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2017

Sponsoring Corruption

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DATE DOWNLOADED: Thu Jul 15 14:14:49 2021

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Citations:

Bluebook 21st ed.

Pammela S. Quinn, Sponsoring Corruption, 32 MD. J. INT'L L. 221 (2017).

ALWD 6th ed.

Quinn, P. S., Sponsoring Corruption, 32 Md. J. Int'l L. 221 (2017).

APA 7th ed.

Quinn, P. S. (2017). Sponsoring Corruption. Maryland Journal of International Law, 32, 221-235.

Chicago 17th ed.

Pammela S. Quinn, "Sponsoring Corruption," Maryland Journal of International Law 32 (2017): 221-235

McGill Guide 9th ed.

Pammela S Quinn, "Sponsoring Corruption" (2017) 32 Md J Int'l L 221.

AGLC 4th ed.

Pammela S Quinn, 'Sponsoring Corruption' (2017) 32 Maryland Journal of International Law 221.

MLA 8th ed.

Quinn, Pammela S. "Sponsoring Corruption." Maryland Journal of International Law, 32, 2017, p. 221-235. HeinOnline.

OSCOLA 4th ed.

Pammela S Quinn, 'Sponsoring Corruption' (2017) 32 Md J Int'l L 221

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Sponsoring Corruption

PAMMELA S. QUINN[†]

ABSTRACT

By reference to a detailed analysis of recent major corruption scandals that have plagued the IOC and FIFA, this Article examines the ways in which large multi-national corporate sponsors sometimes exercise private regulatory authority in the international sports arena. Through their contract relationships with sporting organizations, corporate sponsors potentially have the capacity to act as strong regulators. When major corruption scandals have emerged, sponsors have taken a variety of actions that run the gamut from tepid criticism to withdrawing from the sponsoring arrangements. Yet, they ultimately have been far less effective regulators than one might expect given their financial importance to the international sports organizations with which they are affiliated. Ultimately, various structural obstacles appear to stand in the way of corporations fulfilling their full potential to exert strong influence.

INTRODUCTION

Scandal dogs sport at every level: from very young Little League players who are accused of lying about their ages;¹ to the perennial charges of players being illegally paid to play at the collegiate level;²

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1. See, e.g., Dan Le Batard, *Little League Cheating Scandal*, ESPN THE MAGAZINE (Dec. 24, 2001), <http://www.espn.com/espn/news/story?page=Mag15detour>.

2. See, e.g., Dave Davies, NPR, *Fresh Air: The Illegal Procedure of Paying College*

and the ongoing controversy over the National Football League's handling of scientific evidence regarding concussion risks,³ which has recently given rise not only to troubling news stories but also to a major Hollywood movie. There is simply no escaping major controversy when high-profile sporting events and personalities are involved. Yet, while scandal may always seem to go hand in glove with high-profile sports, the international sports arena in particular appears to be perpetually rife with serious problems at the very highest levels. Stories of major corruption scandals involving international sporting events seem to arise with nearly as much frequency as stories about the events and athletes themselves.

The plague of corruption infecting the highest levels of international sports organizations and events may be directly attributable to the fact that such organizations are operating beyond the national plane. As is true with respect to transnational enterprises more generally, the transnational/trans-regulatory nature of international sports makes them far more complicated and challenging to regulate than is the case for similar organizations that operate in a purely domestic context. While "political entities ... [have traditionally] had a virtual monopoly over economic regulation, each in their own territor[ies],"⁴ when people or entities cross borders and become international in their scope, regulatory efforts become difficult for any one state to control. As a result, "public law, as either substantive rules or as systems of governance, has proven increasingly unable to respond efficiently to the problems of [transnational] governance."⁵

Private regulation—the regulation of one private entity by another—has emerged in the academic literature as a potential solution to this regulatory dilemma. This notion found its way into comedian John Oliver's *Last Week Tonight* segment about the corruption scandal that plagued the Fédération Internationale de Football Association

Athletes (aired Mar. 28, 2012), <http://www.npr.org/2012/03/28/148610494/the-illegal-procedure-of-paying-college-athletes> (reviewing JAMES DALE & JOSH LUCHS, *ILLEGAL PROCEDURE: A SPORTS AGENT COMES CLEAN ON THE DIRTY BUSINESS OF COLLEGE FOOTBALL* (2012)).

3. See Jeanne Marie Laskas, *Bennet Omalu, Concussions and the NFL: How One Doctor Changed Football Forever*, GQ (Sept. 14, 2009), <http://www.gq.com/story/nfl-players-brain-dementia-study-memory-concussions>; see also Lauren Larson, *Watch Will Smith Take On the NFL in This Chilling Trailer for Concussion*, GQ (Aug. 31, 2015) <http://www.gq.com/story/trailer-concussion-will-smith>.

4. Larry Catá Backer, *Economic Globalization and the Rise of Efficient Systems of Global Private Law Making: Wal-Mart as Global Legislator*, 39 CONN. L. REV. 1739, 1743 (2007).

5. *Id.* at 1745.

("FIFA") in 2015.⁶ Oliver called upon the organization's corporate sponsors to take action and force the resignation of FIFA President Joseph "Sepp" Blatter. Perhaps only half-jokingly he referred to the organization's corporate sponsors as "the only group even more powerful than world government."⁷

Indeed, FIFA's sponsors include some of the largest multinational enterprises in the world, including Coca-Cola, Budweiser, Adidas, and Hyundai/Kia. While traditionally viewed as subjects of regulation, large multi-national corporations also possess enormous potential to wield regulatory authority over FIFA and other international sporting bodies and events that they sponsor.

And occasionally they *have* harnessed this power. The John Hancock Life Insurance Company was a worldwide Olympics sponsor in the 1990s.⁸ When a bidding scandal over the 2002 Salt Lake City Games emerged, the company's CEO David D'Alessandro demanded that International Olympics Committee ("IOC") President Juan Antonio Samaranch resign.⁹ D'Alessandro believes that his measures were directly responsible for the IOC's becoming more transparent at the time.¹⁰

With respect to the recent FIFA scandal, too, some sponsors did do as Oliver suggested. Corporate sponsors serve as a major source of cash for FIFA, which earned \$1.6 billion from sponsorship money in

6. After allegations of corruption emerged in the selection of host countries for two upcoming World Cups, dozens of FIFA executives, including those at the very top of the organization, were investigated by the FBI and eventually indicted by the Justice Department between May and December 2015. *See, e.g.*, *Fifa Corruption Crisis: Key Questions Answered*, BBC NEWS (Dec. 21, 2015), <http://www.bbc.com/news/world-europe-32897066>. The BBC article noted that while DOJ's "investigation was initially sparked by the bidding process for the Russia 2018 and Qatar 2022 World Cups," it was eventually "widened to look back at Fifa's dealings over the past 20 years." *Id.* FIFA's selection of Qatar has also come under attack given the human rights problems emerging there. Shona Gosh, *Why FIFA's Sponsors Haven't Quit*, PR WEEK (June 2, 2015), <http://www.prweek.com/article/1349704/why-fifa-sponsors-havent-quit#YIxmy5wQWdUX095V.99> ("Its selection of Qatar as the 2022 World Cup host has also been heavily criticized after hundreds of migrant workers were revealed to have died during stadium construction work.").

7. *See* Lisa de Moraes, *John Oliver Vows To Drink Bud Light Lime If World Cup Sponsors Boot FIFA Chief - Update*, DEADLINE HOLLYWOOD (June 1, 2015), <http://deadline.com/2015/06/john-oliver-fifa-sepp-blatter-budweiser-world-cup-last-week-tonight-video-1201435345/>.

8. Richard Sandomir, *Sponsors React Meekly to Sepp Blatter's Resignation*, N.Y. TIMES (June 2, 2015), https://www.nytimes.com/2015/06/03/sports/soccer/sponsors-react-meekly-to-sepp-blatters-resignation.html?_r=0.

9. *Id.*

10. *Id.*

the four-years leading up to the 2014 World Cup.¹¹ Nearly half of its money comes from just six top sponsoring companies, two of which (Sony and Emirates) ended their sponsorships in 2014 during a flurry of bad press surrounding the corruption allegations.¹²

On the other hand, most IOC and FIFA sponsors are more notable for their lack of response to these corruption scandals. Even with respect to those that did take action, their responses are not necessarily very effective. In the case of Sony and Emirates, the companies did not even mention the corruption scandal directly in announcing their decisions not to renew sponsorship deals. Further, the impact of their departures are mooted by other competitors' jumping in to take their spots.¹³ And other major sponsors, such as Visa and Coca-Cola, who made public statements calling on FIFA to take action, took no financial action or other steps that might have exerted real pressure in connection with their sponsorship roles.

Using case studies of corruption and corporate sponsor responses to scandals in the IOC and FIFA, this Article considers broadly how and when corporate sponsors effectively serve as private regulators of

11. Mike Esterl, *FIFA's Corporate Sponsors Welcome Resignation of Sepp Blatter*, WALL ST. J. (June 2, 2015), <http://www.wsj.com/articles/fifas-corporate-sponsors-welcome-resignation-of-sepp-blatter-1433277626> ("Sponsors also spend money on TV ads on networks around the world that air soccer matches. Overall, FIFA took in \$5.72 billion in the 2014 cycle.").

12. *Id.* Sony terminated its sponsorship worth \$277 million "saying the expense of sponsorship may become a burden in the future for the technology company." Polly Mosendz, *Sony Drops FIFA Sponsorship Amid Corruption Scandal*, NEWSWEEK (Dec. 1, 2014), <http://www.newsweek.com/sony-drops-fifa-sponsorship-amid-corruption-scandal-288443>. Emirates indicated that it would be interested in renewing its sponsorship deal once the corruption issues had been dealt with. *Emirates Keen on Sponsoring Fifa Once Corruption Scandal Is Cleared Up*, THE NATIONAL (June 21, 2016), <http://www.thenational.ae/business/aviation/emirates-keen-on-sponsoring-fifa-once-corruption-scandal-is-cleared-up> ("I'd like to think that when it's all sorted out we get back in because it's great for us, we're so football orientated," [Emirates President] said."). Other "second-tier" sponsors followed suit. Owen Gibson, *Scandal-Hit FIFA Loses Three More Major Sponsors*, THE GUARDIAN (Jan. 23, 2015), <https://www.theguardian.com/football/2015/jan/23/fifa-lose-three-sponsors-castrol-continental-tyres-johnson-and-johnson> ("Three of FIFA's sponsors during the 2014 World Cup in Brazil have joined Sony and Emirates in declining to renew their contracts with the scandal-hit world governing body. Castrol, Continental Tyres and Johnson & Johnson – so-called second-tier sponsors that had a high-profile presence in Brazil – have confirmed they have not renewed their deals.").

13. As of July 2015, Qatar Airways reported that it was in latter stages of negotiating a sponsorship agreement with FIFA (as a replacement for Emirates). Aaron Flanagan, *Qatar Airways Still Plan World Cup Sponsorship Despite Revelations of Alleged FIFA Corruption*, MIRROR (June 2, 2015), <http://www.mirror.co.uk/sport/football/news/qatar-airways-still-plan-world-5808056>.

corruption in international sports. The Article also describes many of the obstacles that currently stand in the way of effective regulation by corporate sponsors. After examining the literature considering private regulation in the transnational/international sphere generally, the Article considers what factors may have encouraged sponsors to engage in regulatory responses and discouraged others from behaving similarly. The Article concludes with thoughts about the overall potential of private regulation to help stem corruption in international sports organizations, despite some serious limitations.

I. THE RISE OF PRIVATE REGULATION

Legal regulation is often viewed as primarily within the purview of public lawmakers. Yet, as crossing borders becomes routine and globalization becomes the norm, regulation becomes difficult for public actors to control effectively. As a result, “public law, as either substantive rules or as systems of governance, has proven increasingly unable to respond efficiently to the problems of the governance of economic relations.”¹⁴ The result is that “[a] diverse group of actors today vie with national governments for the right to exert power and authority Of these, the modern multinational corporation (MNC) is perhaps the most powerful.”¹⁵

A deep scholarly literature describes the regulatory difficulties that arise when misconduct becomes multinational in scope.¹⁶ A variety of scholars from different academic disciplines have challenged the traditional public law framework that classically permeates scholarly analyses of regulation.¹⁷ These scholars analyze private law’s potential as a substitute for, or helpmate to, public law in

14. Backer, *supra* note 4, at 1745.

15. David Antony Detomasi, *The Multinational Corporation and Global Governance: Modelling Global Policy Networks*, 71 J. BUS. ETHICS 321, 321 (2007); *see also* Peter J. Spiro, *Constraining Global Corporate Power*, 46 VAND. J. TRANS. L. 1101, 1103 (2013) (“To the extent that states are less able to regulate them, then, globalization empowers multinational corporations”).

16. *See, e.g.*, PETER T. MUCHLINSKI, *MULTINATIONAL ENTERPRISES AND THE LAW* 123-72 (1999); Steven Lukes, *Five Fables About Human Rights*, in *ON HUMAN RIGHTS* 19 (Stephen Shute & Susan Harley eds., 1993); Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443, 446 (2001).

17. Backer, *supra* note 4, at 1745-1746 (citing SARAH JOSEPH, *CORPORATIONS AND TRANSNATIONAL HUMAN RIGHTS LITIGATION* 1128-43(2004); Mitchell F. Crusto, *Green Business: Should We Revoke Corporate Charters for Environmental Violations?*, 63 LA. L. REV. 175, 241 (2003); A.J. Natale, *Expansion of Parent Corporate Shareholder Liability Through the Good Samaritan Doctrine: A Parent Corporation’s Duty to Provide a Safe Workplace for Employees of its Subsidiary*, 57 U. CIN. L. REV. 717, 734-36 (1988)).

situations “[w]here regulation does not exist (in form or fact), or where markets in law break down or are inefficient.”¹⁸ Among other things, scholars pursuing this kind of research agenda study how and when private actors¹⁹—including corporations, civil society, the media, and individuals—separately and together can create a system of rule-making and rule-enforcement that may be more effective than public lawmaking standing alone.²⁰

A significant amount of scholarly research along these lines has recently been published in the transnational corporate law and business literatures. For instance, many projects have examined the potential of supply chain contracting to serve as an effective private regulatory mechanism.²¹ The hypothesis being tested in the supply-chain literature involves the potential of contracts to impact positively the labor conditions enjoyed by persons working in suppliers’ factories located in developing economies where serious human rights violations occur with depressing frequency.²² Specifically, companies at the top of supply chains arguably can regulate others in the chain by insisting on contractual commitments by their suppliers that they undertake to provide better and safer working conditions than they

18. Backer, *supra* note 4, at 1749.

19. Larry Catá Backer suggests there are four principal actors who function separately and in tandem as private regulators: (1) corporations and other enterprises; (2) civil society, primarily economic and human rights NGOs, (3) the media, and (4) consumers (of both media and market goods). *Id.* at 1748–49.

20. *Id.* at 1749; Mathias Koenig-Archibugi, *Transnational Corporations and Public Accountability*, 39 GOV’T & OPPOSITION 234, 245–57 (2004) (detailing the efforts to regulate corporations globally by states, international organizations, NGOs, and corporations themselves); Rhys Jenkins, *Corporate Codes of Conduct: Self-Regulation in the Global Economy*, U.N. RES. INST. FOR SOC. DEV. 1 (Apr. 2001) (describing the historic development of corporate codes); Sean D. Murphy, *Taking Multinational Codes of Conduct to the Next Level*, 43 COLUM. J. TRANSNAT’L L. 4–5 (2005) (describing emergence of corporate codes of conduct); Spiro, *supra* note 15, at 1104–09 (describing private regulatory approaches to disciplining transnational corporate behavior). *But see* Ralf Michaels, *The Mirage of Non-State Governance*, 2010 UTAH L. REV. 31, 33 (criticizing the notion of “non-state governance” as “conceptually,” “empirically” and “normatively unattractive”).

21. *See, e.g.*, RICHARD M. LOCKE, *THE PROMISE AND LIMITS OF PRIVATE POWER: PROMOTING LABOR STANDARDS IN A GLOBAL ECONOMY* (2013); Richard M. Locke, *Can Global Brands Create Just Supply Chains?*, BOSTON REV. (May 21, 2013), <http://bostonreview.net/forum/can-global-brands-create-just-supply-chains-richard-locke>; Kish Parella, *Outsourcing Corporate Accountability*, 89 WASH. L. REV. 747 (2014); Spiro, *supra* note 15 (noting generally that “voluntary initiatives have come under fire for a lack of enforcement architecture” and specifically citing workplace tragedies in Bangladesh that revealed weaknesses in supply chain regulatory initiatives).

22. *See, e.g.*, Tansy Hoskins, *Supply chain audits fail to detect abuses, says report*, THE GUARDIAN (Jan. 14, 2016), <https://www.theguardian.com/sustainable-business/2016/jan/14/supply-chain-audits-failing-detect-abuses-report>; Locke, *supra* note 21.

would be legally required to provide within their home jurisdictions. Such private contractual provisions can, in theory, fill public regulatory gaps at the supplier end of the chain.²³ Whether in fact this form of private regulation is feasible or effective at offsetting public regulatory failures is debatable,²⁴ but it has been embraced as a serious alternative in situations where public regulation is especially unrealistic.²⁵

In the field of environmental law, too, analysis of private contracts reveals the potential for private parties to regulate their contracting partners via the contract relationship. Professor Michael Vandenberg, a leading scholar in this area, reports on “recent empirical research” suggesting that a variety of private regulatory initiatives are positively affecting “environmental behavior and environmental quality.”²⁶

Vandenberg has described the practice wherein contracting parties incorporate public law environmental standards as terms of their private agreements, such as in credit agreements and insurance policies.²⁷ These provisions typically make it a contractual condition for borrowers or insureds to comply with environmental regulations – and sometimes with even stricter standards than those already required by law.²⁸ The existence of such contractual provisions, Vandenberg argues, means that the party imposing the requirement “has incentives to ensure that [the party subject to it] does not violate the law or engage

23. See, e.g., Parella, *supra* note 21 (criticizing current approaches for failing to take into account misaligned incentives of suppliers and their MNE buyers and suggesting alternatives that incorporate some elements of traditional public legal regulation).

24. See, e.g., Backer, *supra* note 4, at 1739-84.

25. Recent events, such as the Rana Plaza tragedy, suggest that dangerous workplace conditions pose a real threat to vulnerable workers worldwide. See Jana Kasperkevic, *Rana Plaza collapse: workplace dangers persist three years later, reports find*, THE GUARDIAN (May 31, 2016), <https://www.theguardian.com/business/2016/may/31/rana-plaza-bangladesh-collapse-fashion-working-conditions>. See also, e.g., John G. Ruggie, *Commentary: Quo Vadis? Unsolicited Advice to Business and Human Rights Treaty Sponsors*, INS’T. FOR HUMAN RIGHTS & BUS. (Sept. 9, 2014) (discussing contentious debate over multilateral treaty on topic of business and human rights); Larry Catá Backer, *Regulating Multinational Corporations: Trends, Challenges, and Opportunities*, 22 BROWN J. WORLD AFF. 1, 3 (2015) (same).

26. Michael Vandenberg, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 139 (2013).

27. Michael Vandenberg, *The Private Life of Public Law*, 105 COLUM. L. REV. 2029, 2030-32 (2005).

28. *Id.* at 2045 (“A sample of the credit agreements filed with the SEC suggests that firms filed more than 1,500 in 2001, and more than 70% of these credit agreements include environmental provisions.”).

in liability creating behavior.”²⁹ While it is unclear, as an empirical matter, how frequently lenders actually insist on influencing borrowers to comply (or not) with environmental obligations, “it is clear that lenders have incentives to select low-risk borrowers, and often have incentives to demand regulatory compliance or over-compliance during the term of the loan. As a result, in many instances lenders have incentives to engage in traditionally public regulatory functions, including monitoring and enforcement, implementation, standard setting, and dispute resolution.”³⁰ “Lenders also include provisions in credit agreements that establish their right to monitor debtors during the term of the loan and to enforce regulatory compliance (e.g., by declaring noncompliance to be a breach of representation and an event of default).”³¹

As research across disciplines develops, debate is only intensifying on the basic question of whether and how contracting can become a feasible mechanism for addressing transnational regulatory gaps across the board.³² Yet, it is clear that some forms of private regulation are increasingly being viewed as serious alternatives to public regulation—particularly in contexts where public regulation is especially unrealistic.³³

Contracts between corporate sponsors and international sporting organizations have the potential to serve a similar regulatory function.

The financial dependence of FIFA³⁴ and the IOC³⁵ on large corporate sponsors means that, at least in theory, sponsors may have

29. *Id.* at 2052.

30. *Id.* at 2053.

31. *Id.*

32. *See, e.g.,* Locke, *supra* note 21 (concluding that, “[d]espite many good faith efforts over the past fifteen years, private regulation has had limited impact”); Parella, *supra* note 21 (criticizing current approaches for failing to take into account misaligned incentives of suppliers and their MNE buyers and suggesting alternatives that incorporate some elements of traditional public legal regulation).

33. *See, e.g.,* Backer, *supra* note 4.

34. Corporate sponsors have served as a major source of cash for FIFA, which earned \$1.6 billion from sponsorship money in the four years leading up to the 2014 World Cup. Mike Esterl, *FIFA's Corporate Sponsors Welcome Resignation of Sepp Blatter*, WALL ST. J. (June 2, 2015) <http://www.wsj.com/articles/fifas-corporate-sponsors-welcome-resignation-of-sepp-blatter-1433277626> (“Sponsors also spend money on TV ads on networks around the world that air soccer matches. Overall, FIFA took in \$5.72 billion in the 2014 cycle.”).

35. Jere Longman, *Potential Olympic Sponsors Said to Be Uneasy*, N.Y. TIMES (Jan. 21, 1999) <http://www.nytimes.com/1999/01/21/sports/olympics-potential-olympic-sponsors-said-to-be-uneasy.html> (noting that sponsor money was critical to the ability of the United States to stage a full Winter Olympics).

significant leverage they can choose to utilize to combat corrupt behavior.³⁶ Case studies suggest that this does sometimes, but not often, occur.

II. CASE STUDIES: RESPONSES OF CORPORATE SPONSORS TO CORRUPTION SCANDALS IN THE IOC AND FIFA

Two of the most high-profile international sports organizations – the International Olympic Committee (“IOC”)³⁷ and the Fédération Internationale de Football Association (“FIFA”)³⁸ – have been the subject of numerous corruption scandals over the past decades. Just last spring, allegations emerged that bribery may have helped to secure Tokyo’s winning bid for the 2020 Summer Olympics.³⁹ While the suspicions of bribery ultimately proved unfounded, the allegations brought back memories of the scandal that rocked the 2002 Salt Lake City Games, in which members of the IOC took bribes from the Salt Lake Organizing Committee (“SLOC”) in the form of direct payments, land purchase agreements, tuition payments, and political campaign and charitable donations.⁴⁰ Ultimately, twenty IOC members were

36. To the extent that such leverage exists in fact, it might be written into the contracts that structure the sponsorship relationship, as in some of the examples from other fields discussed above, or, alternatively, might be exercised as part of that ongoing relationship outside its written terms. *See infra* Part 3 (arguing that regulatory influence by a stronger contracting partner may exist even when the contract terms do not reflect it. The formal contract terms in these contracts may, however, get in the way); *see also* Pamela S. Quinn, *Regulation in the Shadows of Private Law*, 28 DUKE J. COMP. & INT’L L. ____ (forthcoming 2017) (describing how the regulatory relationship between contracting parties might not be reflected in the terms of the formal contract).

37. The IOC is an international NGO organized “in the form of an association with the status of a legal person, recognized by the Swiss Federal Council in accordance with an agreement entered into on 1 November 2000. Its seat is in Lausanne (Switzerland), the Olympic capital. The object of the IOC is to fulfill the mission, role and responsibilities as assigned to it by the Olympic Charter.” INT’L OLYMPIC COMM., *Olympic Charter*, at 31 (Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.143403894.2109143337.1484936426.

38. FIFA “is an association governed by Swiss law founded in 1904 and based in Zurich. It has 211 member associations and its goal, enshrined in its Statutes, is the constant improvement of football.” FIFA, *About FIFA: Who We Are*, <http://www.fifa.com/about-fifa/who-we-are/index.html> (last visited Feb. 23, 2017).

39. *Japan Investigators Say No Bribery in Tokyo Olympic Payment*, BBC NEWS (Sept. 1, 2016), <http://www.bbc.com/news/world-asia-37243012>.

40. Stephanie Grimes, *Five Biggest Scandals in Winter Olympic History*, L.V. REV.-J. (Feb. 19, 2014), <http://www.reviewjournal.com/sports/5-biggest-scandals-winter-olympic-history>.

either expelled or sanctioned.⁴¹

FIFA endured its own recent corruption scandal after allegations of bribery emerged in the selection of host countries for two upcoming World Cups. Ultimately, dozens of FIFA executives, including those at the very top of the organization, were indicted by the United States Department of Justice.⁴²

In the case of each of these scandals, corporate sponsors played a role in the response to the breaking allegations of corruption. In both cases, a few sponsors took action while most did not. Notably, however, with respect to those sponsors that did choose to act, the types of actions taken have varied fairly broadly.

Corporate Sponsors' Responses to the IOC Bribery Scandal

When the bidding scandal over the 2002 Salt Lake City Games emerged, the John Hancock Life Insurance Company's CEO David D'Alessandro publicly demanded resignations of various IOC members including the IOC President Juan Antonio Samaranch.⁴³ In making such demands, John Hancock did not simply terminate its relationship or pull its sponsoring dollars. Instead, the company took other concrete measures, such as taking the Olympics logo off of Hancock's billboards and other advertising and, perhaps most significantly, freezing its purchase of \$20 million in advertising during the NBC 2000 Summer Olympics coverage.⁴⁴

A few sponsors cited the scandal as part of decisions not to renew sponsorship deals.⁴⁵ In addition, while the scandal was unfolding, there were reports that two *potential* Salt Lake City sponsors were skittish and refusing to finalize deals.⁴⁶

For the most part, however, sponsors were largely quiet while the scandal was unfolding.⁴⁷ When John Hancock's decision to suspend

41. *Id.*

42. See, e.g., *Fifa Corruption Crisis: Key Questions Answered*, BBC NEWS (Dec. 21, 2015), <http://www.bbc.com/news/world-europe-32897066>.

43. Sandomir, *supra* note 8.

44. *Id.*

45. Ameet Sachdev, *Sponsors Say Scandal Didn't Stain Olympics*, CHI. TRIB., (Sept. 5, 2000), http://articles.chicagotribune.com/2000-09-05/business/0009050022_1_ioc-sydney-games-winter-games (noting that IBM ended its 38-year relationship with the Olympics and that the scandal had affected UPS's analysis of whether to renew).

46. Longman, *supra* note 37.

47. See, e.g., Stephen Wilson, *Olympic Games: Salt Lake Inquiry Implicates 24*, THE INDEPENDENT (Feb. 11, 1999), <https://www.independent.co.uk/sport/olympic-games-salt->

advertising negotiations was made public, the IOC's Marketing Director Michael Payne was quick to report that Olympic sponsors were generally standing with the IOC during the crisis. Payne asserted that sponsors remained not just committed to the Olympic Games but also "are standing . . . behind the steps and action the IOC, Samaranch and the executive board are taking [in response to the bribery inquiry]."⁴⁸

Corporate Sponsors' Responses to the FIFA Corruption Scandal

The responses of sponsors in connection with the recent FIFA scandal were even more muted. Perhaps the most significant response was the refusal of two of FIFA's "big six"⁴⁹ sponsors (Sony and Emirates) to renew their sponsorship deals in 2014.⁵⁰ A few other major sponsors, namely Visa and Coca-Cola, made public statements calling on FIFA to take action to resolve its corruption problems.⁵¹

For the most part, however, FIFA sponsors have been criticized for their lack of response to the corruption scandal and, even with respect to those that did take action, with the lukewarm nature of the responses. Neither Sony nor Emirates discussed or cite directly the corruption scandal in announcing their decisions not to renew

lake-inquiry-implicates-24-1070165.html.

48. *Id.*

49. Nearly half of FIFA's sponsorship dollars comes from just six top sponsoring companies. Esterl, *supra* note 11.

50. Sony terminated its sponsorship worth \$277 million "saying the expense of sponsorship may become a burden in the future for the technology company." Polly Mosendz, *Sony Drops FIFA Sponsorship Amid Corruption Scandal*, NEWSWEEK (Dec. 1, 2014, 5:31 PM), <http://www.newsweek.com/sony-drops-fifa-sponsorship-amid-corruption-scandal-288443>; Emirates indicated that it would be interested in renewing its sponsorship deal once the corruption issues had been dealt with. *Emirates Keen on Sponsoring Fifa Once Corruption Scandal Is Cleared Up*, THE NATIONAL (June 10, 2016, 12:48 PM), <http://www.thenational.ae/business/aviation/emirates-keen-on-sponsoring-fifa-once-corruption-scandal-is-cleared-up> ("I'd like to think that when it's all sorted out we get back in because it's great for us, we're so football orientated," [Emirates President] said."); Other "second-tier" sponsors followed suit. Scandal-hit FIFA lose three more major sponsors. Gibson, *supra* note 12. ("Three of Fifa's sponsors during the 2014 World Cup in Brazil have joined Sony and Emirates in declining to renew their contracts with the scandal-hit world governing body. Castrol, Continental Tyres and Johnson & Johnson – so-called second-tier sponsors that had a high-profile presence in Brazil – have confirmed they have not renewed their deals.").

51. Alexander Smith, *FIFA Corruption Scandal: Sponsors Visa, Coca-Cola Express Concern*, NBC NEWS (May 28, 2015, 6:41 AM), <http://www.nbcnews.com/storyline/fifa-corruption-scandal/visa-coca-cola-mcdonalds-are-extremely-concerned-fifa-scandal-n365806>.

sponsorship deals.⁵² Nor did critics like Visa and Coca-Cola take any financial action or threaten any.⁵³

III. THE PITFALLS OF REGULATION BY CORPORATE SPONSORS IN THE INTERNATIONAL SPORTS ARENA

The lack of response is in some tension with the significant *potential* of corporate sponsors to exert influence in this context, as discussed in some detail in Part I above. Both the IOC and FIFA are heavily financially dependent on their sponsors.⁵⁴ The threat of lost sponsorship dollars was a threat that seems to have exerted real influence over the IOC in resolving the Salt Lake City scandal.⁵⁵ Yet, the ability of sponsors to exert this influence is undermined by several significant obstacles, which likely explains the muted responses in both cases described in Part II.

First, it has been speculated that FIFA sponsors whose contracts were not up for renewal may have been contractually prevented from withdrawing sponsorship or making strong public statements condemning the scandal as it was unfolding.⁵⁶ According to this account, it is the corporate sponsors, not the sporting organization, whose behavior is more likely to be regulated by the contractual relationships between them.

Although sponsorship contracts almost certainly have so-called “morals clauses” that would provide sponsors with the right to withdraw should certain types of scandals emerge, some experts have suggested that such clauses might not cover scandals in which individuals rather than the organization are the focus.⁵⁷ That is, “[e]ven

52. Mosendz, *supra* note 54.

53. Phil Rosenthal, *FIFA scandal statement: Visa, McDonald's, others don't run, won't kick*, CHICAGO TRIBUNE (May 29, 2015, 5:31 PM), <http://www.chicagotribune.com/business/columnists/ct-rosenthal-fifa-corruption-0531-biz-20150529-column.html>; Darren Rovell, *Corporate Sponsors yet to drop FIFA amid corruption investigations*, ESPN FC (May 27, 2015), <http://www.espnfc.us/fifa-world-cup/story/2469265/corporate-sponsors-yet-to-drop-fifa-amid-corruption-probe>.

54. See de Moraes, *supra* note 7 & accompanying text.

55. Larry Siddons, *IOC expels six members in Salt Lake City scandal*, THE GUARDIAN (March 17, 1999, 6:00 AM), <https://www.theguardian.com/sport/1999/mar/17/ioc-expels-members-bribes-scandal>; see also Alex Altman, *The Real Story of Romney's Olympic Turnaround*, TIME (July 18, 2012), <http://swampland.time.com/2012/07/18/the-real-story-of-romneys-olympic-turnaround/> (discussion about Romney being hailed for bringing in so many sponsor dollars in the aftermath of the scandal).

56. Gosh, *supra* note 6.

57. *Id.*

if multiple individuals are convicted, that may not be enough to trigger a morals clause.”⁵⁸ More than likely, the contracts are drafted to be friendly to the organization and the morals clauses may be drafted to require “a criminal conviction actually involving” the organization.⁵⁹

Further, even if the clauses are not clear-cut in this respect, if there is an argument that a morals clause is not clearly triggered, the risk may seem to be too great for sponsors to undertake. If they are wrong in interpreting the morals clause to apply in a given case, there might “be significant financial consequences” in the form of potential “damages for breach of contract”—perhaps even equal to the value of the entire deal.⁶⁰ The risk for the most financially invested would be the highest, thus handicapping those sponsors with the most potential influence.

Second, the financial stakes may seem particularly high to sponsors given the lack of a clear upside to staking out a critical position. With respect to the FIFA scandal, Professor Jeroen Weijermars claims that

consumers also seem to be quite indifferent. The Dutch press suggested that consumers stop buying any product sponsoring FIFA as a sign of rejection, but nothing happened. Moreover, consumers quickly forget: at the next World Cup, the ball will be put into play and it will again be one of the greatest sporting events.⁶¹

He notes that, in general, “studies that show negative publicity causes little damage to a sponsor’s brand value.”⁶²

Given the probability that brand value will suffer little, sponsors may feel they are standing in a sweet spot if they take some steps to signal disapproval but not so much that they trigger the ire of the organization and a threatened action for breach. This is particularly true given the increasing importance many companies place on being viewed as a good corporate citizen.⁶³ “A combination of media

58. *Id.*

59. *Id.*

60. *Id.*

61. Jeroen Weijermars, *The sponsors’ reaction to FIFA case*, JOHAN CRUYFF INST.: THE MAGAZINE, (June 02, 2015) <http://johancruyffinstitute.com/en/blog-en/the-sponsors-reaction-to-fifa-case/>.

62. *Id.*

63. See Sarah Dadush, *Profiting in (RED): The Need for Enhanced Transparency in Cause-Related Marketing*, 42 N.Y.U. J. INT’L L. & POL. 1269, 1278 (2010) (discussing the importance of a company’s boosting its corporate social responsibility image and its sales).

pressure, social media commentary, and ‘sophisticated’ understanding of [corporate social responsibility (“CSR”)] means few of the brands are willing to stay completely quiet.”⁶⁴ All of this is in line with the reality that “[s]ome sponsors have been more vocal than you’d expect, publicly.”⁶⁵

Third, structural obstacles may make it difficult for many if not most companies to do more. As noted above, strict contract provisions in FIFA sponsor contracts may tie the hands of sponsors to do much. To the extent there is little brand tarnishment associated with these scandals, the organization may stay in the driver’s seat in terms of contract negotiations – especially in situations where there are sponsors lined up to take a spot if one drops out. While sponsors may find themselves in a position to demand contract provisions that give them more power in the wake of a scandal—as several companies apparently did with the IOC at the tail end of the Salt Lake City scandal—this position may have changed significantly by the time the next renewal period comes around. Ultimately, unless brand tarnishment through association becomes a real issue, sponsors may not wield as much authority as their dollar contributions suggest they should.

The CEO of John Hancock has also spoken directly to the issue of organizational obstacles that stand in the way of sponsors’ ability to exert real regulatory pressure, claiming that his background, which put him in a unique position to take the stance he did vis-à-vis the IOC during the Salt Lake City scandal, is unusual for a high-ranking corporate official.⁶⁶ Specifically, he claims that sports sponsorship contracting is typically run out of divisions within a company headed by middle managers who are unlikely to have the status or incentives necessary to advocate for harsh sanctions.⁶⁷ Moreover, unlike D’Alessandro himself who did exactly this, those who serve in those middle management jobs and have the expertise and knowledge of sponsorship deals generally do not move up the company “food chain” to positions where they might achieve such status.⁶⁸

64. Gosh, *supra* note 6.

65. *Id.* (“It’s a trend that sponsors have become more prepared to stick their heads above the parapet and actively engage with the public conversation.”) (quoting Nick Johnson, board director for the European Sponsorship Association).

66. Sachdev, *supra* note 49 (noting that David D’Alessandro, John Hancock’s CEO, was the most critical corporate backer of the IOC after the Salt Lake City scandal).

67. Sandomir, *supra* note 8.

68. *Id.*

Finally, even when they are in such a position to do something, sponsors' regulatory efforts may not be as public as John Hancock's were. Behind the scenes action may be deemed more effective—but would be hard to identify or measure.⁶⁹ In general, both sides are likely to understand that “it could do more harm than good for the sponsors to quit” altogether and rescind their affiliation with the sporting organization.⁷⁰ Where they maintain established relationships, they maintain leverage or influence. “[I]t’s going to be easier for them to work within existing parameters than for any new sponsor coming in.”⁷¹ Both the organization and sponsor may also be aware that the impact of sponsors' potential departures might be muted or mooted to the extent competitors are easily lined up to take their spots.⁷² For instance, Emirates' departure as a FIFA sponsor was quickly overshadowed by news that Qatar Airlines was already in line to take its place.⁷³

CONCLUSION

John Hancock's efforts to push the IOC to take action to clean house in the wake of the Salt Lake City bribery scandal appear to have been very effective at pushing the IOC to do just that. Unfortunately, the lack of broader sponsor efforts at that time, and tepid responses to the FIFA scandal, may reflect the existence of various impediments to effective corporate regulation of corruption more generally. While the success of John Hancock should encourage those who are looking for glimmers of hope in a difficult to regulate space, unpacking what made it successful and contrasting with more typical responses reveals that it is certainly no panacea or magic solution to lean more on the corporate sponsor community to combat corruption by these organizations.

69. See, e.g., Smith, *supra* note 55.

70. Gosh, *supra* note 6.

71. *Id.* (quoting Johnson).

72. For example, as of July 2015, only months after the departure of major sponsors such as Emirates during the FIFA corruption scandal, Qatar Airways reported that it was in latter stages of negotiating a sponsorship agreement with FIFA (as a replacement for Emirates). Flanagan, *supra* note 13.

73. *Id.*