

## Sheinberg, Samuel I.

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**From:** [REDACTED]  
**Sent:** Tuesday, September 18, 2018 10:47 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora  
**Subject:** FW: Financials and Item 5 Data (18 Months Rule)

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**From:** [REDACTED]  
**Sent:** Tuesday, September 18, 2018 10:46:28 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** Shaffer, Kristin  
**Cc:** [REDACTED]  
**Subject:** RE: Financials and Item 5 Data (18 Months Rule)

Thanks, Kristin.

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**From:** Shaffer, Kristin [mailto:kshaffer@ftc.gov]  
**Sent:** Monday, September 17, 2018 09:58  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Financials and Item 5 Data (18 Months Rule)

[REDACTED]

Yes, Buyer can use FY17 revenue for Item 5, but it should submit its FY18 financials for Item 4 (please flag this in an endnote).

Best regards,  
Kristin

**Kristin Shaffer**  
Attorney  
Premerger Notification Office  
Federal Trade Commission  
202-326-3434 | [kshaffer@ftc.gov](mailto:kshaffer@ftc.gov)

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**From:** [REDACTED]  
**Sent:** Thursday, September 13, 2018 4:59:18 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Subject:** Financials and Item 5 Data (18 Months Rule)

Hello HSRHelp,

Buyer issued its financial statements for its most recent fiscal year ("FY18") some time ago. It has not yet, however, compiled its Item 5 data for that fiscal year. It is now preparing a HSR filing. Can it use its revenue data from the previous fiscal year ("FY17") because that fiscal year end (and Item 5 data) is not more than 18 months old? Or does Buyer need to compile Item 5 data for "FY18" before filing?

I'm looking at opinion 189 in the Premerger Manual. It says "financial statements (and the NAICS Code breakdown of that financial data) are not available" and "when the reporting person's financial statements and NAICS data" are not available, but doesn't address when one of those is available (financials) but the other is not yet available (Item 5 data) and we're within the 18-month period.

Thanks,

