COLLEGE SPORTS COMMISSION and STUDENT-ATHLETE NIL ARBITRATION

May 11, 2026

In the Matter of the Arbitration between-	:	
18 STUDENT-ATHLETES ON THE UNIVERSITY OF NEBRASKA-LINCOLN FOOTBALL TEAM	:	
Claimants,	:	**CSC Case No. 2026-002**
-and-	:	
THE COLLEGE SPORTS COMMISSION,	:	
Respondent	:	

Before: Andrew M. Strongin, Arbitrator

Appearances:

For the Student-Athletes:

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This proceeding, brought pursuant to the Arbitration Rules and Procedures for Disputes with Student Athletes Concerning CSC Determinations ("Rules and Procedures"), which are an outgrowth of the final approved settlement of certain federal court class-action litigation, concerns the consolidated arbitration demands of 18 student-athletes on the University of Nebraska-Lincoln Football Team ("Student-Athletes" or "Claimants") broadly challenging the determinations of the College Sports Commission ("CSC" or "Respondent") that the materially identical Services Agreements signed by each of the Student-Athletes with Playfly Sports Properties, LLC ("Playfly") for the sale of their Name, Image, Likeness ("NIL deals") violate applicable rules of the National Collegiate Athletic Association ("NCAA").[1] The parties seek a final and binding determination whether, under the applicable rules, CSC appropriately refused to approve, otherwise known as "clear," those NIL deals.[2] By Rule 10(d) of the Rules and Procedures, "Neither party shall carry any burden of proof. All parties must prove their positions by a preponderance of the evidence and neither party shall be afforded the benefit of any presumption."

[1] Claimants include [redacted] Each Claimant separately executed an NIL deal with Playfly Sports Properties, LLC ("Playfly"), and all 18 deals separately were submitted to CSC for review. It is undisputed that all 18 of the deals are materially identical apart from the dollar amounts and number of corresponding obligations for the individual Claimants, and on that basis the parties jointly requested that the matters be consolidated for hearing and decision pursuant to Rule 15 of the Rules and Procedures. By Order dated February 25, 2026, the undersigned, acting as Notice Arbitrator under the Rules and Procedures, granted that joint request.

[2] Rule 11(a) of the Rules and Procedures provides, "The Arbitrator shall have plenary authority to review CSC's finding that an NIL transaction involving an Associated Entity or Individual (as defined in the Settlement Agreement) violates the NCAA Rules affirmed, revised, or created pursuant to the Settlement Agreement, and/or whether a penalty imposed by CSC was appropriate."

BACKGROUND

House v. NCAA Settlement Agreement and NCAA Rules Regarding Third-Party NIL Deals

This proceeding is an outgrowth of the final approved settlement of the federal court litigation of certain consolidated, class-action anti-trust claims brought in the District Court for the Northern District of California by certain student-athletes (represented by "Class Counsel") against the NCAA and the "Power Five" athletic conferences (collectively, "the Defendants"), commonly referenced as *House v. NCAA*.[3] That action sought relief from certain NCAA rules that prohibited, *inter alia*, student-athletes from receiving NIL compensation from third parties. The parties to that litigation reached a voluntary settlement that ultimately received final court approval on June 6, 2025. *See*, Fourth Amended Stipulation and Settlement Agreement, *In re: College Athlete NIL Litigation*, No. 4:20-CV-03919 (N.D. Cal. May 7, 2025) [ECF No. 958-1], *final approval as modified,* June 6, 2025) [ECF No. 979] ("Settlement Agreement"). Of relevance here, in addition to the provision of certain other relief, the settlement includes injunctive relief that required modification of the NCAA's rule that then prohibited third-party NIL payments. Critically here, and as would be expected of a settlement in which there was no admission of wrongdoing, the settlement represents a compromise between the parties, newly allowing student-athletes to benefit from third-party NIL deals, albeit

[3] At the time of the settlement, the Power Five conferences included the Atlantic Coast Conference ("ACC"), Big Ten Conference ("Big Ten"), Big 12 Conference ("Big 12"), Pac-12 Conference ("Pac-12") and Southeastern Conference ("SEC")). Due to realignment, the Power Five effectively has become the Power Four, consisting of the ACC, Big Ten, Big 12, and SEC.

subject to limitations that, by definition, are aimed at balancing the parties' interests, not ensuring the unfettered maximization of student-athlete NIL deals.

Thus, greatly distilled, the Settlement Agreement authorizes the NCAA and Conference Defendants to continue and pass new rules to effectuate the agreement and newly permits student-athletes to execute NIL deals with third parties, albeit subject to specially negotiated limitations. Pursuant to that rulemaking authority, the Defendants established CSC to serve as a clearinghouse to facilitate review of NIL deals involving Division 1 student-athletes with a total value of $600 or more, and on that basis to "clear" or "not clear" those deals. In the event CSC does not clear, *i.e.*, rejects, a deal, the student-athlete may demand arbitration pursuant to the above-referenced Rules and Procedures.

Turning now to the NCAA rules at issue, which the parties agree are consistent with the Settlement Agreement, the NCAA rules permit student-athletes to be paid to play by their institutions, subject to a revenue-sharing cap, and also permit individual student-athletes to "receive compensation for the use of [their] name, image and likeness, which may be secured or compensated based, in whole or in part, on athletics skill or reputation. Name, image and likeness activities may not be used to compensate an individual for athletics participation or achievement." NCAA Rule 22.01.1. The rules specify that student-athletes "may permit the use of the individual's name, image, likeness in noninstitutional name, image and likeness activities and receive compensation for such activities." NCAA Rule 22.1.2. That is to say, a student-athlete may sell their NIL rights to a third-party, subject to certain limitations in the event a third-party is found to be an "associated entity or individual" as defined in the NCAA Rules, which definitions are carried over from the Settlement Agreement:

NCAA Rule 22.02.1 Associated Entity. [S] An associated entity is: (Adopted: 6/6/25 effective 7/1/25)

(a) An entity that is or was known (or should have been known) to an institution's athletics department staff to exist, in significant part, for the purpose of promoting or supporting the institution's intercollegiate athletics program or student-athletes; and/or creating or identifying name, image and likeness opportunities solely for the institution's student-athletes;

(b) An entity that has been directed or requested by an institution's athletics department staff to assist in the recruitment or retention of student-athletes or prospective student-athletes, or otherwise has assisted in the recruitment or retention of student-athletes or prospective student-athletes; or

(c) An entity owned, controlled, or operated by, or otherwise affiliated with an associated individual or an associated entity defined in (a) or (b) above, other than a publicly traded corporation.

NCAA Rule 22.02.2 Associated Individual. [S] An associated individual is: (Adopted: 6/6/25 effective 7/1/25)

(a) An individual who is or was a member, employee, director, officer, owner, or agent of an associated entity;

(b) An individual who directly or indirectly (including contributions by an affiliated entity or family member) has contributed more than $50,000 during the individual's lifetime to an institution or to an associated entity defined in 22.02.1-(a); or

(c) An individual who has been directed or requested by an institution's athletics department staff to assist in the recruitment or retention of student-athletes or prospective student-athletes, or otherwise has assisted in the recruitment or retention of student-athletes or prospective student-athletes.

As for the limitations applicable to NIL deals between student-athletes and associated entities or individuals (known as "associated deals"), NCAA Rule 22.1.3 establishes what has come to be known as the "Valid Business Purpose Rule" to guide heightened scrutiny of such deals:

> **An associated entity or individual shall not enter into an agreement with or provide payment to a prospective student-athlete or student-athlete unless the agreement or payment terms, as determined by the name, image and likeness clearinghouse, are for a valid business purpose related to the promotion or endorsement of goods or services provided to the general public for profit, with compensation at rates and terms commensurate with compensation paid to similarly situated individuals with comparable name, image and likeness value who are not prospective student-athletes or student-athletes of the institution. Raising money to induce student-athletes to attend or participate in intercollegiate athletics at an institution does not satisfy the valid business purpose requirement for making NIL payments to student-athletes.**

Operationally, CSC partnered with Deloitte Consulting LLP, supported by Deloitte Transactions and Business Analytics LLP (collectively, "Deloitte"), both to launch "NIL Go," the online portal that serves as the clearinghouse for NIL reporting and review, and to develop a "Rates and Terms" ("R&T") model and associated algorithms for evaluating those associated deals against the requirements of Rule 22.1.3. Working with CSC, Deloitte developed what it terms a Range of Compensation ("RoC") algorithm to help CSC determine whether a particular NIL deal provides appropriate compensation in light of the student-athlete's obligations under that deal. At a high level as explained in the witness statement provided by Karl Schaefer, a Principal at Deloitte:

> **The RoC Algorithm is the principal component of the R&T evaluation and was designed to analyze deals and to help the**

> **CSC make a [R&T] determination. The RoC Algorithm evaluates whether a deal's compensation exceeds a range of compensation of similarly situated individuals based on multiple factors including, but not limited to, the deal's performance obligations, the student-athlete's athletic performance and social media presence, and the market reach of the student-athlete's institutional athletics program. The RoC Algorithm compares historical NIL deal data to the deal being evaluated to determine if it reflects rates and terms commensurate with those of similarly situated student-athletes. If a deal is not within the upper bound of the RoC Algorithm, it proceeds to the secondary review framework to determine whether additional tests indicate whether its compensation could be within "rates and terms commensurate[.]"**

Fact Witness Statement of Karl Schaefer (April 20, 2026) at ¶ 6.

Greatly distilled, the RoC Algorithm is based on three core principles:

> ***First*, the principles of fair market value were considered as a foundational element, in which transactions should reflect arm's length dealings between willing buyers and willing sellers, neither being required to act, and both having reasonable knowledge of the relevant facts. *Second,* valuations should be rooted in actual market data to reflect market dynamics and leading practice valuation guidelines. *Third*, the data relied upon must be sufficiently comparable to the transactions under review. (Footnotes omitted.)**

Id. at ¶ 7.

Functionally, the algorithm establishes three so-called pillars against which a deal is evaluated: Athlete Performance, Market Reach, Social Media. In turn, each of those pillars is made up of several dimensions, defined as, "a metric or characteristic that contributes to the marketability of a student-athlete's NIL." If the value of a deal falls within the upper bound of any one of those three pillars, the deal will be cleared.

Critically here, the upper bound of each of the three pillars is established by consideration of only those NIL deals included within the RoC

database Deloitte created for purposes of R&T review. As the record shows, Deloitte used public-company NIL transactions to inform the initial buildout of its RoC database, explaining that "NIL deals between student-athletes and publicly traded companies were relied on due to the fiduciary responsibility that public companies have to maximize shareholder value, and due to that fact such public-company transactions were likely to reflect market behaviors between willing buyers and willing sellers." *Id*. at ¶ 9. According to Schaefer, who augmented his Witness Statement with testimony at hearing, Deloitte initially populated its database with deal data from the 70 schools in the Power Five (now Power Four) conferences, which it routinely updates with new batching to ensure the algorithm reflects the current NIL market. Of note, Deloitte decided to populate its database only with non-associated cleared deals; all associated deals, cleared or not, are excluded from the RoC database.

Recognizing that a deal that fails RoC review nevertheless might warrant clearance, Deloitte developed two tools for secondary review: the Player Portfolio Test ("PPT") and the Sponsor Comparable Test ("SCT"). The PPT assesses whether a deal's compensation "on a per-obligation basis is consistent with other not associated, cleared deals that the student-athlete has previously entered in NIL Go," and if the compensation "is at or below the aggregate maximum rate, the deal passes the PPT ...." *Id*. at ¶ 18. The SCT, by contrast, assesses "whether a particular deal's compensation on a per-obligation basis is similar to a Sponsor's compensation for other not associated, cleared deals that the Sponsor made with student-athletes at other member institutions." Under this test, "the maximum rates per obligation from these not associated deals define the maximum rate that the Sponsor may pay this student-athlete and still be considered 'at rates and terms.'" As with the PPT, a deal will pass the SCT only if its compensation "is at or below

the aggregated threshold." *Id*. at ¶ 19. At hearing, Schaefer acknowledges that these secondary tools, like the RoC algorithm, reflect what amounts to a policy determination that associated deals should not be market drivers for NIL deals. Under both sets of tools, an associated NIL deal that exceeds its selected comparators will not pass review; by design, it must follow that an associated NIL deal will never be reviewed against other associated NIL deals, and no associated deal can pass review if it exceeds its assigned aggregated threshold. Transcript at 224.

R&T review aside, the NCAA Rules provide an independent basis for reviewing an NIL deal against the Valid Business Purpose Rule, known as the "Warehousing Rule":

> **22.1.3.3 Deployment of Rights as a Valid Business Purpose. [S] An NIL agreement or payment with an associated entity or individual must include direct activation of the student-athlete's name, image and likeness rights. In other words, the acquisition of such rights without reasonable specificity of the NIL activation (e.g., description of the specific group licensing categories, the student-athlete's obligations related to the activation, timing and ultimate use of the student-athlete's NIL) may not satisfy the requirements for payments by associated entities or individuals.**

NCAA Rules provide as follows with respect to CSC's reporting and enforcement roles:

> **22.2.4 Name, Image and Likeness Clearinghouse Review -- Agreements With Associated Entities or Individuals. [S] The name, image and likeness clearinghouse shall review all reported noninstitutional name, image and likeness contracts or payment terms submitted by student-athletes once all reporting requirements have been met (see Bylaw 22.2.2) to determine whether an associated entity or individual, including a noninstitutional payor, is involved. If an associated entity or individual is involved, the NIL clearinghouse shall determine whether the contract or payment terms are for a valid business**

> **purpose related to the promotion or endorsement of goods or services provided to the general public for profit, with compensation at rates and terms commensurate with compensation paid to similarly situated individuals with comparable name, image and likeness value who are not prospective student-athletes or student-athletes of the institution.**

Critically here, the parties agree that an NIL deal between a student-athlete and a third-party that does not qualify as an associated entity or individual is not subject to heightened scrutiny under NCAA Rules 22.1.3 and 22.1.3.3 and must be cleared by CSC.

Finally, CSC asserts, and Claimants do not dispute, that Class Counsel received notice of the NCAA rules promulgated pursuant to the Settlement Agreement, and "reviewed and approved all NCAA rules stemming from the Settlement."

The Disputed NIL Deals and CSC's Determination Not to Clear Them[4]

As noted, the 18 NIL deals at issue in this proceeding involve student-athletes on the football team of the University of Nebraska-Lincoln, which is a member of the Big Ten Conference, which opted into the benefits and obligations of the Settlement Agreement. Under the settlement, the University is allowed to provide direct compensation to its student-athletes through revenue-sharing rules that, for purposes here, total $20.5 million for the 2025-2026 academic year, subject to increase in successive years. This total amount serves as a cap, but critically here, that cap does not operate to prohibit student-athletes from securing additional

[4] The following recitation of facts is drawn from the record as a whole and is greatly distilled. Additional facts and evidence will be discussed to the extent necessary for explication of the ultimate decision.

compensation through the sale of their NIL. Nor, it bears emphasis, does the cap or related rules preclude the University from facilitating such deals under certain circumstances.

Thus, in October 2022 the University sold to Playfly its multimedia rights ("MMR") in an initial 15-year/$301 million licensing agreement. That MMR agreement calls for Playfly to provide broad, multifaceted distribution and marketing work to promote and support the University's athletics programs, including by permitting Playfly to use the trade name "Huskers Athletic Partners." The agreement allows Playfly not only to identify itself as a licensee of Nebraska Athletics for purposes of soliciting corporate sponsorships for the University's athletics program, but also essentially to stand in the University's shoes for those purposes. As part of that agreement, Playfly specifically agreed that it would provide $2.25 million to an NIL fund to be distributed to the University's student-athletes under the NCAA rules as they then existed. To facilitate Playfly's performance under that MMR agreement, the University and Playfly agreed that Playfly would embed its own employees into the University's athletics department.

Following the Settlement Agreement and the new rules that resulted, the University and Playfly executed a Fifth Addendum to the MMR agreement whereby they agreed to redirect $10.25 million of the University's annual rights fee to Playfly's NIL investment, and further provided that any royalties due to the University also could be redirected to Playfly to increase its NIL investment in the University's student-athletes. Significantly, the addendum provides that the University "will collaboratively agree on specific areas" for the NIL investment. The University and Playfly also agreed, however, that if the NIL funds could not be spent, any unspent funds would be reallocated to the rights fee. Under the

addendum, $8 million of the NIL investment for the 2025-2026 contract year was to be spent on or before June 30, 2026.

Apparently consistent with its obligations under the Fifth Addendum, Playfly signed the NIL deals at issue, which in the aggregate total approximately $7.5 million. Those 18 deals necessarily were submitted to CSC for review via the NIL Go portal between January 19 and February 16, 2026. As noted, aside from dollar amounts and the number of obligations attached to each individual claimant, the deals are materially identical. Each is specifically intended to comply with NCAA rules and to provide payments to the student-athletes separate and apart from any shared revenue to be paid to such student-athlete pursuant to the Settlement Agreement. Of particular relevance here, the agreements, which are between each student-athlete and Playfly "on behalf of themselves and their third party corporate sponsors of University Athletics," provide a total fee ranging from $50,000 to $750,000 payable to each claimant in three equal installments on a set schedule, January 31, March 31, and June 30, 2026, in exchange for performance of certain NIL-related services to be performed no later than December 31, 2026.

In addition to what might be termed "typical" contractual provisions, the agreements allow Playfly immediately to terminate the agreements in the event the student-athlete "fails to maintain a residence within 75 miles of the University of Nebraska during the Term of the Agreement." In the event the student-athlete breaches the agreement, including the relocation provision, or otherwise fails to perform, there is a "claw-back" provision that, in the event the student-athlete fails to cure the breach upon notice, allows Playfly the right to seek a pro-rata refund of the undelivered services.

As for the student-athletes' obligations, each nominally is obligated to provide a specific number of Services (Media Interviews, Content Shoots, Podcast

Episodes, Autograph Signing) for which they are compensated at the rate of $5,000 per hour (*e.g.*, 65 hours' worth of such services x $5,000 per service = $325,000) and, separately, a specific number of Social Media posts for which they are compensated at the rate of $5,000 per post (*e.g.*, 40 posts x $5,000 = $200,000). Additionally, each student-athlete is paid a flat amount in exchange for allowing Playfly to use their NIL during the term of the agreement (*e.g.*, $200,000). Per the schedules, these three performance categories aggregate to the total dollar value of each agreement (*e.g.*, $750,000). Of note, the agreements contemplate adjustments reflecting "real time commitments," *i.e.,* provision of additional services for additional payments.

In so providing, it is undisputed that Playfly's business model is to acquire these rights and hold them as inventory for future sale to third-party corporate sponsors; none of the Services Agreements specify the sponsors for whom any of the actions will be performed. Further, there is no guarantee that Playfly ultimately will prove able to sell any of the actions covered by the Services Agreement to any corporate sponsor. In this sense, Playfly appears to be guaranteeing certain payments to each student-athlete in exchange for performance of as-yet unspecified services that it hopes to sell in the future to some as-yet unidentified sponsor on an as-yet unidentified date, in promotion of an unidentified good or service for sale to the general public.

As discussed below, CSC reviewed the deals and determined that Playfly is an associated entity and therefore subjected each of the deals to heightened scrutiny under NCAA Rules 22.1.3 ("Valid Business Purpose Rule") and 22.1.3.3 ("Warehousing Rule") and, finding the deals to be noncompliant, identically notified each individual claimant pursuant to its authority under NCAA Rule 22.2.4 that their deal would not be cleared:

> **This prospective deal does not include direct activation of your name, image, and likeness (NIL) rights. Deals with Associated Entities or Individuals must include reasonable specificity of the NIL activation (e.g., description of the specific group licensing categories, the student-athlete's obligations related to the activation, timing, and ultimate use of the student-athlete's NIL). As a result, this prospective deal does not satisfy the requirements of NCAA Rule 22.1.3.3.**
>
> **Additionally, this prospective deal is above the compensation rates and terms commensurate with compensation paid to similarly-situated individuals with comparable name, image, and likeness value who are not prospective student-athletes or student-athletes of the institution. As a result, this prospective deal does not satisfy the requirements of NCAA Rules 22.1.3 and 22.2.4.**
>
> **In addition to the reasons set forth above, there may be other reasons why this prospective deal could not be cleared, including that the prospective deal may not be for a business purpose related to the promotion or endorsement of goods or services provided to the general public for profit. In such a case, this prospective deal does not satisfy the valid business purpose requirement of NCAA Rules 22.1.3 and 22.2.4**

As described above, Claimants demanded arbitration of those denials pursuant to the Rules and Procedures established under the authority of the Settlement Agreement, and the Notice Arbitrator appointed under the Rules and Procedures granted the parties' joint request that the demands be consolidated for hearing and decision. During the subsequent processing of this matter, the parties submitted prehearing memoranda with supporting materials, as augmented at hearing, as well as closing arguments and then posthearing briefs. The matter is now ripe for decision.

ISSUES FOR DECISION

The parties agree that the threshold question is whether Playfly is an associated entity as defined by NCAA Rule 22.02.1. If that question is answered in the negative by the Arbitrator, the parties agree the deals must be cleared. If that question is answered in the affirmative by the Arbitrator, additional questions are presented whether the deals satisfy the Valid Business Purpose and Warehousing Rules.

THE PARTIES' CONTENTIONS

As noted, the parties set forth their respective positions through the submission of prehearing memoranda, opening statements and closing arguments at hearing, and then posthearing briefs. The principal positions of those submissions, incorporated herein in their entirety by reference, may be summarized as follows:

CSC's Contentions

Initially, CSC notes that neither party to this proceeding, by rule, bears the burden of proof, but argues that it, alone, has presented witnesses to explain the process by which these deals were reviewed and not cleared due to the application of the NCAA rules as written and approved. CSC suggests that the reason no official of Playfly or the University submitted a witness statement or testimony at hearing is because the deals were not in fact negotiated at arm's length, but rather were intended as recruiting tools with Playfly effectively serving as a pass-through to redirect its rights fees to the student-athletes in a way that plainly runs afoul of the

rules. In this regard, CSC notes the correlation between Playfly's obligation under the MMR agreement to invest $8 million in NIL deals by the same date that the final payments are due to Claimants under their aggregated $7.5 million NIL deals. In this same vein, CSC disputes as unsubstantiated the claim that Playfly is a for-profit company, noting that the evidence suggests that these NIL deals are free to Playfly, bought with the University's rights fees and royalties, with any unspent funds reverting to the University.

Turning to the threshhold question whether Playfly properly is considered an associated entity under NCAA Rule 22.02.1(a), CSC emphasizes that the University itself identified Playfly as an associated entity in its April 2025 reporting. The CSC points to Playfly's status as an MMR and its close collaboration with the University in targeting NIL deals and the significant financial and practical commitments it has made in support of the University's athletics department. CSC notes, in particular, the embedding of Playfly employees within the University's athletics department, rendering them essentially indistinguishable in their support for the University's athletics program.

CSC argues that NCAA Rule 22.02.1(b) provides independent support for such a finding, as the University has directed and/or requested Playfly's assistance with recruiting and retention, emphasizing the importance of NIL deals as a part of a student-athlete's overall compensation and choice of institution as reflected in communications of the Head Coach, agents, and the student-athletes and their families. Indeed, CSC shows that NIL deals are presented alongside the University's own revenue-sharing commitments as part of a student-athlete's total compensation package, plainly presented as a significant consideration in competitive recruiting and retention efforts. The CSC notes, too, the relocation provision of the NIL deals at issue, arguing that Playfly's right immediately to cancel

the deal in the event a student-athlete fails to maintain a residence in proximity to the University demonstrates an intention to forestall their entry into the transfer portal. All of this evidence, CSC argues, counters any concern that CSC has been overzealous and overbroad in its labeling of Playfly as an associated entity, as the evidence shows that CSC has cleared over 10,000 non-associated NIL deals.

Having concluded that Playfly is an associated entity, CSC next contends that the disputed NIL deals fail the Warehousing Rule for lack of direct activation and reasonable specificity. CSC argues that the indeterminate nature of the deals both interferes with its responsibility to determine whether the deals have a valid business purpose, and is suggestive, too, of an effort to circumvent both the revenue-sharing cap and the prohibition against use of guaranteed NIL deals as a recruiting tool.

CSC argues that the deals also fail R&T review, in that analysis of each of the deals under the Deloitte algorithms, including especially the RoC model, demonstrates the likelihood that Claimants would be overcompensated in the range of 25-30%. CSC notes that the PPT test could only be applied to two of the Claimants and in both cases shows significant overcompensation. None of the deals even could be evaluated under the SCT test, and no other evidence has been identified to CSC that, in its judgment, provides any other basis for finding the deals to be acceptable. Indeed, CSC suggests that the deals were reverse-engineered to match the University's recruiting-related compensation goals for each of the 18 student-athletes.

Finally, CSC argues that the deals cannot be cleared under the Valid Business Purpose test because, notwithstanding the problematically indeterminate nature of the deals – focused as they are on warehousing NIL rights as inventory to be activated later on behalf of as-yet unidentified sponsors – there is no indication

that any of the NIL deals contemplate promotional support for Playfly's own business interests, *i.e.*, MMR-related activities. Absent any evidence that any of the NIL deals in fact will be activated in support of any good or service offered for sale to the general public, CSC argues that it properly determined not to clear any of them. In this regard, CSC claims that the reason for Playfly's focus on future activation without specification of any identifiable sponsor, under circumstances where other legitimate deals routinely are being approved every day by CSC, is to end-run the prohibition against guaranteed NIL; through this warehousing, the University effectively is guaranteeing NIL deals to its own student-athletes as a way to bolster its retention efforts even as it redirects its own money to those student-athletes. In this regard, CSC argues that the Settlement Agreement should not be taken as support for any intended maximization of NIL dollars; to the contrary, CSC views the settlement as evidence of an intentional balancing of NIL rights against legitimate, ongoing concerns for pay-for-play by associated entities, a term that it argues is intended to be broader than boosters or collectives.

The Student-Athletes' Contentions

Claimants focus principally on the contention that CSC's entire case depends on a misapplication of the associated entity rule to Playfly in pursuit of an overbroad, overzealous effort to clamp down on misplaced concerns for revenue cap compliance. Claimants contend that neither the Settlement Agreement nor NCAA rules require or reasonably permit CSC to address concerns for cap compliance through an effort to throttle NIL deals with legitimate third-party, for-profit companies like Playfly. In this regard, Claimants emphasize that Playfly is a private, for-profit company with dozens of MMR deals with competing institutions, 2,200

grant partners, and 11 offices in three countries, plainly distinguishing it from the types of boosters and collectives focused on single institutions without regard to any profit motive. Claimants argue, too, that it is incongruous for CSC effectively to saddle the student-athletes with responsibility for defending Playfly's business model and/or the University's MMR agreement, matters to which they are not party and over which they have no control. In essence, Claimants argue that CSC's concerns over an unproved cap compliance issue, absent any actual evidence that Playfly is funneling University funds to the student-athletes, should not be permitted to transform Playfly into an associated entity.

Specifically regarding NCAA Rule 22.02.1(a), Claimants argue that Playfly does not exist for the sole purpose of supporting or promoting the University's athletics programs or to identify NIL opportunities for the University's student-athletes. Claimants insist that the definition of associated entity as set forth in the Settlement Agreement and the NCAA rule should be understood to focus, rather, on entities that support a particular school, not third-parties like Playfly with diverse interests. Accordingly, Claimants contends that Playfly does not meet the definition of associated entity under Rule 22.02.1(a).

Neither, Claimants contend, is there any evidence to demonstrate that Playfly has been directed or requested to assist in the University's recruitment and/or retention efforts within the meaning of Rule 22.02.1(b). Indeed, Claimants note that none of the student-athletes at issue entered the transfer portal, which should be dispositive proof that neither the University nor Playfly had any impetus to worry about retention. In any case, Claimants argue that payment of NIL, alone, cannot suffice to establish associated entity status, else all entities that provide NIL deals would be subject to heightened scrutiny, which plainly is not the intent of the rule. Claimants point out, in this regard, that there are numerous factors that contribute to

recruiting and retention efforts, of which compensation is only one, yet NIL money is the only factor relied upon by CSC in arguing that Playfly is assisting with recruitment and retention. In effect, Claimants contend that CSC has created the exception that swallows the rule, invalidating this set of legitimate, non-associated commercial agreements for NIL rights, in a form that is very much alike the sort of permissible third-party NIL facilitation by universities. Such facilitation, Claimants contend, should not be taken as evidence of associated status.

Turning now to the Warehousing Rule, Claimants contend that the deals provide direct activation through reasonably specific identification of the intended use, especially when viewed in context of Playfly's business model of acquiring NIL rights, packaging them with the media rights acquired from the University so as to increase the combined value, and then selling those rights to the roster of presently-identifiable University sponsors at a time when they are most valuable, for instance at the moment when a student-athlete has a standout performance. In this regard, Claimants argue that CSC misreads the rule; the requirement is one of *reasonable* specificity, not *actual* specificity, and in any case that CSC and the Arbitrator have discretion to clear the deals even if there is not reasonable specificity. Thus, Claimants argue that Playfly's business model is legitimate, does not present any of the concerns relating to pay-for-play schemes, and therefore the student-athletes should be permitted to benefit from their deals with Playfly.

Claimants contend that the same evidence regarding Playfly's business model demonstrates, too, that the deals meet the Valid Business Purpose test. Thus, Claimants argue that Playfly's business model and these deals do not raise any legitimate concern over the booster and/or collective-related concerns regarding pay-for-play schemes at which the Valid Business Purpose Rule is aimed. Claimants contend, to the contrary, that Playfly has a profit motive to insist that each student-

athlete meet the performance requirements of their deal, subject to the claw-back provision included in each of the deals. Claimants add that for practical purposes, maximum value of a student-athlete's NIL is time-sensitive and cannot be achieved if Playfly is obligated to submit the deals at the time of each activation to a third-party sponsor.

As for the R&T evaluation, Claimants argue that the NCAA rule does not require adoption of the Deloitte algorithms, and under circumstances where the algorithm has been shown not to include cleared deals with associated entities – which is precisely the category of deal into which CSC believes these deals fall – the algorithm depresses the RoC against which CSC compares these deals, to Claimants' obvious disadvantage. Claimants point out that by Deloitte's admission, approximately $80,000,000 dollars' worth of deals, representing 40% of the $200,000,000 total dollar value of deals submitted to date, is excluded from the algorithm. Beyond that, Claimants insist that Playfly negotiated the deals based on reasonable, arm's-length negotiations with each student-athlete, as reflected in the varying dollar amounts of the 18 deals. Finally, Claimants contend that sufficient information in the record supports the Arbitrator's authority to determine, as a matter of discretion, that the R&T of these deals satisfies the requirements of the rule.

DISCUSSION

Playfly ... Was Known ... to the University to Exist, in Significant Part, for the Purpose of Promoting or Supporting the Institution's Intercollegiate Athletics Program or Student-Athletes

This record shows that in April 2025, in satisfaction of its obligation under Rule 22.2.3.1, the University itself identified Playfly as an associated entity.[5] Under the plain terms of the rule as written, which does not depend on an entity's "present" status, but reaches into the past without temporal limitation, it is difficult to get past the University's own identification of Playfly as an associated entity in April 2025.

To be sure, the University withdrew that designation in May 2025, but the record is silent as to the reasons why the University made the initial designation and then changed it. In this regard, as noted, it bears emphasis that neither party to this proceeding bears the burden of disproving the other's position; each party must affirmatively establish their own case: "All parties must prove their positions by a preponderance of the evidence and neither party shall be afforded the benefit of any presumption." The CSC has shown that the University itself made the designation in April 2025, and given the reporting obligation, CSC is within its rights in accepting that designation at face value unless information comes to it reasonably to suggest otherwise, such as that the initial designation was unintended or that the University otherwise never actually considered Playfly to be an associated entity. The best evidence of the University's reasoning, of course, originates with the University, not CSC, but Claimants offer no explanation for the University's changed designation. Ultimately, the unexplained change in designation did not obligate CSC to reject the April designation in favor of the May reversal. On this record, CSC had a right to accept the two designations at face value, which

[5] "An institution shall be responsible for disclosing all associated entities or individuals associated with the institution to the NIL clearinghouse. If a noninstitutional payor cannot be verified as associated, then the institution shall be responsible for making such a verification. (Adopted: 6/6/25 effective 7/1/25)"

sufficiently establishes that in April 2025 the University knew Playfly to be an associated entity.

Under the rule as written and for purposes of this case, the University's withdrawal of the associated entity designation has no necessary practical effect; so far as the record shows, it merely shifted Playfly's status as an associated entity from the present tense "is ... known," to the past tense "was known," both of which tenses are covered by the rule, which Class Counsel approved as written. Moreover, the parties to this proceeding agree that the rule as written presents no conflict with the terms of the underlying Settlement Agreement. Noting the restrictions of Rule 10(c) of the Rules and Procedures ("The Arbitrator shall not be empowered to add to, or detract from, the terms of the Settlement Agreement."), the Arbitrator is constrained to enforce the rule as written and, accordingly, find that the University's April 2025 designation is dispositive of the question whether it knew Playfly "was" an associated entity. Plainly, it did. In so concluding, there is no occasion here to determine whether the April 2025 designation will hold for all time; it is enough to conclude that, on this record, it was sufficiently proximate in time to the disputed NIL deals to support CSC's determinations that Playfly is an associated entity for purposes of reviewing the disputed NIL deals.

Playfly Is ... Known (or Should Have Been Known) to the University to Exist, in Significant Part, for the Purpose of Promoting or Supporting the Institution's Intercollegiate Athletics Program or Student-Athletes

Alternatively, the record otherwise supports a finding that Playfly *is or should have been* known by the University to be an associated entity for purposes of this case. To be sure, Playfly has many and varied interests across sports and

geographical lines. It maintains international interests and global aspirations. At bottom, however, Playfly has a demonstrated interest not only in college athletics, generally, but the University, specifically, and that interest appears to be a significant part of its business model. In this regard, "significant" bears no special definition under the rule, so the Arbitrator ascribes to it its generally accepted meaning. According to Merriam-Webster, significant is defined as "having meaning," "having or likely to have influence or effect: IMPORTANT," OR "likely caused by something other than mere chance."[6] (Emphasis in original.)

As defined, "significant" is not to be confused with a weighted term such as "preponderant" or "majority," much less "sole"; it is not tied to any specific quantification or measurement, and it is no stretch to find significant to Playfly's existence its interest and obligations relating to the promotion and support of the University's athletics department in light of its considerable obligations to the University under the MMR agreement, and especially in light of the agreement by which funds due to the University under the MMR agreement – whether rights fees or royalties – are redirected through Playfly to the University's own student-athletes via NIL payments that, in actuality, are the University's money. In effect, Playfly functions as a pass-through for University payments to its student-athletes in a way that was designed to bypass the cap. That these payments are understood in this way by the University and its student-athletes is made plain not only by the public statements in the record, but by evidence of the way in which the University discusses those deals with the student-athletes and their agents, and by the University's inclusion of such NIL deals, which by rule cannot be guaranteed to

[6] https://www.merriam-webster.com/dictionary/significant

student-athletes, alongside each student-athlete's revenue share when communicating with the student-athlete about their overall compensation.[7]

Further, Playfly has hired employees intended and expected to work so closely with the University's athletics department that they are embedded within that department. While such employees may be employed by an employer that has a broader interest, those employees serve the University's interests, devoting their time and energies to the University's program and students. In that sense, their work obligations seem to be undivided from the University's interests.

Without regard to any other MMR deal at any other institution, the specific MMR agreement between the University and Playfly bespeaks a commitment to work so closely with the University that it is difficult to discern where Playfly's interests stop and the University's begin. It would stretch the term "significant" beyond its reasonable breaking point to conclude that Playfly's interests in the University's athletics program and student-athletes is other than significant, much less *insignificant*.

Functionally, Playfly may generate profits from its work on behalf of the University, but that does not detract from the myriad ways in which Playfly has committed to promote and support the University under the MMR agreement. Claimants insist that Playfly is not doing this work as a booster or collective out of special affinity for the University, but rather exists as a private, for-profit company. So far as it goes, there is nominal support for that position, but profit-making is not an exclusionary factor under the associated entity rule if the private company

[7] NCAA Rule 22.1.1.1 No Guarantee of Third-Party NIL: "An institution shall not provide a written or oral guarantee of a third-party NIL contract or payment. A guarantee is any written or oral statement that the institution will be responsible for such contract or payment if not fulfilled by the third party."

otherwise falls within the rule's ambit. Neither is the rule written to apply only to boosters and/or collectives; notwithstanding certain statements by Class Counsel during the Settlement Agreement approval process, the Arbitrator's reading of those materials suggests the issue is not so one-sided as Claimants would have it, and in any event the final Settlement Agreement makes no mention of boosters and/or collectives when setting forth the associated entity definition.

Thus, Playfly's own marketing materials make clear what services Playfly exists to perform: "We innovate **ACROSS** media, sponsorship, and advisory & services **FOR** brands and professional, college, and youth sports rightsholders." (Emphases in original.) It hardly need be said that the University did not enter into an MMR agreement with Playfly simply to generate profit for Playfly; the University did so in exchange for its expectation that Playfly will succeed at the myriad obligations it has undertaken on behalf of the institution, literally standing in the University's shoes under the heading of Husker Athletics Partners, a title that is the University by another name.

Further, if Playfly profits from the MMR agreement, that is all the better from the perspective of the University's athletics department. As the MMR agreement provides, if Playfly profits beyond a specified threshold and royalties therefore are owed to the University, Playfly can redirect the University's royalty payments to yet more NIL deals. Reasonably regarded, this underscores CSC's point that the evident purpose of the MMR is not simply to generate profits for Playfly or returns to the University for the sale of its media rights, but to redirect the University's own money, through Playfly, to its athletic department and/or its student-athletes. Under the MMR, as agreed, the rights fee and any royalties can be redirected by Playfly in collaboration with the University, which retains the right to collaborate with Playfly "on specific areas" of NIL investment, apparently

referencing identification of which student-athletes should receive the NIL money. No other intended meaning of the "specific areas" language is suggested on this record. In such case, Playfly would not simply be profiting from the University's MMR rights, it would be serving as a pass-through for millions of dollars from the University to its own student-athletes in the form of NIL deals, thereby circumventing the revenue sharing cap, which is precisely one of the concerns that appears to animate the associated entity rule.

Claimants nevertheless argue that the determinative factor here should be Playfly's principal profit motive; they argue that Playfly accepted the obligations under the MMR to promote and support the University only in service of that corporate goal, so in that sense Playfly exists to profit, not to serve. Ultimately, the Arbitrator finds that to be an unpersuasive exercise in hyper-textualism. Claimants' effort conceptually to separate the work Playfly does from the profit it generates has no practical effect; it seems a false dichotomy in that one hand plainly is washing the other: Playfly gets its profits, but in doing so, purports to redirect the University's money to NIL deals for the University's own student-athletes outside of the cap. Playfly's profits depend upon its agreement to perform under the MMR.

In any case, the rule as written does not suggest such a bright-line division between Playfly's benefits and obligations under the MMR; Playfly cannot benefit without accepting those obligations, and in that sense the rule reasonably is read as covering for-profit entities that, in exchange for the opportunity to profit, agree to promote and support an institution. It stands to reason: Playfly's fortunes as a for-profit company at the University depend on the success of its endeavors on behalf of the University, and that is reflected in the financial terms of the MMR agreement. Plainly, Playfly's profit-making opportunities through the University are tied to the performance of its obligations.

To the extent that Claimants argue that Playfly should not be viewed as an associated entity because of its varied interests and divided loyalties across the college landscape and even within the Big Ten, the University's conference home, that ultimately is no answer. To be sure, Playfly supports other, competing institutional athletic programs. The rule, however, does not require undivided loyalty or exclusivity of an MMR to fall within the definition of an associated entity. Playfly can have multiple "significant" interests in its college athletics division without discounting the reality that its obligations to the University are, in fact and by intent, "significant" in their own right. The foregoing conclusion finds considerable support in the language of the provision as a whole, which demonstrates an intention that the rule be interpreted more broadly than Claimants would like. The first clause of the provision speaks generally and broadly to promotion and support for the institution's athletics program or student-athletes; the second clause captures activities relating to the specific work of "identifying name, image and likeness opportunities *solely* for the institution's student-athletes." (Emphasis added.) In using the term "solely" specifically in relation to the second clause, but not in relation to the first, the rule indicates that this exclusivity concept is not meant to apply to activities falling within the general category of covered promotion and support activities. Thus, CSC need not demonstrate that Playfly exists in significant part to create NIL opportunities *only* for the University's student-athletes. It is enough to fall within the rule if Playfly is shown to exist *in significant part* to promote and support the University's athletics program, which it generally does by performing under its MMR agreement with the University, of which the NIL piece is one element among many, without regard to whether Playfly creates NIL opportunities solely for the University's athletes, and no other.

Finally with regard to subsection (a), Claimants argue that the rule narrowly is meant to capture boosters and collectives, and CSC therefore urges an overbroad interpretation of the rule to the extent it applies the rule to Playfly. As the Arbitrator understands the record, however, an entity need not be a booster or a collective – words that bear a distinct definition, neither of which is included in the definition of associated entity – to be found to be an associated entity. As written, the rule is both broader and narrower than Claimants argue. It is broader because, by its terms, it applies heightened scrutiny to "entities," a general term that is not limited to prototypical boosters or collectives, even those that might have a bona fide profit-making purpose. It is narrower, too, because formerly boosters and collectives could not make direct payments to student-athletes; now, associated entities are permitted to make direct NIL deals with student-athletes, provided they meet the conditions of Rule 22.1.3 *et seq.* In the end, the fact that the analysis of an entity's status may be simpler in the case of an actual booster or collective does not change the reality that Playfly, under the rule, reasonably is defined as associated.

Playfly Has Been Directed or Requested by the University to Assist in the Recruitment or Retention of Student-Athletes or Prospective Student-Athletes, or Otherwise Has Assisted in the Recruitment or Retention of Student-Athletes or Prospective Student-Athletes

Notwithstanding the foregoing finding that Playfly meets the definition of associated entity under Rule 22.02.1(a), the Arbitrator independently finds that Playfly also meets the definition of associated entity under Rule 22.02.1(b).

At the outset, it cannot seriously be disputed that payment of NIL to a student-athlete at least generally assists in the recruitment or retention of student-athletes, especially in light of the many public statements of the University and

officials of its athletics department that make this plain. Claimants argue, nonetheless, that the new rules relegate NIL deals to the status of "table stakes," which all universities must pay. In effect, Claimants urge the Arbitrator to find that payments of NIL deals across the landscape of college athletics should cancel each other out and therefore bear no special significance in CSC's recruitment and retention analysis. Rather, Claimants argue, the focus of this inquiry should be on the unique features of the offerings of each institution and its athletics department and program. Claimants emphasize that recruitment and retention efforts formerly were undertaken without reliance on NIL deals, and those very same factors continue to be important to student-athletes.

The Arbitrator does not gainsay the importance to a student-athlete of the unique features offered by a university or its athletic department. As a general matter, the Arbitrator will not discount or minimize the importance to the recruitment and retention process of academic offerings and degree programs, graduation rates, campus life, geographic location, market size, conference affiliation, athletic facilities, playing opportunities, and the like. It would be irresponsible on this record, however, to suggest that NIL payments are non-determinative on the theory that they essentially are the same across the board. The University's own communications to the student-athletes party to this case show that a principal feature of the offer is financial and is composed of the student-athlete's share of the revenue sharing dollars together with the NIL payment, which the University presents together as co-equal parts of an overall compensation package and compares to offerings from other institutions when communicating with the student-athlete and their representatives. The foregoing finds considerable support from the University's Head Football Coach, whom the record shows to have proclaimed regarding the University's agreement to redirect $10.25 million of its media rights

fees to NIL deals: "That is a huge recruiting differentiator for us moving forward." The rule, as written, does not say and cannot reasonably be interpreted as requiring that NIL payments form the sole basis for recruitment and retention efforts. NIL payments undeniably are a critical part of those efforts.

NIL payments are not mere table stakes. The University's actions demonstrate that each student-athlete presents a unique negotiation in terms of cap share, and the institution will do what it can to augment that amount by helping to facilitate an NIL deal. Thus, as the MMR agreement between Playfly and the University provides, the University does not just redirect its profits from the sale of its media rights to its student-athletes, it retains the right to collaborate with Playfly regarding such deals. By all appearances, the University is not just facilitating NIL deals for its student-athletes, to be paid for at least in part with the proceeds of the sale of its media rights under the MMR agreement, it has a voice in the selection of the student-athletes to whom those deals will be offered, likely a determinative one.

Recognition that the University has a voice in the selection of student-athletes to whom Playfly should offer NIL deals under the MMR agreement goes a long way to support the inference that the University directed or requested Playfly to offer the deals at issue. As indicated by the Board of Regents itself in deciding to amend the MMR agreement to increase the amount of rights fees to be redirected to NIL deals:

> **Considering the continued evolution of intercollegiate athletics and matters related to student-athlete name, image, and likeness, the parties desire to amend the agreement to increase Playfly's investment in name, image, and likeness initiatives and, correspondingly, reduce the annual rights fee. The parties also desire to amend the agreement to permit Playfly to invest, in its discretion, some or all of any royalty payments due under the agreement to support name, image, and likeness activities during the agreement term.**

The resulting changes to the MMR agreement, as the University's Head Coach unmistakably acknowledged, only increased the University's collaborative support for Playfly's NIL deals as a means through which to bolster the University's recruiting and retention efforts. Overall, the record amply demonstrates the University's direction and/or request that Playfly aid those efforts by increasing its investment in NIL deals, essentially by redirecting its own profits from the MMR agreement to the student-athletes.

In so concluding, the Arbitrator is mindful of Claimants' concern that such a finding effectively creates an exception that will swallow the rule. According to Claimants, by this logic literally any NIL deal will aid or assist in recruitment or retention, in which case there would be no need to define associated entity apart from any entity that provides NIL payments. That argument, however, ignores a critical element of the rule. Playfly does not qualify as an associated entity merely because it provides NIL deals; Playfly constitutes an associated entity under Rule 22.02.1(b) because in addition to providing NIL deals, Playfly is paying for those deals with the redirected proceeds from the University's sale of its media rights, and those NIL deals are being directed to student-athletes in collaboration with the University's athletics department. Moreover, it bears emphasis that actual experience shows Claimants' concern to be overstated: over 10,000 NIL deals have been cleared to date with entities found to be non-associated. Plainly, payment of NIL money to a student-athlete is not determinative, without more, of an entity's associated status.

Having concluded that Playfly is an associated entity, it remains to consider whether the NIL deals at issue clear the restrictions of Rules 22.1.3 and 22.1.1.3.

The Disputed NIL Deals Have a Valid Business Purpose Related to the Promotion or Endorsement of Goods or Services, but those Goods or Services Are Not Offered to the General Public for Profit

At the outset, and as discussed more fully below, the Arbitrator does not doubt Claimants' assertion that Playfly intends to profit from its entry into the disputed NIL deals. Even assuming, however, that the amounts of money set forth in the NIL deals were negotiated at arm's-length between Playfly and the student-athletes – a proposition that CSC reasonably calls into question for lack of substantiating evidence – the deals nevertheless fail the Valid Business Purpose test because, by every indication in the record, Playfly is not offering goods or services to the general public and cannot identify any actual third-party sponsor offering such to the general public that actually will purchase the NIL rights Playfly seeks to acquire as inventory for future sale.

In common usage, the term, "general public," relates not to businesses, but to people, and sales of goods or services to the general public reasonably is taken in the sense of "direct-to-consumer." Playfly is not offering anything for sale to the general public; Playfly claims to be offering NIL rights for sale to putative sponsors to be identified in the future, after payment of the money to the student-athletes, and it is those as-yet unidentified sponsors who will be the entities selling goods or services to the general public. As CSC demonstrates, Playfly is not acquiring any NIL rights for promotion or support of its own business. By all accounts, Playfly's relationship to any future offering to the general public is only indirect and entirely non-specific, which does not satisfy the Valid Business Purpose test.

CSC Reasonably Concluded that the Disputed NIL Deals Violate the Warehousing Rule

NCAA Rule 22.1.3.3 is meant to mitigate the risk of "pay-for-play" prohibitions by requiring "direct activation" of the NIL rights being acquired, to ensure that the NIL payments in fact are exchanged for a valid business purpose. At the outset, it bears emphasis that but for Playfly's associated status, the deals at issue would be permissible and would have been cleared. That is undisputed. The problem, rather, is that Playfly's business model, however attractive to Playfly and its partners, constitutes the very sort of warehousing that is prohibited by the rule.

By design, Playfly is acquiring NIL as inventory to be warehoused and activated when most advantageous to Playfly, *e.g.*, when a student-athlete scores a winning touchdown and their NIL rights may prove most valuable in real time. Playfly admittedly structured these deals with the specific, definite intention of acquiring the NIL rights and holding them for future use. The deals thus are precisely the type of associated deals targeted by this rule; Playfly has acquired Claimants' NIL rights without providing for any fixed obligation relating to their ultimate use, if any. As CSC argues, it is unknowable whether any of the student-athletes will be called upon to perform under these deals, or if so, when or for whom or on behalf of what goods or services to be offered for sale to the general public. There simply is no way to understand these NIL deals as providing for the type of direct activation contemplated by the rule, and as CSC persuasively argues, CSC really cannot assess the deals for want of that information. To be sure, Playfly may, at some future date, sell the NIL rights to some third-party sponsor, but that has not been shown yet to have occurred with respect to any of the 18 student-athletes party to this case, which underscores CSC's continuing offer to evaluate any deal brokered

by Playfly involving the sale of any of the student-athletes' NIL to an actual sponsor that sells good or services to the general public.

That said, it bears emphasis that apart from Playfly's associated status, the Arbitrator finds no general infirmity under the rules in Playfly's business model as described in this record. There is no basis for doubting the claim that Playfly's model is meant to maximize the value of the student-athletes' NIL rights by packaging them synergistically with the University's marks and selling them at the most opportune time without undue delay. If the profits from such post-acquisition sales flow to Playfly and not the student-athletes, that is only because the student-athletes made the business decision to sell their NIL rights in advance, representing a conscious decision to guarantee their NIL-related income that depending on their on-field performance could be grossly disproportionate to the payment received, for better or worse. That is the sort of future-looking financial risk-reward analysis that any rights-buyer and rights-seller might consider, and undoubtedly the risk of disproportionality – to both Playfly and its student-athlete partners – is greater the farther removed the ultimate activation is from the date the NIL deal is executed.

Thus, it is possible that the student-athlete will have a breakout performance and impact far beyond anything imagined in the NIL deal, in which case Playfly would benefit disproportionately to the student-athlete, but it likewise is possible that a highly prized student-athlete will fall short of their perceived promise, and sale of that student-athlete's inventoried NIL rights by Playfly will prove difficult if not impossible, in which case the student-athlete will benefit disproportionately to Playfly. Claimants do not deny these possibilities, but liken them to the reality that any goods or services offered for sale to the general public based on the marketing of a student-athlete's NIL carries the same risk. As the argument goes, some student-athletes are willing to risk underpayment in return for

guaranteed payment, just as Playfly conversely is willing to risk overpayment. There is some attraction, in that sense, to Claimants' position, especially considering that any good or service that a student-athlete may be paid to endorse under any NIL deal, even a cleared one, ultimately might prove to provide disappointing returns.

Nevertheless, like the other rules at issue in this proceeding, NCAA Rule 22.1.3.3, as written, is not alleged to conflict with the Settlement Agreement, and the Arbitrator is constrained to enforce its terms. The rule plainly precludes associated entities from warehousing inventoried NIL rights in precisely the way that Playfly intends, notwithstanding what a non-associated entity is permitted to do. And, even if it is not definite that these particular NIL deals present the specific risk of a booster or collective's forbidden pay-for-play arrangement, the deals nevertheless run afoul of the obvious compromise that lies at the heart of the rule: new, expanded rights for student-athletes to receive NIL payments from associated entities, subject to restrictions that Claimants may find to be overdrawn, but which nevertheless admit of clear application.

In any compromise, reasonable minds can differ over the line-drawing, but the settlement parties drew the line where they did, the court approved it, this NCAA rule resulted, and evidently it passed muster with Class Counsel to the extent that they agreed that the settlement permits CSC to forbid warehousing by associated entities, notwithstanding that the very same warehousing would be permissible by a non-associated entity, and notwithstanding the Arbitrator is not persuaded that Playfly's motivations are as nefarious as CSC suggests. In the end, Claimants present what amounts to a policy disagreement with the rule, seeking relief from the strictures of its straightforward application. On this record, replete as it is with evidence that warehousing was the intention, the Arbitrator cannot conclude that the problem here is a mere lack of specificity in the deals. The problem is an intentional

lack of direct activation. Under the circumstances, the Arbitrator cannot responsibly require CSC to subvert the rule as a matter of discretion to clear deals that it reasonably has inferred were meant to circumvent the cap.

In this last regard, the Arbitrator finds unpersuasive the contention that the Warehousing concerns in this case better and more equitably can and should be addressed through cap compliance procedures. It is clear that both the Settlement Agreement and the applicable NCAA rules specifically contemplate rejection of NIL deals such as these, which of course helps to forestall any cap compliance issue before one arises. To be sure, there are other avenues through which a member institution could exceed the cap and thereby subject itself to cap enforcement procedures, but there is no such issue before the Arbitrator. The fact that CSC could initiate cap enforcement procedures against a member institution is not a sound argument for concluding that CSC therefore must clear a deal that it believes to violate the Warehousing Rule. The two enforcement mechanisms, as the Arbitrator understands them for purposes of this case, function more as a belt-and-suspenders approach; they have not been shown to have been intended to be mutually exclusive.

Neither Party Has Made a Wholly Persuasive Demonstration Regarding the Propriety of the Compensation Levels of the Disputed Deals

Notwithstanding the foregoing findings that Playfly is an associated entity and that CSC reasonably determined that the disputed deals violate both the Valid Business Purpose and Warehousing Rules of NCAA Rules 22.1.3 and 22.1.3.3, the potential that Claimants may resubmit for CSC review some version of these deals and related considerations of avoidance of delay suggests that it is appropriate to address also the parties' dispute over the validity of the procedure by which CSC tests the value of such deals under NCAA Rule 22.1.3. As the record shows, CSC

measures such deals principally through application of its RoC pillars test, which understood at the highest level provides for the comparison of Claimants' associated deals against a database comprised only of cleared non-associated deals; by design, the database excludes the entire category of associated NIL deals, whether cleared or not cleared. Evidently, CSC has determined that associated deals should not be market drivers due to its concern that they may not be the product of arm's-length negotiations between sponsors and student-athletes and therefore may be excessive.

As written, NCAA Rule 22.1.3 requires comparison of Claimants' deals with those of similarly situated student-athletes at other institutions. As Claimants correctly point out, the Deloitte algorithm is the product of CSC's discretionary effort to animate the rule; the model is not specifically or strictly required by the Settlement or related rules and has not been shown to have been approved by Class Counsel. Thus, although something on the order of 21,000 NIL deals have cleared CSC's R&T review to date, it is fair for Claimants to question whether clearance of those other deals sufficiently proves that the model is reasonable as applied to Claimants.

While it is understandable that CSC wishes to protect its model from being skewed by deals that are not the product of arm's-length negotiation and CSC therefore reasonably excludes from its comparator database those associated deals that otherwise fail R&T review, it is difficult to conceive of a better set of potential comparators to Claimants' associated deals, than the approximately 7,000 such associated deals of other student-athletes at other institutions that to date have cleared CSC's most rigorous review.

Thus, even if true that associated deals generally tend to be inflated relative to non-associated deals, CSC cannot on this record discount the possibility, if not likelihood, that associated deals exceed the value of non-associated deals

precisely because the NIL rights of the student-athletes able to garner associated deals are viewed as more valuable by those in the business of purchasing them. CSC asserts but has not proved otherwise. The 18 student-athletes in this case have demonstrated their relative value to the extent they have been offered these associated deals, and seemingly by right, the value of their deals should be measured against those of others who have proved able to garner associated deals cleared by CSC. As Claimants persuasively argue, those deals specifically have been found by CSC *not* to contemplate any prohibited pay-for-play transaction. Because CSC's RoC database has the effect of excluding those deals that may prove the most apt comparators to Claimants, the RoC as applied in this case appears improperly to throttle the upper bound of the Pillars tests, to Claimants' potential disadvantage. Because the Pillars test excludes the value of cleared associated deals from the database, contrary to the requirement of the rule to compare deals to those of similarly situated student-athletes, the Arbitrator is not persuaded that the Pillars test, as applied in this case, fairly implements NCAA Rule 22.1.3.

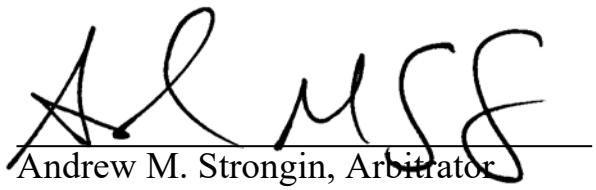
Further, it seems to be uncontroversial to acknowledge that the Pillars test might result in the improper "non-clearance" or rejection of certain associated deals; CSC recognizes that possibility to the extent that it has implemented two additional tests to mitigate that risk, the PPT and SCT. Notwithstanding other concerns that might be found with respect to the adequacy of those secondary tests, the record shows that such secondary tests are not yet reasonably effective due to a lack of comparators. Indeed, the record shows that of the 18 student-athletes party to this case, none of their deals could be evaluated under the SCT test, and only two of the 18 could be evaluated under the PPT. Thus, provision of these secondary tests, at least at this early juncture, seems not adequately to backstop the model's failure to include cleared associated deals in the database of comparators.

All that said, CSC correctly points out that Claimants have not affirmatively proved that their deals should be cleared by any other reasonable measure. Claimants assert that the deals demonstrate arm's-length negotiation, principally pointing to the differing total amounts of the deals for the student-athletes at issue, without citing any specific financial analysis. CSC counters with persuasive testimony that the valuations are not realistic, noting for example that each student-athlete identically will receive $5,000 per social media post under these deals, without regard to what Playfly itself acknowledges are substantial differences in the student-athletes' individual marketability and/or social media following as indicated by the wide variance in total compensation under Claimants' individual deals, which range from $50,000 to $750,000. More generally, Claimants have not provided any evidence to substantiate the valuation of the disputed deals or the assertion that they were negotiated at arm's length.

Consistent with the foregoing, although the Arbitrator is persuaded that there is more work to be done before there can be reasonable assurance that CSC fairly has evaluated the R&T of Claimants' deals, neither can the Arbitrator responsibly conclude on this record that Claimants have demonstrated by a preponderance of the evidence that their deals satisfy R&T requirements.

DECISION

Consistent with the foregoing, CSC properly determined that Playfly is an associated entity, and CSC properly determined not to clear the NIL deals at issue.



Andrew M. Strongin, Arbitrator

Bethesda, Maryland