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## SEC Enforcement Focus Shifting To Individuals: Report

By **Shannon Henson**

*Law360, New York (December 07, 2009)* -- The U.S. Securities and Exchange Commission has increasingly set its sights on individuals rather than companies in enforcement actions, according to a new report by NERA Economic Consulting.

According to NERA's fiscal year-end SEC Settlements Trends report, released Monday, individuals are more likely than companies to be targeted in cases alleging misstatements in the Sarbanes-Oxley Act era.

Public company misstatements are among the most frequent allegations in SEC enforcement actions, the report said.

Since SOX was passed in 2002 to the end of fiscal year 2009, the SEC reached settlements in cases relating to the alleged misstatements of 353 public companies, NERA said.

In those cases, the regulator settled with the company itself 62 times, compared with 99 cases when it settled only with individual directors or employees, while in the remaining 192 cases, the SEC settled with both the company and individuals, the report said.

The SEC's handling of such matters may change, especially in light of a judge's recent rejection of the commission's \$33 million proposed settlement with Bank of America Corp., said Elaine Buckberg, a senior vice president at NERA and an author of the report.

In September, Judge Jed S. Rakoff of the U.S. District Court for the Southern District of New York said it was "absurd" for the SEC to argue that it was permissible for the victimized shareholders of a company to pay for the alleged wrongdoing.

"The agency may focus on individuals more than it even had been," Buckberg said.

The report also found that the SEC settled with the fewest number of defendants annually since SOX was implemented in fiscal 2009.

The commission settled with 626 defendants in fiscal year 2009, down from 673 in fiscal year 2008, according to NERA.

The reduction isn't very surprising because there was a lot of staff turnover at the commission as the Obama administration took power, Buckberg said, but she predicted an increase in enforcement actions going forward.

“There is more staff in place than there was prior to the end of the Bush administration departures, and the agency is under enormous pressure to demonstrate a new vigor and intelligence about enforcement,” she said.

Monetary payments were a component of 58.6 percent of company settlements and 58.9 percent of individual settlements in fiscal year 2009, the report found.

The average company settlement more than doubled in 2009 to \$10.7 million, compared with \$4.7 million in fiscal year 2008, while the median company settlement was \$1 million, compared with \$1.2 million in the prior fiscal year, according to the report.

There were also fewer insider trading settlements in fiscal year 2009 than in any full fiscal year since SOX was passed, NERA said.

However, the report noted, the SEC has cracked down on insider trading since the end of fiscal year 2009, launching a sweeping probe that included charges against Raj Rajaratnam, the founder of the Galleon Group of hedge funds.

According to NERA, 56 individuals settled insider trading cases in fiscal year 2009, compared with 76 in 2008.