



New York Legislature passes Program Bill on behalf of Attorney General James to implement six-year statute of limitations for Martin Act and Executive Law fraud claims

By Erica F. Buckley

In the last hours of the New York Legislative session, the Senate and the Assembly passed a program bill requested by Attorney General Letitia James to amend the Civil Practice Law and Rules to clarify that the statute of limitations for the New York Attorney General to commence an action or special proceeding involving alleged fraudulent practices related to stocks, bonds or other securities under Article 23-A of the New York General Business Law or Section 63(12) of the New York Executive Law will be six years. If signed by the Governor, the change would address the holding by the Court of Appeals in *People v. Credit Suisse Sec. (USA)*, 31 N.Y.3d 622 (2018), where the Court held that the statute of limitation to bring civil claims under the Martin Act is three years. In *People v. Credit Suisse*, the Court also reasoned that the Attorney General is required to “look through” to the applicable statute of limitations governing wrongdoing when using its powers under the Executive Law, touching upon another hot issue for the Attorney General as to whether the Executive Law is a standalone law providing an independent basis for prosecution, or whether it is merely a tool to be used by the Attorney General to prosecute violations of existing laws on the books. The program bill does not address the look through status of the Attorney General’s authority under the Executive Law.

As the memorandum in support by the Senate states, the New York Attorney General plays a critical role in safeguarding the public against alleged fraudulent practices related to stocks, bonds and other securities. However, investigations into illegal conduct take substantial time to develop and involve the use of extensive resources such as electronic discovery, which must be collected and reviewed prior to the commencement of an action or special proceeding by the Attorney General. Examples of the New York Attorney General’s work include actions that resulted in the recovery of billions of dollars after the 2008 financial crisis, and consumer settlements crafted by the office that were responsible for providing millions of dollars of consumer relief in the form of legal services, housing counseling, and Hurricane Sandy Relief, to name a few.

The legislative change is also very important for Martin Act claims, where consumers have no private right of action. See *CPC Intern. Inc. v. McKesson Corp.*, 70 N.Y.2d 268, 277 (1987). And while

parties may mutually agree to modify the statute of limitations for private claims under Civil Practice Law and Rules § 201, including transactions regulated by the Martin Act such as the purchase of a condominium unit from a sponsor, such modifications would not apply to actions or special proceedings commenced by the Attorney General, as private parties are prohibited from abrogating the protections afforded by the statute and governing regulations. See N.Y. Gen. Bus. Law § 352-e, et seq. and 13 N.Y.C.R.R. Parts 18 through 25.

One thing that is not entirely clear from the amendment to the Civil Practice Law and Rules is the applicability to criminal claims under the Martin Act and the breadth of the change to the Executive Law. While the title of the bill references the statute of limitations for certain **crimes** related to fraudulent practices, the law appears to apply primarily to civil violations, which are repeatedly referred to as crimes in the memorandum of support. Despite this characterization in the memorandum of support, the plain language of the amendment should not affect the two-year and five-year statutes of limitations of actions for prosecution of Martin Act misdemeanors or felonies, respectively, pursuant to N.Y. Gen. Bus. Law § 352-c which are both governed by the N.Y. Crim. Proc. Law § 30.10.

Attorney General Letitia James kept her campaign promise and pushed forward with changes to the Civil Practice Law and Rules to extend the statute of limitations for consumer protection claims alleging fraudulent practices involving stocks, bonds and other securities. What this means for businesses is that the Attorney General just doubled the time she has to conduct investigations into alleged wrongdoing, greatly enhancing the ability of the Attorney General to bring such claims. However, the language of the law leaves some questions unanswered, which will likely be addressed through litigation or a technical correction to the law, assuming it is signed by the Governor.

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