Sheinberg, Samuel I.

From: [redacted]
Sent: Wednesday, October 09, 2019 4:34 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: US Sales Question

From: Carson, Timothy
Sent: Wednesday, October 9, 2019 4:33:38 PM (UTC-05:00) Eastern Time (US & Canada)
To: [redacted]
Cc: [redacted]
Subject: RE: US Sales Question

Below are responses to your numbered questions:

1. Agree
2. Agree
3. Agree it is reasonable to include in the aggregate sales in or into the US 100% of the revenue, even if the flight is a layover with a final destination outside of the US.

From: [redacted]
Sent: Wednesday, October 9, 2019 11:07:33 AM (UTC-05:00) Eastern Time (US & Canada)
To: [redacted]
Cc: [redacted]
Subject: US Sales Question

Hi everyone at the PNO,

We have a question about calculating the sales of a Foreign Issuer in or into the US for purposes of 802.51.

The issuer in the potential transaction is an airline company. Our understanding is that it does not own any of the aircraft it uses. Like many airlines, it leases the aircraft. We have been struggling to find clear guidance on how to calculate an airline's sales in or into the US in such circumstances.

Informal Interpretation 1502001 indicates that if an airline has aircraft registered outside of the US, then the airline's sales in or into the US are the revenues from every flight for those aircraft that the airline operates originating in the US or entering the US.

The interpretation leads me to a number of questions:

1. Does it matter if the aircraft are leased and not owned by the airline? I believe the answer is likely, no.
2. Would you include the same revenues for US registered aircraft? I believe the answer is yes. It would not seem to make sense to include revenue of a US registered aircraft if that aircraft has not flown to or from the US in the previous fiscal year.
3. For flights arriving in the US, do you include 100% of the revenue even if the flight is a layover with a final destination outside of the US? I do not know what the PNO's position is on this point, but it would be extremely burdensome for an airline to try to determine what the revenue is from customers on such flights who remain on-board versus those whose final destination is in the US.

Given the above questions, is it the PNO's current position that for a Foreign Issuer airline, the correct revenue to consider for purposes of 802.51 is all revenue from flights originating in the US or that arrive in the US, regardless of: (1) whether aircraft are owned or leased; (2) where the aircraft are registered – which goes to the value of the Issuer's US assets; and, (3) whether the flights arriving in the US are final destinations or are lay-overs continuing outside of the US?

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