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New York attorney general revives Martin Act in pursuit of insider trading case

By Dean M. Conway, Esq., Carlton Fields*

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In the early 2000s, then–New York Attorney General Eliot Spitzer earned the moniker "Sheriff of Wall Street" through an aggressive enforcement campaign targeting some of the financial industry's most powerful institutions.

His investigations — primarily focused on concerns over analyst conflicts of interest regarding stock research, improper trading practices in the mutual fund industry, and contingent commissions in the insurance industry — reshaped the securities enforcement landscape and sent shockwaves through Wall Street. Central to Spitzer's enforcement campaign was the Martin Act, a century-old New York statute that grants the New York attorney general exceptionally broad authority to police securities fraud.

The statute's remedial purpose, combined with its absence of a scienter requirement, makes Martin Act claims a formidable enforcement tool.

Armed with the Martin Act, Spitzer brought significant enforcement actions that traditionally had fallen within the exclusive domain of the Securities and Exchange Commission (SEC) or the Department of Justice (DOJ). In many cases, Spitzer moved faster, leveraging swift and limited investigations to beat federal law enforcement to the punch. Over time, however, the SEC reasserted its primacy in securities enforcement, and the era of high-profile, state-led Wall Street prosecutions receded. A recent development suggests that this balance may be shifting once again.

Insider trading actions

On January 15, 2026, New York Attorney General Letitia James announced (https://bit.ly/464rKLX) a civil action against Robert G. Kramer, the former CEO of specialty biopharmaceutical company Emergent BioSolutions Inc., alleging insider trading in connection with his Rule 10b5-1 trading plan.

Rule 10b5-1 under the Securities Exchange Act of 1934 (Exchange Act) permits corporate insiders to establish prearranged trading plans when they are not in possession of material nonpublic information, and a properly adopted plan can provide an affirmative defense to insider trading allegations even if the insider later comes into possession of such information.

At the same time, James announced a settlement (https://bit.ly/4qz3sku) with Emergent based on the company's approval of Kramer's trading plan while he allegedly possessed material nonpublic information (MNPI).

According to the complaint (https://bit.ly/3MBohOh), when Kramer established his Rule 10b5-1 trading plan on November 13, 2020, he was aware of serious manufacturing problems affecting the COVID-19 vaccine Emergent had been contracted to produce, as well as the company's inability to meet its contractual production schedule.

James alleged that Kramer adopted the trading plan while in possession of MNPI concerning Emergent's "manufacturing crisis" and subsequently realized more than $10.1 million in ill-gotten gains from stock sales executed pursuant to that trading plan.

The action comes amid heightened regulatory scrutiny of Rule 10b5-1 trading plans following amendments (https://bit.ly/3ZyAlgl) adopted by the SEC in December 2022. Those amendments imposed mandatory cooling-off periods before trading may commence under a plan, enhanced disclosure requirements for directors and officers, and a written certification at the time of plan adoption that the insider is not aware of material nonpublic information and is acting in good faith. Directors and officers generally must wait at least 90 days after adopting or modifying a plan before trading may occur.

James sought remedies commonly pursued by the SEC in insider trading cases, including disgorgement of alleged ill-gotten gains and a permanent injunction barring future

violations of the law. In the parallel, settled action (https://bit.ly/4rea0WK), Emergent agreed to pay $900,000 in monetary relief, consent to an injunction, and to enhance its executive trading policies (similar to undertakings sometimes included in SEC settled complaints).

The SEC also investigated the same underlying conduct but declined to bring insider trading charges, instead pursuing a settled, negligence-based administrative fraud action against Emergent (https://bit.ly/4qBrrzE) relating to the company's vaccine production disclosures.

A meaningful shift from federal to state enforcement would introduce increased uncertainty for market participants.

Although the SEC did not pursue an action against Kramer, it brought a litigated insider trading case (https://bit.ly/4rlzyS6) in 2023 against a different corporate executive based on trades executed pursuant to a Rule 10b5-1 trading plan allegedly adopted while in possession of material nonpublic information, charging only the individual and his investment vehicle rather than the company that approved the plan.

James further required Emergent, for a three-year period, to provide quarterly reports identifying any board member or senior officer who adopted, modified, or terminated a Rule 10b5-1 trading plan. She emphasized that neither federal nor New York law permits Rule 10b5-1 trading plans to be used as a vehicle to evade insider trading prohibitions and that the Martin Act forbids insiders from trading on the basis of MNPI.

The Martin Act

The Martin Act (New York's blue sky law) differs sharply from the anti-fraud provisions of the federal securities laws in several critical respects. The Martin Act is generally interpreted in civil cases not to require the New York attorney general to prove reliance, damages, or scienter — a material misrepresentation or omission alone is sufficient to establish liability — as established in cases like *People v. Barysh* (https://bit.ly/3ODreyk) and *People ex rel. Vacco v. World Interactive Gaming Corp* (https://bit.ly/4kDQNLW).

While the SEC likewise is not required to prove reliance or loss causation in enforcement actions, it must still establish scienter in fraud cases brought under section 10(b) of the Exchange Act and Rule 10b-5 thereunder — a demanding burden in insider trading cases. By contrast, the Martin Act imposes a significantly lighter evidentiary burden.

It prohibits (https://bit.ly/4bNlo7e) false statements or representations where the speaker either knew the truth, could have known the truth with reasonable effort, failed to make a reasonable effort to ascertain the truth, or lacked knowledge concerning the representation or statement made. The statute's remedial purpose, combined with its absence of a scienter requirement, makes Martin Act claims a formidable enforcement tool.

Implications and takeaways

It remains unclear whether the cases against Kramer and Emergent reflect isolated instances of the New York attorney general stepping into a perceived enforcement gap, or the beginning of a broader resurgence in state-level securities enforcement. Notably, even during the Spitzer era, insider trading was not a primary focus of the New York attorney general's office, and the Martin Act has only rarely been used to prosecute insider trading claims.

There also may have been case-specific reasons why the SEC declined to bring insider trading charges against either Kramer or Emergent. For example, Kramer may have had a viable advice-of-counsel defense, or the evidentiary record may have suggested that he acted in good faith, thereby undermining the scienter required under federal law. In any event, the strength of James' case will not be known unless and until it survives a motion to dismiss and proceeds to trial.

Federal securities law jurisprudence is mature and well developed, whereas precedent under the Martin Act is comparatively sparse.

Regardless of the ultimate outcome, this action serves as a pointed reminder that state attorneys general — and particularly the New York attorney general — possess expansive and flexible tools to pursue securities enforcement actions that present unique defense challenges. A meaningful shift from federal to state enforcement would introduce increased uncertainty for market participants, both procedurally and substantively.

For example, investigations conducted by the New York attorney general lack the same transparency and predictability that typically accompany SEC investigations. The SEC's enforcement program is well developed, with charging decisions informed by input from multiple divisions and offices, promoting consistency and uniformity.

The SEC also publishes its *Enforcement Manual* (https://bit.ly/4kxxyUb), which outlines standards governing its nonpublic investigative process, and provides the opportunity to make a Wells submission to the SEC arguing why charges are not warranted. Investigations under the Martin Act lack such guidance and structure and charging decisions rest in the hands of a single person.

In addition, securities litigation brought under the Martin Act (or other state blue sky laws) presents heightened legal

uncertainty. Federal securities law jurisprudence is mature and well developed, whereas precedent under the Martin Act is comparatively sparse. This lack of controlling authority — combined with a judiciary that may have less experience adjudicating complex securities matters — raises the stakes for defendants and increases the risk of inconsistent outcomes.

In conclusion, the New York attorney general's insider trading action signals a renewed willingness to step into core areas of federal securities law enforcement and raises the prospect of a shifting paradigm — one that has the potential to materially expand the regulatory and litigation risks facing public companies and individuals alike.

About the author

Dean M. Conway is a shareholder at **Carlton Fields**, focusing on securities litigation and enforcement. He previously served as assistant chief litigation counsel at the U.S. Securities and Exchange Commission. He is based in Washington, D.C., and can be reached at dconway@carltonfields.com. This article was originally published Jan. 30, 2026, on the firm's website. Republished with permission.

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