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How the New York Court of Appeals' Limitation on Martin Act Liability Affects Fund Managers

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The Martin Act ("Act") is New York's broad "blue sky law." It has been used extensively by the New York attorney general ("NY AG") to investigate and combat securities fraud occurring in New York. Although the Act may only be enforced by the NY AG — as there is no private right of action under the Act — it authorizes both criminal and civil charges and, importantly, does not require proof of scienter or reliance to successfully bring a claim. As a result, the Act has been a favored tool of past attorneys general in targeting members of the financial services community. Although not affecting the substance of the Act, a recent decision by the New York Court of Appeals imposed an important new limitation on how the Act can be wielded by the NY AG by holding that New York's three-year statute of limitations applies to civil enforcement actions brought under the Act, rather than the six-year statute of limitations applicable to common law fraud that the NY AG had argued was applicable. In this article, partner Harry Davis provides background on the Act and its notable uses and discusses the likely consequences the recent ruling will have on the financial services community.

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