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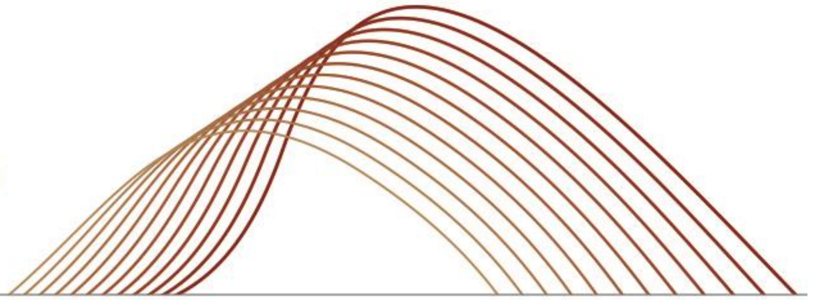

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New York Legislature Sets Statute of Limitations for Martin Act Claims to Six Years

By John Nowak, Anthony Antonelli & Jeanette Kang

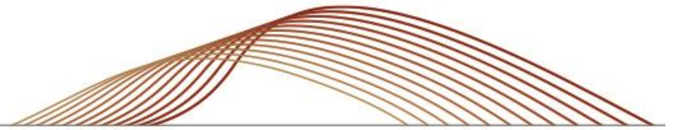
The New York State Assembly and Senate recently passed legislation proposed by the New York Attorney General ("NYAG") establishing a six-year statute of limitations for claims brought under the Martin Act and New York Executive Law § 63(12). This legislation comes almost exactly one year after a landmark decision by the New York Court of Appeals holding that Martin Act and Executive Law § 63(12) actions were subject to a three-year statute of limitations. The legislation will soon be delivered to Governor Cuomo, who can either sign the legislation or veto it. We previously wrote about the Court of Appeals decision and its potential ramifications here.

This legislation clearly indicates that the NYAG views the Martin Act as a key piece of its enforcement arsenal in pursuing allegations of fraud against individuals and companies and that long-term investigations are likely to, once again, become the norm.

Background

The Martin Act is a powerful, century-old law that provides the NYAG the authority to investigate allegations of fraudulent activity involving the purchase or sale of securities or commodities within or from New York.[1] Unlike common law fraud, the statute does not require proof of scienter, reliance or damages. Separately, New York Executive Law § 63(12) authorizes the NYAG to bring an action to enjoin and seek restitution or damages when an individual or company "engage[s] in repeated fraudulent or illegal acts or otherwise demonstrate[s] persistent fraud or illegality in the carrying on, conducting or transaction of business."[2] This provision is often thought of as a "look through" provision in that it authorizes the NYAG to pursue claims under other statutes but does not create a separate cause of action.[3]

In June 2018, the New York Court of Appeals held that the Martin Act is subject to a three-year statute of limitations.[4] In the underlying litigation, the NYAG argued that a six-year statute of limitations should apply because the Martin Act is an "action based upon fraud."[5] The defendant, on the other hand, argued that CPLR § 214's three-year statute of limitations should apply because neither the Martin Act nor Executive Law § 63(12) provide for a statute of limitations period, and both statutes set forth elements of proof that differ from the elements required by common law. The Court of Appeals agreed with the defendant and overturned a string of lower court decisions finding Martin Act claims were subject to a longer, six-year limitations period. Specifically, the Court held that, because the Martin Act "imposes numerous obligations—or 'liabilities'—that did not exist at common law," Martin Act claims are governed by the three-year limitations period in CPLR § 214(2), which



applies to any liability created or imposed by statute.[6] Separately, the court also held that the length of the statute of limitations period for Executive Law § 63(12) depends on whether the underlying liability amounts to a type of fraud recognized in common law or whether it was imposed by statute.[7]

Takeaways

It is clear the NYAG views the Martin Act and Executive Law § 63(12) as powerful enforcement tools and will pursue violations of these statutes aggressively. Assuming that Governor Cuomo signs the legislation, the statute of limitations for claims under the Martin Act will return to the six-year time period that had historically applied to Martin Act suits. This means that the NYAG will have more time to conduct investigations, that aged conduct might still be subject to inquiry and NYAG scrutiny, that lengthy investigations are likely on the horizon, and that the statute of limitations defense may no longer be as strong or readily available for defendants currently under investigation.

It is also worth noting that this legislation eviscerates the holding by the Court of Appeals regarding Executive Law § 63(12). Specifically, the Court of Appeals held that the statute of limitations for claims resting in Executive Law § 63(12) depended upon the statute of limitations applicable to the underlying liability, *i.e.*, if the offensive conduct amounts to the "type of fraud" recognized in common law then a six-year statute of limitations applied; however, if the claim is based in statute or on conduct not prohibited in common law (*e.g.*, a Martin Act violation), the claim would be subject to a shorter, three-year limitations period.[8] The recent legislation does away with the distinction between common law and statutory violations and applies a six-year statute of limitations to both. Accordingly, this legislation also has the potential to govern the statute of limitations of other statutory consumer protection violations that, like Martin Act claims, may be charged under Executive Law § 63(12).[9]

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings New York lawyers:

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1 N.Y. Gen. Bus. Law Art. 23-A, § 352 *et seq*.

2 N.Y. Exec. Law § 63(12).

3 *People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622, 633 (2018).

4 *Id.*

5 *Id.* at 627. Specifically, the NYAG argued that its claims were subject to the six-year statute of limitations under CPLR § 213(1) (a "residuary provision applicable to an 'action for which no limitation is specifically prescribed by law'"), 213(8) (an "action based upon fraud"), or, alternatively, that its complaint pleaded the elements of common-law fraud. *Id.* at 627-29.

6 *Id.* at 632.

7 *Id.* at 634-35.

8 *Id.* at 633.

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[9] *See, e.g.*, N.Y. Gen. Bus. Law § 349; *Gaidon v. Guardian Life Ins. Co. of Am.*, 96 N.Y.2d 201, 210 (2001) (finding N.Y. Gen. Bus. Law § 349, relating to false advertising and other deceptive business practices, is subject to a three-year statute of limitations).