

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE POSSESSION }
AND CONTROL OF THE COMMISSIONER }
OF BANKS AND REAL ESTATE OF } Cause No. 00CH05905
INDEPENDENT TRUST CORPORATION } Judge Jones
a/k/a INTRUST, an Illinois Corporate fiduciary }

**RECEIVER’S RECOMMENDATION
REGARDING IMPLEMENTATION AND COLLECTION OF
THE CASH TRUST FUND SHORTAGE ALLOCATION**

**PRICEWATERHOUSECOOPERS LLP, IN ITS CAPACITY AS RECEIVER FOR
INDEPENDENT TRUST CORPORATION A/K/A INTRUST, IN ACCORDANCE
WITH THE ORDER OF THE COURT, HEREBY FILES THIS
RECOMMENDATION REGARDING IMPLEMENTATION AND COLLECTION
OF THE CASH TRUST FUND SHORTAGE ALLOCATION AS FOLLOWS:**

INTRODUCTION

1. On April 14, 2000, the Commissioner of Banks and Real Estate (“Commissioner”) took possession and control of Independent Trust Corporation (“Intrust”), pursuant to Article VI of the Illinois *Corporate Fiduciary Act*. An examination by the Commissioner revealed that there was a significant shortage of cash trust funds which Intrust was holding for the benefit of its account holders, and that Intrust was unable to meet all its obligations to such account holders. On April 14, 2000, the Commissioner appointed PricewaterhouseCoopers LLP as Receiver (“Receiver”) to

liquidate Intrust through receivership in accordance with section 6-9 of the Illinois *Corporate Fiduciary Act*.

2. On April 14, 2000, the Court entered an Order of Administration (the “Order”) at the request of the Receiver and with the consent of the Commissioner. Pursuant to such Order, the trust operations of Intrust have been restricted while the Receiver conducted an initial investigation into the cash trust fund shortage (the “Shortage”).

ALLOCATION OF THE SHORTAGE

3. In a Report dated and filed with the Court on June 23, 2000, the Receiver made recommendations with respect to the Shortage. In summary, these recommendations were as follows:
 - The Shortage of \$68.1 million be allocated to all current account holders whose accounts were open at April 23, 1999, other than land trusts, accounts for which Intrust performed only bookkeeping services and never held any assets, and certain other accounts. (By way of clarification, an account will be deemed to be an account of a current account holder at April 23, 1999, even if the subject account was opened after April 23, 1999, if the holder closed one or more accounts at Intrust after April 23, 1999 and thereafter opened the subject account.)
 - The Shortage be allocated based on the total asset values in the accounts (including cash, securities and other non-cash trust assets) maintained by Intrust as at April 30, 2000, adjusted back to April 14, 2000 for certain cash transactions.

The Receiver estimated that this allocation would result in a charge of approximately 6% to each affected account holder (the “Included Account Holders”). This charge to each Included Account Holder is described herein as the Allocation.

4. The Receiver has conducted an Initial Investigation of the cash and non-cash trust assets of Intrust in support of its determination of the Shortage and reported thereon to the Court on July 12, 2000.

IMPLEMENTATION ISSUES

5. In making its allocation recommendation as summarized above, the Receiver recognized that there are many issues which must be dealt with in implementing the allocation of the Shortage. It is the purpose of this Report to set out recommendations with respect to the implementation of the Allocation and collection of the Shortage from Included Account Holders.
6. The Receiver wishes to co-operate with all account holders, to the extent reasonably practical, in collecting the charge from the Included Account Holders. The nature of the accounts and the personal circumstances of account holders vary widely and a single collection method may not be suitable for all Included Account Holders. In addition, there may be tax implications for many account holders and the Receiver, to the extent possible, wishes to implement the Allocation in a manner which the account holders believe best deals with those tax implications. The Receiver is not identifying tax issues with respect to the allocation of the Shortage nor is it giving any advice to any account holders with respect to any tax issues. The Receiver strongly urges account holders to discuss the tax implications of the Allocation with their tax advisors.
7. In order to allow Included Account Holders to select a preferred means for the Receiver to collect the Allocation, the Receiver proposes to give each Included Account Holder the opportunity to advise the Receiver of the holder's preferred method of payment. Should an Included Account Holder not so advise the Receiver within a specified time period, the Receiver will collect the Shortage on the basis of the methodology set out below.

8. The Receiver intends to prepare and send an account statement to each Included Account Holder setting out the balance in the Holder's account as at April 30, 2000, with adjustments to the cash component to eliminate cash transactions between April 15 and April 30, 2000. These statements are described as the Allocation Statements. Together with these Allocation Statements, the Receiver intends to prepare and send to the Included Account Holders their Allocation based on the allocation methodology approved by the Court.
9. The Receiver proposes to offer three options to each Included Account Holder to assist in meeting the Allocation. In the absence of an Included Account Holder timely directing the Receiver to implement one of the three designated options (or any combination of the three options), the Receiver will act upon a fourth option to collect the Allocation. These options are set out below:

Option #1 – Cash Payment

10. Included Account Holders may pay for their allocation by sending a check (not to be drawn on the Intrust money market fund) to Intrust in the amount of their allocation. Such a payment would meet their obligation without diminishing any assets in their account. The check proceeds will be deposited in the Intrust money market account. The Receiver anticipates that this check will not be taxable income to Intrust and it may be treated by applicable authorities as an additional deposit to the account holder's account.

Option #2 – Payment from the Cash Component of the Account

11. Included Account Holders may direct the Receiver to reduce the balance in the Intrust money market component of their Allocation Statement by the amount of the Allocation. This Option will only be available when the money market component of the account equals or exceeds the Allocation.

Option #3 – Payment by Liquidating Non-Cash Assets in the Account

12. Included Account Holders may direct the Receiver to sell sufficient non-cash assets in their account to meet their Allocation (or authorize and assist the Receiver in obtaining a loan in the amount of the Allocation with recourse limited to the non-cash assets). The proceeds from such liquidations will be placed in the money market component of their account and the Receiver will then reduce the money market component of the account by the amount of the Allocation.

Option #4 – Action by the Receiver

13. If within the designated time period, Included Account Holders do not direct the Receiver with respect to implementation of the Allocation, the Receiver will remove cash or the proceeds from liquidating non-cash assets as follows (it being understood that the Receiver reserves the right to choose from among the following three steps, or to use any combination of the three steps outlined below, as it deems appropriate):
 1. The Receiver will reduce the Included Account Holder's balance in the Intrust money market component of the Included Account Holder's account by the amount of the Allocation, if there are sufficient such assets to meet the Allocation. If such funds exist, but the allocation exceeds such funds, the Receiver will remove the full amount of such funds and satisfy the remainder of the Allocation as described below.
 2. If there are insufficient cash funds in the account, the Receiver will liquidate certain assets, the proceeds of which, together with any existing cash in the account, will be sufficient to meet the Allocation. Should there be assets (for example, life insurance policies) against which a loan may readily be obtained, the Receiver will obtain such a loan. In determining assets to be liquidated, the Receiver will use its discretion in selecting assets which it believes will be the

easiest to sell. In general, but without being obligated to do so, the Receiver expects to liquidate assets in the following order:

- Money market funds held with third parties (i.e. not held in the Intrust money market account);
- Marketable securities that are traded on a recognized stock exchange;
- Mutual funds;
- Other assets, including commodities and derivatives

3. If there are insufficient assets in the account to meet the Allocation or the assets are incapable of liquidation or being used as collateral for a loan, the Receiver will place a lien on the account in the amount of the Allocation. This lien interest will accrue at a rate of the prime lending rate of Cole Taylor Bank plus 4%, compounded quarterly at the end of each calendar quarter and will remain in place until the Allocation and accrued interest have been paid in full. The lien will prevent the liquidation, transfer or closure of the account or any assets in the account until this obligation has been met. Alternatively, should the Receiver succeed in selling the business of Intrust, it will request any successor trustee to fund the amounts represented by liens in order to fully meet the Shortage. (The successor trustee would then hold the liens against the accounts.) Should the business of Intrust not be sold, the liens will remain an obligation to meeting the Shortage until they are realized in cash.

14. The Receiver requests that the Court:

(a) order, in connection with its decision on the allocation of the Shortage and the Receiver's implementation of the decision, that the Receiver shall have no liability whatsoever for any loss or damages which may arise from implementation of this Option;

(b) authorize the Receiver to use any of the corporate assets in the Intrust receivership estate to defend and indemnify the Receiver against any claim arising

from the Receiver's implementation of Option #4;

(c) retain exclusive jurisdiction to adjudicate any dispute about the Receiver's implementation of Option #4;

(d) empower the Receiver to direct brokers, mutual fund managers of other custodians of Included Account Holders to comply with this Option, if so directed; and

(e) authorize the Receiver to condition any withdrawal by any account holder of any further funds from the Intrust receivership estate on the execution of a release of any claims against the Receiver for the actions the Receiver has taken in connection with the Receiver's recommendation on the allocation or implementation of any court in connection therewith..

Other Matters Relating to the Implementation

15. The Receiver expects to send the Allocation Statement to Included Account Holders no later than fifteen days following the date on which the order of this Court approving a methodology for implementing an allocation becomes a final order that has not been reversed, vacated or stayed and as to which (a) the time to appeal or seek other review proceedings has expired with no appeal or other review proceeding having been timely taken or filed, or (b) any appeal or other review proceeding that has been or may be filed has been resolved by the highest court to which the order was appealed or review was sought. The Receiver proposes that Included Account Holders be given 35 days from the date of the mailing of the Allocation Statements to respond in writing to the Receiver indicating which of the Options they wish to follow and so directing the Receiver. If, after 35 days, the Receiver has not received a direction from an Included Account Holder, it will follow Option #4.

16. To the extent that Intrust has reporting obligations with respect to any tax-deferred accounts, Intrust (or a successor trustee) will prepare the applicable tax reporting forms.

Claims Against the Receivership Estate

17. The Receiver proposes to record on Intrust's books a claim ("Claim") on behalf of each Included Account Holder in the amount of Allocation that has been paid. This Claim will presumptively entitle the holder to distribution of funds the Receiver may receive as part of its efforts to minimize the Shortage through lawsuits, sale of the business, insurance proceeds or other actions (to the extent that such funds exist after payment of expenses or administering the receivership estate), as approved by the Court. Should there be any over-allocation of the Shortage, such over-allocation will form part of any recoveries for pro-rata distribution to Included Account Holders and other creditors of Intrust. Notwithstanding the foregoing, the Receiver reserves the right to object to the Claim of any Included Account Holder on any basis that may be appropriate under the circumstances. The Receiver is investigating the propriety and advisability of evidencing the Claim through the issuance of Receiver's certificates, as well as the incidents (such as transferability) of these certificates, and hopes to report its conclusions thereon at the hearing scheduled for July 28. The Receiver does not expect that it will propose the issuance of Receiver's certificates unless they will not be subject to registration under the United States federal securities laws. The Receiver hereby advises the Court that it intends to rely on the exemption contained in section 3(a)(10) of the Securities Act of 1933 based on the Court's approval of the transaction and/or on other exemptions under the Securities Act of 1933 as a basis for not registering the Receiver's certificates, if the Receiver determines that it is appropriate to issue Receiver's certificates.

Summary of Implementation and Collection Recommendations

18. The Receiver summarizes its recommendations with respect to implementation of the Allocation, as follows:

- Within fifteen days following final Court approval of the allocation methodology (as more fully described above), the Receiver expects to prepare and mail to each Included Account Holder an Allocation Statement setting out the balances on which their Allocation will be based and the amount of the Allocation.
- Together with the Allocation Statement, the Receiver will mail to each Included Account Holder an outline of the options which are available to meet their Allocation.
- The Receiver will give Included Account Holders 35 days from the date of mailing of the Allocation Statements in which to direct the Receiver how to meet their Allocation and, if Option #1 is selected, to provide a check to meet the Allocation obligation.
- If Included Account Holders do not advise the Receiver within 35 days of their selection of an Option, the Receiver will act upon Option #4 to meet their Allocation obligation. The Receiver will not be liable for any loss or damages which may result from acting on this Alternative. The Receiver requests that the Court direct brokers, investment agents, banks and other financial institutions, trust companies, depositories, escrow agents, title companies and other custodians to act upon the Receiver's instructions in implementing this Option and other appropriate orders in aid of this implementation, and further, retain jurisdiction to issue other orders, as appropriate.

- If sufficient assets cannot be liquidated to meet the Allocation, a lien will be placed on the account accruing interest at the Cole Taylor Bank prime lending rate plus 4%, compounded quarterly. An account (and the assets contained therein) with a lien placed upon it cannot be liquidated, transferred by the account holder or closed until the amount of the lien has been paid.
- To the extent authorized by the Court, the Receiver will record on its books a Claim entitling the holder to distributions from recoveries which the Receiver may obtain from lawsuits, sale of the business, insurance proceeds or other source (after payment of expenses of administration) and, if appropriate and

- authorized by the Court, issue Receiver's certificates to evidence these obligations.
- The Receiver will offer no tax advice with respect to the Allocation or any of the Options by which it may be met. It is the responsibility of each included Account Holder to determine any tax implications of the allocation methodology.
- The Receiver reserves the right to seek other appropriate relief as is appropriate to collect the Allocation from any account holder who does not voluntarily elect and comply with Options 1,2 and/or 3 described above.

Respectfully submitted

PricewaterhouseCoopers LLP
As Receiver of Independent Trust Corporation

By _____
Lawrence A. Ward

July 12, 2000