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**Monahan & Roth LLC**

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**To:** Hester Peirce **From:** Tony Rothenfluch

**Fax:** 202-942-9595 **Pages:** 3

**Phone:** None given **Date:** 5/8/2003

**Re:** Comment Letter **CC:**

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MAY 09 2003



Monahan & Roth, LLC

May 5, 2003

Jonathan G. Katz, Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street NW  
Washington DC 20549-0609

Re: Proposed Rule: Compliance Programs of Investment Companies and  
Investment Advisers  
File No. S7-03-03, Release Nos. IC-25925, IA-2107

Dear Mr. Katz:

Monahan & Roth, LLC provides regulatory guidance for firms that offer securities products. Our clients range from one-person retail broker-dealer operations to full-scale multi registered representative broker-dealers, investment advisers, investment bankers, bank affiliated broker-dealers, and financial holding companies. This comment reflects the opinion of Monahan & Roth. We support the provision of this rule requiring firms to adopt and implement written policies and procedures, however we recommend that the SEC implement this rule in a manner sensitive to potential costs to small firms.

#### *Adoption and Implementation of Policies and Procedures*

The new regulation proposes: (1) funds and advisers adopt and implement policies and procedures reasonably designed to prevent violation of the federal securities Laws; (2) funds and advisers review their policies and procedures at least annually to determine their adequacy and the effectiveness of their implementation; and (3) each fund and adviser designate an individual responsible for administering the compliance policies and procedures.

Requiring funds and advisers to adopt and implement policies and procedures will establish more consistent procedures among firms, and help ensure that firms are following Federal Securities Laws. Establishing consistent procedures among firms will: (1) allow auditors to audit firms more quickly; (2) better identify violations; and (3) allow the SEC to better define appropriate rules for establishing, implementing, and maintaining policies and procedures.

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If all firms are required to implement policies and procedures the industry can be expected to develop a similar general format among most firms. This generally acceptable format(s) will allow auditors to recognize inconsistencies more quickly and reduce the time required to perform audits. A general format will help auditors better identify violations of the rule by allowing auditors to concentrate on the content and implementation of procedures rather than the format. Further, auditors will have more consistent feedback to the SEC on what changes need to be made to streamline the auditing requirements.

The annual review will ensure funds and advisers have up to date: (1) policies that include new SEC regulations; (2) procedures that reflect any business changes; and (3) firm contact information required by their policies.

Requiring an annual review will prevent funds and advisers from writing procedures once and shelving them for the life of the firm. SEC regulations will change, business structure may change, and firm contacts may change. This requirement will encourage firms to use their policies and procedures as a tool to adhere to Federal Securities Laws.

We strongly support the proposed SEC rule requiring all funds and advisors to adopt and implement policies and procedures designed to prevent violation of Federal Securities Laws.

### *High Costs to Small Firms*

The SEC comments regarding cost to small firms implies that the cost of implementing the new rule is not unduly burdensome on small firms or that the benefits of this rule outweigh the burdens placed on small firms.

With regard to cost, the SEC states that: (1) the costs of adopting and implementing this rule to small firms will be minimized because small firms typically engage in a limited number of transactions and have one or two employees; (2) firms internal compliance programs would be markedly less complex than those of their large firm counterparts; and (3) industry representatives, commentators, and organizations will have model programs that small firms can use.

We do not agree with the SEC's small firms cost analysis. Although small firms may often engage in a limited number of transactions or have a limited number of employees, firms will still need to create general policies and procedures that will be the same for all firms. This will be a much higher burden on smaller firms that create much less revenue than larger firms. Although the actual compliance program may be less complicated the cost of drafting the basic policies and procedures will be the same for small or large firms. At this time, the amount of resources available to small businesses to create these policies and procedures is limited and may be cost prohibitive for some firms.

We agree that the benefits of creating a rule requiring policies and procedures are great. The SEC states that it will provide guidance to funds and advisers in their adopting release. We argue that the SEC should shoulder some of the administrative industry burden in promoting this rule by publishing a general template firms can use and modify to fit their own needs. This would serve to reduce initial costs until the industry has further developed an infrastructure to adhere to the new requirement.

Monahan & Roth appreciates the opportunity to comment on the SEC's proposed rule requiring investment companies and investment advisers to adopt certain compliance programs.

Sincerely,

Anthony E. Rothenfluch