Question 255.33

Question: Do non-U.S. investors need to be counted under Rule 501(e) in calculating whether an issuer has exceeded the limit of 35 non-accredited investors in ~~a~~any 90-calendar-day period for all offerings by the issuer made in reliance on Rule 506(b) ~~offering~~ under Regulation D?

Answer: As explained in Rule 500(g), if the foreign offering meets the safe harbor conditions set forth in Regulation S relating to offerings made outside the United States, then the foreign offering is not required to comply with the conditions of Regulation D, including those limiting the number of investors. But if the issuer elects to rely on Regulation D for offers and sales to non-U.S. investors, the issuer must count the non-U.S. investors in calculating whether it meets the conditions of Regulation D limiting the number of investors. [~~Jan. 26~~March 12~~, 2009~~*2025]