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PERSPECTIVE

A Different Game

Considerations for athletes who are looking to become engaged in venture capital.

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As compensation in the professional leagues continues to rise, athletes are looking for alternative investment opportunities and are actively engaging, either directly or through investment funds, in venture capital investments in early-stage companies. This article discusses how athletes are becoming involved in, and certain issues to consider in connection with, venture capital investments.

Involvement in Venture Capital

An athlete's path to venture capital ranges from active management of an investment portfolio or direct association with a company in which he or she has invested to passive investment opportunities in venture capital funds or funds-of-funds. Because people generally gravitate to athletes and celebrities, investment opportunities abound. In addition, the franchises in areas with access to investment opportunities or owners who have been involved with venture capital and private equity funds have realized that exposure to these investments is a meaningful tool to retain their players and attract free agents. The key, however, is finding the best investments and affiliating with well-regarded companies.

Examples of athlete investors are numerous in Silicon Valley and beyond. In the case of Andre Iguodala of the Golden State Warriors, the combination of an eagerness to learn and the fostering of key relationships with influential executives and investors in Silicon Valley has reportedly led to a portfolio of investments in approximately 25 companies — including NerdWallet, Casper and Twice. In other instances, athletes are launching investment-focused companies. The Durant Company, founded by Kevin Durant of the Golden State Warriors and partner Rich Kleiman, reportedly boasts a portfolio of investments in approximately 30 companies — including Coinbase, Acorns and Postmates. Athletes are also focused on empowering other athletes to

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Kevin Durant in San Bruno, Jan. 17, 2017. The Golden State Warriors star founded his own company, The Durant Company, through which he boasts an investment portfolio of approximately 30 companies.

become involved in venture capital. For example, in August 2017, Steph Curry and Iguodala hosted a Technology Summit aimed at encouraging athletes to begin thinking about and engaging in venture capital investments and to tap into the synergies inherent among sports and technology companies.

Other opportunities include management of an investment fund (Bryant Stibel, led by Kobe Bryant and Jeff Stibel) or participating in a venture capital or private equity fund as an investment professional (Ryan Howard, partner at SeventySix Capital; Joe Montana, general partner at Liquid 2 Ventures; Steve Young, partner at HGGC). For the more passive athlete-investor, there are plenty of opportunities to invest in venture capital funds and funds-of-funds. The NBA's All-Star Fund, for example, presents an athlete-specific fund-of-funds opportunity to gain access to high-profile investment opportunities in Silicon Valley's 'unicorn' companies.

Although the opportunities to participate in venture capital investments differ, a common set of issues should be considered at the outset of each investment.

Considerations for Athlete-Investors

Investment structure. If the athlete is making direct investments, he or she should avoid signing any transaction document or making a commitment in an individual capacity. Instead, all investments and contractual commitments should be made through some sort of investment vehicle. This structure protects the athlete by limiting the athlete's exposure to the amount invested. From a returns perspective and depending on the stage of the company in which it is investing, athletes should also consider whether to make an equity or debt investment. Debt investments, either secured or unsecured, can provide structural advantages and additional protection, as well as economic incentives in the form of a conversion discount in the next equity financing round. Athletes should also negotiate a put right pursuant to which the athlete can sell the stock back to the company for a de minimis amount in the event that he or she no longer desires to be associated with the company due to performance or reputational issues. Additional considerations include the time horizon of the investment and the potential exit opportunities. On the other hand, investing indirectly through a venture capital fund may be preferable for many athletes who do not have the time, expertise or interest to find and negotiate investments of their own.

Diligence. Diligence takes on heightened importance in the context of an athlete-investor given the volume of investment opportunities they are presented with. Like any investor, athletes want to be associated with successful companies and are wary of providing capital and lending their names to ventures that could harm their reputations. Unfortunately, the investment landscape is littered with examples of athletes who have been taken advantage of or steered to investments with little to no diligence on the opportunity. As a result, in connection with any investment opportunity, it is critically important that the diligence process include a review of the company and the terms of the investment as well as the founders and other key individuals involved with the operation of the company. Because most venture capital investments by athletes are early-stage and relatively low dollar, diligence can be tailored to a "red flag" review of the operations and prospects of the company, but it should always involve a background check of the key players. Increased focus on diligence will ultimately help the athlete develop a targeted process for selecting investments and avoid investments that could negatively impact net worth and otherwise bring reputational harm to the athlete if issues are missed at the outset.

Services agreements; affiliation with the company. Companies will often enter into ancillary services agreements with athletes to endorse products or make appearances on behalf of the company following their investments. It is important that the athlete consider the obligations proposed by the company so as not to burden the athlete during his or her season. In that regard, any services should be provided on an annual basis rather than on a monthly or quarterly schedule. Also, while unlikely, it's at least theoretically possible that league personal conduct policies could be triggered due to an athlete's publicized investment in a company that later becomes embroiled in scandal or by the athlete's active promotion of a product or service that subsequently harms consumers. As a result, similar to the put provision contemplated above, an athlete should propose terms in the services agreement that allow the athlete to terminate its relationship with the company under certain conditions, including conduct by company's directors, officers or founders that could bring reputational harm to the athlete. The athlete should also propose limiting the company's ability to publicly associate with the athlete or propose investing on a nonames basis, at least without his or her consent. While affiliation with and the performance of services for a successful company in which the athlete has invested will provide value to the athlete's brand, being tied to a company on the wrong side of the news cycle can be just as damaging if the athlete is unable to disassociate from the company quickly.

League endorsement conflicts. While players are generally not prohibited from endorsing products that compete with league sponsors, athletes should be aware of potential conflicts presented by investing in and promoting products in conflict with their league's interests. For example, in 2014, Bose became the NFL's exclusive headset provider. Beats by Dre headphones — heavily promoted by NFL players in particular — were banned for use by NFL players during press conferences or pregame warmups. While it can be argued that the NFL's reaction to this issue created more brand awareness for Beats by Dre as a result, an athlete's services agreement with a company should exclude any breach resulting from mandatory promotional duties imposed by such athlete's league. Also, an athlete may be required to directly or indirectly promote products or services of a league sponsor during league sanctioned events and the athlete should not be in breach of a services agreement or any other agreement with respect to his or her investment as a result.

Conclusion

Athletes are now presented with more investment opportunities than ever before and the best franchises with the right connections are using these opportunities to attract and retain players. As venture capital investments by athletes continue to rise, athletes and their advisors must pro-actively address the athlete- specific issues that arise when an athlete acts a venture capital investor to maximize returns and preserve the reputation of the athlete.

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