

**William Michael Cunningham  
Creative Investment Research, Inc.**

Friday, January 30, 2015

Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

RE: File No. 14-28

Dear Sir/Madam:

We understand that the U.S. Federal Communications Commission (the Commission) is considering a “fundamental question: What is the right public policy to ensure that the Internet remains open?”

We are writing to provide general comments on this question.

**Background**

William Michael Cunningham registered with the U.S. Securities and Exchange Commission as an Investment Advisor on February 2, 1990 and with the D.C. Public Service Commission on January 28, 1994. 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.

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 and February 6, 2006, we warned the S.E.C. and other regulators that statistical models using the 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 saved millions.

Mr. Cunningham’s understanding of capital markets is based on first-hand knowledge obtained in a number of positions at a diverse set of major financial institutions: Senior Investment Analyst for an insurance company; Institutional Sales Representative in the Fixed Income and Futures and Options Group for a leading Wall Street firm and 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 at [www.ari.net/cirm](http://www.ari.net/cirm) (now [www.creativeinvest.com](http://www.creativeinvest.com)).

## William Michael Cunningham Creative Investment Research, Inc.

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.

### Track Record

On June 18, 1998, 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.

On June 15, 2000, Mr. Cunningham testified before the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (GSE's). He 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 projects. The Minneapolis-based effort helped 50 families victimized by predatory lending practices. [See article, Property Flipping Remediation Yields Investment-grade Security.](#)

On December 22, 2003, we warned regulators that statistical models created by the firm 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 against PMI Group, Fairbanks Capital Corporation, Select Portfolio Servicing, US Bank National Association, as Trustee of CSFB ABS Series 2002-HEI, et. al. The case 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 April 11, 2005, Mr. Cunningham testified on behalf of investors before Judge William H. Paley III in the US District Court for the Southern District of New York at a fairness hearing regarding the \$1.4 billion dollar Global Research Analyst Settlement.

## William Michael Cunningham Creative Investment Research, Inc.

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

On September 28, 2008, [we wrote to Richard Shelby, Ranking Member, Committee on Banking, Housing and Urban Affairs, United States Senate, to comment on the financial crisis rescue plan](#) then under consideration by the US House and Senate. In the appendix, we provided a four step plan for dealing with the crisis.

On December 9, 2013, Mr. Cunningham filed a "Friend of the Court" brief in the United States District Court, Central District of California. The Court recognized him as an expert, interested party 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. Our comments resulted in a significant change in enforcement strategy, including the first ever, albeit temporary, rating firm suspension.

### Comments on the proposal

We concur with the Commission that “each broadband provider can either add to the benefits that the Internet delivers to Americans—by maintaining Internet openness and by extending the reach of broadband networks—or it can threaten those benefits—by restricting its customers from the Internet and preventing edge providers from reaching consumers over robust, fast and continuously improving networks.” We further agree “that providers of broadband Internet access service had three types of incentives to limit Internet openness. First, broadband providers may have economic incentives to block or disadvantage a particular edge provider or class of edge providers. Second, broadband providers may have incentives to increase revenues by charging edge providers for access or prioritized access to the broadband provider’s end users.<sup>4</sup> In particular, excessive fees could reduce edge provider entry, suppress innovation, and depress consumer demand. Third, if providers could profitably charge edge providers they would have an incentive “to degrade or decline to increase the quality of service they provide to non-prioritized traffic.”

We also agree with those who have stated that “Internet service providers (ISPs) should treat all data that travels over their networks equally.” Allowing “some Internet providers to provide better access to some websites that pay a fee to reach users faster. This kind of ‘pay-to-play’ Internet

**William Michael Cunningham**  
**Creative Investment Research, Inc.**

stifles innovation. New websites that can't afford expensive fees for better service will face new barriers to success, leaving users with ever fewer options and a less diverse Internet."

Full and fair internet access is a human right. With open internet standards, we expect internet file formats to become more efficient, leading to smaller download sizes and faster access. Further, we expect that funding for format research and development will increase if standards remain open, that is, as long as there is maximum economic incentive to lower file sizes. A bifurcated internet eliminates this incentive, and will result in a reduction in R&D that would otherwise lead to more efficient, more robust internet file methodologies.

Further, given the history of racial and economic discrimination in this country, we expect that, if ISP's are allowed to discriminate, they will eventually do so based on racial and economic factors.

We believe the Commission should

"retain the definitions and scope of the 2010 rules. Second, we tentatively conclude that the Commission should enhance the transparency rule that was upheld by the D.C. Circuit so that the public and the Commission have the benefit of sunlight on broadband provider actions and to ensure that consumers and edge providers—indeed, the Internet community at large—have the information they need to understand the services they are receiving and to monitor practices that could undermine the open Internet. Third, we tentatively conclude that the Commission should adopt the text of the no-blocking rule from the *Open Internet Order* with a revised rationale, in order to ensure that all end users and edge providers can enjoy the use of robust, fast and dynamic Internet access. Fourth, and where conduct would otherwise be permissible under the no-blocking rule, we propose to create a separate screen that requires broadband providers to adhere to an enforceable legal standard of commercially reasonable practices, asking how harm can best be identified and prohibited and whether certain practices, like paid prioritization, should be barred altogether."

We disagree with the proposal to create "a multi-faceted dispute resolution process to provide effective access for end users, edge providers, and broadband network providers alike and the creation of an ombudsperson to act as a watchdog to represent the interests of consumers, start-ups, and small businesses." We believe repeated, proven violations of open internet standards should result in an immediate suspension.

In summary, we believe the use of on-line, Internet-based and enhanced capital access tools will significantly reduce costs and increase the flow of capital to all sectors in society. This increase in capital access will, in turn, result in significantly increased general economic activity.

**William Michael Cunningham**  
**Creative Investment Research, Inc.**

We estimate, using proprietary economic models, this increased economic activity at \$22 trillion dollars over ten years. (This assumes an internet based capital access system that is gender and racially neutral, operating without significant falsification and fraud.)

The internet is a powerful tool. We understand both the potential benefits and the potentially disruptive nature of this technology better than most.

Capital market regulators in other regions of the world will, at some point, enhance their ability to access capital using internet-based tools. Thus, competitive advantage with respect to capital access is available to any country with significant economic potential and a modest communications infrastructure.

We do not know which countries will be winners over the long term. We know with certainty, however, that without the full set of open internet standards and enhanced capital access tools, it is unlikely that the United States will long maintain and enjoy its current advantage.

We look forward to reviewing the Commission's continuing efforts to carry out its mission. We appreciate the time and effort the Commission has devoted to this task. Thank you for your leadership.

Please contact me with any questions or comments.

Sincerely,

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