football.[88]

B. The Current Iteration of Financial Fair Play

UEFA entrusts the enforcement of their FFP rules to the Club Financial Control Body (CFCB).[89] The CFCB has two chambers, both of which answer to the CFCB chairman.[90] First, the investigatory chamber has the task of

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clubs to remain commercially viable since they will not be able to compete on the pitch).

80 *See id.*

81 *See id.*

82 *See* Mullock, *supra* note 46 (discussing third-party sponsorship of Manchester City allowing them to spend large amount of money in the transfer window acquiring better players).

83 2015 FFP, *supra* note 20; *see also* FFP all you need to know, *supra* note 73.

84 *Club Licensing and FFP Regulations approved*, UEFA.COM, http://www.uefa.com/insideuefa/about-uefa/executive-committee/news/newsid=2262293.html (last updated Feb. 13, 2017)[hereinafter FFP updated].

85 *Id.*

86 *Id.*

87 *Id.* (discussing UEFA, in updating the regulations, are moving from a time of austerity to a period where UEFA can offer more chances for club development and sustainable growth).

88 *Uefa says financial fair play has changed to attract new investors*, THE GUARDIAN (June 29, 2015 6:53 PM), https://www.theguardian.com/football/2015/jun/29/uefa-financial-fair-play-investors ("We are sure that these new rules will encourage investors to invest in European football because European football is the best product in the world when it comes to club football").

89 PROCEDURAL RULES GOVERNING THE UEFA CLUB FINANCIAL CONTROL BODY, art. 3 (2015).

90 *Id.* art. 4.

monitoring clubs and investigating potential wrong-doings[91] Second, the adjudicatory chamber oversees the judgment stage of any proceedings.[92] The CFCB chief investigator heads the investigatory chamber and the CFCB chairman heads the adjudicatory chamber.[93] There cannot be a member in either chamber that also serves in the other chamber.[94]

Should the CFCB find that a club violated the FFP, they have many options available to them in disciplining the club.[95] The potential disciplinary measures available to the CFCB range from a warning to the withdrawal of a club's previously won trophy.[96] While there is a wide range of potential punishments, the CFCB prefers settlements with clubs rather than harsher punitive punishments.[97] Settlement agreements offered by the CFCB may set out objectives, with timelines, clubs must meet.[98] If a club is able to complete stated objectives in its settlement agreement ahead of schedule, the CFCB can amend the remaining objectives within the settlement agreement if the offending club makes a reasoned request.[99]

The first iteration of the FFP mainly sought to ensure clubs did not have any overdue payables.[100] UEFA introduced the break-even analysis which looks to balance club spending with their revenue and looks to curb clubs accumulating debt.[101] The break-even analysis is set out in article fifty-eight through sixty-four of UEFA's FFP regulations.[102] Any club that wishes to participate in UEFA-sanctioned competitions must comply with the FFP break-even analysis.[103]

Article fifty-eight of FFP outlines streams of revenue and club expenses

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[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.* art 29(1).

[96] *Id.* (Article 29(1) outlines nine different potential disciplinary actions for clubs including: a) warning; b) reprimand; c) fine; d) deduction of points; e) withholding of revenue from UEFA competition; f) prohibiting the registration of new players; g) restriction on number of players a club can use in a UEFA competition; h) disqualification from UEFA competition; and i) withdrawal of UEFA title or award).

[97] *See* FFP all you need to know, *supra* note 73 (discussing UEFA prefers to take a rehabilitative approach rather than a punitive approach with breaching clubs, providing a roadmap for clubs to reach break-even in the future); *see generally* PROCEDURAL RULES GOVERNING THE UEFA CLUB FINANCIAL CONTROL BODY art. 15.

[98] *See* PROCEDURAL RULES GOVERNING THE UEFA CLUB FINANCIAL CONTROL BODY, *supra* note 89, art. 15(1) (2015); *see also* FFP all you need to know, *supra* note 73.

[99] PROCEDURAL RULES GOVERNING THE UEFA CLUB FINANCIAL CONTROL BODY, *supra* note 89, art. 15(1).

[100] FFP all you need to know, *supra* note 73.

[101] *Id.*

[102] 2015 FFP, *supra* note 20, arts. 58-64.

[103] *Id.* art. 57(1).

that are to be evaluated under the break-even analysis.[104] FFP, in article fifty-eight, also outlines that income and expenses from "related parties" must be adjusted to reflect fair market value.[105] FFP defines "related parties" to include individually related parties and legal entities.[106] Due to the demand of European football, clubs can feel enticed to inflate the value of revenue received from a related party;[107] thus, the need for UEFA's stipulation that revenue from a related party needs to reflect a fair market value. What some clubs attempt to do through related party revenue is conceal equity contributions to the club as legitimate payment for services.[108] The difficulty for UEFA is determining what percentage of a related party payment, if any, is an equity contribution rather than payment for services rendered.[109]

There are three reporting periods outlined in Article fifty-nine of FFP which a club will be assessed under.[110] The first reporting period under the break-even analysis, known as reporting period T, is the ending of the calendar year that the UEFA competition begins.[111] The second reporting period, referred to as T-1, is the year prior to T.[112] The last reporting period, referred to as T-2, is the year prior to T-1.[113] For example, if UEFA is evaluating the break-even analysis for a club during the 2017/2018 season, the analysis would cover the reporting periods ending in 2017 (T), 2016 (T-1), and 2015 (T-2).[114]

Article sixty of FFP, referred to as the "notion of break-even results," discusses what exactly the break-even analysis evaluates.[115] The break-even analysis looks at the revenues earned by the club and expenses paid by the club to determine if the club is operating in a deficit or surplus.[116] The CFCB

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[104] *Id.* art. 58(1) (Annex X of UEFA'S FFP discusses revenues such as: a) gate receipts; b) sponsorship and advertising; c) broadcasting rights; d) commercial activity; e) UEFA prize money; and f) other operating income all count in the break-even analysis. As for expenses, the break-even analysis takes into consideration: a) cost of sales/materials; b) employee benefits; c) other operating expenses).

[105] *Id.* art. 58(3).

[106] *Id.* annex X(F)(1) (defining related party as a person or entity that is related to the entity that is preparing its financial statements. In considering each possible related party relationship, UEFA looks to the substance of the relationship and not merely the legal form).

[107] Salvatore Cincimino, *Revenues from related Parties Transactions and UEFA Financial Fair Play. The Search for an Alternative Solution to Fair Value Measurement for the Break-even Result Assessment*, 1 ATHENS J. SPORTS 103, 104 (JUN. 2014).

[108] *Id.*

[109] *Id.*

[110] 2015 FFP, *supra* note 20, art. 59.

[111] *Id.* art. 59(a).

[112] *Id.* art. 59(b).

[113] *Id.* art. 59(c).

[114] *Id.* art. 59.

[115] *Id.* art. 60.

[116] *Id.* art. 60 (the terms 'revenue' and 'surplus' are defined in Annex X of FFP regulations).

will inquire into whether a club has a surplus or deficit for each reporting period (T, T-1, and T-2).[117] If all three reporting periods total zero or more, UEFA will judge the club to have a break-even surplus.[118] However, if the amount between all three reporting periods is less than zero, UEFA will find the club will to have a break-even deficit.[119] Moreover, if a club does have a break-even deficit over the three reporting periods, they can point to a surplus in two previous reporting periods (T-3 and T-4) in an attempt to reduce their deficit.[120]

While UEFA looks to ensure clubs are not spending beyond their means, they do allow slight deviation for clubs when it comes to the break-even analysis.[121] Article sixty-one provides allowable deviations. UEFA allows clubs to deviate from the break-even analysis by amounts up to €5 million.[122] However, if the club has an equity owner or a related party making contributions to the club, the club is allowed a deviation of €30 million.[123] Allowing a deviation of €30 million if capital contributions are present from equity owners or related parties is a reduction from the €45 million that the 2012 version of FFP regulations allowed.[124]

The rest of the articles in the FFP regulations that make up the break-even analysis (sixty-two through sixty-four) detail what information the club must provide and when.[125] FFP details clubs whom operate a deficit in either T, T-1, or T-2 must submit projected financials for the upcoming fiscal year indicating their financials are moving in the right direction.[126]

C. Application of the Break-Even Analysis

UEFA has issued fifty-four settlements or adjudications since the introduction of the break-even analysis for club with varying degrees of FFP breaches.[127] A little over half of the disciplinary action taken by the CFCB for breach of FFP have been the CFCB settling with clubs over their FFP breach.[128] Out of the fifty-four disciplinary actions taken by the CFCB, some of them have garnered more media attention than others. These cases illuminate the application of FFP best due to the visibility of not only the

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117 *Id.*

118 *Id.*

119 *Id.*

120 *Id.*

121 *Id.* art. 61.

122 *Id.*

123 *Id.*

124 UEFA CLUB LICENSING AND FINANCIAL FAIR PLAY REGULATIONS, EDITION 2012 art. 61 (2012) [hereinafter 2012 FFP].

125 2015 FFP, *supra* note 20, art. 62.

126 *See id.* art. 64.

127 *See supra* note 73.

128 *See id.* (listing all fifty-four CFCB decisions, twenty-eight out of fifty-four, or fifty-one percent, were settlements between the breaching club and CFCB).

infractions of the club, but the results of the penalties faced by the clubs.

One of the most recent decisions by the CFCB against a club was the settlement agreement reached between the CFCB and the storied Portuguese club FC Porto.[129] UEFA found FC Porto in breach of the monitoring requirements found in articles fifty-three through sixty-eight, particularly the break-even analysis found in articles fifty-eight to sixty-four.[130] The two years prior to CFCB disciplinary action, FC Porto had net operating losses of €48,614,000 and €16,745,000 respectively.[131] FC Porto had taken steps to bring the club within the requirements of the break-even analysis; consequently FC Porto was able to present a comprehensive business plan to the CFCB investigators.[132] Because FC Porto presented their plan, the CFCB, per article fifteen of the procedure rules governing the CFCB, found a settlement agreement an acceptable outcome in this case.[133]

The settlement agreement requires FC Porto to satisfy the break-even analysis by monitoring periods for 2018, 2019, and 2020.[134] Additionally, FC Porto agrees to forfeit €700,000 of their winnings for their participation in the 2016/2017 UEFA Champions League competition.[135] If FC Porto fails to adhere to the break-even analysis for 2018, 2019, or 2020 outlined in the settlement agreement, they will forfeit an additional €1,500,000 from their 2016/2017 UEFA champions league winnings.[136] In addition to FC Porto's monetary punishment, they were also subject to a sporting punishment as well.[137] FC Porto had the maximum number of registrable players they can register for UEFA Champions League competition reduced for each year of the settlement monitoring period.[138]

During 2014, the first year CFCB discipline took place after the

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[129] *See* UEFA Club Licensing & Financial Fair Play Unit, Decision Of The Chief Investigator Of The CFCB Investigatory Settlement Agreement With FUTEBOL CLUBE DO PORTO–FUTEBOL, SAD (2017) [hereinafter FC Porto CFCB agreement]; *see also History*, FC PORTO, http://www.fcporto.pt/en/clube/historia/Pages/historia.aspx (discussing FC Porto is now, as of the end of the 2016/2017 season, the most winningest club hailing from Portugal).

[130] FC Porto CFCB agreement, *supra* note 129, at 1.

[131] *Management Report & Consolidated Accounts 2015/2016 FC Porto Futebol SAD*, FC Porto SAD, http://www.fcporto.pt/Relatrios%20de%20Contas/RC_Consolidado_2015-2016_INGLES.pdf (showing a majority of the operational expense for the two reporting years stemming from the purchasing of players and their salary).

[132] FC Porto CFCB agreement, *supra* note 129, at 1.

[133] *Id.*

[134] *Id.* at 2 (discussing FC Porto may not have a break-even analysis deviation of more than €30 million at the end of the 2017 reporting period, €20 million at the end of the 2018 reporting period, and €10 million at the end of the 2019 reporting period).

[135] *Id.* at 3.

[136] *Id.*

[137] *Id.* at 4.

[138] *Id.* (discussing how FC Porto may not register more than twenty-two players in the 2017/2018 season, twenty-three players in the 2018/2019 season, and twenty-three players for the 2019/2020 season. Clubs are allowed to register twenty-five players for UEFA Champions League competition if no reduction is in place).

introduction of the FFP, two high-profile settlements occurred: one with Manchester City and the other with PSG.[139] Both settlements occurred on the same day, May 16, 2014. Manchester City, for fiscal year 2011 and 2012,[140] had net operating losses of £189,587,000 and £93,444,000 respectively;[141] and in 2013, or reporting period T, Manchester City took a loss of £44,753,000.[142] PSG also took losses over the course of the reporting periods applicable to their settlement.[143] PSG's losses stemmed mainly from UEFA reevaluating a sponsorship agreement between PSG and Qatar Tourism Authority (QTA).[144] The CFCB found PSG had been above the allocated deviation from the break-even analysis once the PSG/QTA sponsorship deal was reevaluated.[145]

Additionally, both PSG and Manchester City faced similar penalties under FFP in their settlement agreements with CFCB.[146] Manchester City agreed to pay UEFA a total of €60 million in fees, of which €40 million would be returned to Manchester City if they fully comply with the settlement agreement.[147] The CFCB handed PSG the same monetary penalty.[148] Both clubs were prohibited from increasing their spending on player salaries while also significantly reducing their spending on new players for the next two years.[149] Lastly, the CFCB required both clubs to reduce their registered players for all UEFA competitions down to twenty-

139 UEFA, ARCHIVE OF DISCIPLINARY ACTIONS, http://www.uefa.com/insideuefa/disciplinary/club-financial-controlling-body/cases/index.html (last updated June 13, 2018)*;* *see also* Keith Weir, *PSG, Man City face squad caps, fines over FFP*, REUTERS (MAY 6, 2014 5:37 AM), https://www.reuters.com/article/uk-soccer-uefa-ffp/psg-man-city-face-squad-caps-fines-over-ffp-idUKKBN0DM0LR20140506; *Financial Fair Play: Manchester City and PSG Punished*, CNN (May 16, 2014 5:35 PM), http://edition.cnn.com/ 2014/05/16/sport/football/financial-fair-play-uefa-football/index.html.

140 2011 would be considered "T-2" for purposes of the break-even analysis that was used in determining Manchester City's breach of FFP. 2012 would be "T-1" for the same analysis.

141 MANCHESTER CITY, ANNUAL REPORT 2011-2012, http://content.mcfc.co.uk/~/media/Files/Annual%20Report/Annual%20report%201112%20FINAL.pdf [hereinafter 2011-2012 Man City Report].

142 MANCHESTER CITY, ANNUAL REPORT 2012-2013, http://content.mcfc.co.uk/~/media/Files/Annual%20Report/MCFC_AR.pdf, [hereinafter 2012-2013 Man City Report].

143 *See* UEFA CLUB LICENSING & FINANCIAL FAIR PLAY UNIT, DECISION OF THE CHIEF INVESTIGATOR OF THE CFCB INVESTIGATORY SETTLEMENT AGREEMENT WITH PARIS SAINT-GERMAIN FOOTBALL CLUB 1 (2014) [hereinafter PSG CFCB AGREEMENT].

144 *Id.*; *see also infra* section IV (discussing the question sponsorship deal as one instrument used by PSG foreign owners attempting to circumvent FFP).

145 PSG CFCB AGREEMENT, *supra* note 143, at 1.

146 *Id.*; *see* UEFA CLUB LICENSING & FINANCIAL FAIR PLAY UNIT, DECISION OF THE CHIEF INVESTIGATOR OF THE CFCB INVESTIGATORY SETTLEMENT AGREEMENT WITH MANCHESTER CITY FOOTBALL CLUB LIMITED (2014) [hereinafter MAN CITY CFCB AGREEMENT].

147 MAN CITY CFCB AGREEMENT, *supra* note 146, at 2.

148 PSG CFCB AGREEMENT, *supra* note 143, at 2.

149 *Id. at 1*; MAN CITY CFCB AGREEMENT, *supra* note 146, at 1.

one players from the standard twenty-five players.[150]

FFP, while only being around for a few years, has already made a large impact on the game. Revenue has increased and deficit spending has decreased, ensuring clubs are spending responsibly.[151] UEFA enacted FFP to ensure fiscal responsibility in European clubs,[152] however, some clubs have found ways of getting around FFP in hopes of achieving victory on the largest European stage.

IV. METHODS USED BY FOREIGN OWNERS TO AVOID FINANCIAL FAIR PLAY REGULATIONS.

The rationale behind FFP is to ensure clubs do not spend beyond their means,[153] but some clubs discovered ways to undercut the spirit of FFP while technically remaining within the regulatory guidelines.[154] UEFA requires, per FFP article fifty-eight, relevant income and expenses from related parties to be assessed at fair market value.[155] The issue with related party income, specifically when it comes from sponsorships, is it can be difficult to discern what part, if any, of the revenue is truly intended to be a sponsorship payment and what portion is equity contributions to the football club from the related party.[156]

The realization that some clubs may attempt to obscure equity contributions through related party "revenues" is not lost on UEFA.[157] On at least two occasions, UEFA called into questions revenue received from related parties. One of those occasions occurred in connection to a sponsorship deal the English club Manchester City entered into with the airline Etihad.[158] Both Etihad's and Manchester City's owners hail from the UAE.[159] The owner of Manchester City is a member of the royal family of

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[150] PSG CFCB AGREEMENT, *supra* note 143, at 1; MAN CITY CFCB AGREEMENT, *supra* note 146, at 1.

[151] UEFA 2015 REPORT, *supra* note 3, at 106 (discussing European clubs' net operating losses have been reduced by eighty-one percent since the introduction of FFP).

[152] *Supra* Section III.

[153] *Supra* Section III.A (discussing the stated reasons for FFP—found in article 2 of the FFP regulations).

[154] *See* Jack Pitt-Brooke, *supra* note 27 (discussing comments made by a European club manager discussing an entire country owning a football club amounts to "financial doping.").

[155] 2015 FFP, *supra* note 20, art. 58.3.

[156] Salvatore Cincimino, *supra* note 107, at 112.

[157] *See* Daniel Taylor, *Uefa to scrutinise Mancherster City's sponsorship deal with Etihad*, THE GUARDIAN (Aug. 16, 2011 2:41 PM), https://www.theguardian.com/football/2011/aug/16/uefa-manchester-city-etihad (Jean-Luc Dehaene, chairman of the CFCB stated "If we see clubs that are looking for loopholes we will act. It is not enough to say: 'We've got a sponsorship contract and that's OK' if the contract is out of line").

[158] *Id.*

[159] Matt Slater, *Uefa boss to scrutinise Manchester City's Etihad deal*, BBC (Aug. 16, 2011), http://www.bbc.com/sport/football/14490740.

UAE while the owner of Etihad airlines is the UAE government.[160] Manchester City and Etihad claimed they valued their sponsorship deal to be worth around £400 million over ten years.[161] In the two years prior to the announcement of this sponsorship agreement, Manchester City posted revenue of -£93 million and -£121 million respectively.[162] UEFA made the decision to investigate the sponsorship deal to ensure Manchester City was not using the sponsorship deal to circumvent the new FFP rules recently put in place; mainly because Manchester City was facing such large losses in the years prior.[163]

In addition to UEFA voicing concern about clubs potentially sidestepping FFP through the use of related parties, the Council of Europe (COE) proffered the same concern.[164] The COE raised concerns over the Etihad sponsorship of Manchester city as a way for the club to circumvent FFP rules.[165] Additionally, the COE discussed the idea UEFA should prohibit clubs from "sponsoring themselves or using associated bodies to do so."[166] Lastly, the COE raised concerns of sponsors inflating the value of their sponsorship deal in order to increase revenues of European clubs.[167] The COE went on to deem the sponsorship deal between Etihad and Manchester City as "improper."[168] However, the COE acts as a watchdog and is separate from the European Union; they have no power to impose any kind of rules.[169] While UEFA eventually sanctioned Manchester City for failing the break-even analysis,[170] UEFA found the sponsorship deal with Etihad to not be a related party transaction, therefore, the value did not necessitate scrutiny.[171]

The second deal that caught the attention of UEFA due to a related party

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[160] *Id.*

[161] *Id.*

[162] *Id.*

[163] Taylor, *supra* note 157.

[164] EUR. CONSULT. ASS., *Good governance and ethics in sports*, Doc. No. 12889 4 (2012), http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbncveG1sL1hSZWYvWDJILURXLWV4dHIuYXNwP2ZpbGVpZD0xODA5OSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTE4MDk5.

[165] *Id.*

[166] *Id.*

[167] *See id.* at 10. ("There is also a need to monitor the 'purchases' of sponsors, who should not overpay for the rights they acquire.").

[168] *Id.*

[169] *Manchester City's Etihad deal 'improper' says Council of Europe*, THE GUARDIAN (Mar. 7, 2012, 11:41 AM), https://www.theguardian.com/football/2012/mar/07/manchester-city-etihad-deal-improper.

[170] Man City CFCB agreement, *supra* note 146, 1.

[171] *See Manchester City – Roll With It*, THE SWISS RAMBLE (Jan. 2, 2015), http://swissramble.blogspot.com/2015/01/manchester-city-roll-with-it.html.

transaction was PSG's sponsorship with QTA.[172] PSG's sponsorship deal with QTA would see €200 million generated annually in sponsorship revenue, eclipsing any sponsorship revenue earned by their rivals.[173] Unlike the Manchester City sponsorship deal, the CFCB found the sponsorship to have been a related party transaction.[174] Because the CFCB found this agreement to be a related party transaction, the value assessed by PSG needed to reflect the fair value. The CFCB found the value of €200 million annually for the sponsorship was not the "fair value" and thus UEFA needed to reevaluate the value.[175] In reevaluating the value of the sponsorship, the CFCB found PSG's revenue did not meet or exceed their expenses and therefore was in violation of the break-even analysis.[176]

While the CFCB found both PSG and Manchester City liable for breaching FFP, specifically the break-even analysis, their punishment mainly came in the form of monetary damages and heightened supervision.[177] What is not evident in the FFP regulations is whether repeat offenders will face harsher penalties or if they will continue being admonished in the form of monetary fines.[178] If there is no process to levy harsher punishments against repeat offenders under FFP, we may see clubs with wealthy foreign benefactors pricing UEFA's monetary fines into the cost of doing business. In the current corporate regulatory environment, it has become commonplace for companies to price in their violations (also known as an "efficient breach").[179] The spirit of FFP as well as the stated objectives would be undercut if clubs are allowed to "efficiently breach" FFP via their owners paying the fines. If FFP is to not only survive but achieve its stated objectives, UEFA must make changes in how the regulations are applied to clubs across Europe.

V. SOLUTIONS TO ENSURE THE SURVIVAL OF FINANCIAL FAIR PLAY REGULATIONS

With what appears to be some clubs choosing to eschew UEFA's FFP regulations, there needs to be reform to ensure FFP lives on and accomplishes its stated objectives. By closing some current holes in the regulations, club

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[172] Ogden, *supra* note 28.

[173] *Id.*

[174] PSG CFCB agreement, *supra* note 143, at 2.

[175] *Id.*

[176] *Id.*

[177] *Supra* Section III.C (discussing the settlement agreements between Manchester City and PSG with UEFA over their break of FFP).

[178] In both the FFP regulations as well the CFCB procedures, information as to how the CFCB and UEFA will handle repeat offenders is absent. 2015 FFP regulations; Union of Eur. Football Assocs., PROCEDURAL RULES GOVERNING THE UEFA CLUB FINANCIAL CONTROL BODY (2015).

[179] Cynthia Williams, *Corporate Compliance with the Law in the Era of Efficiency*, 76 N.C.L REV. 1265, 1270 (1998).

spending can maintain the rationalism intended by FFP while ensuring foreign owners are not able to pick winners and losers.

The first issue to address is whether repeat offenders will face harsher sanctions than monetary fines. Using the law-as-price theory posited by Professor Williams,[180] it would make little sense for clubs to stop breaking the rules if they are to only face continual monetary fines. Allowing clubs to price in habitual breaching of the FFP regulations would not only be costly to the competition in football, it would be costly to the regulatory system put in place by UEFA.

Let us use the FC Porto sanctions discussed above as an example.[181] For the 2016/2017 season, the CFCB fined FC Porto €2,200,000 for their breach of FFP regulations. The season prior to this sanction being imposed, FC Porto's operational income was roughly €75,000,000.[182] The fine imposed by the CFCB in the settlement comes out to be almost three percent of their operational income from the previous year. Although the CFCB have other punishments at their disposal beyond monetary fines, the CFCB adjudication rules for administering FFP do not require the CFCB to escalate club punishment for repeat offenders. If, hypothetically, FC Porto wanted to continue to breach FFP in hopes of securing better players, the sanction amount is and would continue to be inconsequential to the overall operation of the club. The CFCB's fine could easily be offset by additional income stemming from FC Porto's continual breach of FFP.

The competitiveness found in the current environment of European football has placed a higher intrinsic value on on-the-pitch success than bottom line profitably. This is evident through the myriad of clubs failing to spend within the boundaries of their income that are reviewed by the CFCB on a yearly basis. While the number of clubs spending irresponsibly has reduced in recent years due to FFP, there are still cases every year of clubs spending outside their means. By allowing clubs to continue to chase top talent in hopes of greater success on the pitch while eschewing their financial responsibilities, the goals set out by FFP will never come to fruition. There is a clear correlation between the amount spent on players and success on the pitch, as well as a clear correlation between success on the pitch and increased revenue.[183]

I proffer, as the first reform to FFP, a new policy be implemented to ensure repeat offenders are mandatorily given harsher penalties for every subsequent breach of FFP. UEFA would simply need to update article

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[180] *Id.*

[181] *Supra* Section III.C

[182] Futebol Club Do Porto SAD, *Management Report & Consolidated Accounts 2015/2016* (2016), http://www.fcporto.pt/Relatrios%20de%20Contas/RC_Consolidado_2015-2016_INGLES.pdf.

[183] Fiona Carmichael, Ian McHale, & Dennis Thomas, *Maintaining Market Position: Team Performance, Revenue and Wage Expenditure in the English Premier League*, 63 BULL. OF ECON. RES. 464, 480 (2010).

twenty-nine of Procedural Rules governing the UEFA Club Financial Control Body regulations or add a subsequent article to indicate harsher penalties for repeat offenders. To discourage pricing FFP breaches into the club's business model, punishment for repeat offenses should not include monetary fines. The rules governing the CFCB list nine potential disciplinary measures; the first three disciplinary measures are a warning, reprimand, and a monetary fine respectively.[184] Implementing new regulations that require repeat offenders to face a minimum punishment starting at the fourth disciplinary measure, point reduction,[185] would not allow clubs to "price in" in their habitual rule breaking and ensure that actual long lasting change is introduced to European football by FFP.

When a club is repeatedly unable to manage their finances, additional financial burdens will not serve as a method to correct their behavior. There are two potential reasons for a club to breach FFP and spend outside of the club's current revenue level. First, the club is facing legitimate financial burdens and are choosing to spend outside their means in hopes of increasing revenue through on-the-pitch success. Second, the club has a wealthy owner, potentially a foreign owner looking to make a previously unsuccessful club successful, and the bottom line finances of that club mean less to the wealthy owner than on-the-pitch success. In either of these scenarios, continual fines for failing to spend within reason is not a punishment that will lead to a more financially stable club. By diminishing a club's potential success in the UEFA competitions through either point reduction or total disbarment from the competition, clubs will not have to make a choice between financial stability or on-the-pitch success. The CFCB will make this choice for them through a policy that eliminates even the chance of on-the-pitch success if finances are not stable.

In addition to requiring the CFCB to start at harsher penalty than monetary fines for habitual FFP breaches, I posit an amendment to punishment 1(g), found in article twenty-nine of the Procedural Rules Governing the CFCB, which could help curb irresponsible spending by wealthy foreign owners in hope of securing top talent. Punishment 1(g) states the CFCB, in finding a club has breached FFP, may impose a "restriction on the number of players that a club may register for participation in UEFA competitions, including a financial limit on the overall aggregate cost of the employee benefit expenses of players registered on the A-list for the purpose of UEFA club competitions."[186] I recommend adding additional language to this punishment which would bar clubs from registering any player purchased in any fiscal year found to be in violation of FFP regulations.

Take for example PSG's most recent settlement which was discussed

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[184] Union of European Football Associations, PROC. RULES GOVERNING THE UEFA CLUB FIN. CONTROL BODY art. 29(1) (2015).

[185] *Id.*

[186] *Id.* art. 29(1)(g).

previously.[187] In this settlement, PSG had their available squad for all UEFA competitions reduced to twenty-one from the standard twenty-five. This means while PSG may only register twenty-one players, they can register any twenty-one players on their roster. If PSG is spending outside their means to acquire top talent, these new players could become part of this twenty-one players and PSG would choose lesser skilled players to remain unregistered in UEFA competitions. During the fiscal period that led to PSG being sanctioned, they purchased three star players for a total €114 million: Edinson Cavani for €64 million alone,[188] and Marquinhos and Lucas Digne for the remaining €50 million. [189] Had the recommendation posited here been part of the punishment handed out to PSG in 2014, PSG could not register these three for the following season.

By restricting clubs from using players that were purchased with funds that led to a breach of FFP, their investments lost most, if not all, their return. For example, let us examine PSG again but this time, in the most current transfer window. In the summer of 2017, PSG purchased Neymar from Barcelona and Mbappe from AC Monaco for a total €367 million.[190] While the CFCB have not sanctioned PSG for breach of FFP to date, the CFCB is investigating PSG's recent spending.[191] If the CFCB finds that PSG breached FFP, more likely than not, PSG will face similar sanctions as they did in 2014 and have their squad reduced from twenty-five to twenty-one. However, if those twenty-one spots allotted to PSG for UEFA competitions cannot include either Neymar or Mbappe, PSG's investment of €367 million will have little to no return. This change to punishment 1(g) will discourage wealthy foreign owners from spending large amounts of money on new players knowing they may not be able to use these new expensive players in future competitions. By further restricting the players from UEFA competitions and installing harsher penalties for habitual rule breakers, new foreign owners may feel less inclined to use their wealth to pick winners and losers in European football.

Beyond additional regulations to FFP, the term "related party" of the current regulations need to have a more clear and inclusive definition. In addition to a better definition to the term, UEFA and the CFCB need to take a stance that the term will apply in a broader, more liberal way. If the CFCB

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[187] *Supra* Section III.C.

[188] *Edinson Cavani joins Paris Saint-Germain for French Club Record Fee*, THE GUARDIAN (Jul. 16, 2013, 3:46 PM), https://www.theguardian.com/football/2013/jul/16/edinson-cavani-paris-saint-germain-transfer.

[189] *See* Tom Williams, *Will PSG retain their Ligue 1 title after turbulent summer?*, THE GUARDIAN (Aug. 9, 2013 6:27 AM), https://www.theguardian.com/football/football-further-blog/2013/aug/09/paris-saint-germain-retain-ligue-summer.

[190] Burt, *supra* note 16.

[191] *Paris-St Germain investigated by UEFA over financial fair play, BBC (Sep. 1, 2017), http://www.bbc.com/sport/football/41129494.*

adopt a clearer definition of related party, while also interpreting the term in a broader sense, the CFCB could ensure the spirit of FFP is upheld to the highest extent possible.

For example, the Etihad sponsorship of Manchester City should fall under the definition of related party. Yet, the CFCB found these two parties to have not been related parties. This has allowed Manchester City to receive large sums of money via sponsorship deals between their club and Etihad airlines with minimal oversight by UEFA and CFCB. Under FFP, the CFCB consider two parties to be related if they "are controlled, jointly controlled, or significantly influenced by the same government."[192] Taking a closer look at Manchester City and Etihad, it would appear the CFCB means to interpret the language "significant influence by the same government" extremely narrowly. One way to combat potential related party transactions from escaping UEFA scrutiny would be to broaden the interpretation of the related party regulations found in FFP.

The first solution to the current definition of related parties under FFP would be to expand the verbiage found in the actual regulations. Under FFP, one qualifies as a related person if they are a close family member such as a spouse, child, child of the spouse, or dependent of a key figure of the football club that has control or significant influence over the football club.[193] This definition of a related person is wanting and leaves many different close family relationships outside the purview of FFP. The U.S. Securities and Exchange Commission(SEC) defines related parties more broadly. The SEC defines a related person as "Any immediate family member […] which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and any person (other than a tenant or employee) sharing the household of such security holder."[194]

The difference between UEFA's related person definition and the SEC's is stark. By aligning the definition of related person closer to what has been codified by the SEC, UEFA may be able to pull additional transactions under their jurisdiction and allow for greater oversight of European Football. This greater oversight would help curb transactions disguised as legitimate revenue when in actuality they entail equity contributions.

Next, beyond rewriting the actual definition of related parties, UEFA must take the stance of interpreting FFP regulations in a broader sense. An example for the need to broaden the interpretation of the regulations is the previously given transaction between Manchester City and Etihad Airlines. With one being a member of the royal family of UAE and the other being owned by the country of UAE, it is confounding how these two parties are not "significantly influenced by the same government." This solution does

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192 2015 FFP, *supra* note 20, annex X(F)(3)(b).
193 2015 FFP, *supra* note 20, annex X(F)(2)(a)-(c).
194 17 C.F.R. 229.404(a).

not require any rewriting of the current FFP regulation. It merely requires the CFCB to enforce the regulations that are currently on the books.

Even if Manchester City and Etihad could make a compelling argument that they are not significantly influenced by the same government, it would appear a member of the royal family of UAE has "significant influence" over an airline owned by UAE.[195] UEFA must set out a clear definition of "significant influence" and must make that clear definition as broad as possible. This again would allow additional transactions to fall under the jurisdiction of UEFA and allow for greater oversight of potentially related party transactions.

Moreover, related party transactions need to be differentiated between types of transactions. Looking at related party transaction regulations under the SEC, different transactions have different regulations pertaining to related parties.[196] Beyond mirroring the language found in the SEC regulations regarding definitions of related parties, UEFA should also appropriate the idea of related party regulations regarding specific types of transactions. Sponsorships are one of the many ways related parties or potentially related parties are able to funnel money into a football club of their choosing. A solution to this problem would be to have regulations regarding club sponsorships and related parties.

As the COE raised, there is a concern over clubs "sponsoring themselves" through related party sponsorships.[197] According to the current rules of FFP, if a club is to claim revenue from a related party transactions, including a sponsorship deal, it is the club's responsibility to determine the fair market value of the sponsorship deal.[198] If UEFA decides to investigate the claimed fair market value, the CFCB will refer the transaction for investigation to an independent third party to determine the true fair market value.[199] My recommendation would be to bifurcate related party transactions that are based on sponsorship transactions and those that are non-sponsorship transactions. The reason for this bifurcation in the regulations would be to ensure no European clubs may participate in self-sponsorship.[200] My recommendation is for UEFA to determine the fair market value of related

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[195] 2015 FFP, *supra* note 20, Annex X (F)(3)(c)(explaining two entities are related parties when "one entity has significant influence over the other entity").

[196] *See* 17 C.F.R. 229.404 (discussing related party transactions dealing with indebtedness and related party transaction dealing with leaseholds and how they are treated differently).

[197] Council of Europe, *Good governance and ethics in sports*, Doc. No. 12889, 10 (2012).

[198] 2015 FFP, *supra* note 20, Annex X(B)(k).

[199] *Id.* Annex X(F)(6).

[200] *See* Council of Europe, *supra note 197*. *See also* Mike Ozanian, *La Liga Says PSG Using Financial Doping To Get Neymar*, FORBES (Aug. 3, 2017, 11:49 AM), https://www.forbes.com/sites/mikeozanian/2017/08/03/la-liga-says-psg-using-financial-doping-to-get-neymar/#50dc05cd41ba (discussing PSG holding tenth position in kit sponsorships but at the same time holding the largest sponsorship of any European club from their parent company).

party sponsorship transactions from the beginning of the transaction rather than allow the club to make the initial valuation.

Requiring UEFA to value sponsorship transactions will deter clubs from using related party transactions for a few reasons. First, the club will feel less in control of its sponsorship transactions when it comes to related parties relative to a third-party sponsorship transaction. A club will feel their negotiating position has been reduced when ultimately the value will be determined by UEFA. Second, the related party sponsor will be hesitant to participate in a related party sponsorship again due to a lack of negotiating power. A related party sponsor may feel as if they are being forced to pay too much for the exposure being generated from the sponsorship. A related party sponsor may feel it could generate a larger exposure for the same price in an arms-length transaction with a price negotiated by the parties than it could in a related party transaction where the value is set by UEFA.

Last, requiring UEFA to evaluate the price of a sponsorship transaction between a club and a related party would add unnecessary time to a sponsorship transaction. Clubs enter into new sponsorships deals for higher streams of revenue. If the club requires larger streams of income, it would prefer the stream of income to start sooner rather than later. By being able to enter an arms-length negotiated sponsorship sooner than a related party sponsorship, the club would have another reason to favor non-related party sponsorships.

As stated previously, the CFCB should treat related party sponsorships differently than other related party transactions entered into by a club. Other non-sponsorship related party transactions will continue to be valued by the club and only investigated if UEFA feels there is a deviation between the true market value and the value claimed by the club. There are two reason for bifurcating these two types of related party transactions.

First, as it stands now, self-sponsorship through related parties is one of the major ways wealthy foreign owners are able to contribute equity to the club disguising it as legitimate revenue.[201] Until other transactions prove to be just as troublesome, the heightened scrutiny is only warranted with sponsorship transactions. Second, UEFA would be required to expend large amounts of time and resources administering this regulation. To require this level of heightened scrutiny on all possible related party transactions would become unreasonable and burdensome.

VI. CONCLUSION

For the protection of European football, the FFP regulations needs amending to ensure winners and losers are no longer chosen by foreign investments. With the increasing popularity of European football, investment opportunities have not only increased in number, but increased in value.

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[201] *Id*.

Since the 2003/2004 season, Europe has seen an explosion of foreign owners investing in football clubs. With the increase of additional competition in European football, clubs have taken it upon themselves to spend at unsustainable levels in a race to the top. Because of this irresponsible spending, UEFA decided to introduce the FFP regulations.

UEFA implemented FFP to ensure responsible spending by the clubs as well as to promote and improve all aspects of the game. However, some aspects of the game, namely competition, continue to go unimproved. By closing certain loopholes exploited by the new foreign owners coming into European football, clubs can enjoy financial stability FFP looks to implement as well as a competitive sport for the clubs and fans alike. If UEFA addresses repeat offenders, the method of valuing related party transactions, and more clearly defines a related party, the sport of European football would be better off.