



## New York's Martin Act Just Got a Little Less Powerful

On June 12, New York's highest court ruled in a 4-1 decision that Martin Act claims are subject to a three-year statute of limitations, rejecting the New York Attorney General's argument for a six-year limit, and overruling two lower courts' decisions. The Martin Act, which prohibits "fraudulent practices" by financial institutions, is one of the most powerful financial fraud enforcement tools in the country. The Attorney General does not, for example, have to prove intent or justifiable reliance. Remarkably, although the statute is almost a century old, the New York Court of Appeals had never heard the limitations issue.

The court ruled in favor of Credit Suisse, sued by the Attorney General in 2012 for certain alleged practices in RMBS securitizations dating back to 2006 and 2007. The court concluded that the Martin Act does not simply codify common law, which would have made it subject to a six-year statute of limitations, but rather "imposes numerous obligations — or 'liabilities' — that did not exist at common law, justifying the imposition of a three-year statute of limitations." In a lengthy dissent, Judge Jenny Rivera wrote that the majority's ruling improperly curtailed the Attorney General's enforcement function. The court remitted back to the trial court a separate question regarding the statute of limitations for a New York Executive Law 63(12) claim, another broad liability provision the Attorney General frequently invokes.

As we have [previously written](#), the Attorney General's authority is not without its limits. Without a tolling agreement, which one would expect the Attorney General to request now with greater frequency, the Attorney General now has only three years to bring Martin Act fraud claims, less than the five years the SEC and private investors have for similar claims. That will make it more difficult for the Attorney General to investigate large complex financial fraud matters. The Attorney General can always invoke the six-year statute of limitations by bringing a common-law fraud claim, but will of course then need traditional proof of intent, reliance, and causation, losing the powerful authority to dispense with such proof under the Martin Act.



**Harold K. Gordon**  
New York



**Antonio F. Dias**  
Washington



**Courtney L. Snyder**  
Pittsburgh

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