

EXHIBIT H



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August 11, 2011

VIA FEDERAL EXPRESS

Department of the Secretary of State
Attn: Tasha W. Sheehy, Enforcement Attorney
P.O. Box 29622
Raleigh, NC 27262

Re: North Carolina Department of the Secretary of State File No. 10 SEC 170
Subpoena *Duces Tecum* to NCAA

Dear Ms. Sheehy:

Please find enclosed a formal Objection in the above referenced case on behalf of the National Collegiate Athletic Association (NCAA), Dr. Mark A. Emmert; and Dr. Nathan O. Hatch.

Very truly yours,

BELL, DAVIS & PITT, P.A.

William K. Davis

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OBJECTION TO SUBPOENA DUCES TECUM

NOW COMES the National Collegiate Athletic Association (“NCAA”); NCAA President, Dr. Mark A. Emmert; and Dr. Nathan O. Hatch, a member of the NCAA Division I Board of Directors (collectively the “Respondents”), by and through undersigned counsel, objecting pursuant to Rule 45(c)(3)(a-e) of the North Carolina Rules of Civil Procedure and North Carolina General Statutes § 78C-27 and § 78C-87 to the Subpoena *Duces Tecum* (“Subpoena”) issued by the North Carolina Securities Administrator and the Department of the Secretary of State. In support of this objection, the Respondents show the following:

1. The NCAA is an unincorporated association with its national office located in Indianapolis, Indiana. The NCAA does not maintain any offices in North Carolina. The NCAA has more than 400 employees, none of which are located within North Carolina. All records of the NCAA are maintained outside of North Carolina, that is, at NCAA’s offices in Indiana. Dr. Mark A. Emmert is the current President of the NCAA. He is a resident of Indiana. Dr. Nathan O. Hatch is the member of the NCAA Division I Board of Directors, not an employee of the NCAA. Dr. Hatch is also the President of Wake Forest University, located in Winston-Salem, North Carolina.

2. The NCAA was served with the Subpoena by certified mail on or about August 4, 2011. Copies of the Subpoena were received by Dr. Hatch on August 2, 2011, and on Dr. Emmert on August 4, 2011. The six-page Subpoena was issued by Rodney S.

Maddox, Chief Deputy Secretary of State. The Subpoena commands and directs the NCAA, and also may direct Dr. Emmert and Dr. Hatch individually, to appear at the North Carolina Department of the Secretary of State, Securities Division in Raleigh, North Carolina at 9:30 a.m. on Monday, August 15, 2011.

The Subpoena further commands the production of NCAA records as follows:

[A] true, accurate, complete, and unredacted copy of the Notice of Allegations (Case No. M357) that the [NCAA] provided to the University of North Carolina (hereinafter, the University) on or about June 21, 2011 (hereinafter the “Notice of Allegations”);

[A] record of any and all statements made by, or interviews of, University student-athletes, former University student-athletes, University coaches, and University employees since January 1, 2010 relating to the NCAA’s investigation of the University, including but not limited to any transcription, writing, or audio recording;

[A] record of any and all statements made by, or interviews of, Todd Stewart since January 1, 2010, relating to the NCAA’s investigation of the University, including but not limited to any transcription, writing, or audio recording;

[A] record of any and all statements made by, or interviews of, John Blake since January 1, 2010, relating to the NCAA’s investigation of the University, including but not limited to any transcription, writing, or audio recording;

[A] record of any and all statements made by, or interviews of, Marvin Sanders since January 1, 2010, relating to John Blake’s contract with Ndamukong Suh, including but not limited to any transcription, writing, or audio recording; and

[A] copy of John Blake’s July 6, 2010 credit report, referenced in paragraph 8, subpart (b) of the Notice of Allegations.

5. The Respondents first object to the Subpoena as being procedurally defective, pursuant to Rule 45(c)(3)(e) of the North Carolina Rules of Civil Procedure. Specifically, the Subpoena is procedurally defective because the subpoena power of the Secretary of State does not extend, either under N.C.G.S. § 78C-27 or under § 78C-87, to the NCAA—a non-party, non-resident, unincorporated association. Accordingly, the Secretary of State cannot compel such a non-party, non-resident, unincorporated association to appear in North Carolina to testify, nor command it to produce documents located outside of North Carolina in the state of Indiana.

6. Critically, the NCAA does not contest the authority of the North Carolina Department of the Secretary of State to obtain certain records through the use of the subpoena procedures set out under the laws of the State of Indiana. In fact, the Department has previously availed itself of said procedures, having obtained hundreds of NCAA records through the Indiana Secretary of State's Securities Division in January 2011. The NCAA maintains voluminous records regarding its hundreds of member institutions, the thousands of student-athletes enrolled at its member institutions, and the numerous individuals and entities that interact with both its member institutions and their student-athletes. The NCAA must maintain a consistent response to the multiple formal and informal requests for information made to it each year to ensure that federally protected confidential-student-athlete-information, and other protected and privileged information, is not disclosed. The only feasible way to obtain this consistency is for the numerous formal requests the NCAA receives for the production of its records to be

appropriately issued through, and governed by, the state courts of Indiana, where the NCAA resides.

7. The NCAA next objects to the Subpoena because it requires the disclosure of privileged information, confidential information, and other protected records. *See* Rule 45(c)(3)(b), (7). The NCAA's records contain sensitive and confidential information regarding its member institutions and their student-athletes' compliance with NCAA's private rules. The NCAA's records often contain personally identifying information, academic records, medical records, and other confidential information that is protected by state and federal law. Additionally, as a private association, the NCAA lacks the lawful authority to command individuals to appear and provide information regarding potential violations of its rules. Thus by necessity, the NCAA relies on individuals to voluntarily provided essential information about potential infractions. The confidentiality of individuals who voluntarily come forward is essential to the operation of the NCAA, and the forced disclosure of such information would necessarily impair the NCAA's ability to conduct future investigations. The forced production of such information, given the Secretary of State's own ability to subpoena witnesses and investigate any alleged violation of state law, creates an undue burden on the NCAA and is unreasonably oppressive. *See* Rule 45(c)(3)(c), (d).

8. The NCAA further objects to the Subpoena as being overbroad and inasmuch as it asks for all statements regarding every student-athlete, every former student-athlete, every University coach, and every University employee relating to the

NCAA's investigation of the University after January 1, 2010. Notably, the Subpoena does not limit its command to any specific investigation, but to any inquiry regarding any one of the thousands of student-athletes, former student-athletes, coaches, and employees. The demand for all statements from *all former student-athletes* requires a search of the records regarding every single student-athlete to have ever attended the University. Accordingly, responding to this request would place an undue burden on the NCAA.

9. The NCAA finally objects to the Subpoena as failing to allow a reasonable time for compliance. The Subpoena was served on the NCAA on August 4, 2011. Compliance with such a broad request first requires an exhaustive search of the NCAA's voluminous records, followed by the presence of the NCAA in Raleigh on the morning of the eleventh day. Eleven days is insufficient to allow for the thorough search of the NCAA's records that is necessary for accurate compliance with the Subpoena.

10. Dr. Mark A. Emmert objects to the subpoena as procedurally defective to the extent commands him to personally appear and/or produce documents. Dr. Emmert, like the NCAA, is a non-party, non-resident. Additionally, Dr. Emmert does not personally maintain or control the NCAA's records. Thus, forcing Dr. Emmert to appear in North Carolina, eleven days after receipt of the Subpoena, is both unduly burdensome and unreasonably oppressive.

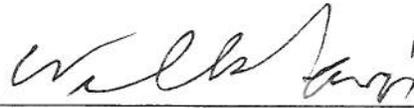
11. Dr. Nathan O. Hatch objects to the subpoena as procedurally defective, unduly burdensome, and unreasonably oppressive. Dr. Hatch is the President of Wake Forest University. He serves, as a result of his position with Wake Forest University, as a

member of the NCAA Division I Board of Directors. Dr. Hatch does not maintain or control any of the records requested by the Subpoena. Accordingly, Dr. Hatch is unable to produce any of the requested information. Thus, it is unduly burdensome and unreasonably oppressive to command his presence—upon potential contempt of court as noted by the Subpoena—in Raleigh on August 15, 2011. Additionally, any such appearance would unnecessarily interfere with his substantial duties as the President of Wake Forest University.

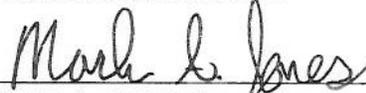
12. The NCAA has previously advised the Secretary of State of its willingness to produce non-privileged and unprotected records upon its receipt of a valid subpoena from the State of Indiana. The NCAA has also previously advised the Secretary of State of its position that neither N.C.G.S. § 78C-27, nor § 78C-87, extend the Secretary's subpoena power to reach into Indiana to compel the production of documents that are maintained in Indiana by a non-party, non-resident, unincorporated association.

For the reasons stated above, and pursuant to Rule 45(c)(3) of the North Carolina Rules of Civil Procedure, as incorporated within the Subpoena as pages 3-6, the NCAA, Dr. Mark A. Emmert, and Dr. Nathan O. Hatch do hereby formally object to the Subpoena as procedurally and otherwise defective. Should the Secretary of State seek a court order pursuant to Rule 45(c)(4) of the North Carolina Rules of Civil Procedure, the Respondents respectively reserve their right to move the court, pursuant to Rule 45(c)(5), for a court order to quash or modify the Subpoena.

This the 11th day of August, 2011.



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