NY COURT OF APPEALS CLARIFIES STATUTE OF LIMITATIONS IN SECURITIES CASES

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The New York Court of Appeals recently dealt the New York Attorney General a defeat when it addressed some thorny statute of limitations issues related to fraud claims in *People v. Credit Suisse Securities (USA) LLC*. The Court held that a three-year statute of limitations applies to Martin Act Securities claims. The Court also held that the longer six-year statute might apply to Executive Law claims brought by New York's Attorney General, depending on the circumstances.

The New York Attorney General brought fraud claims based on Credit Suisse's alleged misrepresentations about the quality of mortgage loans underlying residential mortgage-backed securities and the amount of due diligence and ongoing monitoring of the underlying loans. The Attorney General argued that both of its fraud-based claims were governed by a six-year statute of limitations, which would permit capture of a broader time window of the allegedly fraudulent conduct. The Court of Appeals disagreed.

The Court dismissed the Attorney General's Martin Act claim as time-barred. The Court applied a three-year rule, reasoning that the statutory claim under the Martin Act was governed by a rule (CPLR 214(2)) that provided for three years in which a claimant could bring a claim for "a liability, penalty or forfeiture created or imposed by statute." In so holding, the Court ruled that the Martin Act imposes numerous statutory obligations that were not previously recognized under the common law and rejected the Attorney General's argument that the Martin Act simply codified already-existing fraud liabilities.

On the Executive Law § 63 claim, however, the Court held that while generally a three-year statute of limitations would apply, the Attorney General may pursue remedies for other liabilities, and the courts must "look through" the Executive Law to determine whether the that claim "amounts to a type of fraud recognized in the common law." If it does, then the longer statute of limitations may apply. The Executive Law claim lived to fight another day. The case was remanded for determination of whether the Executive Law claim was the type of fraud recognized by the common law and would, thus subject to a six-year statute of limitations. The Court cautioned that even if a prima face case of common law fraud was made out, the Attorney General would still "be obliged to demonstrate each such element at the proof stage or the claim will be subject to dismissal as time-barred."

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This decision restricts the time for which the Attorney General can capture bad acts, which would limit money damages and other remedies. This fact was not lost on Justice Rivera who dissented. In his dissenting opinion, Justice Rivera was highly critical of the majority decision and wrote that because both the Martin Act and Executive Law § 63 claims relate to fraud, the statute of limitations for both should be six years. Justice Rivera argued that the majority ignored precedent and the legislative history of the Martin Act in shrinking the statute of limitations. Justice Rivera also cautioned that "this is a significant decision with potentially devastating consequences for the People of the State of New York, as well as the markets beyond our borders, which depend on a global financial center."