William Michael Cunningham
Creative Investment Research
Washington, DC
www.creativeinvest.com
www.minorityfinance.com
www.diversityfund.net

info@creativeinvest.com
202-455-0430

2/24/16

Mr. Brent Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Number 265-27

Dear Mr. Fields,

On behalf of William Michael Cunningham and Creative Investment Research, I am pleased to submit the comments below.

Background

William Michael Cunningham registered with the U.S. Securities and Exchange Commission as an Investment Advisor on February 2, 1990. He registered with the D.C. Public Service Commission as an Investment Advisor on January 28, 1994. Mr. Cunningham manages an investment advisory and research firm, Creative Investment Research.

Creative Investment Research was founded in 1989 to expand the capacity of markets to provide capital, credit and financial services in minority and underserved areas and markets. We have done so by creating new financial instruments and by applying existing financial market technology to underserved areas. The Community Development Financial Institution Fund of the US Department of the Treasury certified the firm as a Community Development Entity on August 29, 2003. The Small Business Administration certified the firm as an 8(a) program participant on October 19, 2005. (As noted in detail below, we did not receive any revenue due to our participation and withdrew from the program.)

William Michael Cunningham
Creative Investment Research
Washington, DC
www.creativeinvest.com
www.minorityfinance.com
www.diversityfund.net

info@creativeinvest.com
202-455-0430

Mr. Cunningham's understanding of capital markets is based on firsthand knowledge obtained in a number of positions at a diverse set of major financial institutions. He served as Senior Investment Analyst for an insurance company. Mr. Cunningham was an Institutional Sales Representative in the Fixed Income and Futures and Options Group for a leading Wall Street firm. Mr. Cunningham also served as Director of Investor Relations for a New York Stock Exchange-traded firm.

He registered with the Supplier Clearinghouse for the Utility Supplier Diversity Program of the California Public Utilities Commission twice, first in 1991 and secondly on April 16, 2010 (VON-10CS0091). For the record, he received no revenue due to participation in the program.

In 1991, Mr. Cunningham created the first systematic bank analysis system using social and financial data, the Fully Adjusted Return® methodology. He designed the first mortgage security backed by home mortgage loans to low and moderate income persons and originated by minority-owned institutions. (See: *Security Backed Exclusively by Minority Loans*, The American Banker. Friday, December 2, 1994.)

On July 3, 1993, William Michael Cunningham wrote to then US Securities and Exchange Commissioner (SEC) Mary Schapiro to suggest the Commission warn the public about the "Nigerian letter scam."

On November 16, 1995, he launched one of the first investing websites.

In 2001, he designed a refinancing plan for victims of predatory lending that led to the creation of targeted community development investments. (See: http://www.socialfunds.com/news/article.cgi?sfArticleId=682)

On December 22, 2003, he warned the SEC that statistical models using the Fully Adjusted Return ® Methodology signaled the probability of system-wide economic and market failure. (See page 6: http://www.sec.gov/rules/proposed/s71903/wmccir122203.pdf)

William Michael Cunningham
Creative Investment Research
Washington, DC
www.creativeinvest.com
www.minorityfinance.com
www.diversityfund.net

info@creativeinvest.com
202-455-0430

On February 6, 2006, his statistical models, created using the Fully Adjusted Return ® Methodology, confirmed that system-wide economic and market failure was a growing possibility. (See page 2: http://www.sec.gov/rules/proposed/s71005/wcunningham5867.pdf)

In 2006, he launched the Creative Investment Research, Inc. Diversity Portfolio. Stocks of the largest companies in the U.S. are included in the fund. These companies have been selected because they have outstanding investment characteristics and are top performers with respect to key measures of inclusion and diversity, human capital & CEO commitment.

On April 27, 2009, he provided to Pacific Gas & Electric Company (PG&E) social and financial credit ratings covering community development banks serving areas of high social need within PG&E's service territory.

On March 15, 2011, the California Public Employees' Retirement System awarded a contract for Investment Diversity Consultant Services Spring-Fed Pool to Mr. Cunningham and Creative Investment Research, Inc.

We suggest the Commission review the following:

http://www.washingtonpost.com/business/capitalbusiness/commentary-the-quest-forcrowdfunding-enters-a-complicated-but-critical-phase/2012/12/23/d15ef280-4939-11e2-ad54580638ede391_story.html

http://www.washingtonpost.com/business/capitalbusiness/commentary-crowdfunding-canprovide-new-financing-option-for-minority-firms/2012/06/01/gJQAThq7BV_story.html

William Michael Cunningham
Creative Investment Research
Washington, DC
www.creativeinvest.com
www.minorityfinance.com
www.diversityfund.net

info@creativeinvest.com
202-455-0430

The firm and Mr. Cunningham have long been concerned with the integrity of the banking and securities markets:

- In September, 1998, Mr. Cunningham opposed the application, approved by the Federal Reserve Board on September 23, 1998, by Travelers Group Inc., New York, New York, to become a bank holding company by acquiring Citicorp, New York, New York, and to retain certain nonbanking subsidiaries and investments of Travelers, including Salomon Smith Barney Inc., New York, New York. Mr. Cunningham based his opposition on the fact that Salomon Smith Barney Inc. had a history of attempting to monopolize markets and defrauding investors. This single fact rendered the merger potentially injurious to the public welfare.

  Specifically, Mr. Cunningham noted that the merger was not consistent with 12 U.S.C. Section 1841 et. seq., the Bank Holding Company Act of 1956. The Act states that:

  > "The (Federal Reserve) Board shall not approve -
  >
  > (B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade.."

  Mr. Cunningham cited evidence that growing financial market malfeasance greatly exacerbated risks in financial markets, reducing the safety and soundness of large financial institutions. He also warned that approving the merger was dangerous and might lead to market collapse. (On April 28, 2003, Citigroup Global Markets Inc. settled S.E.C. enforcement actions involving conflicts of interest between research and investment banking operations by paying fines totaling $400 million. The firm was found, *again*, to be defrauding investors by operating schemes *in restraint of trade*.)

William Michael Cunningham
Creative Investment Research
Washington, DC
www.creativeinvest.com
www.minorityfinance.com
www.diversityfund.net

info@creativeinvest.com
202-455-0430

- On Monday, April 11, 2005, Mr. Cunningham spoke on behalf of investors at a fairness hearing regarding the $1.4 billion dollar Global Research Analyst Settlement. The hearing was held in Courtroom 11D of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York. *No other investment advisor testified at the hearing.* On April 22, 2005, as a direct result of Mr. Cunningham's testimony, the Court extended the publication schedule and ordered that the notice schedule include publications directed at women and minorities. (See: http://www.sec.gov/spotlight/globalsettlement/order042205.pdf)

In the interest of full disclosure, we note that:

- On August 13, 2012, the United States Court of Appeals for the Second Circuit recognized William Michael Cunningham as "Friend of the Court" in a case concerning the United States Securities & Exchange Commission (SEC) and Citigroup Global Markets Inc. (Citigroup), the latter *yet again* accused of securities fraud.

- On December 9, 2013, the United States District Court, Central District of California recognized William Michael Cunningham as "Friend of the Court" in a case the Department of Justice brought against Standard & Poor's Financial Services LLC, et. al. His comments led to the first ever, albeit temporary, rating firm suspension.

- On June 17, 2015, the United States Court of Appeals for the District of Columbia Circuit recognized William Michael Cunningham as "Friend of the Court" in an action (15-1149) that State securities regulators in Montana and Massachusetts brought against the U.S. Securities and Exchange Commission (SEC).

William Michael Cunningham
Creative Investment Research
Washington, DC
www.creativeinvest.com
www.minorityfinance.com
www.diversityfund.net

info@creativeinvest.com
202-455-0430

Capital Formation Experience

Rather than support and engage in the types of predatory subprime lending practices that negatively impacted the mortgage market and the country as a whole, we proposed to develop alternative, socially responsible methods to enhance homeownership opportunities for minorities and women.

As an 8(a) firm, Mr. Cunningham submitted an unsolicited proposal to Department of Housing and Urban Development (HUD) on April 7, 2006. In our proposal, we offered to research and create a collaborative, market-based approach to increase participation in HUD 's Energy Efficient Mortgage (EEM) Program. The proposal was submitted to the Senior Energy Management Officer in the Office of Environment and Energy, US Department of Housing and Urban Development, Washington, DC.

We have unique, value adding capabilities in this area:

- We identified a utility company willing to manage "the process of having energy ratings and evaluations done on properties," at no cost to the borrower. This necessary step in the EEM mortgage process "is sometimes seen as excess work for the lender, which is why the product has traditionally not been actively promoted."
- We identified a pension fund to purchase a resulting GNMA EEM pool.
- We believe the supply of EEM mortgages should increase once EEM loan originators are able to verify that there are a set of investors willing to purchase EEM mortgage pools. Originators may then start to promote the program. Energy market forces support this contention. One article noted that
    - "last year's dramatic rise in fuel prices helped increase the awareness of the (EEM) mortgage loan product. When you've have a spike as we've had with energy and home heating,

William Michael Cunningham
Creative Investment Research
Washington, DC
www.creativeinvest.com
www.minorityfinance.com
www.diversityfund.net

info@creativeinvest.com
202-455-0430

> these products get dusted off..the last time I remember they were being talked about so much was in the mid-90s. According to news reports, "a sudden jump in media attention (is also) helping to bring energy efficient mortgages back to the spotlight."

We proposed to help FHA, GNMA and HUD capitalize on these trends. FHA, GNMA and HUD thought otherwise. Our proposal was initially ignored and subsequently rejected.

Current Economic Environment for Small Business Capital Formation

My economic models show the following:

a. Financial conditions are less supportive of growth. Both the dollar and interest rates are up, and lower oil prices do not seem to be meaningfully impacting growth prospects.

b. The recovery in the housing sector is ongoing. Prices and activity are both up.

c. Consolidation in the banking industry is also ongoing. This results in fewer and fewer banks, less competition, and less beneficial terms for small business bank customers. <u>We suggest the Advisory Committee encourage small businesses to consider meeting their financing needs at Credit Unions</u>.

Capital market practices, in general, remain deeply flawed. It is our hope that the Committee will begin to review market practices from a systemic, global perspective, since defective practices in one sector have been linked to faulty practices in other capital market sectors.

Faulty market practices mask a company's true value and misallocate capital by moving investment dollars from deserving companies to unworthy companies. These practices threaten the integrity of securities markets. Individuals and market institutions with the power to safeguard the system,

William Michael Cunningham
Creative Investment Research
Washington, DC
www.creativeinvest.com
www.minorityfinance.com
www.diversityfund.net

info@creativeinvest.com
202-455-0430

including investment consultants, analysts and rating agencies, have been compromised. Few efficient, effective and just safeguards are in place. Investors and the public are at risk.

Diversity of the Advisory Committee

We note a disturbing lack of ethnic diversity on the Advisory Committee. This continues a pattern of hostile behavior toward African Americans on the part of the Agency. The Agency's behavior and lack of true ethnic diversity led it to ignore warnings of the financial crisis originating from those outside the majority community. It was unconcerned about unethical market behavior at very large financial service providers, since those behaviors initially impacted the African American community, even though this community of American citizens are entitled to protection under the Constitution.

Economic Rationale for Diversity

Given increasing global competitiveness, it is in the national interest to foster business innovation and breakthroughs from every sector of the population.

A diverse agency or corporation has an inclusive work force, marketplace and business community (suppliers, partners and investors). To successfully compete in the United States and globally, companies must reflect the changing population within the ranks of their employees and managers. Increasingly, the faces of our work force, our suppliers and our investors are faces of color, faces of women, faces of people with disabilities, faces of gay, lesbian, bisexual and transgendered individuals, faces of older workers. By integrating diversity into the workplace, companies vigorously tailor their offerings to fit the needs of shifting cultural priorities.

Successful firms have access to the broadest possible base of customers and suppliers, and multicultural marketing is a proven way to boost revenues.

William Michael Cunningham
Creative Investment Research
Washington, DC
www.creativeinvest.com
www.minorityfinance.com
www.diversityfund.net

info@creativeinvest.com
202-455-0430

Diversity friendly institutions may also have lower employee turnover and higher innovation and productivity, reflective of a culture of inclusion.

In our Diversity Portfolio, stocks of the largest companies in the U.S. are included. These companies have been selected because they have outstanding investment characteristics and are top performers with respect to four key measures of inclusion and diversity: Human capital, CEO commitment, corporate communications, and supplier diversity.
As shown below, our Diversity Portfolio of stocks outperforms the broad equity market.

Other Comments

"The Commission should consider additional investor protections for the new exemption, including publicly accessible electronic filings of offering statements, periodic reporting for companies that have completed an offering pursuant to the new exemption and "bad actor" disqualification provisions."

William Michael Cunningham
Creative Investment Research
Washington, DC
www.creativeinvest.com
www.minorityfinance.com
www.diversityfund.net

info@creativeinvest.com
202-455-0430

We further suggest that the "bad actor" disqualification provisions should include automatic disqualification for any firm fined more than $1 million by any regulatory agency, to specifically include firms that have violated section 17(a) of the SEC Act of 1933. For a listing of these firms we refer the Agency to an article in the New York Times, "Promises Made, and Remade, by Firms in S.E.C. Fraud Cases" by Edward Wyatt published on November 7, 2011.

We also agree that:

"The Commission should, in connection with allocation of resources for the review of regulations affecting capital formation, consider the greater importance of other areas of its review, including the review of rules relating to triggers for public reporting, restrictions on general solicitation and the disclosure requirements and restrictions on communications in initial public offerings."

As I note in my book on the JOBS Act, The JOBS Act: Crowdfunding for Small Businesses and Startups, http://www.amazon.com/The-JOBS-Act-Crowdfunding-Businesses/dp/143024755X , the JOBS Act specifically seeks to benefit Small Businesses and Startups.

Thank you,

Sincerely,

William Michael Cunningham