

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

<b>IN THE MATTER OF THE POSSESSION</b>	)	
<b>AND CONTROL OF THE COMMISSIONER</b>	)	
<b>OF BANKS AND REAL ESTATE OF</b>	)	<b>No. 00 CH 5905</b>
<b>INDEPENDENT TRUST CORPORATION</b>	)	<b>Judge Sidney A. Jones III</b>
<b>a/k/a INTRUST, an Illinois</b>	)	
<b>corporate fiduciary</b>	)	

**ORDER**

This Court having held hearings on the Receiver’s Recommendation Regarding Allocation Of Trust Fund Shortage (“Allocation Recommendation”) and having considered the Receiver’s Recommendation Regarding Implementation And Collection Of The Cash Trust Fund Shortage (“Collection Recommendation”) filed by PricewaterhouseCoopers LLP as receiver of Intrust (“Receiver”), and having also heard and fully considered objections and other considerations of the account holders and other parties in interest to the Allocation Recommendation, and entered an Order dated August 17, 2000 regarding portions of the Allocation Recommendation, and having provided opportunity for account holders and other parties in interest to review and comment on the provisions of this Order, and now wishing to enter an Order relating to other issues presented by the Allocation Recommendation and Collection Recommendation (except for the amount of the Allocation Percentage), it is hereby ORDERED:

1. As used herein, “Receiver” shall refer to PricewaterhouseCoopers LLP. In the event of a sale of all or substantially all of Intrust’s business to a purchaser to serve as successor trustee for the Intrust accounts pursuant to order of this Court (“Successor Trustee”), such Successor Trustee shall be entitled to the protections afforded to the Receiver in this Order with respect to implementation and collection of the Shortage.

2. As used herein, “Eligible Accounts” shall have the same meaning as ascribed in Paragraph 17 of the Court’s August 17, 2000 Order; provided, however, that should this Court subsequently determine that some or all of the Intrust accounts excluded from allocation of the Shortage pursuant to Paragraph 6 of the August 17, 2000 Order should nevertheless be included in allocation of the Shortage, then “Eligible Accounts” as used herein will be deemed to include such accounts.

### **IMPLEMENTATION AND COLLECTION OF ALLOCATION**

3. The Court shall determine the percentage of the Shortage (as defined in Paragraph 4 of the Court’s August 17, 2000 Order) to be allocated to Eligible Accounts (the “Allocation Percentage”) after a determination is made by the Court as to which accounts shall be Eligible Accounts. Following such a determination by the Court, the Receiver shall calculate a proposed Allocation Percentage and present it to the Court for approval. The Allocation Percentage set by the Court will consider the delay and impracticability of collecting the Shortage from Eligible Accounts with illiquid assets.

4. Notwithstanding the provisions of Paragraph 3 of this Order, after entry of an order by this Court establishing the Allocation Percentage, the Receiver shall be entitled to ask the Court for any further orders that change the Allocation Percentage (upward or downward) based upon any relevant factors that come to the Receiver’s attention.

5. Within 15 days after the Court enters an order determining the Allocation Percentage, the Receiver (or the Successor Trustee) shall mail to each holder of an Eligible Account an Allocation Statement together with a statement of the Allocated Amount for such account. An Allocation Statement means an account statement setting out the balance in the account holder’s account as of April 30, 2000, as adjusted back to April 14, 2000 for cash transactions (as provided in Paragraph 21

of the Court's August 17, 2000 Order). The Allocated Amount shall be equal to the amount of the Eligible Account as reflected on the Allocation Statement multiplied by the Allocation Percentage.

6. In the Allocation Statement, the Receiver (or the Successor Trustee) shall offer to the holder of each Eligible Account a choice among the following three options (or any combination of options) for collecting the Allocated Amount from that account holder ("Implementation Options"):

- (a) the account holder may send a check or otherwise deliver immediately available funds to the Receiver (or the Successor Trustee) in the amount of the Allocated Amount, provided that such a check or other immediately available funds cannot consist of a check drawn on a money market fund at Intrust or the Successor Trustee;
- (b) the account holder may direct the Receiver (or the Successor Trustee) in writing to sell, on or by a certain date, sufficient non-cash assets in the account to satisfy the Allocated Amount (or authorize and assist the Receiver (or the Successor Trustee) in obtaining a loan in the Allocated Amount without recourse to the Receivership estate or any trust assets other than the assets in the affected trust account), provided that the date designated for the sale of the non-cash assets is no greater than thirty (30) days after the date of such written election, and further provided that the Receiver shall use its commercially reasonable best efforts to sell such non-cash assets on the date designated by the account holder, but shall not be obligated to do so, with the proceeds of the sale of the non-cash assets to be placed in the affected account and then the proceeds in the Allocated Amount removed from the account; or
- (c) the account holder may not respond to the Allocation Statement. The Allocation Statement shall inform the account holder that, if the Receiver (or Successor Trustee) has not received a response to the Allocation Statement within 35 days of the mailing of the Allocation Statement, the Receiver (or Successor Trustee) will proceed to remove cash or the proceeds from liquidating non-cash assets from the Eligible Account as follows (it being understood that the Receiver (or Successor Trustee) shall be entitled, and reserves the right, to choose, at its sole discretion, from among any one of or a combination of the following alternatives, as it deems appropriate):
  - (i) The Receiver (or the Successor Trustee) shall be entitled to reduce the Eligible Account's balance in the Intrust (or Successor Trustee) money

market fund by the Allocated Amount, if there are sufficient such assets to meet the Allocated Amount. If such funds exist, but the Allocated Amount exceeds such funds, the Receiver (or the Successor Trustee) shall be entitled to remove the full amount of such funds and satisfy the remainder of the Allocated Amount as described below.

- (ii) If there are insufficient cash funds in the Eligible Account, the Receiver (or the Successor Trustee) shall be entitled to liquidate certain assets, the proceeds of which, together with any existing cash in the account, will be sufficient to meet the Allocated Amount. Should there be assets against which a loan may readily be obtained, the Receiver (or the Successor Trustee) shall be entitled to obtain such a loan. In determining assets to be liquidated, the Receiver (or the Successor Trustee) shall 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 (or the Successor Trustee) shall liquidate assets in the following order:
  - (1) Money market funds held with third-parties;
  - (2) Marketable securities that are traded on a recognized stock exchange;
  - (3) Mutual funds; and
  - (4) Other assets, including commodities and derivatives.
- (iii) If there are insufficient assets in the Eligible Account to meet the Allocated Amount or the assets are incapable of liquidation, the Receiver (or the Successor Trustee) shall be entitled to place a lien on the Eligible Account and the assets therein (the “Liened Account”). This lien interest shall secure the Receiver’s (or the Successor Trustee’s) right to collect, until paid: (i) the Allocated Amount; (ii) accruing interest thereon from the date of the end of the 35-day period described in this Paragraph 6 of this Order at a rate equal to the prime lending rate of Cole Taylor Bank plus 4% per annum, compounded quarterly; (iii) the Receiver’s (or the Successor Trustee’s) reasonable costs of collection, including a collection fee of \$250 (“Collection Fee”); and (iv) any other obligations of the Eligible Account holder to the Receiver (or the Successor Trustee) or Intrust (“Lien”). This Lien shall have the force of a judicially ordered lien that is perfected as of the

date that the Receiver (or the Successor Trustee) files with the Clerk of the Court in this proceeding a notice declaring that it has placed the Lien against the Liened Account. The Receiver (or the Successor Trustee) shall be entitled to enforce this Lien by selling any one or more assets in the Liened Account(s) in a non-judicial sale, on fifteen days notice to the record holder of the affected account(s). The purchaser, assignor, or transferor at such a sale shall be entitled to receive the Liened Account (or any portion thereof) free and clear of any liens, claims or encumbrances of any type that were perfected against the Liened Account (or any portion thereof) after the time the Lien was filed with the Clerk of the Court, and the Receiver (or the Successor Trustee) shall be entitled to receive the proceeds of such sale free and clear of any such later-perfected liens, claims or encumbrances. Any proceeds in excess of the Lien shall be distributed to parties as their rights may appear (except that proceeds deliverable to an account holder shall be retained subject to further order of this Court). At the Receiver's sole reasonable discretion, the Receiver shall be entitled to sell, assign, transfer or otherwise convey the Liened Account (or any portion thereof) subject to the Lien (including without limitation the sale of Intrust to a successor trustee), with the purchaser acquiring all of the rights of the Receiver hereunder with respect to the Lien. In addition, the Receiver (or the Successor Trustee) shall be entitled to withhold any liquidation of the Liened Account, transfer of assets out of or within the Liened Account, or closing of the Liened Account, unless and until the Liened Account has been satisfied in the full amount of the Lien.

Any proceeds of the Implementation Options shall be deposited in the Intrust (or the Successor Trustee) money market account.

7. Once the Allocation Statements are mailed, the Receiver (and the Successor Trustee, if applicable) are authorized and directed to collect the Allocated Amounts from each Eligible Account holder consistently with the process described in Paragraph 6 of this Order.

8. All brokers, mutual fund managers, banks and other financial institutions, trust companies, depositories, escrow agents, title companies, transfer agents, and other custodians shall

comply with the direction of the Receiver (or the Successor Trustee) in aid of collection of the Allocated Amount(s) from all Eligible Account(s) maintained by such entities.

### **RECEIVERSHIP CERTIFICATES**

9. After collection of the Allocated Amount from an Eligible Account, the Receiver shall record on Intrust's books a claim by the payor of the Allocated Amount (whether it be the account holder, the account, or a third-party). In addition, the Receiver shall issue to the payor of the Allocated Amount, a Receivership Certificate in the Allocated Amount ("Receivership Certificate"), provided that the Receiver (or Successor Trustee) shall not be obligated to issue a Receivership Certificate if it has a good faith basis for believing that issuance of that Receivership Certificate would violate any state or federal law or regulation, including securities laws. The Receivership Certificates will be payable by the Intrust estate pursuant to the terms of further orders entered by this Court. The Receiver shall have no personal liability on the Receivership Certificates.

10. In connection with the issuance of Receivership Certificates, the Court hereby makes all of the findings required or contemplated as prerequisites to the issuance of such certificates under Section 3(a)(10) of the Securities Act of 1933, as amended, and under Revised Staff Legal Bulletin No. 3 (October 20, 1999) issued in connection therewith, including but not limited to specific findings that:

- (a) the terms and conditions for the issuance of the Receivership Certificates are fair to those to whom such certificates are to be issued;
- (b) the Court has been advised prior to the hearings on the Allocation Recommendation and Collection Recommendation that the Receiver might or will rely on the Section 3(a)(10) exemption based upon this Court's approval of the transaction;

- (c) this Court has been expressly authorized under the Illinois Corporate Fiduciary Act to hold the hearings on the Allocation Recommendation and Collection Recommendation;
- (d) the hearing on the Allocation Recommendation and Collection Recommendation was open to everyone to whom Receivership Certificates might be issued without any improper impediments to the appearance by those persons at the hearing; and
- (e) adequate notice has been given to all such persons.

### **MISCELLANEOUS**

11. The Receiver (and the Successor Trustee) shall condition any withdrawal, transfer, or other transaction by an Eligible Account holder, investment advisor, or any other person of further funds from any Eligible Account upon collection of the Allocated Amount (and any other costs of collection or other obligations) owed by such Eligible Account.

12. Neither the Receiver nor any Successor Trustee shall have any liability whatsoever for any loss or damage, or claims therefor, that may arise in connection with the allocation, implementation, or collection of the Shortage or the other transactions or actions authorized or contemplated by this Order, except respectively in the case of its own gross negligence or willful misconduct or the gross negligence or willful misconduct of their respective agents or employees. The Receiver (and any Successor Trustee) shall be entitled to rely in good faith on the books and records of Intrust and records provided by third persons with respect to allocation, implementation, and collection of the Shortage.

13. The Receiver is authorized to use any of the corporate assets of the Intrust receivership estate to defend itself and its attorneys, agents, officers, and employees (and the attorneys, agents,

officers, and employees of Intrust) against any claim arising from the allocation of the Shortage, the collection of Allocated Amounts from Eligible Accounts and the implementation of that allocation. Notwithstanding the foregoing, in the event that the Receiver or Intrust (or any of their attorneys, agents, officers and employees) is found by any court of competent jurisdiction to have acted with gross negligence and/or willful misconduct in connection with the allocation, implementation, or collection of the Shortage or the other transactions or actions authorized or contemplated by this Order, the Receiver or Intrust shall not be entitled to use the corporate assets of Intrust to defend itself and shall be obligated to reimburse Intrust for all such defense costs provided to it pursuant to this Paragraph 13 of this Order.

14. The Court hereby retains jurisdiction to issue any further orders in aid of any of the matters that are the subject of this Order, and the Receiver (and the Successor Trustee) is authorized to seek further such orders in aid of implementation and collection of the Allocated Amounts as it deems appropriate.

15. Within 90 days after the mailing of the Allocation Statements as provided in Paragraph 6 of this Order, the Receiver (or the Successor Trustee) shall report to this Court on the status of implementation and collection of the Allocated Amounts from all Eligible Accounts as set forth herein. Pending further order of this Court, the Receiver (and the Successor Trustee) shall not make or permit disbursements, transfers or withdrawals from, or sales or trades of, Preclosing Trust Assets (as defined in the Court's April 14, 2000 Order of Administration) or proceeds derived therefrom, except as necessary to complete the actions contemplated by Paragraph 6 of this Order and to the extent authorized by previous Orders of this Court.

16. If any deadline for filing any document or taking any action under this Order falls on a day that is not a regular business day in Chicago, Illinois, the deadline shall be deemed extended to the first day thereafter that is a regular business day.

SO ORDERED.

Date: September 12, 2000

/s/ Judge Sidney A. Jones III  
Judge Sidney A. Jones III