Why SDNY May Be Dusting Off The Financial Kingpin Statute

By **Michael Longyear, Jillian Berman and Cindy Kuang** (March 4, 2026)

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Two cases filed in the past few months have seemingly revived a rarely invoked white collar law: the Continuing Financial Crimes Enterprise statute under Title 18 of the U.S. Code, Section 225.

Just six weeks apart, the U.S. Attorney's Office for the Southern District of New York unsealed indictments in two massive fraud cases: U.S. v. Chu in December, related to the bankruptcy of Tricolor Holdings, and U.S. v. James in January, related to the bankruptcy of First Brands Group. In both cases, prosecutors charged a single top company executive as the ringleader of the alleged fraud under the CFCE.

The CFCE charge carries a mandatory minimum of 10 years and a maximum of life imprisonment, making it one of the most severe enforcement tools in the federal white collar arsenal — particularly when compared to more commonly utilized statutes, such as wire fraud, which has no mandatory minimum and a 20-year statutory maximum; and bank fraud, which has no mandatory minimum and a 30-year statutory maximum.

Yet prior to these cases, the statute had not appeared on the Southern District of New York's docket in 30 years. Why, after decades of disuse, are prosecutors reaching for it now?

History of the CFCE

The CFCE was born out of the savings and loan crisis of the 1980s. Between 1986 and 1995, over 1,000 savings institutions failed, costing taxpayers an estimated $132 billion.[1] A significant share of these failures was attributable not merely to poor management or adverse market conditions, but to deliberate, organized fraud by insider executives who looted the institutions they were entrusted to manage.[2]

In response, certain members of Congress proposed the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act in 1990. The bill was sweeping, providing for, inter alia, increased maximum prison terms for bank fraud and embezzlement from 20 to 30 years, new criminal penalties for concealing assets from the Federal Deposit Insurance Corp. or obstructing bank examinations, and restitution to bank crime victims.[3]

The bill also set forth the CFCE, which was eventually adopted and passed under the Crime Control Act in 1990.[4]

Designed to hold the most culpable perpetrators of the savings and loan crisis accountable, the CFCE was modeled after the earlier Continuing Criminal Enterprise statute, commonly known as the "Kingpin Statute," which was enacted as part of the Comprehensive Drug Abuse Prevention and Control Act to target leaders of large-scale drug trafficking organizations.[5]

Under the CCE, the government must prove that the defendant (1) committed a continuing series of drug felonies, (2) in concert with five or more persons, (3) while serving as an organizer, manager or supervisor, and (4) obtained substantial income or resources from the violations. The penalties are severe: A first-time CCE conviction carries a mandatory minimum of 20 years and a maximum of life.[6]

Like the Kingpin Statute, the CFCE targets top-level perpetrators in the financial fraud context. Under the CFCE, the government must prove that the defendant (1) organized, managed or supervised "a continuing financial crimes enterprise," and (2) received $5 million "or more in gross receipts from such enterprise during any 24-month period."[7]

The term "continuing financial crimes enterprise" is defined as a series of violations of enumerated financial fraud statutes, "committed by at least 4 persons acting in concert."[8]

The parallels are clear: Both statutes target the organizers of ongoing criminal enterprises, both require concerted action by multiple participants, both demand proof of substantial financial gain, and both impose severe penalties designed to incapacitate the enterprise's leadership.

In essence, the CFCE sought to transplant the kingpin concept from drug trafficking to financial fraud, applying the same logic to the world of financial institutions — that the architects of large-scale, organized criminal activity deserve the most severe punishment.

The CFCE's Decades of Disuse

Despite its ambitious purpose, it is exceedingly rare to see cases charged under the CFCE. The most likely explanation for its disuse may lie in the statute's structural rigidity relative to the more familiar tools in the federal prosecutor's toolkit.

Consider the alternatives: Charging conspiracy under Title 18 of the U.S. Code, Section 371 requires only an agreement between two or more persons to commit a federal offense and an overt act in furtherance of that agreement.

Wire fraud[9] and bank fraud,[10] the workhorses of white collar prosecution, can be charged against a single defendant without proving acts in concert with others, and neither require proof of an ongoing enterprise, a leadership role or a specific dollar threshold.

Charging under the Racketeer Influenced and Corrupt Organizations Act is more demanding — requiring proof of a pattern of racketeering activity and an enterprise — but it encompasses a broader range of predicate offenses, including state law crimes, and does not impose a minimum dollar threshold or a requirement that the defendant occupy a managerial role.[11]

The CFCE, by contrast, imposes several cumulative requirements that significantly narrow its applicability.

First, the predicate offenses are limited to a small and defined list of financial fraud statutes: bank fraud,[12] false entries in bank records,[13] false statements on loan applications,[14] bribery of bank officials,[15] embezzlement by bank officers,[16] embezzlement from lending institutions,[17] concealment of assets,[18] and mail or wire fraud[19] only where it "affect[s] a financial institution."[20]

This last qualification is critical: Garden-variety wire fraud schemes that do not directly affect a financial institution cannot serve as predicates, even if they involve enormous sums of money.

Second, the statute requires at least four people acting in concert, a higher threshold than RICO's general enterprise requirement or conspiracy's two-person minimum.

Third, the defendant must have organized, managed or supervised the enterprise — a leadership requirement that excludes lower-level participants, even those deeply involved in the fraud.

Fourth, the $5 million gross-receipts threshold during any 24-month period, while not exceptionally high for large-scale fraud, is an additional element the government must prove beyond a reasonable doubt, adding complexity to trying such a case.

The practical result of the CFCE's design is that in the vast majority of white collar cases, prosecutors can achieve comparable or even superior results against a wider range of perpetrators using statutes that are more flexible and supported by decades of case law — such as conspiracy, wire fraud, bank fraud or RICO.

And the problem is self-perpetuating: The rarer the charge, the thinner the precedent, and the thinner the precedent, the greater the risks of bringing such a charge.

This calculus may explain the CFCE's near-total absence from the Southern District of New York's docket in the last 30 years. Prior to the Tricolor and First Brands prosecutions, the single significant CFCE case in the U.S. Court of Appeals for the Second Circuit was U.S. v. Harris, decided in 1996, in which the CEO of petroleum refining company Arochem Corp. was convicted under the CFCE — alongside conspiracy, wire fraud, bank fraud and money laundering.[21]

Recent Revival

If the CFCE has spent decades in near dormancy, what explains its sudden reappearance in two major Southern District of New York prosecutions?

Harris as Useful Precedent

The most obvious answer may be that the facts alleged in Tricolor and First Brands are uncannily similar to Harris. In that case, the defendant was Roy William Harris, the CEO of Arochem Corp., an oil-trading and petroleum-refining company that borrowed $245 million from a consortium of banks under a revolving credit agreement.

As alleged, Harris and his co-conspirators defrauded the banks by falsifying financial statements, fabricating contracts and collateral documentation, manipulating oil inventory valuations, and diverting company assets to personal accounts. When the fraud unraveled, Arochem owed the banks around $200 million.[22]

The Tricolor and First Brands indictments follow the same pattern.

In Tricolor, prosecutors allege that founder and former CEO Daniel Chu, and former chief operating officer David Goodgame, double-pledged auto loan collateral to multiple warehouse lenders, manipulated loan data to disguise delinquent assets and overstated collateral by roughly $800 million — leaving creditors with hundreds of millions in losses

when the company filed for bankruptcy in September 2025.[23]

Meanwhile, First Brands founder and former CEO Patrick James, and his brother Edward James, a former senior vice president, allegedly fabricated invoices, double- and triple-pledged collateral, falsified financial statements, and concealed liabilities — all while the company reported $5 billion in net annual sales, but held just $12 million in cash against over $9 billion in liabilities at the time of its bankruptcy filing also in September.[24]

The parallels among these three cases are striking: Each involves a CEO who is alleged to be the central architect of the fraud. Each alleged systematic deception of lending institutions through falsified collateral, inflated assets and fabricated documentation. Each features the requisite number of alleged co-conspirators acting in concert over a sustained period. And each alleged catastrophic losses for the lending institutions and broader market disruption.

With Harris as a strong precedent in the Second Circuit, prosecutors may proceed in Tricolor and First Brands with more confidence in securing a conviction.

U.S. Attorney Jay Clayton's Enforcement Priorities

Another reason for the CFCE's resurfacing may be due to the enforcement agenda of U.S. Attorney Jay Clayton. The collapse of Tricolor and First Brands within weeks of each other seemingly signaled to Wall Street executives and regulators alike that corporate lending practices may have grown too lax.[25]

From the outset of his tenure, Clayton signaled that the Southern District of New York would, under his leadership, prioritize traditional fraud and market integrity.

In a speech given in September 2025 — the same month as the Tricolor and First Brands bankruptcies — Clayton identified "a relentless focus on financial crime and preserving market integrity" as one of the office's top priorities, declaring that there "is no place for bad actors in our markets."[26]

At the same time, industry observers anticipated that Clayton's office would pull back from novel prosecutorial theories and enforcement actions in frontier technology sectors like cryptocurrency and artificial intelligence.[27]

The CFCE fits naturally within these enforcement priorities. It is a long-standing statute carrying severe penalties designed to target exactly the kind of large-scale lending fraud alleged in Tricolor and First Brands.

Charging the CFCE sends a clear message about the Southern District of New York's tough stance on financial crime, without requiring the U.S. attorney's office to develop novel legal theories or push the boundaries of existing doctrine.

Implications for Private Credit

The CFCE's revival carries particular significance for private credit. Both the Tricolor and First Brands indictments allege asset-backed lending frauds targeting warehouse lenders and revolving credit facilities — institutions that make up the private credit market.[28]

As private credit funds and direct lenders increasingly displace regulated banks as the primary providers of this type of financing, they risk heightened exposure to exactly the

kind of criminal conduct that the CFCE was designed to punish: sustained large-scale fraud orchestrated by borrower executives that pledge the same collateral multiple times, inflate asset valuations and fabricate supporting documentation.

Clayton seems conscious of this risk profile already. As he stated during a panel in December, there "are areas of the private credit markets where there's been recent trouble and we should continue to look."

In particular, he singled out loans backed by soft collateral, such as future cash flows and licensing agreements — which are prone to manipulation on the books.[29]

Just two weeks later, the Tricolor indictment detailed precisely the occurrence of such conduct, alleging that Tricolor's CEO had directed subordinates to manipulate collateral data in borrowing base reports to extract $900 million in loans based on falsified records.[30]

Unlike traditional banks subject to ongoing prudential supervision, many private credit funds are not subject to the same supervisory regime — periodic examinations, call reports and regulatory oversight — that can surface red flags early. This gap in surveillance creates conditions in which fraud may fester for longer, ultimately producing the magnitude of losses and the sustained pattern of conduct that the CFCE targets.

Private credit lenders should therefore treat the Tricolor and First Brands prosecutions not merely as isolated examples of borrower misconduct, but as warnings to reassess their collateral verification protocols, borrowing base audit practices and their ongoing monitorship of pledged assets.

Implications for Practitioners

The Tricolor and First Brands prosecutions carry several practical lessons for white collar practitioners and their clients.

First, the mandatory minimum for CFCE fundamentally alters the plea calculus. Wire fraud and bank fraud carry no mandatory minimum, and loss-driven U.S. sentencing guidelines calculations often yield sentences of fewer than 10 years.[31] In contrast, CFCE carries a 10-year minimum, so the mere threat of a CFCE charge may give prosecutors significant leverage during plea negotiations.[32]

Defense counsel advising executives who may be targets or subjects in lending fraud investigations should factor this dynamic into any early assessment of exposure and settlement posture.

Second, the leadership element warrants careful attention. The CFCE requires that the defendant organized, managed or supervised the enterprise.[33] This is a fact-intensive inquiry, and courts have construed similar language in the CCE context broadly: An individual need not be the sole architect of the fraud, but they must have exercised some degree of control or direction over others.[34]

Board members, C-suite officers, and senior managers who directed or approved the fraudulent conduct — even if they did not personally execute transactions — may satisfy this element. Executives who assumed they were insulated from criminal liability because they delegated operational responsibility should take note.

Third, victim lenders may face document preservation obligations and cooperation demands

from the government. Warehouse lenders, revolving credit facility providers and other institutional creditors in cases like Tricolor and First Brands can expect grand jury subpoenas for loan files, borrowing base certificates, inspection reports and internal communications.

Counsel for lender-victims should move early to preserve relevant records, assess any potential parallel civil claims and evaluate whether voluntary cooperation with prosecutors is appropriate, particularly where parallel U.S. Securities and Exchange Commission or FDIC referrals are possible.

Conclusion

Time will tell whether the CFCE is set to become a signature of Clayton's Southern District of New York tenure, or whether its use in Tricolor and First Brands is purely situational — a product of two cases whose facts happened to align neatly with the slim Second Circuit precedent. The CFCE's structural limitations have not changed, and more flexible alternatives remain available.

Either way, executives at the helm of lending-adjacent businesses, private credit counterparties and their counsel should take note. If these prosecutions produce convictions and prompt the Second Circuit to develop the law under this statute further, prosecutors across the country will have ample reason to reach for this long-dormant tool.

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[1] U.S. Gen. Acct. Off., GAO/AIMD-96-123, Financial Audit: Resolution Trust Corporation's 1995 and 1994 Financial Statements (1996), https://www.gao.gov/products/aimd-96-123.

[2] U.S. Gen. Acct. Off., GAO/T-AFMD-89-4, Failed Thrifts: Internal Control Weaknesses Create an Environment Conducive to Fraud, Insider Abuse, and Related Unsafe Practices (Mar. 22, 1989), https://www.gao.gov/products/t-afmd-89-4.

[3] Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, S. 3194, 101st Cong. (1990).

[4] Crime Control Act of 1990, Pub. L. No. 101-647, § 2510(a), 104 Stat. 4789, 4863 (codified at 18 U.S.C. § 225).

[5] 21 U.S.C. § 848.

[6] Id.

[7] 18 U.S.C. § 225(a)(2).

[8]18 U.S.C. § 225(b).

[9] 18 U.S.C. § 1343.

[10] 18 U.S.C. § 1344.

[11]18 U.S.C. §§ 1961-1968.

[12] 18 U.S.C. § 1344.

[13] 18 U.S.C. §§ 1005-1007.

[14] 18 U.S.C. § 1014.

[15] 18 U.S.C. § 215.

[16] 18 U.S.C. § 656.

[17] 18 U.S.C. § 657.

[18] 18 U.S.C. § 1032.

[19] 18 U.S.C. § 1341 and §1343.

[20] 18 U.S.C. § 225(b).

[21] 79 F.3d 223 (2d Cir.). Harris was convicted in December 1992 on 21 counts, including CFCE. See also Harris v. United States, 9 F. Supp. 2d 246 (S.D.N.Y. 1998).

[22] Harris, 9 F.Supp. 2d at 250-51.

[23] Indictment ¶ 1-3, United States v. Chu, No. 25-cr-579 (S.D.N.Y. Dec. 17, 2025), https://www.justice.gov/usao-sdny/media/1421041/dl.

[24] Indictment ¶ 1-3, United States v. James, No. 26-cr-029 (S.D.N.Y. Jan. 29, 2026), https://www.justice.gov/usao-sdny/media/1425811/dl.

[25] Nupur Anand, Tatiana Bautzer & Manya Saini, First Brands, Tricolor Collapses Raise Fears of Credit Stress, with Dimon Warning of "More Cockroaches", Reuters, Oct. 14, 2025, https://www.reuters.com/business/first-brands-tricolor-collapses-invite-more-scrutiny-wall-street-sees-robust-2025-10-14/.

[26]U.S. Attorney Jay Clayton, Remarks at 2025 Police Athletic League New York Luncheon (Sept. 16, 2025), https://www.justice.gov/usao-sdny/speech/us-attorney-jay-clayton-delivers-remarks-2025-police-athletic-league-new-york.

[27]See Luc Cohen & Chris Prentice, Crypto Enforcement Seen Slowing as Trump Shifts

Priorities, Reuters (Nov. 15, 2024); see also Christian R. Everdell & Sri Kuehnlenz, New Year, New Sheriff in Town: Anticipated SDNY Priorities Under Jay Clayton, Cohen & Gresser LLP (Feb. 13, 2025), https://www.cohengresser.com/publication/new-year-new-sheriff-in-town-anticipated-sdny-priorities-under-jay-clayton/.

[28] Indictment ¶ 6, United States v. Chu, No. 25-cr-579 (S.D.N.Y. Dec. 17, 2025), https://www.justice.gov/usao-sdny/media/1421041/dl; see also Indictment ¶ 10, United States v. James, No. 26-cr-029 (S.D.N.Y. Jan. 29, 2026), https://www.justice.gov/usao-sdny/media/1425811/dl.

[29] Liz Hoffman, Private Credit Defaults are Coming — and That's Okay, Semafor (Dec. 3, 2025), https://www.semafor.com/article/12/03/2025/private-credit-defaults-are-coming-and-thats-ok-blackrock-mike-patterson-says.

[30] Indictment ¶ 13-14, United States v. Chu, No. 25-cr-579 (S.D.N.Y. Dec. 17, 2025), https://www.justice.gov/usao-sdny/media/1421041/dl.

[31] See 18 U.S.C. §§ 1343, 1344 (prescribing no mandatory minimum for wire fraud or bank fraud); U.S. Sent'g Guidelines Manual § 2B1.1 (U.S. Sent'g Comm'n 2024) (calculating offense levels primarily by reference to loss amount).

[32] 18 U.S.C. § 225(a).

[33] Id.

[34] See, e.g., United States v. Wilkinson, 754 F.2d 1427, 1431-32 (2d Cir. 1985) (affirming conviction under CCE because evidence showed defendant was a supplier to other co-conspirators).