

# New York Establishes Six-Year Statute of Limitation for Prosecution of Claims under the Martin Act

**The Capital Commitment Blog** on October 7, 2019

On August 25, 2019, New York Governor Andrew Cuomo signed [New York State Senate Bill S6536](#) which established a six-year statute of limitations for the prosecution of certain crimes related to fraudulent practices in respect to stocks, bonds and other securities and conducting business in the State of New York. As discussed below, the legislation overturned a New York Court of Appeals ruling last year holding that claims under the Martin Act were subject to a three-year statute of limitations.

## Background

First enacted in 1921, the [Martin Act](#) “authorizes the [New York] Attorney General to investigate and enjoin fraudulent practices in the marketing of stocks, bonds and other securities within or from New York State.” [Kerusa Co. LLC v. W10Z/515 Real Estate Ltd. Partnership](#), 12 N.Y.3d 236, 242, 906 N.E.2d 1049 (2009). Unlike claims of fraud under common law, the Martin Act does not require proof of scienter and reliance, making it an extremely powerful enforcement tool for the New York Attorney General (“NYAG”).

## People v. Credit Suisse Securities USA LLC, et al.

Despite the lengthy history of the Martin Act, before 2018 the New York Court of Appeals had never judicially determined the applicable statute of limitations. A recent appeal brought the issue to the forefront. On November 20, 2012, the NYAG [commenced an action](#) against Credit Suisse Securities USA LLC, et al. (“Credit Suisse”) alleging violations of the Martin Act in connection with the offer and sale of residential mortgage-backed securities in 2006 and 2007.

Credit Suisse moved to dismiss the Martin Act claims on the basis that the three-year statute of limitations under Section 214(2) of the New York Civil Practice Law and Rules (“New York CPLR”) applied to the action and thus, despite a tolling agreement Credit Suisse entered into with the NYAG in March of 2012, the claims were time-barred. The NYAG countered that the timeliness of the claims were instead governed by the six-year statute of limitations under Section 213(8) of the New York CPLR.

Comparing the relevant provisions in the New York CPLR, the six-year statute of limitations under Section 213(8) applies to actions “based on fraud,” while three-year statute of limitations under Section 214(2) applies to fraudulent practices beyond those recognized under common law (i.e. those causes of action created by statute). Credit Suisse argued that because fraud claims brought under the Martin Act do not require proof of scienter or reliance, such claims were statutory creations and therefore subject to the three-year statute of limitations under Section 214(2).

In 2014, the New York state trial court denied Credit Suisse’s motion dismiss, which Credit Suisse appealed. In 2016, the New York Appellate Division (First Department) affirmed the trial court’s ruling in a 3-2 decision. Credit Suisse subsequently petitioned the New York Court of Appeals for further review.

On June 12, 2018, the New York Court of Appeals [issued a 4-1 ruling](#) reversing the Appellate Division and holding that claims brought under the Martin Act were subject to the three-year statute of limitations under Section 214(2) of the New York CPLR. The court reached its decision on the grounds that the Martin Act expanded liability for “fraudulent practices” beyond those recognized under the common law. Perhaps in a foreshadowing of future events, dissenting Judge Jenny Rivera called on the New York state legislature to put forth legislation expressly codifying a six-year limitations period for claims brought under the Martin Act.

Following the New York Court of Appeals ruling, a spokeswoman for the NYAG stated that the ruling would “have no impact” on the activities of the NYAG. However, practitioners predicted a rise in requests by the NYAG for tolling agreements, as well as an acceleration of investigations brought by the NYAG. Some practitioners also predicted that the NYAG could start to pursue claims under common law theories of fraud, to take advantage of a longer six-year statute of limitations period.

## **The Legislative Fix**

On June 15, 2019, Senate Bill S6536 was proposed to amend Section 213 of the New York Rules to expressly include claims brought under the Martin Act within a six-year statute of limitations. According to its own [press release](#), the NYAG submitted the legislation as a program bill and vigorously advocated for its passage. On August 25, 2019, New York Governor Andrew Cuomo signed the bill into law.

## Takeaways

While the legislation is effective immediately, it does not clearly address whether it applies retroactively. Nonetheless, any defendant would likely have strong policy-based arguments that previously time-barred claims should be precluded from prosecution. At the same time, the NYAG may seek to include conduct from earlier time periods in connection with ongoing investigations, which would have previously been time-barred under the 2018 New York Court of Appeals ruling.

[View Original](#)

## Related Professionals

---

- **Seetha Ramachandran**

Partner