

William Michael Cunningham

Economist and Social Investing Advisor

March 25, 2015

We understand that “The Division of Corporation Finance (of the United States Securities and Exchange Commission) is reviewing the disclosure requirements in Regulation S-K and Regulation S-X, which provides requirements for financial statements, and is considering ways to improve the disclosure regime for the benefit of both companies and investors. The goal is to comprehensively review the requirements and make recommendations on how to update them to facilitate timely, material disclosure by companies and shareholders' access to that information. Initially, the review will focus on the business and financial disclosures required by periodic and current reports, Forms 10-K, 10-Q, and 8-K. Subsequent phases of the project will include compensation and governance information included in proxy statements.

The Division of Corporation Finance welcomes input and comments on how to improve disclosure and make it more effective.”

I believe I have expertise borne of experience that may be helpful, having authored a book on the JOBS Act titled *The JOBS Act: Crowdfunding for Small Businesses and Startups*. See:

<http://www.amazon.com/JOBS-Act-Crowdfunding-Businesses-Startups/dp/143024755X/>

Further, we remind the SEC that “All men are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.” This is especially true with respect to the subject matter at issue here.

Summary

As the market value of environmental factors continues to grow, companies and investment managers will engage in fraudulent practices related to disclosure concerning these factors. These practices will range from simple falsification of environmental and financial records to fraudulent, but more sophisticated, methods related to “environmental ratings.”

We remind the SEC that, under its watch, unethical practices have flourished in capital market institutions, propelling ethical standards of behavior downward. Thus, unethical behavior has become standard in the financial services marketplace.

This behavior has become especially prevalent in the oil and gas industry and refer to the following:

“On 13 August 2013, the oil and gas industry in Indonesia was shaken again..Rubiandini, Chairman of the Oil and Gas Special Task Force (SKKMIGAS) – the institution that replaced BPMIGAS – was arrested at his home. He was arrested by Indonesia’s Corruption Eradication Commission (KPK) over a case involving

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gratification and potentially bribery. Rubiandini had apparently been caught red-handed accepting US\$700,000 from Simon Gunawan Tanjaya, an executive of Kernel Oil, a Singapore oil trading firm.”

<http://www.nortonrosefulbright.com/knowledge/publications/113978/corruption-scandal-shakes-indonesias-oil-and-gas-industry>

“BP found ‘grossly negligent’ in Gulf of Mexico oil spill.”

<http://www.neworleanssun.com/index.php/sid/225407625>

“Shell is pushed to explain its role in \$1.1bn Nigerian corruption scandal.”

<http://www.theguardian.com/sustainable-business/shell-nigeria-oil-payment-corruption-scandal>

This is a cursory review. A more thorough review, beyond the scope of this comment, reveals even more ethically suspect behavior.

Environmental Issues and Stock Returns

Our research suggests that there is no contradiction between financial goals and responsible environmental stewardship. As shown below, disclosure is critical to this process, however.

Using data from Forms 10-K, 10-Q, and 8-K, [Creative Investment Research, Inc. explored and quantified the impact environmental factors have on stock prices using several statistical techniques.](#)

Our research is structured into two parts. In the first, we specify three standard market models and test the hypothesis that environmental factors do, in fact, impact equity prices. In the second part, we examine the impact of a major environmental incident on stock prices, using new data sources and with the assistance of the equity market models specified in phase one.

We created three portfolios based on a ranking of environmental impact forecasts and preparations, as outlined below. The first portfolio returned -21.974%. This portfolio consisted of firms with an environmental impact forecast who were well prepared for an environmental incident. The second portfolio consisted of firms with an environmental impact forecast who were marginally prepared for an environmental incident. Returns were +30.686%. The final portfolio consisted of firms without an environmental impact forecast who were not prepared for an environmental incident. Returns were -24.036%.

Our analysis strongly suggests that investors and publicly traded companies must recognize the impact environmental incidents and issues have on a given firm's ability to use company assets and therefore generate revenue and profits.

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Conclusion

It has been shown that the SEC does not apply regulatory or enforcement capacities in a competent, fair, racially neutral manner, and we have no reason to believe the Agency will competently do so here.

The SEC cost the nation \$19.2 trillion, increased the speed with which China will overtake the U.S. in GDP terms, and set the stage for the eventual replacement of the US dollar as global reserve currency. These events tend not to be in the public interest.

Given the facts above, we conclude that the Agency is compromised. We note that racial bias is one indicator of a lack of competence, and the fact that no qualified, competent African American males have ever been employed by the Division (with the exception of one “token”) is prima facie proof.

We look forward to reviewing your continuing efforts to carry out your mission. Please contact me with any questions or comments.

Sincerely,

/William Michael Cunningham/

William Michael Cunningham

Social Investing Adviser for William Michael Cunningham and Creative Investment Research, Inc.

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APPENDIX

Background

William Michael Cunningham is a DC Native. He holds a Master's in Economics and an MBA in Finance, both from the University of Chicago, and is a graduate of Howard University.

Mr. Cunningham manages an investment advisory and research firm, Creative Investment Research, Inc. The firm researches and creates socially responsible investments and provides socially responsible investment advisory services. He is also Managing Partner at National Crowdfunding Services, LLC.

Creative Investment Research, Incorporated is an independent investment research and management firm, founded in 1989. For clients, our services save millions, if not billions: on December 22, 2003, December 22, 2005, and February 6, 2006, we warned the S.E.C. and other regulators that statistical models using our proprietary Fully Adjusted Return® Methodology signaled the probability of system-wide economic and market failure (see below). Clients who heeded our warning adjusted their investment portfolios in a manner that allowed them to escape much of the damage caused by the crisis. The firm was formerly in the pool of Corporate Governance Advisors and Diversity Investing Advisors to CalPERS.

Mr. Cunningham is a Global Member of ISOC, the Internet Society (ISOC), a Public Member of W3C, the World Wide Web Consortium, and an Invited Expert Member in the eGovernment Group of the W3C. On November 16, 1995, he launched one of the first investment advisor websites at www.ari.net/cirm (now www.creativeinvest.com).

Forecasting Track Record

On July 3, 1993, Mr. Cunningham wrote to US Securities and Exchange Commissioner (SEC) Mary Schapiro to notify the Commission about a specific investing scam, the "Nigerian letter scam." A timely warning was not issued to the investing public, members of the public were damaged, and the SEC launched retaliatory regulatory actions against Mr. Cunningham.

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 Newspaper](#). Friday, December 2, 1994.)

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. In October 1998, in a petition to the United States Court of Appeals ([Case Number 98-1459](#)) concerning the Travelers Group Inc./Citicorp merger, Mr. Cunningham cited evidence that growing financial market malfeasance greatly exacerbated risks in financial markets, reducing the safety and soundness of large financial institutions.

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From October 1999 to March 2002, Mr. Cunningham was responsible for proxy voting activity for the Board of Pensions of the Evangelical Lutheran Church in America. In 2001, he voted on 1395 issues impacting 401 companies. In 2000, he voted on 1903 issues impacting 422 companies. We managed fund efforts and corporate governance matters related to Talisman Energy and its' operations in the Sudan. We researched the issue, contacting various groups involved in the process. For the fund, our efforts also included researching fund policies and procedures. Our collaborative, risk controlled strategy helped lead the firm out of the Sudan. On February 1, 2000, Mr. Cunningham wrote to the office of U.S. Senator Samuel Brownback (R-KS) urging him to encourage pension funds to divest from the Sudan.

On June 15, 2000, Mr. Cunningham testified before the Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (GSE's) of the U.S. House of Representatives and suggested that GSEs Fannie Mae and Freddie Mac be subject to a Social Audit. A social audit is an examination of the performance of an enterprise relative to certain social return objectives. It includes a review of ethical practices. Had the GSE's been subject to this audit, certain flaws in their operation, including ethical shortcomings, would have been revealed earlier, in a better market in which to make corrections.

In 2001, Mr. Cunningham participated in the first wide scale home mortgage loan modification project. The Minneapolis-based effort helped 50 families victimized by predatory lending practices. [See: Property Flipping Remediation Yields Investment-grade Security.](#)

On December 22, 2003, he warned US regulators that statistical models he created using the proprietary Fully Adjusted Return® Methodology signaled the probability of system-wide economic and market failure. [See Page 6.](#)

In 2005, Mr. Cunningham served as an expert witness in a case that sought to hold Credit Suisse First Boston, Fairbanks/SPS, Moody's and Standard and Poor's, US National Bank Association, and other parties legally responsible for supporting and facilitating fraudulent subprime lending market activities. Had this single case been successful, we believe the credit crisis would have been less severe.

On December 22, 2005, he issued a strongly worded warning that system-wide economic and market failure was a growing possibility in a meeting at the SEC with Ms. Elaine M. Hartmann of the Division of Market Regulation.

On February 6, 2006, he again warned regulators that statistical models created using the proprietary Fully Adjusted Return® Methodology confirmed that system-wide economic and market failure was a growing possibility. He stated that: Without meaningful reform there is a small, but significant and growing, risk that our (market) system will simply cease functioning. This is, of course, exactly what happened. [See pages 2 and 8.](#)

On June 18, 2009, he testified before the House Ways and Means Select Revenue Measures Subcommittee at a joint hearing with the Subcommittee on Domestic Monetary Policy and Technology of the Financial Services Committee: Testimony on the New Markets Tax Credit Program. He suggested

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ways to improve the program. See:

http://www.novoco.com/new_markets/resource_files/advocacy/cunningham_testimony_061809.pdf

On Wednesday, January 13, 2010 and Monday, June 14, 2010, Mr. Cunningham wrote to Mr. Phil Angelides, Chairman, Financial Crisis Inquiry Commission, to submit testimony and comments to the Commission. In addition, he noted that he was “disappointed that FCIC has not sought out or recognized a broader set of opinions and viewpoints and are further disappointed by FCIC’s lack of ethnic diversity at both the Board and Staff level.”

On July 19, 2010, Mr. Cunningham testified on behalf of the public at the Joint Interagency Public CRA hearings: “The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency jointly held public hearings on modernizing the regulations that implement the Community Reinvestment Act (CRA).” See:

http://www.fdic.gov/CRAhearings/Individual_Presentations.pdf

On August 13, 2012, Mr. Cunningham filed a "Friend of the Court" brief in United States Securities & Exchange Commission vs. Citigroup Global Markets Inc. (Second Circuit Court of Appeals Case Number 11-5227). The case concerned the rejection, by a Federal Judge, of a settlement agreed to by the United States Securities & Exchange Commission (SEC) and Citigroup Global Markets Inc. (Citigroup), the latter accused of securities fraud. <http://www.prlog.org/11948760-william-michael-cunningham-files-revised-brief-in-sec-vs-citigroup-2nd-cir-ct-of-ap.html>

On December 9, 2013, Mr. Cunningham filed a "[Friend of the Court](#)" brief in the United States District Court, Central District of California in a case concerning an action that the U.S. Department of Justice, acting on behalf of the United States of America (Plaintiff), brought against McGraw-Hill Companies, Inc., and Standard & Poor’s Financial Services LLC, et. al., (Defendants) under 12 U.S.C. § 1833a; 18 U.S.C. §§ 1341, 1343 & 1344. My comments led to a significant change in enforcement strategy, including the first ever, albeit temporary, rating firm suspension.

On February 3, 2015, I commented on an effort by Apple Computer to utilize women and minority-owned brokerage firms: <http://www.usatoday.com/story/tech/2015/02/03/apple-debt-offering-minority-firms-jesse-jackson-diversity-silicon-valley/22805673/>

Mr. Cunningham writes commentary on small business topics for the Washington Post. For more background information, please see:

[Global Market Turmoil Graphic](#) and [Financial Crisis Calendar Graphic](#), Creative Investment Research, Inc., December, 2008 and November, 2009.

Equity Crowdfunding: <https://youtu.be/1802x3V-EhA>

Black Economic Forecast: https://youtu.be/rlr_DomOais, https://youtu.be/E_AgImRM_Wk

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