

William Michael Cunningham
Economist and Social Investing Advisor
Creative Investment Research, Inc.
Washington, DC

Friday, February 7, 2014

Joyce Cofield
Executive Director
Office of Minority and Women Inclusion
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Sheila Clark
Director
Office of Minority and Women Inclusion
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington DC 20551

Melodee Brooks
Senior Deputy Director
Office of Minority and Women Inclusion
FDIC
550 17th Street NW
Washington, DC 20429

Tawana James
Director
Office of Minority and Women Inclusion
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Stuart Ishimaru
Director
Office of Minority and Women Inclusion
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Pamela Gibbs
Director
Office of Minority and Women Inclusion
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

info@creativeinvest.com
www.creativeinvest.com

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Re: Request For Comment on the Proposed Interagency Policy Statement Establishing Joint Standards For Assessing the Diversity Policies and Practices of Entities Regulated By the Agencies.

Transmitted electronically concerning:
OCC: Docket ID OCC-2013-0014
Federal Reserve: Docket No. OP-1465
FDIC:
NCUA:
CFPB: Docket No. CFPB-2013-0029
SEC: Release No. 3470731, File No. S7-08-13

Dear Ms. Cofield, Ms. Clark, Ms. Brooks, Ms. James, Mr. Ishimaru, and Ms. Gibbs,

We understand that “six federal financial regulatory agencies – the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency – issued a Proposed Interagency Policy Statement to present joint standards and a model assessment approach for assessing the diversity policies and practices of entities regulated by the agencies.

As mandated by Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the OMWI Director must develop standards for assessing the diversity policies and practices of entities regulated by the agency. The proposed joint standards and the model assessment approach presented in the Proposed Interagency Policy Statement are intended to promote the transparency and awareness of, and provide guidance for assessing, the diversity policies and practices of the entities regulated by the agencies.”

I applaud the OCC, Board, FDIC, NCUA, CFPB, and SEC (each an “Agency” and collectively, the “Agencies”) for proposing joint standards for assessing the diversity policies and practices of the entities they regulate.

I believe these standards are critical. It is important that the Agencies aggressively pursue their legally mandated responsibility to promote the transparency and awareness of, and provide guidance for assessing, the diversity policies and practices of the entities they regulate.

Background

William Michael Cunningham, an African American US Citizen, 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

info@creativeinvest.com
www.creativeinvest.com

Investment Research, Inc. Mr. Cunningham holds an MA in Economics and an MBA in Finance, both from the University of Chicago in Chicago, Illinois.

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. On November 16, 1995, he launched one of the first investment advisor websites. Mr. Cunningham authors a report containing ratings for each of 29 Offices of Women and Minority Inclusion. These ratings were released on [September 24, 2011](#), [October 17, 2012](#), and [July 26, 2013](#).

Mr. Cunningham has long been concerned with the integrity of the securities markets. In an article titled "Fannie Mae To Build Up Charity Unit" appearing in the Washington Post on Thursday, December 28, 1995 (Page A1) he criticized Fannie Mae for not doing more to help local (Washington, D.C.) residents purchase affordable housing, given the local governments' inability to do so. Freddie Mac and Fannie Mae responded by retaliating against Mr. Cunningham, rejecting his employment applications and consulting proposals, encouraging others in the industry and dependant on Fannie or Freddie for revenue to do so as well, and encouraging his mortgage lender to revoke (successfully) the mortgage on the house he lived in.

The Small Business Administration certified Mr. Cunningham as an 8(a) program participant on October 19, 2005. He did not receive any federal government contract revenue due to participation in the program. He withdrew from the program, under retaliatory pressure by the SBA in 2008, shortly after he met and wrote to Henry Paulson, Jr., Secretary, US Department of the Treasury, offering to assist the country recover quickly from the financial crisis. He wrote to the Honorable Nydia M. Velázquez, Chairwoman, Committee on Small Business of the United States House of Representatives, describing his experiences.

Mr. Cunningham has long been concerned with the ability of financial institution regulators to protect the public interest. The examples below describe his experience.

On July 9, 1993, Mr. Cunningham wrote to Mary Schapiro, the former Chair of the SEC, when she was a Commissioner to notify the Commission about a certain, specific investing "scam." A timely warning was not issued to the investing public. That letter to the SEC, dated July 3, 1993, described correspondence to Mr. Cunningham dated July 2, 1993 from an "officer" of the Nigerian Ministry of Finance. The SEC acknowledged receiving this warning, in a letter to Mr. Cunningham dated October 29, 1993. Several American citizens were, in the interim, "taken" by these scam artists. At least one U.S. citizen was killed when they went to the country in an attempt to retrieve their funds.

In response to these and other complaints, the SEC launched retaliatory regulatory actions against Mr. Cunningham. In retaliation for his 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 Agency contacted a client of his and dissuaded them from doing business with Mr. Cunningham. (Also see: <http://www.prlog.org/12256590.html>) Recently, Mr. Cunningham was not permitted to use the SEC public library to conduct research on this comment letter and on two legal cases: US vs. S&P (US District Court, Central District CA) and SEC v. Citigroup.

This continues a pattern of hostile behavior toward African Americans on the part of the Agency. The Agency's behavior and lack of 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.

Of course, the SEC is not alone in this behavior.

In 2006, 2007 and 2008, Mr. Cunningham created a fund to provide capital to women and minority owned banks. He sought approval as a bank holding company for this fund. A staff member at the Federal Reserve, the agency responsible for approving bank holding company applications, told him that unless he worked with a specific lawyer at a specific law firm, the application would be denied. Mr. Cunningham declined to work with the law firm. The application was denied.

In 2008, Mr. Cunningham approached the FDIC about creating a website to provide information on starting a business to women and minorities. He [created an online compendium of information](#). He approached the FDIC about sponsoring this website. The FDIC's response was to misappropriate Mr. Cunningham's information and create a website of their own using the idea and the information Mr. Cunningham provided at <http://www.fdic.gov/about/diversity/sbrp/index.html> More importantly, Mr. Cunningham provided the FDIC with a copy of the same bank holding company application cited above. The FDIC distributed this confidential document to industry trade associations and others without Mr. Cunningham's permission.

Mr. Cunningham has worked to repair the damage caused by unethical institutions. From his testimony on behalf of the public in Federal Court on SEC consent decrees, he understands that the widespread, generalized decline in ethical standards of business behaviour over the past four decades requires consideration of the public interest.

Experience of other commenters

We note with interest the opinions of others commenting on these matters. Several members of the Civil Rights lobbying industry have commented One cites the recently released NAACP Banking Report. The Report cites the high unemployment and the decline in wealth in the Black community without noting just how high Black unemployment is and just how low Black wealth has fallen. (One article noted that Black teen unemployment in Chicago is 89%.

(<http://www.dnainfo.com/chicago/2014/01/20/grand-boulevard/teens-push-lawmakers-as-unemployment-climbs-89-percent-for-black-teens>)

The Report states that financial services will create one million new jobs between 2010 and 2020 without giving any indication concerning the accuracy of this forecast. It also notes that current employment in the sector is 5.5 million and that financial service jobs tend to be well paying. These statistics are used to justify a focus on diversity in the financial services industry, but betrays a focus on monetary factors that may be inappropriate in this context given recent history. I note the Report did not touch on the ethnic substitution effect, as members of other minority groups take the place of African Americans.

The Report neglects to mention the opportunity banks have to provide new services, outreach and products. As labor costs fall, financial service product prices should go down for minorities. They have not. This is prima facie evidence of discrimination. Finally, the Report incorrectly claims that looking at only five banks serves as a proxy for the banking market itself.

These same members of the Civil Rights lobbying industry have been silent on Black neighborhoods, churches targeted for "ghetto loans."

<http://twisri.blogspot.com/2009/06/black-neighborhoods-churches-targeted.html>

Several commenters have indicated that these "Civil Rights" institutions may be compromised by their monetary ties to certain banking institutions. (See: Wells Fargo Donates \$4.1 Million to National Urban League: online at:

<http://iamempowered.com/article/2013/12/05/wells-fargo-donates-41-million-national-urban-league>. Also see: <http://donny-allen.us/2013/01/29/naacp-nul/>)

Minority staff at both non minority financial service firms and at the Agencies encounter hostile working environments, with no ability to make corrections. The Civil Rights lobbying industry will not pursue discrimination lawsuits when the subjects are African American males, however.

Economic Rationale for Diversity Efforts

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

A diverse 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. Diversity friendly companies 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. The portfolio returned 50.14%, compared to a 33.52% return for the S&P 500 Index, from April 19, 2011 to February 7, 2014.



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The diversity standards that the Agencies are responsible for creating will insure that economic rights, relating to the ability for any qualified man/woman to obtain and secure business opportunities, are protected. The proposed diversity standards play a critical role in ensuring that minority and women businesses are treated fairly.

Comments on specific questions

(1) Are the proposed joint standards effective and appropriate to promote diversity and inclusion?

We seek open access and market based diversity performance standards. We believe the Agencies should define minimum standards for diversity and let the marketplace determine whether diversity performance by a given firm is credible. In this way, users will determine the extent to which diversity ratings are reasonably relied upon by the marketplace.

Why or why not?

The Agencies have begun signaling that the economic and social returns from diversity are high enough to promote activity in this area.

If not, what standards would be appropriate and why?

Prescribing firm diversity standards now may require rule changes at some later point, since the Agencies cannot now anticipate new diversity standards that might become operational in the future.

We have developed a set of Diversity Performance ratings and tools that we used in the creation of our Diversity Portfolio. We would be happy to discuss these with the Agencies. In addition, our [Fully Adjusted Return® model](#) would be useful here.

How would such standards support or hinder the objectives of section 342?

We believe the standards proposed fully support the objectives of Section 342.

(2) Are the proposed joint standards sufficiently flexible but still effective to allow meaningful assessments of entities with a wide range of particular characteristics or circumstances (for example, asset size; number of employees; contract volume; income stream; and number of members and/or customers)?

Yes.

Are there other ways to approach the standards for smaller entities, such as those with small contracting dollar volumes or those not required to file EEO-1 reports?

We believe a through examination, conducted by the Agencies, of the diversity statements and operations of a regulated entity is the only way to determine diversity performance. New information tools and techniques make this type of analysis costless. Indeed, we have developed an algorithm that performs this type of analysis at very low cost.

What other approaches or characteristics would be appropriate for any such alternative, modified or scaled approach?

We suggest the Agencies carefully review the experience of the Federal Financial Institution Examination Council (FFIEC) with respect to the implementation of the Home Mortgage Disclosure Act.

We also suggest the Agencies review all available information concerning discrimination complaints and lawsuits.

How would such modification or scaling support or hinder the objectives of section 342?

We recognize the resources the Agencies believe are required to complete this task, but note that new information technologies make this type of analysis possible.

(3) What other factors, if any, would be useful in assessing the diversity policies and practices of the regulated entities, and why should such factors be considered?

We again suggest the Agencies review all available information concerning discrimination complaints and lawsuits.

How would such factors support or hinder the objectives of section 342?

This should be obvious.

(4) Is the proposed model approach to assessment effective and appropriate to promote diversity and inclusion?

Yes. It is a start.

Why or why not?

They begin the process of signaling that the economic and social return from diversity are high enough to promote activity in this area.

If not, what approach would be appropriate and why?

Using new information technologies to conduct very disaggregated analysis.

How would such approach support or hinder the objectives of Section 342?

Very micro level data

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(5) Would there be potential advantages or disadvantages of the proposed model approach to assessment?

Yes.

If so, what would they be?

Ultra low cost. Ultra high accuracy.