

April 2, 2020

VIA ELECTRONIC MAIL (FARA.PUBLIC@USDOJ.GOV)

Mr. Brandon L. Van Grack
Chief, FARA Unit
Counterintelligence and Export Control Section
National Security Division
U.S. Department of Justice
175 N Street NE, Constitution Square Building Three—Room 1.100
Washington, DC 20002

Re: Comment on Paperwork Reduction Act Notice (Forms NSD-2 to NSD-6)

Dear Mr. Van Grack:

We are writing in response to the Department of Justice’s Paperwork Reduction Act notice related to disclosure forms filed under the Foreign Agents Registration Act (“FARA”).¹ Our comments are made in a personal capacity as legal practitioners and not on behalf of any client or any other person.

We propose the following changes to the forms, which we believe will improve FARA’s disclosure regime:

- Alter the Supplemental Statement (Form NSD-2) and Short-Form Registration Statement (Form NSD-6) to provide for redaction of personal residential information. Current FARA forms require short-form registrants, as well as the officers/directors/partners of long-form registrants, to list their residential addresses. This is an unnecessary intrusion into privacy that can result in harassment of these individuals. Although FARA’s statutory text requires the continued submission of this residential address information to the government, the Department should use its authority to promulgate disclosure forms to allow for the redaction of residential addresses from the general public’s view. This approach will strike the proper balance between accomplishing the public policy objectives of collecting FARA-related information and preventing unnecessary harassment.
- Clarify that certain questions on the Supplemental Statement (Form NSD-2) and on Exhibit B to Registration Statement (Form NSD-4) apply only to FARA-registrable activities. Certain questions on FARA forms contain wording that is vague as to whether those questions cover only FARA-registrable activities. For example,

¹ 85 Fed. Reg. 6973-6978 (Feb. 6, 2020).

Question #11 on Exhibit B to the Registration Statement broadly asks: “Prior to the date of registration for this foreign principal did the registrant engage in any registrable activities, such as political activities, for this foreign principal?” Similarly, Section IV of the Supplemental Statement solicits information regarding money, contributions, or things of value received by or in the interests of any foreign principal, as well as disbursements made to or on behalf of any foreign principal. The Department’s staff has previously given informal guidance that these questions only pertain to FARA-registrable activity. We suggest that the Department revise the wording of its forms to clarify that these questions require information only about FARA-registrable activities.

- Provide guidance on the proper use of the Amendment to Registration Statement (Form NSD-5). Filers regularly update information related to their FARA registration by submitting Supplemental Statements. It is not clear, based on prior informal guidance from the Department’s staff, when updated information should be submitted through an Amendment to Registration Statement form rather than a Supplemental Statement form. We recommend that the Department issue more detailed instructions on this topic.
- Clarify the scope of required disclosures of political contributions on Supplemental Statements (Form NSD-2). By its plain language, Question #15(c) on the Supplemental Statement form reasonably may be construed to require disclosures of political contributions only by the primary registrant, and not by individual Short Form filers who are not required under FARA regulations to file Supplemental Statements. The FARA Unit has indicated, however, that the primary registrant also must include any political contributions during the reporting period by individuals who filed Short Forms.
- Require updates on Supplemental Statements (Form NSD-2) only for partners who previously filed Short Form Registrations. National and multinational law firms have many partners located in multiple offices who are not associated with any activities of their firm on behalf of the foreign principal for which registration was effected, and who are not otherwise engaged in any FARA-registrable work. We recommend that the Department clarify that updates are required only with respect to changes concerning the status of partners who previously filed Short Form Registration Statements.

We appreciate the efforts of the FARA Unit to administer the Department’s enforcement responsibilities utilizing the extant forms. But those forms are outdated in certain material respects, and the Attorney General, under 22 U.S.C. § 620, has the legal authority to amend the forms as he “may deem necessary” to discharge those enforcement responsibilities. As set forth above, we urge the Department to refine the forms in ways that protect privacy, promote transparency, and improve clarity, particularly in an era of increased FARA enforcement and scrutiny of FARA filers.

We welcome the opportunity to discuss our recommendations with you or with personnel in the FARA Unit. If we can be of further assistance, please contact David H. Laufman at (202) 800-2477 or dlaufman@wiggins.com, or Matthew T. Sanderson at (202) 862-5046 or msanderson@capdale.com.

Respectfully Submitted,

/s/

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