

Points of Clarification

Our stock market of people was founded on the spirit of 2006 Nobel Peace Prize Winner Muhammad Yunus' microloans to entrepreneurial women hindered by poverty in Bangladesh, and on the Olympic pursuit of sports achievement in a culture of international unity.

1. MOTIVATION FOR SPONSORING AN ATHLETE

The financial market of athletic sponsorships that we offer to investors focuses on supporting a limited group of high potential athletes who could enhance their tournament preparation with better funding. Investors are likely to earn a small return on their sponsorship with the opportunity for their return to increase if their athlete advances farther in a tournament than expected.

Our stock market of people can be best understood as primarily a market for compassionate sports enthusiasts seeking to contribute to an athlete's development and to follow their progress on the pro tour as a fan and investor. As a gift for their financial support, they will receive a percentage of the athlete's prize money and possibly some free gifts such as tickets to tournaments and autographed items in recognition of their contribution. This allows people investing to be exciting and financially rewarding to investors and thus seeks to improve the overall experience of sports fans.

2. ONLY PROFESSIONAL ATHLETES IN INDIVIDUAL SPORTS QUALIFY FOR OUR PROGRAM

Our program minimizes risk for investors by raising funds for athletes who are already professional. This eliminates the uncertainty of whether an athlete will ever make it to the pro tour. Investing in youths would be a riskier proposition for investors given that any number of negative events, such as a career-ending injury, could occur in the many years that would pass before the youth reached an age where he could turn professional.

Selecting high potential athletes when they are youths also presents difficulties in terms of the quality of athletes that we would be able to recruit. Athletes would have to issue a much higher percentage of their prize money to the investor base to compensate for the higher risk incurred by investors. The prospect of giving up a larger percentage of their tournament prize money may deter some high potential youths from participating unless their economic need for funding was sufficiently large.

In an effort to reduce the risk for investors, we select athletes who are already professional and will be competing in a series of professional tournaments. Individual sports have

tournaments or competitions that offer prize money for participating athletes. Based on our tournament model, we are able to examine the prize money offered by each tournament to utilize a more precise valuation of an athlete's sponsorship contract for an upcoming series of tournaments.

Due to the nature of team sports, we do not accept professional athletes in team sports for our program. In team sports, athletes are typically drafted by a team's managers and coaches whom consider a wide range of factors including the abilities of the other players on their team. It would be very difficult to derive an accurate valuation for an athlete in team sports. In addition, investors would be engaging in a higher risk investment with a lower chance of receiving a return to compensate for the larger risk they undertook.

3. A SHARE OR A PIECE OF AN ATHLETE'S SPONSORSHIP CONTRACT IN THE JOCK MARKET DOES NOT CONSTITUTE A SECURITY

According to the Howey Test, there are four criteria used to determine whether an investment constitutes a security that falls under the Securities Act of 1933 as stated in Section 2(a)(1):

- (1) Investment of money
- (2) In a common enterprise
- (3) With an expectation of profits
- (4) To be earned solely through the efforts of others

To begin the analysis, we examine the criteria that investments in athletes in our market satisfy. It becomes evident that investing in athletes meets criteria 1 of being an investment of money. Giving an athlete money to support their training in order to receive a percentage of the athlete's prize money from a specific tournament is a transaction whereby investors transfer money to athletes with the expectation that a profit or return will follow.

For the moment, we skip criteria 2 and proceed to criteria 3 that an investment is made with an expectation of profits. As mentioned in the discussion of criteria 1, investors provide athletes with funds in order to earn a return on the money given to athletes. The fact that investors expect to earn a return in the form of a percentage of the athlete's prize money distinguishes the purchase of a sponsorship contract from a donation that is made with no expectation of profits. As such, investing in athletes satisfies criteria 3 that investors expect to earn a return on their investment.

We return to criteria 2 to show that investing in athletes does not meet this criterion and thus ultimately cannot qualify as a security. With regard to criteria 2 of common enterprise, the possibility for a human to be considered a common enterprise can be eliminated given that a common enterprise is a business enterprise or business venture. The premise that an individual is not a common enterprise prevents the classification of investments in people as a security under the Howey Test. The details on this assertion follow.

In the *Howey* case, the importance of the criteria was explained that “a common enterprise managed by respondents or third parties with adequate personnel and equipment is therefore essential if the investors are to achieve their paramount aim of a return on their investments.” Taking into account this declaration, the first point of distinction between investing in a human in our market and investing in a common enterprise lies in the primary motivation for investing. In financial markets that have achieved a large scale as well as the ability to deliver significant amounts of wealth to investors, investors put money into an enterprise primarily to earn a return. This corresponds to the court’s statement that receiving a return is the “paramount” or principal aim for investors purchasing securities.

However, the notion of investing in people introduces an emotional dimension to investing that previously did not exist. The emotional aspect refers to the genuine concern for another human being’s welfare and the desire to provide support during times of struggle. It follows that the invention of people investing is accompanied by a new approach to investing - one of compassionate investing - that shifts the paramount aim for investing from solely earning profit to offering support for an athlete’s development. With this main purpose for investing, earning a small return becomes the secondary motivation for investors.

Even with a significant point of distinction between an individual and a common enterprise on a general level, we engage in a more detailed analysis of people investments by discussing the three methods employed to determine whether an investment satisfies the common enterprise requirement: horizontal approach, narrow vertical approach and broad vertical approach.

The horizontal approach focuses on the relationship among investors in a business venture. Horizontal commonality exists when at least two investors have a similar relationship in a business enterprise in which they pool their funds, and share all the risks and benefits of the business enterprise. The narrow vertical approach states that a common enterprise exists if there is a correlation between the fortunes of an investor and a promoter. The earnings of investors are intertwined and dependent upon the efforts and success of the promoters of the investment. For there to be a common enterprise, the broad vertical approach requires that the success of an investor depends on the promoter’s expertise. That is, investors depend upon the expertise or efforts of the investment promoter for their returns.

Regardless of the approach used to evaluate whether an investment is made in a common enterprise, it can be demonstrated that investments in athletes do not meet the criteria of common enterprise. The explanation will cover the contradiction that arises from a claim that an individual is business enterprise, the establishment of no correlation between the fortunes of an investor and the promoter, and the absence of a dependence of the investor’s success on the promoter’s expertise.

People investments fail to constitute a common enterprise using the horizontal approach. The critical element of the definition of a common enterprise is that it is a business enterprise. From this central point of the test for common enterprise, the question that arises is whether a single person can be defined as a business enterprise. An analysis reveals that an individual cannot constitute a business enterprise. Certainly, a person can found a business enterprise by opening a business that provides products or services to customers or by incorporating their business. But in no way can a human by himself be considered a business enterprise for there can never be ownership in an individual.

To claim that a human is a business enterprise would imply that an individual can be owned by another person or group of people. A business enterprise can be owned by an individual or group of individuals. A human cannot be owned by other people. Fundamental to a business venture is the role of ownership to control the decisions and actions of the business as an organizational entity. Investors provide funds to a business enterprise for a percentage of ownership or a stake in the company's earnings.

Therefore, a claim that an individual is a business enterprise suggests that an individual can be owned by others who have the power to dictate a person's life. The assertion that a human can be subject to ownership is unable to withstand the principles of individual liberty guaranteed by the rule of law. Taken to its extreme, ownership of an individual to the degree that it is possible in a business enterprise would be a form of human slavery. It is impossible for slavery to exist in the modern legal system.

To a lesser extent, ownership of an individual's labor would be indentured servitude. Laws preventing indentured servitude declare that a person's labor cannot be owned for any period of time. A person working for an employer receives wages to compensate the worker for his time and effort, which have an opportunity cost. While employers pay for a worker's services to the firm, there is no sense of ownership over an individual. If there is dissatisfaction over the worker's inability to meet certain standards or guidelines, the employer merely terminates the worker's employment contract.

We have shown that any claim that a human is a business enterprise gives rise to a natural contradiction within a legal structure. The one aspect that makes the existence of a business enterprise possible is the ownership of a business by more than one person. Yet modern law prohibits the ownership of an individual or an individual's labor by others through laws preventing slavery and indentured servitude. So in order for one to claim that a person is a business enterprise would require that a human can be subject to ownership by others, which would violate laws preventing slavery and indentured servitude.

The narrow vertical approach for establishing the presence of a common enterprise falters on the basis that there is no correlation between the fortunes of an investor and the promoter of the investment. The company selling an athlete's sponsorship contract for an upcoming series of tournaments acts as the promoter of the investment. It creates a detailed athlete profile and compiles information about the tournaments to provide

investors with as much information as possible to enable investors to make informed decisions. But the company, as the promoter of the investment, receives 10% of the investment proceeds raised for the athlete as compensation for the marketing services for the athlete and informational services for investors regardless of how the athlete performs at the tournaments.

The return that investors receive does not depend on the amount that the company receives. The company receives a fixed percentage of proceeds raised as payment for connecting athletes with investors. The gain to investors depends on the actual rather than expected performance of the athlete that they sponsored, in which it should be noted that the athlete is not the promoter of the investment. Stated differently, the investor and the promoter do not benefit in the same manner. The dichotomy between the earnings to investors and the earnings to the promoter of the investment excludes the possibility of commonality between the investors and promoter in a business venture.

Using the broad vertical approach, the criteria of common enterprise cannot be satisfied due to the fact that the success of an investor does not depend on the promoter's expertise. Our company serves as the promoter of the investment by creating a centralized site on the internet to provide full information about an athlete, his past performance and his upcoming tournaments. Expertise that would enhance an investor's success would require specialized or a unique type of knowledge in the field of professional sports.

The only type of expertise that would raise the chances of success for investors is expertise in the management of sports and professional athletes. Yet we only provide a market mechanism that connects athletes seeking funding with investors who are passionate about sports and interested in supporting athletes. The role of our company in providing descriptive information about athletes to investors originates from common skills such as interview and writing abilities. A recording of events, goals and past performance would not qualify as expertise or specialized knowledge in a field that would improve the investor's chance of success. An examination of the common enterprise criteria from all three different approaches shows that buying shares in an athlete's sponsorship contract fails the Howey Test for a security.

Further, the case of the *United Housing Foundation v. Forman* emphasized that we must look beyond nominal terms in determining whether an investment constitutes a security. Simply because an investment is called a "stock" does not necessarily mean that it is a security. The economic reality test dictates that the nature of the economic transaction and its finer details must be examined to evaluate whether the criteria of the Howey Test are met for the investment to be considered a security. From this, it can be observed that a seeming glance at the use of terminology in our market involving "stock" should not lead one to the immediate conclusion that investments in athletes meet the criteria for a security.