

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Monday, July 10, 2023 12:59 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle  
**Subject:** FW: Question on Item 5 Revenue

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**From:** Musick, Vesselina <vmusick@ftc.gov>  
**Sent:** Monday, July 10, 2023 12:58:53 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Question on Item 5 Revenue

Confirmed.

Kind regards.

**Vesselina Musick**

Attorney | Federal Trade Commission | Premerger Notification Office  
Direct +1 202.326.2307 | Email: [vmusick@ftc.gov](mailto:vmusick@ftc.gov) | [www.ftc.gov](http://www.ftc.gov)

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**From:** [REDACTED]  
**Sent:** Friday, July 7, 2023 10:00:29 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Cc:** [REDACTED]  
**Subject:** Question on Item 5 Revenue

Dear PNO,

We hope you all enjoyed the holiday weekend.

We have a revenue recognition question regarding Item 5(a). Our client is selling several of its foreign entities that are engaged in the leasing of movable assets, some of which are located in the United States and leased to U.S. customers. Based on your guidance, these assets are considered US assets based on where they are registered. It is our understanding, based on recent PNO guidance, that for Item 5 purposes, revenue derived from the leasing of these movable assets is considered revenue from a "service" and therefore the location of where the leasing services are conducted or the revenue is booked are determinative rather than the location of the customer and movable assets. In the present example, the entities in question (including any entities they control) are not U.S. entities and are not located in the U.S. The lease contracts are negotiated and signed outside the U.S. and the leasing revenue is booked through these non-U.S. entities. No leasing revenue is booked through a U.S. entity and no services are offered or performed in the US. Per Informal Interpretation Letter #1403009, it is our understanding that the location of the customer would be irrelevant for reporting leasing revenue under Item 5(a) despite the fact that the leased items are located in the U.S. and otherwise considered U.S. assets for HSR reporting purposes. Therefore, we believe that no revenue from the leasing of these movable assets to U.S. customers should be reported in Item 5.

Can you please confirm that based on the fact pattern described no leasing revenue is required to be reported in Item 5(a)?

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]