V. FACTUAL BASIS FOR THE PLEA.

If this case were to proceed to trial, the government would introduce competent evidence which would establish that from in or about January 2001, through April 2007, the defendant, Joseph M. Braas, served in a high-level position at EFI. During this time period, defendant Braas managed a sophisticated loan fraud scheme that involved artificially inflating EFI's revenues and concealing its loan delinquencies, which caused losses to EFI and its owners of $53 million, and which led to the demise of EFI and its parent entities, Sterling Financial Corporation ("Sterling") and the Bank of Lancaster County, N.A. ("BLC").

EFI was a logging industry lender based in Lititz, Pennsylvania, that provided financing for the purchase of forestry and land clearing equipment, primarily in the southeastern United States. It was acquired by Sterling in or about March 2002. Sterling was a diversified financial services company headquartered in Lancaster, Pennsylvania. Through its affiliates and subsidiaries, Sterling provided financial services such as specialty commercial financing, fleet and equipment leasing, and investment, trust, and brokerage services for corporate and individual clients. Sterling was a publically held company whose shares of stock were publically traded on the NASDAQ stock exchange. When Sterling acquired EFI, it made EFI a wholly owned subsidiary of BLC. BLC was a wholly-owned subsidiary of Sterling that was headquartered in Strasburg, Pennsylvania. BLC was a financial institution the deposits of which were insured by the Federal Deposit Insurance Corporation. As a subsidiary of Sterling, EFI's books were examined on a regular basis by Sterling's internal auditor, Accume Partners, and its independent auditor, Ernst & Young, LLP ("E&Y").

From the time EFI was acquired by Sterling until April 2007, the value of EFI's loan portfolio grew on paper from approximately $80 million to approximately $330 million. During the 2006 to 2007 time period, EFI's purported net income accounted for approximately 30% of Sterling's purported net income.

Defendant Braas was a Senior Vice President of EFI and its Chief Operating Officer. In that position, he was responsible for running EFI from day-to-day. He also initiated and serviced loans and had responsibility for reviewing and approving loans initiated by others at EFI.

Beginning in at least January 2001, defendant Braas colluded with other EFI employees and with people who did not work at EFI to defraud EFI and others by artificially inflating EFI's revenues, concealing its loan delinquencies, and falsifying its books. Defendant Braas conspired to make EFI appear more profitable than it actually was and make it appear that EFI was exposed to less risk than it actually was. Through these methods, he and co-conspirators Michael Schlager, Mary Stankiewicz, Misty Kroesen, and Curtis Kroesen, who worked at EFI, were able to keep their jobs, where each year they "earned" increasingly higher salaries and bonuses, and were able to continue to obtain funding for EFI from BLC and its other creditors.

One of the ways that defendant Braas and others inflated EFI's assets was by creating bogus loans. Defendant Braas and others who worked at EFI initiated loans that were in the names of fictitious borrowers, were in the names of borrowers who did not know about the loans and did not purchase the equipment listed, were in the names of borrowers who did not do business with EFI, were in the names of businesses that had previously been shut down, were in the names of deceased borrowers, were in the names of borrowers who were not loggers, were issued under alias borrower names in order to circumvent EFI's loan limit reporting policy, listed down payments that had never been made, and were in the names of straw or nominal borrowers, that is, people who had been recruited and sometimes paid money to falsely sign EFI loan documents claiming to be loggers purchasing logging equipment.

In order to make the bogus loans appear to be legitimate, defendants Braas, Schlager, Stankiewicz, Misty Kroesen, and Curtis Kroesen, as well as others who did not work at EFI, filled EFI's files with false records and records designed to give a false impression of legitimacy, such as documents with forged borrower and dealer signatures, documents that listed down payments as having been paid when they were not, loan contracts that listed equipment that already secured one loan as the collateral on a separate loan, documents falsely purporting to show that equipment was insured, unfiled Uniform Commercial Code forms that were placed in the files to give the false impression that they had been properly filed, and bogus insurance premium invoices. To minimize the number of third parties who knew about the creation of the bogus loans, defendant Braas sometimes instructed other EFI employees not to order customer payment coupon books and not to send "paid off" letters to customers whose loans were recorded in EFI's records as having been paid in full.

Defendant Braas used the proceeds of the bogus loans to inflate assets and to conceal delinquencies. He sometimes ordered co-conspirators Stankiewicz and Misty Kroesen not to issue the usual proceeds checks to dealers when bogus loans were funded, but instead to credit the proceeds of the bogus loans to EFI's income account or as customer payments on other, unrelated loans. He also diverted customer payments and directed that they be applied as payments on other, unrelated loans, in order to conceal the delinquent status of those loans.

The defendant concealed the amount of risk to which he was exposing EFI by issuing loans under borrower aliases and, with the assistance of another EFI employee, changing the borrower names on EFI's loans to show borrower aliases, all in order to circumvent the EFI reporting requirement for borrowers who exceeded $500,000 in loans. In approximately 2002, the defendant and Curtis Kroesen changed the names of borrowers on some existing loans to other names in order to avoid having to report borrowers who exceeded $500,000 in loans. For his assistance with this task, defendant Braas paid Curtis Kroesen approximately $300 cash.

To avoid having to write loans off as losses or report them in EFI's books as delinquencies, defendant Braas issued deferrals on loans without contacting the borrower or charging the customary deferral fee. He also failed to report equipment repossessions. Defendant Braas carried loan files on EFI's books after the equipment securing the loan had been repossessed, and concealed the delinquent status of these loans by issuing improper deferrals.

The defendant also undermined the audit process in order to conceal the true financial status of EFI. He, along with other EFI employees, did so by submitting to the auditors false and misleading records, such as back-dated, whited-out, and altered documents, and interfering with the loan confirmation process. Sometime between May 2006 and March 2007, the defendant recruited Curtis Kroesen to assist him with placing falsified records into loan files in anticipation of an upcoming audit by E&Y. These records included back-dated credit reports, falsified work and bank references, and falsified account analyses and reviews. In March 2007, he directed Misty Kroesen to create a false record showing that a customer had approximately $4,000 more in his account than he actually did, so that defendant Braas could present the false record to E&Y auditors. Also in March 2007, when E&Y auditors requested evidence of specific customer payments that did not exist because the proceeds of bogus loans had been used to make the payments, defendant Braas, along with Schlager, directed Stankiewicz and Misty Kroesen to create documentation of approximately five fake check-by-phone payments to show to the auditors. For their assistance, defendant Braas paid Stankiewicz and Misty Kroesen \$1,000 each. Defendant Braas also knowingly provided incorrect addresses for auditor confirmation letters, so that the letters would either be returned undeliverable or not returned at all. The defendant paid Misty Kroesen approximately \$1,000 cash for assisting him in providing the auditors with false borrower addresses for confirmation letters.

During the period of the fraud, the EFI reports that defendants Braas and Schlager provided to BLC and Sterling executives on a monthly and quarterly basis, as well as statements the defendant made at the meetings with BLC and Sterling management, included false information about, among other things, the number of new contracts purchased, EFI's income, and EFI's delinquent accounts.

One of the bogus loans defendant Braas created was initiated in September 2003. Defendant Braas and Stankiewicz originated a bogus loan for approximately \$42,000 for a borrower with the purported name "Knot Wood Products, LLC." In fact, this loan was for Stankiewicz's then-boyfriend, T.P., and was not for any purpose related to the purchase of logging equipment. Defendant Braas provided the proceeds check to Stankiewicz to deliver to T.P.

One customer whose name defendant Braas used on several bogus loans was an individual whose initials are D.C. In March 2004, the defendant originated a bogus loan in the name of D.C. In April 2004, defendant Braas caused D.C. to receive a letter from EFI confirming the purchase of the contract, and a copy of the fraudulent Conditional Sales Contract.

In May 2006, the defendant originated a bogus loan that was recorded under the borrower alias "C.T.T., I." but was actually for D.C., and caused D.C. to receive from EFI a letter that had been sent to him via the United States Postal Service from Lititz, Pennsylvania, to Trenton, North Carolina, confirming the purchase of the contract, and a copy of the fraudulent Conditional Sales Contract. Also in May 2006, defendant Braas forwarded a memo to D.C. in which the defendant stated that D.C. should forward money owed to EFI to defendant Braas because defendant Braas had made loan payments for D.C. In fact, defendant Braas had not made these payments out of his personal accounts. In response to the defendant's memo, from approximately June 2006, to November 2006, D.C. mailed defendant Braas seven checks totaling approximately $95,000, which defendant Braas deposited into his personal bank accounts. In October 2006, the defendant originated another bogus loan in the name of borrower D.C. and caused D.C. to receive from EFI a letter that had been sent to him via the United States Postal Service from Lititz, Pennsylvania, to Trenton, North Carolina, confirming the purchase of the contract, and a copy of the fraudulent Conditional Sales Contract. In January 2007, the defendant originated another bogus loan in the name of D.C. and caused an EFI check in the amount of $65,107.08 to be mailed to D.C. in Trenton, North Carolina. Included with the check was a handwritten note from the defendant which asked D.C. to return the $65,107.08 to him in two checks. D.C. then mailed defendant Braas two checks, which the defendant deposited into his personal bank accounts.

During the period of the conspiracy, defendant Braas knew that Schlager was also creating bogus EFI loans, that many of those loans were in the name of co-defendant John Wiley Spann, and that Spann was helping Schlager to create bogus loans in others' names. Defendants

Braas and Schlager worked together to conceal the fraudulent nature of the loans each was creating, to hide delinquencies on all EFI loans, including the bogus loans, to fool Sterling's auditors, and to conceal the true nature of EFI's financial status from executives at BLC and Sterling.

Schlager and Spann extracted money from EFI's insurance escrow account to use in the scheme to defraud. Schlager's and Spann's method was to cause false insurance premium invoices to be submitted to EFI from South Central Agency ("SCA") in Andalusia, Alabama. EFI paid those bogus SCA bills. The principals of SCA, Harold Young and John Tomberlin, kept some of that money and wrote checks for the rest as directed by Spann. Some of this money was eventually cycled back to EFI so that Schlager could use it to conceal loan delinquencies, some Spann kept for himself and used to pay his personal debts, and some Spann used to pay nominal borrowers.

On January 30, 2003, the defendants caused EFI check number 10071, in the amount of $35,000.00, to be mailed via Federal Express from EFI in Lititz, Pennsylvania, to SCA in Andalusia, Alabama. On January 30, 2004, the defendants caused EFI check number 11164, in the amount of $125,818.00, to be mailed via Federal Express from EFI in Lititz, Pennsylvania, to SCA in Andalusia, Alabama.

As of April 2007, when the fraud at EFI was discovered by Sterling, EFI had outstanding loans from BLC totaling approximately $200 million. All loans from BLC were secured by EFI's loans. Due to the size of the fraud and its impact on BLC's finances, Sterling immediately consolidated BLC with several of its other banks in order to pool capital. Then in July 2007, Sterling itself announced that it had agreed to be purchased by PNC Financial

Services Group, Inc. That deal closed in the first quarter of 2008.

This memorandum sets forth only the essential facts that would need to be proved to establish the elements of the offenses charged.

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s/ Nancy E. Potts
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CERTIFICATE OF SERVICE

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