

**TARP FRAUD: A NEW FEDERAL CRIME IS BORN?**

Although the worst of the financial crisis is widely believed to have passed, the law enforcement consequences of the crisis are just now coming to light. The most recent of these was the widely publicized indictment on March 13, 2010, of Charles J. Antonucci, Sr., the former president and chief executive officer of the Park Avenue Bank of New York (the “Bank”), for, among others things, making false statements on an application for funding under the U.S. government’s Troubled Asset Relief Program (“TARP”). With this indictment, Mr. Antonucci became the first, but probably not the last, person to be criminally charged with attempting to defraud TARP.

Mr. Antonucci was charged by the U.S. Attorney’s Office for the Southern District of New York with making false statements to the FDIC and the U.S. Treasury Department in connection with the Bank’s application for more than \$11 million in TARP funds.<sup>1</sup> According to the criminal complaint, in the Fall of 2008, Mr. Antonucci, in order to create the appearance of strengthening the Bank’s capital position, pretended to invest \$6.5 million of his personal funds in exchange for Bank stock. In reality, the entire \$6.5 million investment was a sham: Mr. Antonucci had caused the Bank to lend the money to entities he controlled, which he then used to funnel the money back to the Bank under the guise of a personal “investment” by Mr. Antonucci.

In November of 2008, the Bank applied for an investment of over \$11 million from TARP’s Capital Purchase Program. According to the complaint, although Mr. Antonucci did not sign the Bank’s written application, the application, on which he was copied, made reference to the fact that the Bank had raised \$5 million in capital through Mr. Antonucci’s purchase of stock. Moreover, while the FDIC was reviewing the application, Mr. Antonucci had several phone conversations with the reviewing agent in which he stated, falsely, that he had made a substantial personal capital contribution to the Bank and that this should factor in favor of the Bank’s TARP application. Interestingly, the FDIC ultimately decided *not* to approve the Bank’s application and, on February 24, 2009, provided the Bank with the opportunity to withdraw its application voluntarily, which it did the next day.

Mr. Antonucci’s alleged false statements in connection with the Bank’s TARP application were uncovered as part of a broad-ranging federal investigation into a variety of alleged crimes. As revealed in the criminal complaint, the investigation was a collaborative effort across a number of government agencies, including the Office of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”), headed by Neil Barofsky, the New York State Banking Department, the U.S. Department of Homeland Security, the FBI, and the FDIC Office of Inspector General.

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<sup>1</sup> Technically, Mr. Antonucci was charged with violating 18 U.S.C. §§ 1001 and 1002, which prohibit making false statements or possessing false documents for the purpose of defrauding the United States.

Mr. Antonucci's prosecution serves as a reminder of the scrutiny that should be expected by applicants for and recipients of TARP funding -- even where the TARP application is later voluntarily withdrawn and no TARP money is received. According to Mr. Barofsky: "[T]his case should stand as a stark warning to would-be wrongdoers that if you attempt to profit from this historic program, SIGTARP and its law enforcement partners will work tirelessly to ensure that you will be caught, you will be charged and you will be brought to justice." In this environment, TARP applicants and recipients are well advised to think proactively about the compliance and enforcement risks inherent in the TARP program.

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If you have any questions regarding this memorandum, please contact James C. Dugan (212-728-8654, [jdugan@willkie.com](mailto:jdugan@willkie.com)) or the attorney with whom you regularly work.

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March 19, 2010

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