

INDICTMENT AS AMENDED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, CRIMINAL TERM

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THE PEOPLE OF THE STATE OF NEW YORK :
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 -against- :
 : Indictment No. 5259/02
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 L. DENNIS KOZLOWSKI and MARK H. SWARTZ, :
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 Defendants. :
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THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuse the defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** of the crime of **ENTERPRISE CORRUPTION**, in violation of Penal Law 460.20(1)(a), committed as follows:

The defendants, in the County of New York and elsewhere, during the period from on or about January 1, 1995, through on or about September 9, 2002, having knowledge of the existence of a criminal enterprise (hereinafter called the “Top Executives Criminal Enterprise” or “TEXCE”) and the nature of its activities, and being employed by and associated with that enterprise, intentionally conducted and participated in the affairs of such enterprise by participating in a pattern of criminal activity, as follows:

TEXCE was a group of persons, including the defendants, together with other entities and persons, known and unknown to the Grand Jury, sharing a common purpose

of engaging in criminal conduct, associating together in an ascertainable structure distinct from their pattern of criminal activity, and which possessed a continuity of existence, structure and criminal purpose beyond the scope of individual criminal incidents.

TEXCE was created and operated for the purpose of obtaining money by theft, fraud in the sale of securities, and other frauds in which Tyco International Ltd. (Bermuda) (“Tyco”), its predecessor and subsidiary companies were, variously, the victims and the vehicles of the thefts and frauds. To accomplish these purposes, members of TEXCE falsified records, bribed others, and concealed and distorted material information.

STRUCTURE OF THE ENTERPRISE

Tyco is a global company, employing over 270,000 people, with \$36 billion in annual revenues, that manufactures, distributes and services products and systems for a broad spectrum of markets, with core business segments in electronics, telecommunications, healthcare and specialty products, fire and security services, and flow control. Prior to July 1997, and a merger with a Bermuda company, a current Tyco subsidiary, now named Tyco International (US) Inc., was Tyco’s main operating company under the name Tyco International Ltd. (Mass.) (Former Tyco). Tyco has approximately 2,342 subsidiaries, including non-operating holding companies; the corporate headquarters staff of Tyco, with fewer than 400 people, is paid through a subsidiary named TME Management Corp. (“TME”). Tyco itself, other than in its subsidiaries, has fewer than 20 employees.

At all relevant times Tyco and Former Tyco were corporations, owned by shareholders, with Directors charged with conducting the business of the corporation. The Directors of Tyco operate through both the Board of Directors (“the Board”) and committees created by the Board, including the Nominating and Governance Committee, the Audit Committee, and the Compensation Committee, which committees have powers delegated to them by the Board. The Compensation Committee, for example, was charged by the Board with approving the compensation for all Tyco executive officers and key managers. The officers of Tyco, responsible to the Board and its committees for executing its policies, included defendant L. Dennis Kozlowski who was, until June 3, 2002, the Chief Executive Officer and Chairman of the Board of Directors and defendant Mark Swartz who was, until August 2002, a Director, and thereafter continued as Executive Vice President and Chief Financial Officer.

TME, the corporate headquarters company of Tyco, handled an array of corporate functions, as well as mergers and acquisitions, and included several different units, including Treasury, Tax, Finance, Investor Relations, Human Resources, Legal, Executive Treasury, and Internal Audit. At all times relevant to this indictment, Tyco was a publicly-owned company with corporate offices in Exeter, New Hampshire, New York, New York, and Boca Raton, Florida, although it was nominally headquartered in Bermuda.

STRUCTURE OF THE CRIMINAL ENTERPRISE

TEXCE adopted the structure of TME, a company through which TEXCE conducted fraudulent business, with certain modifications. In the structure of TEXCE the individual defendants filled various roles.

Defendant Kozlowski was the boss of the criminal enterprise, and set its policies. He decided what bonuses would be paid, to whom, and when, without regard for the restrictions that the Board had put on executive officers' compensation. He entered into private deals with executive officers and directors of Tyco, which he sought to keep secret even when they were required to be disclosed. He caused Internal Audit to report to the Board through himself, and ensured that they would not audit TME. Working with personnel from Investor Relations, defendant Kozlowski met with and defrauded investors, analysts, and journalists to manipulate Tyco's stock price. He used the personnel in Executive Treasury to pay his bills from the Tyco "concentration account." He established a system of internal controls in which his assistant's authorization was sufficient to warrant expenditures of many millions of dollars.

Defendant Swartz was chief of operations of TEXCE; he was the second-in-command to defendant Kozlowski. Defendant Swartz exercised control over the transfer of funds, the booking of accounting entries, and the operations of those portions of Tyco's Human Resources department dealing with certain compensation, bonuses, and loans. Defendant Swartz established a system by which the Finance Department, and not the Tyco Legal Department, controlled the data going into Tyco's filings with the United State Securities and Exchange Commission and caused Tyco's filings to be false and

deceptive. Defendant Swartz deceived investors and the Board by misallocating substantial personnel costs resulting in falsely enhanced operating performance.

Because they were the two highest-ranking officers of Tyco, the defendants as members of TEXCE were able to recruit others to join TEXCE, and were also able to use others at Tyco as unwitting agents of the criminal enterprise.

TEXCE exploited the corporate and geographic structure of Tyco to gain control of the flow of information between the Board, the officers employed at TME, and the employees of the Tyco operating companies, together with investors in, prospective purchasers of, and other acquirers of Tyco's securities and debt instruments. Members of TEXCE provided incomplete and misleading information and omitted to give truthful information and necessary legal advice to the Board and its committees. While keeping the Board and its committees in ignorance of what was actually happening, members of TEXCE used their positions in the company to take corporate funds for themselves and their friends without permission or authority, and were able to conceal thefts and other wrongdoing by corrupting key employees at TME with lucrative payments to influence their behavior.

PATTERN OF CRIMINAL ACTIVITY

During the period of the offense, the defendants, with intent to participate in and to advance the affairs of TEXCE, engaged in conduct constituting and were criminally liable for criminal acts included within a pattern of criminal activity, as follows:

FIRST PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of a violation of the General Business Law section 352-c (5), as follows:

The defendants, during the period from on or about January 1, 1995, through September 9, 2002, in the County of New York and elsewhere, intentionally engaged in a scheme constituting a systematic on-going course of conduct with intent to defraud ten and more persons, to wit, shareholders and regulators, and to obtain property, to wit money and securities, from ten and more persons, to wit, Tyco International Ltd. (Bermuda) (“Tyco”), and its subsidiaries and predecessors, as well as investors in, prospective purchasers of, and other acquirers of Tyco’s securities and debt instruments by false and fraudulent pretenses, representations, and promises, and so obtained property from one and more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities issued by Tyco, as follows:

Tyco is a publicly-owned corporation, the shares of which are traded on the New York Stock Exchange. Prior to July 1997, and to a merger with a Bermuda corporation, a Tyco subsidiary, now named Tyco International (US) Inc., was Tyco’s main operating company, and was then a corporation named Tyco International Ltd. (Mass.) (“Former Tyco”), that traded on the New York Stock Exchange. For purposes of this count, Tyco hereinafter includes, unless otherwise indicated, Former Tyco. At all times during the scheme Tyco and its subsidiaries issued stock and debt instruments whose market value depended on the "market perception" of how valuable Tyco was. Information material to market perception includes financial statements issued by the corporation, filings by the

corporation with the United States Securities and Exchange Commission (“SEC”) and other regulatory bodies, public statements by corporate officers, press reports, releases, and statements issued by the corporation, and reports disseminated by ostensibly independent analysts and credit rating agencies, all of which are required to be accurate and truthful. Among the matters which Tyco, by its officers, reported to the public, and was required by law to report publicly were (1) the compensation paid to Tyco's directors and five highest paid executive officers, (2) the existence of loans outstanding to executive officers and directors, if in amounts greater than \$60,000, (3) the sales of stock by executive officers and directors, and (4) certain related party transactions between Tyco and its directors and officers.

During the period of the scheme Tyco compensated its senior executive officers substantially in stock. Also, during the period of the scheme, Tyco routinely acquired other companies, frequently “buying” them with Tyco stock. During the period of the scheme defendant Kozlowski was Chief Executive Officer and Chairman of the Board of Directors of Tyco. During the period of the scheme defendant Swartz was Executive Vice President and Chief Financial Officer; in addition, he performed the functions of a chief operating officer for the company.

As part of a scheme constituting a systematic on-going course of conduct the defendants and others known and unknown to the Grand Jury (“the schemers”) falsely represented and materially omitted to represent accurately and in a timely fashion:

- (1) The compensation paid to executive officers
- (2) The loans extended to executive officers
- (3) The extent of stock sales by corporate insiders

(4) The earnings per share of Tyco stock before non-recurring charges

(5) The level of spending by the executive officers in managing the money and property of Tyco's owners and investors.

(6) Related party transactions

The schemers concealed from Tyco's investors, potential investors, debt holders, and regulators:

(1) That certain executive officers received tens of millions of dollars in forgiven loans and "gross-up" payments.

(2) That certain executive officers received tens of millions of dollars in credit lines and loans from Tyco.

(3) That defendants Kozlowski and Swartz were selling substantial amounts of Tyco stock to Tyco.

(4) That certain measures of the earnings per share of Tyco stock were artificially inflated.

(5) That certain executive officers utilized Tyco's corporate resources to fund personal ventures and property acquisitions, to increase their own personal wealth, and to avoid the loss of personal wealth.

(6) That Tyco purchased a residential property from a director in 1995 for \$875,000, that Tyco purchased another residential property from a different director in 1997 for \$2,500,000, and that Tyco gifted residences, money, and other property to favored employees.

During the scheme and as part thereof, defendants Kozlowski and Swartz each executed written statements for the preparation of Tyco's proxy that falsely asserted the extent of his own indebtedness to Tyco.

During the period of the scheme, and as part thereof, defendant Kozlowski, in speeches, told investors that he had the greatest faith in Tyco. In such speeches, defendant Kozlowski fraudulently characterized his Tyco stock sales, which in fact exceeded 5.5 million shares. As part of the scheme defendant Kozlowski and others sought to persuade a large securities broker to replace an analyst who regularly reported on Tyco with an individual whom defendant Kozlowski viewed as more friendly to Tyco; defendant Kozlowski and the replacement analyst thereafter exchanged presents worth thousands of dollars.

As part of the scheme defendant Swartz authorized and caused the booking of unauthorized bonuses as “non-recurring charges,” with the intent to raise Tyco's earnings per share before non-recurring charges – a common measure used by investors and others to evaluate Tyco's financial condition – and to maximize the annual bonuses the Board granted defendants Kozlowski and Swartz.

Among the amounts misbooked were in excess of \$95,000,000 in connection with an initial public offering of TyCom Ltd., in excess of \$55,000,000 in connection with the sale of the ADT Automotive business, and in excess of \$15,000,000 in connection with a transaction involving FLAG Telecom Holdings Ltd.

In the course of the scheme and as part thereof defendant Kozlowski sold in excess of 5.3 million shares of Tyco stock, obtaining in excess of \$280,000,000, and

defendant Swartz sold in excess of 2 million shares of Tyco stock, obtaining in excess of \$125,000,000.

SECOND PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **CONSPIRACY IN THE FOURTH DEGREE**, in violation of Penal Law 105.10(1), as follows:

The defendants, in the County of New York and elsewhere, during the period from on or about January 1, 1995, through September 9, 2002, with intent that conduct constituting the felonies of Grand Larceny in the First Degree, Grand Larceny in the Second Degree, Criminal Possession of Stolen Property in the First Degree and Criminal Possession of Stolen Property in the Second Degree be performed, agreed with each other and with others known and unknown to the Grand Jury to engage in and cause the performance of such conduct, as follows:

BACKGROUND TO THE CONSPIRACY

Tyco International Ltd. (Bermuda) (“Tyco”) is a global company with \$36 billion in annual revenues, employing over 270,000 people, that manufactures, distributes, and services products and systems for a broad spectrum of markets, with core business segments in electronics, telecommunications, healthcare and specialty products, fire and security services, and flow control. Prior to July 1997, and a merger with a Bermuda corporation, a Tyco subsidiary, now named Tyco International (US) Inc., was Tyco’s

main operating company, and was then a corporation named Tyco International Ltd. (Mass.) (“Former Tyco”).

Beginning in or about 1992 and during the conspiracy defendant Kozlowski was Chief Executive Officer and Chairman of the Board of Directors of Former Tyco; in 1997, after the merger, he became Chief Executive Officer and Chairman of the Board of Directors of Tyco. In or about February 1995 defendant Swartz, having been associated with Former Tyco since 1991, became Executive Vice President and Chief Financial Officer of Former Tyco, and thereafter, in 1997, of Tyco. In 2001, defendant Swartz became a member of the Board of Directors of Tyco.

It was the goal of the conspirators to steal millions of dollars in money and other property from Tyco and Former Tyco, to maintain knowing possession of the money and property acquired to benefit themselves and others, and to impede recovery of the money and property by an owner thereof. The conspirators agreed to meet this goal in large part through a perversion of two corporate loan programs, called the Key Employee Loan Program and the New York City Corporate Headquarters Relocation Loan Program, and by the payment to themselves and others of unauthorized compensation.

The Key Employee Loan Program, also termed at times the Key Employee Corporate Loan Program (“KELP”), was first established in 1983 by Former Tyco; it was and is a program through which Tyco employees who had been granted stock through a restricted stock ownership plan could obtain loans from the company for the purpose of paying federal and state taxes incurred on the vesting of such stock and for the purpose of repaying other similar loans, and for no other purpose.

The New York City Corporate Headquarters Relocation Loan Program (“NYC Relo”), as approved by the Compensation Committee of the Board of Directors of Former Tyco (“Compensation Committee”) and by the Board of Directors itself on August 1, 1995, was a program through which any employee, if required to relocate to Former Tyco’s New York City corporate headquarters, would be permitted an interest free loan to buy a home, under certain circumstances and conditions.

During the period of the conspiracy Tyco’s Board of Directors directed the Compensation Committee to oversee the compensation and benefits of the executive officers and key managers of the company and its principal subsidiaries.

The conspirators agreed to take money from Tyco and Former Tyco, spend it on themselves and others, and account for that money as money borrowed pursuant to the KELP, or pursuant to a relocation loan program, or as extra compensation, taken without approval of the Compensation Committee.

The conspirators agreed to spend Tyco and Former Tyco funds to acquire real estate, yachts, artwork, jewelry and other property and to finance personal expenditures, personal investments and expensive parties. The conspirators further agreed to spend Tyco and Former Tyco funds to acquire real estate for others, to forgive loans due to Tyco, and to sign mortgage cancellations, thereby transferring property paid for with funds from Tyco and Former Tyco to others without appropriate consideration.

OVERT ACTS

In the course of and in furtherance of the conspiracy the conspirators committed and caused to be committed, in the County of New York and elsewhere, overt acts, including the following:

- 1) In September, 1995, defendants Kozlowski and Swartz implemented a relocation plan different from the NYC Relo plan approved by the Board of Directors of Former Tyco.
- 2) During September and October, 1997, defendant Swartz and others authorized the purchase with Tyco funds of a Boca Raton, Florida residence from a Tyco director for in excess of \$2,500,000.
- 3) On or about October 2, 1997, defendant Kozlowski obtained \$200,000 dollars through KELP for renovations to a Greenwich, CT house for renovations.
- 4) On or about November 10, 1997, defendant Kozlowski obtained \$100,000 dollars through KELP for “Karen Mayo – Rye Beach.”
- 5) On or about November 30, 1997, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness in excess of \$60,000 by him or an associate of his to Tyco or Former Tyco at any time since July 1, 1996.
- 6) On or about November 30, 1997, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since July 1, 1996.

- 7) On or about December 29, 1997, defendant Kozlowski obtained in excess of \$2,000,000 through KELP for “Wentworth Land/Runneymead.”
- 8) On or about December 29, 1997, defendant Kozlowski obtained in excess of \$5,000,000 through KELP for property in Nantucket, MA.
- 9) During the period December 29, 1997, through March 31, 1998, defendant Kozlowski obtained in excess of \$900,000 from Tyco for property in Greenwich, CT.
- 10) In or about May 1998, defendant Kozlowski obtained in excess of \$9,000,000 from former Tyco for property in Boca Raton, FL.
- 11) In or about May 1998, defendant Kozlowski obtained in excess of \$2,000,000 from former Tyco for property in Rye, NH.
- 12) On or about August 31, 1998, defendant Kozlowski obtained in excess of \$60,000 through KELP for a motor vehicle.
- 13) On or about October 1, 1998, defendant Kozlowski obtained in excess of \$90,000 through KELP for a motor vehicle.
- 14) On or about November 6, 1998, defendant Kozlowski obtained in excess of \$8,000,000 from Tyco for “GW NJ Sports Partnership.”
- 15) On or about November 10, 1998, defendant Kozlowski obtained in excess of \$900,000 from Tyco for “The Sanctuary – final payment lot 71.”
- 16) On or about November 30, 1998, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1997.

- 17) On or about November 30, 1998, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1997.
- 18) On or about December 15, 1998, defendant Kozlowski obtained in excess of \$240,000 through KELP for "Harry Winston, Inc."
- 19) On or about April 19, 1999, defendant Swartz obtained in excess of \$620,000 through KELP for "Highland Beach Project."
- 20) On or about July 2, 1999, defendant Swartz obtained \$1,000,000 through KELP for "Sirios Capital Partners II."
- 21) On or about July 19, 1999, defendant Swartz obtained \$500,000 through KELP for "KMS Family 1999 Trust."
- 22) On or about July 23, 1999, defendant Kozlowski obtained \$1,000,000 as borrowings from Tyco for "Karen Mayo."
- 23) During the period from July 1998 to October 2000, the conspirators allowed tens of millions of dollars in Tyco funds as interest free loans to Tyco employees for obtaining residential property, which loans were not authorized by either KELP or the NYC Relo programs.
- 24) In or about August 1998, defendants Kozlowski and Swartz permitted Tyco's Senior Vice President for Human Resources an interest free loan of over \$400,000 for a New Hampshire residential property.
- 25) On or about August 12, 1999, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course

of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1997.

- 26) On or about August 12, 1999, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1997.
- 27) In or about August 1999, defendant Swartz told a Tyco employee in the Department of Finance that a special relocation bonus had been approved forgiving \$38,500,000 in KELP loans to defendant Kozlowski, defendant Swartz, and another Tyco employee, and that the appropriate entries should be made in Tyco's books.
- 28) In or about September 1999, defendants Kozlowski and Swartz caused entries to be made to Tyco's books reducing defendant Kozlowski's KELP debt by \$25,000,000 which reduced KELP loans to defendant Kozlowski.
- 29) In or about September 1999, defendants Kozlowski and Swartz caused entries to be made to Tyco's books reducing defendant Swartz's KELP debt by \$12,500,000 which reduced KELP loans to defendant Swartz.
- 30) In or about September 1999, a conspirator caused the forgiveness of debt of \$1,000,000 which reduced KELP loans to a Tyco employee.
- 31) On or about December 30, 1999, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1998.

- 32) On or about December 30, 1999, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1998.
- 33) In or about February 2000, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1998.
- 34) On or about February 11, 2000, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1998.
- 35) On or about May 29, 2000, defendant Kozlowski obtained in excess of \$7,000,000 from Tyco for the purchase of property from Tyco located at 610 Park Avenue in New York County.
- 36) In or about September, 2000, defendant Swartz obtained \$12,700 through KELP ostensibly for "K. McRae salary."
- 37) In or about September 11, 2000, defendant Kozlowski caused a memorandum to issue "to forgive the relocation loans" for a list of Tyco employees that included himself and defendant Swartz.
- 38) In or about September 2000, defendant Kozlowski told Tyco's Director of Human Resources that the Board of Directors of Tyco had approved the

forgiveness of over \$56,000,000 in loans to himself and other Tyco employees, and the "gross-up" of their income by more than \$39,000,000.

- 39) In or about September and October 2000, defendant Kozlowski concealed from the Compensation Committee the forgiveness of over \$19,000,000 in loans to defendant Kozlowski and the payment of over \$13,500,000 in "gross-up."
- 40) In or about September 26, 2000, an agent of defendants Kozlowski and Swartz caused the issuance of letters to defendants Kozlowski and Swartz, as well as other Tyco employees, that required the recipients to keep the forgiveness of loans and "gross-up" payments "confidential."
- 41) In or about September 28, 2000, defendant Swartz concealed from the Compensation Committee the forgiveness of over \$9,700,000 in loans to defendant Swartz and the payment of over \$6,800,000 in "gross-up."
- 42) In or about September 29, 2000, defendant Swartz issued a memorandum "to award special bonuses" to "selected employees."
- 43) In or about September 2000, defendants Kozlowski and Swartz authorized a transaction by which Tyco's Senior Vice President of Human Resources, having borrowed funds from Tyco for a New Hampshire premises, had the loan forgiven at Tyco's expense.
- 44) In or about September 2000, defendants Kozlowski and Swartz authorized a Tyco book entry forgiving loans previously booked as relocation loans to defendant Kozlowski in excess of \$19,000,000.

- 45) In or about September 2000, defendants Kozlowski and Swartz authorized a Tyco book entry forgiving loans previously booked as relocation loans to defendant Swartz in excess of \$9,700,000.
- 46) In or about September 2000, defendants Kozlowski and Swartz authorized a Tyco book entry forgiving loans previously booked as relocation loans to Tyco employees aggregating in excess of \$56,000,000.
- 47) In or about September 2000, defendants Kozlowski and Swartz authorized Tyco funds to be used to pay “gross-up” taxes in excess of \$13,000,000 on the forgiveness of relocation loans to defendant Kozlowski.
- 48) In or about September 2000, defendants Kozlowski and Swartz authorized Tyco funds to be used to pay “gross-up” taxes in excess of \$6,800,000 on the forgiveness of relocation loans to defendant Swartz.
- 49) In or about September 2000, defendants Kozlowski and Swartz authorized Tyco funds to be used to pay “gross-up” taxes aggregating in excess of \$39,000,000 on the forgiveness of Tyco employee relocation loans.
- 50) On or about October 6, 2000, defendant Swartz authorized a transaction by which Tyco's Treasurer received a Florida residence at Tyco's expense.
- 51) On or about November 13, 2000, defendant Kozlowski issued letters regarding “bonuses and relocation payments” being issued for the “successful divestiture of Tyco’s ADT Automotive business.”
- 52) In or about November 2000, defendants Kozlowski and Swartz caused in excess of \$55,000,000 from Tyco’s sale of the ADT Automotive business

to be diverted to defendants Kozlowski and Swartz and other Tyco employees.

- 53) In or about November 2000, defendants Kozlowski and Swartz caused an illegal “special” bonus in excess of \$16,000,000 to be paid to defendant Kozlowski.
- 54) In or about November 2000, defendants Kozlowski and Swartz caused an illegal “special” bonus in excess of \$8,000,000 to be paid to defendant Swartz.
- 55) On or about December 15, 2000, defendant Swartz issued a memorandum regarding “Special ADT Automotive related bonuses” that were being issued “to various Tyco employees.”
- 56) On or about December 20, 2000, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1999.
- 57) On or about December 29, 2000, defendant Kozlowski obtained \$1,000,000 through KELP for Cambridge University.
- 58) On or about January 18, 2001, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1999.

- 59) On or about March 1, 2001, defendant Swartz caused \$1,200,000 in Tyco funds to be wired to an account of KMS Family Partnership, controlled by defendant Swartz.
- 60) In or about June 2001, defendants Kozlowski and Swartz caused Tyco to authorize the expenditure of over \$1,000,000 in Tyco monies to fund travel to and expenditures in Sardinia, the primary purpose of which was a private party for the benefit of Kozlowski.
- 61) In or about November 2000 through June 2001, defendants Kozlowski and Swartz caused Tyco to issue in the form of a special bonus restricted shares in the aggregate value of in excess of \$15,000,000.
- 62) In or about July 2001, a conspirator authorized the payment of Tyco funds, to wit, a sum of \$20,000,000 for a Tyco director.
- 63) On or about December 19, 2001, defendant Kozlowski borrowed approximately \$8,800,000 through KELP for artwork.
- 64) On or about December 19, 2001, defendant Kozlowski signed a promissory note to a Tyco subsidiary in the amount of \$8,800,000.
- 65) On or about January 3, 2002, defendant Kozlowski borrowed approximately \$3,950,000 through KELP for artwork.
- 66) On or about January 3, 2002, defendant Kozlowski signed a promissory note to a Tyco subsidiary in the amount of \$3,950,000.
- 67) No later than January 25, 2002, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course

of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 2000.

- 68) No later than January 25, 2002, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 2000.

THIRD PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, during the period from in or about August 2000 to October 15, 2000, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$32,000,000 from Tyco International Ltd.

FOURTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, during the period from in or about August 2000 to October 15, 2000, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$16,000,000 from Tyco International Ltd.

FIFTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, in or about August 1999 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$38,500,000 million from Tyco International Ltd.

SIXTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, in or about August 1999 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$25,000,000 from Tyco International Ltd.

SEVENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, in or about August 1999 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$12,500,000 from Tyco International Ltd.

EIGHTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, during the period from in or about October 2000 to November 2000, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$16,000,000 from Tyco International Ltd.

NINTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, during the period from on or about October 2000 to November 2000, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$8,000,000 from Tyco International Ltd.

TENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, during the period from in or about June 2001 to November 2001, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$8,000,000 from Tyco International Ltd.

ELEVENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, during the period from in or about June 2001 to November 2001, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$4,000,000 from Tyco International Ltd.

TWELFTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, on or about July 1, 2001 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$20,000,000 from Tyco International Ltd. (“Tyco”), by paying money to a Tyco director in connection with the acquisition of CIT Group, Inc. without the necessary approval of the Tyco Board of Directors and its committees.

THIRTEENTH PATTERN ACT:

Defendant **L. DENNIS KOZLOWSKI** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendant, in the County of New York and elsewhere, during the period from in or about August 2001 to September 2001, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$1,975,000 from Tyco International Ltd.

FOURTEENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, in or about December 2001 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$8,800,000 million from Tyco International Ltd.

FIFTEENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendants, in the County of New York and elsewhere, on or about January 3, 2002 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$3,950,000 from Tyco International Ltd.

SIXTEENTH PATTERN ACT:

Defendant **MARK H. SWARTZ** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendant, in the County of New York and elsewhere, on or about March 1, 2001 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$1,200,000 from Tyco International Ltd.

SEVENTEENTH PATTERN ACT:

Defendant **L. DENNIS KOZLOWSKI** committed the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, as follows:

Defendant, in the County of New York and elsewhere, on or about July 13, 2000, stole property, to wit, money and stock having a value in excess of \$1 million, to wit, \$2,000,000 and 200,000 shares of stock from Tyco International Ltd.

EIGHTEENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, in or about September 1995, and thereafter, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Tyco International Ltd. New York City Corporate Headquarters Relocation program.

NINETEENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about February 17, 1998, and thereafter, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Tyco International (US) Inc. Florida Corporate Headquarters Relocation program.

TWENTIETH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, in and about September 1997, and thereafter, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Grinnell Fire & Safety, Inc. Florida Corporate Headquarters Relocation program.

TWENTY-FIRST PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$786,513.99 in value between TME Management Corp. and an employee.

TWENTY-SECOND PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$8,481,764.21 in value between TME Management Corp. and an employee.

TWENTY-THIRD PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$335,679.39 in value between TME Management Corp. and an employee.

TWENTY-FOURTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$339,770.17 in value between TME Management Corp. and an employee.

TWENTY-FIFTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$468,193.38 in value between TME Management Corp. and an employee.

TWENTY-SIXTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$424,854.70 in value between TME Management Corp. and an employee.

TWENTY-SEVENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$863,051.74 in value between TME Management Corp. and an employee.

TWENTY-EIGHTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$949,800.17 in value between TME Management Corp. and an employee.

TWENTY-NINTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$508,905.85 in value between TME Management Corp. and an employee.

THIRTIETH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$485,156.91 in value between TME Management Corp. and an employee.

THIRTY-FIRST PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$489,793.77 in value between TME Management Corp. and an employee.

THIRTY-SECOND PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$380,671.36 in value between TME Management Corp. and an employee.

THIRTY-THIRD PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$384,153.33 in value between TME Management Corp. and an employee.

THIRTY-FOURTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$1,681,993.84 in value between TME Management Corp. and an employee.

THIRTY-FIFTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$844,359.63 in value between TME Management Corp. and an employee.

THIRTY-SIXTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$828,561.83 in value between TME Management Corp. and an employee.

THIRTY-SEVENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$602,303.78 in value between TME Management Corp. and an employee.

THIRTY-EIGHTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$5,275,608.67 in value between TME Management Corp. and an employee.

THIRTY-NINTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$342,225.24 in value between TME Management Corp. and an employee.

FORTIETH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$513,466.62 in value between TME Management Corp. and an employee.

FORTY-FIRST PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$380,731.72 in value between TME Management Corp. and an employee.

FORTY-SECOND PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$483,460.56 in value between TME Management Corp. and an employee.

FORTY-THIRD PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$327,989.24 in value between TME Management Corp. and an employee.

FORTY-FOURTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$379,983.04 in value between TME Management Corp. and an employee.

FORTY-FIFTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$456,658.18 in value between TME Management Corp. and an employee.

FORTY-SIXTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$32,976,067.85 in value between TME Management Corp. and L. Dennis Kozlowski.

FORTY-SEVENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$441,051.74 in value between TME Management Corp. and an employee.

FORTY-EIGHTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$377,812.50 in value between TME Management Corp. and an employee.

FORTY-NINTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$1,399,491.09 in value between TME Management Corp. and an employee.

FIFTIETH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$516,720.95 in value between TME Management Corp. and an employee.

FIFTY-FIRST PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$727,056.83 in value between TME Management Corp. and an employee.

FIFTY-SECOND PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$344,420.13 in value between TME Management Corp. and an employee.

FIFTY-THIRD PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$373,064.43 in value between TME Management Corp. and an employee.

FIFTY-FOURTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$393,800.69 in value between TME Management Corp. and an employee.

FIFTY-FIFTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$572,095.00 in value between TME Management Corp. and an employee.

FIFTY-SIXTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$1,696,352.84 in value between TME Management Corp. and an employee.

FIFTY-SEVENTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$1,434,893.35 in value between TME Management Corp. and an employee.

FIFTY-EIGHTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$671,019.37 in value between TME Management Corp. and an employee.

FIFTY-NINTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$16,610,687.02 in value between TME Management Corp. and Mark H. Swartz.

SIXTIETH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$380,310.36 in value between TME Management Corp. and an employee.

SIXTY-FIRST PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$379,863.46 in value between TME Management Corp. and an employee.

SIXTY-SECOND PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$635,664.80 in value between TME Management Corp. and an employee.

SIXTY-THIRD PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$571,416.45 in value between TME Management Corp. and an employee.

SIXTY-FOURTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$3,294,361.95 in value between TME Management Corp. and an employee.

SIXTY-FIFTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$380,831.21 in value between TME Management Corp. and an employee.

SIXTY-SIXTH PATTERN ACT:

Defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendants, in the County of New York and elsewhere, on or about September 26, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a loan forgiveness agreement aggregating \$2,180,468.14 in value between TME Management Corp. and an employee.

SIXTY-SEVENTH PATTERN ACT:

Defendant **L. DENNIS KOZLOWSKI** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about December 20, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SIXTY-EIGHTH PATTERN ACT:

Defendant **L. DENNIS KOZLOWSKI** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about November 30, 1997, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SIXTY-NINTH PATTERN ACT:

Defendant **L. DENNIS KOZLOWSKI** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about November 30, 1998, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SEVENTIETH PATTERN ACT:

Defendant **L. DENNIS KOZLOWSKI** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about August 12, 1999, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SEVENTY-FIRST PATTERN ACT:

Defendant **L. DENNIS KOZLOWSKI** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about December 30, 1999, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SEVENTY-SECOND PATTERN ACT:

Defendant **L. DENNIS KOZLOWSKI** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, in or about February 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SEVENTY-THIRD PATTERN ACT:

Defendant **L. DENNIS KOZLOWSKI** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about December 20, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SEVENTY-FOURTH PATTERN ACT:

Defendant **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about November 30, 1997, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SEVENTY-FIFTH PATTERN ACT:

Defendant **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about November 30, 1998, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SEVENTY-SIXTH PATTERN ACT:

Defendant **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about August 12, 1999, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SEVENTY-SEVENTH PATTERN ACT:

Defendant **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about December 30, 1999, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SEVENTY-EIGHTH PATTERN ACT:

Defendant **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about February 11, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SEVENTY-NINTH PATTERN ACT:

Defendant **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, on or about January 18, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

EIGHTIETH PATTERN ACT:

Defendant **MARK H. SWARTZ** committed the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York and elsewhere, prior to or on January 25, 2002, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** of a violation of the General Business Law section 352-c (5), committed as follows:

The defendants, during the period from on or about January 1, 1995, through September 9, 2002, in the County of New York and elsewhere, intentionally engaged in a scheme constituting a systematic on-going course of conduct with intent to defraud ten and more persons, to wit shareholders and regulators, and to obtain property, to wit, money and securities, from ten and more persons, to wit, Tyco International Ltd. (Bermuda) (“Tyco”), and its subsidiaries and predecessors, as well as investors in, prospective purchasers of, and other acquirers of Tyco’s securities and debt instruments by false and fraudulent pretenses, representations, and promises, and so obtained property from one and more of such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase of securities issued by Tyco, as follows:

Tyco is a publicly-owned corporation, the shares of which are traded on the New York Stock Exchange. Prior to July 1997, and to a merger with a Bermuda corporation, a Tyco subsidiary, now named Tyco International (US) Inc., was Tyco’s main operating company, and was then a corporation named Tyco International Ltd. (Mass.) (“Former Tyco”), that traded on the New York Stock Exchange. For purposes of this count, Tyco hereinafter includes, unless otherwise indicated, Former Tyco. At all times during the scheme Tyco and its subsidiaries issued stock and debt instruments whose market value depended on the "market perception" of how valuable Tyco was. Information material to

market perception includes financial statements issued by the corporation, filings by the corporation with the United States Securities and Exchange Commission (“SEC”) and other regulatory bodies, public statements by corporate officers, press reports, releases, and statements issued by the corporation, and reports disseminated by ostensibly independent analysts and credit rating agencies, all of which are required to be accurate and truthful. Among the matters which Tyco, by its officers, reported to the public, and was required by law to report publicly were (1) the compensation paid to Tyco's directors and five highest paid executive officers, (2) the existence of loans outstanding to executive officers and directors, if in amounts greater than \$60,000, (3) the sales of stock by executive officers and directors, and (4) certain related party transactions between Tyco and its directors and officers.

During the period of the scheme Tyco compensated its senior executive officers substantially in stock. Also, during the period of the scheme, Tyco routinely acquired other companies, frequently “buying” them with Tyco stock. During the period of the scheme defendant Kozlowski was Chief Executive Officer and Chairman of the Board of Directors of Tyco. During the period of the scheme defendant Swartz was Executive Vice President and Chief Financial Officer; in addition, he performed the functions of a chief operating officer for the company.

As part of a scheme constituting a systematic on-going course of conduct the defendants and others known and unknown to the Grand Jury (“the schemers”) falsely represented and materially omitted to represent accurately and in a timely fashion:

- (1) The compensation paid to executive officers
- (2) The loans extended to executive officers

- (3) The extent of stock sales by corporate insiders
- (4) The earnings per share of Tyco stock before non-recurring charges
- (5) The level of spending by the executive officers in managing the money

and property of Tyco's owners and investors.

- (6) Related party transactions

The schemers concealed from Tyco's investors, potential investors, debt holders, and regulators:

- (1) That certain executive officers received tens of millions of dollars in forgiven loans and "gross-up" payments.

- (2) That certain executive officers received tens of millions of dollars in credit lines and loans from Tyco.

- (3) That defendants Kozlowski and Swartz were selling substantial amounts of Tyco stock to Tyco.

- (4) That certain measures of the earnings per share of Tyco stock were artificially inflated.

- (5) That certain executive officers utilized Tyco's corporate resources to fund personal ventures and property acquisitions, to increase their own personal wealth, and to avoid the loss of personal wealth.

- (6) That Tyco purchased a residential property from a director in 1995 for \$875,000, that Tyco purchased another residential property from a different director in 1997 for \$2,500,000, and that Tyco gifted residences, money, and other property to favored employees.

During the scheme and as part thereof, defendants Kozlowski and Swartz each executed written statements for the preparation of Tyco's proxy that falsely asserted the extent of his own indebtedness to Tyco.

During the period of the scheme, and as part thereof, defendant Kozlowski, in speeches, told investors that he had the greatest faith in Tyco. In such speeches, defendant Kozlowski fraudulently characterized his Tyco stock sales, which in fact exceeded 5.5 million shares. As part of the scheme defendant Kozlowski and others sought to persuade a large securities broker to replace an analyst who regularly reported on Tyco with an individual whom defendant Kozlowski viewed as more friendly to Tyco; defendant Kozlowski and the replacement analyst thereafter exchanged presents worth thousands of dollars.

As part of the scheme defendant Swartz authorized and caused the booking of unauthorized bonuses as “non-recurring charges,” with the intent to raise Tyco's earnings per share before non-recurring charges – a common measure used by investors and others to evaluate Tyco's financial condition – and to maximize the annual bonuses the Board granted defendants Kozlowski and Swartz.

Among the amounts misbooked were in excess of \$95,000,000 in connection with an initial public offering of TyCom Ltd., in excess of \$55,000,000 in connection with the sale of the ADT Automotive business, and in excess of \$15,000,000 in connection with a transaction involving FLAG Telecom Holdings Ltd.

In the course of the scheme and as part thereof defendant Kozlowski sold in excess of 5.3 million shares of Tyco stock, obtaining in excess of \$280,000,000, and

defendant Swartz sold in excess of 2 million shares of Tyco stock, obtaining in excess of \$125,000,000.

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants **L. DENNIS KOZLOWSKI** and, **MARK H. SWARTZ** of the crime of **CONSPIRACY IN THE FOURTH DEGREE**, in violation of Penal Law 105.10(1), committed as follows:

The defendants, in the County of New York and elsewhere, during the period from on or about January 1, 1995, through September 9, 2002, with intent that conduct constituting the felonies of Grand Larceny in the First Degree, Grand Larceny in the Second Degree, Criminal Possession of Stolen Property in the First Degree and Criminal Possession of Stolen Property in the Second Degree be performed, agreed with each other and with others known and unknown to the Grand Jury to engage in and cause the performance of such conduct, as follows:

BACKGROUND TO THE CONSPIRACY

Tyco International Ltd. (Bermuda) (“Tyco”) is a global company with \$36 billion in annual revenues, employing over 270,000 people, that manufactures, distributes, and services products and systems for a broad spectrum of markets, with core business segments in electronics, telecommunications, healthcare and specialty products, fire and security services, and flow control. Prior to July 1997, and a merger with a Bermuda corporation, a Tyco subsidiary, now named Tyco International (US) Inc., was Tyco’s

main operating company, and was then a corporation named Tyco International Ltd. (Mass.) (“Former Tyco”).

Beginning in or about 1992 and during the conspiracy defendant Kozlowski was Chief Executive Officer and Chairman of the Board of Directors of Former Tyco; in 1997, after the merger, he became Chief Executive Officer and Chairman of the Board of Directors of Tyco. In or about February 1995 defendant Swartz, having been associated with Former Tyco since 1991, became Executive Vice President and Chief Financial Officer of Former Tyco, and thereafter, in 1997, of Tyco. In 2001, defendant Swartz became a member of the Board of Directors of Tyco.

It was the goal of the conspirators to steal millions of dollars in money and other property from Tyco and Former Tyco, to maintain knowing possession of the money and property acquired to benefit themselves and others, and to impede recovery of the money and property by an owner thereof. The conspirators agreed to meet this goal in large part through a perversion of two corporate loan programs, called the Key Employee Loan Program and the New York City Corporate Headquarters Relocation Loan Program, and by the payment to themselves and others of unauthorized compensation.

The Key Employee Loan Program also termed at times the Key Employee Corporate Loan Program (“KELP”), was first established in 1983 by Former Tyco; it was and is a program through which Tyco employees who had been granted stock through a restricted stock ownership plan could obtain loans from the company for the purpose of paying federal and state taxes incurred on the vesting of such stock and for the purpose of repaying other similar loans, and for no other purpose.

The New York City Corporate Headquarters Relocation Loan Program (“NYC Relo”), as approved by the Compensation Committee of the Board of Directors of Former Tyco (“Compensation Committee”) and by the Board of Directors itself on August 1, 1995, was a program through which any employee, if required to relocate to Former Tyco’s New York City corporate headquarters, would be permitted an interest free loan to buy a home, under certain circumstances and conditions.

During the period of the conspiracy Tyco’s Board of Directors directed the Compensation Committee to oversee the compensation and benefits of the executive officers and key managers of the company and its principal subsidiaries.

The conspirators agreed to take money from Tyco and Former Tyco, spend it on themselves and others, and account for that money as money borrowed pursuant to the KELP, or pursuant to a relocation loan program, or as extra compensation, taken without approval of the Compensation Committee.

The conspirators agreed to spend Tyco and Former Tyco funds to acquire real estate, yachts, artwork, jewelry and other property and to finance personal expenditures, personal investments and expensive parties. The conspirators further agreed to spend Tyco and Former Tyco funds to acquire real estate for others, to forgive loans due to Tyco, and to sign mortgage cancellations, thereby transferring property paid for with funds from Tyco and Former Tyco to others without appropriate consideration.

OVERT ACTS

In the course of and in furtherance of the conspiracy the conspirators committed and caused to be committed, in the County of New York and elsewhere, overt acts, including the following:

- 1) In September, 1995, defendants Kozlowski and Swartz implemented a relocation plan different from the NYC Relo plan approved by the Board of Directors of Former Tyco.
- 2) During September and October, 1997, defendant Swartz and others authorized the purchase with Tyco funds of a Boca Raton, Florida residence from a Tyco director for in excess of \$2,500,000.
- 3) On or about October 2, 1997, defendant Kozlowski obtained \$200,000 dollars through KELP for renovations to a Greenwich, CT house for renovations.
- 4) On or about November 10, 1997, defendant Kozlowski obtained \$100,000 dollars through KELP for “Karen Mayo – Rye Beach.”
- 5) On or about November 30, 1997, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness in excess of \$60,000 by him or an associate of his to Tyco or Former Tyco at any time since July 1, 1996.
- 6) On or about November 30, 1997, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since July 1, 1996.

- 7) On or about December 29, 1997, defendant Kozlowski obtained in excess of \$2,000,000 through KELP for “Wentworth Land/Runneymead.”
- 8) On or about December 29, 1997, defendant Kozlowski obtained in excess of \$5,000,000 through KELP for property in Nantucket, MA.
- 9) During the period December 29, 1997, through March 31, 1998, defendant Kozlowski obtained in excess of \$900,000 from Tyco for property in Greenwich, CT.
- 10) In or about May 1998, defendant Kozlowski obtained in excess of \$9,000,000 from former Tyco for property in Boca Raton, FL.
- 11) In or about May 1998, defendant Kozlowski obtained in excess of \$2,000,000 from former Tyco for property in Rye, NH.
- 12) On or about August 31, 1998, defendant Kozlowski obtained in excess of \$60,000 through KELP for a motor vehicle.
- 13) On or about October 1, 1998, defendant Kozlowski obtained in excess of \$90,000 through KELP for a motor vehicle.
- 14) On or about November 6, 1998, defendant Kozlowski obtained in excess of \$8,000,000 from Tyco for “GW NJ Sports Partnership.”
- 15) On or about November 10, 1998, defendant Kozlowski obtained in excess of \$900,000 from Tyco for “The Sanctuary – final payment lot 71.”
- 16) On or about November 30, 1998, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1997.

- 17) On or about November 30, 1998, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1997.
- 18) On or about December 15, 1998, defendant Kozlowski obtained in excess of \$240,000 through KELP for "Harry Winston, Inc."
- 19) On or about April 19, 1999, defendant Swartz obtained in excess of \$620,000 through KELP for "Highland Beach Project."
- 20) On or about July 2, 1999, defendant Swartz obtained \$1,000,000 through KELP for "Sirios Capital Partners II."
- 21) On or about July 19, 1999, defendant Swartz obtained \$500,000 through KELP for "KMS Family 1999 Trust."
- 22) On or about July 23, 1999, defendant Kozlowski obtained \$1,000,000 as borrowings from Tyco for "Karen Mayo."
- 23) During the period from July 1998 to October 2000, the conspirators allowed tens of millions of dollars in Tyco funds as interest free loans to Tyco employees for obtaining residential property, which loans were not authorized by either KELP or the NYC Relo programs.
- 24) In or about August 1998, defendants Kozlowski and Swartz permitted Tyco's Senior Vice President for Human Resources an interest free loan of over \$400,000 for a New Hampshire residential property.
- 25) On or about August 12, 1999, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of

business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1997.

- 26) On or about August 12, 1999, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1997.
- 27) In or about August 1999, defendant Swartz told a Tyco employee in the Department of Finance that a special relocation bonus has been approved forgiving \$38,500,000 in KELP loans to defendant Kozlowski, defendant Swartz, and another Tyco employee, and that the appropriate entries should be made in Tyco's books.
- 28) In or about September 1999, defendants Kozlowski and Swartz caused entries to be made to Tyco's books reducing defendant Kozlowski's KELP debt by \$25,000,000 which reduced KELP loans to defendant Kozlowski.
- 29) In or about September 1999, defendants Kozlowski and Swartz caused entries to be made to Tyco's books reducing defendant Swartz's KELP debt by \$12,500,000 which reduced KELP loans to defendant Swartz.
- 30) In or about September 1999, a conspirator caused the forgiveness of debt of \$1,000,000 which reduced KELP loans to a Tyco employee.
- 31) On or about December 30, 1999, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1998.

- 32) On or about December 30, 1999, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1998.
- 33) In or about February 2000, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1998.
- 34) On or about February 11, 2000, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1998.
- 35) On or about May 29, 2000, defendant Kozlowski obtained in excess of \$7,000,000 from Tyco for the purchase of property from Tyco located at 610 Park Avenue in New York County.
- 36) In or about September, 2000, defendant Swartz obtained \$12,700 through KELP ostensibly for "K. McRae salary."
- 37) In or about September 11, 2000, defendant Kozlowski caused a memorandum to issue "to forgive the relocation loans" for a list of Tyco employees that included himself and defendant Swartz.
- 38) In or about September 2000, defendant Kozlowski told Tyco's Director of Human Resources that the Board of Directors of Tyco had approved the

forgiveness of over \$56,000,000 in loans to himself and other Tyco employees, and the "gross-up" of their income by more than \$39,000,000.

- 39) In or about September and October 2000, defendant Kozlowski concealed from the Compensation Committee the forgiveness of over \$19,000,000 in loans to defendant Kozlowski and the payment of over \$13,500,000 in "gross-up."
- 40) In or about September 26, 2000, an agent of defendants Kozlowski and Swartz caused the issuance of letters to defendants Kozlowski and Swartz, as well as other Tyco employees, that required the recipients to keep the forgiveness of loans and "gross-up" payments "confidential."
- 41) In or about September 28, 2000, defendant Swartz concealed from the Compensation Committee the forgiveness of over \$9,700,000 in loans to defendant Swartz and the payment of over \$6,800,000 in "gross-up."
- 42) In or about September 29, 2000, defendant Swartz issued a memorandum "to award special bonuses" to "selected employees."
- 43) In or about September 2000, defendants Kozlowski and Swartz authorized a transaction by which Tyco's Senior Vice President of Human Resources, having borrowed funds from Tyco for a New Hampshire premises, had the loan forgiven at Tyco's expense.
- 44) In or about September 2000, defendants Kozlowski and Swartz authorized a Tyco book entry forgiving loans previously booked as relocation loans to defendant Kozlowski in excess of \$19,000,000.

- 45) In or about September 2000, defendants Kozlowski and Swartz authorized a Tyco book entry forgiving loans previously booked as relocation loans to defendant Swartz in excess of \$9,700,000.
- 46) In or about September 2000, defendants Kozlowski and Swartz authorized a Tyco book entry forgiving loans previously booked as relocation loans to Tyco employees aggregating in excess of \$56,000,000.
- 47) In or about September 2000, defendants Kozlowski and Swartz authorized Tyco funds to be used to pay “gross-up” taxes in excess of \$13,000,000 on the forgiveness of relocation loans to defendant Kozlowski.
- 48) In or about September 2000, defendants Kozlowski and Swartz authorized Tyco funds to be used to pay “gross-up” taxes in excess of \$6,800,000 on the forgiveness of relocation loans to defendant Swartz.
- 49) In or about September 2000, defendants Kozlowski and Swartz authorized Tyco funds to be used to pay “gross-up” taxes aggregating in excess of \$39,000,000 on the forgiveness of Tyco employee relocation loans.
- 50) On or about October 6, 2000, defendant Swartz authorized a transaction by which Tyco's Treasurer received a Florida residence at Tyco's expense.
- 51) On or about November 13, 2000, defendant Kozlowski issued letters regarding “bonuses and relocation payments” being issued for the “successful divestiture of Tyco’s ADT Automotive business.”
- 52) In or about November 2000, defendants Kozlowski and Swartz caused in excess of \$55,000,000 from Tyco’s sale of the ADT Automotive business to be diverted to defendants Kozlowski and Swartz and other Tyco employees.

- 53) In or about November 2000, defendants Kozlowski and Swartz caused an illegal “special” bonus in excess of \$16,000,000 to be paid to defendant Kozlowski.
- 54) In or about November 2000, defendants Kozlowski and Swartz caused an illegal “special” bonus in excess of \$8,000,000 to be paid to defendant Swartz.
- 55) On or about December 15, 2000, defendant Swartz issued a memorandum regarding “Special ADT Automotive related bonuses” that were being issued “to various Tyco employees.”
- 56) On or about December 20, 2000, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1999.
- 57) On or about December 29, 2000, defendant Kozlowski obtained \$1,000,000 through KELP for Cambridge University.
- 58) On or about January 18, 2001, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 1999.
- 59) On or about March 1, 2001, defendant Swartz caused \$1,200,000 in Tyco funds to be wired to an account of KMS Family Partnership, controlled by defendant Swartz.

- 60) In or about June 2001, defendants Kozlowski and Swartz caused Tyco to authorize the expenditure of over \$1,000,000 in Tyco monies to fund travel to and expenditures in Sardinia, the primary purpose of which was a private party for the benefit of Kozlowski.
- 61) In or about November 2000 through June 2001, defendants Kozlowski and Swartz caused Tyco to issue in the form of a special bonus restricted shares in the aggregate value of in excess of \$15,000,000.
- 62) In or about July 2001, a conspirator authorized the payment of Tyco funds, to wit, a sum of \$20,000,000 for a Tyco director.
- 63) On or about December 19, 2001, defendant Kozlowski borrowed approximately \$8,800,000 through KELP for artwork.
- 64) On or about December 19, 2001, defendant Kozlowski signed a promissory note to a Tyco subsidiary in the amount of \$8,800,000.
- 65) On or about January 3, 2002, defendant Kozlowski borrowed approximately \$3,950,000 through KELP for artwork.
- 66) On or about January 3, 2002, defendant Kozlowski signed a promissory note to a Tyco subsidiary in the amount of \$3,950,000.
- 67) No later than January 25, 2002, defendant Kozlowski executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 2000.
- 68) No later than January 25, 2002, defendant Swartz executed a Director and Officer Questionnaire that asserted no non-KELP or ordinary course of

business indebtedness by him or an associate of his in excess of \$60,000 at any time since September 30, 2000.

FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, during the period from on or about August 2000 to October 15, 2000, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$32,000,000 from Tyco International Ltd.

FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, during the period from on or about August 2000 to October 15, 2000, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$16,000,000 from Tyco International Ltd.

SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, in or about August 1999 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$38,500,000 million from Tyco International Ltd.

SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, in or about August 1999 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$25,000,000 from Tyco International Ltd.

EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, in or about August 1999 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$12,500,000 from Tyco International Ltd.

NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, during the period from in or about October 2000 to November 2000, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$16,000,000 from Tyco International Ltd.

TENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, during the period from in or about October 2000 to November 2000, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$8,000,000 from Tyco International Ltd.

ELEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, during the period from in or about June 2001 to November 2001, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$8,000,000 from Tyco International Ltd.

TWELFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, during the period from in or about June 2001 to November 2001, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$4,000,000 from Tyco International Ltd.

THIRTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, on or about July 1, 2001 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$20,000,000 from Tyco International Ltd. ”), by paying money to a Tyco director in connection with the acquisition of CIT Group, Inc. without the necessary approval of the Tyco Board of Directors and its committees.

FOURTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **L. DENNIS KOZLOWSKI** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendant, in the County of New York and elsewhere, during the period from in or about August 2001 to September 2001, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$1,975,000 from Tyco International Ltd.

FIFTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, in or about December 2001 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$8,800,000 million from Tyco International Ltd.

SIXTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendants, in the County of New York and elsewhere, on or about January 3, 2002 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$3,950,000 from Tyco International Ltd.

SEVENTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **MARK H. SWARTZ** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendant, in the County of New York and elsewhere, in or about March 1, 2001 and thereafter, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$1,200,000 from Tyco International Ltd.

EIGHTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **L. DENNIS KOZLOWSKI** the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

Defendant, in the County of New York and elsewhere, on or about July 13, 2000, stole property, to wit, money, having a value in excess of \$1 million, to wit, \$2,000,000 and 200,000 shares of stock from Tyco International Ltd.

NINETEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendants, in the County of New York and elsewhere, in or about September 1995, and thereafter, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Tyco International Ltd. New York City Corporate Headquarters Relocation program.

TWENTIETH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendants, in the County of New York and elsewhere, on or about February 17, 1998, and thereafter, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Tyco International (US) Inc. Florida Corporate Headquarters Relocation program.

TWENTY-FIRST COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants **L. DENNIS KOZLOWSKI** and **MARK H. SWARTZ** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendants, in the County of New York and elsewhere, in and about September 1997, and thereafter, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Grinnell Fire & Safety, Inc. Florida Corporate Headquarters Relocation program.

TWENTY-SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **L. DENNIS KOZLOWSKI** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about December 20, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

TWENTY-THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **L. DENNIS KOZLOWSKI** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about November 30, 1997, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

TWENTY-FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **L. DENNIS KOZLOWSKI** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about November 30, 1998, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

TWENTY-FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **L. DENNIS KOZLOWSKI** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 12, 1999, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

TWENTY-SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **L. DENNIS KOZLOWSKI** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about December 30, 1999, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

TWENTY-SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **L. DENNIS KOZLOWSKI** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, in or about February 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

TWENTY-EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **L. DENNIS KOZLOWSKI** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about December 20, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

TWENTY-NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **MARK H. SWARTZ** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about November 30, 1997, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

THIRTIETH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **MARK H. SWARTZ** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about November 30, 1998, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

THIRTY-FIRST COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **MARK H. SWARTZ** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 12, 1999, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

THIRTY-SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **MARK H. SWARTZ** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about December 30, 1999, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

THIRTY-THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **MARK H. SWARTZ** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about February 11, 2000, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

THIRTY-FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **MARK H. SWARTZ** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, on or about January 18, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

THIRTY-FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendant **MARK H. SWARTZ** of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, committed as follows:

The defendant, in the County of New York and elsewhere, prior to or on January 25, 2002, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, to wit, a Director and Officer Questionnaire.

ROBERT M. MORGENTHAU
District Attorney