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New York's Blue Sky Law (Martin Act) Statute of Limitations Extended to 6 Years

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On August 26, 2019, New York Governor Andrew Cuomo signed into law a significant change affecting New York's blue sky law (the Martin Act),[1] extending the period during which the Attorney General of New York can take action for violations of the Act to 6 years from the 3 year statute of limitations that the New York Court of Appeals determined was applicable in 2018 in *People v. Credit Suisse Sec. (USA) LLC*.[2] This change restores the longer period the Attorney General thought it had to investigate and bring actions.

Only the Attorney General is permitted to enforce the Martin Act by investigating and prosecuting suspected fraud in the offer, sale or purchase of securities.[3] The Attorney General can obtain preliminary and permanent injunctive relief and civil and criminal penalties as provided by law. In this regard, it has the power to issue subpoenas statewide to compel attendance of witnesses or to require production of documents in connection with an investigation.[4]

The Attorney General's Office has broadly interpreted this grant of authority to investigate and prosecute a variety of what it deems potential and actual financial frauds and has also used its authority under Section 63 of the New York State Executive Law to investigate and obtain relief against persons who engage in "repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."[5]

The Martin Act is known as a powerful state securities law. It gives the New York Attorney General extensive power to investigate and prosecute and has been used over the last several decades to pursue cases that the SEC and the US Attorney's Office did not or could not pursue. The Martin Act has broad jurisdictional reach and because many major banks, underwriters and brokerage firms have offices in New York and most US public companies trade on the NYSE or the Nasdaq, the New York Attorney General has authority over the vast majority of securities transactions executed in the United States.

New York courts liberally construe the Martin act to protect "the public from fraudulent exploitation in the offer and sale of securities"[6] and have permitted the Attorney General to investigate and prosecute false promises, fraud, attempted fraud and misleading statements in the sale or promotion of securities (broadly defined) within or from New York. The Attorney General has used both civil and criminal prosecutions to enforce the Martin Act.

The Martin Act does not require the Attorney General to prove fraudulent intent or scienter[7] and the new 6 year statute potentially increases the exposure of a number of possible defendants

1 S.6536/A.8318, amending Section 213 of the New York Civil Practice Law and Rules to add a new clause 9 setting a statute of limitations of 6 years for actions under N.Y. Gen. Bus. Law Art. 23A (the Martin Act) and, Section 63 of the N.Y. Executive Law allowing the Attorney General to bring actions for fraud generally.

2 31 N.Y.3d 622 (2018), 82 N.Y.S.3d 295 (2018).

3 There is no private right of action for violations of the Martin Act. *CPC International Inc. v. McKesson Corp.*, 70 N.Y. 2d 268, 276, 519 N.Y.S.2d 804, 807 (1987)

4 N.Y. Gen. Bus. Law § 352(2).

5 N.Y. Executive Law Section 63(12) (McKinney's 2012).

6 *All Seasons Resorts, Inc. v. Robert Abrams*, as Attorney-General of the State of New York, 68 N.Y.2d 81, 87 (1986)

7 *People v. Federated Radio Corp.* 244 N.Y. 33, 38 -39 (NY 1926)

(including their counsel) who might have thought their exposure to Martin Act investigations and prosecutions to have expired.

In 2011, in *Assured Guaranty (UK) v. J.P. Morgan Investment Management Inc.*,[8] the New York Court of Appeals held that the Martin Act does not preclude private investors from bringing lawsuits based on common law securities tort claims. However, the federal Securities Litigation Uniform Standard Act, enacted in 1998, prevents class action lawsuits alleging securities fraud under common law and state law claims and the Private Securities Litigation Reform Act of 1995 increased pleading requirements, limited discovery, and addressed liability, class representation, and awards of legal fees and expenses in an effort to reduce frivolous securities lawsuits.

Although there have been bills in various sessions of the New York legislature in the past few years to permit private rights of action, none have been passed.

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8 17 N.Y.3d 891(2011), 933 N.Y.S.2d 641 (2011).