
A.8646 (Brotsky)/ S.5768 (Schneiderman)

Legal Rights for Main Street: Pensioners,
Madoff Victims, et al.

Presented by:

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Esq.

The NYS Martin Act – Section 352-c General Business Law

- Grants the Attorney General sweeping investigative & prosecutorial powers in the securities area
 - In 1987 the New York Court of Appeals ruled that there is no private right of action under the Martin Act
 - The Attorney General is the only one that can sue perpetrators of securities fraud for restitution
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Martin Act Continued

- Statute of Limitations: 6 years
 - Potential Defendants: primary & secondary violators (i.e. aiders & abettors)
 - Scier Requirements: no pleading or proof of intent to deceive required (i.e. negligence standard)
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A.8646 (Brodsky)/ S. 5768 (Schneiderman)

Proposed Amendment to Martin Act

- Private Right of Action: Yes for institutional investors
 - Statute of Limitations: 6 years
 - Potential Defendants: primary & secondary violators (i.e. aiders & abettors)
 - Scierer Requirements: no pleading or proof of intent to deceive required (i.e. negligence standard)
-

Martin Act Amendment Bill

- Senate: Bill number S.5768, Sponsored by Senator Eric Schneiderman
 - Currently in the Corporations, Authorities and Commissions Committee
 - Assembly: Bill number A.8646, Sponsored by Assembly Member Richard Brodsky
 - Currently in the Corporations, Authorities and Commissions Committee
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NY Public Pension Fund Losses from Three Financial Companies – Losses from 2008-2009

	AIG	Bank of America	Citigroup	Total
NYSLRS	-285.4	-486.5	-377.9	-1,149.8
NYSTRS	-193.9	-25.6	-134.2	-353.7
NYCERS	-76.8	-120.5	-101.1	-298.4
NYCTRS	-61.1	-110.6	-87.8	-259.5
NYCPPF	-13	-14.3	-19.1	-46.4
NYCFPF	-10.8	-18	-15.2	-44.0
Total	-\$641.0	-\$775.5	-\$735.3	-\$2,151.8

Reported in millions of dollars

NY Public Pension Fund Losses from Three Financial Companies – Losses from 2008-2009

- Percent change in stock price 3/31/08 to 3/31/09
 - AIG: -98.5%
 - Bank of America: -86.7%
 - Citigroup: -95.1%
 - DJIA Index: -38.4%
 - S&P 500 Index: -43.9%
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NYC & State Public Pension Fund Losses from Wall Street Meltdown

	Net Assets 3/31/07	Net Assets 3/31/08	Net Assets 3/31/09	2yr Losses 3/31/09	% assets lost
NYS&LRS	156.6	155.8	110.9	-45.7	-29%
	Net Assets 6/30/07	Net Assets 6/30/08	Net Assets 6/30/09	2yr Losses 6/30/09	% assets lost
NYSTRS	104.9	95.8	72.5	-32.4	-31%
NYCERS	42.5	39.7	31.9	-10.6	-25%
NYCTRS	37.1	32.3	23.1	-14.1	-38%
NYCPPF	21.9	21.1	17.4	-4.5	-20%
NYCFPF	7.2	6.8	5.6	-1.6	-23%
BOERS	2.2	2.0	1.5	-0.6	-29%
Total	\$372.5	\$353.5	\$262.9	-\$109.6	-25.6%
Total, NYC	\$110.9	\$101.9	\$79.5	-\$31.4	-28.33%

Reported in billions of dollars

Who supports this bill?

- **Unions:** NYS AFL-CIO, NYC Municipal Labor Committee, United Federation of Teachers, NYS United Teachers, NYS Public Employee Conference, Local 237, IBT, DC 37, Public Employees Federation, 1199 SEIU, CWA Local 1180, Plumbers & Pipefitters Union Local 112, International Brotherhood of Electrical Workers, NYS Council of Sheet Metal Workers' International Association, AFSCME New York
 - **Elected Officials:** NYC Comptroller Liu 2010, NYC Public Advocate Deblasio 2010, NYS Comptroller DiNapoli 2007
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Who opposes this bill?

- American Tort Reform Association
 - Securities Industry & Financial Markets Association (SIFMA)
 - New York City Partnership
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Federal Securities Law

- Private right of action: Yes
 - Statute of limitations: lesser of 2 years from discovery of fraud or 5 years from the date of the fraud
 - Potential defendants: Primary violators only
 - Scierer Requirement: heightened standard of pleading and proving scierer under private Securities Litigation Reform Act and Fed. R. Civ. P. 9(b)
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Federal Securities Law Continued

- Legislation passed by Congress sharply curbed and “federalized” securities class actions
 - Private Securities Litigation Reform Act of 1995 (PSLRA)
 - Securities Litigation Uniform Standards Act of 1998 (SLUSA)
 - Class Action Fairness Act of 2005 (CAFA)
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State Common Law Causes of Action

- Breach of Fiduciary Duty
- Common Law Fraud

Elements of common law fraud:

- 1) a representation of an existing fact
 - 2) its materiality
 - 3) its falsity
 - 4) the speaker's knowledge of its falsity
 - 5) the speaker's intent that it shall be acted upon by the plaintiff
 - 6) plaintiff's ignorance of its falsity
 - 7) plaintiff's reliance on the truth of the representation
 - 8) plaintiff's right to rely upon it
 - 9) consequent damages suffered by plaintiff
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- Send letter/email to elected officials, you can find a sample in the materials for today

Dear Gov. Paterson / Speaker Silver / Senator Sampson / local legislator,

As a member of _____ union, I'm writing you in support of S.5768 (Schneiderman)/A.8646-A (Brotsky). This bill amends the Business Corporation Law and the Retirement and Social Security Law to provide authority to institutional investors, including New York State's pension fund and the five pension funds in New York City, to bring actions for damages resulting from violations of the State's Martin Act.


As a result of recent corporate wrongdoings, trustees of large institutional investors such as public and private pension funds, have found themselves without adequate remedy for damages and massive losses due to corporate violations of the State's securities laws. Currently, the State Attorney general has broad powers to prevent fraudulent securities practices, yet large institutional investors have no right of action when the State's securities laws are violated. Under current federal law, investors may make damage claims in federal court under the Private Securities Litigation Reform Act, but no such avenue exists for state securities laws. By bringing action in State court, large institutional investors have an appropriate venue to bring damage claims against New York State corporations.

Public pension funds in New York State lost well over \$100B in value during the recent financial crisis and private sector pensions funds in upstate New York have suffered from aiders and abettors of the Madoff fraud. I hope that you will consider supporting this important piece of legislation that will help protect the future of countless New Yorkers.

Thank you,

Help Pass A.8646/S.5768

- Financially support a proposed web based campaign to contact elected officials




[What is the Martin Act?](#)
[Legislative Sponsors](#)
[Support Memorandums](#)
[See the Bill](#)

How you can help:
[Contact your Legislator](#)
Sign up


It's Your Money, Your Future:

Martin Act 2010




True Financial Reform for New York State

A.8646 / S.5768



Assemblyman Richard Brodsky



Sen. Eric Schneiderman

Join other supporters of our legislation:

- NYC Comptroller John Liu
- NYS AFL-CIO
- NYC Municipal Labor Committee
- 1199 SEIU
- AFSCME
- District Council 37
- NYSUT
- Teamsters Local 237
- CWA 1180

S 5768 SCHNEIDERMAN Same as [A 8646](#) Brodsky
ON FILE: 01/06/10 Business Corporation Law
TITLE....Authorizes a public retirement system, mutual fund, or other institutional investor to bring actions for damages sustained due to violations of the Martin Act
06/04/09 REFERRED TO CORPORATIONS, AUTHORITIES AND COMMISSIONS
01/06/10 REFERRED TO CORPORATIONS, AUTHORITIES AND COMMISSIONS

A8646 Brodsky Same as [S 5768](#) SCHNEIDERMAN
Business Corporation Law
TITLE....Authorizes a public retirement system, mutual fund, or other institutional investor to bring actions for damages sustained due to violations of the Martin Act
06/02/09 referred to governmental employees
06/05/09 reference changed to corporations, authorities and commissions
01/06/10 referred to corporations, authorities and commissions

Help Pass A.8646/S.5768

- Help build the coalition in support by reaching out to unions, benefit funds, university endowments, and attorneys that are representing these institutions in attempts to win compensatory damages
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