In the Matter of Crystal World Holdings, Inc. (HO-13397)

WELLS SUBMISSION OF CRYSTAL WORLD HOLDINGS, INC. AND THE NEW SPORTS ECONOMY INSTITUTE

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I. INTRODUCTION

The Division of Enforcement ("DoE") has indicated that it is considering recommending that the Securities and Exchange Commission (the "Commission" or "SEC") bring an enforcement action against Crystal World Holdings, Inc. ("CWH" or the "Company"), a Wyoming company and the New Sports Economy Institute ("NSEI"), a 501(c)(3) non-profit, tax-exempt organization registered in California (collectively "we" or "us"). The proposed enforcement action would allege that CWH and NSEI violated Section 5 and/or Section 17 of the Securities Act of 1933 in connection with the grant of CWH stock as part of a broad and mixed basket of goods and services to NSEI donors.

CWH and NSEI did not engage in illegal security offerings, but that’s just the beginning. In a world where the truth started to have multiple versions, fraud is rampant, and transparency is becoming a lost art, CWH and NSEI have always acted with integrity and in good faith. For close to 20 years, we have fought, and survived, in the direst of circumstances.

This Wells submission is, in fact, the second document that we addressed to the SEC in 2019. Just a couple months ago, in March 2019, CWH submitted a Form 1 application for one of its subsidiaries to become a National Securities Exchange and trade sports-related financial instruments. In a world where any sports and money combination is assumed to be de facto gambling, we have set out to disprove that deep-seated assumption. When we saw most actors eschew regulation, we took the road less travelled. We proactively sought regulation. We strived for legal
certainty. Along the way, we have never wavered from our mission: to make sports an asset class.

A close and honest inspection of the voluminous history of the nearly two decades of our existence shows nothing but pure intentions and the costly journey to find a regulatory pathway for sports as an asset class. As we certainly hope our story will illustrate, CWH and NSEI are, without doubt, good actors that are motivated to make the world a better place.

Of course, actions speak louder than the words. While we genuinely believe that we have not engaged in any illegal security offerings, we understand the power of precedents. We realize that the act of granting company stock through a non-profit could turn into a slippery slope in the hands of bad actors. We understand that non-profits could be formed not for charitable purposes, but to mask securities offerings. The Commission should not allow that to happen. We believe in ‘do no harm’, and if our actions are going to open a door that should stay closed, we want to be the first ones to close it. As of April 30, 2019, we have essentially self-imposed a cease-and-desist on the alleged violation. As also communicated to the DoE on one of our phone conversations, as of that date, we have stopped stock grants through NSEI.

We appreciate the opportunity to tell our story, and for the reasons outlined above and further in this submission, we urge the Commission to decline to bring the proposed enforcement action against CWH and NSEI.
II. FACTUAL BACKGROUND

A. Business Overview

CWH’s mission is to make sports an asset class. To that end, the Company has developed socially beneficial sports trading instruments that it intends to offer to the investing public in regulated financial markets overseen by the SEC and/or the U.S. Commodity Futures Trading Commission ("CFTC") in the U.S., the Ontario Securities Commission ("OSC") in Canada, and/or similar regulatory bodies in other jurisdictions.

The first product the Company is planning to bring to market is SportShares ("SportShares"), which are virtual ‘interests’ or ‘stocks’ which represent specific sports teams. Assuming regulatory approval is granted, it is our intention that SportShares will be traded as set forth below and that purchasers will be able to buy and sell SportShares in a manner similar to stocks and receive dividend-like distributions on both a quarterly basis (on March 31, June 30, September 30 and December 31), and after each win.

In order to facilitate the trading of SportShares, the Company has developed and plans to launch a proprietary exchange platform, AllSportsMarket ("ASM"), where SportShares can be traded. ASM will be accessed via www.allsportsmarket.com and available mobile applications. Currently, two preliminary versions of the ASM exchange are operated by the NSEI: i) the Learning Market, where trading is done on a trial ‘cashless’ basis; and ii) the Pilot Market, where each participant’s annual deposit limit is capped, voluntarily by CWH and NSEI, at $2,500. The purpose of the Learning Market and the
Pilot Market are educational, and experimental, respectively.

Through our affiliate Global Sports Financial Exchange, Inc. (“GSFE”), we plan to undertake the required steps to be licensed as an exchange or alternative trading system (“ATS”), whereupon actual regulated trading of the SportShares may take place. To that end, on March 25, 2019 we submitted Form 1 to the SEC for GSFE to become a National Securities Exchange. If and when the regulated ASM is launched, we intend to continue to maintain the Learning Market, operated by NSEI, for educational purposes, and discontinue the Pilot Market.

In essence, through the development of SportShares and the ASM platform, the Company has created the sports investing concept. The Company plans to market ASM as a sports ‘stock’ exchange and has secured various related trademarks such as The World’s First Sports Stock Market®, The Global Sports Financial Exchange®, SportsFolio®, SportFolio® and Trade Sports Like Stocks® among others.

While the trading of SportShares will be performed in a fashion similar to online stock trading, SportShares will not represent an equity interest in any particular sports franchise. Rather, SportShares will represent a claim to the perpetual dividend flows that a particular SportShare will generate on the ASM platform. The dividends will be paid from a dividend reserve pool which will initially be created from the proceeds of the sale of SportShares to the public. Subsequently, a certain portion of the trading commissions will be added to the dividend reserves with each trade.
As currently designed, trading commissions are envisioned to be 1% on both the buy side and the sell side, and 50% of all trading commissions will be added to that team’s dividend reserve pool. As an example, if one Los Angeles Lakers SportShare is traded between a willing buyer and seller at the price of $100, both the buyer and the seller will pay a commission of $1, for a total of $2, and half of that, $1, will be added to the dividend reserve pool of Los Angeles Lakers, with the remaining $1 to be recognized by the Company as revenue.

We envision that the SportShares will be first offered to the public via a public offering process conducted through the ASM platform. Upon the consummation of the public sale of SportShares, each individual purchaser will be the owner of the SportShares they were able to secure during the public sale process. The teams/leagues are intended to be the primary beneficiary of the proceeds, either by virtue of being the issuers of the SportShares, or otherwise being the ultimate beneficiary of the proceeds (if the issuer is another entity). In essence, we view SportShares to be a tool for sports franchises to raise capital. While they would not have to part with equity as part of the capital raise like traditional issuers do, the process would not be costless for them. They would still subject themselves to a well-established federal regime for securities, and, among other things, may face various compliance and disclosure requirements.

The price of SportShares will be set initially by the issuer, but secondary trading pricing will be driven by supply and demand, with traders individually determining an acceptable price to buy or
sell a particular SportShare. That decision can be expected to be driven by a variety of factors, including the perceived value of the SportShares based on market conditions, recent trades and market value, considering both the existing dividend reserves and expected dividend flows.

A SportShare investor can unlock the asset value in two ways: dividend payments and/or price appreciation (or price depreciation if one has a short position). It is our intention to have holders of SportShares receive dividends on a quarterly basis, in addition to game-based dividend payments after each win. Dividends are payable from the dividend reserve pools, which are backed by cash, which is intended to be held in an escrow account.

A typical purchaser of SportShares may consider both performance and popularity as significant inputs factoring into their investment decisions on the ASM platform. Specifically, the typical purchaser would likely evaluate the performance of the underlying sports franchise, the popularity of the team, as well as the popularity of the league in which that particular team competes. To the extent more popular teams/leagues attract more trading, everything else equal, they may be expected to generate dividend reserve pools with relatively higher balances. Performance plays a role as well; the dividends in the dividend reserve pools will be regularly re-distributed across teams within a given league based on performance (with a portion of the dividend reserve pool of the losing team being transferred to the dividend reserve pool of the winning team). Once the game is over, and the dividend reserve pools are adjusted, a portion of the dividend
reserve pools are then subsequently distributed to SportShare holders. Accordingly, while valuation is inherently a subjective exercise, at least a subset of the purchasers may expect the value of the SportShares to be somewhat proportional to the performance of the sports teams and the popularity of the sports teams and leagues in the long run.

The Company believes its sports investing concept is fundamentally different from, and superior to, sports gambling, which includes traditional sports betting and in our view, also daily fantasy sports (“DFS”). Our position is that ASM is not sports gambling because it serves a valid economic, socially beneficial purpose while fostering financial literacy through responsible investing. Sports gambling, on the other hand, is a pure entertainment vehicle that does not serve a valid economic purpose. We consider the following to be among the key differences between sports investing and sports gambling:

- Unlike traditional sports bets or DFS positions, SportShares never expire. Barring a complete collapse of the price, one’s entire purchase price is not at risk. SportShares can be liquidated any time, assuming there exists a counterparty willing to take the other side of the trade.

- There are no odds. Each team share has a price that is continuously changing. These prices, in turn, allow the sports industry and other stakeholders to allocate resources more efficiently, and make better decisions.

- Prices are based on supply and demand, and can be impacted by, among other things, performance, trades, drafts, injuries,
coaching/management changes and free agency. A single game outcome has a negligible impact on the price, if any. In fact, the price of winning teams can drop after the game, and vice versa.

- While SportShares do not represent equity, debt, revenue sharing or other similar interests in a particular sports franchise and the owners do not own an equity interest in the underlying professional sports team or any entity or claim, SportShares owners have a claim against perpetual future dividends earned on their SportShares on the ASM platform. Investors of SportShares decide whether a team is a good investment based on their assessment of risk, growth, and expected dividend flows.

Furthermore, sports investing is designed to preserve the integrity of sports. On the ASM platform, game-based dividends offer purchasers a small return on their initial capital amount on a periodic basis. As a hypothetical example, a purchase of one SportShare at $10 prior to the start of the season could possibly result in a dividend payment after each win, but such payments are likely to be de minimis. While the game-based dividends as well as the quarterly dividends can be expected to add up and offer a reasonable return acceptable to a SportShare purchaser in the long run, the sports investing concept is unlikely to offer excessive returns on the capital invested in the short run. Excessive returns, on the other hand, may be available to the individual engaging in sports gambling in the short run, in fact, in a matter of hours, even minutes. The Company believes that sports investing preserves integrity precisely as a result of
how it is designed; since excessive returns are unlikely to be available to the sports investor in the short term, the incentive to fix games and other inappropriate behavior is removed.

There already exists a federal regulatory framework for traditional equity securities. Based upon how we anticipate the ASM market will function and our review of relevant case law, we believe the existing regulatory framework for traditional equity securities will be the applicable regulatory framework for the issuance and trading of SportShares. Specifically, we believe that SportShares should be characterized as securities under the principles established in *SEC v. Howey Co.*, 328 U.S. 293, 298 (1946) and its progeny.

Furthermore, while we believe that the offering of SportShares would be permissible under existing laws, we also acknowledge the novel nature of our products. Accordingly, in order to operate the business on a national or global scale, the Company anticipates having to obtain regulatory approval from one or multiple regulators for its exchange. More specifically, the Company’s main objective is to obtain regulatory certainty for its proprietary trading products from the SEC, and/or CFTC in the U.S., as well as OSC in Canada, and, at a later stage, from similar regulatory bodies in other jurisdictions.

The Company anticipates that GSFE will operate as a national securities exchange or as an ATS. In doing so, the GSFE may also be required to be licensed as a broker/dealer and join FINRA and/or other self-regulatory organizations. Neither the Company nor GSFE are currently registered as a national securities exchange and/or broker-dealer. As
mentioned above, the Company submitted an application to the SEC for GSFE, its wholly-owned subsidiary, to operate as a National Securities Exchange on March 25, 2019.

Alternatively, to the extent sports performance and/or popularity is considered a commodity, the Company may be required to operate under the auspices of commodities laws, with CFTC being the likely regulator, and may need to partner with, or become a designated contract market (“DCM”) for the purposes of listing and trading of SportShares.

Since CWH operates at the intersection of sports and money, we believe the total addressable market has two populations that are likely overlapping to some extent: 1) traders with a desire to speculate on sports; and 2) participants in the financial services industry, in particular, equity trading.

The desire to speculate on sports with real money, to date, has manifested itself only in the form of sports gambling. Traditional sports betting, until very recently, has been only legal in Nevada, and the estimated total amount wagered in 2017 was $4.9 billion. Outside Nevada, traditional sports gambling has been a mostly underground industry. Estimates vary widely with respect to the size of illegal sports gambling, but it is believed to be anywhere between $150-500 billion. Fantasy sports, including both traditional season-long and daily fantasy sports, was recently estimated to be a $7.2 billion industry with 59.3 million fantasy sports participants in the United States and Canada.
The financial services industry in general, and stock trading in particular, can also be used for speculative purposes. The key difference between the stock market and the gambling is that the former serves a valid economic purpose, and the latter does not. In the stock market, traders’ positions can range from speculative to investing, with the ‘margin of safety’ being the key factor; the higher the margin of safety, the closer a position moves to investing on the speculation-investment spectrum. Sports gambling positions, on the other hand, are purely speculative. The overall platform where these positions are taken matters a great deal as well. The primary market is an effective tool for companies to raise capital, and the subsequent trading in the secondary market results in both price discovery, and individuals having an opportunity to share into the success of the companies by investing in them.\footnote{A similar argument regarding valid economic purpose applies to derivatives markets. There, speculators get matched with hedgers, and the trade, even though it generally is zero-sum \textit{ex post}, is value-creating \textit{ex ante}. In addition, just like the stock market, the aggregated actions of all individuals result in socially valuable price discovery. The Commodity Futures Trading Commission Act ("CFTC Act") of 1974 introduced the public interest standard for designation of commodity futures contracts and included an Economic Purpose Test, which permitted listing and trading of contracts that could be used for hedging and price basing on a more than occasional basis.} A sports gambling platform is a form of entertainment, and nothing more. It is precisely this distinction, i.e. serving a valid economic purpose versus not, is what differentiates the Company’s products and why we believe that our products fit into the existing financial regulatory framework.
If and when regulatory certainty is achieved, the Company expects to have two principal sources of revenue: (1) fees associated with the offering of SportShares to the investing public as part of the public offering process; and (2) commissions generated by the trading of SportShares. Additional revenue may also be generated from ancillary services and licensing fees as a new ecosystem is built around sports as a new asset class. There is currently no public market for CWH capital stock or for the SportShares.

In the long term, the Company intends to bring other sports-related financial instruments to the market serving investing, risk management and other needs of the sports industry participants. As further detailed below, the Company developed such a product a decade ago, called SportsRiskIndex ("SRI"). SRI was intended to be a proxy for franchise valuation. The index was calculated using various factors, e.g. attendance, TV rating etc. The Company also developed SRI futures contracts that traded against the SRI. By law, the Company was required to partner with a designated contract market ("DCM"), unless it could become one itself, for the purposes of the listing and trading of SRI futures, and effective July 14, 2008, it had entered into a contract with United States Futures Exchange, Inc. ("USFE"), which had a DCM designation at the time. The Company and USFE, collectively, have maintained a dialogue with the CFTC as part of the product development process. During Fall 2008, USFE, with CWH’s assistance, has prepared a draft application that it planned to submit to the CFTC. Before USFE had an opportunity to submit the application, the economic crisis of 2008 intensified, ultimately
resulting in USFE discontinuing its operations. The Company has subsequently shifted its focus back to the ASM platform and further development of SportShares.

Presently, the Company intends to continue to focus on bringing SportShares to regulated financial markets and does not anticipate to focus on SRI in the near term. In the long term, however, the Company may re-engage with the CFTC, and seek potential partners for the listing and trading of SRI futures to continue to serve its mission of making sports an asset class.

We acknowledge the uniqueness of our proposition: the creation of financial products with a valid economic purpose at the intersection of sports and money, a domain that has been long assumed to be equivalent to gambling. We categorically reject the position that our operations are a form of sports gambling. Our relentless pursuit for legal clarity and regulatory certainty has been the defining pillar for both CWH and NSEI, as further detailed throughout the rest of the section.

B. Early Days: 2003-2006

The predecessor to CWH was Soluciones Globales Optimas, S.A. (“SGO”), a now-defunct entity domiciled in Costa Rica. SGO was formed in 2003 by Chris Rabalais (“Rabalais”) and his co-founders. Rabalais was previously both a stock trader and worked for a sports betting operator. His starting question was a seemingly simple one: “Why does a sports stock market not exist?” SGO started to operate ASM, in Beta mode, in 2003, and went fully live, with unlimited real money trading, in 2004. ASM has
become moderately successful and has attracted over 10,000 traders in the first couple of years.


The sports stock market concept that Rabalais and his co-founders have developed was facing two uphill battles. One is the widespread, but in the Company’s view, flat-out wrong perception that any combination of sports and money, regardless of economic purpose, must be sports gambling. Being in Costa Rica certainly did not help. Costa Rica was, and to some extent still is, considered a sports gambling mecca. Then, as it is now, it was home to hundreds of sportsbooks. Against that backdrop came the Unlawful Internet Gambling Enforcement Act (“UIGEA”) of 2006. Rabalais faced a conundrum. He could either stay in Costa Rica, continue to grow the ASM platform and take his chances with the U.S. laws. Alternatively, he could chart a different path and seek regulatory certainty on a business model that was, admittedly, in a gray area. Coupled with a firm belief that sports is an asset class and the sports stock market concept can be regulated within the financial regulation framework, he has chosen the latter. Dr. Sharon Brown-Hruska, former Acting Chairman of the CFTC and Paul Architzel, the legal architect of the Commodities Futures Modernization Act of 2000 were engaged as advisors through their respective firms at the time, NERA and Alston & Bird, respectively.

In December 2006, Rabalais made a trip to Washington, D.C. to have in-person meeting with his advisors. Rabalais travelling to D.C. was not entirely without risk. One of the lawyers (not his external legal counsel), who recently joined the law firm from the
Justice Department said “Why aren’t you afraid of being arrested on the spot?” Rabalais responded that he needs to find legal certainty for the business model.

On February 8, 2007 Alston & Bird issued a memo to Rabalais titled “New Internet Gambling Law” in which it provided an analysis of recently enacted UIGEA, and its implications for ASM. In it, it opined that ASM is likely to be considered an internet gambling operator and could face enforcement action. While we did not (and do not) agree with the opinion, it became clear that the environment at the time was not conducive to a novel business model at the intersection of sports and money.

It was another fork in the road for Rabalais. He could ignore the legal advice it received and continue to operate in a gray area, or stay true to its ultimate mission of making sports an asset class and continue to develop socially beneficial sports-based financial instruments. Despite firmly believing that its sports stock market concept is on the right side of law, he realized the timing was not optimal. The prudent decision was to shelve the sports stock market concept for later use, and Rabalais did just that. That started the wind-down process of ASM, which ultimately ceased operations in early 2009. Having decided to pivot but refusing to back down from the mission, he asked his team and advisors: “What other sports-based financial products could we develop?”


2007 was a pivot year for Rabalais and his team. Together with its advisors, the Company started to tinker with a risk management product
catering to the sports industry, and the SRI was born. SRI was developed to track the relative value of sports franchises, and is calculated using a variety of economic and demographic factors, such as attendance, TV ratings, the purchasing power individuals in a particular metropolitan area, etc. Since there is a strong relationship between the revenue generation capability of sports franchises and different businesses within the sports industry, the SRI was also determined to be a reliable underlying index for futures contracts, and the Company started developing the SRI futures. As a futures product intended for risk management, the product clearly fell under CFTC’s jurisdiction.

A secondary product the Company was working on at the time was location contracts. The underlying premise behind the location contracts was that major sports events, e.g. the Olympics, World Cup etc. are economically significant, and being the host location has significant economic consequences for both businesses and local and national governments. The Company decided that continuously traded binary option contracts with a payoff based on the outcome of the selection of the host location would provide an appropriate vehicle for hedging the risks associated with the city selection.

CWH was formed in early 2007 as a Delaware corporation. It was intended to be, and still is, a holding company that owns substantially all of the Company’s intangible assets, including but not limited to issued and pending patents, and over 20 registered trademarks.
On June 25, 2007, the Company’s economic advisor, NERA, has met with certain staff members of the CFTC and presented the case that the sports industry is just like any other, and is in need of risk management tools. The presentation included preliminary thoughts on both the location contracts and the SRI contracts.

By late 2007, the Company had prepared a draft submission for its location contracts (that would be ultimately submitted by a DCM), however it ultimately decided not to pursue the location contracts and focus on the SRI.

Effective July 14, 2008, CWH entered into a license agreement with USFE, a now-defunct designated contract market (“DCM”). Under the terms of the license agreement, USFE was going to be responsible for the listing and trading of the SRI futures.

Around that time CFTC has been considering jurisdictional issues in connection with markets with exotic underlyings. In 2008, the CFTC solicited public comments on the appropriate regulatory treatment of financial agreements offered by markets commonly referred to as event, prediction, or information markets. Concept Release on the Appropriate Regulatory Treatment of Event Contracts, Federal Register, 73 Fed. Reg. 25669 (May 7, 2008). CFTC asked, inter alia, “[w]hat objective and readily identifiable factors, statutorily based or otherwise, could be used to distinguish event contracts that could appropriately be traded under Commission oversight from transactions that may be viewed as the functional equivalent of gambling?” and “[w]hat are
the implications of possibly preemtping state gaming laws with respect to event contracts and markets that are treated as Commission-regulated or exempted transactions?” *Id.* While the SRI product was not an event contract per se, Rabalais responded to the request for comment.  

On October 27, 2008, CWH, its advisors, and USFE jointly made a presentation to the Division of Market Oversight at CFTC to further discuss the proposed SRI futures. While there was no indication from the Division of the Market Oversight whether or not the products would be approved (if they were submitted to the CFTC for approval), or no challenge would have been raised by the CFTC (if they were self-certified), the consensus view between CWH and USFE were the regulatory process would likely be complete in time before the start of the Major Baseball League season in April 2009.

The consensus view did not come to pass. In the last couple of months in 2008, the U.S. economy imploded. Under pressure, USFE’s main owner, MF Global Ltd., put USFE up for sale and when no buyers emerged, USFE closed down. As a result, the license agreement between CWH and USFE was terminated on January 6, 2009.

**E. The Gestation: 2009-2014**

With no resources to seek out another designated contract market partner, CWH’s

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operations were brought down to a minimum. During the 2009-2014 period, our focus was on maintaining our intellectual property rights for our SRI concept and the associated index futures and to refine our thinking around the sports investing concept and the SportShares with the sole objective of getting both products ready for future regulatory approval.

One of the most significant development in this period was the formation of the NSEI in 2011 to facilitate our educational and social mission and broader objectives. A sports-based finance curriculum, while incomplete at this time, was developed and published. Our grand vision for anchoring sports at the center of society as its core organizing principle started taking shape. The specific mechanisms for how our vision will be realized were conceived and developed.

This period also saw two ASM legacy disputes come to the forefront. A trader from the original ASM platform publicly announced that he notified the SEC, which started an investigation in 2009 out of its Fort Worth, TX location. After meeting with Rabalais and reviewing certain business documents, the SEC decided to take no action.

Another trader bypassed the regulatory agency route completely and decided to sue Rabalais, SGO, and an affiliate entity of the SGO in California Court. Despite his deposits exceeding his withdrawals only approximately by $4,000, the trader was able to obtain a monetary judgment for $379,000 that was significantly aided by the fact that the business was on life support as a result of the recession, and both
CWH and Rabalais lacked the necessary resources to engage legal counsel in a timely manner.

In January 2011, Rabalais filed for personal bankruptcy. Upon listing the aforementioned trader’s default judgment in the list of his dischargeable debts (Schedule F), the case started to move through the Federal Courts. Viewing this as an opportunity to potentially get legal clarity on SportShares, while still having no resources for counsel, Rabalais appealed the case all the way through and ultimately petitioned the Supreme Court, pro se, asking the following question: “Is sports performance an excluded commodity under the Commodity Exchange Act?” The Supreme Court declined to hear the case.

It was also during this period when Rabalais came dangerously close to being homeless. Residing in Houston, TX at the time (he moved from Costa Rica to Houston a few years earlier in anticipation of leading a U.S.-based business) yet not being able to pay his mortgage due to financial hardship, Rabalais was in danger of losing his home. The personal bankruptcy proceedings mentioned above turned out to be a blessing in disguise; it slowed the process just enough so Rabalais could take advantage of a new federal government mortgage program, and was ultimately able to modify his loan.


Persevering through an extremely difficult few years, where the sole goal was to stay alive and preserve the value created before ‘The Great Recession of 2008’, the original ASM team began to come back together in 2014 to see the mission
through. A decision was made to go back full circle to square one, and resurrect the new and improved ASM market in some form. In February 2014, CWH filed a provisional patent for ASM.

In August 2014, NSEI was granted 501(c)(3) status (retroactive to 2011). Around that time, the Learning Market, which incorporated the improvements and refinements conceived during the 2009-2013 period was launched via an Apple Store app called ASM Free! by the NSEI.

In 2015, The SportsVote, an initiative to gain public support for socially beneficial sports markets, got underway with actor Zack Ward, of A Christmas Story fame, signing on as its ambassador and filing the Sports Integrity Protection Amendment (“SIPA”) in California to make responsible sports trading a basic citizen right. ³ While we are undoubtedly the first to argue for fully regulated sports markets provided that they serve the public interest, we believed we wouldn’t be the last. We genuinely believed, and still do, that responsible, non-gambling and socially beneficial sports markets will develop and thrive under the right financial regulatory framework. We intended the SIPA to be a catalyst for like-minded innovation across our nation. While the SIPA did not gain much traction, we deem it to be an important milestone in our history.

In March 2016, CWH was granted the SRI patent in China.

G. Seeking Regulatory Certainty, Again: 2016–present

While ASM Free! was a moderate success, it did not gain the traction the Company hoped it would. Presumably this was a result of the lack of the ability to trade with real money. This was yet another fork in the road for Rabalais, and more broadly the Company. As always, Rabalais firmly believed that the business model is not only sound from a regulatory and legal perspective, but it will also contribute substantially to the broader U.S. economy in the form of jobs and taxes without creating any of the vice costs that sports gambling does. Similarly, on the educational side, Rabalais maintained, as he always has, that CWH and NSEI’s efforts will significantly advance financial literacy.

However, Rabalais also was not willing to repeat the Costa Rica experiment with unlimited real money trading. He felt that despite his personal beliefs that he has a perfect business model that combines the profit motive with social mission, it would not be prudent to go all out without legal certainty.

That created a little bit of a catch-22 situation. Rabalais figured that if he did nothing, the model will likely never get traction. On the other hand, an unlimited real money market did not feel right either. He found what he thought was the optimal solution somewhere in the middle. He greenlighted a limited money model, which was referred to as the Pilot market, and instituted, voluntarily, a $2,500 per trader per year deposit limit. The idea was to ensure
the market works as intended and to gather data to show the use case for the product.

The voluntarily imposed deposit limit was important to Rabalais, but it was not sufficient. He wanted to ensure that there is full visibility to regulators, both SEC and CFTC. Concurrent with the start of the operations of the Pilot Market on March 3, 2016, NSEI filed a no-action relief request with the SEC with a copy to the CFTC. In it, NSEI stated that the Pilot Market was meant to be a transitionary phase toward full regulation. It said:

> Importantly, we don’t envision the no-action, if granted, serving as a perpetual placeholder for our proposed, limited market operations. On the contrary, we view it as an intermediate, transitionary phase on the path to full regulation. It is our intent during this phase to:

i) collaborate with the SEC and other regulatory agencies, as needed, through a continuous and transparent dialogue to determine the details as to how the proposed sports stocks and the concept of sports investing should ultimately be regulated; and

ii) to demonstrate the benefits of sports investing to the world, not only as a needed addition to capital markets, but also how it can become an enabler of global economic development and educational reform.

NSEI did not receive a response from the SEC on its no action request, but continued to proactively seek regulatory certainty. On March 25, 2019, the
Company submitted an application to the SEC for GSFE, its wholly-owned subsidiary, to operate as a National Securities Exchange, the latest milestone in what has been a long and costly journey to find a regulatory pathway for sports as an asset class.

III. CWH DID NOT ENGAGE IN ANY ILLEGAL SECURITIES OFFERINGS

A. Grants of CWH Stock to NSEI Donors Were Gifts, Not Sales

NSEI has been running certain fundraising programs to advance its educational and social mission and as part of its programs, has provided to its donors a broad and mixed basket of goods and services, which included, among other things, CWH common and preferred shares. The Company firmly believes that including common and preferred stock in a basket of goods and services provided to its donors does not constitute a violation of the securities laws.

It is true that having a mixed basket of goods and services with multiple items were intended to entice donors to take action. NSEI did not identify a single good or service that would increase the chances of securing donations. Instead, NSEI understood that different people responded to different incentives, and decided to include the CWH stock, among other things, in the mixed basket of goods and services.

From a transaction flow perspective, the CWH stock was granted to the NSEI donors, and the shares came out of CWH treasury. The donations went to the NSEI, and not to CWH.
The form of the transaction aside, we have always believed that substance trumps form. Case law generally supports that position. “Finally, we are reminded that, in searching for the meaning and scope of the word "security" in the Act, form should be disregarded for substance and the emphasis should be on economic reality.” Tcherepnin et al. v. Knight et al., 389 U.S. 332 (1967) (citing SEC v. Howey Co., 328 U.S. 293, 298 (1946)). “This Court has decided a number of cases in which it looked to the economic substance of the transaction, rather than just to its form, to determine whether the Acts applied.” Landreth Timber Co. v. Landreth et al., 471 U.S. 681 (1985). It is true that the economic reality is NSEI donors have parted with their money, and have received something in return.

While we agree with the principle of ‘substance over form’, we disagree that the transaction where donors, as a result of donating to a non-profit, were engaging in a stock purchase transaction, or conversely that CWH was engaging in a securities offering. As mentioned above, the grant of CWH shares was but one item that the donors have received as part of a mixed basket of goods and services. In a typical securities transaction, the investor is focused on one thing, and one thing only: the security.

In United Housing Foundation v. Forman, 421 U.S. 837 (1975), the Supreme Court argued: “This test, in shorthand form, embodies the essential attributes that run through all of the Court's decisions defining a security. The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. By
profits, the Court has meant either capital appreciation resulting from the development of the initial investment, as in Joiner, supra (sale of oil leases conditioned on promoters' agreement to drill exploratory well), or a participation in earnings resulting from the use of investors' funds, as in Tcherepnin v. Knight, supra (dividends on the investment based on savings and loan association's profits). In such cases the investor is "attracted solely by the prospects of a return" on his investment. Howey, supra, at 300. By contrast, when a purchaser is motivated by a desire to use or consume the item purchased—"to occupy the land or to develop it themselves," as the Howey Court put it, ibid.—the securities laws do not apply. See also Joiner, supra. (bold emphasis added)

The natural question, then, to ask is this: Was stock the only reason, as it typically is in a securities transaction, or was it only one of the motives?

Admittedly, the question is not an easy one to answer. The donors themselves may not know why they are making a certain decision, let alone an outside observer making that determination. However, some data exists that offer valuable insights. According to an internal survey the company has conducted in April 2019 (186 participants responded), 61.3% of the participants have reported that the stock grant was either a major reason or the only reason why they participated in a NSEI donation program. Furthermore, only 8.1% of the respondents (15 out of 186) reported that it was the only reason.

As of April 30, 2019, NSEI has decided to not include free CWH common and preferred stock as an
element in the basket of goods and services provided to the donors. What happened afterwards is also quite instructive. In its May 2019 donation drive, NSEI did not include CWH stock as part of the basket of goods and services, and still received approximately 60% of the donations (measured in dollars) from its donor base compared to its previous program where CWH stock was part of the basket of goods and services.

Therefore, the hypothesis that the grant of CWH stock as part of a bigger program amounts to a securities offering in disguise, is not supported at all by the data. It was certainly a factor, and the NSEI hoped it would be. But it is clear that the NSEI donors were not solely attracted by the prospects of a return, the linchpin of a securities offering. For donors, the stock was a gift that was perhaps a motivating factor, and not a security to be purchased under the disguise of a donation.

B. Rabalais and NSEI did have pre-existing, substantive relationships with a number of the NSEI donors

A 506(b) private placement is an offer exempt from registration provided by Regulation D in Section 4(a)(2) of the Securities Act of 1933. It allows private companies to raise unlimited funds provided they meet certain requirements.

These requirements include that there is not any general solicitation or advertising. No more than 35 unaccredited investors be allowed to participate, if they do participate, they must have sufficient investment knowledge and be provided disclosure documents, as well as, financial statements. All
purchases of a 506(b) are issued ‘restricted stock’ as described in Rule 144(a)(c) and purchases must pass a ‘bad actor’ disqualification provision.

The company is required to file, within 15 days to the SEC, a notice of sale for each initial sale in a state. The Securities Act of 1933 provides preemption from state registration; however, some states may require notification filings.

Arguably, the most important element in a 506(b) offering is having pre-existing, substantive relationships with the investors. In a letter to the SEC acknowledged the same point. “We agree that the quality of the relationship between an issuer (or its agent) and an investor is the most important factor in determining whether a "substantive" relationship exists.”

While CWH and NSEI firmly believe that they did not engage in any illegal securities offerings, to the extent the Commission concludes that the act amounted to illegal securities offering and decides to take enforcement action, we submit that CWH and NSEI, and in particular Rabalais, has substantial relationships with the NSEI donors, and knows quite a few of them in person, with some of the relationships going back more than a decade. To be clear, CWH did not conduct a 506(b) offering, nor do we claim that all

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requirements of a 506(b) offering were followed – for the simple reason that CWH did not consider its acts to amount to a securities offering. Nevertheless, the relationships matter. In substance, that’s why the 506(b) safe harbor exists. The offering must not be generally solicited, and issuers must have pre-existing substantive relationships with the investors. NSEI programs were not broadcasted publicly (though the donors could share it with family and friends); they were intended to be for people that are familiar with the overall project. If the goal was to defraud investors, a much broader public that presumably knew nothing about CWH or NSEI could have been easily targeted, which, clearly, was not the case.

C. Multiple Third Parties Did Not Raise Any Issues Regarding the Share Structure

The securities industry is based on trust, as well as appropriate checks and balances.

CWH attempted to raise money through the Jumpstart Our Business Startups (“JOBS”) Act twice. In its first try, CWH was the entity that intended to raise money, and it used WeFunder, which claims to be the largest Regulation Crowdfunding portal. CWH hired Crowdcheck, Inc. (“Crowdcheck”) to assist with the process. While Crowdcheck had some initial inquiries about the Company’s capitalization table, and the issuance of the Company’s shares, after various documents were provided, CWH, based on Crowdcheck’s verbal representations in subsequent conversation, believes that there was no remaining deficiency regarding the Company’s share structure. CWH could not complete the process because it did not have audited financials at the time.
In its second try, the Company attempted to raise capital via another crowdfunding portal, StartEngine, this time using GSFE as the vehicle for a capital raise. The attempt ultimately failed, but it was not related to CWH shares at all. Instead StartEngine observed that the contracts traded on the Pilot Market did not have legal clarity. We explained to StartEngine that this was the primary reason why we were raising capital; that the capital infusion was intended to be spent on addressing that very uncertainty and make significant progress on the regulatory front. Ironically, CWH was a victim of transparency and honesty; publicly admitting that there exists some regulatory uncertainty with respect to its business model resulted in not being able to raise the capital it needed to make progress on resolving that uncertainty. In any event, the StartEngine diligence process was robust, and the fact it was not derailed due to any company share related issues is certainly indicative.

Currently, the Company is in the process of completing its audited financials, and engaged an independent audit firm. While this work is in process, no share-related issues were identified and the Company has been reassured by the independent audit firm that they will be ready to sign off on the financial statements once all payments are completed.

The fact that multiple third parties did not find the share issuance problematic does not conclusively imply that no violation has occurred. However, we believe it needs to be given significant weight. These third parties, after all, have substantial expertise in
the matters around capital raise and share issuance by private parties.

D. Rabalais Does Not Have Any Equity Interest in CWH

In practically all security frauds, the perpetrator has a profit motive. However, this can not be the case here for a simple reason. Rabalais owns exactly 0% of CWH common or preferred stock, and therefore, he has, personally, no economic stake in the outcome. To the extent the alleged acts amounted to an illegal sale of securities, Rabalais will not be the beneficiary of any economic gain associated with the alleged violation. This simple fact, in our opinion, significantly weakens the case that a violation occurred.

IV. CWH AND NSEI HAVE ACTED WITH INTEGRITY AT ALL TIMES

In its Wells Notice, the DoE reference section 17, which involves omission of material facts, fraud, or deceit. We are not aware of any specific allegations and the DoE did not provide one in writing. Therefore, we are unable to respond to any alleged section 17 violations specifically.

As a general matter, however, we are unshaken in our belief that we did not deceive any of our stakeholder. We provided all the information we had to the best of our ability at the time we had it in every case. In fact, the three acts have guided our decisions

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5 As of April 27, 2019, Rabalais’s two kids own 1% each, and two other family members own 0.08% each.
at all times: Transparency, accountability, and integrity.

We hope that the detailed summary that we presented in Section 2 above contained sufficient examples in that regard. For completeness, however, we would like to mention one fairly major act of transparency. CWH and NSEI hold weekly status calls, attended by the Company executives/insiders as well as NSEI executives/volunteers. Those calls have been taking place for more than seven years, and every single call is recorded and posted online on NSEI website, available to download for any eligible stakeholder. CWH and NSEI do this not because they have to, but because they want to. Its guiding philosophy, from the very beginning, has always been full transparency. In fact, this was Rabalais’s idea, which, as an uncommon practice, received initial pushback by most of the stakeholders. Rabalais didn’t yield, told his team that that there is nothing to hide and they should welcome the opportunity to get on record. Through these calls, stakeholders have always had access to important developments, good and bad, strategic discussions, and other important news.

CWH had certainly its ups and downs in its history of almost 20 years, and admittedly there were mostly downs than ups, but one thing is clear - there are no skeletons in the closet. We are not aware of any company, public or private, large or small, that shares information at the level we do. As such, we find it extremely likely that any company that even remotely believes that it may have violated the law would hang its ‘dirty laundry’ for everyone to see.
V. COMMISSION SHOULD NOT TAKE ENFORCEMENT ACTION

A. We Have Voluntarily Stopped the Alleged Violation

While we genuinely believe no violations of securities laws have occurred, we understand that the grant of stock via an affiliated non-profit could be a tool for bad actors. After all, we believe the Commission is, rightfully, worried about setting precedent. We acknowledge precedence matters, and as of April 30, 2019, NSEI has voluntarily stopped granting stock as part of a basket of goods and services to its donors.

By essentially implementing a voluntary cease and desist on the behavior that the Commission may be worried about when it comes to precedent setting, we believe a de facto enforcement action is essentially already in place. Public dissemination of the news that NSEI voluntarily stopped the alleged violation would effectively put industry participants on notice, and close the door on potential future moral hazard. We don’t believe any additional enforcement action would achieve any goals that are already not achieved by NSEI’s voluntary change of behavior.

For the foregoing reasons, we don’t believe any additional enforcement action would be necessary or just.
B. CWH and NSEI are Good Actors That Have Been Through a Long and Costly Journey to Make Sports an Asset Class

A close and honest inspection of the voluminous history of the nearly two decades of our existence shows nothing but pure intentions and the costly journey to find a regulatory pathway for sports as an asset class.

CWH had not one, but multiple ‘near-death’ experiences. Through sheer determination, and an unwavering commitment to turn sports into an asset class, CWH was able to weather the storm at every turn, and survived against all odds.

Clearly all stakeholders suffered, but nobody other than Rabalais himself went through the hardest hardships. Along the way, among other things, he came close to losing his home. He is not even economically incentivized to grow the business – he literally has zero shares. The incentive he does have is an unshakable belief that sports is an asset class and the potential and power of properly regulated (as a financial asset), socially responsible sports-based financial contracts and markets toward making the world a better place. Rabalais is good actor, driven only by the social and educational mission.

At every turn, CWH, NSEI and Rabalais opted for what was clearly a better path toward full regulation. Despite all the setbacks, no shortcuts were ever taken, and integrity is never compromised. A clear desire for financial regulation guided every significant decision. When everybody zigged, we zagged. When regulation was considered to be something to avoid by many, we welcomed it, and
proactively sought it, powered by the belief that innovation should be guided by appropriate regulation.

As an example, when there was a choice to ignore the legal advice and stay in Costa Rica, that was, for all intent and purposes, not a choice for us. Instead, we pivoted, executing an agreement with a DCM, engaging CFTC, and coming close to a product launch all within 18 months, only to be derailed by the 2008 recession. More recently, we did all we can to make progress on regulatory certainty regarding SportShares. An application to become a National Securities Exchange is currently pending with the Commission.

Timely updates were provided to stakeholders, and in the interest of full transparency, practically all status calls were posted online. Once again, when everybody zigged, we zagged. As we saw a tendency to be not entirely forthcoming with respect to business matters, we published our internal world for everyone to see.

We were not supposed to survive through all the hardship. It wouldn’t be a surprise to anyone if we folded. Yet, that was not an option. We felt a responsibility to our stakeholders. In fact, any enforcement action by the Commission would only harm the stakeholders. In connection with launching a new strategic hub for innovation and financial technology, SEC Chairman Jay Clayton commented: "The SEC is committed to working with investors and

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market participants on new approaches to capital formation, market structure, and financial services, with an eye toward enhancing, and in no way reducing, investor protection." Given its mission, harming the stakeholders is precisely the outcome that the Commission should, and could avoid.

VI. CONCLUSION

We appreciate the opportunity to tell our story. A possible enforcement action, above and beyond what we imposed on ourselves by voluntarily stopping the alleged violation would have significant negative economic impact by halting the development of our potentially groundbreaking exchange, and by doing so, it would go against the very core of one of the SEC’s goals which is to foster innovation in the securities markets.

For the reasons outlined in this submission, we urge the Commission to decline to bring the proposed enforcement action against CWH and NSEI.

Respectfully submitted,

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