

William Michael Cunningham

Economist and Impact Investing Researcher



May 22, 2023

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090.

Re: File Number S7-04-22

Dear Sir/Madam,

We understand that the Securities and Exchange Commission (“Commission”) is reopening the comment period for a release (“Investment Management Cybersecurity Release”) proposing new rules under the Investment Advisers Act of 1940 (“Advisers Act”) and the Investment Company Act of 1940 (“Investment Company Act”) that would require registered investment advisers (“advisers”) and investment companies (“funds”) to adopt and implement written cybersecurity policies and procedures reasonably designed to address cybersecurity risks, disclose information about cybersecurity risks and incidents, report information confidentially to the Commission about certain cybersecurity incidents, and maintain related records.

We provide comments and references below. Our understanding is borne of significant experience, knowledge which has given the firm in depth comprehension of these issues. We have expertise that is unmatched in either duration or depth:

Federal Appeals and lower courts have accepted several “Amicus Curiae” or “Friend of the Court” briefs we filed in signal cases concerning financial marketplace structure and fraud cases:

The U.S. Court of Appeals for the District of Columbia Circuit accepted a "Friend of the Court" brief filed by William Michael Cunningham in Mozilla Corporation vs. the Federal Communications Commission (net neutrality). <https://www.prlog.org/12729944-william-michael-cunningham-files-amicus-brief-in-net-neutrality-case-18-cv-1051.html>

Amicus Brief in Fiduciary Rule Case (16-cv-1035): <https://www.prlog.org/12573252-william-michael-cunningham-files-amicus-brief-in-fiduciary-rule-case-16-cv-1035.html>

Amicus Brief in Met Life v FSOC (16-5086): <https://www.prlog.org/12570202-william-michael-cunningham-files-amicus-brief-in-met-life-fsoc-16-5086.html>

Amicus Brief in Galvin v SEC (15-1150): <https://www.prlog.org/12499745-william-michael-cunningham-files-amicus-brief-in-galvin-sec-15-1150.html>

Amicus Brief in US vs. S&P (US District Court, Central District CA): <https://www.prlog.org/12256590-william-michael-cunningham-files-amicus-brief-in-us-vs-sp-us-district-court-central-district-ca.html>

info@creativeinvest.com
www.creativeinvest.com

Copyright, ©, 2022, William Michael Cunningham

William Michael Cunningham








Economist and Impact Investing Researcher



Revised brief in SEC vs. Citigroup (2nd Cir Ct of Ap):

<https://www.prlog.org/11948760-william-michael-cunningham-files-revised-brief-in-sec-vs-citigroup-2nd-cir-ct-of-ap.html>

We also have significant relevant experience:

-  We developed the first targeted mortgage-backed security investment CRA securitization, an MBS pool backed by loans from minority financial institutions. We designed and created the investment in 1992. (See: <https://www.creativeinvest.com/wglelca.pdf>)
-  In 1992, in a letter to the Federal Reserve, we suggested the creation of an Investment Test as part of the Community Reinvestment Act (CRA) as a way to evaluate community development performance, another suggestion that was ignored until non-Black persons and firms could profit.
-  In 1993, at the First Annual Greenlining Institute Conference on Community Development, we suggested the creation of government backed venture capital funds to take first risk position in the provision of equity capital to small, minority businesses on Georgia Avenue in NW Washington, DC. This morphed into the New Markets Tax Credit program, a real estate focused "community development" program that has fueled gentrification.
-  On November 3, 1994, in a speech titled "The Role of Minority Banks in Meeting the Credit Needs in the Marketplace" delivered at the Federal Reserve Bank of Kansas City Seminar on: Credit and the Disadvantaged, we suggested the Fed purchase mortgage-backed securities issued by Black owned banks as a way to address housing inequality while enhancing the impact of monetary policy, a suggestion the Fed ignored until majority-owned banks could profit.
-  Mr. Cunningham is an unaffiliated member of NARALO, the North American Regional At-Large Organization of ICANN, the Internet Corporation for Assigned Names and Numbers.
-  Mr. Cunningham's presentation at the Texas Association of African American Chambers of Commerce resulted in successful crowdfunding legislation for the State of Texas. <https://www.creativeinvest.com/TexasEconomicForecastCrowdfundingBill.pdf>
-  On February 3, 2015, Mr. Cunningham 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 has published articles on banking issues in the Washington Post (see:

https://www.washingtonpost.com/business/capitalbusiness/commentary-crowdfunding-can-provide-new-financing-option-for-minority-firms/2012/06/01/gJQAThQ7BV_story.html?utm_term=.0e8c32762d95)

and in the American Banker Newspaper (see: <https://www.americanbanker.com/opinion/time-to-clean-house-at-wells-fargo> , <https://www.americanbanker.com/opinion/cryptocurrency-regulation-is-a-job-for-treasury> and <https://www.americanbanker.com/opinion/blow-up-the-cra-and-start-from-scratch>).

We are the premier firm in understanding and analyzing environmental, social and governance (ESG) trends as they impact global economic systems. Our research has focused on "long-term changes that will affect and influence the economy, financial system, society and environment at large." For more

info@creativeinvest.com
www.creativeinvest.com


Copyright, ©, 2022, William Michael Cunningham

information, please see: [Global Market Turmoil Graphic](#) and [Financial Crisis Calendar Graphic](#), December, 2008 and November, 2009.

Our comments follow a series of forecasts we have issued:

- 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.
<https://www.creativeinvest.com/SECNigerianLetter.pdf>

- In October 1998, in a petition to the United States Court of Appeals for the District of Columbia Circuit in opposition to the Citigroup/Travelers merger, we cited evidence that growing financial market malfeasance greatly exacerbated risks in financial markets, reducing the safety and soundness of large financial institutions. We went on to note that:

 *"The nature of financial market activities is such that significant dislocations can and do occur quickly, with great force. These dislocations strike across institutional lines. That is, they affect both banks and securities firms. The financial institution regulatory structure is not in place to effectively evaluate these risks, however. Given this, the public is at risk."*

On July 25, 2012, the New York Times reported that Sanford I Weill, former chairman and chief executive of defendant Citigroup "called for a wall between a bank's deposit-taking operations and its risky trading businesses. In other words, he would like to resurrect the regulation (Glass-Steagall) that he once fought."

- On June 15, 2000, we testified before the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (GSE's) of the US Congress. We suggested that the GSE's (Fannie Mae and Freddie Mac) be subject to a thorough "Social Audit." A Social Audit is an examination of the performance of an enterprise relative to certain social objectives. It also includes a review of ethical practices at the firm. Had they been subject to this audit, certain flaws in their operation which led to their failure, including ethical shortcomings, would have been revealed earlier.
- In 2001, Mr. Cunningham helped create the first wide scale home mortgage loan modification project. See: *Property Flipping Remediation Yields Investment-grade Security* at: <http://www.creativeinvest.com/remediation.pdf>
- On December 22, 2003, statistical models we created 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>

info@creativeinvest.com
www.creativeinvest.com

Copyright, ©, 20022, William Michael Cunningham

William Michael Cunningham

Economist and Impact Investing Researcher



- On Monday, April 11, 2005, we testified before Judge William H. Pauley III in the U.S. District Court for the Southern District of New York on behalf of investors at a fairness hearing regarding the \$1.4 billion-dollar Global Research Analyst Settlement.
- In 2005, we served as an expert witness for homeowners in a case against PMI Group, Credit Suisse First Boston, Moody's, Standard and Poor's, Fairbanks Capital Corporation, Select Portfolio Servicing, US Bank National Association, as Trustee of CSFB ABS Series 2002-HEI, et. al., in the New Jersey Superior Court Law Division - Monmouth County. Our expert witness testimony held corporate parties responsible for facilitating predatory lending practices. Had this single case been successful, we believe the financial crisis of 2008 would not have occurred.
- On December 22, 2005, Mr. Cunningham met with Ms. Elaine M. Hartmann of the Division of Market Regulation at the U.S. Securities and Exchange Commission. At that meeting, he issued a strongly worded warning that system-wide economic and market failure was a growing possibility.
- On June 18, 2009, Mr. Cunningham 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. (See: <https://www.creativeinvest.com/nmtctestimony.html>)
- On August 13, 2015, Mr. Cunningham provided testimony on the Department of Labor's Fiduciary Rule. Online at <https://youtu.be/kOGS-DdLYe0>
- We stated, on February 5, 2015, in testimony to the Norwegian Ministry of Finance (<http://www.creativeinvest.com/NorwayTestimonyFeb52015.pdf>) and on April 22, 2015 in testimony to the Government of the United Kingdom:

"As the market value of environmental, social and governance factors continues to grow, companies and investment managers will engage in fraudulent practices related to these factors. These practices will range from simple falsification of environmental, social and governance records to more sophisticated, but no less fraudulent methods related to environmental, social and governance ratings."

On September 22, 2015 automaker Volkswagen admitted that "'defeat devices' used to cheat emissions testing were installed in 11 million vehicles worldwide."

- Our 2015 report "Environmental Issues and Stock Returns." quantifies the impact environmental issues have on company stock prices. <https://www.eventbrite.com/e/how-environmental-issues-impact-stock-returns-tickets-2029288657>
- Our June 11, 2016 forecast predicted the election of Donald J. Trump. See: Why Trump Will Win. <https://www.linkedin.com/pulse/why-trump-win-william-michael-cunningham-am-mba/> and <https://www.linkedin.com/pulse/trumpism-william-michael-cunningham-am-mba/>

info@creativeinvest.com
www.creativeinvest.com

Copyright, ©, 20022, William Michael Cunningham

- We suggest you review our Maternal Mortality Reparation Facility for Black Women at <https://www.prlog.org/12876083-maternal-mortality-reparation-facility-for-black-women.html> and our proposal to create a \$50 billion-dollar Black Bank financing facility, outlined in Black Enterprise Magazine on October 21, 2019, online at <https://www.blackenterprise.com/black-banking-crisis-economist-offers-50-billion-solution/>

Comment and Summary

William Michael Cunningham and Creative Investment Research launched their website on November 16, 1995, giving the firm more experience online than most. See:



<https://www.creativeinvest.com/images/be1996.jpg>

Mr. Cunningham is also an Unaffiliated Member of the North American Regional At-Large Organization at ICANN.

We note that incompetence, anti-Black discrimination and exclusionary practices based on race are currently operational in investment and finance, including at regulatory bodies. Our economic models show clearly the effectiveness of existing regulatory frameworks. Fully detailing and describing model outcomes would serve no purpose other than to enrich a set of non-African American individuals and entities while simultaneously damaging the public

Given this fact, we decline to provide solutions or to directly address the questions raised, having done so over the past 30 years. We do, however, note that TCP/IP technology was never designed to be secure. Any attempts at security are imposed on a fundamentally unsound framework. This is a fundamental feature of the technology.

We refer the Commission to the following:

-  October 04, 2006. Roundtable discussions relating to the use of eXtensible Business Reporting Language (XBRL). [File No. 4-515]. <https://www.sec.gov/news/press/4-515/wcunningham7465.pdf> Page 17
-  Mr. Cunningham participated in a discussion about money at the Future of Money Conference held by the Government Blockchain Association. <https://youtu.be/n1i4J8df0t0>
-  William Michael Cunningham on Impact Investing, Blockchain, and Crowdfunding. <https://www.impactinvesting.online/2018/11/william-michael-cunningham-on-impact.html>
-  Summary of bitcoin and its underlying technology-blockchain, by Henry Zhang, Impact Investing Intern. University of Toronto. - May 12, 2017. <https://www.impactinvesting.online/2017/05/summary-of-bitcoin-and-its-underlying.html>
-  Blockchain 1.0. - May 27, 2017. <https://www.impactinvesting.online/2017/05/blockchain-10.html>
-  The Future of Money by Peter Hamilton (University of Miami), Impact Investing Analyst, Creative Investment Research. <https://www.impactinvesting.online/2019/03/futureofmoney.html>

info@creativeinvest.com
www.creativeinvest.com

Copyright, ©, 2022, William Michael Cunningham



-  Cryptocurrency regulation is a job for Treasury | American Banker Newspaper. February 22, 2018. <https://www.impactinvesting.online/2018/02/cryptocurrency-regulation-is-job-for.html>
-  Blockchain, Cryptocurrency and Africa by Diya Wang (Georgetown University) and Zhiqiang Qing (University of Maryland), Interns. April 20, 2019. <https://www.impactinvesting.online/2019/04/blockchain-cryptocurrency-and-africa-by.html>
-  Blockchain for Social Impact, November, 2017 https://youtu.be/0_m5qp_iLUs
-  Bitcoin and Blockchain Explained IN 30 MINUTES FOR FREE. <https://www.udemy.com/course/bitcoin-explained/>
-  Financial Planning Association (FPA) Annual Conference 2018 –Chicago, IL – October 3-5. The Future of Blockchain. Wednesday, October 3. 5:15 PM - 6:15 PM. <https://www.creativeinvest.com/FPABlockchainTranscript.pdf>

We incorporate all documents at the links above by reference.

While we decline to fully answer the queries posed, note the following: as Mr. Cunningham has demonstrated, inadequate consideration of the public interest damaged the public and investors.¹ Current regulatory practices protect the monetary interest of a narrow set of non-African American persons, fail to protect the general public, and damage the Country's long term economic prospects.

Regulators have even failed to apply normalized standards of ethics, important for financial system confidence. (See <https://www.impactinvesting.online/2021/09/the-eight-commitments-of-ethical.html> and Footnote 1).

These regulatory failings have real implications for the public.

While we have created several innovations² and designed policies³ to effectively address these issues, the fact remains: no solution to the issues presented will be accepted unless non-Black institutions and individuals are positioned to profit from them. Providing any answers to the questions posed would be a futile gesture.

Our economic model outlines the impact of a growing set of cascading, complex and systemic risks. These include political system risks, health risks, risks related to food, environmental risks, risks related to monetary policy and social stability, and several hidden risks we will not describe here. While the

¹ For example, see: *Fed Unveils Stricter Trading Rules Amid Fallout from Ethics Scandal*. Jeanna Smialek, Oct. 21, 2021. The New York Times. Online at: <https://www.nytimes.com/2021/10/21/business/federal-reserve-trading-ethics.html> and *Bankers Cast Doubt On Key Rate Amid Crisis*

https://www.wsj.com/articles/SB120831164167818299?reflink=desktopwebshare_twitter via @WSJ

² See: *The JOBS Act: Crowdfunding Guide to Small Businesses and Startups 2nd Edition*.

https://www.amazon.com/dp/B01MT104U1/ref=cm_sw_r_tw_dp_N51QKTHKS32E53HZ251V

³ See: *Thriving as a Minority-Owned Business in Corporate America: Building a Pathway to Success for Minority Entrepreneurs 1st ed.* <https://www.amazon.com/dp/1484272390/>

William Michael Cunningham

Economist and Impact Investing Researcher



policy under review is a small factor in the risk hierarchy, it is nonetheless a factor, one of several susceptible but resistant to appropriate management given regulatory capture and incompetence.

info@creativeinvest.com
www.creativeinvest.com

Copyright, ©, 2022, William Michael Cunningham