

**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            )**     **Case No.: 00 CH 05905**  
**INDEPENDENT TRUST CORPORATION         )**  
**A/K/A INTRUST, AN ILLINOIS                )**  
**CORPORATE FIDUCIARY,                    )**

**ORDER**

This matter came to be heard upon the motion of PricewaterhouseCoopers, LLP, as receiver for Independent Trust Corporation (“Receiver”) for payment of accrued and accruing fees owed by account holders to investment advisers (each an “Investment Adviser”) in connection with client investment accounts maintained at Independent Trust Corporation (“Intrust”).

The court after reviewing the motion and considering the statements of counsel, has determined that the freeze on Intrust customer accounts imposes an undue hardship with respect to the fees owed Investment Advisers and that the relief requested is appropriate in the circumstances. Therefore it is hereby

**ORDERED:**

1. Receiver’s motion is granted.
2. Each Investment Adviser is allowed payment of now accrued and to be accrued in connection with its clients’ accounts at Intrust upon the following terms and procedures:

a) Each Investment Adviser shall submit a written statement to the Receiver for the fees that it asserts it is owed. As part of such statement, the member of the Investment Adviser shall expressly represent and warrant that it is entitled to the fees for which it is seeking payment and that the fees were incurred in the ordinary course of business.

b) Each member of the Investment Adviser shall execute and deliver an agreement substantially in the form of Exhibit A hereto whereby such Investment Adviser agrees to (i) defend and indemnify Intrust, the Receiver, and the Commissioner of Banks and Real Estate and to indemnify the related account holder against any claim that any payment that the Receiver makes to or at the direction of such Investment Adviser pursuant to the fee request exceeds the amounts to which such Investment Adviser is entitled under its agreements with the account holder or has left insufficient funds in the related account to cover any loss that may be allocated to the account pursuant to orders of this court, and (ii) submit to the jurisdiction of this Court for resolution of any dispute with the Receiver concerning payment of fees pursuant to this motion.

c) Payment of fees from an account consisting of securities shall be permitted to the extent that, after such payment, the value of all securities remaining in the account will be at least 50 percent of the value of all

securities in the account as of the close of business on April 14, 2000. In determining value, the Receiver shall be entitled to use any valuation method that the Receiver reasonably and in good faith deems to be appropriate.

d) With respect to an account consisting of cash, the payment of fees shall be permitted to the extent that, after such payment, the cash remaining in the account will be at least 70 percent of the amount of cash in the account as of the close of business on April 14, 2000.

3. The Receiver is authorized to disburse fees to Investment Advisers consistent with the provisions of paragraph 2 above. Should the Receiver object to any statement for fees owed submitted by an Investment Adviser, and should the parties be unable to reach an agreement on the amount of fees owed or otherwise as to the Investment Adviser's right to payment, then the Receiver shall have a reasonable period of time to pay such portion of the fees to which it does not object and shall reasonably promptly file and notice for hearing before this Court an objection regarding the disputed portion of such fees.

BY THE COURT

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Sidney A. Jones, III,  
Circuit Court Judge

## EXHIBIT A

### INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) dated \_\_\_\_\_, 2000, is entered into between PricewaterhouseCoopers LLP, as Receiver for Independent Trust Corporation a/k/a Intrust (“Receiver”) and \_\_\_\_\_ (“Investment Adviser”).

Investment Adviser provides investment advice to one or more account holders (each being an “Account Holder”) at Independent Trust Corporation (“Independent”). Investment Adviser hereby represents that, pursuant to various agreements it has entered into with the Account Holder and/or Independent, Investment Adviser is entitled to be paid fees for the services it provides or has provided. Investment Adviser has requested the Receiver to permit withdrawals of funds from one or more Account Holder’s account at Independent to pay the fees related to the services that Investment Adviser has performed in relation to such Account Holder. Subject to the execution and delivery of this Agreement, the Receiver has agreed to pay those fees.

THEREFORE, Receiver and Investment Adviser agree as follows:

1. The Receiver shall have no obligation to make any payment to an Investment Adviser unless and until the Investment Adviser presents a written invoice to the Receiver for investment adviser fees that the Investment Adviser claims it is owed. Notwithstanding the foregoing, the Receiver shall be entitled to pay an Investment Adviser fees that the Investment Adviser claims that it is owed, even if no written invoice is presented to the Receiver.

2. The Investment Adviser agrees that presentation of an invoice pursuant to section 1 of this Agreement, or acceptance of any fees paid to it by the Receiver pursuant to this Agreement, constitutes a representation and warranty by the Investment Adviser that the Investment Adviser is entitled to the fees for which it is seeking payment and that the fees were incurred in the ordinary course. The Investment Adviser further agrees that submission of any written invoice shall constitute a continuing representation and warranty to the Receiver that the Investment Adviser was entitled to any fees the Receiver previously paid to the Investment Adviser with respect to the accounts of the related Account Holder and that the fees were incurred in the ordinary course.

3. Investment Adviser agrees (a) to defend and indemnify Independent, the Receiver, the Commissioner of Banks and Real Estate, and to indemnify the related Account Holder, against any claim that any payment that the Receiver makes to or at the direction of the Investment Adviser pursuant to any fee request exceeds the amounts to which the Investment Adviser is entitled, whether under the Investment Adviser’s agreements with the Account Holder or Independent or otherwise and (b) to submit to the jurisdiction of Circuit Court of Cook County, Chancery Division (“Court”), in the case styled In the Matter of the Possession and Control of the Office of Banks and Real Estate of Independent Trust Corporation a/k/a Intrust, Case No. CH5905 (“Case”), for resolution of any dispute with the Receiver concerning payment of

investment adviser fees pursuant to this Agreement or pursuant to any orders entered by the Court in the Case in respect of the subject matter of this Agreement.

4. Notwithstanding anything herein to the contrary, Investment Adviser understands and agrees that nothing herein shall obligate Receiver to pay any amounts to Investment Adviser and that, subject to the procedures set forth in Section 3 of the Order dated June \_\_, 2000, regarding payment of investment adviser fees, on any basis it deems appropriate in its reasonable discretion, Receiver shall be entitled to cease making payments to Investment Adviser. NOTHING HEREIN WAIVES OR LIMITS THE RIGHT OF THE RECEIVER, THE COMMISSIONER OF BANKS AND REAL ESTATE, OR ANY OTHER PARTY IN INTEREST TO RECOVER FROM THE INVESTMENT ADVISER ANY FUNDS THAT ARE DISTRIBUTED OR HAVE BEEN DISTRIBUTED TO THE INVESTMENT ADVISER OR TO RECOVER FROM THE INVESTMENT ADVISER ANY FUNDS OWED TO INDEPENDENT TRUST CORPORATION OR THE RECEIVER.

5. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

To the Receiver

To the Investment Adviser

PricewaterhouseCoopers LLP, as Receiver \_\_\_\_\_  
Attn: Mr. Gary Barton  
1201 Louisiana Street  
Houston, TX 77002

-with a copy to-

Independent Trust Corporation  
Attn: \_\_\_\_\_  
15255 94<sup>th</sup> Avenue South  
Orland Park, IL 60462-3897

-and a copy to-

Kirkland & Ellis  
Attn: Joseph U. Schorer  
200 East Randolph Drive  
Chicago, IL 60601

6. This Agreement constitutes the entire Agreement of the parties and supersedes all prior or contemporaneous agreements or understandings related to the subject thereof. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if

drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

7. This Agreement shall be binding upon the Investment Adviser and shall inure to the benefit of the Investment Adviser, the Receiver, the Commissioner of Banks and Real Estate, the related Account Holder, and their respective successors in interest and permitted assigns. The Investment Adviser shall not be entitled to assign its obligations or rights hereunder to any other entity. The Receiver shall be entitled, without the consent or approval of anyone other than the Commissioner of Banks and Real Estate, to assign its rights hereunder to any entity that the Receiver deems appropriate in its sole discretion.

8. This Agreement constitutes a contract to be interpreted under and governed by the internal laws of the State of Illinois without regard to principles of conflicts of laws.

9. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Investment Adviser and the Receiver. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

10. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

11. Each of the Investment Adviser and the Receiver will bear its own costs and expenses (including legal fees and expenses) incurred in connection with the negotiation and drafting of this Agreement and the transactions contemplated hereby; provided that the Investment Adviser shall pay the Receiver's reasonable fees and expenses incurred in collecting any payments to which it is determined by court order that the Receiver is entitled.

WHEREFORE, the parties have entered into this Agreement as of the first day stated above.

PRICEWATERHOUSECOOPERS, LLP, as Receiver  
For Independent Trust Corporation a/k/a Intrust

By: \_\_\_\_\_  
For the Receiver

[INVESTMENT ADVISER NAME]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_