

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ASANTE K. BERKO,

Defendant.

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Civil Action. No.

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) alleges the following against defendant Asante K. Berko (“Berko” or the “Defendant”):

**SUMMARY**

1. Defendant Berko violated the Foreign Corrupt Practices Act of 1977 (“FCPA”), a law that generally prohibits companies whose stock is publicly traded in the United States, and individuals associated with those companies, from paying bribes to foreign officials in order to secure business in foreign countries. Berko, a United States citizen, is a former executive of a United Kingdom-based financial services company (the “Subsidiary”) that is a wholly-owned subsidiary of a publicly traded bank holding company based in the United States (the “Holding Company”).

2. Berko’s role at the Subsidiary was to develop investment banking business for the Subsidiary and the Holding Company, which included identifying and arranging financing, restructuring or merger transactions for clients, and assisting with the work necessary to complete those transactions.

3. From approximately 2015 through at least 2016 (the “relevant period”), while employed at the Subsidiary, Berko schemed to bribe various government officials in the Republic of Ghana (“Ghana”) so that a client of the Subsidiary, a Turkish Energy Company (the “Energy Company”), would win a contract (the “Power Purchase Agreement”) to build and operate an electrical power plant in Ghana and sell the power to the Ghanaian government (the “Power Plant Project” or “Project”). To effect the corrupt scheme, Berko arranged for the Energy Company to funnel between \$3 million to \$4.5 million to a Ghana-based company (the “Intermediary Company”) to bribe various government officials responsible for approving the Power Plant Project. The Energy Company transferred at least \$2.5 million of the planned \$3 million to \$4.5 million to the Intermediary Company, all or most of which was used to bribe Ghanaian government officials.

4. Berko crafted, developed and carried out the bribery scheme with the knowledge, or under circumstances that made it substantially certain, that all or a portion of the money paid to the Intermediary Company would be paid as bribes to Ghanaian government officials to secure support for the Power Plant Project. Berko and the Energy Company timed the largest transfers of funds to coincide with key milestones in the approval process of the Power Plant Project so that funds would be available to bribe the corrupt officials who were in positions to help accomplish those milestones. For example:

a. On or about April 13, 2015, Berko learned that the Energy Company and the Ministry of Power of Ghana (“Ministry of Power”) had reached an agreement in principle on the terms of the Power Purchase Agreement. By April 20, 2015, at the request of the Intermediary Company, Berko and the Energy Company had arranged for the Energy Company to transfer \$500,000 to the Intermediary Company, which the Intermediary Company then used to bribe a

senior Ghanaian government official (“Government Official 1”) who represented the Ministry of Power during its negotiations with the Energy Company.

b. On May 11, 2015, the Energy Company and the Ministry of Power signed the Power Purchase Agreement. On May 19, 2015, the Intermediary Company sent an invoice to the Energy Company for an additional \$1.5 million in funds for the bribe scheme. On May 22, 2015, the Energy Company transferred \$1.5 million to the Intermediary Company, all or part of which was to be used to bribe Ghanaian government officials. Berko knew of this transfer at, or soon after, the time of this transfer.

c. On July 17, 2015, the Ghanaian parliament ratified the Power Purchase Agreement. On July 20, 2015, the Intermediary Company requested, through Berko, that the Energy Company send it another \$1.5 million for its “next crucial steps.” Those funds were to be used to bribe Ghanaian government officials and to advance the bribery scheme.

d. On August 4, 2015, the Intermediary Company emailed another invoice to the Energy Company, copying Berko, for \$250,000 for the bribery scheme. On October 19, 2015, the Energy Company transferred \$250,000 to the bank account of an employee of the Intermediary Company (“Intermediary Employee 1”) who was also part of the bribery scheme.

5. Berko also helped the Intermediary Company pay smaller bribes, totaling approximately \$210,000, to various other government officials involved in the Power Plant Project. These included bribes to a Ghanaian government official (“Government Official 2”) who assisted Government Official 1 on the Project, employees at the Ministry of Power who provided confidential information to the Intermediary Company concerning the Project, government engineers who assessed the Energy Company’s technology, and officials at other government agencies who reviewed the Project.

6. In addition to the bribes paid through the Intermediary Company, Berko personally paid bribes to advance the corrupt scheme. By August 2015, Berko had paid bribes of at least \$66,000 to members of the Ghanaian parliament and other government officials in his effort to obtain approval for the Power Plant Project.

7. Berko sought to profit from the bribery scheme in two ways. First, he knew the Subsidiary would earn over \$10 million in fees if the Energy Company secured the Power Plant Project and the Subsidiary organized financing for it, which in turn would enhance Berko's performance and stature within the Subsidiary. Second, by at least July 2015, Berko understood that the Energy Company would secretly compensate him for arranging the bribe scheme. Unbeknownst to the Subsidiary – and in violation of Berko's employment agreement with the Subsidiary – between September 2016 and February 2017, the Energy Company paid Berko \$2 million for successfully coordinating the bribery scheme.

8. Berko took deliberate measures to prevent the Holding Company's and the Subsidiary's compliance personnel from discovering his corrupt scheme. First, Berko used his personal email rather than his work email to arrange the bribery scheme in order to evade detection. Berko knew that Subsidiary and/or Holding Company compliance personnel could review his work email as part of their periodic and/or project-related due diligence. Second, Berko intentionally failed to correct a critical document – directed to the Holding Company – that falsely stated that the Energy Company had not compensated any intermediaries or politically exposed persons in connection with the Power Plant Project.

9. Despite Berko's efforts to conceal his misconduct, the Holding Company required additional due diligence to further assess the potential reputational risks associated with the Project and to address other concerns. As part of this diligence, during March 2016, compliance

personnel at the Subsidiary reviewed Berko's emails and discovered the involvement of the Intermediary Company. After interviewing Berko about the Intermediary Company, they began to investigate the matter further.

10. During approximately May through June 2016, and as part of their further investigation, Subsidiary personnel questioned the Energy Company's executives about the Intermediary Company's role in the Power Plant Project. The Energy Company's executives provided incomplete and inaccurate information to the Subsidiary personnel's questions and failed to disclose that the Intermediary Company's true purpose was to facilitate the bribery scheme. When Subsidiary personnel continued to probe the role of the Intermediary Company in the transaction, the Energy Company's executives refused to answer any more questions on the topic. As a result of information obtained during this further investigation, by August 2016, the Subsidiary terminated its involvement in the Project.

11. Between September 2016 and February 2017, the Energy Company paid Berko \$2 million for his effort in facilitating the bribery scheme. On or about December 7, 2016, Berko tendered his resignation to the Subsidiary, which became final on or about March 6, 2017. Following his departure from the Subsidiary, Berko began providing consulting services for the Energy Company.

#### **AUTHORITY, JURISDICTION AND VENUE**

12. The Commission brings this action pursuant to enforcement authority conferred by Section 21(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§78u(d) (1)]. The Commission seeks imposition of a civil penalty against Berko pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

13. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and

27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e) and 78aa].

14. Venue is appropriate in this Court under Section 27 of the Exchange Act [15 U.S.C. §§78aa] because certain acts or transactions constituting the violations of the federal securities laws detailed herein occurred in this district, including travel through the district and the transmission of electronic messages in connection with those violations.

15. Berko directly or indirectly made use of the means and instrumentalities of United States interstate commerce in connection with the acts, practices, and courses of business alleged herein, including electronic messaging systems based in the United States. Among other things, while in New York, Berko communicated, using a United States-based email account and email service provider, with employees of the Intermediary Company in order to advance the bribery scheme described herein. Berko also arranged for, perpetrated and participated in the bribery scheme with the understanding that documentation relating to the Power Plant Project would be sent, through the instrumentalities of interstate commerce in this district, to New York-based members of a Committee of the Holding Company. Berko also travelled to and from London and other international venues through airports in this district in furtherance of the scheme detailed herein. Berko further knew, or was reckless in not knowing, that funds would be transferred through wire communications through this district to banks in New York and then to individuals and entities in Ghana to facilitate the bribe scheme and helped arrange some of those fund transfers.

#### **DEFENDANT**

16. Asante K. Berko, age 46, is a dual United States and Ghanaian citizen who currently resides in Ghana. During the period from approximately July 2014 until his resignation in approximately December 2016, Berko was an executive in the Subsidiary's investment banking

division with responsibility for developing business in Africa.

**RELATED ENTITIES AND INDIVIDUALS**

17. “Holding Company” is a bank holding company incorporated in Delaware with its primary place of business in New York. Its common stock is registered with the Securities and Exchange Commission pursuant to Section 12(b) of the Exchange Act. At all relevant times, the Holding Company carried out its global operations through numerous consolidated and controlled subsidiaries. The Holding Company managed its subsidiaries through various committees comprised of senior members of these subsidiaries, including such persons based in New York. The subsidiaries through which the Holding Company conducted business were established for various legal and administrative purposes and were not operated as independent businesses.

18. “Subsidiary” is a United Kingdom-based subsidiary of the Holding Company through which the Holding Company provided broker dealer, investment banking and other financial services for its clients in Europe, Asia, and the Middle East and Africa. The senior members of the Subsidiary served on committees of the Holding Company, and at least one senior executive of the Subsidiary was an officer of the Holding Company. The financial statements (including the related books, records, and accounts) of the Subsidiary were consolidated with the financial statements of the Holding Company. From approximately 2012 to 2018, the Subsidiary owned a portion of the Energy Company.

19. “Subsidiary MD” was a managing director at the Subsidiary who supervised Berko on the Power Plant Project.

20. “Subsidiary Deal Team” or “Deal Team” was a team of Subsidiary employees, including Berko, who were responsible for assisting the Energy Company in the Power Plant

Project.

21. “Energy Company” is a Turkish energy company publicly traded on the Istanbul stock exchange.

22. “Energy Company CEO” is a Turkish citizen who was the chief executive officer of the Energy Company.

23. “Energy Company CFO” is a Turkish citizen who was the chief financial officer of the Energy Company.

24. “Intermediary Company” is a privately owned Ghanaian company that purports to provide consulting and other services for energy development projects in Ghana.

25. “Intermediary Senior Executive” is a Ghanaian citizen and a senior executive of the Intermediary Company.

26. “Intermediary Executive” is a Ghanaian citizen and an executive officer of the Intermediary Company who reported to the Intermediary Senior Executive.

27. “Intermediary Employee 1” is a Ghanaian citizen and an employee of the Intermediary Company who reported to the Intermediary Senior Executive and the Intermediary Executive.

28. “Politically Exposed Person” or “PEP” may be a controlling person of the Intermediary Company who was an immediate family member of one of the most senior officials of Ghana at the time.

29. “Government Official 1” is a high-ranking government official in Ghana who had the ability to influence the award of the Power Plant Project to the Energy Company and who, along with Government Official 2, participated in an intra-governmental agency group to assess the appropriate fee, or tariffs, to be paid to energy companies in connection with power plant



projects in Ghana.

30. “Government Official 2” is a government official in Ghana who assisted Government Official 1 for the Power Plant Project.

### **FACTUAL ALLEGATIONS**

#### **The Subsidiary was an Agent of the Holding Company**

31. During the relevant period, the Holding Company controlled and directed the Subsidiary, which acted as its agent, both generally and specifically for the Power Plant Project. The Holding Company primarily conducted business through nine revenue producing operating entities (i.e. bank, broker-dealer, and investment adviser subsidiaries), including the Subsidiary, and nine service entities (i.e., funding, staffing and physical asset service subsidiaries). The Holding Company’s revenue-producing entities further divided their business into four segments: the Investment Banking Division, Institutional Client Services, Investing and Lending, and Investment Management. Aside from these revenue-producing units, the Holding Company and its subsidiaries had staff in independent control and support functions, including legal and compliance functions, that worked together to manage risk for the two entities.

32. The Holding Company funded dividend payments on its securities, and payments on its obligations, including debt obligations, from the dividends, distributions and other payments (e.g., payments on intercompany loans) it received from revenues generated by its subsidiaries, including the Subsidiary. Individual subsidiaries, including the Subsidiary, also relied upon funding from the Holding Company.

33. The Holding Company also consolidated financial information across its subsidiaries as a whole for its annual 10-K filings, presenting the group as a unified enterprise, both for these filings and for branding purposes. Further, the Holding Company provided high-

level operational oversight and set firm-wide policies, including legal and compliance policies. Individual subsidiary operating entities also provided various services to one another. And as of the end of 2016, the Subsidiary was the second largest subsidiary of the Holding Company, accounting for up to 20% of firm-wide net revenue and 12% of total staff.

34. At least one person was an officer of both the Holding Company and the Subsidiary. And, the most senior managers of the Subsidiary were members of committees of the Holding Company that reviewed, authorized and approved nearly all significant transactions for the consolidated subsidiaries. As a result, during the relevant period the Subsidiary acted as an agent of the Holding Company, both generally and specifically for investment banking transactions related to Africa.

**Berko was an Agent and/or an Employee of the Holding Company**

35. Berko acted as an employee and/or agent of the Holding Company for the Power Plant Project through his employment, duties and responsibilities.

36. Through onboarding and training programs, Berko understood that he was subject to the policies of the Holding Company, including but not limited to its anti-bribery and anti-corruption policies.

37. The Holding Company directed and controlled Berko for both his general work activities and specifically for his work on the Power Plant Project. The Holding Company conducted its Africa-based investment banking business through the Subsidiary but retained control over all significant transactions.

38. Committees of the Holding Company, which included senior officers and employees based in New York, managed risk for the Subsidiary's transactions (including the Power Plant Transaction) by, among other things, conducting interim and final reviews of those

transactions.

39. Berko in turn directed his actions towards the New York-based Holding Company. He helped create a memorandum concerning the Power Plant Project that he knew would be, and in fact was, provided to New York-based members of a committee of the Holding Company for their review. Accordingly, Berko and the Holding Company understood that Berko acted on behalf of and for the benefit of the Holding Company while participating in the Power Plant Transaction. As a result, Berko was an agent and/or an employee of the Holding Company and was subject to its direction and control.

**Berko Engaged the Intermediary Company for the Power Plant Project**

40. During 2013, Ghana began experiencing severe power shortages. As a result, the government of Ghana prioritized energy development, including by fast-tracking large power projects.

41. In or about July 2014, the Subsidiary hired Berko, who had previously worked on investment banking projects in Africa, to develop its business in Ghana and Africa.

42. During November 2014, the Subsidiary MD approached Berko, the resident Ghana specialist, about opportunities to win business in Ghana's energy sector. The Subsidiary MD advised Berko that a longtime client of the Subsidiary, the Turkish Energy Company, was interested in building and operating an electrical power plant in Ghana and selling the power to the Ghanaian government. The Subsidiary MD and Berko planned for the Subsidiary to advise and arrange financing for the Energy Company if the Energy Company was able to close such a deal.

43. Within that same month, Berko met with the Intermediary Executive and enlisted the Intermediary Company – which purported to provide consulting services for energy projects

– to assist him with the possible power plant project.

44. Based on prior interactions, Berko knew that the most senior employees of the Intermediary Company, the Intermediary Executive and the Intermediary Senior Executive (collectively, the “Intermediary Company Executives”), had contacts within the highest levels of the government of Ghana.

45. Through previous business dealings and communications with the Intermediary Company Executives, Berko knew that the Intermediary Company’s close connections to the government included the PEP. And, by virtue of his joint communications with the PEP, the Intermediary Company Executive and the Energy Company Executives, Berko knew, or was reckless in not knowing, that the PEP was closely associated with the Intermediary Company.

46. In early December 2014, Berko arranged for senior executives of the Energy Company – including its CEO, chairman of the board, and another board member – to meet with the Intermediary Executive and senior Ghanaian government officials to discuss a possible Power Plant Project between the Energy Company and the government of Ghana. Berko also attempted to arrange for a meeting with the then President of Ghana, noting that he was “[w]orking with [the President’s] Advisors (also [the PEP]) to confirm timing.”

47. On December 9, 2014, Berko flew into an airport in this district on his way to Ghana. While in New York on or about December 10, 2014, Berko worked with Subsidiary employees and the Intermediary Executive to assist the Energy Company executives to obtain the needed visas for a trip to Ghana to attend the planned meetings with government officials.

48. On December 18, 2014, the Energy Company executives and Berko met with senior government officials about the Energy Company’s proposed Power Plant Project. Berko also discussed the Energy Company’s proposed Project with the PEP who advised that “it will be

good for [the Energy Company] to carry on with its plan [for a power plant].”

49. On January 4, 2015, Berko, the Subsidiary MD, the Intermediary Senior Executive, the PEP, as well as the CEO of the Energy Company and other Energy Company executives met with the Minister of Power and other Ghanaian government officials at the home of the Chairman of the Energy Company in Turkey to discuss the Power Plant Project. On January 5, 2015, an Energy Company executive emailed Berko a draft proposal for the Power Plant Project. On January 8, 2015, the Subsidiary MD emailed Berko stating that “[the PEP] and [the Intermediary Senior Executive] will mark up the proposal in a way that will work for them. I will then get the [Energy Company] guys to agree.”

50. On January 13, 2015, the Intermediary Executive emailed Berko, the Intermediary Senior Executive, and the PEP a draft of a letter for the Energy Company in which he proposed that the Intermediary Company and the Energy Company become partners in the Power Plant Project. Among other things, this draft letter highlighted the close relationship between the Intermediary Company and the various government agencies that would be involved in the Power Plant Project.

51. On February 3, 2015, the Minister of Power, through the Intermediary Company, sent a letter to the Energy Company that formally invited it to submit a proposal for the Power Plant Project. On February 10 and 11, 2015, Berko, the Intermediary Company Executives, and an Energy Company board member met with government officials in Ghana, including Government Official 1, to begin the negotiations for the Power Plant Project.

52. On February 13, 2015, the Intermediary Executive emailed Berko a letter, addressed to the Energy Company, to confirm that the Intermediary Company “will be prepared to partner with [the Energy Company] to provide 200MW power to the Ghanaian grid system,”

and attached a list of the Intermediary Company's proposed duties that included obtaining all governmental permits relating to the plant.

53. By March 2015, the Subsidiary had staffed a Deal Team consisting of Berko, the Subsidiary MD, and four other Subsidiary employees to assist the Energy Company with developing and financing the Power Plant Project. Berko, as the Subsidiary's specialist in Ghana, was the primary Subsidiary employee tasked with assisting the Energy Company in its negotiations with the government of Ghana. Berko was the only Subsidiary employee who spent significant time in Ghana or had any substantial interactions with Ghanaian government officials in connection with the Power Plant Project.

54. From March 2015 through at least July 2015, the Energy Company CEO and the Energy Company CFO (collectively, the "Energy Company Executives"), assisted by the Intermediary Company Executives, the PEP, and Berko engaged with the Ghanaian government, including Government Official 1, in negotiating the terms of the Power Purchase Agreement and obtaining approval for the Power Plant Project. For example:

a. During early April 2015, the Intermediary Company Executives and Berko advised the Energy Company Executives on its negotiations with the Government concerning the electricity tariff (i.e., the fee to be charged to the government for the sale of the electrical power). The Intermediary Executive and Berko liaised with government officials, including Government Official 1, on this issue.

b. On April 17, 2015, the Energy Company CFO emailed Berko concerning, among other things, an issue with the electricity tariff, but added that he "think[s] [Government Official 1] will deal with it." The CFO later noted that "[we] will discuss the way [forward] . . . you may

want to discuss these [outstanding issues] with [the Intermediary Senior Executive] and [the PEP] . . .”

c. On April 29, 2015, Government Official 1 emailed Berko, the Energy Company Executives, the Intermediary Executive, and others about proposed changes to the Power Purchase Agreement. In response, Berko emailed the Energy Company CEO: “Reply to the [Minister of Power] and [government official] and [Intermediary Senior Executive]. I will suggest we keep [Government Official 1] off. [The Intermediary Executive] will take a copy to the President [of Ghana] immediately.”

d. On April 29, 2015, the Intermediary Executive emailed the Energy Company Executives, Berko and others stating: “We have negotiated the attached [Power Purchase Agreement] as best we can. . . . I need an email no later than 10 a.m. my time giving me the final proposal from [the Energy Company].” In response, the Energy Company CFO stated: “The decision will be given during the meeting with the Minister [of Power] in Dubai together with [the Intermediary Senior Executive] and [the PEP].”

e. On May 2, 2015, Government Official 1 emailed the Energy Company Executives, the Intermediary Executive, Berko and others of additional concerns with the Power Plant Project. The Energy Company CEO responded that Government Official 1 “continues to create problems” and “should be taken out of the process.” The Energy Company CFO replied that “it may not be possible to remove him,” adding that the Energy Company, the PEP, and the Intermediary Executive should meet with Minister of Power to discuss any issues.

f. On May 4, 2015, an Energy Company executive sent Berko and the Intermediary Executive a list of equipment for the Power Plant Project, copying the Energy Company CFO.

On May 6, 2015, the Intermediary Executive forwarded the email to Government Official 2, adding that he would “come by [to] see you tomorrow.”

### **Berko Arranges the Bribery Scheme**

55. While involved in these negotiations, and without informing the Subsidiary or the Holding Company, Berko arranged for the Energy Company to funnel money to the Intermediary Company to be used to bribe government officials, including Government Official 1 and Government Official 2, to win approval for the Power Plant Project. The central conspirators in the bribery scheme were Berko, the Intermediary Company Executives, the PEP, and the Energy Company Executives.

56. From at least April 2015 through at least August 2015, Berko, the Intermediary Company Executives, the PEP, and the Energy Company Executives planned, implemented and executed the scheme to bribe government officials. Under the planned scheme, the Energy Company Executives agreed to funnel money to an entity controlled by the Intermediary Company for Berko, the Intermediary Company Executives and/or the PEP to use to bribe key government officials responsible for approving the Power Plant Project. And in some instances, Berko and the Intermediary Executive used their own funds to bribe government officials and then sought reimbursement from the Energy Company.

57. The Energy Company Executives agreed to transfer large blocks of funds at or close to when the government had agreed to significant milestones in the Power Plant Project. These milestones would occur when the Ministry of Power signed the Power Purchase Agreement; when parliament ratified the Power Purchase Agreement; and when the government provided financing (via a government-backed Letter of Credit) for the Power Plant Project. Berko, the Intermediary Company Executives, and/or the PEP would then use the transferred



funds to bribe the government officials who had corruptly helped them achieve these milestones.

58. Emails among Berko, the Intermediary Company Executives, the Energy Company Executives and the PEP discussed in detail how the corrupt scheme worked. For example, on or about April 13, 2015, the Energy Company and the Ministry of Power reached an agreement in principle for the terms of the Power Purchase Agreement. Almost immediately, Berko, the Energy Company Executives and the Intermediary Company Executives began arranging the initial fund transfer for the bribery scheme:

a. On April 14, 2015, the Intermediary Senior Executive emailed Berko an invoice for \$500,000 owed by the Energy Company, along with a schedule for funding the bribery scheme: \$1.5 million when the parties signed the Power Purchase Agreement; \$1.5 million when the Energy Company received a Letter of Credit from the government; and \$1.5 million when the power plant began operations. The invoice contained specific instructions for the funds to be wired to the Ghana account of a shell company controlled by the Intermediary, via a New York correspondent bank.

b. On April 18, 2015, the Energy Company CFO updated Berko and the Intermediary Executive on the negotiations with the government: “Hopefully once we have the green light tomorrow, we’ll send the contract for [the power plant] with all changes.” He added: “[We are] planning to come on Monday with an extended team to have meetings [with the Government Electricity Company] on Tuesday.”

c. On April 19, 2015, the Intermediary Executive again urged Berko and the Energy Company CEO for the \$500,000 in bribe money because “the intended recipient” - [Government Official 1] – “is on my case.” The Intermediary Executive added: “I am going to part with [\$250,000] to [Government Official 1] on the basis that I will receive the same in due course.

This will represent part payment to him as discussed.” The Intermediary Executive then pressed “to have the [\$1.5 million] also here in Ghana no later than end of this week or early part of the following [week]” because “[a]s agreed, certain payments will be made on signing [of the Power Purchase Agreement] and I believe all will be covered if you follow the above guidelines.”

d. The Energy Company CFO quickly agreed to the initial \$500,000 fund transfer for Government Official 1, but expressed some confusion on the schedule. Responding to the Intermediary Executive and Berko, he stated: “I have an invoice for \$500k. That’s what you are referring to right, to be paid within this week? Then . . . [\$1 million] at signing [the Power Purchase Agreement] and [\$1.5 million] at [the signing of the Letter of Credit from the government].” He then voiced concern about the lack of information from Government Official 1: “Why is there no news from [Government Official 1] [about the] extension and meeting on Tuesday, any news you can share?”

e. Replying to the Energy Company CFO and Berko that same day, the Intermediary Executive again emphasized the necessity for the bribe money: “Please proceed as I stated earlier. It is in all our interest to make the necessities [sic] are done now. [\$500,000] now!!!” He then reiterated the proposed schedule: “[\$1 million] on signing [the Power Purchase Agreement] and \$1.5 million on [signing the Letter of Credit]. As stated, I am getting concerned with [Government Official 1] and his resistance. I’ve decided to sort him out this week following recent developments and would advise that you have the same ready for me immediately upon signature.”

f. On Monday, April 20, 2015, the Energy Company’s CFO responded, copying Berko: “Money is ready, [but the Energy Company CEO] wants to talk to [the Intermediary Senior Executive] and [the PEP].” Shortly thereafter, he again emailed the Intermediary

Executive and Berko to confirm the bribes: “[\$500,000] is coming today or tomorrow. [Please] pay [Government Official 1]. Let’s do the meeting on Tuesday and agree on 370 and the rest. Send [the] contract to [government official] and prepare for signing before Friday.”

59. On May 12, 2015, the Energy Company and the Ministry of Power signed the Power Purchase Agreement, triggering another milestone payment. Berko, the Intermediary Executive, and the Energy Company Executives almost immediately arranged the next tranche of funding for the bribe scheme:

a. On May 12, 2015, the Intermediary Senior Executive emailed the Intermediary Executive an invoice for the Energy Company to provide an additional \$1.5 million of funding that was intended to be used to further the bribery scheme.

b. On May 19, 2015, the Intermediary Executive forwarded the invoice for \$1.5 million to the Energy Company CEO for payment. When, or soon after, this invoice was sent, Berko also knew, or was reckless in not knowing, that the funds requested by the Intermediary Company were to be used to bribe government officials to approve the Power Plant Project.

c. On May 22, 2015, the Energy Company wired \$1.5 million to the Intermediary Company. These funds were wired from the Energy Company’s bank account in Turkey, through a New York-based correspondent bank, to a shell company bank account in Ghana under the control of the Intermediary Company. On May 26, 2015, the Energy Company CEO emailed the Intermediary Executive a copy of a bank document confirming the payment. At or soon after the time of this payment, Berko knew that it had been made.

d. On May 28, 2015, the PEP received \$30,000 from the same bank account into which the Energy Company had transferred the \$1.5 million and which the Intermediary Company used to facilitate the bribery scheme.

e. On June 11, 2015, Berko received \$75,000 from the same bank account into which the Energy Company transferred the \$1.5 million and which the Intermediary Company used to facilitate the bribery scheme.

60. On July 15, 2015, Berko emailed Intermediary Employee 1 his bank account information along with fund transfer instructions so that the Intermediary Company could wire him funds for the bribery scheme. Berko's fund transfer instructions specified that funds should be routed through a New York-based correspondent bank to Berko's account at a bank in Ghana.

61. On July 17, 2015, the Ghanaian parliament ratified the Power Purchase Agreement, another of the milestones that triggered additional funding for the bribery scheme. That same day, Intermediary Employee 1 forwarded Berko's bank account information and fund transfer instructions to the Intermediary Executive with the note: "[Berko] payments \$33,800." Berko planned to use these funds to bribe (or to reimburse himself for bribes already made to) government officials, including members of parliament, to advance the Power Plant Project.

62. On July 20, 2015, the Senior Intermediary Executive emailed the Intermediary Executive and Berko apprising them on the progress of their corrupt scheme: "Just a quick update from my side and anything we can do to get some of the outstanding deliverables happening . . . . Caught up with [Government Official 1] and I think we are aligned on how to proceed. He claims to have resolved the [Government Utility Company] issue so no problem from there and I agreed with him to do the needful for the boys there . . . . I presume [Government Official 2] will do most of the required memo's [sic] to get things moving." He then noted that "[the Intermediary Company is] due to issue a milestone invoice on parliamentary ratification" as "Funds [were] urgently required for next crucial steps."

63. At that point, a dispute arose between Berko and the Intermediary Senior

Executive concerning the amount of funding the Energy Company was obligated to provide to the Intermediary Company. In particular, the Intermediary Senior Executive claimed that the Energy Company had agreed to fund \$5 million for the bribery scheme and demanded a \$1.5 million “milestone payment” of that agreed amount. Berko, however, maintained that the Energy Company had only agreed to fund a total of \$3 million, and that no more funds were due. Email communications on July 20, 2015 documented this dispute:

a. Berko, who was then in New York, promptly responded to the Intermediary Senior Executive’s July 20, 2015 email requesting a \$1.5 million milestone payment. First, Berko stated that “a deal will be reached as [the Energy Company] is not in a position to renege as long as I am working on the project,” adding that “we need to also agree my split vis a vis [the Intermediary Company].” Then Berko asserted that all milestone payments due had already been paid: “With regards to invoices there is not one that can be raised at this stage . . . . Based on the schedule [\$1 million] was for signing and [\$1 million] was for parliamentary approval . . . and last will be based on [the receipt of the Letter of Credit].”

b. The Intermediary Senior Executive continued to demand the additional payment. Later that day, he emailed Berko: “[The] deal is for [\$5 million] and hence the historical [\$500,000] + [\$1.5 million] and not [\$1 million] + [\$1 million] . . . . [Therefore] there is [\$1.5 million] due now (parliament) and another [\$1.5 million for the Letter of Credit].” Berko again disputed the amounts owed: “As far as I was concerned [the Energy Company] did not agree to 5 million and they are also saying the same thing. I will chalk down to misunderstanding rather than a devious attempt to screw anyone out of cash. I am doing my best to manage a relationship that will pay everyone millions of dollars and I hope it is appreciated as [it] is not easy to get counterparts that will pay out 2 million without a transaction closing.”

c. Berko knew, or was reckless in not knowing, that the funds discussed in these email communications were to be used to bribe government officials and/or otherwise facilitate the bribe scheme.

64. Berko, the Intermediary Company Executives, and the Energy Company Executives continued to advance their corrupt bribery scheme – often by email – through August 2016. For example:

a. On August 4, 2015, the Intermediary Executive emailed the Energy Company CEO requesting another \$250,000. The Intermediary Executive implied that he intended to use all or part of this money to bribe Government Official 1, whom he noted “is also waiting for the ‘holy rain’ and would appreciate it sooner rather than later.” The Intermediary Executive then forwarded this email to Berko, who responded: “Reply and copy me in saying adding Asante [Berko]. Gmail only!” Berko’s instruction to use his personal email (Gmail) only served to remind his colleagues that his work email was monitored by his firm’s compliance department.

b. On August 5, 2015, the Energy Company CEO replied to Berko and the Intermediary Executive and disputed the payment because “we have discussed but never agreed on the issue” and they need “to delay this topic until finalization of our agreement.”

c. On August 17, 2015, the Intermediary Executive again forwarded to the Energy Company CEO his August 4, 2015 email requesting the \$250,000 in bribe money, stating: “Please find as discussed.” The Energy Company CEO answered, copying Berko, “asking for details of this request” and that he “would check it with [the Energy Company CFO].”

d. On October 19, 2015 the Energy Company transferred \$250,000 to the Intermediary Company. The Energy Company wired the funds from its bank account in Turkey, through a New York-based correspondent bank, to the bank account of Intermediary Employee

1. A copy of the bank transfer information was contemporaneously emailed to the Intermediary Executive.

65. In addition to the payments detailed above, Berko and the Intermediary Executive also bribed Government Official 2, various members of the Ghanaian parliament, as well as several other government officials whose assistance they needed to win approval for the Power Plant Project. Berko, the Intermediary Executive, and the Energy Company CEO discussed these bribes in a series of emails sent between August 28, 2015 and September 2, 2015.

66. For example, on August 28, 2015, the Intermediary Executive invoiced the Energy Company Executives \$210,000 for “substantial payments made” in furtherance of the bribery scheme and asked that they “kindly perform your magic.” These payments included:

- a. a \$10,000 payment to Government Official 2;
- b. three payments of \$20,000 each (\$60,000 in total) to various employees at the Ministry of Power, the Government Utility Company, and the Government Power Grid Company;
- c. \$25,000 to the “power team” (i.e., employees of various government agencies responsible for power related projects);
- d. \$30,000 for members of the Ghanaian parliament;
- e. \$35,000 for Berko; and
- f. \$45,000 for employees of various government agencies that visited Turkey to assess the Power Plant Project.

67. On September 1, 2015, the Energy Company CEO replied, copying Berko, approving the payments for Government Official 2 and Berko and rejecting others before offering \$105,000 to “conclude all outstanding payments.” The Intermediary Executive then proceeded to justify the original invoice:

a. “[Government Utility Company employees] have so far received 120K, 100K from u and 20K from Asante [Berko]. Each inspector that visited Turkey was given 5K on top of the flight and accommodation. Total expenditure was over 45K.”

b. “The [Ministry of Power] girls have been promised 30K in total . . . That’s 10k each when we get [the Letter of Credit]. They have received 20k so far. These ladies are most vital to our communication and information acquisition.”

c. “Parliament was all paid by Asante [Berko]. He actually added another 10k on his last visit as he had promised this to the guys. The whole 30k requested is due him. I know he paid more than that. (Approximately 46k that I know of!).”

d. “The power team was very receptive after I started agreeing payments with them. The payments were staggered and settled fully when we had a contract agreed. They were 8 in all . . . Average payment was only 3k! The important ones like [the Government Electricity Company] and the [Ministry of Power] received 5k.”

e. [Government Power Grid Company] . . . . The number of times we have visited them and the number of engineers we have interacted with!! Each time they were sorted out to make sure we got the correct information and assistance. Why would even think 5k?”

68. The Intermediary Executive concluded by demanding \$250,000, which “will put us on even ground.” On September 2, 2015, the Energy Company CEO requested that Berko mediate, stating that he would “follow exactly what Asante will comment [on the Intermediary Executive’s email].” In turn, Berko proposed “150,000 to 200,000 to settle and close this matter.” When the Energy Company CEO countered with a \$140,000 offer, Berko responded “Matter settled.”

69. On September 4, 2015, the Energy Company transferred \$140,000 to the



Intermediary Company. The Energy Company wired these funds from its bank account in Turkey, through a correspondent bank account in New York, to the bank account of Intermediary Employee 1.

70. As a result of these and other communications, and his personal involvement in the scheme, Berko knew, or was reckless in not knowing, that all or most of the funds paid to the Intermediary Company by the Energy Company were used for bribing, or reimbursing bribes already paid to, Ghanaian government officials in return for their approval of the Power Plant Project.

**Additional Payments Made by the Energy Company to Advance the Bribery Scheme**

71. By at least July 2015, Berko knew that the Intermediary Company Executives had enlisted Intermediary Employee 1 to assist them in the bribery scheme. For example, on September 1, 2015, when Berko, the Intermediary Executive, and the Energy Company CEO debated how much of the bribe payments made by the Intermediary Company should be reimbursed to the Intermediary Company, the Intermediary Executive requested “a little extra [to] put a smile on [Intermediary Employee 1’s] face for his contributions thus far as well.”

72. Between September 2015 and October 2015, the Energy Company transferred at least \$900,000 to the Intermediary Company. On information and belief, these payments were made to reimburse the Intermediary Company for bribes it had paid; to pay additional bribes; and/or to otherwise facilitate the bribery scheme. The Energy Company wired these funds from its bank account in Turkey, through a correspondent bank account in New York, to the bank account of Intermediary Employee 1. These payments included:

a. A September 4, 2015 payment of \$140,000 from the Energy Company to the bank account of Intermediary Employee 1 (as described in paragraph 69 above).

b. An October 9, 2015 payment of \$180,000 from the Energy Company to the bank account of Intermediary Employee 1.

c. An October 19, 2015 payment of \$250,000 from the Energy Company to the bank account of Intermediary Employee 1 (as described in paragraph 64.d above).

d. A December 21, 2015 payment of \$130,000 from the Energy Company to the bank account of Intermediary Employee 1.

e. A February 25, 2016 payment of \$200,000 from the Energy Company to the bank account of Intermediary Employee 1.

**Berko and the Energy Company Planned to Pay Additional Bribes in the Future**

73. During October 2015, the parent company of the Energy Company contracted to pay the Intermediary Company up to \$42 million over five years for various purported services, none of which justified the \$42 million fee. Rather, the purported services were a pretext for the true purpose of the fee: to allow the Intermediary Company to pay or reimburse bribes in order to obtain additional regulatory benefits (including a tax exemption waiver worth millions of dollars and a government-backed letter of credit) for the Energy Company. Berko knew, or was reckless in not knowing, that for the Energy Company to obtain the specified regulatory benefits, the Intermediary Company would likely need to bribe government officials. And in fact Berko and the Energy Company Executives drafted the contract in a way that encouraged the Intermediary Company to bribe government officials: payments to the Intermediary Company were conditioned on it actually obtaining the sought-after governmental concessions. Thus, the Intermediary Company would have to obtain these regulatory benefits for the Energy Company before it could collect any part of the \$42 million.

74. Berko played a central role in negotiating the contract, which he kept hidden from

the Subsidiary. From at least September 2015 to October 2015, exclusively using his personal email account, he reviewed, commented on, and edited various drafts of the agreement including as follows:

a. On September 7, 2015, the Intermediary Senior Executive emailed the Energy Company CEO, copying the Intermediary Executive and Berko, requesting that he sign the attached contract. The Energy Company CEO, however, made additional edits to the contract, adding that “we are fed up of waiting for satisfaction of the [conditions precedent] in the [contract].”

b. On September 8, 2015, Berko emailed the Energy Company CEO and the Intermediary Executive adding his own recommendations about the terms of the contract.

c. On September 11, 2015, legal counsel for the Energy Company emailed legal counsel for the Intermediary Company to confirm that the proposed service fees in the contract would be reduced if the Energy Company did not receive the tax exemption or the Letter of Credit. When the Intermediary Company rejected any adjustment to the fees, the Energy Company CEO forwarded the email to Berko and voiced his displeasure. Berko responded to the Energy Company CEO, copying the Intermediary Executive: “I do not understand the point of renegotiation [and] it should not even be brought up. Basically if you do not get the [Letter of Credit] or tax waiver this contract is null and void.”

d. Discussions on the contract continued throughout September 2015, with Berko included on many of the communications. On September 28, 2015, after numerous communications concerning the terms of the contract, the Intermediary Executive provided comments on the most recent draft of the contract to the Energy Company CEO and Berko and asked that they forward the final versions for signature. The next day, the Energy Company

CEO emailed the Intermediary Executive, the Intermediary Senior Executive, and Berko the final version for signature. On or about September 29, 2015, the Intermediary Executive signed the contract and emailed a copy to Berko and the Energy Company CEO.

e. On or about September 29, 2015, the Energy Company CEO emailed the Intermediary Executive and Berko: “Now that the contract nightmare is over we would like to concentrate all our efforts for the [Letter of Credit] together with you and Asante . . . . We are coming with [another Energy Company employee] on Monday and hopefully Asante will be there as well.” On October 1, 2015, the Energy Company CEO emailed Berko and the Intermediary Company Executive the contract with his signature on behalf of the Energy Company’s parent company.

75. Despite agreeing to the contract, the relationship between the Energy Company and the Intermediary Company continued to deteriorate. On July 11, 2016, the Intermediary Executive emailed the Intermediary Senior Executive and the PEP two “Final invoices,” one for \$2 million and the second for \$1 million, to be sent to the Energy Company. On September 8, 2016, the Energy Company wired \$1 million to the Intermediary Company as payment for the second invoice.

**Berko Sought to Circumvent the Legal and  
Compliance Controls at the Subsidiary and the Holding Company**

76. At all times, Berko acted to keep the bribery scheme hidden from legal and compliance personnel at the Subsidiary and the Holding Company by circumventing their internal controls, including but not limited to their anti-bribery and other anti-corruption policies. For example:

a. Berko circumvented the anti-bribery policy, which prohibited employees from “providing anything of value to obtain or retain business” to, among others, “public officials,” “employees of state-owned enterprises,” and “clients/customers.”

b. Berko circumvented the policy on Engaging Intermediaries/Finders, which required employees to disclose to compliance personnel any payments to intermediaries or to politically exposed persons relating to transactions requiring Holding Company committee approval. Berko, who received a copy of the policy knew, or was reckless in not knowing, that the Intermediary Company and the PEP should have been disclosed to compliance personnel under this policy, but deliberately kept their involvement hidden.

c. Berko circumvented his employer’s policy on email use, which required employees to use only company-approved email and text messaging for any work related business. Berko knew that compliance personnel could review his email and other documents as part of their due diligence on the Power Plant Project. To evade such scrutiny of his conduct, Berko deliberately used his personal email when facilitating the bribery scheme.

d. Berko circumvented his employer’s Policy on Outside Activities, which required firm approval for any compensated activities "before engaging in any Outside Activity," "for which the individual is or anticipates being compensated." Berko, who received \$2 million from the Energy Company for facilitating the bribery scheme (while he was employed by the Subsidiary) purposefully hid these payments from the Subsidiary to avoid detection of the bribery scheme.

77. Berko withheld essential information from a critical document used by the Holding Company to evaluate the Power Plant Project. This document, called a Posting Memo, was typically prepared for most significant investment banking transactions and was routinely

provided to the appropriate Holding Company committee so it could assess the transactions. During October 2015, the Deal Team prepared a Posting Memo concerning the Power Plant Project for a Committee of the Holding Company to make an interim evaluation of the proposed transaction. Berko knew, or was reckless in not knowing, that this Committee consisted of senior members of the Subsidiary and the Holding Company, at least some of whom were based in New York.

78. On or about October 1, 2015, a Deal Team member prepared an initial draft of the Power Plant Project Posting Memo and circulated it among the other members of the Deal Team and to other departments within the Subsidiary. Each Deal Team member was expected to review the Posting Memo and provide input according to their knowledge or expertise.

79. The Posting Memo contained a section entitled “Intermediaries and Finders” that asked whether (1) the Subsidiary, its client or other person involved in the transaction had compensated an intermediary; and (2) whether the Subsidiary, its client or other person engaged or compensated an advisor with a familial or other close relationship to a current or former government official or employee involved in the transaction. The memo answered “No” to both questions. The Deal Team member who authored the draft did not know about the involvement of the PEP in the Power Plant Project and relied upon the Deal Team members familiar with the Intermediary Company – i.e. Berko – to add any necessary disclosure about the role of the PEP and the Intermediary Company in the deal to the Posting Memo.

80. Berko, who reviewed both drafts and the final version of the Posting Memo, purposely withheld the information that (i) the Subsidiary’s client (the Energy Company) had compensated a third party (the Intermediary Company) to provide typical intermediary services (i.e. advising on and/or obtaining permits and licenses from the government); and (ii) he knew or

was reckless in not knowing or should have known based on all the circumstances that the PEP was closely associated with the Intermediary Company. Berko withheld this information when he reviewed the Posting Memo because he knew that if he disclosed the role of the Intermediary Company or the PEP, the Holding Company would order further diligence into the Power Plant Project and possibly discover the bribery scheme.

**Berko Tried to Mislead Compliance Personnel  
About the Involvement of the Intermediary Company**

81. On October 21, 2015, after reviewing the Posting Memo, a Committee of the Holding Company provided interim approval for the Power Plant Project. Even so, to further assess the potential reputational risks and other concerns associated with the Project, the Committee designated the deal as “significant and complex” and required additional due diligence before any final approval.

82. During March 2016, as part of the enhanced due diligence required by the Holding Company Committee, compliance personnel conducted a review of Berko’s work emails and uncovered the involvement of the Intermediary Company.

83. At first, Berko downplayed the Intermediary Company’s role to Subsidiary compliance personnel, stating that “[i]t is a company that [the Energy Company] was speaking to initially to outsource some local work,” and asserting that it “had not finalized any arrangement and I am not sure where the company’s current role is or will be.”

84. In or about April 2016, compliance personnel referred the matter to the Subsidiary’s legal department, which convened a team of both legal and compliance personnel to investigate the matter further.

85. During May 2016, at the direction of legal and compliance personnel, the Deal Team asked the Energy Company to clarify the Intermediary Company’s role and to identify all

payments it had made to the Intermediary Company. The Energy Company CEO stated that the Intermediary Company had initially provided local support (e.g., responses from government departments, visas, office space and accommodation) for which it had been had paid about \$300,000, but failed to disclose the true role of the Intermediary Company – facilitating the bribery scheme. He further added the Energy Company no longer needed the Intermediary Company’s services and now anticipated making a final \$200,000 to \$300,000 “walk away” settlement payment, but again failed to disclose that the Energy Company had contracted to pay the Intermediary Company up to \$42 million to obtain additional regulatory benefits.

86. Berko never disclosed to compliance personnel the actual role of the Intermediary Company, the Energy Company or his own role in arranging the bribery scheme. Instead, Berko assisted the Energy Company CEO by drafting false and misleading responses to the questions posed by the compliance personnel.

87. For example, on May 3, 2016, a Deal Team member, at the direction of compliance personnel, emailed the Energy Company CEO the following question concerning the Intermediary Company:

Could you please detail why you contemplated keeping the [Intermediary Company] as a subcontractor when they were no longer part of the [joint venture] plan in Mar-2016? Could you please provide some colour on why you ultimately decided not to use [the Intermediary Company]?

88. On May 4, 2016, the Energy Company CEO drafted a response that he forwarded to Berko (using Berko’s personal email) for his review. On May 5, 2016, Berko responded to the Energy Company CEO, adding the language (italicized below) to the Energy Company CEO’s proposed draft:

*They were quite useful to us last year. They were crucial in going around to the responses from government departments, arranging temporary work entry for our engineers and workers, environmental assessment, providing office space and*



*accommodation. We also needed them to get temporary fuel storage and to arrange the local logistics in bringing fuel to the country. The fuel business can only be done with local companies that are licensed to so [sic] and they introduced us to a company that could help. However as we got localized in Accra, our team lead by our Project Manager in Ghana started to accumulate local relationship and therefore need for such local services became obsolete [sic] for us. And [the Subsidiary] was very against us doing business with their fuel partner as they were linked to the brother of [a very senior Ghanaian government official]. We felt confident as time passes by to sort things out with our own team on the ground and therefore substantially started to decrease the services requested from [the Intermediary Company]. Now the relationship has broken down as they want more work which we are not allowed by our financing bank to give out without a tender and we also have lost trust in the partnership. We informed them in March that we will like to terminate business and are now at the stage to finalize a settlement with them. (emphasis added).*

89. Upon receiving Berko's proposed edits, the Energy Company CEO responded that he "was not happy to put anything [about the brother of the very senior Ghanaian government official]. . . . What if [the Subsidiary] wants to me to show the termination documentation? That's why I took out the last sentence.... [please] comment." Shortly thereafter, the Energy Company CEO answered the Subsidiary incorporating most of the language that Berko had suggested (but excluding the sentence concerning the brother of the very senior Ghanaian government official).

90. Despite Berko's efforts, the Deal Team continued to question the Energy Company about the Intermediary Company's services and payments. In late May 2016, the Energy Company CEO refused to answer any further questions concerning the Intermediary Company, essentially ending the Energy Company's cooperation with the Subsidiary. By August 2016, compliance personnel effectively terminated the Subsidiary's involvement in the Power Plant Project.

### **Berko's Ongoing Relationship with the Energy Company**

91. On December 7, 2016, Berko tendered his resignation to the Subsidiary, which became effective on or about March 6, 2017. Berko continued to assist the Energy Company in

the Power Plant Project after his resignation from the Subsidiary. Between September 2016 and February 2017, the Energy Company paid Berko \$2 million as compensation for arranging the bribery scheme: \$500,000 on September 28, 2016; \$500,000 on December 7, 2016; \$500,000 on December 20, 2016; and \$500,000 on February 14, 2017. The Energy Company wired these funds from its bank account in Turkey through a correspondent bank in New York to Berko's bank account in Ghana. Berko never disclosed to the Subsidiary either his ongoing work for, or his compensation from, the Energy Company.

92. The Power Plant Project began commercial operations in 2017.

### **FIRST CLAIM**

#### **Berko Violated the Anti-Bribery Provisions of the Foreign Corrupt Practices Act Exchange Act Section 30A, 15 U.S.C. §78dd-1**

93. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 92 above as if set forth fully herein.

94. By engaging in the corrupt transactions described above, Berko, who was an employee and/or agent of the Holding Company, a United States issuer, made use of the mails or other means or instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of, any money, offer, gift, promise to give, or authorization of the giving of anything of value to foreign officials for the purpose of influencing their acts or decisions in their official capacity, inducing them to do or omit to do any action in violation of their lawful duties, securing an improper advantage, or inducing such foreign officials to use their influence with foreign governments or instrumentalities thereof to affect or influence any act or decision of such government or instrumentality, in order to assist the Holding Company in obtaining or retaining business.

**SECOND CLAIM**

**Berko Aided and Abetted the Holding Company's Violations of the Anti-Bribery Provisions of the Foreign Corrupt Practices Act  
Exchange Act Section 30A, 15 U.S.C. §78dd-1**

95. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 92 above as if set forth fully herein.

96. The Holding Company violated Section 30A of the Exchange Act when it made use of the mails or other means or instrumentalities of interstate commerce corruptly in furtherance of offers, payments, promises to pay, or authorizations of the payments of, any money, offer, gift, promise to give, or authorizations of the giving of anything of value to foreign officials for the purposes of influencing their acts or decisions in their official capacity, inducing them to do or omit to do any action in violation of their lawful duties, securing an improper advantage, or inducing such foreign officials to use their influence with foreign governments or instrumentalities thereof to affect or influence any act or decision of such government or instrumentality in order to assist the Holding Company in obtaining or retaining business while engaging in the corrupt transactions described above.

97. Through his conduct described above, Berko knowingly or recklessly provided substantial assistance to the Holding Company in its violations of Section 30A of the Exchange Act.

98. By reason of the foregoing, Berko violated Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)] and Section 30A of the Exchange Act [15 U.S.C. §78dd-1] by aiding and abetting the Holding Company's violations of Section 30A of the Exchange Act [15 U.S.C. §78dd-1].

**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests a Final Judgment that:

- A. Permanently restrains and enjoins Berko and each of his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of: Exchange Act Section 30A [15 U.S.C. §78dd-1];
- B. Requires Berko to disgorge his ill-gotten gains, plus pre-judgment interest;
- C. Orders Berko to pay appropriate civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)];
- D. Retains jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and,
- E. Grants such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

The Commission hereby demands a trial by jury on all claims so triable.

Dated: April 13, 2020

On behalf of the Commission,

//s// Alicia Reed

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