

**RESPONSE OF NORTH CAROLINA STATE UNIVERSITY  
TO THE COMPLEX CASE UNIT'S AMENDED NOTICE OF ALLEGATIONS**

**Case No. 00935**

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## KEY RECORDS LIST<sup>1</sup>

### Prior Case Filings

1. [North Carolina State University Response to NCAA Notice of Allegations](#) (Dec. 9, 2019)
2. [Response to the Division I Committee On Infractions' Petition to Refer Case No. 00935 to the Independent Accountability Resolution Structure](#) (Apr. 8, 2020)
3. [Notice of Allegations to the Chancellor of North Carolina State University](#) (July 9, 2019)
4. [North Carolina State University Response to NCAA Notice of Allegations](#) (Dec. 19, 2019)
5. [Enforcement Written Reply](#) (Feb. 7, 2020)
6. [Petition to Request Referral of Case to the Independent Accountability Resolution Structure by the chair designee of the NCAA Division I Committee on Infractions to the Infractions Referral Committee](#) (Feb. 14, 2020)
7. [Amended Notice of Allegations to the Chancellor of North Carolina State University](#) (Feb. 1, 2021)

### Factual Information

8. [Unsealed Complaint.pdf](#) – Sealed Complaint, *United States v. Gatto*, No. 1:17CR00686, 2017 WL 7790583 (S.D.N.Y. Sept. 25, 2017)
9. [FI017\\_Gatto17Cr686\\_SupersedingIndictment\\_050718\\_NorthCarolinaSt\\_00935.pdf](#) – Superseding Indictment, *United States v. Gatto*, No. 1:17-cr-00686 (LAK), 2018 WL 1756907 (S.D.N.Y. Apr. 10, 2018)
10. [FI138\\_TBlanche\\_Letter\\_CCU\\_DisclosureResponseWithEnclosures\\_020121\\_NorthCarolinaSt\\_00935.pdf](#) – Letter from T. Blanche to M. Quigley and S. Berryman (Feb. 1, 2021)

### Other Materials

11. Exhibit 1 – Joe Giglio, [NC State accepts NCAA's referral to independent investigative process](#), WRALSportsFan (Apr. 8, 2020)
12. Exhibit 2 – [University receives notice of potential NCAA infractions](#), The University of Oregon (Dec. 21, 2017)
13. Exhibit 3 – [Information about NCAA Case](#), The University of Mississippi (June 6, 2017)

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<sup>1</sup> The documents, information, and materials contained in this Key Records List are not intended to be a comprehensive list of materials that support the University's case.

14. Exhibit 4 – [Carolina comments on, releases NCAA's third notice of allegations](#), The University of North Carolina at Chapel Hill (Dec. 22, 2016)

North Carolina State University (“NC State” or the “University”) respectfully submits this response to the Complex Case Unit’s (“CCU”) Amended Notice of Allegations.

## INTRODUCTION

On February 1, 2021, after several months of investigation, the CCU issued an Amended Notice of Allegations (“Amended NOA”) to NC State containing substantially the same allegations as the Notice of Allegations (“NOA”) issued by the NCAA enforcement staff more than 18 months earlier. As with the initial NOA, the principal allegation in the Amended NOA relates to an alleged illicit payment of \$40,000 to “an individual associated with” former men’s basketball player Dennis Smith, Jr., as well as a number of additional alleged minor potential violations spanning a two-and-a-half-year period in which Smith, his trainer, family, or friends received “special parking” or complimentary men’s basketball admissions.

As relevant here, the Amended NOA contained two changes with respect to potential aggravating factors.<sup>2</sup> *First*, consistent with the position asserted by the University in its response to the initial NOA, the CCU removed as a potential aggravator the University’s prior history of Level I, Level II, or major violations, of which the NOA had identified only five during the preceding 66 years. *Second*, however, the CCU added as a potential aggravator the University’s

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<sup>2</sup> This submission sets forth the University’s response to the changes reflected in the Amended NOA. As the Amended NOA otherwise contains substantially similar allegations as the NOA, the University incorporates by reference and relies on its prior submissions in this matter, including its [Response to the NCAA Notice of Allegations](#) dated December 9, 2019, [Response to the Division I Committee On Infractions’ Petition to Refer Case No. 00935 to the Independent Accountability Resolution Structure](#) dated April 8, 2020, and Response to the Complex Case Unit’s Pre-Hearing Brief on Procedural Issues dated May 3, 2021, and all points made and authorities referenced therein. The University also respectfully requests and reserves the right to submit a final pre-hearing brief setting forth its positions on all remaining issues to be addressed at the hearing before the Independent Resolution Panel (“IRP”) scheduled for August 9–10, 2021, after the IRP has had an opportunity to consider the issues raised herein and in the parties’ Pre-Hearing Briefs on Procedural Issues being submitted simultaneously.

issuance of a short, written public statement on April 8, 2020, briefly summarizing its response to the Committee on Infractions' ("COI") Referral Petition that had been released online that day. According to the Amended NOA, this public statement potentially constituted "failing to cooperate" or "compromising the integrity of an investigation" under [Bylaw 19.9.3-\(e\)](#).

For the reasons explained in further detail below, there is no basis to treat the University's April 8 statement as an aggravating factor, and doing so here would be both unfair and unprecedented. *First*, the University's statement was entirely consistent with prior statements that had been approved by the NCAA, and statements commonly issued by NC State and other member institutions in similar contexts without objection by the NCAA. The University is not aware of any prior instance in which a similar statement by a University official was treated as an aggravating factor, or charged as a violation of any Bylaw, and doing so here would be contrary to longstanding practices of the NCAA and its member institutions.

*Second*, the University's statement plainly did not compromise the integrity of the NCAA investigation into this matter. The University's short, three-sentence, written statement merely summarized, or directly quoted, similar statements contained in the University's written Response to the COI Referral Petition, which is a public record under North Carolina state law, and had been posted online. The statement did not reference any witness, evidence, investigative information, or any other aspect of the investigation that was not already in the public record.

*Finally*, any suggestion that the University's statement reflected a "fail[ure] to cooperate during [the] investigation," [Bylaw 19.9.3-\(e\)](#), is completely contrary to the facts. The University has fully cooperated with the investigations into this matter by both the enforcement staff and the CCU, and its April 8 statement expressly referenced the University's "long history of working cooperatively with the NCAA," and indicated that the University "remain[s] committed to working

collaboratively through the IARP to address concerns and to resolve this matter as fairly and efficiently as possible.”

For all these reasons, the April 8 statement should not be treated as an aggravating factor in this case.

## **HISTORY AND BACKGROUND**

As summarized in the University’s prior submissions in this matter, this case arose out of a 2017 investigation by the FBI and the Office of the United States Attorney for the Southern District of New York against former Adidas employees James Gatto and Merl Code, and former sports agent Christian Dawkins, regarding charges for federal crimes related to schemes to defraud NC State and other NCAA Division I universities. *See [Sealed Complaint](#), United States v. Gatto*, No. 1:17CR00686, 2017 WL 7790583 (S.D.N.Y. Sept. 25, 2017). In connection with that investigation, a Superseding Indictment filed on April 10, 2018 charged Gatto, Code, and Dawkins with fraud and conspiracy to defraud NC State, and two other universities, based on allegations that the individuals “made or attempted to make illicit cash payments to the families of high school basketball players in connection with commitments by those student-athletes to matriculate at specific universities sponsored by [Adidas], and with the further aim that these student-athletes would later sign lucrative contracts with the scheme participants upon entering the [NBA].” *Superseding Indictment* at ¶ 30, *United States v. Gatto*, No. 1:17-cr-00686 (LAK), 2018 WL 1756907 (S.D.N.Y. Apr. 10, 2018). As they relate to NC State, the charges centered on an alleged arrangement by Gatto of a \$40,000 cash payment to Smith’s father in an attempt to “help secure and maintain [Smith’s] commitment to play basketball at” NC State. *Id.*

Days after the superseding indictment was issued, NC State notified the NCAA, which initiated its own investigation into related matters. Between June 2018 and February 2019, in response to requests from the NCAA enforcement staff, the University produced over 100,000

pages of documents totaling nearly 40 gigabytes of data, made several University employees available for interviews, and assisted the enforcement staff in locating former employees.

On July 19, 2019, the enforcement staff issued a Notice of Allegations containing four allegations against the University; Mark Gottfried, the former men’s head basketball coach; and Orlando Early, a former assistant coach. *See* [Notice of Allegations to the Chancellor of North Carolina State University](#) (July 9, 2019). Principally, the NOA alleged a violation based on the same conduct at issue in the *Gatto* case. Namely, it alleged that in November 2015, Early arranged for TJ Gassnola, an outside consultant for Adidas, “to provide Early with \$40,000 in cash to ensure Smith’s commitment to the institution,” and “informed Gassnola that he intended to provide the money to Shawn Farmer . . . who would then provide the money to the Smith family.” *Id.* at 2 (Allegation 1-(c)). As to Smith, the NOA also alleged a number of incidents spanning a two-and-a-half-year period from September 2014 through March 2017 in which Smith, his trainer Shawn Farmer, his family, or his friends received “special parking” or complimentary men’s basketball admissions, as well as one incident in which Gottfried permitted his former colleague and mentor to accompany him to a public practice session of Smith. *See id.* at 1–2 (Allegation 1-(a), (b), (d), (e)). The NOA also alleged that men’s basketball staff provided two former Amateur Athletic Union coaches with 14 complimentary admissions to men’s basketball games. *See id.* at 3 (Allegation 2). And based on the incidents alleged in Allegation 1-(d), 1-(e), and 2, the NOA alleged that the University failed to adequately monitor its men’s basketball program with respect to provision of complimentary admissions. *See id.* at 4 (Allegation 4).

As to the University, the NOA also identified four potential aggravating factors and one potential mitigating factor for the COI’s consideration. The potential aggravating factors included: (1) “[m]ultiple Level I and Level II violations” alleged in the NOA; (2) “[a] history of Level I,

Level II, or major violations” based on five prior violations occurring between 1955 and 1989; (3) that a “person of authority” was “personally involved in the violations”; and (4) an alleged “pattern of non-compliance” based on Allegation 1, 2, and 3. *See id.* at 5–6. The mitigating factor identified was NC State’s “established history of self-reporting Level III or secondary violations” during the previous five years. *See id.*

Shortly after the NOA was issued, and consistent with North Carolina law, which categorizes all documents and communications “in possession of the University of North Carolina or any of its constituent institutions related to membership in or communication with the National Collegiate Athletic Association (NCAA)” as public records, N.C. Gen. Stat. § 132-1.3A, the University released a copy of the NOA accompanied by a short statement. The statement, which the NCAA reviewed and approved before it was released, stated, in part, “NC State has strong and clear compliance policies, and puts extensive effort into annual training and education to ensure coaches and athletes are fully aware of those policies and NCAA rules. All four allegations are tied to former coaches who were well educated about the rules and knew the rules, and if the allegations are true, those coaches chose to break the rules. No current coaches are named or implicated in the allegations.” *See* [Enclosures, Letter from T. Blanche to M. Quigley and S. Berryman](#) (Feb. 1, 2021) (“Blanche Letter”) at 5.

On December 9, 2019, the University submitted its response to the NOA setting forth detailed responses to each of the alleged violations, and potential aggravating and mitigating factors identified in the NOA. *See* [North Carolina State University Response to NCAA Notice of Allegations](#) (Dec. 19, 2019) (“NC State Response to NCAA NOA”). For example, with respect to Allegation 1-(c), the University explained, among other things, that there was no direct evidence adduced during the SDNY trial that the alleged \$40,000 payment was provided to Smith or his

family. *See id.* at 11–24. The University also explained that Allegation 1-(a) and 1-(b) were time-barred under [Bylaw 19.5.11](#) because they were based on conduct that occurred more than four years before the Notice of Inquiry was provided. *See id.* at 25–28; *see also* NC State Response to the CCU’s Pre-Hearing Brief on Procedural Issues at 10–15. With respect to the alleged impermissible complimentary admissions referenced in Allegation 1-(d), 1-(e), 2, and 4, the University acknowledged that a limited number of violations occurred and a minor extra benefit by the student-athlete was received as a result, but explained that in the vast majority of the instances identified by the enforcement staff, the complimentary admissions were permissible. *See [NC State Response to NCAA NOA](#)* at 28–35, 36–38. In other words, although the correct process of including the admissions on the student-athlete complimentary admissions list was not followed, including the complimentary admissions on a different list would have been permissible and did not result in an extra benefit being provided to the student-athlete.

The University also responded to each of the potential aggravating factors, identified in the NOA, including that: (1) without the alleged \$40,000 payment to Smith’s family, which was not supported by any direct evidence, the remaining alleged violations were properly categorized as Level II or III; (2) the University’s history demonstrated that it did not have a history of major violations, and instead had gone 30 years without any major infraction; (3) former assistant coach Early was not a “person of authority” during his time at the University as he did not have any hiring, firing, supervisory, or budgetary authority; and (4) the case did not evidence a pattern of noncompliance as it primarily involved one student-athlete, one former assistant coach, and one Level I allegation. *See id.* at 40–41. The University agreed with the potential mitigating factor identified by the CCU based on its history of self-reporting, and identified two additional ones, including the University’s affirmative steps to expedite final resolution of this matter, and its prior

dissociation from professional basketball agent Andy Miller, who was a central figure in the *Gatto* case. *See id.* at 41–42. Prior to releasing its Response, the University informed the enforcement staff that there was an open public records request on file with NC State, and that the Response would be made public upon filing.

On the same day that the University submitted its Response to the initial Notice of Allegations, the University also released a short, written statement summarizing the response, including a statement from Chancellor Woodson stating: “When this process started, we promised accountability where appropriate and vigorous defense where necessary, and our response does exactly that. We look forward to a thorough and accurate review by the panel of the committee on infractions and a fair resolution of this case for the university and the NCAA.” [Blanche Letter](#) at 18. The NCAA did not respond to this statement or raise any concerns at the time.

On February 7, 2020, the enforcement staff submitted its reply, *see* [Enforcement Written Reply](#), and on February 14, 2020, the COI submitted a petition requesting referral of this case to the Independent Accountability Resolution Process (“IARP”), *see* [Petition to Request Referral of Case to the Independent Accountability Resolution Structure by the chair designee of the NCAA Division I Committee on Infractions to the Infractions Referral Committee](#) (Feb. 14, 2020) (“Referral Petition”).

On April 8, 2020, the University submitted its response to the referral petition explaining that, in light of concerns it had with respect to fairness and impartiality of the COI process based on statements in the Referral Petition, the University reluctantly acceded to the COI’s referral to the IARP. *See* [Response of North Carolina State University to Division I Committee on Infractions’ Petition to Refer Case No. 00935 to the Independent Accountability Resolution Structure](#) (Apr. 8, 2020) (“Referral Petition Response”). The Referral Petition Response also

reiterated the University's commitment to working collaboratively with the NCAA to resolve this matter. *See id.* at 1, 6, 7. On the same day that the University submitted the Referral Petition Response, it also issued a short, written statement from Chancellor Woodson summarizing the response. That statement read, in its entirety:

We've stated throughout this process that NC State will accept accountability for any shortcomings and defend ourselves aggressively where we feel it is appropriate and necessary to do so. As our response to the Referral Petition demonstrates, we do not think NC State can receive an objective or fair hearing before the Committee on Infractions in this matter. We believe the only remaining option is that our case be moved to the Independent Accountability Resolution Process. NC State has a long history of working cooperatively with the NCAA, and we remain committed to working collaboratively through the IARP to address concerns and to resolve this matter as fairly and efficiently as possible.

[Blanche Letter](#) at 21. The NCAA did not respond to this statement or raise any concerns at the time.

On May 18, 2020, the Infractions Referral Committee ("IRC") issued a decision referring this case to the IARP.

On February 1, 2021, after several months of further investigation, the CCU issued its Amended NOA. *See* [Amended Notice of Allegations to the Chancellor of North Carolina State University](#) (Feb. 1, 2021). As to the University, the Amended NOA contained the same substantive allegations as the NOA that had been issued previously by the enforcement staff, but it included two changes with respect to potential aggravating factors. *First*, consistent with the University's position, the CCU *removed* as a potential aggravator the University's alleged history of Level I or Level II violations. *Second*, the CCU *added* as a potential aggravator under [Bylaw 19.9.3-\(e\)](#) that "[w]hile this case was pending, the institution made a public disclosure about the case on April 8, 2020." [Amended NOA](#) at 6.

For the reasons discussed below, there is no basis for the Panel to conclude that the University's April 8 statement, or any other statement by the University regarding this investigation, constitutes an aggravating factor.

## ARGUMENT

### **The University's Brief Statement Summarizing Its Response To The Referral Petition Did Not Compromise The NCAA Investigation Or Demonstrate A Lack Of Cooperation**

The Amended NOA includes as a new potential aggravating factor that the University purportedly “[f]ailing to cooperate/compromising the integrity of an investigation” in violation of [Bylaw 19.9.3\(e\)](#).<sup>3</sup> [Amended NOA](#) at 6. In particular, the Amended NOA states:

While this case was pending, the institution made a public disclosure about the case on April 8, 2020. An Institution subject to NCAA bylaws involved in a case is prohibited from making public disclosures about the case until a final decision has been announced [NCAA Bylaw 19.01.3]. Further, institutional staff members have a responsibility to cooperate, which includes “[p]reserving the integrity of an investigation and abiding by all applicable confidentiality rules and instructions” [NCAA Bylaw 19.2.3(f)]. “Failing to satisfy the responsibility to cooperate may . . . be considered an aggravating factor for purposes of determining a penalty” [NCAA Bylaw 19.2.3.2].

*Id.*

The public disclosure referenced in the Amended NOA is the short statement from Chancellor Woodson issued by the University on April 8, 2020 in conjunction with the release of the University's Referral Petition Response. *See supra* at 7–8. This brief statement was similar to statements previously approved by the NCAA, and to a long history of similar statements issued by other member institutions in this and other matters. Chancellor Woodson's statement plainly does not constitute an aggravating circumstance that would justify a higher range of penalties under [Bylaw 19.9.3\(e\)](#) for several reasons.

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<sup>3</sup> *See* n.1 *supra*.

*First*, as a public educational institution and State of North Carolina entity, NC State is subject to North Carolina Public Records laws, which specifically categorize as public records all documents and communications “related to membership in or communication with the National Collegiate Athletic Association . . . .” N.C. Gen. Stat. § 132-1.3A. Consistent with this state law, documents like the Referral Petition Response are considered public records, and the response itself was posted online on a sports news website the very same day it was submitted to the Infractions Referral Committee. *See* Joe Giglio, [NC State accepts NCAA’s referral to independent investigative process](#), WRALSportsFan (Apr. 8, 2020), Ex. 1. The COI’s Referral Petition also was posted on the same website on the same day despite being marked as “Confidential” in large font on the cover page. *See* [Referral Petition](#) at 1.

It is entirely reasonable and appropriate for the Chancellor of a public university to issue a short press statement consistent with, or related to, a NCAA filing that is not only a public record under the law, but a record that was also publicly available and of public interest. Indeed, the NCAA has recognized as much. In this very matter, the NCAA previously approved similar press statements issued by NC State, including in conjunction with the release of the initial NOA in July 2019. There are also numerous historical examples of member institutions issuing similar public statements summarizing the institution’s response to a Notice of Allegations.<sup>4</sup> The University has not identified any prior instance in which a similar statement by a University official was treated as an aggravating factor under [Bylaw 19.9.3\(e\)](#), or charged as a violation of any other Bylaw. Therefore, doing so here would be both unfair and unprecedented.

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<sup>4</sup> *See, e.g.,* [University receives notice of potential NCAA infractions](#), The University of Oregon (Dec. 21, 2017), Ex. 2; [Information about NCAA Case](#), The University of Mississippi (June 6, 2017), Ex. 3; [Carolina comments on, releases NCAA’s third notice of allegations](#), The University of North Carolina at Chapel Hill (Dec. 22, 2016), Ex. 4.

*Second*, contrary to the CCU’s position in the Amended NOA, the University’s statement did not “compromise[e] the integrity of” the NCAA investigation, as required to constitute an aggravating factor under [Bylaw 19.9.3\(e\)](#). At the time of the University’s statement, the enforcement staff already had concluded its investigation, and the COI’s petition requesting referral of this case to the IARP, as well as the University’s response to the Referral Petition, were being made public. Moreover, as the table below demonstrates, every aspect of the Chancellor’s statement merely paraphrased, or directly quoted, statements that already had been made by the University in its Referral Petition Response, which is a public record and was posted online by media.

University Statement	University Response to Referral Petition
<p>“We’ve stated throughout this process that NC State will accept accountability for any shortcomings and defend ourselves aggressively where we feel it is appropriate and necessary to do so.”<sup>5</sup></p>	<p>“NC State fully accepts the responsibility of operating its athletic programs in accord with NCAA and ACC rules, and cooperating with the NCAA when potential NCAA rules issues arise.” <a href="#">Referral Petition Response</a> at 6.</p> <p>“[I]n light of the various concerns described herein, NC State also reserves all rights and remedies, both within and outside of the NCAA structure.” <a href="#">Referral Petition Response</a> at 7.</p>
<p>“As our response to the Referral Petition demonstrates, we do not think NC State can</p>	<p>“Based upon the Referral Petition, NC State believes it cannot receive an objective or fair</p>

<sup>5</sup> This statement also is the same as statements previously made by Chancellor Woodson on July 2019 in connection with release of the NOA (“As the university carefully reviews the NCAA’s allegations and thoroughly evaluates the evidence in order to determine our response, we are prepared to be accountable where we believe it is appropriate and to vigorously defend this great university and its Athletics program where we feel it is necessary.” [Blanche Letter](#) at 5.) and in December 2019 in connection with the University’s response (“When this process started, we promised accountability where appropriate and vigorous defense where necessary, and our response does exactly that. We look forward to a thorough and accurate review by the panel of the committee on infractions and a fair resolution of this case for the university and the NCAA.” [Blanche Letter](#) at 18).

University Statement	University Response to Referral Petition
receive an objective or fair hearing before the Committee on Infractions in this matter.”	hearing before the COI.” <a href="#">Referral Petition Response</a> at 6.
“We believe the only remaining option is that our case be moved to the Independent Accountability Resolution Process.”	<p>“[F]or the reasons discussed further below, the University is left with little choice but to accede to referral to the IARP.” <a href="#">Referral Petition Response</a> at 2.</p> <p>“As a result, NC State is left with little choice but to reluctantly accede to the referral of this case to the IARP.” <a href="#">Referral Petition Response</a> at 7.</p>
“NC State has a long history of working cooperatively with the NCAA, and we remain committed to working collaboratively through the IARP to address concerns and to resolve this matter as fairly and efficiently as possible.”	“NC State has a long history of working cooperatively and collaboratively with the NCAA on matters large and small, and it remains open to working collaboratively as part of the IARP to address its concerns, and to resolve this matter as efficiently as possible.” <a href="#">Referral Petition Response</a> at 7

The IRP cannot reasonably conclude that the University somehow “compromised the integrity” of the already concluded investigation by the enforcement staff, or the yet-to-begin CCU investigation, by issuing a short public statement containing the very same, or substantially similar, statements that the University had made in its Referral Petition Response, which was publicly available at the time.

*Third*, any suggestion that the University’s public statement reflected a “fail[ure] to cooperate during an investigation or refusal to provide all relevant or requested information,” [Bylaw 19.9.3\(e\)](#), defies reason and is inconsistent with the factual record here. *See also id.* at [19.2.3.2](#) (“Failing to satisfy the responsibility to cooperate may result in an independent allegation and/or be considered an aggravating factor for purposes of determining a penalty.”). Consistent with the University’s “long history of working cooperatively with the NCAA” that was expressly

referenced in the April 8 statement, the University has demonstrated exemplary cooperation with the investigation by both the enforcement staff and the CCU.

For example, on April 13, 2018, just days after the U.S. Attorney's Office for the Southern District of New York issued a superseding indictment in the *United States v. Gatto*, which gave rise to this matter, the University promptly notified the enforcement staff of the indictment charging former Adidas employees James Gatto and Merl Code, and former sports agent Christian Dawkins, with schemes to defraud NC State, and other NCAA Division I universities. *See [Superseding Indictment](#), United States v. Gatto*, No. 1:17-cr-00686 (LAK), 2018 WL 1756907 (S.D.N.Y. Apr. 10, 2018). Less than two months later, the University began producing more than 100,000 pages of documents totaling nearly 40 gigabytes of data in response to document requests from the enforcement staff, including every document the University had produced to the Southern District of New York. The University also made witnesses available for interviews, assisted the staff in locating former employees, and otherwise collaborated with them to conclude the investigation in a timely manner. Even after this matter was referred to the IRP, the University continued to actively cooperate with the investigation by the CCU, including, for example, voluntarily producing additional potentially responsive documents and information to the CCU, and responding to several follow-up requests. In large part due to the University's efforts, this case is one of the first of the so-called "SDNY cases" to be ripe for resolution by the NCAA. *See also* Response of NC State to the Complex Case Unit's Pre-Hearing Brief on Procedural Issues at 14–15.

Importantly, the NCAA Bylaws make clear that cooperation by a member institution does not mean that the institution must agree with all of the alleged violations in a Notice of Allegations or otherwise refrain from acting in its best interest. It is entirely permissible, and anticipated by

the Bylaws, for the University to deny certain alleged violations and “otherwise act[] in furtherance of [its] independent interests” while still exhibiting “exemplary cooperation.” See [Bylaw 19.2.3.1](#) (“Institutions or involved individuals may demonstrate exemplary cooperation while denying some or all of the alleged violations and otherwise acting in furtherance of their independent interests.”).

*Finally*, the Amended NOA cites [Bylaw 19.2.3\(f\)](#), which requires member institutions to “cooperate fully with and assist” the NCAA by “[p]reserving the integrity of an investigation and abiding by all applicable confidentiality rules and instructions” and [Bylaw 19.01.3](#), which provides that member institutions “shall not make public disclosures about the case until a final decision has been announced in accordance with prescribed procedures.” [Amended NOA](#) at 6. However, as discussed above, the University has in fact cooperated fully and assisted with the NCAA’s investigation into this matter. The public statement that the CCU identifies as a potential aggravating factor did not reveal any confidential information about the investigation. In fact, the University’s statement did not reveal any facts determined by the investigation at all, but instead, merely repeated the University’s position regarding the COI’s decision to request referral of the case to the IARP, which already had been expressed in the University’s written response released that same day.

Furthermore, as also discussed above, the University’s statement was entirely consistent with prior public statements that had been reviewed and approved by the NCAA, and public statements by other member institutions in similar contexts. Even if the IRP were to adopt the unprecedented position here that the University’s statement briefly summarizing the position expressed in its publicly released response constituted a “public disclosure about the case” contrary

to [Bylaw 19.01.3](#), that statement still does not reflect “failing to cooperate” or “compromising the integrity of an investigation” under [Bylaw 19.9.3\(e\)](#).

### CONCLUSION

For all these reasons, the University respectfully requests that the IRP reject the CCU’s newly proposed aggravating factor.

Date: May 3, 2021

Respectfully submitted,

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