



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

September 13, 2021

Via Email

[name and contact information]

Re: [U.S. firm]
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name]:

We write in response to your letter dated August 17, 2021 (“August 17 Letter”), requesting an advisory opinion under 28 C.F.R. § 5.2, with respect to your client, [U.S. firm] possible obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), in connection with political outreach that [U.S. firm] proposes to conduct.

You contend that [U.S. firm’s] proposed political outreach does not require registration under FARA because [U.S. firm] does not have an agency relationship with a foreign principal. Alternatively, you argue that even if [U.S. firm] has an agency relationship with a foreign principal, it is entitled to exemption from FARA’s registration obligations pursuant to Section 613(d)(2) of the Act (“the commercial exemption”).

Based on your specific representations in the August 17 Letter, we do not contest your assertion that [U.S. firm] is not obligated to register for the activities described in your letter because it does not have an agency relationship with a foreign principal.

I. Background

According to your letter, [U.S. firm] is a U.S. private equity firm, and all of its “investment decisions are made by the [U.S. firm] Committee, which consists of six [U.S. firm] partners, each of whom hold U.S. citizenship.” August 17 Letter at 1.

You assert that “[t]o support its [particular] investment platform, [U.S. firm] would like [foreign company] to *become* an anchor investor.” *Id.* at 2 (emphasis in original). You represent that “[foreign company] is *not a current* investor of [U.S. firm] nor does it otherwise direct, control or influence [U.S. firm’s] activities. [Foreign company] is located in [foreign city, foreign country], and is 100% owned by [a government-owned sovereign wealth fund].” *Id.* (emphasis in original). In addition, “[t]he CEO of [foreign company] is [name] who is also a member of [council in foreign country].” *Id.*

You further assert that “[t]o help persuade [foreign company] to become an anchor investor in [U.S. firm], [U.S. firm] plans to engage in outreach to the U.S. Administration,

including outreach to the White House and potentially to the U.S. State Department and other U.S. government agencies.” *Id.* at 2. Specifically, “[U.S. firm’s] outreach would involve educating the Administration about [U.S. firm], [U.S. firm’s] proposed [type of] investments in the United States and abroad.” *Id.* You represent that “[t]he ultimate goal of this outreach would be to encourage senior U.S. Government official(s) to reach out to the [foreign country] Government and encourage them to support [and] invest in [U.S. firm’s] fund.” *Id.*

II. FARA Analysis

FARA’s purpose is to inform the American public of the activities of agents working for foreign principals intended to influence U.S. Government officials and/or the American public with reference to the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a foreign country or foreign political party. The term “foreign principal” is defined as including “a government of a foreign country and a foreign political party . . . and a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.” 22 U.S.C. § 611(b). A person representing a foreign principal is “an agent of a foreign principal” who must register under FARA if it acts “at the order, request, or under the direction or control of a foreign principal” and engages in certain specified activities within the United States. Among those activities requiring registration are engaging in “political activities” or “represent[ing] the interests of such foreign principal before any agency or official of the Government of the United States.” 22 U.S.C. § 611(c)(1)(i) and (iii).

You acknowledge that [foreign company] would be a foreign principal were there an agency relationship, but assert that “[U.S. firm] is not acting as an ‘agent’ of [foreign company] or any other foreign principal with respect to its proposed activity,” and, thus, is not required to register under FARA. August 17 Letter at 3.

In support, you submit that “[t]his is an initiative undertaken solely by [U.S. firm]”; and that [foreign company] will not “even be made aware of this political outreach by [U.S. firm].” *Id.* You represent that “[foreign company] is not a current investor of [U.S. firm] nor does it otherwise direct or control [U.S. firm’s] activities.” *Id.* Rather, you assert that “[U.S. firm’s] investment decisions are all driven by the [U.S. firm] Investment Committee.” *Id.* You explain that “[t]o persuade [foreign company] to become an anchor investor in [U.S. firm], [U.S. firm] – on its own behalf and for its own interests – intends to lobby the Administration to wield its influence and encourage [foreign company] to invest in [U.S. firm].” *Id.*

You emphasize that “the outreach would be directed, controlled, financed, and subsidized directly and entirely by [U.S. firm] itself,” and that this “initiative is undertaken solely by [U.S. firm], and neither [foreign company], [government-owned sovereign wealth fund] or [foreign country] is even aware of this initiative by [U.S. firm].” *Id.* at 2. Based on this representation and others in your letter, we understand that [foreign company], [government-owned sovereign wealth fund] and [foreign country] are not aware of [U.S. firm’s] proposed activities, and that neither [foreign company] nor any other foreign principal is directing, controlling, or funding [U.S. firm’s] outreach in the United States. On this basis, we do not contest your assertion that

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[U.S. firm] does not have an agency relationship with [foreign company] or another foreign principal with regard to the proposed activities described in your letter.¹

III. Conclusion

Based on the representations in your August 17 Letter, [U.S. firm] is not obligated to register under FARA at this time. Please note that this advisory opinion is based entirely upon the facts set out in your August 17 Letter. Our determination must be revisited in the event that any of the facts or circumstances described in the August 17 Letter change. For example, should [U.S. firm's] relationship with [foreign company] or any other foreign principal change in a way such that it may have an agency relationship with that foreign principal, [U.S. firm] may have a possible obligation to register. If any of the facts change, [U.S. firm] should contact the FARA Unit immediately so that we may reexamine whether it has an obligation to register.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [attorney name] by telephone at 202-233-0776, or by email at FARA.Public@usdoj.gov if you have any questions.

Sincerely,

Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief
FARA Unit

¹ Note that the proposed activities described in your August 17 Letter constitute political activities. The Act defines “political activities” as “any activity that the person engaging in believes will, or that the person intends to, in any way, influence any agency or official of the Government of the United States or any section of the public within the United States with reference to . . . the political or public interests, policies, or relations of a government of a foreign country or foreign political party.” 22 U.S.C. § 611(o). Because we do not contest your assertion that there is not an agency relationship, we do not need to reach the applicability of the commercial exemption that you argue would apply if there were an agency relationship.