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**Report on the NCAA's Engagement of
a Source's Counsel and Use of the
Bankruptcy Process in its University
of Miami Investigation**

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I. EXECUTIVE SUMMARY

On January 22, 2013, the National Collegiate Athletic Association (“NCAA” or “Association”) retained Ken Wainstein and Cadwalader, Wickersham & Taft LLP (“Cadwalader”) to conduct an external review of the circumstances surrounding the role of the NCAA’s Enforcement Staff in securing depositions in a bankruptcy proceeding in order to further the NCAA’s investigation of the University of Miami (the “Enforcement Review”¹).

The focus of the Enforcement Review has been to determine whether NCAA Enforcement Staff took inappropriate steps in their efforts to secure testimony and records through the bankruptcy process, and if so, to determine how that happened. In particular, we sought to identify how the plan to use bankruptcy depositions evolved, and who within the NCAA approved the plan. We interviewed 22 people in 11 days in three states. Our interviews included the President and senior executives of the NCAA, current and former employees of the Association, and third parties. We collected and reviewed more than 4,300 documents to assist us in understanding what happened.

We received extensive cooperation from the NCAA and all of its employees. In addition, a number of third parties, including former NCAA employees, University of Miami (“U. Miami”) representatives, and others made themselves available for interviews, even though they were under no obligation to do so. We greatly appreciate the cooperation and dedication of resources by the NCAA, its employees, and all third parties with whom we met.

A. Background

Through our Enforcement Review, we developed the following narrative of the events concerning the NCAA’s use of the bankruptcy process in its investigation of the University of Miami:

The National Collegiate Athletics Association is a private, voluntary, unincorporated association of four-year colleges and universities, athletics conferences or affiliated associations, and other educational institutions that regulates the conduct of the intercollegiate athletics programs of its member institutions.²

¹ We use the term “Enforcement Review” to refer to Cadwalader’s external investigation of the NCAA’s Enforcement operations so as to avoid confusion with references to the underlying Miami investigation.

² NCAA Const. arts. 3.01, 3.1.1, 4.02.1.

In 2011, Nevin Shapiro, a former booster of U. Miami sports programs, contacted the NCAA and made allegations that he had provided improper benefits to U. Miami student-athletes. Over the course of the ensuing investigation, the Enforcement Staff worked extensively with Shapiro and his attorney, Maria Elena Perez, Esq. In the course of that relationship, Ms. Perez suggested to Director of Enforcement Ameen Najjar that she could assist the NCAA's investigation by qualifying for practice in her client's bankruptcy proceeding and using bankruptcy subpoenas to compel depositions from witnesses who had refused to cooperate with the NCAA. In return, Ms. Perez asked that the NCAA pay her for her work in relation to the depositions.³

Mr. Najjar presented the proposal to his supervisors, Julie Roe Lach, Vice President of Enforcement, and Tom Hosty, Managing Director of Enforcement. In explaining the value of the proposal, Mr. Najjar noted that "[o]ther than conducting these depositions, I do not believe we will be able to secure interviews with the witnesses... ." Believing the proposal had merit, Ms. Lach obtained financial authority to pay for it from Jim Isch, Chief Operating Officer, and directed Mr. Hosty to seek the Legal Staff's approval.

The Legal Staff carefully reviewed and analyzed the merits of the proposal and strongly advised Mr. Najjar – both in writing and in a subsequent meeting – that the Enforcement Staff should not hire Mr. Shapiro's attorney to take bankruptcy depositions for the NCAA. The written advice was shared with Ms. Lach and Mr. Hosty, and Ms. Lach attended the subsequent meeting in which the Legal Staff repeated the advice.

Notwithstanding this advice, Mr. Najjar proceeded to accept the proposal and coordinate depositions by Ms. Perez. He did so under the rationale that the NCAA would not be "hiring" or "retaining" Ms. Perez for her services, but would rather only be reimbursing her for the costs of the depositions. Mr. Najjar went forward with the proposal without ever returning to the Legal Staff to check if that rationale would change their strong advice against accepting Ms. Perez's proposal. When asked by Ms. Lach and Mr. Hosty, Mr. Najjar assured them that the Legal Staff had, in fact, approved the proposal.

It was not until after Mr. Najjar left the NCAA that the Enforcement Staff learned that the Legal Staff had not approved the proposal. Upon learning that the Perez proposal had been implemented contrary to the Legal Staff's advice, the Enforcement and Legal Staffs immediately ceased all coordination with Ms. Perez in the bankruptcy process. They also directed that any allegations or assertions in the Investigative Record for the U. Miami case that were based directly or indirectly on Ms. Perez's depositions or other work in the bankruptcy proceedings be excised

³ For ease of reference, this Report refers to this proposal as the "Perez proposal."

from the document. The NCAA then conducted a preliminary factual inquiry to understand how this happened, sought an opinion from outside counsel about any legal ethical implications, and informed U. Miami and the public about these events. Finally, NCAA President Emmert retained Cadwalader and Ken Wainstein to conduct an independent investigation of the circumstances surrounding the Perez proposal and deferred any further action in relation to the U. Miami case until the completion of that investigation.

B. Key Factual Findings

We have evaluated witness accounts and the information we received in the course of our Enforcement Review, and have made the following specific factual findings, which are most relevant to our assessment of responsibility for the actions taken by the Enforcement Staff:

- Ms. Lach directed that the Perez proposal be reviewed by the Legal Staff before it could be accepted and implemented.
- The legal advice provided by the Legal Staff to Mr. Najjar, Ms. Lach and Mr. Hosty was clear that they should not accept the Perez proposal.
- Mr. Najjar chose not to follow that legal advice, deciding instead to come up with “a way around it.”
- Mr. Najjar went forward with his “way around” without returning to the Legal Staff and asking if that idea would change their advice to reject the Perez proposal.
- Mr. Najjar told Ms. Lach and Mr. Hosty that the Legal Staff had approved his actions when, in fact, they had not.
- Neither Ms. Lach nor Mr. Hosty checked with Legal Staff to confirm that they had reversed their original advice and accepted Mr. Najjar’s “way around.”
- Neither Ms. Lach nor Mr. Hosty examined the Perez proposal carefully enough to appreciate the prudential concerns it raised.
- The Enforcement Staff and Legal Staff acted appropriately once they realized that Mr. Najjar had gone forward with the proposal contrary to legal advice.

C. General Findings

We made the following general findings relating to the legal, policy and prudential concerns that were potentially implicated by the Enforcement Staff's acceptance and implementation of the Perez proposal:

First, we find that the facts do not establish that any NCAA employee knowingly violated a specific bylaw or law. While the Enforcement Staff may have disregarded the advice of the Legal Staff in proceeding with the proposal, that conduct does not appear to have violated any written NCAA rule. We have also found no apparent violation of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or Bankruptcy Court orders by NCAA staff.⁴

Second, we find that Mr. Najjar knowingly circumvented the legal advice against engaging Ms. Perez. While we did not identify a written rule requiring Enforcement Staff members to abide by duly provided legal advice, it was universally understood at the NCAA that Enforcement Staff must adhere to such advice. Accordingly, it was simply not reasonable for Mr. Najjar to proceed with Ms. Perez's proposal in light of the clear advice to the contrary from the Legal Staff.

Third, we find that internal NCAA practice was violated by the engagement of Ms. Perez by the Enforcement Staff rather than the Legal Staff. The NCAA, like most organizations, requires counsel to be retained and monitored by their legal staff. The NCAA's internal website, NCAA Daily, clearly states that the Legal Staff are responsible for approving and retaining outside counsel. It was also made clear to the Enforcement Staff by the Legal Staff, both in an email and in person.

Fourth, we find that Mr. Najjar, Ms. Lach and Mr. Hosty paid insufficient attention to the concern that the Perez proposal could constitute a manipulation of the bankruptcy process. Mr. Najjar, in particular, knew all angles of the arrangement with Ms. Perez, yet he completely overlooked several that should have raised that concern in his mind. While these Enforcement Staff members can cite circumstances that gave this arrangement a more benign cast in their eyes, they should have been aware that it could be – or at least could be seen as – an abuse of the bankruptcy process. To the extent that they were aware of that concern, there is no evidence that they did anything to address it.

Fifth, we find that Mr. Najjar adopted and Ms. Lach and Mr. Hosty went along with the Perez proposal without sufficiently considering whether it was consistent with the NCAA membership's understanding about the limits of the

⁴ Our legal finding that the Enforcement Staff's conduct did not violate any written rule or proscription is limited to the facts, as we currently understand them, regarding the Perez proposal.

Enforcement Staff's investigative powers. There are any number of techniques that, though permissible in the law enforcement context, are considered over the line for NCAA investigations. Mr. Najjar and his supervisors never considered whether the Perez proposal fell within that category.

Sixth, we find that Enforcement Staff managers Ms. Lach and Mr. Hosty exercised insufficient oversight of Mr. Najjar's handling of the Perez proposal and that they failed to detect and rectify the problems with the Perez proposal for almost a full year.

Finally, we find that the NCAA Legal and Enforcement Staffs undertook an appropriate and commendable course of action once they realized that the Enforcement Staff had implemented the Perez proposal against legal advice. The record demonstrates that the Legal Staff led the NCAA to immediately conduct a preliminary review of the circumstances and scope of Mr. Najjar's conduct; they sought an outside opinion on its ethical implications; they excised from the Investigative Record any reference to information obtained from Ms. Perez's work with the bankruptcy process; and they fully disclosed the issue to the Persons at Risk in the investigation and to the American people.

II. SUMMARY OF INVESTIGATION

A. Background

The NCAA is a private, voluntary, unincorporated association of four-year colleges and universities, athletics conferences or affiliated associations, and other educational institutions that regulates the conduct of the intercollegiate athletics programs of its member institutions.⁵ As a private association seeking to ensure a level playing field for competition, the member institutions are obligated to apply and enforce agreed-upon rules relating to “basic athletics issues,” such as admissions, financial aid, eligibility, and recruiting.⁶

Recognizing that a member institution may fail to fulfill this obligation, the members created a centralized Enforcement Staff within the NCAA and vested it with the authority to investigate alleged rule violations and present them to the Committee on Infractions for disposition.⁷

For the past 22 months, the NCAA has been investigating allegations of NCAA rules violations that were brought to their attention by Nevin Shapiro, a former U. Miami booster⁸ who had been charged with securities fraud and money laundering in connection with an alleged Ponzi scheme. Mr. Shapiro—who pleaded guilty to the two counts in September 2010 and was sentenced to twenty years in prison in June 2011—used his Florida-based company, Capitol Investments USA Inc. (“Capitol”), to raise approximately \$930 million from individuals who believed they were investing in a grocery-distribution business. When the Ponzi scheme collapsed in 2009, Capitol investors forced the company and Mr. Shapiro into an involuntary Chapter 7 bankruptcy.⁹

In February 2011, Mr. Shapiro contacted the NCAA Enforcement Staff to provide details on his allegations with respect to U. Miami. Over the course of the

⁵ NCAA Const. arts. 3.01, 3.1.1, 4.02.1.

⁶ NCAA Const. art. 1.3.2.

⁷ NCAA Operating Bylaws art. 19, NCAA Administrative Bylaws art. 32

⁸ Under NCAA Bylaw article 13.02.14, a booster is a “representative of athletics interests,” which is “an individual . . . who is known (or should have been known) by a member of the institution’s executive or athletics administration to . . . (b) Have made financial contributions to the athletics department or to an athletics booster organization of that institution . . . [or] (d) Be assisting or to have assisted in providing benefits to enrolled student-athletes or their families”

⁹ *In Re Capitol Investments USA, Inc.*, No. 09-36408-BKC-LMI (Bankr. S.D. Fla.); *In Re Nevin K. Shapiro*, No. 09-36408-BKC-LMI (Bankr. S.D. Fla.).

next six months, Mr. Shapiro described to NCAA investigators how he had used profits from the Ponzi scheme to provide benefits to U. Miami student-athletes with the full knowledge of certain U. Miami coaches and staff.

The Enforcement Staff undertook to investigate the allegations with interviews of the current and former NCAA athletes and staff whom Shapiro had implicated. As the investigation continued, however, they began to encounter difficulties in convincing third-party witnesses to provide them with truthful information. In late September 2011, Mr. Shapiro's criminal defense attorney, Maria Elena Perez, Esq., proposed to NCAA Enforcement Staff members the idea of leveraging the subpoena process in Mr. Shapiro's ongoing bankruptcy proceedings to compel certain witnesses to provide the testimony they were seeking. Despite advice from the NCAA's Legal Staff not to retain Ms. Perez for this purpose, the NCAA Enforcement Staff nevertheless proceeded with the proposal.

In the fall of 2012, the Legal Staff and Enforcement Staff managers realized that the proposal had been implemented contrary to the Legal Staff's advice, and they immediately ordered all coordination with Ms. Perez in the bankruptcy proceeding to cease. On January 22, 2013, the NCAA retained Cadwalader to conduct an outside investigation of this engagement of Ms. Perez.

B. Scope of Investigation

Cadwalader's Enforcement Review is two-staged. In the first stage, Cadwalader undertook an investigation into the circumstances surrounding the Enforcement Staff's retention of a source's counsel and the of bankruptcy proceedings in its investigation of U. Miami. This first stage of our Enforcement Review will be complete with the submission of this Report.

Stage Two of our engagement is broader. In that stage, we will assess the broader environment, policies, and procedures of the NCAA's Enforcement operations.

C. Overview of Investigation

The first stage of our Enforcement Review included the collection and review of over 4,300 NCAA emails, electronic and hard copy documents, and a wide range of applicable NCAA bylaws, manuals and other public and nonpublic materials. We interviewed twelve current and former NCAA employees, and conducted five additional interviews of other involved persons and organizations, including representatives of U. Miami and the Bankruptcy Trustee.

Throughout this stage of our Enforcement Review, we have received extensive cooperation from the NCAA and its employees and from all the third parties we contacted. We are grateful to the following individuals who agreed to meet with us: Gary Freedman, Esq., and Andrea Rigali, Esq., counsel for the

Bankruptcy Trustee; Honorable Donna Shalala, President of U. Miami, Aileen Ugalde, Esq., and Judd Goldberg, Esq., General Counsel and Associate General Counsel for U. Miami, respectively; and Michael Glazier, Esq., outside counsel for U. Miami; Ameen Najjar and Richard Johanningmeier, former NCAA employees; and Maria Elena Perez, Esq. and her client, Nevin Shapiro.

III. DESCRIPTION OF EVENTS

A. Key Players

Jim Isch – Jim Isch is the Chief Operating Officer of the NCAA. Over his fifteen-year career with the NCAA, Mr. Isch also has served as interim President of the NCAA and as Chief Financial Officer. Prior to joining the NCAA, Mr. Isch was an administrator at the University of Arkansas, Montana State University, and Kansas State University.

Donald Remy – Donald Remy is Executive Vice President and Chief Legal Officer of the NCAA.¹⁰ Prior to joining the NCAA in 2011, Mr. Remy had been a partner at Latham & Watkins, a Deputy Assistant Attorney General in the Civil Division of the U.S. Department of Justice, and Deputy General Counsel, Chief Compliance Officer, and Vice President of Litigation at Fannie Mae.

Julie Roe Lach – Julie Roe Lach is the Vice President of Enforcement of the NCAA. Ms. Lach began her career with the NCAA in 1997 as a college intern on the Enforcement Staff. Upon graduation, Ms. Lach joined the Student-Athlete Reinstatement office. In 1999, Ms. Lach was promoted to Director of Student-Athlete Reinstatement. Ms. Lach joined the Enforcement Staff as a Director of Enforcement in 2004, a role in which she served until 2010, when she was promoted to Vice President of Enforcement. As Vice President of Enforcement, Ms. Lach has responsibility over all Enforcement Staff matters.

Tom Hosty – Tom Hosty is the Managing Director of Enforcement of the NCAA. Mr. Hosty has been a member of the Enforcement Staff since 1993; prior to joining the NCAA, Mr. Hosty was a prosecutor in the Kansas City District Attorney's Office.

Ameen Najjar – Ameen Najjar is a former Director of Enforcement of the NCAA. Prior to joining the NCAA in 2004, Mr. Najjar was a police officer and later legal counsel with the Indianapolis Police Department. Mr. Najjar oversaw the U. Miami investigation.

Richard Johanningmeier – Richard “Coach” Johanningmeier is a former Associate Director of Enforcement of the NCAA, a position he held from 1986 to 1990, and again from 1999 to 2012. Mr. Johanningmeier is a former head coach of the Missouri State Football Bears, Director of Athletics at Washburn University,

¹⁰ Mr. Remy assumed his current title in January 2013. At the time of the conduct in question, he was General Counsel of the NCAA. For consistency, we refer to him as General Counsel.

and head coach and Athletic Director at Illinois College. He served as the initial lead investigator in the U. Miami investigation, reporting to Mr. Najjar.

Naima Stevenson – Naima Stevenson is Deputy General Counsel of the NCAA.¹¹ Prior to joining the NCAA Office of Legal Affairs in 2006, Ms. Stevenson spent five years as an attorney at Arnold & Porter LLP.

Nevin Shapiro – Nevin Shapiro, former owner and Chief Executive Officer of Capitol Investments USA, Inc., is the primary source of allegations for the NCAA's investigation into U. Miami. Mr. Shapiro pleaded guilty in September 2010 to one count of securities fraud and one count of money laundering¹² in connection with a \$930 million Ponzi scheme linked to Capitol. Investors put Capitol and Mr. Shapiro into involuntary Chapter 7 bankruptcy in 2009. Mr. Shapiro is currently serving a twenty-year prison term.

Maria Elena Perez – Maria Elena Perez, Esq., is Nevin Shapiro's criminal defense attorney.

B. NCAA Begins Investigation Into the University of Miami

In February 2011, Nevin Shapiro, a former U. Miami athletics booster who at the time was incarcerated on charges of running a \$930 million Ponzi scheme, reached out to NCAA Enforcement Staff officials by sending a letter to Rich Johanningmeier, Associate Director of Enforcement at the NCAA. (Comley, Johanningmeier)¹³. In that letter and in subsequent conversations, Mr. Shapiro made allegations that over the course of a nearly 10-year period, he colluded with numerous student-athletes and coaches to provide improper benefits to athletes and prospective recruits.

NCAA Enforcement Staff members, including Mr. Johanningmeier and then-Director of Enforcement Ameen Najjar, spoke regularly with Mr. Shapiro throughout the U. Miami investigation both on the phone and in person. Messrs. Johanningmeier and Najjar made two visits to meet with Mr. Shapiro in May 2011 and Mr. Najjar made a third visit by himself later in May 2011. (Johanningmeier, Shapiro). In one jailhouse visit, Mr. Shapiro provided Messrs. Johanningmeier and Najjar with four boxes of documents related to his allegations involving U. Miami. (Comley, Shapiro).

¹¹ Ms. Stevenson assumed her current title in January 2013. At the time of the conduct in question, she was Associate General Counsel of the NCAA. For consistency, we refer to her as Associate General Counsel.

¹² <http://www.fbi.gov/newark/press-releases/2010/nk091510.htm>

¹³ In this Report, we have cited to emails and documents by exhibit number and to our interviews of witnesses by the last name of the witness or witnesses relied upon.

In August 2011, the Enforcement Staff briefed NCAA President Mark Emmert for the first time on the status of the investigation. (Emmert). Shortly thereafter, Messrs. Johanningmeier and Najjar met with U. Miami President Donna Shalala to present her with the NCAA's Notice of Inquiry regarding the ongoing investigation. (Najjar, Shalala). On August 16, 2011, based on information provided by Mr. Shapiro, Yahoo! Sports published an article which provided details regarding Mr. Shapiro's allegations of NCAA violations by U. Miami.¹⁴

C. Enforcement Staff Cooperates with Shapiro's Attorney

As the NCAA Enforcement Staff investigated Mr. Shapiro's allegations, they interacted regularly with his criminal attorney, Maria Elena Perez, Esq. Mr. Johanningmeier first made contact with Ms. Perez in April 2011 after Mr. Shapiro requested that she be informed of his cooperation with the NCAA investigation. (Exhibit 1). The NCAA's interactions with Ms. Perez continued through the spring and summer of 2011, as the NCAA sought relevant documents that Mr. Shapiro suggested she might be able to provide.

This interaction evolved into an ongoing relationship as Ms. Perez and the Enforcement Staff investigators coordinated the transfer of information substantiating Mr. Shapiro's allegations. For example, on April 21, 2011, Mr. Johanningmeier asked Ms. Perez if she could provide the NCAA with copies of Mr. Shapiro's Federal Bureau of Investigation ("FBI") 302 reports, which contained information related to his provision of benefits to student-athletes at U. Miami.¹⁵ (Exhibit 2). Ms. Perez responded a week later, indicating that she was not able to provide copies of the FBI 302 reports, but offering to "extract the information regarding any reported NCAA violations or the like." (Exhibit 3). In a later email, Ms. Perez offered to prepare summaries of Mr. Shapiro's 302 reports for the NCAA at a rate of \$575.00 per hour and to provide the NCAA with a formal retainer agreement setting forth the arrangement.¹⁶ In addition, Ms. Perez offered to have the trustee in Mr. Shapiro's bankruptcy proceeding "forward any and all information they have regarding any payments made to either coaches or college football players, as well as any and all formal statements made to them by Mr. Shapiro regarding any college football players, etc." (Exhibit 3).

¹⁴ Charles Robinson, "Renegade Miami Football Booster Spells Out Illicit Benefits to Players," YAHOO! SPORTS, Aug. 16, 2011, http://sports.yahoo.com/investigations/news?slug=cr-renegade_miami_booster_details_illicit_benefits_081611.

¹⁵ Part 2 10-13.3(3) of the FBI's Manual of Administrative Operations and Procedures requires employees to use form FD-302 to memorialize witness interviews. The FD-302 form reports are commonly referred to as "FBI 302s" or "302 reports."

¹⁶ The NCAA declined Ms. Perez's offer to summarize this information. (Exhibit 3).

D. Perez Proposes Conducting Depositions Through the Bankruptcy Process

As the U. Miami investigation continued, NCAA investigators encountered third-party witnesses who refused to be interviewed or who gave seemingly false or incomplete information in their unsworn interviews. (Najjar, Hosty). It was in this context that on September 28, 2011, Ms. Perez told Messrs. Johannningmeier and Najjar that she could use certain procedures of the bankruptcy process to conduct sworn depositions of these witnesses and in return, the NCAA would pay her through a “financial agreement.” (Exhibit 4, Exhibit 5). Ms. Perez explained that Mr. Shapiro had been cooperating with the Bankruptcy Trustee since November 2010 in an effort to recover money from the Ponzi scheme that he had given to U. Miami players.¹⁷ As Ms. Perez told Mr. Najjar, her client had two reasons for assisting the Bankruptcy Trustee: first, assisting the Bankruptcy Trustee in recovering money for the victims of Mr. Shapiro’s Ponzi scheme could help reduce Mr. Shapiro’s sentence and restitution obligation; and second, conducting these depositions would help Mr. Shapiro get revenge on U. Miami and its student-athletes and coaches who had turned their back on him. (Najjar). As part of that effort, Mr. Shapiro had been urging the Bankruptcy Trustee to depose both Mr. Allen and Mr. Huyghue for some time. (Shapiro).

At the time, the NCAA was interested in seeking interviews of Mario Sanchez, Mr. Shapiro’s former bodyguard, Sean “Pee-Wee” Allen, a former assistant equipment manager for the U. Miami football team, and Michael Huyghue, Mr. Shapiro’s former business partner in Axxcess Sports & Entertainment and former United Football League Commissioner.¹⁸ Messrs. Sanchez and Allen had informed the NCAA that they would refuse any interview unless required to participate by a subpoena. (Johanningmeier, Comley).

Mr. Najjar considered this idea to be a potentially effective means of securing truthful testimony from reluctant witnesses. That evening he reported on the proposal to Ms. Lach and Mr. Hosty. He explained that under Ms. Perez’s proposal, she would depose those individuals and use questions drawn up by the NCAA investigators.¹⁹ (Exhibit 5).

¹⁷ Mr. Najjar confirmed that Ms. Perez and Mr. Shapiro proposed to the NCAA Enforcement Staff the idea of using the bankruptcy process. (Najjar).

¹⁸ The notes from the U. Miami investigation team case strategy meeting held on September 28, 2011, suggest that that the Bankruptcy Trustee did not intend to depose Mr. Sanchez, Mr. Allen, or Mr. Huyghue, but that “Perez as Shapiro’s attorney can do that in the bankruptcy attorney’s stead.” (Exhibit 4).

¹⁹ Ms. Lach stated that she did not recall Mr. Najjar’s email and did not believe she had heard of Ms. Perez before that date. (Lach). Mr. Hosty stated that he did not learn about

On October 4, 2011, Ms. Perez provided the NCAA with a written proposal to conduct depositions of nine individuals, including Messrs. Huyghue, Allen, and Sanchez.²⁰ According to her proposal, Ms. Perez estimated that “expenses and legal fees” would approximate \$20,000. (Exhibit 6).

E. U. Miami Raises Concerns Over Bankruptcy Depositions

U. Miami counsel Judd Goldberg and Michael Glazier knew of the Perez proposal before it was formally presented to NCAA supervisors for approval. During an October 10, 2011 conference call with Messrs. Najjar and Johannmeier, Mr. Goldberg and Mr. Glazier articulated three primary concerns with the concept of bankruptcy depositions. They were concerned that 1) Ms. Perez could leak information regarding the investigation because she was not bound by the NCAA’s confidentiality policy; 2) Ms. Perez was not trustworthy; and 3) Ms. Perez was not listed as an attorney in Mr. Shapiro’s bankruptcy, and thus had no authority to issue the bankruptcy subpoenas. (Goldberg and Glazier). Mr. Goldberg reiterated these concerns to Mr. Najjar in an email the following day. (Exhibit 8).

1. Najjar Confirms Legal Authority for Bankruptcy Depositions

In an apparent response to Mr. Goldberg’s email, Mr. Najjar emailed Ms. Perez the same day and asked her for the legal authority allowing her to issue subpoenas through the bankruptcy proceedings. (Exhibit 9). Specifically, Mr. Najjar wrote, “before we proceed any further, we need to fully understand your legal authority to not only issue and enforce subpoenas but the authority that allows you to ask the deposition questions.” (Exhibit 9).²¹ Ms. Perez replied the following day, explaining that she was able to depose individuals in connection with Mr. Shapiro’s bankruptcy proceedings through Bankruptcy Rule 2004 and providing several Bankruptcy Court documents relating to that authority. (Exhibit 10). Approximately one week later, Ms. Perez sent an email confirming that upon completion of a training session for Bankruptcy Court filings, she would be permitted to file subpoenas in the federal Bankruptcy Court. (Exhibit 10).

the Miami case until August 2011, but that he had been briefed on the interviews with Mr. Shapiro and thus knew about Ms. Perez prior to receiving the September 28, 2011 email. (Hosty).

²⁰ On October 10, 2011, Mr. Najjar wrote Ms. Perez to state that the NCAA desired that she depose only Mr. Sanchez, Mr. Allen, Mr. Huyghue, and two other individuals of the nine individuals named in her proposal, as well as David Leshner, who had not been included on her prior proposal. (Exhibit 7).

²¹ Mr. Najjar graduated from Indiana University School of Law in 1990. (Najjar).

Mr. Najjar stated that after reviewing the information Ms. Perez provided, he was confident that Ms. Perez could appear in the bankruptcy matter. (Najjar). He then replied to Mr. Goldberg's email noting that "under the FRCP and bankruptcy rule 2004, [Ms. Perez] can represent the bankruptcy matter . . ." and promising to keep the U. Miami lawyers apprised of any developments with Ms. Perez. (Exhibit 8).

F. Enforcement Staff Supervisors Review Perez Proposal

During this same time period, Mr. Najjar raised the Perez proposal with his supervisors. On October 10, 2011, Mr. Najjar sent Ms. Lach and Mr. Hosty the following email:

Julie/Tom,

I have been exploring the possibility of having Nevin Shapiro's criminal attorney, Maria Elena Perez, assist our investigation by conducting depositions of the following key witnesses who are outside the NCAA's jurisdiction:

1. Mario Sanchez [. . .]
2. Sean (Pee Wee) Allen, [. . .]
3. Michael Huyghue, former sports agency partner with Shapiro.
4. David Leshner, friend of Shapiro's [. . .]
5. [Other Individuals] [. . .].

The depositions would be conducted by Perez and she has agreed to ask any questions we provide her. Additionally, members of the enforcement staff will be able to attend the depositions, as they are open to the public. Other than conducting these depositions, I do not believe we will be able to secure interviews with the witnesses or as in the case of Allen, will simply lie to us during an interview.

Additionally, Perez will also provide us documents, such as summaries of the FBI 302 reports, Shapiro's yacht records and bank and credit card records. I have attached Perez' proposal, which may be adjusted downward slightly because we do not want to depose the four listed coaches. However, we will be looking at roughly \$20,000

in total costs. If we could discuss this in the viability of this [sic] in the near future, it will be helpful. Thanks,

Ameen R. Najjar

(Exhibit 11). As Mr. Najjar explained to us, his purpose in sending this email was both to seek approval for the expenditure of NCAA funds and to get their guidance whether the arrangement was permissible under the NCAA's bylaws. (Najjar).

Mr. Hosty read and replied to Mr. Najjar's email the same day, writing, "Most intriguing. I don't know what we can afford from costs but this could be a creative solution for bigger break-throughs on evidence." (Exhibit 11). During interviews, Mr. Hosty also recalled that after receiving this email he asked Mr. Najjar about the legality of the proposal and Mr. Najjar assured him that Ms. Perez's proposal was a legitimate part of Ms. Perez's effort to recoup money from Mr. Shapiro's Ponzi scheme that was disbursed to U. Miami student-athletes. (Hosty).

Ms. Lach also responded promptly to Mr. Najjar's email. During interviews, Ms. Lach recalled having two concerns when she received Mr. Najjar's email: first, that they needed to make sure that Enforcement had the funds to pay for the proposal, and, second, that they needed to make sure that the Legal Staff would approve the proposal. (Lach). Acting on her first concern, Ms. Lach forwarded Mr. Najjar's email to Mr. Isch, the NCAA's Chief Operating Officer, and requested his approval for funding Enforcement's efforts to use the bankruptcy process:

Can I get the green light for this? We finished last year with a surplus but we are spending more on travel and transcripts. I've spent quite a bit of time ... in accounting working on ways to reliably project expenditures for the year so I know how much money I have to spend on opportunities such as this. But, we are not yet in a position to know with certainty where we'll stand. I think we can cover this but if not, I'd like some sort of okay from you to proceed. I hope to create a detailed budget by Nov 1. In the past, we did not have a level of specificity in the line items that helps when considered [sic] unplanned costs midyear. We will soon.

(Exhibit 11).

Mr. Isch replied to Ms. Lach's email: "Absolutely, please proceed, if past practice is any indication, there will be enough money." (Exhibit 11). During interviews, Mr. Isch stated that given the size and importance of the U. Miami investigation to the NCAA, he was prepared to provide Enforcement Staff with whatever financial resources the Association had available. Mr. Isch explained that

he only provided authorization for the expenditure of funds, and did not opine as to the propriety of using the bankruptcy process. (Isch).

After receiving Mr. Isch's approval, Ms. Lach acted on her second concern, directing Mr. Hosty to clear the proposal with Naima Stevenson, a member of the NCAA's Legal Staff. (Exhibit 11). Ms. Lach explained that, while she was a licensed attorney,²² her role within Enforcement and at the NCAA was not to provide legal analysis or advice. She expected Ms. Stevenson to advise whether the Perez proposal was permissible. (Lach).

G. Legal Staff Provides Advice Regarding Perez Proposal

At Ms. Lach's direction, Mr. Hosty forwarded Mr. Najjar's proposal to Ms. Stevenson on October 13, 2011 with a cover email saying "Julie [Lach] has approved the use of funds to pay for this and Julie [Lach] and I are comfortable with proceeding with this plan, but Naima, do you see any issues?" (Exhibit 12).

Ms. Stevenson promptly reviewed Mr. Najjar's email, and it raised two primary concerns in her mind. First, she felt that the idea that the Enforcement Staff would hire Ms. Perez ran contrary to the internal NCAA policy that only the Legal Staff could hire outside counsel. Second, she saw the arrangement as an effort to circumvent the limits on the NCAA's authority to compel cooperation from third parties. (Stevenson).

Ms. Stevenson replied to Mr. Hosty and Mr. Najjar the same day and asked to "touch base" with them so that she could receive some additional information regarding the proposal. (Exhibit 12).²³ Three days later, Mr. Najjar forwarded the material that Ms. Perez had sent to him, characterizing it as "additional information concerning the authority of Nevin Shapiro's criminal attorney to conduct depositions in the bankruptcy matter."²⁴ (Exhibit 13).

²² Ms. Lach graduated from Indiana University School of Law in May of 2004. (Lach).

²³ Ms. Stevenson stated that she has no recollection of meeting with Mr. Najjar in person to discuss his proposal at this point (Stevenson), while Mr. Najjar stated that he believed he met with Ms. Stevenson to discuss her concerns. (Najjar).

²⁴ Mr. Najjar's email consisted of forwarding on the letter Ms. Perez sent him on October 12, 2011, along with copies of Bankruptcy Rule 2004 and the requirements for Pro Hac Vice appearances.

1. Stevenson Provides Legal Opinion Advising Against the Perez Proposal

After consulting with her boss, Donald Remy,²⁵ Ms. Stevenson provided her legal opinion on the Perez proposal on October 21, 2011. (Remy). In the email reproduced below, Ms. Stevenson advised Mr. Najjar not to use Ms. Perez in the proposed manner and offered several explanations for why she and the Legal Staff believed the Perez proposal was inappropriate:

Ameen,

I spoke with Donald regarding the request to use a source's criminal attorney to conduct depositions in a bankruptcy proceeding on behalf of the NCAA. As we discussed, the receipt of document, the costs associated with the provision of those documents as well as the attendance at public depositions does not cause concern. The use of a source's criminal attorney to conduct depositions on behalf of the Association does raise concerns. As a threshold matter, any engagement of outside counsel to represent the interests of the Association should be done through the Office of Legal Affairs. Essentially what is being requested is the engagement of counsel to not only represent her client's interest in a legal proceeding, the substance of which is not related to NCAA infractions, but for counsel to also represent the interests of the NCAA for which she would be paid by the NCAA. In addition to the fees and costs associated with the depositions, we would be also paying for counsel's time in conducting the depositions of individuals she would not otherwise depose. Understanding that there are at least three individuals that will not speak with us, but would be compelled to do so under the bankruptcy proceeding, our advice would be to not use a source's criminal attorney in this manner. Any information obtained through such a manner for use in the NCAA process would be subject to significant scrutiny to the extent any decisions were based on that information if those decisions were to be subsequently challenged. Donald and I are happy to discuss further with you, Julie and Tom if you would like. Thanks!

Naima M. Stevenson

(Exhibit 14).

Mr. Najjar was disappointed when he received Ms. Stevenson's email, as it presented a significant "road block" just when he was getting pressure to make progress on the U. Miami investigation. (Najjar). In an email that he copied to Ms.

²⁵ Mr. Remy recalled that Ms. Stevenson was indignant at the idea of the Enforcement Staff proposing to hire outside counsel. He also recalled agreeing with Ms. Stevenson that it would be improper for the NCAA to hire someone to solicit testimony from witnesses who were not otherwise accessible to the NCAA. (Remy).

Lach and Mr. Hosty, Mr. Najjar then replied to Ms. Stevenson, explaining that her advice “creates a significant impediment to our investigation” and asking for a meeting. (Exhibit 14).

After exchanging emails with Mr. Najjar, Ms. Stevenson set up a meeting for October 25, 2011, at 4:00 p.m. to discuss the Perez proposal. Ms. Stevenson believed it was necessary to include Mr. Remy in the meeting to reinforce her advice. (Stevenson). She also invited Ms. Lach, Mr. Hosty, and Mr. Najjar to the meeting. (Stevenson).²⁶ Ms. Stevenson, Mr. Remy and Mr. Najjar all attended the meeting in person. (Remy, Stevenson). Ms. Lach participated in the meeting via phone. (Remy, Stevenson).

2. Enforcement Staff and Legal staff Meet to Discuss the Legal Advice

Mr. Remy and Ms. Stevenson have quite similar recollections of this meeting. They recall that the meeting was brief and that Mr. Remy did most of the talking, reiterating the advice that Ms. Stevenson had provided in her email. (Remy, Stevenson). Mr. Remy said that the Enforcement Staff could not retain legal counsel to represent the interests of the NCAA, but that the Enforcement Staff could attend any public depositions or copy transcripts thereof. Mr. Remy and Ms. Stevenson also cited the concern that the Perez proposal may be an inappropriate circumvention of the NCAA’s investigative limitations. They never raised the concern that it may be an abuse of the bankruptcy process. (Remy, Stevenson).

Mr. Remy and Ms. Stevenson are the only two participants who recall the meeting. Ms. Lach reported she had no recollection of the meeting, although she acknowledges that it certainly could have taken place.²⁷ (Lach). She was sick and out of the office on that day,²⁸ and according to Mr. Remy and Ms. Stevenson, Ms. Lach called into the meeting and participated by phone. (Remy, Stevenson). Ms. Stevenson did not recall whether Ms. Lach made any specific statements, but did recall that Ms. Lach appeared to accept Ms. Stevenson’s legal opinion. (Stevenson).

²⁶ Mr. Hosty informed Ms. Stevenson that he was unable to attend the meeting because he was preparing for a hearing in another Enforcement case, but he would have Ms. Lach and Mr. Najjar update him on the meeting’s outcome. (Exhibit 15).

²⁷ As explained in section V.C.2, Ms. Lach was overwhelmed with a variety of weighty issues at that time. She attributes her failure to remember this one phone call (among the nine work calls she handled as she was at home sick that day) to that workload.

²⁸ A review of Ms. Lach’s cell phone records revealed that she received a call from the NCAA offices at 4:02 p.m., approximately the time the meeting began, and that the call lasted for eleven minutes. (Exhibit 16).

Mr. Najjar reported he had no recollection of the October 25, 2011 meeting. (Najjar). He did, however, recall discussions with Ms. Stevenson after receiving her October 21, 2011 email in which she rejected the Perez proposal.²⁹ Mr. Najjar said he came away from these discussions with the understanding that the key principle was the NCAA could not retain Ms. Perez or pay her billable hours. (Najjar).

H. Najjar Responds to Legal Advice

Minutes after the October 25, 2011 meeting with Ms. Stevenson and Mr. Remy concluded, Mr. Najjar sent Ms. Perez a text message that stated, “I ran into a problem with our legal dept concerning ‘retaining’ you but there is **a way around** it. I will call you tomorrow morning.” (Exhibit 17) (emphasis added). Mr. Najjar then set out to put that “way around” into action.

There are two different accounts – Mr. Najjar’s account and Ms. Perez’s account – as to what that “way around” constituted. According to Mr. Najjar, he told Ms. Perez that the Enforcement Staff would not pay her for her billable hours, but that they could reimburse her for costs and expenses, including, for example, costs for the court reporter. According to Mr. Najjar, this was his interpretation of the guidance he had received from Ms. Stevenson. (Najjar).

Ms. Perez’s recollection of Mr. Najjar’s “way around” the legal advice was very different. According to her, Mr. Najjar told her that the Enforcement Staff could not “retain” her, but that they would agree to pay her “costs and fees,” including reimbursing her for billable hours spent arranging and taking the depositions. She was clear that Najjar never told her that the Enforcement Staff refused to compensate her for her time. (Perez).

No matter whose account is more accurate, it is clear that Mr. Najjar never checked with the Legal Staff to make sure that his “way around” was consistent with their original advice to reject the Perez proposal.³⁰ Instead, Mr. Najjar started to implement his “way around” without any further approval. On October 27, 2011, he had Ms. Perez send him her tax number so that she could receive payment, and on November 22, 2011 he text messaged her the assurance that “everything was approved.” (Exhibit 18; Exhibit 19).

²⁹ He was unable to offer details about these conversations, including when they occurred. (Najjar).

³⁰ Ms. Stevenson says that Mr. Najjar never asked the Legal Staff to review this “way around” (moving forward without “retaining” Ms. Perez and paying her only for her expenses), and there is no document indicating that such review was sought.

I. Najjar Assures Lach and Hosty that Legal Staff Approved the Perez Proposal

At some point during this time period, Mr. Najjar assured both Ms. Lach and Mr. Hosty that the Legal Staff had approved of the circumstances under which Ms. Perez had been engaged. Ms. Lach had a general recollection and understanding during the fall of 2011 that Mr. Najjar's activities with Ms. Perez were cleared by legal counsel, based on a conversation she had with Mr. Najjar. (Lach). That understanding is confirmed by a subsequent email on January 17, 2012 which discusses the possibility of additional depositions. That email suggests that Ms. Lach believed the Perez proposal had been initially approved by the Legal Staff, as Ms. Lach notes, with respect to the additional depositions, "did we get [Ms. Stevenson's] sign off as well?" (Exhibit 20).

Mr. Hosty also recalled receiving such assurances from Mr. Najjar. He recalled talking to Mr. Najjar and asking whether the Legal Staff had approved the Perez proposal. According to Mr. Hosty, Mr. Najjar told him that the Legal Staff approved the proposal, although there had been a misunderstanding that he was able to work out. It was Mr. Hosty's clear understanding that Legal Staff had approved the proposal as it was being implemented by Mr. Najjar.³¹ (Hosty).

Mr. Najjar recalled discussing Ms. Stevenson's email and prohibition on hiring Ms. Perez with Ms. Lach and Mr. Hosty. According to Mr. Najjar, they both recognized that the NCAA would be subject to outside scrutiny for Enforcement's use of the depositions in the bankruptcy proceedings to further its investigation. They were comfortable paying for Ms. Perez's costs and expenses, however, so long as the NCAA did not retain Ms. Perez and pay for her billable hours. Importantly, Mr. Najjar was unclear whether he assured them that the Legal staff had signed off on his "way around." (Najjar).

³¹ During interviews, Mr. Hosty explained that at the time he thought Ms. Perez was an officer of the Bankruptcy Court and did not realize that Ms. Perez had not taken bankruptcy training or qualified for admission to the Bankruptcy Court. (Hosty).

J. Najjar and Perez Coordinate Depositions

1. Najjar and Perez Coordinate Dates and Areas for Examination

Toward the end of 2011, Mr. Najjar and Ms. Perez exchanged emails and coordinated the depositions of Sean Allen³² and Michael Huyghue.³³ On December 13, 2011, Ms. Perez contacted Mr. Najjar to inform him that Mr. Allen's deposition was scheduled for December 19, 2011 and that Mr. Huyghue's deposition was scheduled for December 28, 2011.³⁴ Ms. Perez also noted that she scheduled a deposition for David Leshner on December 27, 2011 and was in the process of trying to serve process on a fourth witness, Mario Sanchez.

Mr. Najjar and Ms. Perez also discussed the preparation of questions for the depositions. Ms. Perez stated that if Mr. Najjar were unable to attend Mr. Allen's deposition, Mr. Najjar should send "any and all questions" for the deposition, although she noted, "I believe Mr. Shapiro has all the questions covered."³⁵ (Exhibit 23).

³² As Mr. Najjar alluded to in his October 10, 2011 email, Mr. Allen was previously interviewed about the U. Miami investigation by the NCAA on August 15, 2011. According to the Enforcement Staff, Mr. Allen was not perceived as truthful in his initial interview. (Hosty).

³³ For example, on December 7, 2011, Ms. Perez provided a list of seven individual she was prepared to depose. (Exhibit 21). Ms. Perez emailed Mr. Najjar the following day to inform him that if the NCAA wanted to depose witnesses between December 27 and December 29, 2011, she was required to serve all witnesses with a subpoena on or before December 12, 2011. (Exhibit 22).

³⁴ During 2011 and 2012, Ms. Perez discussed using the process in Luther Campbell's defamation suit against Shapiro in Florida state court as a vehicle for securing witness testimony and documents. Although she issued subpoenas in that case, the depositions were never taken. On another occasion, the NCAA Enforcement Staff asked Ms. Perez to contact a jewelry store to obtain records of Mr. Shapiro's purchases. Ms. Perez issued a subpoena for the records in the Luther Campbell litigation and obtained the records. However, Ms. Perez never provided those records to the NCAA Enforcement Staff due to a dispute over payment.

³⁵ To facilitate communications between the NCAA and Mr. Shapiro, Mr. Johanningmeier purchased a disposable mobile phone and paid for Mr. Shapiro's use of the prison telephone system. Mr. Johanningmeier, in turn, expensed those costs to the NCAA. (Comley; Lach; Johanningmeier; Najjar; Shapiro). We learned that the NCAA had expended approximately \$8,200 to fund communications with Mr. Shapiro, including transfers of approximately \$4,500 to his prison commissary account from which he pays for communications expenses. We understand that the NCAA will disclose the existence and nature of these payments to U. Miami and other involved individuals, as well as the NCAA's Committee on Infractions, so that they may be part of the evidence used to weigh

In response to this request, Mr. Najjar collaborated with Enforcement Staff to develop questions for the deposition. (Najjar).³⁶ On December 18, 2011, the day before Mr. Allen's deposition, Mr. Najjar provided Ms. Perez with a list of thirty four "areas" the NCAA would like Ms. Perez to "explore." (Exhibit 24). These questions were likely written by Mr. Najjar, Mr. Johanningmeier, and Ms. Barnhart and focused on identifying the student-athletes who may have received prohibited entertainment and gifts from Mr. Shapiro.³⁷ (Najjar).

2. Perez Takes Allen's and Huyghue's Depositions

Mr. Allen's deposition was taken on December 19, 2011 in Miami, Florida.³⁸ Mr. Allen, Mr. Allen's counsel, and Ms. Perez attended the deposition, which lasted from 11:10 a.m. until 2:40 p.m. Mr. Najjar attended the deposition, but he was asked to leave the deposition by Mr. Allen's counsel.³⁹ In addition to the deposition, Mr. Allen provided several documents in response to a subpoena duces tecum issued by Ms. Perez (Exhibit 25).⁴⁰

the relative credibility of Mr. Shapiro, similar to the requirements of prosecutors to disclose payments to witnesses. *See, e.g., Kyles v. Whitley*, 514 U.S. 419 (1995).

³⁶ At least three Enforcement Staff members reported they were aware the NCAA was providing questions for Mr. Allen's deposition. (Hannah; Humphrey; Barnhart). Ms. Hannah stated during her interview that at the time of Mr. Allen's deposition, she understood that Ms. Perez was deposing Mr. Allen and that there were common issues between the work Ms. Perez was doing for Mr. Shapiro and the NCAA's investigation of U. Miami, which is why Enforcement was providing questions. (Hannah). Ms. Barnhart explained that she was under the belief that Ms. Perez was conducting depositions regardless of the NCAA's involvement, and that the NCAA was providing Ms. Perez with topics to discuss during the depositions. (Barnhart).

³⁷ Mr. Najjar's list of areas to explore included questions such as, "When Allen was employed/associated with Axxcess Sports, which Miami players did he recruit for Axxcess to represent and what monetary or other benefits did he provide or was aware were provided to them?" and "Did you ever entertain Miami student-athletes on behalf of Nevin Shapiro? Detail these instances. Who provided the source of funds?" (Exhibit 24).

³⁸ Transcript of Sean Allen Deposition, at 1, *In Re: Capitol Investments USA, Inc. and Nevin Shapiro*, No. 09-36408; No. 09-36418, (Bankr. S.D. Fla. December 19, 2011).

³⁹ During his interview, Mr. Najjar stated that he "backed out and didn't attend the deposition" (Najjar). Mr. Allen, however, reported to CBS Sports that he and his attorney asked Mr. Najjar to leave the deposition. Bruce Feldman, Curious Timing to NCAA Announcement on Miami Probe, CBSSports.com, January 23, 2013, *available at* <http://www.cbssports.com/collegefootball/blog/bruce-feldman/21604690/timing-of-ncaas-eyes-opening-is-curious>.

⁴⁰ Mr. Allen's document production included copies of his bank statements from August 14, 2008 through January 13, 2009, copies of emails between him, Mr. Shapiro, and Mr. Shapiro's acquaintances that were sent between February 2009 and September 2009, and

Mr. Huyghue's deposition was held in Orlando, Florida on December 28, 2011. It began at 11:45 a.m. and continued until 2:08 p.m.⁴¹ Ms. Perez, Mr. Huyghue, and Mr. Huyghue's counsel attended the deposition in person, while Sandra Upegui of U. Miami and Andrea Rigali of Tabas, Freedman, Soloff, Mill & Brown, PA⁴² appeared telephonically.

Although Ms. Perez and Mr. Najjar attempted to secure the depositions of Mario Sanchez and David Leshner, the Huyghue deposition was the last one that Ms. Perez took.

3. Najjar Coordinates With U. Miami Regarding the Depositions

Throughout the depositions, there were communications with U. Miami, including with Michael Glazier, its outside counsel, and Judd Goldberg.⁴³ However, Mr. Goldberg and Mr. Glazier stated that Mr. Najjar was generally reluctant to disclose information about the depositions, noting that Mr. Najjar never mentioned to them that Sean Allen's deposition had taken place. (Goldberg, Glazier).

K. Perez Seeks Payment for Expenses

Over the ensuing nine months, Ms. Perez submitted a series of invoices. The first four invoices, submitted between December 2011 and July 2012 requested reimbursement of Ms. Perez's costs, including, for example, court reporter fees, copying costs, and conference room rental.⁴⁴ None of these invoices included charges for her attorney time. The Enforcement Staff paid these invoices relatively

copies of his telephone records from December 23, 2010 until March 22, 2010, and his telephone records from May 23, 2011 to June 22, 2011.

⁴¹ Transcript of Michael Huyghue Deposition, at 1, In Re: Capitol Investments USA, Inc. and Nevin Shapiro, No. 09-36408; No. 09-36418, (Bankr. S.D. Fla. December 28, 2011).

⁴² Ms. Rigali appeared on behalf of Joel Tabas, the Chapter 7 Bankruptcy Trustee for Mr. Shapiro and Capitol Investments USA.

⁴³ Mr. Najjar also coordinated U. Miami's participation and attendance at the depositions with Ms. Perez. For example, Mr. Najjar informed Ms. Perez that he would attend Mr. Allen's deposition on December 19, 2011 and a U. Miami representative would also likely attend the deposition. (Exhibit 23).⁴³ Ms. Perez objected to U. Miami's presence, but Mr. Najjar stated that under the NCAA's cooperative principle, he was required to notify U. Miami about the depositions. (Exhibit 26).

⁴⁴ The invoices included a December 20, 2011 invoice for \$4,530, a January 3, 2012 invoice for \$1,879, a January 10, 2012 invoice for \$1,085, and a July 13, 2012 invoice for \$1,153. (Exhibit 27; Exhibit 28; Exhibit 29; Exhibit 30).

promptly. Through the winter and spring of 2012, Ms. Perez noted that she would also be submitting invoices for her hours expended on the depositions.⁴⁵

On August 2, 2012, Ms. Perez sent Ms. Hannah nine invoices requesting payment for the billable time that Ms. Perez spent on the NCAA's investigation between October 11, 2011, and July 31, 2012. The invoices, reflecting an hourly rate of \$350 per hour for Ms. Perez's legal work, requested a total payment of approximately \$57,115. (Exhibit 31).⁴⁶

L. Enforcement Staff Evaluate Perez's Invoices

By this time, Mr. Najjar had separated from the NCAA's employment and Stephanie Hannah had taken his position as manager of the U. Miami investigation. In this role, Ms. Hannah was responsible for reviewing Ms. Perez's invoices. By late August, Ms. Perez was growing impatient about having not been paid for her time. In an August 29, 2012 email, Ms. Perez set forth the basis for the invoices. (Exhibit 33). Ms. Hannah forwarded that email to Ms. Lach, who responded that while she recalled approving Mr. Najjar's request to retain Ms. Perez, she was certain that the amount that the NCAA had agreed to pay for the depositions was capped far below \$57,000. Ms. Lach later confirmed that she had told Mr. Najjar that his budget for working with Ms. Perez was \$15,000. (Exhibit 34; *see also* Exhibit 35).

Through September 2012, Ms. Hannah, Mr. Hosty, and Ms. Lach engaged in further analysis of Ms. Perez's invoices and the propriety of some of the specific charges (Lach; Hannah).

M. Legal Staff Learn of the Perez Depositions

Uncertain about the propriety of some of the charges on the invoices, Ms. Lach directed Ms. Hannah to review them with Ms. Stevenson. Ms. Lach explained that she knew Ms. Stevenson had worked at a law firm and that Ms. Stevenson would be able to know if certain charges were legitimate. (Lach). On September 28, 2012, Ms. Hannah and Ms. Stevenson discussed Ms. Perez's invoices as well as the propriety of specific charges. (Exhibit 36; Hannah). Ms. Stevenson was surprised to learn that Mr. Najjar had retained Ms. Perez after she and Donald Remy had specifically told him not to. (Hannah). Ms. Stevenson then re-circulated her

⁴⁵ We found no document or email in which Mr. Najjar challenges Ms. Perez's suggestion that she would be submitting bills for her time on the matter. Mr. Najjar stated that he spoke to Ms. Perez and reminded her that the NCAA was not paying for her time.

⁴⁶ On September 18, 2012, the NCAA paid the six invoices that Ms. Perez submitted for work performed in 2012, totaling approximately \$10,500 dollars. (Exhibit 32)

October 21, 2011 email to Mr. Najjar, in which she had advised Mr. Najjar not to use Ms. Perez or Mr. Shapiro's bankruptcy proceeding to conduct depositions. (Exhibit 36). Ms. Stevenson met with Ms. Lach, and they both agreed to discontinue all work with Ms. Perez in the bankruptcy proceedings. Ms. Hannah then sent an email to Ms. Perez advising her that they would no longer pay for her services.

N. NCAA Responds After Learning That Perez Depositions Were Taken Contrary to Legal Advice

The Enforcement and Legal Staffs undertook a series of measures once they learned that the Perez depositions had been taken contrary to the Legal Staff's advice:

Preliminary Review. They first sought to simply understand what had occurred with respect to the Perez proposal and to identify the contours of the NCAA's agreement with Ms. Perez. They gathered and reviewed relevant documents and emails and Donald Remy contacted both Ms. Perez and Mr. Najjar to gain their insights. This effort was complicated by the limited written record about the Perez proposal, due to the fact that Mr. Najjar and Ms. Perez conducted much of their communication by phone.

Final Payment to Ms. Perez. Although the Legal and Enforcement Staffs felt that Mr. Najjar had entered into an agreement without authority, they concluded that he had nevertheless obligated the NCAA to pay Ms. Perez all of her legitimate charges for costs and services. After lengthy deliberations as to the legitimacy of the charges included on her invoices, the Enforcement and Legal Staffs jointly agreed to pay a final amount of approximately \$18,000.

Excluding Evidence. To ensure that the parties at risk of the investigation suffer no prejudice from the NCAA's use of the bankruptcy proceeding, the Enforcement and Legal Staffs decided to remove from U. Miami's Investigative Record any information directly or indirectly derived from the work of Ms. Perez in the bankruptcy proceeding. As described in Section IV, *infra*, Enforcement Staff and Ms. Stevenson worked to remove any information derived from the deposition from the Investigative Record, which will ensure that it would never be included in any Notice of Allegations in the event one is ever issued.

Outside Legal Ethics Opinion. The Legal Staff hired outside counsel to provide an opinion on potential legal ethical issues, which opinion is pending completion of our investigation into the facts of this situation.

Disclosure to U. Miami and the Subject Parties. On January 11, 2013, the Enforcement Staff notified U. Miami and the subject parties of its conduct involving the Perez proposal and its decision to exclude any evidence directly or indirectly derived therefrom.

Retention of Cadwalader, Wickersham & Taft LLP. On January 22, 2013, the NCAA retained Cadwalader and Ken Wainstein to undertake this Enforcement Review.

Disclosure to the Media. On January 23, 2013, the NCAA held a telephonic press conference and issued a press release describing the Enforcement Staff's conduct and promising an external investigation to determine how that conduct had been permitted to occur.

IV. EXCLUSION OF TESTIMONY AND DOCUMENTS

A. NCAA Identifies and Removes Information from the U. Miami Investigative Record

The NCAA made the decision that the evidence derived directly or indirectly from the Perez depositions should not be used in any way against U. Miami or the subject parties. Accordingly, in October 2012, the Legal Staff, in consultation with the NCAA President and Chief Operating Officer, directed that the U. Miami Investigative Record be revised to exclude information obtained directly or indirectly from the Enforcement Staff's agreement to pay Ms. Perez for obtaining testimony or documents through the bankruptcy process. As Mr. Remy explained, the decision to exclude information was not based on a particular NCAA Administrative Bylaw or policy, but instead was inspired by the criminal law concept of excluding illegally obtained evidence and its "tainted fruits" to ensure that investigative targets are not prejudiced by any improper investigative techniques.

NCAA Enforcement Staff, with the assistance of Ms. Stevenson, were charged to identify and exclude such "tainted" evidence from the U. Miami Investigative Record. In conducting this review, the Enforcement Staff distinguished between tainted and untainted evidence and drew lines according to the connection between the evidence in the Investigative Record and the information that was procured via the bankruptcy process. In drawing these lines, the Enforcement Staff made the following determinations:

1. The Enforcement Staff determined that any statements made by Mr. Allen in his voluntary interviews with the NCAA, both those that occurred before and after his sworn deposition, would be excluded.
2. The Enforcement Staff determined that witness interviews they conducted after the Allen deposition that derived from Mr. Allen's deposition or his subsequent interviews would be excluded completely. As a result, 13 interviews were excluded from the Investigative Record.
3. The Enforcement Staff determined that portions of additional interviews conducted after the Allen deposition that made some reference to information derived from Mr. Allen's deposition or his subsequent interviews would be excluded. As a result, portions of 12 interviews were excluded from the Investigative Record.

By excluding the use of the information described above, the Enforcement Staff significantly revised the potential allegations in the U. Miami Investigative Record. Some factual allegations were entirely removed from the Investigative Record, while portions of other allegations were similarly excised.

If there is ever a Notice of Allegations (“NOA”) issued in this matter, that same information would not be the basis for any charges contained therein, ensuring that the parties at risk will not be held to account for any allegations or information developed through the NCAA’s use of the bankruptcy process.

B. Cadwalader Reviews the U. Miami Investigative Record

At the NCAA’s request, Cadwalader conducted an independent review of the U. Miami Investigative Record. We reviewed each and every factual assertion in the Investigative Record to ensure that it did not contain any information derived from testimony or documents associated with Messrs. Allen’s and/or Huyghue’s depositions. Cadwalader further identified independent evidentiary bases for every factual assertion in the Investigative Record.

Cadwalader conducted this review in the following stages:

1. First, we requested and reviewed NCAA documents that evidenced the NCAA’s process for excluding documents and testimony from the Investigative Record to understand the process that the NCAA had employed.
2. Next, we requested that the NCAA Enforcement Staff review the Investigative Record and identify each factual assertion and the corresponding evidentiary basis for each assertion contained therein.
3. Cadwalader attorneys then reviewed the evidentiary basis, including transcripts, documents, and other pieces of evidence, for every factual assertion to identify (1) that the evidence indeed supported the assertion and (2) the origin of the evidence.
4. Finally, we confirmed that the evidence supporting each assertion was not derived directly or indirectly from tainted evidence.

In the course of conducting this review, Cadwalader attorneys reviewed and analyzed over 75 interview transcripts and voluminous other records, including bank account documents, receipts, photographs, and other evidence.

Based upon our review, it is our opinion that the current assertions in the U. Miami Investigative Record are not based on evidence that is derived, directly or indirectly, from the depositions of Mr. Allen or Mr. Huyghue.

V. EVALUATION OF CONDUCT

A. Introduction

President Emmert asked us to investigate and evaluate the Enforcement Staff's actions in relation to Ms. Perez's work in the Shapiro bankruptcy proceeding. In the previous section, we laid out our investigative findings as to the actions taken by the Enforcement Staff in this case. This section will evaluate the appropriateness of those actions in light of all the relevant circumstances.⁴⁷

B. Concerns Arising from the Enforcement Staff's Conduct

The first step in evaluating this conduct is to identify those concerns or norms of behavior that might have been implicated by that conduct. In this case, there are several concerns – legal, policy, management and prudential concerns – that may have been implicated by the actions of the Enforcement Staff.⁴⁸ The primary concerns we have identified are the following:

1. Was the acceptance of the Perez proposal and the coordination of depositions with Ms. Perez a violation of any applicable bylaw, rule or law?
2. Was the Enforcement Staff's decision to enter into this arrangement an inappropriate circumvention of the Legal Staff's advice not to do so?
3. Was the Enforcement Staff's agreement to pay Mr. Shapiro's lawyer for her work contrary to internal NCAA practice or policy that the Legal Staff has sole authority to hire outside counsel?
4. Was the NCAA's use of Mr. Shapiro's attorney to compel depositions in the bankruptcy process an abuse of that process?
5. Was that arrangement an inappropriate effort to circumvent the calibrated limits that the NCAA membership has placed on the Enforcement Staff's investigative powers?

⁴⁷ Our mandate was to evaluate the conduct of the NCAA, and not that of any other parties. As such, we offer no opinions on the propriety or reasonableness of non-NCAA actors in this situation.

⁴⁸ For ease of explanation, this section will often refer to "the Enforcement Staff" when discussing an action by one or a few members of that staff. That reference does not mean that all staff members are responsible for that action. The next section will focus on individuals and more clearly attribute specific actions to individual staff members.

6. Was this series of mishaps the product – at least in part – of flawed management in the Enforcement Staff?

The following sub-section will address each of these specific concerns, analyzing whether and how they were implicated by the Enforcement Staff's conduct. The next sub-section will assess the responsibility of each individual person for any questionable or inappropriate conduct.

1. The Violation of any Bylaw or Law

The facts do not establish that any NCAA staff member intentionally or unintentionally violated any bylaw, bankruptcy procedure or law in their acceptance or implementation of the Perez proposal. Based on the circumstances as we now know them, it does not appear that any bankruptcy rule or procedure was violated (see Section V.B.4, *infra*). Nor have we found any NCAA rule or bylaw that specifically prohibits any of the Enforcement Staff's conduct in this matter.

2. The Circumvention of Legal Advice

The Enforcement Staff entered into this arrangement with Mr. Shapiro's attorney in direct opposition to advice provided by the Legal Staff. Associate General Counsel Naima Stevenson was clear in her October 21, 2011 email to Mr. Najjar that "[t]he use of [Mr. Shapiro's] criminal attorney to conduct depositions on behalf of the Association does raise concerns" and that "[Legal Staff's] advice would be to not use [Mr. Shapiro's] criminal attorney in this manner." (Exhibit 14). In support of that position, she laid out three separate concerns with the Perez proposal:⁴⁹ (1) that any hiring of outside counsel must be done by the Legal Staff (and not the Enforcement Staff); (2) that the NCAA should not be using an outside counsel to compel testimony from witnesses who would not otherwise speak with the NCAA; and 3) that the NCAA would expose itself to scrutiny if it based any enforcement decisions on information obtained from that process. She and then-General Counsel Donald Remy then clearly and firmly restated that advice in their meeting with Mr. Najjar and Ms. Lach four days later – as evidenced by Najjar's text moments after the meeting to Ms. Perez, telling her "I ran into a problem with our legal dept concerning 'retaining' you" (Exhibit 17).

Rather than following Ms. Stevenson's sound advice and declining Ms. Perez's proposal, Mr. Najjar crafted a "way around" the advice. (Exhibit 17). Positing that the Legal Staff's only concern was with the prospect of "retaining" Ms. Perez for legal services – and thereby overlooking the other concerns in Ms. Stevenson's email – Mr. Najjar somehow developed an understanding (or a pretext)

⁴⁹ The following paraphrases the points made in Ms. Stevenson's text, based on Stevenson's explanation of the email in our interview.

that paying Ms. Perez was appropriate so long as it was only for “expenses” and not officially for legal work.

While that may have been a plausible counter-proposal to the Legal Staff’s advice on that one point, the evidence is clear that Mr. Najjar never, in fact, presented that counter-proposal to the Legal Staff. Instead, he simply acted on the idea without running it by the Legal Staff to see if it would change their advice (which it would not have, given Ms. Stevenson’s other concerns with the proposal).

Although there are no written bylaws, rules or policies saying that the Enforcement Staff must accept advice from Legal Staff, it is universally understood that, while they may argue against that advice, they may not ignore it. Given that understanding and the strength of the objection registered by Ms. Stevenson and Mr. Remy, it simply was not reasonable for the Enforcement Staff to proceed with the Perez proposal in the face of opposition from the Legal Staff.

3. Hiring Legal Counsel through the Enforcement Staff

It is typically the responsibility of an organization’s legal staff to hire and monitor the retention of outside counsel for their organization’s legal work. The NCAA is no exception to this general rule. Indeed, the NCAA’s internal website, NCAA Daily, makes clear that the Legal Staff is responsible for approving and retaining outside counsel.

Ms. Stevenson made that very point in her October 21, 2011 email, when she told Mr. Najjar that “any engagement of outside counsel to represent the interests of the Association should be done through the Office of Legal Affairs.” (Exhibit 14). Despite this clear injunction, the Enforcement Staff proceeded to hire Ms. Perez without the Legal Staff’s involvement.

It is fortuitous for the Enforcement Staff that their unilateral hiring decision appears to have violated nothing more than internal protocol. Had the circumstances been different, this hiring decision could have been much more problematic. For instance, if Ms. Perez had been working in any capacity for the Bankruptcy Trustee, any arrangement to pay her for services in Shapiro’s bankruptcy would have constituted a violation of various conflict provisions of the Bankruptcy Code. Also, if there had been an applicable confidentiality order in place in the bankruptcy proceeding, the NCAA’s agreement to pay Perez for the transcripts could potentially have led to a violation of the order and a contempt of court charge against Perez and the NCAA. Given that the Enforcement Staff did not know to probe such issues, it was fortuitous that their hiring decision did not expose them or the NCAA to such legal liability.

4. Potential Abuse of the Bankruptcy Process

The federal bankruptcy process is designed to further the goal of discovering assets and claims that might be recoverable for the bankrupt debtor's estate, and it allows certain parties to obtain broad discovery through Federal Rule of Bankruptcy Procedure 2004 ("Rule 2004"). The Rule 2004 procedures are known to allow such wide-ranging and broad examinations to discover assets or unearth frauds that federal courts often refer to them as "fishing expeditions." As the debtor in his bankruptcy, Mr. Shapiro had standing and authority to utilize the tools of Rule 2004 discovery in his bankruptcy proceeding.

Under Rule 2004, Mr. Shapiro had the power to compel third parties to attend depositions and produce documents. This compulsory power is limited only insofar as the depositions and document requests must somehow relate to the conduct or property of the debtor or any matters that may affect the administration of the bankruptcy estate. Mr. Shapiro was therefore entitled to question any party regarding the circumstances under which they received any asset(s) from him or his company, Capitol Investments, or regarding any potential legal claim that could be made by Mr. Shapiro or Capitol Investments.

The most glaring concern about the Perez proposal is the prospect that the NCAA inappropriately used this broad subpoena power for its own investigative purposes that were not sufficiently relevant to the bankruptcy proceeding. As such, our first charge was to determine whether the Perez proposal resulted in an abuse of the bankruptcy process and its subpoena power. Based on our investigation to date, we have not seen a sufficient basis to conclude that the NCAA's conduct amounted to an actual violation of any specific bankruptcy rule or procedure.

This does not end the inquiry, however, as President Emmert asked us to evaluate the wisdom, propriety and general reasonableness of the Enforcement Staff's actions, even if those actions violated no written rule. On this point, we found significant evidence to suggest that the Enforcement Staff showed bad judgment and acted unreasonably in failing to consider whether their involvement in the bankruptcy process was problematic.

Given that the potential misuse of the bankruptcy process is the central concern in this review, we have focused much of our Enforcement Review on an evaluation of the facts and circumstances that are relevant to that issue. The results of that evaluation follow.

a. The Framework for the Abuse of Process Analysis

Any evaluation of the reasonableness of human conduct is a very fact-specific exercise. The outcome of that evaluation will differ depending on the facts and circumstances surrounding that conduct.

In this matter, we could think of a whole spectrum of circumstances that would result in different judgments about the Enforcement Staff's conduct. Assessing the reasonableness of their decision to use the bankruptcy process to further their own investigation may best be understood if we set up two hypotheticals at opposite extremes of that circumstantial spectrum. At one end of the hypothetical spectrum, let's assume the following facts: (1) that Ms. Perez and Mr. Shapiro had had no involvement at all in the bankruptcy process before the NCAA struck its agreement with Ms. Perez; (2) that Mr. Shapiro and Ms. Perez had no genuine interest in taking testimony to further the Bankruptcy Trustee's efforts to recover monies for Mr. Shapiro's victims; and (3) that the NCAA orchestrated all aspects of the depositions, down to the selection of deponents and the drafting of deposition questions. Under these hypothetical circumstances, it is difficult to understand how the NCAA could reasonably believe that the Perez proposal was anything but an improper manipulation of the Shapiro bankruptcy proceedings.

At the other end of the hypothetical spectrum, let's assume (1) that Ms. Perez and Mr. Shapiro were heavily involved in the bankruptcy process before starting any coordination with the NCAA; (2) that they would have taken these depositions for their own reasons regardless of the NCAA's interest in doing so; and (3) that the NCAA's role was limited to suggesting deposition questions and paying the costs for copies of the resulting transcripts. In this hypothetical scenario, it is easier to see how a prudent Enforcement Staff member might reasonably believe that there is nothing inappropriate about piggy-backing on Ms. Perez's efforts in that manner.

As often happens, the set of circumstances we face in this investigation is not at either end of this hypothetical spectrum, and instead falls somewhere in the gray spaces in between. It is our task, therefore, to determine where the factual scenario in our case lies along the spectrum.

To make that determination, we have identified the circumstances that would have had a bearing on the Enforcement Staff's decision making process. For ease of explanation, we have grouped those circumstances into two lists and labeled them as "aggravating" (meaning that they should have caused NCAA Enforcement Staff members to pause and consider whether the Perez proposal was appropriate) and "mitigating" (meaning that knowledge of those facts would have given the Enforcement Staff reason to believe that the arrangement was not inappropriate).

i. Aggravating Circumstances about the Perez Proposal

The following circumstances should have put the Enforcement Staff on notice that the Perez proposal might be manipulative of the bankruptcy process:

- *The Enforcement Staff's stated desire to use bankruptcy subpoenas to compel testimony for purposes of their investigation:* The Enforcement

Staff had tried and failed to secure cooperative and truthful statements from each of the proposed deponents. As Mr. Najjar explained to his supervisors, “[o]ther than conducting these depositions, I do not believe we will be able to secure interviews with the witnesses.” (Exhibit 11). Without access to some sort of compulsory process, the Enforcement Staff had little to no hope of obtaining statements from the deponents.

- *Ms. Perez’s access to the subpoena power of the bankruptcy process:* The Enforcement Staff acknowledged that their primary – if not only – interest in hiring Ms. Perez was to leverage her access to the bankruptcy subpoena power. But for her ability to compel uncooperative witnesses into sworn depositions, the Enforcement Staff would have had no interest in her proposal.
- *Ms. Perez’s Qualification to Practice in the Bankruptcy Court:* The Enforcement Staff knew that Perez had not yet qualified to practice before the Bankruptcy Court and that she did so only after reaching her agreement with the NCAA.
- *Perez’s compensation from the NCAA:* Ms. Perez made it clear to the Enforcement Staff that her client had no source of funds to pay for her work in the bankruptcy process. She also made it abundantly clear to the Enforcement Staff that she would not expend the time and resources to conduct these depositions unless the NCAA was paying her. As she explained in her interview with us, she had absolutely no interest in doing these depositions “for nothing.” Therefore, these depositions would likely not have occurred in the normal course of the bankruptcy proceeding but for the NCAA’s agreement to pay Ms. Perez.⁵⁰

In light of these circumstances, it is apparent that the Enforcement Staff accepted the Perez proposal with clear intent to use the bankruptcy process for their own ends.

In evaluating the reasonableness of that decision, however, we have to also consider the facts they knew at the time that would have given them some reason to

⁵⁰ Ms. Barnhart recounted a conversation when she questioned Mr. Najjar whether they were within their rights to have Ms. Perez take these depositions on their behalf. Mr. Najjar assured her that it was all above board, and that the depositions would have happened regardless of the NCAA’s involvement. While it is possible that Mr. Najjar thought that was the case, there is no evidence that those depositions would have occurred without the NCAA’s involvement and its promise of compensation to Ms. Perez.

believe that this arrangement was nonetheless appropriate and in keeping with NCAA principles.

ii. Mitigating Circumstances about the Perez Proposal

The following circumstances would have made this arrangement appear more benign in the eyes of the Enforcement Staff:

- *Analogous situations in past investigations:* During their interviews, Enforcement Staff members explained that NCAA investigators had leveraged other legal processes to get information in past cases. The NCAA has cooperative relationships with police agencies and other investigative entities around the country, and has used those relationships to coordinate fact-finding in past cases. The Enforcement Staff's awareness of this coordination would understandably have made the Perez proposal seem less suspect in their eyes.
- *Ms. Perez's documentation of her ability to practice in Bankruptcy Court:* As explained above in Section III.E., the lawyers for U. Miami raised a concern early in the process relating to Perez's ability to notice and conduct depositions as a non-member of the Bankruptcy Court. In response to that concern, Mr. Najjar sent Ms. Perez an email asking her to explain "[her] legal authority to not only issue and enforce subpoenas but the authority that allows [her] to ask the deposition questions." (Exhibit 9). Ms. Perez promptly sent Mr. Najjar a packet of materials and later confirmed that she would be authorized to file subpoenas and take depositions once she completed a training session that she ultimately took in late October 2011. Mr. Najjar used those materials in his email exchanges with Ms. Stevenson as evidence of "the authority of Nevin Shapiro's criminal attorney to conduct depositions in the bankruptcy matter." (Exhibit 13).

While those materials arguably confirmed the authority for Ms. Perez to secure depositions in the bankruptcy case, they had no bearing of the appropriateness of her doing so on behalf of the NCAA. Giving Mr. Najjar the benefit of the doubt, however, it is conceivable that he simply failed to distinguish between the two issues and accepted Ms. Perez's materials as confirmation that this arrangement was proper in all respects.

- *Mr. Shapiro's demonstrated interest in the bankruptcy proceeding:* Contrary to the initial understanding of this situation, it has become clear during our investigation that Nevin Shapiro played an active role and had a strong interest in assisting the bankruptcy process. In fact, he had three separate interests. First, he hoped that his efforts to

recover his victims' funds would persuade the prosecutors on his federal case to support an eventual motion to reduce his 20-year sentence. Second, he wanted to assist the recovery process so as to reduce the restitution he owed. Finally, he was looking for revenge against the U. Miami players and coaches who he believed had turned their backs on him when he got in trouble with the federal authorities.

Mr. Shapiro became actively involved early in the bankruptcy proceedings. He had his attorney, Ms. Perez, approach the Bankruptcy Trustee in April 2011 and offer his assistance. From that date to the present, Shapiro has been feeding the Bankruptcy Trustee information about those who received sums of money from him, including those associated with the U. Miami athletics program. This assistance was so substantial that the Bankruptcy Trustee wrote a letter detailing that assistance to Shapiro's sentencing judge on June 6, 2011 – over three months before the Perez proposal was first raised. In that letter, Counsel for the Trustee, Gary Freedman, explained that he has worked in the bankruptcy area for 23 years, and has “never been involved in a bankruptcy case in which the debtor worked so closely with trustee's counsel in assisting and cooperating in the recovery of funds”

Importantly, that active involvement extended also to the particular depositions that we are examining. Well before the NCAA's involvement, Mr. Shapiro drew up a list of potential deponents for the Bankruptcy Trustee, which included Messrs. Allen and Huyghue and the other witnesses of interest to the NCAA. In addition, Mr. Shapiro personally drafted a number of the questions for Ms. Perez's deposition of Sean Allen.

It is clear from the emails and our interviews that the Enforcement Staff was aware that Mr. Shapiro and Ms. Perez had this strong interest and active role in the bankruptcy process. As such, it is more plausible that they legitimately believed that their arrangement with Ms. Perez was not a manipulation of the bankruptcy process, but was simply an effective means of furthering their common interests with Mr. Shapiro.

- *U. Miami's awareness that Perez was securing depositions on behalf of the NCAA:* It is clear from the record that U. Miami attorneys knew from the beginning that the NCAA was using Ms. Perez to secure depositions. As with most NCAA investigations, the Enforcement Staff conducting this investigation kept the subject university apprised of developments in the investigation. While U. Miami's attorneys assert that they never learned that Ms. Perez was being paid for her services

by the NCAA, it appears that they were fully aware that Mr. Najjar and Ms. Perez were coordinating the bankruptcy depositions throughout the fall and winter of 2011. In addition to their email and phone call with Mr. Najjar in October 2011 – in which they articulated several concerns about the Perez proposal⁵¹ –there are emails in which the U. of Miami lawyers were asking how Ms. Perez “plans to be the one asking the questions in any depositions as she could not properly be the one issuing the subpoenas.” (Exhibit 8). Brynna Barnhart also remembers a phone call in which U. Miami’s outside counsel, Mike Glazier, called around the time of the Allen deposition to inquire when it was scheduled. Moreover, Sandra Upegui from the U. Miami legal department participated in the Huyghue deposition by telephone.

Despite their awareness of the depositions, the U. Miami attorneys made no effort to prevent the NCAA from taking these depositions, after the initial reservations they expressed in October. When asked in an interview why they kept silent after October, the attorneys explained that they did not want to appear uncooperative or to look like they were standing in the way of the truth.

Regardless of the reasons, Mr. Najjar was aware that U. Miami knew about the Perez proposal (minus the payment to Perez) and registered no objection beyond their initial reservations. The fact that there were no repeated objections from the subject of the investigation – the party that would be prejudiced by any investigative over-reaching – arguably gave Najjar some reason to believe that there was nothing objectionable about leveraging the bankruptcy proceedings to secure deposition testimony.

iii. Weighing of the Aggravating and Mitigating Circumstances

Given the Enforcement Staff’s awareness of these mitigating circumstances, one can imagine how they may not have immediately perceived this arrangement to be an abuse of the bankruptcy process. However, given the aggravating factors which clearly demonstrate that the NCAA was exercising a significant level of control over bankruptcy proceedings in which they had no cognizable interest or standing, it is difficult to understand how they did not find it necessary to pause and consider the wisdom of the Perez proposal.

⁵¹ With only partial knowledge about the arrangement at its outset, the U. Miami attorneys did not specifically cite the possibility of abuse of the bankruptcy process when they raised their concerns in October.

5. The Circumvention of the Enforcement Staff's Investigative Limits

The NCAA is a private membership association comprised of 1,066 active member schools. As part of their membership, the NCAA members must follow the collectively adopted bylaws and legislation outlined in the NCAA's constitution. The NCAA constitution provides that the Enforcement Staff is responsible for conducting investigations into an institution's potential failure to comply with the Association's rules and presenting substantiated allegations to the Committee on Infractions for a determination of culpability and punishment.

Based upon our Enforcement Review, we understand that in granting this mission to enforce the rules of the Association, the membership also defined the scope of the Enforcement Staff's investigative authorities. In particular, concerns over vesting too much power in the Enforcement Staff led the membership to carefully determine when and under what circumstances the staff or student-athletes of a member institution are obligated to cooperate with an NCAA investigation. For example, the members have established the "cooperative principle," imposing an affirmative obligation on each member institution and its representatives to cooperate with Enforcement Staff investigations and deeming a failure to cooperate to be a basis for sanctions or disassociation. The membership has not agreed, however, to provide any more far-reaching authority to compel cooperation.

Beyond the specific investigative authorities that the membership has blessed, the Enforcement Staff operates under a set of expectations about the lengths to which they can go to investigate a case. Though unwritten, there is an understanding among the membership that they should forgo investigative techniques that might give the Enforcement Staff too much power, especially in the academic environment where they operate. For example, there are any number of investigative techniques that pass muster in court and in public opinion when used by law enforcement – such as running sting operations or, lying to an interviewee to trigger a confession – which would likely be considered beyond the pale for NCAA investigations.

The question for this review is whether the Enforcement Staff's decision to leverage the bankruptcy process to compel interviews from uncooperative third parties went beyond the limits that the membership has placed on its investigations. At some level, the question is inherently unanswerable. There are no guidelines or rules that define such a limit; nor is there a directly analogous precedent that can be reviewed for clear guidance. So, we are not in a position to find that the Enforcement Staff clearly violated an internal NCAA limit on its activities.

However, that is not the end of the inquiry. Everyone we interviewed recognized that the Enforcement Staff operate in an environment of limited authority and that they do not have free rein to adopt any legal technique that would be of use in their investigations. That is the reason Ms. Lach had a habit of getting the Legal Staff's opinion if she had a question about the propriety of an investigative idea or suggestion.

That is also the reason why Mr. Najjar should have given more thought to whether the Perez proposal was consistent with the construct of limited authorities under which they operated. Beyond concluding from the materials from Ms. Perez that the proposal was consistent with the rules of legal practice, he never considered whether it was nonetheless inconsistent with the membership's expectations of the NCAA. This is what Naima Stevenson was referencing in her email when she explained that "[a]ny information obtained through such a manner for use in the NCAA process would be subject to significant scrutiny to the extent any decisions were based on that information if those decisions were to be subsequently challenged." (Exhibit 14).

Unfortunately, that advice was in the part of the email that Mr. Najjar ignored. Had he heeded the advice and considered whether the Perez proposal was consistent with the membership's expectations, the NCAA would not be in this position today.

6. The Management of Enforcement Staff Operations

Whenever missteps occur in the operations of an organization, it is critical to examine whether those missteps were in any way the product of flawed or deficient management. From one perspective, every error is a management error, as it is the job of management to identify weaknesses within their operations and take steps to address those weaknesses before they result in problems. From another perspective, there is a limit to how much management and managers can be held responsible for errors that occur among the line operators. Accepting that both of these perspectives are accurate and applicable to this situation, we have attempted to determine whether and how much mismanagement factored into this situation.

As President Emmert explained at the outset of this Enforcement Review, our work is proceeding in two stages – the first being a focused inquiry into the facts surrounding the hiring of Ms. Perez and the second being an assessment of the broader environment, policies, and procedures of Enforcement, we have deferred the findings regarding deep management processes and policies. We therefore expect to learn more about management processes and expectations in the Enforcement Staff as we proceed through Stage Two.

Suffice it to say at this stage, however, that the role of management in this situation needs to be carefully scrutinized. It is clear that there were management

failures. The Enforcement Staff managers failed to identify the problems in the Perez proposal and to steer their subordinate Mr. Najjar away from it. They also failed to exercise close oversight of Mr. Najjar's activities in what was and is one of the NCAA's most significant investigations. On the other hand, both managers convincingly explained that they never questioned its propriety specifically because Mr. Najjar assured them that the Legal Staff had approved it. Moreover, they both explained, they did not doubt that assurance, as Mr. Najjar had given them no reason to question his veracity or judgment at the time. In light of those circumstances, one could argue that it was not unreasonable for Ms. Lach and Mr. Hosty to give Mr. Najjar significant latitude in the U. Miami investigation and to approve the Perez proposal without any further inquiry.

Regardless, the reality is that this arrangement carried on for almost a year before the Enforcement Staff managers realized that it was problematic and had not been authorized by the Legal Staff.

C. Individual Accountability

Having examined the conduct of the Enforcement Staff as a whole, it is now necessary to do the same for each of the key players. Drawing on the factual findings in Section III and the evaluation of Enforcement Staff conduct in the previous sub-section, we have isolated the relevant actions of each key player and assigned responsibility for actions that were unwise or inappropriate.

1. Ameen Najjar, former Director of Enforcement

Mr. Najjar is the Enforcement Staff member most centrally involved in the inception and implementation of the Perez proposal. Early in the U. Miami investigation, Mr. Najjar took over responsibility for handling coordination with Mr. Shapiro from investigator Rich Johannngmeier. He then became the point person for negotiating the deposition proposal with Ms. Perez, vetting it within the NCAA and coordinating the resulting depositions.

Mr. Najjar took a number of steps that can be seen to reflect a conscientious concern for the propriety of his actions. He told U. Miami about Ms. Perez's proposal to take bankruptcy depositions (even if the Miami attorneys were not aware that the NCAA was paying her for that service). As explained above, he was responsive to concerns from the U. Miami attorneys and challenged Ms. Perez about her authority to take bankruptcy depositions. He was very open about the whole arrangement within the NCAA, regularly circulating emails that clearly described the purpose and contours of the arrangement. And ultimately, we believe that he was motivated to accept and implement the Perez proposal out of a genuine interest in finding the facts relating to the Shapiro allegations.

The record is clear, however, that he made a number of missteps in his effort to find the facts in this case. Those missteps include the following:

- He did not follow Naima Stevenson’s advice to reject the Perez proposal.
- He developed a “way around” that legal advice – characterizing payments to Perez as reimbursement for “costs” rather than compensation for legal services – but never sought or obtained Legal Staff approval for his “way around.”
- He arranged to hire Ms. Perez despite the policy that outside counsel may only be hired by the Legal Staff.
- He assured his supervisors, Ms. Lach and Mr. Hosty, that the Legal Staff had approved his proposed arrangement with Ms. Perez, even though he had never presented his “way around” to the Legal Staff.
- Even giving him the benefit of the doubt that he truly believed that he was hewing to Ms. Stevenson’s legal advice by reimbursing Ms. Perez only for expenses, he took actions that seem to belie that belief. For example, on those occasions when Ms. Perez emailed him seeking payment for “legal fees” beyond her expenses (Exhibit 37; Exhibit 38; Exhibit 39; Exhibit 40), Mr. Najjar never emailed her back to correct or remind her that the NCAA had agreed only to pay expenses.⁵² On another occasion, when Ms. Perez was trying to persuade the NCAA of the need to depose additional witnesses, Mr. Najjar wrote Ms. Lach an email explaining that he was “not going to allow [Perez] to depose unnecessary witnesses **simply for her to make money.**” (emphasis added) (Exhibit 20). That should not have been a concern if the NCAA were truly reimbursing Ms. Perez only for her expenses.

2. Julie Roe Lach, Vice President of Enforcement

Julie Roe Lach is the supervisor above Mr. Najjar most centrally involved in this situation. Although Tom Hosty was Najjar’s direct supervisor, Ms. Lach handled most of the issues that were elevated relating to the Perez proposal. She secured approval from Jim Isch to expend the funds for the proposal. She directed Mr. Hosty to run the proposal by the Legal Staff and participated in the meeting between Mr. Najjar and the Legal Staff. She fielded Ms. Perez’s demands for payment in 2012, and was involved in considering the legitimacy of the specific charges on Ms. Perez’s invoices. Finally, she directed the Enforcement Staff to

⁵² Mr. Najjar reported that he did call Ms. Perez when he received one of these emails and reminded Ms. Perez that the NCAA would not pay for Ms. Perez’s billable time. (Najjar). Ms. Perez stated that Mr. Najjar did not make such a call, adding that if he had, she would have protested vigorously. (Perez).

cease all work with Ms. Perez after Naima Stevenson discovered that the Perez proposal had gone forward against her advice.

Ms. Lach clearly shares some of the responsibility for this situation. She signed off on the Perez proposal and failed to perceive the underlying prudential concerns. She allowed Mr. Najjar to hire Ms. Perez, despite the clear policy that outside counsel may only be hired by the Legal Staff. She exercised insufficient supervision over Mr. Najjar's activities in one of the NCAA's most significant investigations. Finally, she failed to remember the advice imparted in Ms. Stevenson's email to Mr. Najjar and in the subsequent meeting with Mr. Remy and Ms. Stevenson.⁵³ Had she kept that advice in mind, she may well have questioned Mr. Najjar more closely when he assured her that the Legal Staff had ultimately approved the Perez proposal.

An important question is whether – in addition to the failings listed above -- Ms. Lach is also responsible for intentionally disregarding the advice from the Legal Staff – advice that she read in Naima Stevenson's email and presumably heard in the October 25, 2011 meeting she attended by phone. For the following reasons, we conclude that she was not complicit in an intentional effort to act contrary to that advice.

Like Mr. Najjar, Ms. Lach was fully aware of the Perez proposal and its purposes, and she took steps to effectuate it in direct opposition to advice from the Legal Staff. Unlike Mr. Najjar, however, Ms. Lach never *knowingly* took any steps that were inconsistent with legal advice. To the contrary, Ms. Lach took many steps to ensure that she and her staff acted in accordance with legal advice. She was the one who first directed that the Perez proposal be run by the Legal Staff when Mr. Najjar initially raised the proposal (Exhibit 11), and she reiterated the need to “get Naima's sign off” in January when Mr. Najjar was discussing the possibility of additional depositions. (Exhibit 20). The facts clearly indicate that Ms. Lach went along with the Perez proposal only because Mr. Najjar assured her that the Legal Staff had approved it. Once she received that assurance, the question for Ms. Lach became how – and not whether – to implement the proposal.

In retrospect, one asks whether Ms. Lach should have demanded more than Mr. Najjar's bare assurance. We believe, however, that it was understandable that Ms. Lach did not think twice when she received that assurance from Mr. Najjar. First, as she and Mr. Hosty explained in their interviews, they manage with the

⁵³ Ms. Lach attributed her inability to recall Ms. Stevenson's email and the subsequent meeting to the fact that she was overwhelmed that fall as she focused on leading the Enforcement Working Group, which was charged with reforming Enforcement's policies and procedures. (Lach). President Emmert and others confirmed that Ms. Lach was extremely busy during that period. (Emmert).

presumption that each of their subordinates is trustworthy, and absent any indication to the contrary they accept a subordinate's word as honest and accurate. Because Mr. Najjar had always struck her as a man of integrity and candor, Ms. Lach had no reason to doubt him when he told her that he had received approval from the Legal Staff. Second, Mr. Najjar was a seasoned NCAA manager with a long career of experience as an investigator, and it is therefore understandable that his managers would give him latitude and refrain from second-guessing his statements and actions.

It was also understandable that Ms. Lach did not second-guess the reasonableness of the alleged approval from the Legal Staff. While she recognizes in retrospect that she should have asked more probing questions, her failure to do so was consistent with her customary approach to seeking advice from the Legal Staff. As Ms. Lach explained in her interview (and as others confirmed), she is a long-time champion of the Legal Staff's role in Enforcement operations. She has worked to ensure that the Legal Staff has insight into all investigations⁵⁴ and that her staff consult with Legal Staff whenever any issue arises about the propriety or advisability of an investigative course of action.

While she sees it as her responsibility to make sure issues are vetted by the Legal Staff, Ms. Lach does not feel it necessary – or even appropriate – to insert her views into that vetting. Ms. Lach is a lawyer by training (she went to law school at night and received a law degree from Indiana University School of Law in 2004 while working for the NCAA), but she always makes it clear that there should be no blurring of the lines of responsibility between the Enforcement and Legal Staffs. She continually emphasizes that her span of control is limited to operations and that legal analysis is for the lawyers in the Legal Staff.

We can see that mindset at play in her handling of the Perez proposal. On three occasions, she sought assurance that the Legal Staff had approved the proposal, yet she never asked any questions about the wisdom of that alleged approval. In Ms. Lach's mind, that was exactly how she should handle a legal issue. Once she made sure the proposal was squarely presented to the Legal Staff, it was their job to do the analysis and her job simply to follow the resulting advice.

One can question whether this hands-off approach to the vetting of issues of investigative propriety is wise, as it can be seen as an abdication of responsibility for the most sensitive judgment calls in an investigation. However, that approach is more understandable in light of the number of important matters that occupied Ms.

⁵⁴ Ms. Lach was a proponent of having Naima Stevenson physically located within the Enforcement Staff's offices. Since Ms. Stevenson's move out of those offices, Ms. Lach has instituted a regular schedule of meetings for the express purpose of keeping Stevenson knowledgeable of and involved in their investigations. (Lach).

Lach's time and attention at that time. During the fall of 2011, Lach was involved in a variety of time-consuming initiatives, including organizing and coordinating the Enforcement Working Group and restructuring the Enforcement department. She also was traveling regularly to meet and explain the new initiatives to the NCAA members around the country. In addition, she was overseeing a variety of sensitive investigations.⁵⁵ In light of her daunting workload, it is not surprising that Ms. Lach paid little attention to the legal approval process for the Perez proposal, other than to make sure that it took place.

3. Tom Hosty, Managing Director of Enforcement

Tom Hosty similarly failed to detect the prudential concerns lurking within the Perez proposal. When Mr. Najjar first raised it for consideration, Mr. Hosty found the proposal "most intriguing" and thought that it "could be a creative solution for bigger break-throughs on evidence." (Exhibit 11). He raised no doubts when Mr. Najjar assured him that the Legal Staff had approved the proposal, and he never questioned the appropriateness of paying Perez's invoices for legal services. (Hosty). He now wishes that he had asked more questions when the proposal was initially floated, and he regrets that he simply accepted Mr. Najjar's assurance that the proposal had been approved by the Legal Staff.

4. Jim Isch, Chief Operating Officer

As the Chief Operating Officer, Jim Isch has a broad scope of authority over the operations of the NCAA. That does not mean, however, that he has a role in or responsibility for every decision made in the Association. In this matter, he did have a role in approving the Perez proposal, but he did not have responsibility for vetting its appropriateness.

When Julie Lach received Mr. Najjar's email describing the proposal and requesting approval to pay Ms. Perez for taking bankruptcy depositions on the NCAA's behalf, Ms. Lach forwarded the email to Mr. Isch and asked if she could "get the green light for [the proposal]." While the green-light request was stated in broad terms, the balance of her email focused exclusively on budgetary matters and thereby made it clear that she was seeking his approval regarding the outlay of funds and not regarding the propriety of the proposal. His response – "Absolutely, please proceed, if past practice is any indication, there will be enough money." – clearly suggests that he was addressing only the fiscal issue and not any legal/prudential concerns. That interpretation is confirmed by Ms. Lach's next email, in which she forwarded Mr. Isch's response and asked Mr. Hosty to have the Legal Staff give the proposal a legal/prudential review. It was further confirmed in

⁵⁵ All the NCAA witnesses confirmed that Ms. Lach was particularly busy and stretched thin during this time period.

our interviews with Ms. Lach and Mr. Isch, that her request and his approval were limited only to the question of funding.

Given the clear record that Mr. Isch did not – and was not expected to – opine on the propriety of the proposal, there is no basis for holding him accountable for the missteps in this case, other than as the high-level supervisor who had ultimate responsibility for the staff that committed those missteps.

5. Rich Johanningmeier, former Associate Director of Enforcement

Mr. Johanningmeier was Mr. Shapiro's original point of contact on the NCAA Enforcement Staff and during the early months of the investigation served as lead investigator. By early summer 2011, however, Ms. Lach had begun implementing organizational changes within the office and the U. Miami investigation went from a more or less solo effort by Mr. Johanningmeier—with oversight provided by his supervisor, Mr. Najjar—to a team effort overseen by Mr. Najjar. Mr. Johanningmeier made clear in his interview that he took a much less active role in the case when he no longer enjoyed ultimate responsibility for the investigation. Indeed, as Mr. Johanningmeier's responsibility receded, Mr. Najjar effectively took on the lead investigator role.

This was particularly true in relation to the Perez proposal, as Mr. Najjar was the one who worked the proposal through the internal approval process and coordinated the depositions with Ms. Perez. Mr. Johanningmeier explained that even though he was one of the recipients of Ms. Perez's proposal, he could not have acted on it, as he did not have hiring authority.

While Mr. Johanningmeier certainly knew about the proposal, he never probed the propriety of the arrangement for a number of reasons. First, he effectively withdrew from active involvement in the case when it became a "team" effort. Second, he believed such considerations were the responsibility of higher-ups in the office, namely Mr. Najjar, Mr. Hosty, or Ms. Lach. Third, Mr. Johanningmeier seemed to believe that the proposal entailed nothing more than paying for the transcripts produced in the deposition, which he did not see as a departure from past practice.

Mr. Johanningmeier retired in May 2012 without any inkling that Ms. Perez's proposal could cause problems for the NCAA. He still maintains that there has been an overreaction to the issue.

6. Brynna Barnhart, Associate Director of Enforcement

Ms. Barnhart was assigned to work with Rich Johanningmeier on the Miami investigation in late Spring 2011. Although she was made aware of the arrangement with Ms. Perez, she had only a general understanding of the details

and did not learn that the NCAA was paying Ms. Perez for her services until this past fall. At one point, Ms. Barnhart became skeptical about the arrangement and asked Mr. Najjar whether they were on solid ground. Mr. Najjar assured her that they were, and even added that the depositions would be happening regardless of the NCAA's involvement. In light of that assurance from her direct supervisor, it is understandable that Ms. Barnhart never pressed the issue again.

7. Stephanie Hannah, Director of Enforcement

Stephanie Hannah was assigned to supervise the U. Miami investigation after Mr. Najjar left the NCAA in May 2012. Like Ms. Barnhart, she was aware of the arrangement with Perez, but did not realize that the NCAA was paying for Ms. Perez's services until she started receiving invoices and emails seeking payment from Ms. Perez in the summer and fall of 2012. Given the open manner in which this arrangement was conducted and the number of people aware of it, Ms. Hannah assumed that there was nothing amiss about the arrangement and that it had been completely blessed prior to her involvement in the case. In light of those circumstances, it is understandable that she raised no alarms about the Perez arrangement.

8. Naima Stevenson, Associate General Counsel

Ms. Stevenson provided appropriate legal advice in this matter. When first approached about the Perez proposal, she carefully analyzed the propriety and wisdom of accepting the proposal and crafted a well-reasoned email explaining why she advised against doing so. When Mr. Najjar pushed back on that advice, she took the appropriate step of arranging a meeting for Mr. Najjar with her boss, Donald Remy. Her advice was reiterated at that meeting, and Ms. Stevenson assumed that the proposal would be dropped.

She realized a year later that it had not been dropped, and that the Enforcement Staff had paid Ms. Perez for taking depositions on the NCAA's behalf. She immediately alerted Ms. Lach and Mr. Remy about the situation and advised the Enforcement Staff to cease all work with Ms. Perez. She then worked closely with Brynna Barnhart and others on the Enforcement Staff to excise from the U. Miami Investigative Record any and all information that might have derived from Ms. Perez's work in the bankruptcy process.

9. Donald Remy, General Counsel

Donald Remy also provided appropriate legal advice in this matter. He first became involved when Ms. Stevenson briefed him on the advice she had given to Mr. Najjar and requested that he meet with Mr. Najjar. He held the meeting with Mr. Najjar and reiterated Ms. Stevenson's advice against the proposal. He then had no role in the matter until Ms. Stevenson discovered that their advice had been ignored. Mr. Remy was then heavily involved in the NCAA's response to that

discovery. Mr. Remy oversaw the internal effort to review emails and to determine how the Perez proposal had gone forward without their approval. He was then instrumental in the deliberations leading to the decision to disclose the issue to the U. Miami, to the NCAA Executive Committee and ultimately to the public.

10. Mark Emmert, President of the NCAA

Although Mark Emmert knew about the general background of the U. Miami case, he was not apprised of the arrangement with Ms. Perez until the fall of 2012 after Ms. Stevenson realized that her advice the previous year had not been followed. His conduct is therefore not subject to judgment in relation to the implementation of the Perez proposal. To the extent that Mr. Emmert dealt with the issue, it was in the context of deciding how to respond to the issue once the NCAA became aware of it. The appropriateness of his conduct in that context is evident from NCAA's response, and specifically from his decisions to fully disclose the issue and to take all possible steps to ensure that the parties at risk in the investigation suffer no prejudice as a result of the NCAA's mistakes.

VI. FINDINGS OF INVESTIGATION

This section will lay out the findings we derived from our fact-finding about the Enforcement Staff's actions and our evaluation of those actions. We will provide these findings in the following three ways: (1) as an overall narrative of the whole episode; (2) as a listing of the key factual findings that are most relevant to the mistakes that were made; and (3) as a discussion of the types of misconduct that we did or did not find in our investigation of this episode.

A. Background

Our Enforcement Review developed the following narrative of the events concerning the NCAA's use of the bankruptcy process in its investigation of the University of Miami:

Throughout the University of Miami investigation, the Enforcement Staff worked extensively with Nevin Shapiro, the primary source in the investigation, and his attorney, Maria Elena Perez, Esq. In the course of that relationship, Ms. Perez suggested to Director of Enforcement Ameen Najjar that she could assist the NCAA's investigation by qualifying for practice in her client's bankruptcy proceeding and using bankruptcy subpoenas to compel depositions from witnesses who had refused to cooperate with the NCAA. In return, Ms. Perez asked that the NCAA pay her for any work in relation to the depositions.

Najjar presented the proposal to his superiors, Julie Roe Lach, Vice President of Enforcement, and Tom Hosty, Managing Director of Enforcement. In explaining the value of the proposal, Mr. Najjar noted that “[o]ther than conducting these depositions, I do not believe we will be able to secure interviews with the witnesses... .” Believing the proposal had merit, Ms. Lach obtained financial authority to pay for it from Jim Isch, Chief Operating Officer, and directed Mr. Hosty to seek the Legal Staff's approval.

The Legal Staff carefully reviewed and analyzed the merits of the proposal and strongly advised Mr. Najjar – both in writing and in a subsequent meeting – that the Enforcement Staff should not hire Mr. Shapiro's attorney to take bankruptcy depositions for the NCAA. The written advice was shared with Ms. Lach and Mr. Hosty, and Ms. Lach attended the subsequent meeting in which the Legal Staff repeated the advice.

Notwithstanding this advice, Mr. Najjar proceeded to accept the proposal and coordinate depositions by Ms. Perez. He did so under the rationale that the NCAA would not be “hiring” or “retaining” Ms. Perez for her services, but would simply be reimbursing her for the costs of the depositions. Mr. Najjar went forward with the proposal without ever returning to the Legal Staff to check if that rationale would change their strong advice against accepting Ms. Perez's proposal. When asked by

Ms. Lach and Mr. Hosty, Mr. Najjar assured them that the Legal Staff had, in fact, approved the proposal.

It was not until after Mr. Najjar left the NCAA that the Enforcement and Legal Staffs learned that the Perez proposal had been implemented contrary to the Legal Staff's advice. Upon making that discovery, the two staffs immediately ceased all coordination with Ms. Perez in the bankruptcy process and directed that any allegations or assertions in the Investigative Record that were based directly or indirectly on Ms. Perez's depositions or other work in the bankruptcy proceedings be excised from the document. The NCAA then conducted a preliminary factual inquiry to understand how this happened, sought an opinion from outside counsel about any legal ethical implications, and informed the University of Miami and the public about these events. Finally, President Emmert retained Cadwalader and Ken Wainstein to conduct an independent investigation of the circumstances surrounding the Perez proposal and suspended any action in the U. Miami case until after the completion of that investigation.

B. Key Factual Findings

We have evaluated witness accounts and the information we received in the course of our Enforcement Review, and have made the following specific factual findings, which are most relevant to our assessment of responsibility for the actions taken by the Enforcement Staff:

- Ms. Lach directed that the Perez proposal be reviewed by the Legal Staff before it could be accepted and implemented.
- The legal advice provided by the Legal Staff to Mr. Najjar, Ms. Lach, and Mr. Hosty was clear that he should not accept the Perez proposal.
- Mr. Najjar chose not to follow that legal advice, deciding instead to come up with "a way around it."
- Mr. Najjar went forward with his "way around" without returning to the Legal Staff and asking if that idea would change their advice to reject Ms. Perez's proposal.
- Neither Ms. Lach nor Mr. Hosty checked with Legal Staff to confirm that they had reversed their original advice and accepted Mr. Najjar's "way around."
- Mr. Najjar told Ms. Lach and Mr. Hosty that the Legal Staff had approved his actions when, in fact, they had not.
- Neither Ms. Lach nor Mr. Hosty examined the Perez proposal carefully enough to appreciate the prudential concerns it raised.

- The Enforcement and Legal Staffs acted appropriately once they realized that Mr. Najjar had gone forward with the proposal contrary to legal advice.

C. General Findings

We made the following general findings relating to the legal, policy and prudential concerns that were potentially implicated by the Enforcement Staff's acceptance and implementation of the Perez proposal:

First, we find that no NCAA employee knowingly violated a specific bylaw or law. While the Enforcement Staff may have disregarded the advice of the Legal Staff in proceeding with the proposal, they do not appear to have violated any written NCAA rule. We have also found no apparent violation of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, or Bankruptcy Court orders by NCAA staff.⁵⁶

Second, we find that Mr. Najjar knowingly circumvented the legal advice against engaging Ms. Perez. While we did not identify a written rule requiring Enforcement Staff members to abide by duly provided legal advice, it was universally understood at the NCAA that Enforcement Staff must adhere to such advice. Accordingly, it was simply not reasonable for the Enforcement Staff to proceed with Ms. Perez's proposal in light of the clear advice to the contrary from the Legal Staff.

Third, we find that internal NCAA practice was violated by the engagement of Ms. Perez by the Enforcement Staff rather than Legal Staff. The NCAA, like most organizations, requires counsel to be retained and monitored by their legal staff. The NCAA's internal website, the NCAA Daily, states that the Legal Staff are responsible for approving and retaining outside counsel. This policy was made clear to Mr. Najjar by the Legal Staff, both in an email and in person. Mr. Najjar ignored that admonition in arranging for the Enforcement Staff to engage Ms. Perez.

Fourth, we find that Mr. Najjar, Ms. Lach, and Mr. Hosty paid insufficient attention to the concern that the Perez proposal could constitute an inappropriate manipulation of the bankruptcy process. Mr. Najjar, in particular, knew all angles of the arrangement with Ms. Perez, yet he completely overlooked several that should have raised that concern in his mind. For example, Mr. Najjar knew that Perez did not enter an appearance in Mr. Shapiro's bankruptcy proceeding until after the NCAA agreed to pay her, yet he apparently never considered whether he

⁵⁶ Our legal finding that the Enforcement Staff's conduct did not violate any written rule or proscription remains contingent on continued exploration of any relevant facts and rules as we proceed through Stage Two of our Enforcement Review.

was inappropriately using the bankruptcy process for the NCAA's purposes. While these Enforcement Staff members can cite (and we have thoroughly examined (see Section V.B.4.a.ii.)) circumstances that gave this arrangement a more benign cast in their eyes, they should have been aware that it could be – or at least could be seen as – an abuse of the bankruptcy process. To the extent that he was aware of that concern, there is no evidence that he did anything to address it.

Fifth, we find that Mr. Najjar adopted and Ms. Lach and Mr. Hosty went along with the Perez proposal without sufficiently considering whether it was consistent with the NCAA membership's understanding about the limits of the Enforcement Staff's investigative powers. There are any number of techniques that, though permissible in the law enforcement context, were considered over the line for NCAA investigations. Mr. Najjar and his supervisors never considered whether the Perez proposal fell within that category.

Sixth, we find that Enforcement Staff managers Ms. Lach and Mr. Hosty exercised insufficient oversight of Mr. Najjar's handling of the Perez proposal and that they failed to detect and rectify the problems with the Perez proposal for almost a full year.

Finally, we find that the NCAA Legal and Enforcement Staffs undertook an appropriate and commendable course of action once they realized that the Enforcement Staff had implemented the Perez proposal against legal advice. The record demonstrates that the Legal Staff led the NCAA to immediately conduct a preliminary review of the circumstances and scope of Mr. Najjar's conduct; they sought an outside opinion on its ethical implications; they excised from the Investigation Record any reference to information obtained from Ms. Perez's work with the bankruptcy process; and they fully disclosed the issue to the Persons at Risk in the investigation and to the American people.

D. Conclusion

When we started this investigation 27 days ago, the established facts were the following: the Enforcement Staff had paid a source's attorney to insert herself into an ongoing bankruptcy proceeding and to use its subpoena power to compel depositions from uncooperative witnesses. The question for our investigation was how such an arrangement could ever have been adopted and approved by the NCAA staff.

We set out to answer that question by interviewing all involved NCAA staff about their decision making in relation to the Perez proposal. During those interviews, the staff identified a number of considerations (as described above in Section V.B.4.) that help to explain why they at the time did not find this idea so clearly ill-advised as many do with hindsight today. These considerations are

important to understanding why otherwise conscientious staff would feel it appropriate to embrace such an idea.

While these considerations may provide an explanation for their actions, they do not provide an excuse. For a host of reasons, the Perez proposal was unquestionably a bad idea for the NCAA. The decision to forge ahead with the proposal in the face of significant concerns reflected both a lapse of judgment and an insufficient regard for the NCAA's reputation and its credibility.

We have every reason to believe, however, that this series of missteps is not typical of the Enforcement Staff's operations. We have been uniformly impressed with the caliber of the Staff members and with the depth of their commitment to the mission of the NCAA.

We recognize that this incident has nonetheless raised understandable doubts in the minds of many about the management, integrity and effectiveness of the NCAA's Enforcement operations. The Enforcement Staff recognizes those doubts and the need to overcome them with diligence and with renewed dedication to the NCAA's principles. They have taken an important first step in that process with their straightforward and conscientious response to this controversy.