

Bifurcated Settlements Offer Advantages to Individuals Facing an Officer and Director Bar in SEC Enforcement Proceedings

Increasingly, individuals in SEC enforcement actions faced with the threat of imposition of a bar to their ability to serve as an officer or director of a public company are turning to bifurcated settlements. These bifurcated settlements with the SEC allow individual defendants to settle most components of an action, but reserve the question of whether they should be subjected to an O&D bar to the court. This approach gives individual defendants the flexibility to argue their case on the applicability of an O&D bar to a court, without risking a negative judicial ruling on liability. Given the SEC's somewhat rigid imposition of O&D bars in settlements, resorting to the judicial system, where courts have demonstrated a willingness to adopt a fact-specific and highly individualized analysis to whether an O&D bar should be imposed, can provide significant dividends to individual defendants.

In the attached article "Bifurcated Settlements: A New Approach to O&D Bars," Ropes & Gray counsel [R. Daniel O'Connor](#), a former senior trial counsel at the SEC, and associate [Annmarie A. Tenn](#) discuss the novel use of bifurcated settlements to challenge the application of O&D bars. To view this article, please [click here](#).

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