BLUE SKIES FOR AMERICA IN THE SECURITIES INDUSTRY . . . EXCEPT FOR NEW YORK: NEW YORK'S MARTIN ACT AND THE PRIVATE RIGHT OF ACTION

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INTRODUCTION

New York City is the financial hub of the United States and according to some, the world.[2] Yet, New York is the only state without a private right of action for violations of state securities laws, and thus fails to provide its resident investors with the securities protection

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2. Richard Florida, *What is the World's Most Economically Powerful City?*, THE ATLANTIC (May 8, 2012, 9:42 AM), http://www.theatlantic.com/business/archive/2012/05/what-is-the-worlds-most-economically-powerful-city/256841/.

afforded to residents of other states.[3] Blue Sky laws are statutorily designed to regulate the statewide sale of securities.[4] Compared to the Blue Sky laws of other states, New York's Martin Act severely[5] restricts New York residents.[6]

This Article first discusses, in Part I, the origins and legislative history of the Martin Act in order to explain its purpose. Next, Part II explores the advantages and disadvantages of the Blue Sky laws of other states. In light of this exploration, Part III of this Article shows how New York residents are disadvantaged because they cannot rely on a statutory private cause of action under the act. Finally, this Article recommends that to truly protect New York's investing public, the New York legislature must either enact a new Blue Sky law or modify the Martin Act to include a private right of action.

I. THE ORIGIN AND LEGISLATIVE HISTORY OF NEW YORK'S BLUE SKY LAW

Securities regulations have become a necessity to protect the increasing number of investors who have become involved in the marketplace.[7] To fund World War I, the federal government began to sell "securities in the form of Liberty Bonds" to the public.[8] While this introduced many average citizens to the idea of security ownership, it also exposed investors to early forms of securities fraud.[9] Yet, as the federal government had not enacted any legislation to protect its citizens, state legislatures were left to act on the matter.[10] Thus, states

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3. *See* Stephanie Meyers, Comment, *Blue Skies Ahead: Auto Rate Securities and the Need for Private Right of Action for New York Investors*, 30 PACE L. REV. 1109, 1110 (2010).

4. Jonathan R. Macey & Geoffrey P. Miller, *Origin of the Blue Sky Laws*, 70 TEX. L. REV. 347, 348–49 (1991).

5. *See* Meyers, *supra* note 3.

6. *Id.*

7. Ambrose V. McCall, *Comments on the Martin Act*, 3 BROOK. L. REV. 190, 191 (1933).

8. *Id.*

9. *Id.* at 192–93. One early type of fraud found was "switching" where a Liberty bond holder would be induced to give up his/her share which paid 3-4% back annually for a "practically worthless stock" with a promise of higher earnings. *Id.*

10. *Id.* at 193.

enacted Blue Sky laws to protect investors from dishonest vendors who "sell shares in the 'bright blue sky itself.'"[11]

New York faced the problem of "an enormous population with an unusually high per capita wealth suddenly made security conscious" that was prey to dishonest investment practices.[12] Thus, on May 7, 1921, the New York legislature enacted the Martin Act to protect investors from the fraudulent sale of securities.[13] The Martin Act empowers the New York State Attorney General to regulate and enforce the securities laws of New York.[14] However, there is no express or implied private cause of action in the text of the Martin Act's anti-fraud provisions.[15] Very few sources of legislative history look into a private cause of action or why the legislature might have left it out.[16] As such, the New York courts have ruled that there is no private right of action under the Martin Act.[17]

Although there is no private cause of action in the Martin Act, an individual can still bring a claim under common law fraud in New York as long as the traditional rules of pleadings and proof are fulfilled.[18] In *Assured Guaranty (UK) Ltd. v. J.P. Morgan Investment Management Inc*., the New York Court of Appeals addressed whether the legislature intended the Martin Act to supplant "non-fraud common law claims."[19] To override common law, there must first be a "clear and specific legislative intent" to do so.[20] The legislature, however, did not expressly state that the Martin Act would eliminate all other common law claims that could relate to securities fraud.[21] Therefore, the Court of Appeals

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11. *Id.* at 190.
12. *Id*. at 193.
13. CHARLES MILLS, FRAUDULENT PRACTICES IN RESPECT TO SECURITIES AND COMMODITIES: WITH SPECIAL REFERENCE TO THE MARTIN ACT 291 (W.C. Little & Co. 1925).
14. Gabriel Capital, L.P. v. Natwest Finance, Inc*.*, 137 F. Supp. 2d 251, 266 (S.D.N.Y. 2000) (citing N.Y. GEN. BUS. LAW § 352 (McKinney 2014)).
15. CPC Int'l Inc. v. McKesson Corp., 514 N.E.2d 116, 118 (N.Y. 1987).
16. *Id.* at 122.
17. *Id.* at 119.
18. Caboara v. Babylon Cove Dev., LLC, 862 N.Y.S.2d 535, 537 (App. Div. 2008).
19. Assured Guar. (UK) Ltd. v. J.P. Morgan Inv. Mgmt. Inc., 962 N.E.2d 765, 767–69 (N.Y. 2011).
20. *Id.* (citing Hechter v. New York Life Ins. Co., 385 N.E.2d 551, 554 (N.Y. 1978)).
21. *Id*.

determined that an investor may "bring a common-law claim (for fraud or otherwise) that is not entirely dependent on the Martin Act . . . ."[22] The court reasoned that allowing both common law fraud actions and actions brought by the Attorney General under the Martin Act would further the legislature's goal of "combating fraud and deception in securities transactions."[23]

However, combating fraud in securities transactions is better met through simply allowing a private cause of action under the Martin Act.[24] The other forty-nine states have enacted Blue Sky statutes with private rights of action that make it easier for private litigants to bring causes of actions to combat securities fraud.[25] New York is the lone exception.

II. THE UNIFORM SECURITIES ACT OF 2002 AND OTHER STATES' BLUE SKY LAWS

In 1930, the Uniform Law Commission, a non-profit unincorporated association,[26] introduced the Uniform Sales of Securities Act of 1930 ("Uniform Securities Act"),[27] which was later replaced by the Uniform Securities Act of 1956 (the "1956 Act").[28] One of the main reasons for updating the Uniform Securities Act was to standardize state and federal securities laws.[29] The drafters determined that unifying state and federal laws would streamline the legal system for protecting

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22. *Id.* at 770.

23. *Id.* at 771.

24. *See infra* Parts II and III.

25. *See infra* Part II.

26. *About the ULC*, UNIFORM LAW COMMISSION, http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC (last visited Apr. 7, 2014).

27. *Securities Act Summary*, UNIFORM LAW COMMISSION, http://www.uniformlaws.org/ActSummary.aspx?title=Securities%20Act (last visited Apr. 7, 2014).

28. Joel Seligman, *The New Uniform Securities Act*, 81 WASH. U. L.Q. 243, 243 (2003); *see also* UNIFORM SECURITIES ACT OF 1956 §§ 101, 419 (1956), *available at* http://www.nasaa.org/wpcontent/uploads/2011/08/UniformSecuritesAct1956withcomments.pdf.

29. *Securities Act Summary*, UNIFORM LAW COMMISSION, http://www.uniformlaws.org/ActSummary.aspx?title=Securities%20Act.

investors.[30] The 1956 Act served as a model for many states' Blue Sky laws.[31] Although the 1956 Act was updated by the Revised Uniform Securities Act of 1985 ("RUSA"), many states did not adopt RUSA.[32] The revised 1956 Act was most recently amended by the Uniform Securities Act of 2002 (the "2002 Act" and collectively, the "Uniform Acts").[33] Section 501 of the 2002 Act and § 101 of the 1956 Act were modeled after § 10b-5 of the federal Securities Exchange Act of 1934[34] and § 17a[35] of the federal Securities Act of 1933.[36] Most states have adopted some version of the Uniform Acts as their Blue Sky law.[37]

The advantage of following the Uniform Acts is that when there is ambiguity in a state's Blue Sky law, courts may defer to cases that have interpreted the federal securities laws[38] because each state requires that the substantive elements of its law are harmonious to those in the federal laws.[39] To bring a private securities action under § 10b-5, a plaintiff must prove the following elements:[40] "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation."[41]

However, the states do not require "exact parallelism with other states' and federal law."[42] For example, Minnesota's Blue Sky Law, which is based on the 2002 Act, does not require scienter and allows for

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30. Cheryl Nichols, *The Importance of Selective Federal Preemption in the U.S. Securities Regulatory Framework: A Lesson from Canada, Our Neighbor to the North*, 10 CHAP. L. REV. 391, 470–71 (2006).

31. *Id.* at 427.

32. *See* Seligman, *supra* note 28.

33. *Id.*

34. Securities Exchange Act of 1934, 15 U.S.C. § 78j (2012).

35. Securities Act of 1933, 15 U.S.C. § 77q (2012).

36. Merry v. Prestige Capital Mkts., Ltd*.*, 944 F. Supp. 2d 702, 709 (D. Minn. 2013).

37. Nichols, *supra* note 30.

38. *See* Securities Act of 1933, 15 U.S.C. § 77q; Securities Exchange Act of 1934, 15 U.S.C. § 78j.

39. Haberman v. Wash. Pub. Power Supply Sys., 744 P.2d 1032, 1049 (Wash. 1987), *amended*, 750 P.2d 254 (Wash. 1988).

40. *See* Seligman, *supra* note 28; Amgen Inc. v. Conn. Ret. Plans and Trust Funds, 133 S. Ct. 1184, 1191–92 (2013)

41. *Id.* at 1192.

42. *Haberman*, 744 P.2d at 1049.

negligent misrepresentations as a cause of action unlike the federal laws.[43] Similarly, Missouri's Blue Sky law, also based on the 2002 Act, does not require scienter to prove securities fraud.[44] These states allow investors who would otherwise be unable to bring a cause of action under federal law to bring a state law claim.[45]

While most states have adopted some version of the Uniform Acts, other states, such as California, Florida, and Texas, have created divergent Blue Sky laws.[46] The California Corporate Securities Law of 1969 ("CCS") enables investors to establish a securities violation and recover damages more easily than under the Uniform Acts and 10b-5.[47] If not for the CCS, investors in California would not be able to bring certain causes of action because of the heightened pleading standards of common law and federal law.[48] Under the CCS, privity is required to prove negligent conduct on the part of the seller but not to prove market manipulation.[49] Additionally, the CCS does not require the plaintiff to prove reliance or scienter.[50] However, even though reliance and scienter are not necessary to bring the action, the statute is not strict liability because the defendant may defend himself by:

> (1) prov[ing] that he exercised reasonable care and did not know of the untruth or omission, (2) show[ing] that even if he had exercised

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43. *See* Hardin Cnty. Sav. Bank v. Hous. & Redev. Auth. of the City of Brainerd, 821 N.W.2d 184, 192 (Minn. 2012); *see also* Merry v. Prestige Capital Mkts., Ltd., 944 F. Supp. 2d 702 (D. Minn. 2013) ("At the pleading stage, a plaintiff asserting liability under Minn. Stat. § 80A.68(2) must allege: (1) a material misrepresentation or omission by the defendant; (2) negligence; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.").

44. Meyers, *supra* note 3, at 1109, 1130.

45. *Compare* MINN. STAT. § 80A.68(2) (2014), *and* MINN. STAT. § 80A.40 (2014), *with* Securities Act of 1933, 15 U.S.C. § 77q (2012), *and* Securities Exchange Act of 1934, 15 U.S.C. § 78j (2012).

46. *See* California Corporate Securities Law, CAL. CORP. CODE § 25000 (2014); Florida Securities Investor Protection Act, FLA. STAT. § 517 (2014); Texas Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-33 (West 2014).

47. Bowden v. Robinson, 136 Cal. Rptr. 871, 876 (Ct. App. 1977).

48. *See* California Corporate Securities Law of 1969, CAL. CORP. CODE § 25110 (2014); *see also Bowden*, 136 Cal. Rptr. at 876–78.

49. California Amplifier, Inc. v. RLI Ins. Co., 113 Cal. Rptr. 2d 915, 921 (Ct. App. 2001). When there is evidence of market manipulation privity is not required, but it is limited to intentional misrepresentations. *Id.*

50. *Id.*

> reasonable care, he would not have known of the untruth or omission, and (3) show[ing] that the plaintiff knew the facts concerning the untruth or omission.[51]

Although the CCS makes it easier for a plaintiff to bring an action, the California legislature did put in some restrictions.[52] One restriction is monetary: the plaintiff may not recover punitive damages even if the plaintiff would be able to do so under California common law.[53] A second restriction is the strict statute of limitations of four years after the violation or one year after the plaintiff realized that there was a violation, whichever shall expire first.[54] The purpose of this limitation is to prevent the alleged victim from having more time to speculate "at the expense of innocent parties."[55]

Florida's Blue Sky law is known as the Florida Securities Investor Protection Act ("FSIPA").[56] The FSIPA, which was once interpreted to be similar to § 10b-5 because they use similar language, was eventually distinguished from § 10b-5.[57] In *Rouseff*, the Florida Supreme Court addressed whether proximate cause was an element of the FSIPA.[58] The court found that FSIPA, which allows that the "scienter requirement . . . is satisfied by a showing of mere negligence" rather than reckless disregard, was more analogous to § 12(2) of the 1933 Act.[59] Therefore, this ruling makes it easier for an individual to bring a cause of action under the FSIPA than under the federal securities laws.

However, like with federal law, a privity requirement must be fulfilled.[60] Unlike § 10b-5, which covers "any person" involved in the deceitful purchase or sale of a security, the FSIPA is "far more restrictive" because it applies to a narrower group of activities where

51. *Bowden*, 136 Cal. Rptr. at 878.
52. *See* Boam v. Trident Fin. Corp., 8 Cal. Rptr. 2d 177, 180 (Ct. App. 1992).
53. *Bowden*, 136 Cal. Rptr. at 878.
54. *Id.*
55. *Id.*
56. Michael A. Hanzman, *Civil Remedies Under the Florida Securities and Investor Protection Act*, 64 FLA. BAR J. 36 (1990), *available at* https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Articles/E2981A6F0E0E3B9385256B1B004C54DF.
57. *Id.*
58. E. F. Hutton & Co. v. Rousseff, 537 So. 2d 978 (Fla. 1989).
59. *In re* Checkers Sec. Litig., 858 F. Supp. 1168, 1180 (M.D. Fla. 1994).
60. *Id.* (citing *Rousseff*, 537 So. 2d at 981).

"buyer/seller privity is required."[61] Once privity is shown to exist between the parties, the FSIPA imposes a standard of "mere negligence" to bring a cause of action.

The privity element can be detrimental to a plaintiff's action against a third party if the plaintiff cannot show privity with that third party. For instance, in *In re Checkers Securities Litigation*, the court found privity and involvement between the seller and buyer but not between the sellers and the sellers' auditor KPMG.[62] Under the FSIPA, auditors cannot be held liable when they merely provided "professional services and had no financial interest in the sale of the securities."[63] Therefore, because these two elements were not present, KPMG was not liable.[64]

The FSIPA also includes an attorney fee-shifting provision that further distinguishes it from federal law and other state statutes.[65] A fee-shifting provision requires the losing party to bear the reasonable attorney's fees of the other side.[66] The FSIPA fee-shifting provision states:

> [t]he court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred . . . by a trustee, and by the attorney for such trustee, in connection with a liquidation proceeding.[67]

Fee-shifting provisions can be a blessing and a curse for investors. Such provisions encourage investors to bring only the most meritorious cases and discourage investors from bringing cases that are not clear winners.[68] Fee-shifting provisions also change the dynamic of

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61. Hanzman, *supra* note 56.
62. *In re Checkers*, 858 F. Supp. at 1180.
63. *Id.* (citing Moore v. Kayport Package Express, Inc., 885 F.2d 531, 535–37 (9th Cir. 1989)).
64. *See id.* at 1180–81.
65. HENRY COHEN, CRS REPORT FOR CONGRESS: AWARDS FOR ATTORNEYS' FEES BY FEDERAL COURTS AND FEDERAL AGENCIES 75 (2008), *available at* http://www.fas.org/sgp/crs/misc/94-970.pdf.
66. Thomas D. Rowe Jr., *The Legal Theory of Attorney Fee Shifting: A Critical Overview*, 1982 DUKE L.J. 651 (1982).
67. COHEN, *supra* note 65 (quoting Securities Investor Protection Act, 15 U.S.C. § 78eee(b)(5)(A) (2012)).
68. Rowe, *supra* note 66, at 652.

settlement negotiations[69] by encouraging parties to negotiate earlier and more often.

Texas's Blue Sky law, the Texas Securities Act ("TSA"), is also unique.[70] The main purpose of the TSA is to "facilitate investors' actions to recover their monies through a simplified fraud action . . . ."[71] Like the CCS and FSIPA, the TSA provides investors with an alternative route to bring causes of actions that differ from common or federal law.[72] Unlike Texas's common law fraud claims, the TSA does not require privity or scienter.[73] In addition, the TSA requires neither reliance on the seller's material misrepresentation or omission nor any due diligence on the part of the buyer.[74] Like the CCS, when parts of the TSA are found to be similar to federal law, Texas courts may turn to cases that interpret federal law for guidance on novel issues, but do not necessarily find such federal law interpretations dispositive.[75]

However, unlike the CCS and the FSIPA, the TSA requires heightened pleading for claims against aiders and abettors of securities fraud.[76] To establish liability against an aider and abettor of securities fraud, a plaintiff must show:

> (1) the existence of a primary violation of the securities laws, (2) that the aider has a general awareness of its role in the violation, (3) that the aider gave substantial assistance in the violation, and (4) that the aider intended to deceive the plaintiff or acted with reckless disregard for the truth of the representations made by the primary violator.[77]

This pleading standard is higher than where the plaintiff asserts liability against the person directly responsible for the fraud. For

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69. Nicholas N. Nierengarten, *Fee Shifting: The Recovery of In-House Legal Fees*, 39 WM. MITCHELL L. REV. 227, 229 (2012).

70. *See* Keith Rowley, *The Sky Is Still Blue in Texas: State Law Alternatives to Federal Securities Remedies*, 50 BAYLOR L. REV. 99, 104 (1998).

71. George Lee Flint Jr., *Securities Regulation*, 61 SMU L. REV. 1107, 1119 (2008).

72. *See id*.

73. *See id.*

74. *See* Granader v. McBee, 23 F.3d 120, 123 (5th Cir. 1994).

75. *See, e.g.*, *In re* Enron Corp. Sec., Derivative & ERISA Litig., 235 F. Supp. 2d 549, 567 (S.D. Tex. 2002).

76. *See id.* at 568 (citing Frank v. Bear, Stearns, & Co., 11 S.W.3d 380, 384 (Tex. App. 2000)).

77. *Id.*

instance, the Texas Appellate Court held that where lawyers merely prepare the transactional documents for the perpetrator of the fraud without the requisite scienter, there is no aiding and abetting liability.[78]

Still, whether modeled on the Uniform Acts or not, all of the Blue Sky laws of the forty-nine states share the goal of aiding investor protection.[79] To achieve this, all states but New York recognize a private cause of action for securities fraud in violation of their respective Blue Sky laws.[80] If the New York legislature truly seeks to protect investors, as it did when it created the Martin Act,[81] then it must modify its law to include a private right of action for Martin Act violations.

III. CHALLENGES FACING NEW YORK INVESTORS

A New York investor can raise a private cause of action only through common law fraud, as opposed to state statutory violations. The elements for common law fraud in New York are: "1) [r]epresentations, 2) [f]alsity, 3) [s]cienter . . .; 4) [d]eception of the party to whom made; and 5) [i]njury due to justified reliance on the misrepresentation."[82] However, the Attorney General "need not allege or prove either scienter or intentional fraud" to bring a civil enforcement proceeding under the Martin Act.[83] This advantage is exclusively given to the New York Attorney General.[84]

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78. Kastner v. Jenkens & Gilchrist, P.C., 231 S.W.3d 571, 578 (Tex. App. 2007).

79. *See, e.g.*, State v. McGuire, 735 N.W.2d 555, 561 (Wis. Ct. App. 2007) ("Because the entire purpose of "blue sky" laws is to protect investors, the law must be liberally construed to carry out that plain legislative intent."); Sperry & Hutchinson Co. v. Hudson, 226 P.2d 501, 504 (Or. 1951) ("The Blue Sky Law was enacted for the protection of the public[.]"); Hanzman, *supra* note 56 ("[E]ngrafting a scienter or reliance element onto §517.211 would, in the author's opinion, run counter to . . . the Supreme Court's admonition that the act be given a broad and liberal interpretation to effectuate its purpose of protecting the public . . . .").

80. *See* CPC Int'l Inc. v. McKesson Corp., 514 N.E.2d 116, 118 (N.Y. 1987) ("In all the other States, except one, the Legislature has expressly recognized a private civil action for violations of the corresponding provision. Under the Martin Act, however, no private action has been expressly authorized.").

81. McCall, *supra* note 7, at 195 (internal quotation marks omitted).

82. Meyers, *supra* note 3, at 1126.

83. Assured Guar. (UK) Ltd. v. J.P. Morgan Inv. Mgmt. Inc., 962 N.E.2d 765, 768 (N.Y. 2011) (internal quotation marks omitted).

84. Meyers, *supra* note 3, at 1124.

When compared to the Blue Sky laws of other states, like Florida, where "mere negligence" is sufficient to state a cause of action, New Yorkers are clearly at a disadvantage.[85] The most glaring disadvantage for investors in bringing claims under New York's common law fraud is that they cannot easily bring claims for fraudulent omissions. New York plaintiffs must show that "the defendant knowingly uttered a falsehood intending to deprive the plaintiff of a benefit and that the plaintiff was thereby deceived and damaged."[86] Omission claims may be preempted if the plaintiff shows "active concealment unrelated to omissions from Martin Act disclosures."[87] Under the CCS or FSIPA, New Yorkers could more easily plead claims of omissions. For example, in *Ashland Inc.*, a federal New York case, the defendant, Morgan Stanley, was accused of making false and misleading statements and material omissions to get Ashland Inc. to purchase student loan auction rate securities ("ARSs").[88] Morgan Stanley allegedly urged Ashland to continue purchasing ARSs even though Morgan Stanley knew that the market for those securities was collapsing.[89] However, the court found that Ashland failed to state a claim of fraud under New York common law due to insufficient pleadings of scienter and reliance.[90] Had this case been brought in California or Florida, though, Ashland would have been better able to plead its case because in those states: (1) the pleading standards are lower; (2) an omission can be the basis for a claim of fraud; and (3) reliance is not a necessary element to plead securities fraud.[91] Thus, while the Martin Act was a novel initiative when it was

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85. *In re* Checkers Sec. Litig., 858 F. Supp. 1168, 1180 (M.D. Fla. 1994) ("The . . . scienter requirement under Florida law is satisfied by a showing of mere negligence, whereas the minimum showing under Rule 10b–5 is reckless disregard."). *Cf.* Meyers, *supra* note 3, at 1126.

86. Channel Master Corp. v. Aluminum Ltd. Sales, Inc., 151 N.E.2d 833, 835 (N.Y. 1958).

87. Kerusa Co. v. W107/515 Real Estate P'ship, 12 N.Y.3d 236, 246 (2009).

88. Ashland Inc. v. Morgan Stanley & Co., 700 F. Supp. 2d 453, 457 (S.D.N.Y. 2010), *aff'd*, 652 F.3d 333 (2d Cir. 2011).

89. *Id.*

90. *Id.* at 471–72.

91. Mirkin v. Wasserman, 858 P.2d 568, 580 (Cal. 1993) ("There is no requirement under these sections that the plaintiff rely upon the statements or acts of the defendant or even that he be aware that the defendant made them or engaged in them. All that is required is that the plaintiff establish that the price which he paid or received was affected by the defendant's conduct or statements, which would of course assume that someone acted on the basis of the defendant's wrongful conduct. However, it is not

first introduced, it has since become outdated and limits New York investors in seeking remedies for securities fraud.

RECOMMENDATION AND CONCLUSION

As the current state of the Martin Act fails to adequately protect investors in New York, the New York legislature should adopt a new security law similar to the Blue Sky laws in California or Florida.[92] A law based on the Uniform Acts, thought to be superior to the Martin Act, might be disadvantageous because as stated earlier, any ambiguity found in the statute may lead the courts to defer to the higher standard of federal law.[93] At the very least, the legislature should amend the Martin Act to include a private right of action so that defrauded investors could more easily recover for their wrongful losses.[94] There appears to be no legitimate reason for investors in New York to continue being disadvantaged compared to those in the rest of the United States. The only reason that the courts give for this discrepancy is that a private right of action is inconsistent with "the legislative scheme underlying the Martin Act."[95] If anything, given that New York is the center of the securities industry,[96] investors in New York should have greater protection from fraudulent practices in the industry because of the increased likelihood of such fraud to occur.[97] It is time for the New York legislature to further its Blue Sky law for the benefit of its residents.

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necessary that the plaintiff prove that he personally was influenced by such conduct.") (citing 1 MARSH & VOLK, *Practice Under the Cal. Securities Law* § 14.05[6], at 14–53 (1993) (footnote omitted)); *see also*, People v. Simon, 886 P.2d 1271, 1281 (Cal. 1995) ("[T]he California Legislature intended section 25401 to apply to any willful conduct and did not make knowledge of the falsity of a statement an element of the offense.").

92. *See infra* Part III.
93. *See infra* Part II.
94. *See* Meyers, *supra* note 3.
95. CPC Int'l Inc. v. McKesson Corp., 514 N.E.2d 116, 119 (N.Y. 1987).
96. *See* Florida, *supra* note 2.
97. *See* McCall, *supra* note 7.