

William Michael Cunningham

Economist and Impact Investing Researcher



Wednesday, November 28, 2018

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

Dear Mr. Fields,

We understand that SEC staff hosted “a roundtable..to hear from investors, issuers, and other market participants about whether the SEC’s proxy rules should be refined.” Among the issues cited were the following:

- Voting Process
- Retail Shareholder Participation
- Shareholder Proposals
- Proxy Advisory Firms
- Technology and Innovation

Our understanding is borne of significant experience in the proxy voting area:

- 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.
- Mr. Cunningham was formerly in the pool of Corporate Governance Advisors and Diversity Investing Advisors to CalPERS. See: <http://www.creativeinvest.com/Calpers2.pdf>
- Creative Investment Research, Inc. was one of the first signatories to the UN Global Principles for Responsible Investment (www.unpri.org), under the Category of Professional Service Provider. See: <http://www.creativeinvest.com/PRIServices.pdf> and <http://www.creativeinvest.com/PRINews2009land.jpg>

We also have significant experience in investing and technology:

- 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 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

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Washington, DC. This morphed into the New Markets Tax Credit program, a real estate focused "community development" program that has fueled gentrification.

- As we noted on Oct. 5, 2006, foreshadowing the rise of cryptocurrencies: "competitive advantage with respect to capital access is available to any country with significant economic potential and a modest communications infrastructure." <https://www.sec.gov/comments/4-526/4526-1.pdf>
- 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. http://www.dallasweekly.com/business/article_02669560-45ca-11e5-85d2-e7192082a1d2.html
- See: The Journal of Financial Planning. September 2018 - 10 Questions. William Michael Cunningham on Impact Investing, Blockchain, and Crowdfunding <https://www.onefpa.org/journal/Pages/September-2018%20-%2010-Questions.aspx>
- 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 small business 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> and <https://www.americanbanker.com/opinion/cryptocurrency-regulation-is-a-job-for-treasury>).

For more background information, please see: [Global Market Turmoil Graphic](#) and [Financial Crisis Calendar Graphic](#), Creative Investment Research, Inc., 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.
- 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."*

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- 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 created by the firm 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>
- 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 testimony sought to hold corporate parties responsible for facilitating predatory lending practices.
- 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.
- See: Comments on Proposed Rule: Internet Availability of Proxy Materials [Release Nos. 34-52926; IC-27182; File No. S7-10-05]. Statistical models created by the firm 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>)
- See: Comments on the SEC Proxy Process Roundtable. File No. 4-537. May 11, 2007. <https://www.sec.gov/comments/4-537/4537-29.htm>

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- See: Shareholder Proposals Relating to the Election of Directors. [Release No. 34-56161; File No. S7-17-07] <https://www.sec.gov/comments/s7-16-07/s71607-495.pdf>
- 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://financialservices.house.gov/media/file/hearings/111/printed%20hearings/111-47.pdf>)
- On January 25, 2012, Mr. Cunningham submitted, and the Court accepted, a “Friend of the Court” brief to the United States Court of Appeals for the Second Circuit (Case 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.
- On December 9, 2013, William Michael Cunningham filed, and the United States District Court, Central District of California accepted, a “Friend of the Court” brief in a case concerning an action against McGraw-Hill Companies, Inc., and Standard & Poor’s Financial Services LLC, et. al., (Defendants) brought by the US Department of Justice.
- 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.”

- On June 17, 2015, the United States Court of Appeals for the District of Columbia Circuit recognized William Michael Cunningham as a “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).
- On August 13, 2015, Mr. Cunningham provided testimony on the Department of Labor’s Fiduciary Rule. Online at <https://youtu.be/kOGS-DdLYe0>
- 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/>

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- On September 17, 2018, 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."

We incorporate these documents by reference.

Significant Concern

While we provide comments on the SEC's proxy rules in the Appendix below, we question the legitimacy of this effort. As an Agency headed by someone appointed by a president who may have conspired with foreign interests to win election, some believe any Agency proposals put forward are invalid. We take no position on the matter in this case. Given the unique circumstances, we believe further investigation is required, and note that the issue is serious enough to warrant highlighting in this comment.

Thank you.

Sincerely,

William Michael Cunningham

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APPENDIX

Comments on Issues Presented

Voting Process

Potential for over-voting and under-voting of securities by broker-dealers, the reasons this may occur, and ways to address it.

Much like the Trump Voter Fraud Commission, this is not a legitimate concern.

Practical difficulties in confirming whether an investor's shares have been voted in accordance with the investor's instructions.

We suggest you consider blockchain technology to address this issue.

Costs and challenges associated with distributing proxy and other materials to beneficial owners who hold in "street name," as well as the costs and other challenges of communicating with such shareholders more generally.

We suggest you consider blockchain technology to address this issue.

Retail Shareholder Participation

How existing rules or market practices affect the ability of individuals who invest in the public markets through investment vehicles such as mutual funds and pension funds to participate in the governance of public companies in which they have an interest.

Much like the Trump Voter Fraud Commission, this is not a legitimate concern. We suggest you consider blockchain technology to address this issue.

Shareholder Proposals

Whether the current thresholds for minimum ownership (e.g., shares held and length of time) to submit a proposal to be included in the company's proxy statement [5] appropriately consider the interests of all shareholders, taking into account the potential benefits to shareholders of a proposal (or resubmission) being considered or adopted, as well as the costs associated with the inclusion of a proposal (or resubmission) in the proxy statement.

See: Comments on the SEC Proxy Process Roundtable. File No. 4-537. May 11, 2007.

<https://www.sec.gov/comments/4-537/4537-29.htm>

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See: Shareholder Proposals Relating to the Election of Directors. [Release No. 34-56161; File No. S7-17-07] <https://www.sec.gov/comments/s7-16-07/s71607-495.pdf>

Proxy Advisory Firms

Areas that may warrant particular attention include: Whether various factors, including legal requirements, have resulted in investment advisers to funds and other clients relying on proxy advisory firms for information aggregation and voting recommendations to a greater extent than they should, and whether the extent of reliance on these firms is in the best interests of investment advisers and their clients, including funds and fund shareholders.

See: Comments on the SEC Proxy Process Roundtable. File No. 4-537. May 11, 2007. <https://www.sec.gov/comments/4-537/4537-29.htm>

See: Shareholder Proposals Relating to the Election of Directors. [Release No. 34-56161; File No. S7-17-07] <https://www.sec.gov/comments/s7-16-07/s71607-495.pdf>

<https://www.sec.gov/rules/proposed/s73602/wmcunningham1.htm>

Technology and Innovation

The potential benefits and consequences that could result from further reliance on, and changes in, technology. For example, whether technology, such as “blockchain” or distributed ledger technology, could be used to streamline or create more accountability in the proxy process.

See: The Journal of Financial Planning. September 2018 - 10 Questions. William Michael Cunningham on Impact Investing, Blockchain, and Crowdfunding <https://www.onefpa.org/journal/Pages/September-2018%20-%2010-Questions.aspx>

See: Comments on the SEC Proxy Process Roundtable. File No. 4-537. May 11, 2007. <https://www.sec.gov/comments/4-537/4537-29.htm>

See: Shareholder Proposals Relating to the Election of Directors. [Release No. 34-56161; File No. S7-17-07] <https://www.sec.gov/comments/s7-16-07/s71607-495.pdf>

Also see:

<http://www.sec.gov/news/press/4-515/wcunningham7465.pdf>
<http://www.sec.gov/rules/proposed/s71005/wcunningham5867.pdf>
<http://www.sec.gov/rules/proposed/s70306/wcunningham6601.pdf>
<http://www.sec.gov/rules/proposed/s71903/wmccir122203.pdf>

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