Davis Polk

State attorney general insider trading cases highlight state law securities enforcement risk

January 22, 2026 | Client Update | 6-minute read

The New York State Attorney General filed civil actions against a former executive for insider trading and against his company for approving the trading plan that the executive used. These actions highlight the risk of state regulators filing claims that traditionally are handled by federal regulators.

On January 15, 2026, the New York State Attorney General (NYAG) announced that it had filed a litigated case against Robert G. Kramer, the former CEO of Emergent BioSolutions Inc. (Emergent). NYAG alleged that Kramer violated New York's Martin Act by selling company securities pursuant to a Rule 10b5-1 plan at a time the company was having undisclosed manufacturing difficulties in producing COVID-19 vaccines. NYAG also announced a settlement with Emergent for violating the Martin Act and other state laws for approving Kramer's trading plan. The NYAG actions come nine months after the U.S. Securities and Exchange Commission (SEC) instituted a settled action against Emergent for making materially misleading public statements related to its ability to manufacture COVID-19 vaccine doses, but the SEC did not file any claims regarding Kramer's trading.

The insider trading case

In June and July 2020, Emergent announced agreements for large-scale COVID-19 vaccine production. These announcements drove up Emergent's stock price substantially in a matter of weeks. The company soon encountered significant manufacturing difficulties that led to the rejection and destruction of numerous batches. The issues were not made public at the time. Internal communications indicated that Kramer, as CEO, was aware of the problems.

In mid-October 2020, allegedly during the manufacturing problems, Kramer instructed his investment adviser to put in place a Rule 10b5-1 trading plan for him to exercise stock options and sell Emergent shares. The plan was finalized and became effective on November 13, 2020, with sales triggered by price thresholds after a 60-day cooling off period.[1] Over the following months, and pursuant to the plan, Kramer sold 88,555 shares, realizing proceeds exceeding $10 million.

The manufacturing problems persisted into early 2021, and the FDA ultimately halted production at an Emergent facility. Following media reports and other disclosures, the company's stock price dropped dramatically. NYAG's complaint alleges that Kramer's actions constituted fraudulent practices under the Martin Act, including trading on material nonpublic information and employing deceptive schemes to profit from undisclosed risks.

Neither Kramer nor the company were based in New York. As a basis for its jurisdiction, NYAG alleged that the trading was arranged and executed by Kramer's investment adviser on NYSE through its New York-based block trading desk, and that the Rule 10b5-1 trading plan provided that it be governed by New York law. It also alleged that New York investors traded and held Emergent stock.

The settlement with the company

Copyright 2026 Davis Polk & Wardwell LLP

When it announced the litigation against Kramer, NYAG also announced a settlement with Emergent for approving Kramer's 10b5-1 trading plan. In its settlement document, NYAG alleged that a senior counsel at Emergent reviewed Kramer's 10b5-1 plan before it became effective, and that "Emergent reviewed and approved" the plan despite, as alleged, Kramer having material nonpublic information at the time. Neither the complaint against Kramer nor the settlement with Emergent explains what the in-house counsel knew about the manufacturing issues when the Rule 10b5-1 plan was approved, or what information Kramer did or did not share with the lawyer.

NYAG found that Emergent had violated the Martin Act and other state laws.[2] Emergent neither admitted nor denied the findings, is paying a $900,000 penalty, and agreed to amend its insider trading policies, including the use of an enhanced pre-clearance form that requires officers and directors to consider whether they are aware of any undisclosed "material incidents." Emergent also agreed to inform NYAG, for three years, of all officers and directors who adopt, modify or terminate Rule 10b5-1 plans and to provide copies of those plans or changes to them.[3]

The SEC's disclosure case

Several months before the NYAG cases, on April 7, 2025, the SEC filed a settled administration proceeding against Emergent for allegedly making materially misleading public statements about its ability and readiness to manufacture COVID-19 vaccine doses. The SEC's order discussed similar manufacturing issues as described in the NYAG actions and alleged that the company's statements that it had "proven manufacturing capabilities" and was ready to "rapidly deploy" were materially misleading. Without admitting or denying the findings, Emergent agreed to pay a $1.5 million civil penalty. The SEC's order did not mention Kramer's trading or the Rule 10b5-1 plan.

Takeaways

The actions against Kramer and Emergent are unusual examples of insider trading cases filed under state law. Typically, the SEC and U.S. Department of Justice pursue insider trading violations, including those involving the use of Rule 10b5-1 trading plans. Following the NYAG actions, Kramer's attorney said that Kramer's trading was reviewed by the DOJ and SEC, both of which declined to pursue charges. A possible explanation for the lack of federal charges is that Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 (the provisions traditionally used for federal insider trading actions) require scienter. That in-house counsel reviewed Kramer's 10b5-1 plan may have made it difficult for the SEC or DOJ to establish that Kramer acted with scienter. In contrast, the Martin Act does not contain a scienter requirement, and courts have found that NYAG does not need proof of an intent to deceive. Nor did NYAG allege that Kramer failed to share all relevant information with in-house counsel at the time of plan approval.

Regarding the NYAG settlement with Emergent, in our experience, it is unusual for the SEC to charge a public company in connection with trading by an executive.[4] NYAG's enforcement actions are silent on whether the in-house counsel was aware of the alleged material nonpublic information and therefore, allegedly, should not have approved the Rule 10b5-1 trading plan, or whether the in-house counsel was not aware of the information. Given New York's significant role in the securities markets, NYAG's actions highlight possible area of risk for public companies and approval of Rule 10b5-1 trading plans.

Overall, the cases are an important reminder that state authorities often have broader anti-fraud statutes than do federal regulators. They also are a reminder that state authorities make independent charging decisions and may bring cases even when the relevant federal regulator does not.

Copyright 2026 Davis Polk & Wardwell LLP

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Greg D. Andres
+1 212 450 4724
greg.andres@davispolk.com

Martine M. Beamon
+1 212 450 4262
martine.beamon@davispolk.com

Robert A. Cohen
+1 202 962 7047
robert.cohen@davispolk.com

Joseph A. Hall
+1 212 450 4565
joseph.hall@davispolk.com

Michael Kaplan
+1 212 450 4111
michael.kaplan@davispolk.com

Neil H. MacBride
+1 202 962 7035
neil.macbride@davispolk.com

John B. Meade
+1 212 450 4077
john.meade@davispolk.com

Stefani Johnson Myrick
+1 202 962 7165
stefani.myrick@davispolk.com

Fuad Rana
+1 202 962 7053
fuad.rana@davispolk.com

Richard D. Truesdell, Jr.
+1 212 450 4674
richard.truesdell@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

[1] The 60-day cooling off period was shorter than the 90 days that would have been required under rules the SEC later adopted in December 2022, which mandate prescribed cooling off periods in connection with Rule 10b5-1 plans. See our prior Client Update discussing the SEC's rule changes.

[2] The Martin Act broadly permits NYAG to bring civil and criminal suits alleging "fraud" and "fraudulent" practices in connection with the offer, sale or purchase of securities.

[3] The SEC's rule changes in 2022 require public disclosure of Rule 10b5-1 plans adopted, modified or terminated by insiders.

[4] In 2020 and 2023, under prior administrations, the SEC settled proceedings against two different companies in connection with stock buybacks under Rule 10b5-1 plans. See our prior client updates here and here. The SEC's enforcement actions relied on an expansive interpretation of a federal requirement for internal accounting controls under the Exchange Act that has since been called into question in unrelated litigation, as we discussed here.

Copyright 2026 Davis Polk & Wardwell LLP