



Implementing a Franchise Player Designation System in the National Basketball Association

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During the most recent Collective Bargaining Agreement (CBA) negotiation process in 2010-11 between National Basketball Association (NBA) team owners and the National Basketball Players Association (NBPA), the owners proposed adding a new element to the then-current free agency rules—a “franchise player designation.”¹ A franchise tag would have allowed each NBA team to designate one player (who would otherwise have been a free agent) as a “franchise player” each season. That player would only be allowed to sign a contract with his incumbent (i.e., prior) team. The primary purposes of a franchise tag system are to reduce the probability of a team losing its best player(s) in free agency as well as increase the likelihood that teams are able to retain their key players for the maximum number of years possible. The ideal outcome is that a player and his prior team agree to a long-term contract extension to avoid application of the franchise player designation altogether.²

The NBA owners proposed a variation of the National Football League’s (NFL) franchise tag. Unlike the franchise tag system in the NFL, the model proposed by NBA owners would have required a player’s consent to being “franchise-tagged.”³ In addition, the “tagged” players would have also received contract sweeteners that “untagged” players would not be eligible to receive (for example, longer contract length, higher overall salary

¹ Kurt Helin, *Report: NBA Proposes Franchise Tag, Non-Guaranteed Contracts*, SI.COM, (May 11, 2011) <http://nba.nbcsports.com/tag/franchise-tag>. The terms “franchise player designation” and “franchise tag” are used interchangeably in this article.

² See Chad Ford, *Franchise Player Tag in the NBA?* ESPN.COM, (Jan. 21, 2011), http://espn.go.com/blog/truehoop/post/_id/24106/franchise-player-tag.

³ Helin, *supra* note 1.

and more guaranteed money).⁴ The primary objective of the proposed franchise tag was to improve the ability of teams to keep star players by increasing “the gap between what teams can offer a ‘designated player’ and what non-designated players can get on the open market.”⁵ This franchise player designation was one component of a larger overall (and ultimately unsuccessful) league proposal related to player revenue and salary structure, which also sought to reduce player salaries and contract lengths as well as create a hard salary cap.⁶ The NBA owners and the NBPA eventually agreed to a new comprehensive CBA in December 2011 after a 161-day lockout that resulted in 16 lost games for each team. However, the owners and players failed to agree on the issue of integrating a franchise tag provision into the current NBA CBA. The NBA and the NBPA each have the ability to opt-out of the current CBA in June 2017.⁷ Recent events suggest that the NBPA will do so.

In October 2014, the NBA announced a new nine-year, \$24 billion media rights agreement with Turner Broadcasting and ESPN.⁸ Beginning with the 2016-17 NBA season, NBA teams will receive a significant boost in revenue based on this new media rights deal (i.e., from approximately \$30 million per team each year to more than \$75 million per team each year). As a result, NBA players are expected to opt-out of the current CBA in June 2017 and request a larger share of Basketball Related Income.⁹ Michele Roberts, the new Executive Director of the NBPA, explained: “The new television and media deals are good news for all of the stakeholders in the NBA . . . Although we have seen strong revenue growth and significant increases in franchise values over the past three years, it is clear that the league is now entering a period of unprecedented revenue growth. Our job will be to ensure that the players receive their fair share of the results of their efforts.”¹⁰ If the players decide to opt-out of the CBA in 2017, it is

⁴ See *id.*

⁵ *Id.*

⁶ See Chris Sheridan & Chris Broussard, *Players Unhappy with Owners' New Offer*, ESPN.COM (May 4, 2011), <http://sports.espn.go.com/nba/news/story?id=6476219>.

⁷ *2011 Collective Bargaining Agreement*, National Basketball Association, art. XX-XIX § 2 [hereinafter NBA CBA].

⁸ See Press Release, *NBA Extends Partnership with Turner Broadcasting, Disney*, NBA.COM (Oct. 6, 2014), available at <http://www.nba.com/2014/news/10/06/nba-media-deal-disney-turner-sports/>.

⁹ See NBA CBA art. VII §1 (defining Basketball Related Income).

¹⁰ Jeff Zillgitt, *NBA Will Have More Programming Under New TV Deal*, USA TODAY (Oct. 6, 2014), available at <http://www.usatoday.com/story/sports/nba/2014/10/06/nba-tv-deal-espn-turner/16807359/>.

quite possible that the owners could once again push for implementation of a franchise player designation system.

In 2010, when asked about whether he foresaw the NBA advocating for teams to be able to utilize franchise tags, then-current NBA Commissioner David Stern responded, “I think that the franchise player is an interesting concept; I’m sure it will come up in collective bargaining, but I think players are entitled to get the benefit of what they bargained for . . . and the union bargains for free agency after the players serve out a certain contract length.”¹¹ Steve Kerr, former General Manager of the Phoenix Suns and current head coach of the Golden State Warriors, commented that “[t]he franchise tag would be a huge hit for the owners; one of the biggest issues they’re trying to accomplish . . . is cutting down the length of guaranteed contracts and getting rid of dead money.”¹² Another NBA General Manager explained, “I think this is one way, along with revenue sharing, that levels the playing field a bit. For some markets, the only way to get superstars is to draft them. If they’re just going to leave after we develop them—that’s a big problem . . . [O]nce that rookie extension is over, the trend seems to be that the best players leave.”¹³

This article proposes that the NBA adopt a franchise player designation system in specifically defined circumstances—for first-round picks who last played under a four-year rookie salary scale contract and for players who last played under a multi-year contract signed in free agency with an average annual salary of at least \$10 million. Part I of this article summarizes the use of franchise and transition player designations in the NFL. Part II of this article explains why the NFL franchise tag model would not be effective in the NBA, and details preliminary issues to consider with respect to developing and implementing a franchise player designation system in the NBA. Part III of this article highlights the NBA’s restricted free agency and qualifying offer rules, and analyzes the core purpose and function of a franchise tag system in relation to these rules. Part IV of this article provides several case studies that demonstrate the viability and sustainability of a franchise tag system, along with possible limitations and challenges of such a system. Part V of this article outlines the proposed new franchise player designation

¹¹ Benjamin Hochman, *NBA Commish David Stern Talks Carmelo Anthony*, *CBA Talks*, DENVER POST (Oct. 22, 2010), available at <http://blogs.denverpost.com/nuggets/2010/10/22/nba-commish-david-stern-talks-carmelo-anthony-cba-talks>.

¹² Kyle Stack, *A Franchise Tag in the NBA*, SLAM ONLINE MAGAZINE (Sept. 2, 2010) available at <http://www.slamonline.com/online/nba/2010/09/a-franchise-tag-in-the-nba>.

¹³ Chad Ford, *Franchise Player Tag in the NBA?*, ESPN.COM (Jan. 21, 2011), available at http://espn.go.com/blog/truehoop/post/_id/24106/franchise-player-tag.

model and provides several case studies illustrating how the system would operate. The article concludes with a recap of the proposed model as well as a discussion on the likelihood that the NBA and its players will adopt the proposed NBA franchise player designation framework.

I. FRANCHISE AND TRANSITION PLAYER DESIGNATIONS IN THE NFL

The NFL's franchise player and transition player designations allow a team to "tag" one player each season who would otherwise be a restricted or unrestricted free agent. This gives the team either exclusive negotiation rights (for franchise players) or the right of first refusal to match an offer sheet that the player signs with another team (for transition players).¹⁴ Franchise tags are a form of ultra-restricted free agency that enable a team to prevent a player who is considered too valuable for the team to risk losing in an open free agent market from signing a contract elsewhere.¹⁵ Each tag is for a one-year contract, which significantly restricts the ability of that player to change teams and sign a long-term contract that could provide greater financial security.¹⁶

The NFL has had these franchise tag rules in place since 1993.¹⁷ The NFL Players Association (NFLPA) agreed to the designation system simply because no form of free agency existed prior to the first NFL CBA.¹⁸ The rationale behind agreeing to this restriction was that NFL players collectively agreed that one "right of refusal player" per team via the franchise player system was much better than 37 per team (when there was no free

¹⁴ See 2011 NFL Collective Bargaining Agreement, National Football League, art. IX § 1–2 [hereinafter NFL CBA] (defining an Unrestricted Free Agent as a player with four or more accrued seasons and is thus completely free to negotiate and sign a player contract with any club without the prior team having any first refusal rights, and defining a restricted free agent as a player with less than four accrued seasons and is thus completely free to negotiate and sign a player contract with any club but with the prior team being able to receive a right of first refusal and/or draft choice compensation by tendering the player a qualifying offer).

¹⁵ See Larry Coon, *For Melo, Free Agency Full of Risks*, ESPN.COM (Feb.16, 2011), available at http://sports.espn.go.com/nba/columns/story?columnist=coon_larry&page=CarmeloFA-110216.

¹⁶ See Jason Cole, *Sources: Union to Fight 'Franchise' Rule*, YAHOO! SPORTS, February 3, 2011, <http://sports.yahoo.com/nfl/news?slug=jc-franchisetag020311>.

¹⁷ See Mike Tanier, *Too Deep Zone: The First Franchise Player*, February 19, 2007, <http://www.footballoutsiders.com/walkthrough/2007/too-deep-zone-first-franchise-player>.

¹⁸ See Charles Ochab, *Don't Franchise Me! The NFL's Emerging Dilemma*, ILLINOIS BUS. L. J. (March 12, 2007), available at <http://www.law.uiuc.edu/bljournal/post/2007/03/12/Dont-Franchise-Me!-The-NFLs-Emerging-Dilemma.aspx>.

agency at all), so the players accepted the compromise back in 1993 likely without understanding the long-term ramifications of having this provision in the NFL CBA.¹⁹

The NFL's designations require that teams make a specific type of one-year tender offer to the player whom they wish to label as a franchise or transition player. The one-year tender offer salary amount is calculated based on either the average value of the top-five or top-ten player salaries at the designated player's relevant position, depending on whether the player is labeled a franchise or transition player.²⁰ The franchise and transition average values are calculated the same way for every player at the player's position. Thus, there is not an independent calculation of the fair market value for a particular player based on statistics or production—it is assumed to be the average of the annual salaries of the top-five or top-ten highest-paid players at that specific position. A team can only use one of each type of tag per year, and the team may use a franchise tag on the same player for up to three consecutive years.²¹

There are two types of franchise players, which are classified based on the type of required tender that the team offers the player. The first category of franchise player—exclusive franchise tender—is offered the highest-value one-year tender, which is the greater of (a) the average salary of the five largest salaries for players at the franchise player's position (average salary determined for both the five prior seasons and upcoming season), or (b) 120% of the player's prior year salary; the franchise player given this type of designation is prevented from negotiating with any other team.²²

The second category of franchise player—nonexclusive franchise tender—is offered a lower-value one-year tender, which is typically the average of the five largest prior year salaries for players at the franchise player's position (average based on prior five years of salary data); the franchise player given this type of designation can negotiate with another team with the prior team retaining a right of first refusal and receiving two first-round draft selections if the team does not match an offer sheet, thereby allowing the player to sign with a new team.²³

If a player is designated as a transition player, he can sign a contract with a new team, but his prior team has the right of first refusal.²⁴ If another team agrees to a contract with a player whose prior team designated

¹⁹ Tanier, *supra* note 17.

²⁰ See NFL CBA art. X § 2(a), 4(a).

²¹ See *id.* at art. X § 2(b).

²² See *id.* at art. X § 2(a)(ii).

²³ See *id.* at art. X § 2(a)(i).

²⁴ See *id.* at art. X § 3–4.

him as a transition player, then the player's original team receives two first-round draft picks if it decides not to match the new team's offer.²⁵

In the NFL, the time period for teams to designate franchise players begins on the twenty-second day preceding the first day of the new "league year,"²⁶ which is in the same week after the conclusion of the Super Bowl each February. Even after a team designates a player as a franchise player, the team can negotiate with that player on a multi-year contract. The deadline for agreeing to a multi-year contract is July 22, and if no multi-year deal is agreed upon, the player must sign the one-year designation and cannot negotiate for an extension or new contract again until the conclusion of the team's last regular season game in that upcoming season.²⁷

The franchise tag system in the NFL arguably discourages a team from signing a player to a long-term contract, since owners can always fall back on franchising the player the following season.²⁸ NFL and NBA player agent Mark Bartelstein said, "With the franchise tag in football, the players always prefer to get long-term deals [because] you only have so many years to do this and the security and long-term money is what players prefer."²⁹ NFL owners will sometimes use the threat of the franchise tag to get a player to agree to a longer-term contract at lower annual salaries than the player might have commanded from a new team on an open market. Some players agree to sign multi-year contracts or extensions with their prior team because of the risk of the franchise tag being applied and the corresponding uncertainty of having only one season of guaranteed salary (combined with the chance of suffering a career-ending injury).³⁰ For the 2014 NFL season, six players were tagged; two were transition tags while the other four were

²⁵ See *id.* at art. X § 3.

²⁶ League Year is defined as "the period from March [] of one year through and including March [] of the following year, or such other one-year period to which the NFL and the NFLPA may agree." See *id.* at art. I.

²⁷ See NFL CBA art. X § 14–15.

²⁸ Ochab, *supra* note 18.

²⁹ Quoted in KEN BERGER, *Should NBA Adopt NFL-Like Player Movement Rules? Good Question*, July 30, 2010, CBSSPORTS.COM, available at <http://www.cbssports.com/nba/story/13683901/should-nba-adopt-nfl-like-player-movement-rules-good-question>. Bartelstein also said that, "Contracts, like anything in life, are a product of the market. So if people want you enough, whether it's a big signing bonus or a long-term contract, that's what you're going to get. That's the way it should work: supply and demand." *Id.*

³⁰ Cindy Boren, *Everything you need to know about the NFL's franchise tag*, WASHINGTON POST (March 2, 2015), <https://www.washingtonpost.com/news/early-lead/wp/2015/03/02/everything-you-need-to-know-about-the-nfls-franchise-tag/>; Mike Foss, *Why do NFL players hate the franchise tag?* USA TODAY (March 2, 2015), <http://ftw.usatoday.com/2015/03/nfl-franchise-tag-dez-bryant-dallas-cowboys>.

non-exclusive franchise tags.³¹ In 2013, eight NFL teams used franchise or transitions tags—a considerable drop off from the NFL-record 21 players who received the franchise or transition tag designation in 2012.³²

The following section explains that, while the NFL franchise player designation system might not be practicable in the NBA, it could provide some insight into how to develop and implement an optimal franchise tag model in the NBA.

II. THE NBA CANNOT SIMPLY REPLICATE THE NFL FRANCHISE TAG MODEL—INITIAL ISSUES TO CONSIDER WITH RESPECT TO DEVELOPING AND IMPLEMENTING A FRANCHISE PLAYER DESIGNATION SYSTEM IN THE NBA

An identical franchise player designation system to the one used in the NFL would not be effective in the NBA. First, the current NBA free agency rules have successfully kept the majority of star (i.e., “franchise”) players with their prior teams, unless the team is unwilling to pay the player’s fair market value (e.g., the maximum allowed salary).³³ Second, the average salary of the top-five or top-ten players at each position in the NBA can vary depending on the contracts signed each off-season (and which teams had

³¹ Gregg Rosenthal, *Franchise Tag Tracker*, NFL.COM (March 3, 2014), <http://www.nfl.com/news/story/0ap2000000330283/article/franchise-tag-tracker>.

³² Brian McIntyre, *Eight players receive the franchise tag in 2013*, YAHOO! SPORTS (March 4, 2013), <http://sports.yahoo.com/blogs/nfl-shutdown-corner/eight-players-receive-franchise-tag-2013-222934634—nfl.html>; NFL.COM, *Teams that have used franchise tags on 2012 free agents*, (March 2, 2012), <http://www.nfl.com/news/story/09000d5d82756d1c/article/teams-that-have-used-franchise-tags-on-2012-free-agents>.

³³ In the summer of 2014, Kevin Love informed the Minnesota Timberwolves that he would turn down a maximum-salary offer from the team to sign with a new team in the following summer. Love had played six seasons with his prior team and requested a trade to a team that he felt would compete for an NBA championship. Love played for a smaller-market team (i.e., Minnesota) before requesting his trade. Love signed rookie scale extensions that kept him under contract for three additional seasons beyond his initial four-year rookie salary scale deal. Because Love was traded prior to his contract’s expiration, his new team obtained his Larry Bird Rights. This allowed the Cavaliers to offer Love his true maximum salary value as opposed to if he signed there as a free agent straight from Minnesota. Had he signed in Cleveland without his Larry Bird Rights, he would have forfeited more than \$20 million cumulatively. Had a franchise designation system been in place, Love’s prior team could have chosen to sign him to a one-year contract, and possibly increased their leverage in trading Love over the course of the next season. Love would not have been allowed to sign a long-term contract that provided financial security with another team until the team’s option in the franchise tender expired.

salary cap room or engaged in a sign-and-trade transaction) and whether extension salaries (i.e., amendments to existing contracts signed prior to the player becoming a free agent) are included in the calculation. In addition, a player's market value is different based on whether he would be an unrestricted or restricted free agent.³⁴ Third, teams and owners would probably not want to compensate the signing of a transition-tagged player by giving up draft picks if the prior team does not match the offer because there are only 60 total NBA draft selections each year compared to more than 250 total NFL draft selections.

Additionally, there are only 15 available roster spots on each NBA team compared to 53 roster spots in the NFL. Over the previous four NBA seasons (2011-2014), an approximate average of 47 out of 60 drafted players each season made the team's NBA roster at some point during the following season.³⁵ Adding additional picks to the end of the draft or adding supplemental picks that would push other teams' picks back later in the draft would not be an ideal solution since the quality of players who could make an NBA team typically drops off considerably after two draft rounds. And lastly, NBA players might intentionally play poorly or make comments to the media in an effort to avoid being tagged as a franchise or transition player.

NBA players would likely never agree to a franchise player designation system that closely paralleled the NFL's franchise and transition player designation system. With new NBPA Executive Director Michele Roberts and Chris Paul (a seven-time NBA All-Star) leading the NBPA, there would be

³⁴ By way of example, for the ten highest-paid power forwards, the position in the NBA with the most money allocated to the top ten players at a position, the average salary during the 2009-10 season was \$14,696,993, which would constitute 25.5% of the league's salary cap for each team (with a mandatory 13-man roster) and 21.0% of the league's luxury tax level for the 2009-10 season. This is compared to NFL transition designations with a \$12,444,000 average salary for the top-10 highest paid quarterbacks, and a \$8,370,000 average salary for the top-10 highest paid cornerbacks, which equates to 9.7% and 6.5%, respectively, of the league's \$128 million salary cap in 2009 for each team (with 22 starters and a 53-person roster). *See* HOOPDATA - NBA CAP SPACE AND SALARIES INFO, <http://hoopdata.com/salaries/index.aspx> (last visited Mar. 27, 2015).

³⁵ Data is from BASKETBALL-REFERENCE.COM, <http://www.basketball-reference.com/players>, for each individual player selected in the NBA draft between the years 2011-2014. There were 54 total players selected over that span who failed to suit up for the team that drafted them in the following NBA season. Some of these players, such as Jonas Valanciunas (the fifth overall pick in 2011) actually elected to extend playing professionally overseas for a variety of reasons before joining the NBA. Many others, such as Marcus Denmon (the 59th pick in 2012) simply never received a contract offer from the team that selected them.

great reluctance and hesitation to agree to an amendment in the NBA CBA in which star players' options in free agency are limited as severely as franchise-tag related player mobility in the NFL.³⁶ Nonetheless, the NBA CBA already contains several provisions that provide increased leverage for teams who attempt to retain key players. Two examples of NBA CBA provisions that limit player mobility are the NBA's current restricted free agency and qualifying offer rules.

III. NBA RESTRICTED FREE AGENCY AND QUALIFYING OFFER RULES

One potential argument against allowing teams to use a franchise player designation is that the NBA's current restricted free agency and qualifying offer rules already provide teams with leverage to retain key players and, therefore, the franchise tag model is duplicative and unnecessary.

NBA Restricted Free Agency Rules

The current NBA CBA rules pertaining to restricted free agency give a player's prior team a significant advantage in being able to retain the player's services under a new contract.³⁷ The prior team has a right of first refusal to match any offer sheet that the player signs with a new team. Over the past several seasons, the majority of restricted free agents have re-signed with their prior team, or signed an offer sheet with a new team that was subsequently matched by their prior team.³⁸ Additionally, very few players

³⁶ In a November 2014 interview, Michele Roberts explained, "I contend that there is no reason in the world why the union should embrace salary caps or any effort to place a barrier on the amount of money that marquee players can make." Pablo S. Torre, *NBPA Director: 'Let's Stop Pretending,'* ESPN THE MAGAZINE (Nov. 13, 2014), http://espn.go.com/nba/story/_id/11868612/nba-owners-expendable-players-union-chief-michele-roberts-says.

³⁷ Any first round pick who finishes the fourth season of his rookie scale contract (which is for two guaranteed years and two team option years) and any veteran free agent who will have three or fewer years of service entering the off-season will be a restricted free agent if his prior team makes a qualifying offer to the player at any time from the day following the season (e.g., in mid-June after the NBA Finals) through June 30. If such a qualifying offer is made, then, on July 1, the player will become a restricted free agent, subject to a right of first refusal in favor of the prior team. See NBA CBA art. XI § 4.

³⁸ See NBA.COM, *2015 Free Agent Tracker*, last updated Sept. 17, 2015, <http://www.nba.com/freeagents/2015/>; NBA.COM, *2014 Free Agent Tracker*, last updated Oct. 23, 2014, <http://www.nba.com/freeagents/2014/>; NBA.COM, *2013 Free Agent Tracker*, last updated Oct. 26, 2013, <http://www.nba.com/freeagents/2013/>; NBA.COM, *2012 Free Agent Tracker*, last updated Feb. 21, 2013, <http://www.nba.com/free>

have signed a one-year qualifying offer,³⁹ which would allow the player to become an unrestricted free agent the following off-season. This shows that restricted free agents are more inclined to sign multi-year deals with their prior team, opting for the long-term security of such a contract rather than risk a serious injury that would ruin a chance at a true open market in unrestricted free agency the following summer.

Most restricted free agents re-sign with their prior team if that team is willing to pay fair market value. This is because the prior team has the right of first refusal. Under current CBA rules, prior teams are allowed to re-sign their own free agents for an additional season (e.g., five years with prior team compared to four years with new team) and greater annual increases than a new team can offer (e.g., 7.5% annual salary increases for the prior team compared to 4.5% for the new team).⁴⁰

As explained in a November 2014 article by well-respected NBA columnist and commentator Zach Lowe, “even when teams have a clear edge in the restricted free-agency stalemate, they tend to offer a fair deal in the end. Eric Bledsoe got his five-year, \$70 million deal in August . . . Charlotte and Minnesota probably overpaid Kemba Walker and Ricky Rubio, respectively, given the leverage the teams would have had in restricted free agency.”⁴¹ Another member of the media similarly commented, “teams have all the leverage in the restricted free agency process, but playing for the qualifying offer turns things around to where the players have the advantage. The problem is the amount of risk associated with that decision, but for guys like Bledsoe and Monroe who feel like they deserve contracts at or near the max, they may see it as the only realistic option.”⁴²

The franchise player designation system proposed in this article would complement and improve the NBA’s restricted free agency system and also partially replace the NBA’s current qualifying offer system, which is a sel-

agents/2012/; NBA.COM, *2011 Free Agent Tracker*, last updated Dec. 29, 2011, <http://www.nba.com/freeagents/2011/>; NBA.COM, *2010 Free Agent Tracker*, last updated Oct. 14, 2010, <http://www.nba.com/freeagents/2010/> [hereinafter, collectively, “NBA Free Agent Trackers”].

³⁹ See *id.* at art. XI § 1(c) for the definition of Qualifying Offer.

⁴⁰ See *id.* at art. XI § 4.

⁴¹ Zach Lowe, *The Contract Shell Game: Klay, Kawhi, and Extensions in the Ever-Changing NBA*, GRANTLAND.COM (Nov. 5, 2014), <http://grantland.com/the-triangle/nba-contract-extensions-klay-thompson-warriors-jazz-spurs/>.

⁴² Brett Pollakoff, *NBA GM Says ‘There’s No Reason’ to Trade for Restricted Free Agents Greg Monroe or Eric Bledsoe*, NBC SPORTS PRO BASKETBALL TALK (Aug. 21, 2014, 5:02 PM), <http://probasketballtalk.nbcsports.com/2014/08/21/nba-gm-says-theres-no-reason-to-trade-for-restricted-free-agents-greg-monroe-or-eric-bledsoe/>.

dom used and imbalanced one-year contract model that usually does not produce fair and mutually beneficial results for teams and players.

NBA Qualifying Offer Rules

When a team extends a qualifying offer to a player, that player automatically becomes a restricted free agent.⁴³ A player who receives a qualifying offer must be given until at least October 1 (i.e., usually a few days before training camp) to accept the offer.⁴⁴ If a qualifying offer is neither withdrawn nor accepted and the deadline for accepting it passes, the team's right of first refusal continues, but the player will no longer have the option of signing the one-year qualifying offer and the current team can either offer a minimum salary contract or wait until the player signs an offer sheet with another team and determine whether to match the offer.⁴⁵

Every restricted free agent who has signed a qualifying offer during the past six off-seasons has waited until close to the October 1 deadline to do so.⁴⁶ This illustrates that restricted free agents are sometimes reluctantly pushed, because of the current CBA rules, to sign a one-year qualifying offer with their prior team because the 29 other teams do not want to sign a player to an offer sheet when the prior team has a right of first refusal and a three-day matching period. Detroit's Greg Monroe signed a qualifying offer during the 2014 off-season after failing to secure a long-term contract in free agency.⁴⁷ Monroe told one of the authors of this article, "It was a stressful

⁴³ See NBA CBA art. XI §1(c) for a description of the qualifying offer process.

⁴⁴ The October 1 deadline is ninety days after the date by which the qualifying offer must be made, and just one day before the start of a team's training camp for the upcoming season. Under the existing rules, a qualifying offer may be unilaterally withdrawn by the team at any time through July 23 following its issuance. If the qualifying offer is not withdrawn on or before July 23, it may be withdrawn thereafter but only if the player agrees in writing to the withdrawal. If a qualifying offer is withdrawn, the player immediately becomes an unrestricted free agent. *See id.* at art. XI §4(c)(i).

⁴⁵ *See id.* at art. XI §4(c)(ii).

⁴⁶ *See* NBA Free Agent Trackers, *supra* note 38. Each player signed the qualifying offer after not being able to secure a long-term deal with their prior team or a contract with a new team that would be subject to the prior team's right of first refusal.

⁴⁷ Kevin Zimmerman, *Greg Monroe signs qualifying offer with Pistons*, SBINATION (September 5, 2104), <http://www.sbnation.com/nba/2014/8/12/5944785/greg-monroe-pistons-qualifying-offer-nba>.

time. It's a weird predicament for the players. There's always some kind of tension when it comes to negotiations."⁴⁸

The current qualifying offer system is not ideal. One criticism is that the free agent market and player salaries in general have outpaced the current qualifying offers tendered to players because the qualifying offers are not always directly tied to a player's actual production,⁴⁹ the team's desire to keep the player, fluctuations in Basketball Related Income, and the salary cap or any market equivalents. Thus, the NBA's current qualifying offer system is flawed mainly because it does not adjust in conjunction with the salary cap and, when a player is selected in the draft, does not always indicate his value four years later.⁵⁰ Instead, there is a predetermined salary increase over the player's fourth year salary of their rookie scale contract based on when players were selected in the draft, subject to a few limited exceptions that, to date, have not been implicated for an accepted qualifying offer extended to a former first-round draft pick.⁵¹ For first-round picks, qualifying offers range from a 30% increase from the fourth-year salary for the number one overall pick to a 50% increase for the 30th pick.⁵² For reference, the 2014-15 qualifying offer amounts range from \$9,846,619 for the 1st pick to \$3,227,558 for the 30th pick.⁵³

Over the past six seasons, only seven former first-round draft picks who became restricted free agents following the fourth year of their rookie salary

⁴⁸ Interview by Jacob Eisenberg with Greg Monroe, Power Forward, Detroit Pistons, *available* at www.jacobeisenberg.com.

⁴⁹ Qualifying offers in the NBA are in part based on player performance. This is a change from the qualifying offer model in past CBAs. For example, if a player picked 10th to 30th in the first-round meets one of the following two "Starter Criteria," then the player's qualifying offer amount will be equal to the qualifying offer for the 9th overall draft pick: (1) started an average of 41 regular season games or played an average of 2,000 regular season minutes during third and fourth seasons combined; or (2) started at least 41 regular season games or played at least 2,000 minutes during fourth season. In addition, if a player picked 1st to 14th in the first-round fails to meet the Starter Criteria, then the player's qualifying offer amount will be equal to the qualifying offer for the 15th overall draft pick. *See* NBA CBA art. XI.

⁵⁰ For instance, there have been six different players selected to the All-Star game in the past two years who were drafted outside of the top 15 picks. *See* *NBA & ABA All-Star Game Stats and History*, BASKETBALL-REFERENCE.COM, <http://www.basketball-reference.com/allstar> (last visited Mar. 27, 2015).

⁵¹ Larry Coon, *Scale Salary Amounts for First Round Draft Picks*, CBAFAQ.COM, <http://www.cbafaq.com/scale2011.htm>.

⁵² *Id.*

⁵³ *See* NBA CBA Exhibit B.

scale contracts signed qualifying offers with their prior team.⁵⁴ The value of qualifying offers, which decrease in total value but increase in the percentage raise as a player gets drafted with a later pick, usually does not accurately reflect a player's value because the salary is predominantly based on when a player was drafted four years earlier. For example, over the past seven seasons, five players (Ben Gordon, Raymond Felton, Spencer Hawes, Nick Young and Greg Monroe) have received one-year qualifying offers that were valued well below what they were subsequently paid the following season.⁵⁵ Only Spencer Hawes re-signed with his prior team during the off-season following the qualifying offer year.⁵⁶ This is possibly because players eventually develop disappointment or resentment toward their prior teams, who failed to offer what was perceived to be "a fair contract" in the player's eyes when the player was a restricted free agent.

No player drafted in the first round after the 12th pick in a draft since 2000 has signed a qualifying offer.⁵⁷ Players who are picked later in the first round decline to sign these qualifying offers because their self-perceived value in comparison to the one-year deal is too imbalanced for consideration. On the other hand, some players drafted later in the first round are not extended qualifying offers by their respective teams because the players did not produce at a level at which their team wanted to keep them around for another season at the slotted qualifying offer amount.

In addition to the seven former first-round draft picks who have signed one-year qualifying offers during the past six NBA seasons, several second-round picks and undrafted players have signed qualifying offers.⁵⁸ The req-

⁵⁴ See NBA Free Agent Trackers, *supra* note 38.

⁵⁵ See *Ben Gordon*, BASKETBALL-REFERENCE.COM, <http://www.basketball-reference.com/players/g/gordobe01.html>; *Raymond Felton*, BASKETBALL-REFERENCE.COM, <http://www.basketball-reference.com/players/f/feltora01.html>; *Spencer Hawes*, BASKETBALL-REFERENCE.COM, <http://www.basketball-reference.com/players/h/hawessp01.html>; *Nick Young*, BASKETBALL-REFERENCE.COM, <http://www.basketball-reference.com/players/y/youngni01.html>; *Greg Monroe*, BASKETBALL-REFERENCE.COM, <http://www.basketball-reference.com/players/m/monrogr01.html>. One player, Marco Belinelli, signed a one-year qualifying offer that was well above what he was subsequently paid the following season (i.e., qualifying offer of \$3,777,604 for 2011-12 season vs. \$1,957,000 salary in 2012-13). See *Marco Belinelli*, BASKETBALL-REFERENCE.COM, <http://www.basketball-reference.com/players/b/belinma01.html>.

⁵⁶ Chuck Myron, *Players Who've Signed Qualifying Offers*, HOOPSRUMORS.COM (July 7, 2012), <http://www.hoopsumors.com/2012/07/players-whove-signed-qualifying-offers.html>.

⁵⁷ See *Id.*

⁵⁸ On average, historically more first-round draft picks are still in the NBA after two seasons and thus the focus of a franchise player designation system would be on

uisite qualifying offer for all restricted free agents who are not first-round picks is extremely low. The predetermined qualifying offer for second-round picks and undrafted players is the greater of (a) the applicable minimum league player salary for the relevant season plus \$200,000 or (b) 125% of the player's previous year's salary.⁵⁹ Consequently, these stipulated qualifying offers for second-round draft picks and undrafted free agents oftentimes undervalue a player even more than the rookie salary scale qualifying offers for first-round picks.

Overall, thirty-two restricted free agents over the past five seasons signed offer sheets with a new team that the prior team, who had the right of first refusal, did not match. An additional 10 restricted free agents in the past five seasons have been "signed-and-traded" to a new team in restricted free agency. Over this same period, seven players signed offer sheets with a new team that their prior team matched, thus keeping the player with the prior team.⁶⁰ In comparison, 20 unrestricted free agents in the 2014 off-season signed contracts with a starting salary of at least \$4 million with a

first-round picks and the unbalanced qualifying offer system for this particular subgroup of players. For reference, according to NBA.com, on average eight former second-round picks out of 30 selections each year were still in the NBA after just two seasons during the 2010-2012 time period, compared to an average of 24 former first-round picks playing through their four-year rookie scale contract over the same three-year period. Some former second-round picks, such as Carl Landry, encounter a situation where their current teams extend a qualifying offer for under \$1 million and the player's options are limited because other teams are reluctant to offer a contract due to the prior team's right of first refusal. Second-round picks and undrafted players are not subject to the first-round rookie scale and can sign contracts at a length between one and four years as rookies.

⁵⁹ See NBA CBA art. XI. All terms and conditions in the qualifying offer must be unchanged from those that applied to the last year of the player's prior contract. Note, however, that some foreign-born players drafted in the second-round, such as Manu Ginobili, Andres Nocioni, Luis Scola, David Andersen, and Marc Gasol, have received larger qualifying offers because they signed lucrative rookie deals, which the teams offered to convince the players to give up their high-paying foreign-league contracts to join an NBA team. Also note that qualifying offers in the NBA are now in part based on player performance. This is a change from the qualifying offer model in past CBAs. For example, if a player picked 31st to 60th in the second-round (or an undrafted player) meets one of the "Starter Criteria," then the player's qualifying offer amount will be equal to the qualifying offer for the 21st overall draft pick. See *id.*

⁶⁰ Data collected via NBA Free Agent Trackers, *supra* note 38. Each player's free agent contract was researched and subsequently analyzed by the authors of this article to produce the data on restricted free agents.

new team.⁶¹ Players, teams, fans and the league can benefit from franchises keeping their marquee former first-round draft picks and other players who want to stay but end up leaving because of a perceived injustice based on the current restricted free agency and qualifying offer rules. The current system, in which players end up reluctantly signing preset one-year qualifying offers or teams reluctantly extend a qualifying offer to an underperforming player, contradicts this goal.

Even in cases in which teams offer players more money than required in qualifying offers (e.g., David Lee and Nate Robinson with the New York Knicks in 2009) to maintain good relations for future negotiations, the players rarely stay with that team after their one year contracts expire. Lee's agent, Mark Bartelstein, praised the Knicks for giving Lee more money than what his qualifying offer required: "There's never been a player who signed a deal worth more than the qualifying offer on a one-year deal . . . We're very appreciative of that. They did something that's unprecedented . . . they could have taken a much harder stance on this. We'll deal with next summer when we get to it."⁶² But, sure enough, neither Lee nor Robinson was on the Knicks roster past the one-year contracts they were given in lieu of a qualifying offer. The Knicks declined to extend Lee on a long-term contract for what he perceived his value to be.⁶³ They also traded Robinson midway through the following season to a division rival.⁶⁴ There appears to be a repeated pattern of irreparable discord when a player does not receive a long-term commitment from a team to which he has added value for multiple seasons.

The following section of this article highlights several case studies that illustrate how a franchise player designation system could supplement the NBA's restricted free agency system and also function as a much more effective alternative to the NBA's current qualifying offer model.

⁶¹ See *2014 Free Agent Tracker*, NBA.COM, <http://www.nba.com/freeagents/> (last updated Oct. 23, 2014).

⁶² See Marc Stein, *Source: Robinson Also Close to Deal*, ESPN.COM (Sept. 25, 2009, 11:24 AM), <http://sports.espn.go.com/nba/news/story?id=4501088>.

⁶³ Kelly Dwyer, *The Knicks trade David Lee for three Golden State Warriors*, YAHOO! SPORTS (July 9, 2010), http://sports.yahoo.com/nba/blog/ball_dont_lie/post/The-Knicks-trade-David-Lee-for-three-Golden-Stat?urn=nba,254883; Chris Forsberg, *C's Land Robinson, Send House to N.Y.*, ESPN.COM (Feb. 19, 2010), <http://sports.espn.go.com/boston/nba/news/story?id=4924052>.

⁶⁴ See Forsberg, *supra* note 63.

IV. FRANCHISE PLAYER DESIGNATION CASE STUDIES—DEMONSTRATING
THE NEED FOR A FRANCHISE TAG IN THE NBA

Case Study: The Dwight Howard Trade Market in 2012

The most obvious case study focusing on the power of leverage in the modern NBA trade market might be with Dwight Howard and the Orlando Magic in 2012. Without Howard opting-in for the final year of his maximum salary contract, Orlando would have likely settled on a less than ideal trade offer from the Brooklyn Nets (thus, adding star power to a big-market team while simultaneously hurting a small-market team). Orlando stood to lose Howard as a free agent the following summer so there was little incentive for a major market team to offer Orlando valuable assets in a trade when they could possibly add Howard as a free agent a few months later.

Howard, however, opted-in to the final year of his contract and the Magic were given more time to figure out what to do concerning Howard's dissatisfaction with the team. When the Magic's relationship with Howard proved unsalvageable the following summer, the team was still able to find a better trade offer because of the leverage gained with Howard's contract on the payroll for a full extra season.

As a result, Orlando stands well prepared for the future with the acquisitions of Nikola Vucevic, a pick that later turned into Elfrid Payton and other serviceable role players in the trade that sent Howard to the Los Angeles Lakers. If Orlando stubbornly committed to keeping Howard regardless of his impending departure—instead of looking to trade him that summer—they would have had an additional season to see if they could entice him into signing a long-term deal but likely would have lost him in unrestricted free agency for nothing, a season delayed. Howard crossed a threshold with the Magic in which he went from being a franchise centerpiece to becoming a major trade asset that could return valuable assets (i.e., players and draft picks). A superstar player, such as Howard, is most valuable on the trade market when he has at least a full year remaining before his current contract is set to expire. It is in the incumbent team's best interest to trade its superstar before some small-market teams—that would ordinarily be interested in acquiring the superstar—determine themselves incapable of convincing the superstar to stay beyond the short term.

*Case Study: The LeBron James 2010 “Decision” Revisited
with a Franchise Tag Twist*

The Cleveland Cavaliers had the ability to match any offer LeBron James received on the open market in 2006. Knowing this, James extended his contract in Cleveland because the team was guaranteed to retain his rights even if he were to have tested the free agent market. Drafted in 2003, James was almost certainly guaranteed to be under contract with the Cleveland Cavaliers for a minimum of five years. Four of those years were under a rookie contract (with a team option for the third and fourth years of this contract) and, at the very least, a fifth year was guaranteed if Cleveland were to extend a qualifying offer (and also match any offer from another team).⁶⁵

Few teams decline to match a restricted free agent’s maximum offer from an opposing team on the open market. As a result, James signed a 3-year, \$60 million deal in 2006 with Cleveland and bypassed the process of signing an offer sheet elsewhere only to be retained by the Cavaliers.⁶⁶ When James hit unrestricted free agency in 2010, Cleveland assumed its recent success and location in Ohio (James was born in Akron) would be enough to entice James into signing a second long-term extension.

When James decided to leave for Miami, Cleveland was left with the “consolation opportunity” to trade for Miami’s future draft picks in a sign-and-trade (Cleveland received two future first-round picks and two second-round picks.)⁶⁷ James blindsided Cleveland in his free agent process. Regardless, he still had enough negotiating power to sign for six-years guaranteed in Miami after Cleveland came to agree to a sign-and-trade. Cleveland, not wanting to lose James for nothing, eventually helped James acquire that extra year in free agency by agreeing to sign-and-trade his contract as a way to salvage what then-current Cavaliers’ General Manager Chris Grant called “multiple key assets and additional flexibility as we move forward.”⁶⁸

If Cleveland had the opportunity to use a franchise tag on James in 2010, the team could have retained James and found a potential trading partner in the following season if James proved to be disgruntled with the

⁶⁵ Assoc. Press, *Deal Worth Almost \$13 Million in First Three Years* (July 3, 2003), available at <http://espn.go.com/nba/news/2003/0703/1576436.html>.

⁶⁶ Assoc. Press, *LeBron Officially Signs Contract Extension with Cavs* (July 18, 2006), available at <http://sports.espn.go.com/nba/news/story?id=2523410>. The contract included a player-option for a fourth year, and thus lasted until 2010.

⁶⁷ See Press Release, Cleveland Cavaliers, *Cavaliers Complete Sign-and-Trade Deal with Miami* (July 10, 2010), available at http://www.nba.com/cavaliers/news/trade_100710.html.

⁶⁸ *Id.*

organization. As Dwight Howard's case study shows, teams gain significant leverage when they own the rights to a player's contract for at least one additional season. If James was sincerely committed to leaving Cleveland, he would have only had to play there for at most one extra season and would have likely been traded to a playoff contender at the trade deadline (for a package of assets that would have dwarfed Cleveland's actual sign-and-trade return).

V. THE PROPOSED NBA FRANCHISE PLAYER DESIGNATION MODEL

Based on the above analysis, this article proposes an NBA franchise player designation model. The objective of this proposed model is to increase competitive balance by providing incumbent teams—usually from smaller market cities like Minnesota and Milwaukee—with increased leverage in contract negotiations to retain key (i.e., “star” / “franchise”) players.⁶⁹

The franchise player designation should be considered exclusively for first-round picks who last played under a four-year rookie salary scale contract and for players who are scheduled to earn at least \$10 million in average annual salary during a multi-year contract signed in free agency. The remainder of this section details how the franchise player designation framework would operate in each of these two situations. See Figure 1 for a step-by-step detailed overview of the proposed franchise player designation system.

Franchise Player Designation Framework for Players Finishing Fourth Year of Rookie Salary Scale Contract

In the case of former first-round draft picks who are finishing their fourth year of a rookie salary scale contract, the franchise tag tender amount will be the greater dollar value of (a) 125% of the player's fourth year rookie scale salary, or (b) 150% of the Early Qualifying Veteran Free Agent (EQVFA) value for that season.⁷⁰ The player would also have an option to

⁶⁹ Unlike the franchise tag model proposed by the NBA in 2010/2011, in which the tendered players would have been required to consent to being tagged, the current proposed franchise player designation model does not require player consent. For a description of this aspect of the 2010/2011 NBA proposal see Rivers McCown, *NBA Lockout: The NBA's Take On Franchise Tags Is Intriguing*, SBNATION, May 12, 2011, <http://houston.sbnation.com/houston-rockets/2011/5/12/2167524/nba-lockout-franchise-tag-non-guaranteed-contracts>.

⁷⁰ See NBA CBA art. VII §6.

extend the franchise tag for a second year, in which the player's salary would be 150% of his salary in the first year of the franchise tag.

Other than for the top two or three draft picks each year (whose fourth year salary greatly exceeds the EQVFA amount), the greater value in the above formula will typically be the 150% of the EQVFA value. The EQVFA value is equal to 104.5% of the average player salary in the NBA; for the 2014-15 season, that amount was \$5,565,000.⁷¹ The EQVFA provision in the proposed franchise tag model protects first-round picks drafted outside of the top two or three overall selections from receiving a franchise tender that would potentially pay them significantly less than a fair market value.

Some of the league's top players have been drafted in the first round but not in the top ten draft picks. For example, Chicago's Jimmy Butler earned \$2,008,748 in the fourth year of his rookie scale contract after being selected 30th overall in the 2011 draft.⁷² Butler's qualifying offer for the following season would have been \$3,178,821. Without the EQVFA stipulation in our model, Chicago would have been able to franchise tender Butler to a first-year team option at just \$2,510,935 (equal to 125% of his fourth year salary). Butler's second-year player option at 150% of the first year would be just \$3,766,402. Both of these figures significantly undervalued Butler's potential earnings on the open market.⁷³ However, with 150% of the NBA's 2014-2015 EQVFA provision, Butler would receive \$8,347,500 in the first year of the franchise tender. If Butler were to exercise his second year player option at 150% of the first year franchise tag salary, he would receive \$12,521,250 in the second year. Both years' salaries, in this model, add up to a two-year contract worth \$20,868,750—a salary that was very close to Butler's estimated free agent value before the start of the 2014-2015 NBA season.

Let's consider another example. For 2014 NBA Finals MVP Kawhi Leonard, who earned \$2,894,059 in the fourth year of his rookie scale contract after being selected 15th overall in 2011,⁷⁴ a 125% increase on his rookie scale's fourth year would equate to just \$3,617,572 in the first year of

⁷¹ *See id.*

⁷² *Jimmy Butler*, BASKETBALL-REFERENCE.COM, <http://www.basketball-reference.com/players/b/butleji01.html>.

⁷³ Zach Lowe (Grantland.com) and Amin Elhassan (ESPN.com) estimated Butler would receive approximately \$10 million annually in free agency. *See The Lowe Post Podcast*, GRANTLAND.COM (Oct. 2, 2014), <http://grantland.com/the-triangle/the-low-post-podcast-zach-low-and-amin-elhassan-ricky-rubio/>.

⁷⁴ *Kawhi Leonard*, BASKETBALL-REFERENCE.COM, <http://www.basketball-reference.com/players/l/leonaka01.html>.

the proposed franchise player designation model.⁷⁵ For the franchise tender's second-year player option, Leonard would receive only \$5,426,358. In a similar situation to Butler's, a two-year deal worth approximately \$9 million total for Leonard grossly undervalues his potential earnings on the free agent market. With the EQVFA provision in the proposed model, Leonard would receive an identical contract to Butler's two-year, \$20,868,750 deal. While this model still underestimates Kawhi Leonard's free agent market value, the incumbent San Antonio Spurs would have to be cautious with using their franchise tender on Leonard as he would easily be able to decline his second-year player option (worth \$12,521,250) and test free agency as an unrestricted free agent at the age of 24 after the 2015-16 NBA season.

Franchise Player Designation Framework for Free Agents with \$10 Million or Greater Average Annual Salary in Expiring Multi-Year Free Agent Contract

In the case of players in the final year of a multi-year free agent contract with an annual average salary of at least \$10 million, the franchise tag tender amount will be 125% of the player's salary in the final year of his contract. The player would also have an option to extend the franchise tag for a second year, in which the player's salary would be 125% of his salary in the first year of the franchise tag.

For example, for Kevin Love during the 2015 offseason,⁷⁶ the franchise tag amount would be calculated by taking his 2014 season's salary of \$15,719,063⁷⁷ and multiplying that salary by 125%, which results in a salary in the franchise tag year of \$19,648,830.⁷⁸ Love's salary for season one of the franchise tag would get multiplied by another 125% in the player option season, which would result in a salary of \$24,561,038 if Love exercised

⁷⁵ The qualifying offer for Leonard for the following season would be \$4,428,608.

⁷⁶ Kevin Love has a player option to remain on the Cavs for next season at \$16,744,219. Bob Finnan, *Bob Finnan's NBA notes: Examining Kevin Love's contract options*, THE MORNING JOURNAL (May 2, 2015), <http://www.morningjournal.com/sports/20150502/bob-finnans-nba-notes-examining-kevin-loves-contract-options>. He is expected to decline this player option and become an unrestricted free agent. Yaron Weitzman, *Lebron James, Kevin Love Expected to Opt out of Contracts with Cavaliers*, SBINATION, Jun. 18, 2015, <http://www.sbnation.com/nba/2015/6/18/8810483/lebron-james-kevin-love-expected-to-opt-out-of-current-contracts>.

⁷⁷ *NBA Player Salaries – 2014-2015*, ESPN.COM, http://espn.go.com/nba/salaries/_/year/2015/seasontype/4.

⁷⁸ The \$19,648,830 franchise tag salary exceeds Love's potential earnings in a max contract elsewhere (\$17,695,200) by \$1,953,629 in the first year.

his player option—approximately \$6 million more than the maximum allowed salary in the second year of a free agent contract offered by another team.

Al Horford's contract situation functions as an excellent additional case study to illustrate how the franchise player designation operates for veteran free agents. In this upcoming NBA season, Horford will be in the final year of a five-year, \$60 million contract he signed with the Atlanta Hawks.⁷⁹ Horford's salary in the first year of the franchise tag would be \$15 million (125% of \$12 million). If Horford decided to exercise his player option, his salary in the second year of the franchise tag would be \$18,750,000 (125% of \$15 million).

Other Important Components of the Proposed Franchise Player Designation Model

Limit on Number of Tags. A required provision within this proposed model is that each team can only hold one franchise-tagged player on its roster at any given time. In addition, no player can be tagged multiple times by the same team nor can more than two teams tender the same player in a three-year period.

Second-round Picks and Undrafted Players. A second-round draft pick or an undrafted free agent can only qualify for a team's franchise tender after he finishes both his rookie salary scale contract and an additional multi-year contract in free agency. This rewards players drafted in the second round (e.g. Chandler Parsons, Isaiah Thomas) by granting them an opportunity to test their free agent value after they outperform their rookie salary scale and free agent contracts.

Exercising the Player Option. The proposed model will also require a player to either exercise or decline his second-year player option during the NBA season (before February's trade deadline) to give his incumbent team a better understanding of the player's intentions. This increases the likelihood that a player will either renegotiate with his incumbent team for a long-term contract or will give his incumbent team enough time (i.e., leverage) to acquire some legitimate talent in a trade. This player option provision also intentionally creates some risk and uncertainty for teams. For example, the player option provision should increase the level of cautiousness of teams before they utilize the franchise tag on a particular player, because even if that tagged player struggles on the court in the franchise tag year, it is the

⁷⁹ Al Horford, ESPN.COM, http://espn.go.com/nba/salaries/_/year/2015/season-type/4.

player (not the team) who has the option to extend the franchise tag contract for the second season.

Trading a Player Under Rookie-Scale Contract Franchise Tag. An incumbent team that uses its franchise tender on a player finishing his four-year rookie contract will also be required to extend a no-trade clause to this player in the franchise tender. The result is the player will be on that team for at least the entire initial franchise tag season—unless the player consents to a trade. This rule prevents situations in which up-and-coming players receive franchise tenders yet still face the risk of being traded to a new team during the initial franchise tag year. This gives added negotiating leverage to the players coming off of rookie contracts and prevents teams from using their franchise tender merely as a means of maximizing the trade value of a young player.

Trading a Player Under Veteran Free Agent Franchise Tag. If a team trades the tendered player during the first year of the franchise designation, the player would lose his right to sign the second-year player option (at a 125% increase) with his new team.⁸⁰ Instead, the acquiring team would reserve the right to subsequently use its own franchise tag on the player acquired in the trade in the following off-season if the acquiring team wanted to ensure the newly acquired player does not leave the team without first playing at least one full season with the team.⁸¹ This gives players more incentive to stay with their current team but also makes player contracts more appealing around the league for future trades. This provision also grants small-market teams additional security and comfort when trying to trade for a star player.⁸² Meanwhile, the incumbent team gains more leverage on the trade market as the player instantaneously becomes more attractive around the league without the 125% guaranteed salary increase during the second year player option attached to his contract. Because the rules of the proposed

⁸⁰ A team is permitted to trade for a franchise tag player only if the team does not currently have a franchise tag player under contract (either in first year of tag or in second year player option).

⁸¹ If the team is unable to enter into a new contract with the acquired player, it is possible that the traded player would play less than a full season with the new team.

⁸² The Sacramento Kings, for example, had reported interest in both Rajon Rondo and Kevin Love. However, because both players reportedly expressed disinterest in committing to Sacramento for the long-term, Sacramento was unable to trade for either star, as trading a package of valuable assets in return for star's rental contract proved to be too risky for Sacramento's front office. See Greg Wissinger, *Rajon Rondo Wants to Be Traded, But Not to the Kings*, SBNATION – SACTOWN ROYALTY (Aug. 31, 2014), <http://www.sactownroyalty.com/2014/8/31/6089791/rajon-rondo-trade-demand-rumors-sacramento-kings>.

model stipulate that a player cannot be tagged by the same team twice or by more than two teams over a three-season period, the player will assuredly avoid a perpetual cycle of short-term contracts. If the incumbent team trades the player during the second year of the franchise designation (player option year), the acquiring team will retain the player's Larry Bird Rights⁸³ in free agency but will only be allowed to offer the player the maximum contract that he would ordinarily qualify for (based on years of NBA service) in free agency. In addition, if the incumbent team were to trade the player at any point in either year of his franchise tender, the team assuming the player's contract would only have to count the value of the highest paid non-tagged player in the league against that team's salary cap. The remainder of the player's salary would be paid in full to the player without it counting against the acquiring team's salary cap.

Increasing Salary Cap for Teams Losing Players After Franchise Tag. Similar to a traded player exception,⁸⁴ a "franchise tag exception" could be implemented when a player declines his second-year player option. This would assist the team that loses its key player with increased salary freedom in future trades and free agent acquisitions. For example, assume a player was franchise-tendered and elected to decline his player option for the second season of the tender in favor of a long-term contract elsewhere (e.g., four-year contract for \$97 million).⁸⁵ This contract equates to \$24.25 million pro-rated annually over four years. The incumbent team losing a player, with the franchise tag exception, would then divide \$24.25 million by four (the number of years on the player's new contract) and have that amount (approximately \$6.06 million) added to the team's salary cap annually for the duration of the player's first contract with the new team. At the very least, this rule provides the team with some flexibility to work with on the open market (i.e., giving the prior team who lost the player a significant monetary advantage in free agency if they wanted to replace the player with a new quality player).

⁸³ The Larry Bird Exception is also called the "Veteran Free Agent Exception," which allows the incumbent team to offer a higher salary amount and a longer salary length as compared with a new team. *See* NBA CBA art. VII §6(b).

⁸⁴ The traded player exception enables teams that are over the salary cap to complete trades in which the team is permitted to trade for players. *See id.* art. 7 §6(j).

⁸⁵ This example closely mirrors Chris Bosh's reported max-contract offer from the Houston Rockets in the summer of 2014. *See* Zack Cox, *Report: Chris Bosh 'Seriously Considering' Rockets' Four-Year Max Deal*, NESN.COM (Jul. 7, 2014), <http://nesn.com/2014/07/report-chris-bosh-seriously-considering-rockets-four-year-max-deal/>.

Contract Extensions and Free Agency After Franchise Tag. In this franchise tender model, a player will become an unrestricted free agent as soon as his franchise tag expires (either through opting-out after season one of the franchise tag, or after expiration of season two if the player exercises his option). If a player exercises his second-year player option, the team will be permitted to offer a contract up to five years in length with 12.5% annual increases that would begin the year following the second-year player option under the franchise player designation framework. The first year of this contract would be permitted to start at 112.5% of the amount of the player's salary in the second year (player option year) of the franchise tag.⁸⁶ This is another proposed CBA provision that increases the ability of teams to retain key players, as the 12.5% permitted increase under this provision is greater than the 7.5% annual increases that are otherwise allowed. For example, if a player who is coming off of the second-year player option (with a salary in that year of \$18,750,000 as in the Al Horford example above,) is offered a 5-year contract starting at \$20 million with 12.5% annual increases, the total value of this contract (approximately \$128 million) is approximately \$12 million total (about \$2.4 million per year) more than a 5-year contract starting at \$20 million with 7.5% increases. The \$128 million total contract value is also approximately \$40 million total (average of about \$4.2 million per year) more than the player would be allowed to receive in an offer from a new team in which the contract started at the same \$20 million but could only be for four years with 4.5% increases per year based on current NBA CBA rules.⁸⁷

*Revisiting the LeBron James Case Study Based on the Proposed
Franchise Tag Model*

If the proposed franchise tag framework had been in place in 2010, the Cavaliers could have kept James for the 2010 season and traded him at the February 2011 deadline if he were clear with his intentions to leave (i.e., decline the franchise tag's second-year player option). James' salary in the final year of his then-expiring free agent contract (\$15,799,912) would have been multiplied by 125%, which results in a salary of \$19,749,890 for year

⁸⁶ If both the team and player were to agree, the five-year contract could feature a fixed salary across all five years. For example, with Jimmy Butler, instead of five salary increases worth 12.5% annually in a contract starting at \$14,086,406 and reaching \$22,563,698 by the fifth season, the Chicago Bulls and Butler could agree on a five-year contract worth the same total five-year value with a base salary of \$18,076,410 in all five seasons.

⁸⁷ See NBA CBA art. XI §4.

one under the proposed franchise player designation model. While a player such as James might be upset with his lack of control in negotiations with a team under the franchise player designation framework, he would take comfort in knowing the incumbent team would be paying him substantially more money in the franchise tag tender year as compared with the maximum amount a new team would be permitted to pay him in the first year of a free agent contract.⁸⁸ And, if James decided to exercise his player option for year two under the proposed franchise tag system, his \$19,749,890 salary for season one under the franchise tag model would get multiplied by another 125%, resulting in a second year franchise tag salary of \$24,687,363. The \$24,687,363 salary in the player option year is such a high dollar figure (almost 40% of a team's salary cap for the 2014-15 season) that the incumbent team must feel strongly committed to keeping a player to justify extending a franchise tender.

This near-\$25 million salary figure exceeds what James would have received in a maximum contract (under the current CBA) signed with 4.5% annual increases from a new team by approximately \$4 million, even in the final season of a maximum contract. The \$24,687,363 salary also essentially matches the maximum salary of what James would have received in the final season of a maximum contract (under the current CBA) with 7.5% annual increases signed with the incumbent Cavaliers.⁸⁹

Cleveland, in this model, would have undoubtedly extended a franchise tender in 2010-2011 and would have gained at least one extra year of time to win a championship. If the Cavaliers knew James would leave after the

⁸⁸ For maximum salary players with 0-6 years of NBA experience, the 125% franchise tag raises the maximum possible salary from \$14,746,000 to \$18,432,500 in the first year's team option (a gain of \$3,686,500). For maximum salary players with 7-9 years of experience, the 125% franchise tag raises the maximum possible salary from \$17,695,200 to \$22,119,000 in the first year's team option (a gain of \$4,423,800). For maximum salary players with 10+ years of experience, the 125% franchise tag raises the maximum possible salary from \$20,644,400 to 25,805,500 in the first year of the franchise tag (a gain of \$5,161,100).

⁸⁹ See NBA CBA art. II §7 for reference: James would receive \$25.4 million in his fifth year of a maximum contract with the incumbent Cavaliers after 7.5% annual salary increases. James would receive \$21.1 million in the fourth year of a maximum contract with a new team after 4.5% annual salary increases. As a frame of reference, Deron Williams has been playing several seasons on a maximum contract with 7.5% annual contract increases following his summer of 2012 maximum contract with the incumbent Brooklyn Nets and still will never earn close to \$25 million annually when his contract expires in 2017. Williams will earn 22.3 million in the final year of his deal in 2016-2017 despite signing that contract five years earlier and having years of accumulated 7.5% interest on his maximum salary in every season.

2010-2011 season (i.e., James declines his second-year player option), the Cavaliers could have then shopped James on the trade market at the February trade deadline and acquired the biggest mid-season trade haul in NBA history. After all, if the Cavaliers traded James to one of his preferred destinations, that acquiring team would have all but certainly secured assurance from James that he intended to remain long-term with this new team. Or, in the plausible course of events in which a small-market team with an available franchise tag traded for James, that small-market team would secure James's services for at least one guaranteed additional season. This would provide Cleveland with a virtually endless list of suitors to trade with and, in most cases, ensure that the team with the best trade offer would end up with the superstar.

James' contract with his new team would start at the greater of 30% of the salary cap or 105% of the dollar value of what he was earning in the first (and final) year of the franchise tender.⁹⁰ The acquiring team would also acquire James' Larry Bird Rights. In the more likely example in which the Cavaliers gained assurance from James that he planned to stay for his second-year player option (i.e., James signed before the February deadline), Cleveland would gain another full season of guaranteed control on James' contract to build a contender around their superstar. James would become an unrestricted free agent after the player option year and Cleveland would be unable to franchise tender him again. But, under the proposed franchise player designation model, Cleveland could offer James a new five-year free agent contract starting at 112.5% of his salary in the player option year of the franchise tag—this would amount to a starting salary of \$27,773,283—with additional annual increases of 12.5% in subsequent years of this contract.

VI. CONCLUSION

An effective franchise player designation system should aim to give teams an opportunity to retain a key player, preserve a player's contract rights as an asset in future negotiations (e.g., free agency or trade), and/or to gain more time to evaluate an underperforming player before committing to a multi-year contract. Conversely, an effective franchise player designation system should not be used as a mechanism for teams to keep players on

⁹⁰ “[F]or any player who has completed at least seven (7) but fewer than ten (10) Years of Service, the greater of (x) thirty percent (30%) of the Salary Cap in effect at the time the Contract is executed, or (y) one hundred five percent (105%) of the Salary for the final Season of the player's prior Contract.” NBA CBA art. II §7(a)(ii).

contracts at salaries below a player's market value. In addition, a sustainable franchise designation system must also provide an NBA player with some leverage and control of his future by providing flexibility with respect to contract length and salary (e.g., one or two year franchise tag contract vs. four or five year free agent contract). Under the franchise player designation system proposed in this article, the team would have leverage in year one (i.e., year in which franchise tag is tendered), but the player would have leverage in year two (i.e., deciding whether to exercise player option). Both the team and player would benefit by the ability to enter into a long-term (e.g., five year) contract following the player option franchise tag year, which would allow a higher starting salary and higher percentage annual salary increases than are otherwise allowed under the CBA.

The proposed franchise tag model would increase the chances that an incumbent team will either agree with the player on a multi-year contract or consider trading the star player before the team's leverage on the trade market dissipates. Either way, teams will gain more clarity on their star player's intentions and will retain control of his contract on the trade market without risking the possibility of losing that player in unrestricted free agency. Meanwhile, players benefit from higher annual wages in this franchise tag model—especially in comparison to the current qualifying offer model.

Would having a franchise player designation system in place increase a player's willingness to sign a one-year deal (or two-year deal if player exercises option) to remain with his current team and explore free agency the following year if he was going to be paid a high salary for that season (or those two seasons)? For reference, if there is not a franchise player designation, players such as Kevin Love will continue to use leverage in either (a) claiming that he would rather play out his contract, as opposed to signing an extension, in order to capitalize on a robust free agent market, or (b) trying to immediately force a trade to another team.⁹¹ Other ancillary factors that would increase a player's willingness to re-sign for one season (or two seasons) with his current team include a player's prior injury history, the team's position with respect to the luxury tax, the team's ownership situation, the team's desire to see how the player performs with a new coach, and a player's desire to test the market the following year after improved production or when the free agent class is not as strong.

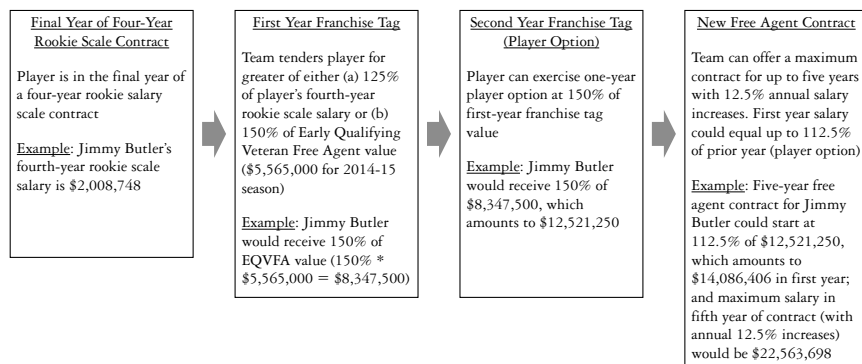
In conclusion, although it is uncertain as to whether NBA owners and players will agree to any franchise player designation system in the near future, expect NBA owners to once again propose a franchise tag system

⁹¹ See Kyle Stack, *A Franchise Tag in the NBA*, SLAM ONLINE MAGAZINE (Sept. 2, 2010), <http://www.slamonline.com/online/nba/2010/09/a-franchise-tag-in-the-nba>.

during the next round of collective bargaining—which could take place as early as 2017.

FIGURE 1 – CONCEPTUAL MODEL FOR PROPOSED NBA FRANCHISE
PLAYER DESIGNATION SYSTEM

*Franchise Player Designation Framework for Players Finishing Fourth Year of
Rookie Salary Scale Contract*



*Franchise Player Designation Framework for Free Agents with \$10 Million or
Greater Average Annual Salary in Expiring Multi-Year Free Agent Contract*

