

William Michael Cunningham

Economist and Impact Investing Researcher



Friday February 11, 2022

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Dear Ms. Countryman,

We understand that "the Securities and Exchange Commission..reopened the comment period on proposed rules under the Dodd-Frank Act requiring disclosure of information reflecting the relationship between executive compensation actually paid by a company and the company's financial performance."

Given the fact that incompetence, discrimination and exclusionary practices based on race are currently operational in investment and finance, including at regulatory bodies, we decline to directly address the questions raised, having done so over the past 30 years. Additional specific input would be futile. We note, however, the following:

Mr. Cunningham (WMC) has long been concerned with the failure of bank and financial institution regulatory agencies to protect the public interest. We base this on the following:

- Mr. Cunningham has been concerned with using new financial technologies to maximize social and financial return. See: Bitcoin and Blockchain Explained IN 30 MINUTES FOR FREE. <https://www.udemy.com/course/bitcoin-explained/>
- On July 3, 1993, WMC wrote to SEC Commissioner Mary Schapiro to notify the Commission about a certain, specific investing "scam." A timely warning was not issued to the investing public and members of the public were damaged. See: <https://www.creativeinvest.com/SECNigerianLetter.pdf>
- WMC 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, at <https://www.creativeinvest.com/mbsarticle.html>)
- In October, 1995, the Washington Gas Light (WGL) Company retained WMC to create mortgage-backed securities (MBS) consisting of one to four family residential home loans originated by minority-owned financial institutions serving areas of high social need. Mr. Cunningham developed a completely original approach that involved geocoding and mapping, for the first time, the location of every loan in an MBS pool and tying that location to social data. A sample map WMC created in 1997 for this process is attached as Appendix A.

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- On April 30, 1997, in Case 97-1256 at the US Court of Appeals for the DC Circuit, Mr. Cunningham opposed the merger of Citigroup and Travelers and the elimination of the Glass–Steagall Act.¹
- In November, 1997 and, again in December, 2003, WMC wrote to the Division of Market Regulation at the Securities and Exchange Commission, on behalf of WMC and Creative Investment Research to request that CIR be considered a nationally recognized statistical rating organization ("NRSRO"). WMC requested this status only with respect to rating securities issued by financial institutions owned by women and minorities. WMC never received a reply from the Commission. We have attached a copy of a letter sent to Ms. Nazareth, Director, Division of Market Regulation, Securities and Exchange Commission, as Appendix B.
- On June 15, 2000, WMC testified before the House Financial Services Committee of the U.S. Congress on ways to improve the supervision and regulation of government sponsored enterprises, Fannie Mae and Freddie Mac. See: <https://www.creativeinvest.com/fnma/>²
- In 2001, WMC designed an investment vehicle for victims of predatory lending. (See <https://www.creativeinvest.com/PropertyFlipping.pdf>)
- On Monday, April 11, 2005, WMC testified before Judge William H. Pauley III in the U.S. District Court for the Southern District of New York on behalf of the public at a fairness hearing regarding the \$1.4 billion-dollar Global Research Analyst Settlement. See: <https://creativeinvest.com/fairness.html>
- On December 22, 2005, WMC issued a strongly worded warning that system-wide economic and market failure was a growing possibility in a meeting with Ms. Elaine M. Hartmann of the Division of Market Regulation at the SEC.
- On February 6, 2006, statistical models created by WMC using the Fully Adjusted Return ® Methodology signaled the probability of system-wide economic and market failure. (See page 2: <http://www.sec.gov/rules/proposed/s71005/wcunningham5867.pdf>)
- On June 18, 2009, WMC 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 concerning ways to improve the New Markets Tax Credit Program. See: <https://www.creativeinvest.com/nmtctestimony.html>³
- On January 25, 2012, WMC submitted a "Friend of the Court" brief in a case before the United States Court of Appeals for the Second Circuit (Case 11-5227). As

¹ See Appendix C.

² Ibid.

³ Ibid.

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a friend to the Court, Mr. Cunningham provides an independent, objective and unbiased view in support of broad public interests. His education and experience uniquely positioned him to provide objective, independent research and opinions concerning the issues central to the case.

- Mr. Cunningham was in the pool of Corporate Governance Advisors and Diversity Investing Advisors to CalPERS. He is currently under contract for Portfolio Assistance (Non-Fiduciary) Investment Consulting Spring-Fed Pool 2020 to the fund. See: <http://www.creativeinvest.com/Calpers1.pdf> <http://www.creativeinvest.com/Calpers2.pdf> and <http://www.creativeinvest.com/Calpers3.pdf>
- Creative Investment Research was one of the first signatories to the UN Global Principles for Responsible Investment (www.unpri.org). See: <http://www.creativeinvest.com/PRINews2009land.jpg>

Mr. Cunningham has a long track record of analyzing proposed regulatory agency rules:

- Our 2003 comments on proposed proxy voting rules that would, under certain circumstances, require companies to include in their proxy materials security holder nominees for election as director. <https://www.sec.gov/rules/proposed/s71903/wmccir122203.pdf>
- See: Comments on Proposed Rule: Internet Availability of Proxy Materials Release Nos. 34-52926 IC-27182 File No. S7-10-05. Confirmed that system-wide economic and market failure was a growing possibility. (See page 2: <http://www.sec.gov/rules/proposed/s71005/wcunningham5867.pdf>)
- 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>
- We have requested that the U.S. Securities and Exchange Commission (SEC) develop mandatory rules for public companies to disclose high-quality, comparable, decision-useful information concerning BLM Pledge fulfillment. See: <https://www.sec.gov/rules/petitions/2021/petn4-774.pdf>

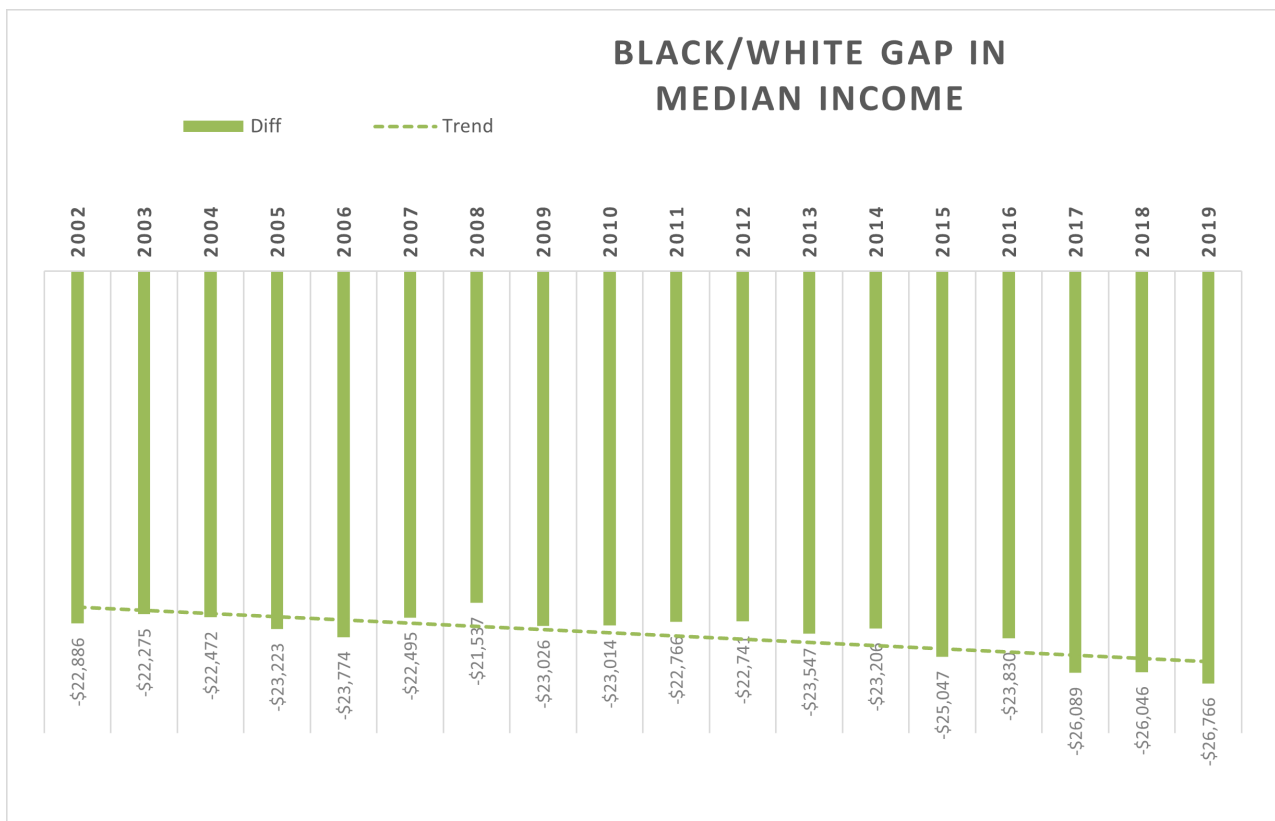
As this record shows, over the past 30 years, Mr. Cunningham has sought to protect the public by working with private sector and Federal regulatory agencies, including the Federal Reserve Board (FRB), the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Financial Crisis Inquiry Commission (FCIC), the U.S. Department of Justice (DOJ), the Consumer Financial Protection Bureau (CFPB), the Federal Housing Finance Agency

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(FHFA), the Department of Commerce (Minority Business Development Agency) and the US Treasury, as an employee or as a contractor. Despite his education and experience, all offers to provide consulting services and all employment applications have been denied (due to age, racial and class discrimination.) Further attempts to work with these institutions would be futile. This leaves Mr. Cunningham no option but to file this comment in order to have his independent, objective technical knowledge and experience given consideration. Mr. Cunningham's interest in this matter stems from his role as an economist and an expert in marketplace ethics and rests upon his status as a citizen of the United States.

As Mr. Cunningham demonstrates, inadequate consideration of the public interest has clearly damaged the public and investors.⁴ Current regulatory practices protect the monetary interest of a narrow set of non-African American persons, fail to



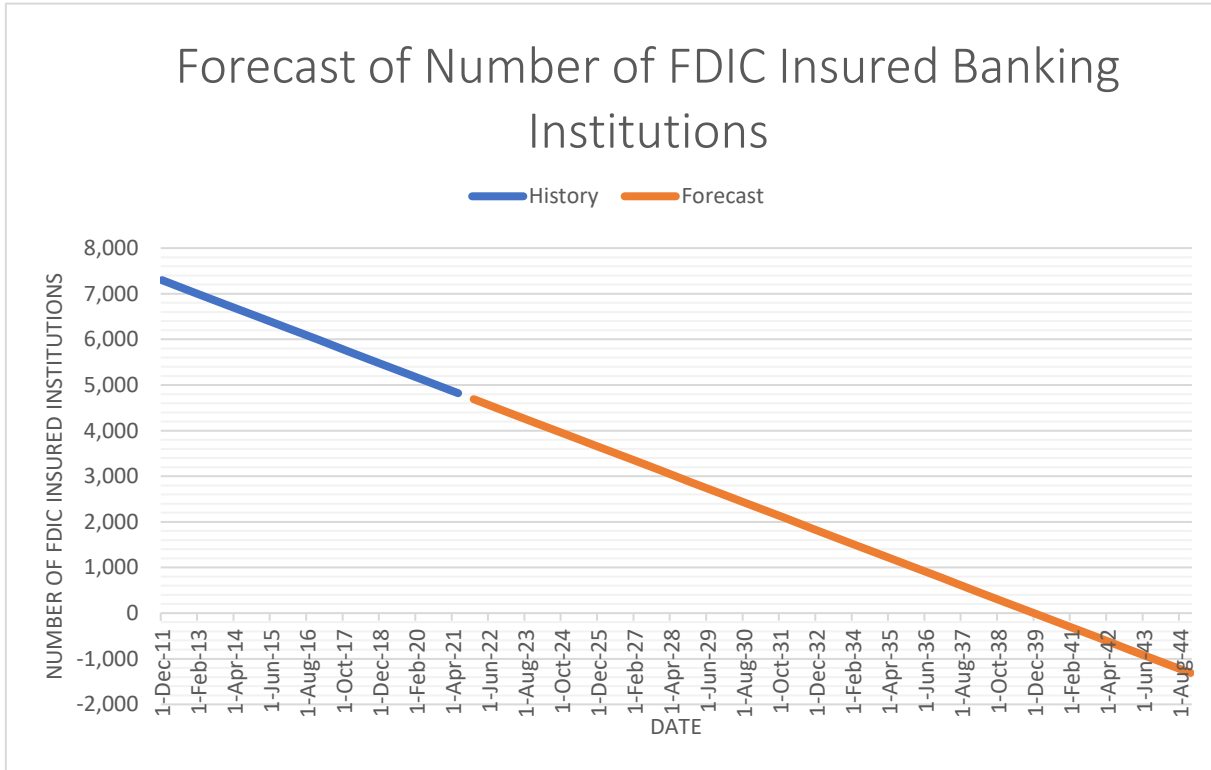
⁴ For example, see: Fed Unveils Stricter Trading Rules Amid Fallout From Ethics Scandal. Jeanna Smialek, Oct. 21, 2021. The New York Times. Online at: <https://www.nytimes.com/2021/10/21/business/federal-reserve-trading-ethics.html> and Bankers Cast Doubt On Key Rate Amid Crisis

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



protect the general public, and damage the Country's long term economic prospects.

These regulatory ethical failings have real implications for the public. Regulators may have abdicated their responsibility to consider the public interest, if that



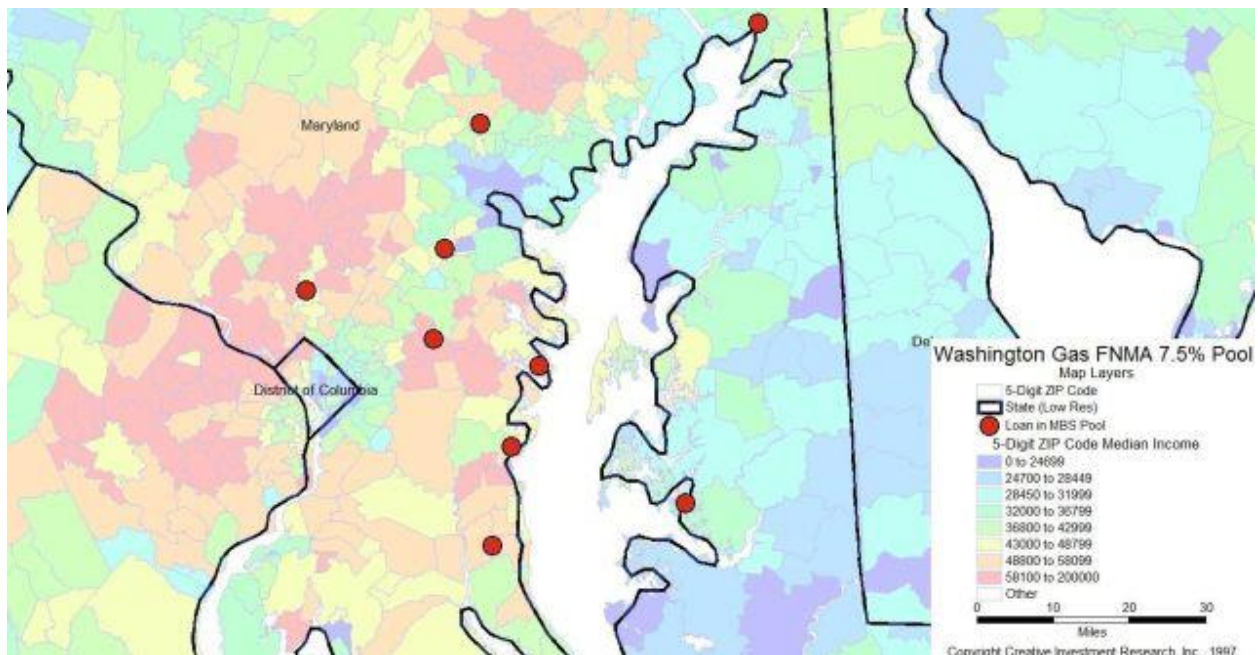
interest includes maintaining a competitive financial services industry. Our forecast indicates that by 12/31/2039, if current trends continue in a linear manner, the number of FDIC insured institutions will be approximately 1-2. Note that, with growing competition from fintech firms and alternatives, like bitcoin, this may imply the wholesale exit of banking institutions from both the FDIC and Federal Reserve systems. This would not be in the public interest.

Appendix A

William Michael Cunningham manages an investment advisory and research firm, Creative Investment Research, founded in 1989 to expand the capacity of capital 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. (We did not receive any benefit or revenue due to our participation in the 8(a) program.)

In 1991, Mr. Cunningham created the first systematic bank analysis system using social and financial data, the Fully Adjusted Return® methodology. In 1992, he developed the first CRA securitization, a Fannie Mae MBS security backed by home mortgage loans originated by minority banks and thrifts.



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In 2001, he helped create the first predatory lending remediation/repair MBS security.⁵

Also see:

- BLACK LIVES MATTER: CORPORATE AMERICA HAS PLEDGED \$1.678 BILLION SO FAR. June 10, 2020.
- <https://www.blackenterprise.com/black-lives-matter-corporate-america-has-pledged-1-678-billion-so-far/>
- BLACK WOMENOMICS Maternal Mortality Reparation Facility
- <https://blackwomenomics.com/>
- CHILD TAX CREDIT <https://www.childtaxcredit.net/>
- FIFTEEN DOLLAR MINIMUM WAGE <https://fifteendollarminimumwage.com/>
- THE FAIRNESS ECONOMY <https://thefairnesseconomy.com/>
- The Crisis in Black Housing
- <https://drive.google.com/file/d/11jFtWfQY5Rpdbpw0s6stHhawY0iero6/view>

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Pool	Client	Originator	Social Characteristics
FN374870	Faith-based Pension Fund	National Mortgage Broker	Mortgages originated by minority and women-owned financial institutions serving areas of high social need.
FN296479			
FN300249			
GN440280	Utility Company Pension Fund	Minority-owned financial institutions	
FN374869			
FN376162			
FN254066	Faith-based Pension Fund	Local bank	Predatory lending remediation

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Appendix B

December 8, 2005

Ms. Elaine M. Hartmann
Division of Market Regulation
U.S. Securities and Exchange Commission
450 5th Street, NW
Washington, DC 20549

Dear Ms. Hartmann,

Creative Investment Research (CIR) has requested that the Division of Market Regulation not recommend enforcement action to the U.S. Securities and Exchange Commission if CIR is recognized as a Nationally Recognized Statistical Rating Organization (NRSRO) for purposes of applying Rule 15c3-1 under the Securities and Exchange Act of 1934, as amended and codified at 17 C.F.R. 240.15c3-1 with respect to rating short term debt vehicles issued by women and minority owned financial institutions.

As part of the NRSRO recognition process, we have provided you and your staff with information regarding our qualifications, including confidential, nonpublic information on our trade secret protected Fully Adjusted Return ® methodology.

Thank you.

Sincerely,

William Michael Cunningham
CEO and Social Investment Advisor

Sample page below



Dryades Saving Bank

233 Carondelet St
New Orleans

LA 70130

Phone: (504) 581-5891
Fax: (504) 598-7233

Branches: 4
Employees: 54
Ethnic Group: Black

Route #: 265070516

Certificate #: 1470512650

INSTTYPE: Savings Bank

Community Reinvestment Act Rating:

Latest Rating: Outstanding
Rating t-1: Outstanding
Rating t-2: Satisfactory
Rating t-3: Satisfactory

Management

President: Virgil Robinson
CFO: Frank J Oliveri
Loan Officer: Tomorr LeBeouf
Operations Officer: Hedy Hebert

Fully Adjusted Return (TM): 173

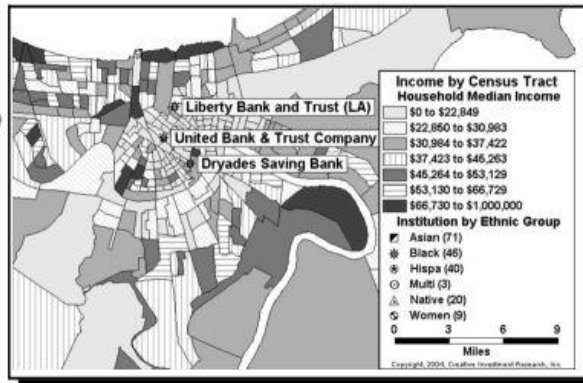
Index of social and financial performance.
Range 300 to 0. (Higher is better.)

Regulatory and Business Status

Trading Status: Not Publicly Traded
Insurance Type: Savings Association Insurance Fund(SAIF)
Holding Company: Dryades Bancorp, Inc.

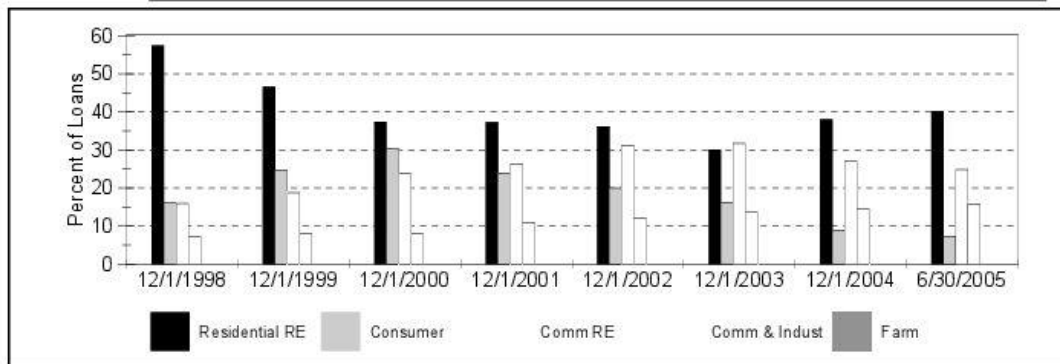
Social Data

COUNTY: Orleans
Unemployment, %, 7/1/2005: 5.60
Population, 7/1/04: 462,269
Population change, % 2000 to 2004: -4.6 %
Offices of FDIC-Insured Inst, 8/22/05: 108
Minority population, % of total in County: 73.4 %
Per Capital personal income, 2003: \$30,152
Minority firms in County, % of total, 1997: 28.6 %
Women-owned firms in County, % of total, 1997: 26.6 %



Year

Year	12/1/1998	12/1/1999	12/1/2000	12/1/2001	12/1/2002	12/1/2003	12/1/2004	6/30/2005
Assets	\$88,946	\$95,937	\$105,717	\$122,844	\$123,349	\$92,773	\$103,456	\$111,051
GrLns	\$68,952	\$74,217	\$82,735	\$76,801	\$61,982	\$56,390	\$62,766	\$66,165
Deposits	\$79,132	\$83,939	\$87,046	\$116,073	\$114,874	\$75,938	\$86,965	\$94,535
Equity	\$6,112	\$5,886	\$5,779	\$5,832	\$7,119	\$8,484	\$7,046	\$6,978
Salaries	\$2,697	\$3,039	\$3,151	\$3,132	\$2,921	\$2,793	\$2,839	\$1,428
Net Inc.	\$365	\$292	\$3	(\$44)	\$302	\$1,733	(\$427)	(\$4)
Net Ch	0.14	0.16	0.61	0.43	0.30	2.16	0.66	1.35
Offs%	0.56	0.82	1.42	1.03	1.50	2.83	2.23	1.34
NonPerLns	0.44	0.32	0.00	-0.04	0.23	1.71	-0.42	-0.01
%	6.21	4.85	0.05	-0.75	4.66	20.00	-5.35	-0.11
ROA								
ROE								



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Appendix C

- 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.”

- 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.

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Economist and Impact Investing Researcher



- 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>
- 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://financialservices.house.gov/media/file/hearings/111/printed%20hearings/11-47.pdf>)
- 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/>

We incorporate these documents by reference.

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