

THOMAS C. BLANK  
(419) 321-1394  
tblank@shumaker.com

April 15, 2020

**SENT BY ELECTRONIC MAIL:** [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Ms. Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-0609

RE: File No: S7-25-19; Amending the Definition of “Accredited Investor”

Dear Ms. Countryman:

I am General Counsel to the Association of Trust Organizations, Inc. (referred to herein at times as “the Association” or “ATO”), a trade group of trust companies located throughout the country. Most of the trust companies (“ITCs”) that are members of the Association are non-depository trust companies that do not make loans. While ATO does have a number of members that have assets under management measuring well into the billions of dollars, the typical member of ATO has assets under management of between \$250,000,000 and \$750,000,000 and generally would be considered a small business.

I am writing on behalf of the Association, and at the direction of its Board, to support the amendment of the definition of “Accredited Investor”. However, as expressed below, ATO would respectfully request that the proposed amendment be expanded to treat trust companies in a manner comparable to that proposed for family offices and registered investment advisers, entities that have certain similarities to trust companies in this regard.

ATO members serve as trustees and in other true fiduciary capacities and provide investment advice to their clients. All trust companies are regulated either by the Office of the Comptroller of the Currency, if nationally chartered, or by the agencies that regulate banking institutions in the various states. As such, trust companies typically are examined on an annual basis by their regulatory agency. Such oversight and examination helps to provide confidence in ITCs and protect the public from unscrupulous operators.

There is some question as to whether the definition of “bank” in Section 3(a)(2) of the Securities Act of 1933 covers ITCs. The definition of “bank” includes entities that are engaged in business “substantially confined to banking”. As noted above, ITCs typically do not take deposits or make loans, but serve in a fiduciary capacity and provide investment advice to their clients. While the federal and state regulations covering ITCs

Ms. Vanessa Countyman  
April 15, 2020  
Page 2

sometimes define ITCs as banks, the definition in the 1933 Act may not treat them in the same manner. If ITCs are deemed “banks” under 3(a)(2) of the 1933 Act, and therefore would, by definition, be an Accredited Investor under 501(a), then this is a moot question. However, as noted above, this is not totally clear and, therefore, it would seem appropriate to specifically include trust companies in the definition of Accredited Investor as it is to be amended, to remove this confusion.

While ITCs are a small universe (maybe 450 entities) compared to RIAs that number close to 31,000 according to the Release, and family offices, this is a meaningful issue for ITCs that are regularly investing on behalf of clients. It would seem appropriate to specifically include trust companies chartered under federal or state law with greater than \$5,000,000 in assets under management in the definition of Accredited Investor for the same reasons the Release proposes to include family offices and RIAs. ITCs are run by sophisticated individuals that provide investment advice to its clients, whether as fiduciaries or pursuant to agency agreements, similar to family offices and RIAs. It should be noted as well that ITCs are exempt from the requirements of the Investment Advisers Act of 1940, so that they would not be deemed “Accredited Investors” by reference to being included as RIAs.

In addition, like individual registered representatives and managers of family offices, the principals that run ITCs should be deemed Accredited Investors in their own right. Most of the trust professionals have advanced degrees in finance, accounting, tax, law and other areas and are certified by third party entities as Certified Financial Analysts (“CFAs”), Certified Financial Planners (“CFPs”), Certified Trust and Financial Advisors (“CFTA”), among others. ATO believes that these persons should be deemed Accredited Investors even though the well-respected entities certifying such persons are not regulated by the Commission. While the Commission has the authority to later expand the definition by order, we request that the current Release include these persons now.

If you have any questions or comments in this regard, please contact me by e-mail at \_\_\_\_\_ or by phone at \_\_\_\_\_. If you would like to learn more about ATO, please go to the ATO web site at [www.trustorgs.net](http://www.trustorgs.net). On behalf of the Association, thank you for your consideration of this letter. We look forward to adoption of the amended definition of Accredited Investor.

Sincerely,



Thomas C. Blank  
General Counsel to  
The Association of Trust Organizations, Inc.