

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 ALLOCATION OF**  
**CASH TRUST FUND SHORTAGE**

**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 ALLOCATION OF THE CASH TRUST  
FUND SHORTAGE 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”). The Receiver has commenced this initial investigation and will file a report thereon with the Court as soon as it is completed.

## **THE BUSINESS OF INTRUST**

3. Intrust is an Illinois trust company which was established on March 20, 1984 to service clients who wished to direct their own investments rather than have a traditional trust department have discretion over their investments, or who wished to utilize the services of an investment advisor. The number of accounts administered and the value of the assets under administration have grown steadily since that time and the number of employees to service these accounts had grown to 53 as at April 14, 2000.
4. Intrust administered trust assets of about \$1.74 billion for the benefit of over 20,000 account holders and beneficiaries at the date of the receivership. The types, approximate numbers of accounts and approximate carrying values are set out in Exhibit I, attached.
5. The account holders held a wide variety of investments in their accounts. Although the majority of funds were invested in public company stocks and mutual funds, other investments included commodities, limited partnerships, life insurance policies, viatical policies, tax lien certificates and promissory notes. Most accounts also contained a cash component, held either by Intrust or the accounts of brokers. It is the Intrust cash trust account in which the Shortage has occurred. In addition, based on its inquiry to date, the Receiver believes that the preponderance of account holders had cash components of their accounts pass through the Intrust cash account at the time contributions were made, as the result of securities transactions or

preparatory to paying out distributions.

6. Intrust maintains its client accounts on a computerized software system called Trust Management and Accounting System (“TMAS”). Although this system may have been adequate at the outset for such recordkeeping, it is not current technology and contains many limitations in its ability to display information, easily recreate historic transactions and balances and answer the many system enquiries made of it to provide the Receiver with needed information. A memorandum setting out some of the characteristics and limitations of TMAS is attached as Exhibit II.
7. Intrust’s clients managed their accounts in a variety of ways. Approximately 61% of the account holders (calculated as a percentage of the total assets under management) utilized investment advisors to manage their funds, typically giving the investment advisors discretionary authority to invest their funds. In such cases, Intrust would enter all transactions into TMAS for such accounts as information was received from the investment advisors. Other account holders, comprising approximately 25% of the total of open accounts, utilized brokers to execute transactions on their behalf and the brokers maintained and held the cash and securities owned for the account holder. In these cases, Intrust merely posted a single monthly entry summarizing the change in the total value of the account, based on information received from the broker. Similarly, for clients operating commodities accounts, Intrust merely entered the overall change in the account based on quarterly information received from the commodities brokers.
8. Market values of quoted securities were obtained at the end of each month by Intrust from DTN Financial Services, an outside pricing service, and applied to the appropriate securities in the accounts. As indicated above, the market value of commodities accounts was updated only quarterly. Some accounts contained assets for which current market values could not be readily obtained (for example, limited partnerships) and such assets were carried at an historic cost or other value. Intrust prepared and issued either monthly or quarterly statements to account holders. The

last monthly statements were issued as of February 29, 2000 and the last quarterly statements were issued as of December 31, 1999. No statements have been prepared or issued since the commencement of the receivership.

## **INITIAL INVESTIGATION**

9. Paragraph 27 of the Order of Administration dated April 14, 2000 sets out the authorities and responsibilities of the Receiver in conducting an initial investigation, as follows:

“As soon as possible, the Receiver shall conduct an initial investigation of the existence and any shortage of cash trust funds that existed as of the date of Closing (“Preclosing CTF”) and other trust assets that existed as of the date of Closing (collectively “Preclosing Trust Assets”). All financial institutions, brokerage houses, and other entities which have or have had in their possession, custody or control any of the funds and investments constituting the Preclosing Trust Assets and corporate funds of Independent shall immediately cooperate with the Receiver and shall immediately provide such information as requested to the Receiver to confirm the existence of Preclosing Trust Assets and corporate funds. In conducting such investigation, the Receiver may rely upon the information provided and statements made by the financial institutions, brokers, and other entities that hold or maintain funds and assets that make up the Preclosing Trust Assets, the books and records of Independent, and its own judgement.”

10. The Receiver has commenced an initial investigation of the cash trust fund assets and other assets that existed as at March 31, 2000 and will be continuing that investigation with respect to April 30, 2000 balances as soon as Intrust’s TMAS records are fully posted to that date. At that time, the Receiver will report to the Court. Based on the preliminary determinations of the initial investigation conducted to date and the limitations inherent in it, the Receiver has accumulated information indicating that the Shortage is \$68.1 million. Accordingly, the Receiver is making a

recommendation to allocate the Shortage of \$68.1 million, as set out below. This recommendation is subject to change should the Receiver's further investigation indicate that the Shortage is a different amount. The initial investigation and this recommendation are both subject to approval of the Court .

## **MISAPPROPRIATION OF TRUST CASH**

11. Intrust maintained its cash trust funds at several depositories. Its primary depository at the time of the receivership was Cole Taylor Bank in Chicago and most transactions went through those accounts. In addition, it maintained small trust cash balances with Charles Schwab and Quick & Reilly to facilitate client transactions through those brokers. Interest was accrued and received monthly on the funds held by these depositories.
12. Intrust had also set up a trust account with Intercounty Title Company of Illinois ("Intercounty"), an affiliated company, in 1990. This trust account was established by an escrow agreement entered into between Intercounty and Intrust. Intercounty changed its name to Wholesale Real Estate Services in 1997. All references herein to Intercounty include Wholesale Real Estate Services. Based on the information available to the Receiver, it appears that there were transfers of funds between Intrust and Intercounty on a periodic basis between 1990 and 1999.
13. Intrust maintained only one ledger account for all of its trust cash, not distinguishing internally among the four depositories of the trust cash. Thus, it is not possible from the TMAS records maintained by Intrust to determine the amount of trust cash held at each of these depositories. It is only by reference to statements prepared by the depositories that it is possible to determine where the components of the Intrust trust cash were held or ought to have been held. As Intrust transferred funds between depositories on a commingled basis and without reference to specific account holder deposits or withdrawals, it is not possible to determine which account holders' funds were held in a specific depository or to trace specific account holders' funds.

14. Because of this weakness in the Intrust system, the Receiver has not been able to corroborate the information supplied by Intercounty to Intrust related to the dates and amounts of transfers from and to Intrust by querying TMAS. Accordingly, the Receiver has undertaken to substantiate this information through an analysis of Intrust bank records and daily cash balancing records. A schedule setting out the dates of these transfers, as provided by Intercounty, is attached as Exhibit III. This schedule indicates that there were regular deposits and withdrawals by Intrust from December, 1990 to August, 1996 and less frequent transactions thereafter. Throughout the period from the opening of the account in 1990 until January 31, 2000, interest was accrued by Intrust on the balances purportedly held by Intercounty and allocated, along with interest earned by Intrust and all other cash deposits, to Intrust's account holders.
  
15. As part of its responsibilities, the Receiver has made an inquiry of the relationships and dealings between Intrust and Intercounty. As a result of this inquiry, the Receiver filed a Complaint in the Circuit Court of Cook County on June 1, 2000 against Intercounty and a number of related parties. The Complaint alleges that Intercounty and its officers and agents misappropriated the money that Intrust deposited into the Intercounty trust account. The amount sought is \$68.1 million in compensatory damages, interest accrued subsequent to January 31, 2000, costs, exemplary damages and an order for an accounting.
  
16. Intrust commingled cash of individual account holders. Therefore, tracing of individual trust cash balances to a specific depository account is not possible. Thus, as indicated in paragraph 13, above, it is not possible to determine which account holders' funds were deposited with or withdrawn from Intercounty and, therefore, were affected by the misappropriation of Intrust's cash funds by Intercounty. Intrust maintained accounts (at Cole Taylor Bank) into which virtually all funds were deposited and from which virtually all withdrawals were made for most of the relevant time period. Intrust appears to have transferred lump sums to and from the other depositories through the Cole Taylor Bank account.

17. Since April 23, 1999, there have been no cash transactions between Intrust and Intercounty with respect to account holder cash. The only change in the balance owing by Intercounty since that date has been the accrual of interest by Intrust up to February 28, 2000, all of which was allocated to account holders but none of which has been received by Intrust.
  
18. The Receiver has carried out extensive reconciling procedures as part of its initial investigation to attempt to ascertain the amount of the Shortage. This work was necessary because of the nature of Intrust's accounting records and its lack of internal accounting controls and/or internal audit function. Based on the books and records of Intrust and the cash balances existing in various bank accounts, the Receiver believes that this Shortage is \$68.1 million as at April 14, 2000, the date of the commencement of the receivership. This Shortage was essentially determined by deducting from the balance of trust cash which Intrust showed in its records, the amount of trust cash held by Cole Taylor Bank, Charles Schwab and Quick & Reilly. The difference is the amount which should have been held by Intercounty and this amount is consistent with the information supplied by Intercounty. It is this amount which the Receiver believes is the Shortage.

#### **ALLOCATION OF THE SHORTAGE**

19. Statements for account holders reflect cash balances that, in actuality, may not exist and non-cash balances that cannot appropriately be credited to them because they may be proceeds of cash that was misappropriated through its diversion to Intercounty. The Receiver believes it is necessary to allocate this Shortage and thereby render corrected account statements. This is imperative to provide an equitable and fair sharing of the misappropriated funds. Otherwise, account holders may collectively attempt to withdraw more funds than exist (thereby prompting a "race to the courthouse" in which the first account holders to withdraw funds will leave the Shortage to be borne entirely by the remaining account holders after the

available funds have been withdrawn), and so that accounts can be settled as part of a sale of Intrust's business.

20. Intrust was not insured under FDIC, SIPC or any other depository insurance funds. Accordingly, there is no outside depository insurance to which account holders may look for recovery of the Shortage. Since there is no depository insurance, the Shortage must be allocated to the account holders.
21. As indicated in paragraph 16 above, it is not possible to trace the funds which were transferred to Intercounty to the specific account holders who deposited those funds with Intrust. This inability to trace has required the Receiver to consider alternative methods of allocating the Shortage to account holders.
22. In considering these alternatives, the Receiver has attempted to identify methods which will be as expedient, cost-effective and fair as possible in allocating the Shortage, while recognizing that any method will have its limitations and be perceived by some as unfair to their specific circumstances. In developing an allocation alternative which appears most realistic, the Receiver considered alternatives with respect to four areas, as follows:
- Accounts to which the Shortage should be allocated;
  - Date(s) at which the allocation should be performed;
  - Valuation of accounts for allocating the Shortage; and
  - Components of accounts to which the Shortage should be allocated.

The issues considered by the Receiver related to each of these four areas are discussed below.

#### **ACCOUNTS TO WHICH THE SHORTAGE SHOULD BE ALLOCATED**

23. Virtually all cash transactions flowed through the Cole Taylor bank accounts in which account holders' funds were commingled and hence, any receipt of funds from an

account holder during the period that transfers were made to the Intercounty account from the Cole Taylor accounts could possibly have been included in such a transfer.

24. The Receiver believes that there may be a few types of accounts which should be considered for exclusion from any allocation of the Shortage:

- Accounts which were opened after the last transfer of funds from Intrust to Intercounty – i.e. after April 23, 1999.
- Accounts which contain “double counted” assets. Such situations occur when assets are managed by Intrust’s investment advisor department and the assets are recorded in investment advisor accounts and also in other trust types such as IRA’s, pension plans and profit sharing plans. These assets are double counted in TMAS in that they are recorded as both investment advisor accounts and other individual accounts. For allocation purposes, the investment advisor balance would be used for allocation while removing the duplicative assets from the allocation base.
- Accounts for which cash may never have been handled by Intrust during the period transfers were being made to Intercounty – this would require that only non-cash assets were transferred into the account, that there were no sales whereby the proceeds were placed in the Intrust trust cash account and no cash income was ever received and deposited into the Intrust trust cash account. However, it would be extremely difficult and time consuming to verify that such accounts exist. Because of the limitations of Intrust’s TMAS system, this would require a manual account by account analysis for all 20,000 accounts for the entire time period. The Receiver has conducted a very limited inquiry of accounts opened without a cash component and ascertained that within a few months, almost all had some element of cash which went through the cash trust bank account. Based on this very limited review and considering the time and expenses which would be required to do an exhaustive investigation of such accounts, the

Receiver is recommending that there be no such accounts excluded from the allocation of the Shortage.

- Land trusts (a type of account that typically never contains cash), except to the extent the Receiver has received specific information of a cash balance at a relevant time.
- Accounts for which Intrust performs bookkeeping tasks and did not, at any time, receive funds for deposit into its trust cash account. Intrust records indicate that there were 232 such accounts at March 31, 2000.

25. The Receiver has also considered the fact that there are thousands of account holders who held accounts at Intrust during the period in which Intrust was transferring funds to Intercounty but who closed or transferred their accounts, including any cash in those accounts, from Intrust prior to the receivership. Such account holders are as likely to have had their cash misappropriated by Intercounty as are the account holders who still have their accounts at Intrust. The Intrust records do not readily identify former account holders and the Receiver is advised by Intrust management that preparing such a list would be time consuming and expensive with no assurance that all would be identified. In addition, the Receiver and its legal counsel believe that even if such closed or transferred account holders could be identified and a portion of the Shortage allocated to them, the difficulty, time and expense of attempting to recover funds relating to their allocation would be greater than the recoveries. Accordingly, because these accounts are not under the Receiver's control, the Receiver believes there is no practical way to allocate the Shortage to former account holders.

26. **The Receiver believes that the following types of accounts should be excluded from any allocation of the Shortage:**

- **Accounts opened after April 23, 1999;**

- **Accounts which are classified as land trusts, except as otherwise described in paragraph 24;**
- **Accounts which contain double-counted assets (excluding the duplicative assets only);**
- **Accounts for which Intrust only performed bookkeeping services**

**The Shortage should be allocated to all other present account holders, hereinafter described as Included Account Holders.**

### **DATE(S) FOR ALLOCATION OF THE SHORTAGE**

27. The Receiver has evaluated the alternate dates at which the allocation might be made and the basis of making the allocation. The limitations of TMAS and the lack of full historic data retained by Intrust might make it impossible for the Receiver to recreate accurate historic data in order to specifically allocate the Shortage created by the misappropriated funds. Coupled with this is the desire to achieve as fast a resolution to this situation as possible in order to normalize the operations of Intrust and lift restrictions on the accounts. Adding to the complexity is the very large volume of transactions which occurs – there are approximately 200,000 transactions per week which affect Intrust accounts.

28. Transfers of funds between Intrust and Intercounty took place on a regular basis from December, 1990 to August, 1996. A summary of these transfers, by month, is set out as Exhibit III. This summary indicates that there were transfers between Intrust and Intercounty almost every month between December, 1990 and August, 1996. There was then a gap until July, 1997 and an additional gap until April, 1999. There were no known transfers after April, 1999.

29. Although the Receiver has considered many possibilities, it believes that there is logic in allocating the Shortage on either of two alternatives:

Alternative #1 - to Included Account Holders whose accounts were open at the various dates that approximate when the individual losses were incurred between August 31, 1993 and April 30, 1999, based on the loss incurred during each of the sixteen periods in which transfers were made between Intrust and Intercounty, or

Alternative #2 - in a single allocation to Included Account Holders whose accounts were open at April 30, 1999 based on the total loss incurred (\$68.1 million).

These alternatives are discussed in more detail as follows.

***Alternative #1***

30. The exact dates that Intrust's funds were misappropriated by Intercounty are unknown at this time, although it appears that Intrust's funds have been misappropriated almost from the beginning of the escrow agreement with Intercounty. As indicated in paragraph 28, above, transfers of funds between Intrust and Intercounty took place on a regular basis from December, 1990 to August, 1996.
31. The dates used in this allocation methodology would be the end of each month during which funds were transferred from Intrust to Intercounty, beginning with the transfer in August, 1993 and concluding with the transfer in April, 1999. The month of August, 1993 is selected as the starting point for Alternative #1 because it is at that date that the net loss commences – i.e. all transfers from Intrust to Intercounty to that time less all transfers back from Intercounty to Intrust.
32. Alternative #1 attempts to allocate the Shortage to accounts open at the end of each monthly period based on the loss incurred during that period. It does not allocate any portion of any given monthly loss to accounts that were opened subsequent to that month end. As it allocates the Shortage only after the date that the account was opened, it does not penalize an account holder who opened an account relatively late in the period in which the transfers were taking place as it does not allocate the share

of the Shortage which occurred prior to the account being opened.

33. Alternative #1 would be time consuming to implement as this method would require sixteen individual allocation dates (as set out in paragraph 29, above) and segmentation of account balances, together with calculations of losses incurred to the allocation date and numerous other considerations. The limitations of TMAS and the ability to expediently obtain reliable information significantly impact the practical application of this alternative. It could also place an unduly heavy allocation on account holders whose accounts have been opened since the early periods when the misappropriations started. It uses a proxy (dates of transfer) for the dates that the losses actually occurred. It also presents valuation issues (see discussion below).

***Alternative #2***

34. Alternative #2 simply allocates the total \$68.1 million loss in a single allocation to Included Account Holders as of April 30, 1999. Alternative #2 is simple to understand and does not place an unduly heavy allocation on account holders whose accounts have been opened since the early times of the misappropriation. It recognizes that transfers of funds that were misappropriated by Intercounty did not necessarily involve funds that were deposited in the month in which the transfer to Intercounty took place.

### *Allocation Valuation Issues Affecting Both Alternatives*

35. The fact that values of accounts as at any of the allocation dates proposed under either alternative cannot be ascertained (see paragraph 37 below), requires that historic losses must be allocated based on current market values, a situation which unquestionably does not match losses to values at the time of the loss. This fact is more problematic with respect to Alternative #1, which would be allocating losses from 1993 to 1999 based on 2000 account balances.
36. Although there are arguments in support of either Alternative #1 or Alternative #2, **the Receiver believes that Alternative #2 should be followed as the basis of allocation.**

### **VALUING OF ACCOUNTS FOR ALLOCATION OF THE SHORTAGE**

37. After determining the date(s) at which the Shortage should be allocated, it is necessary to determine the values against which the Shortage should be allocated. Here again, the limitations of Intrust's TMAS system must be considered. As outlined in paragraph 7, above, there were different bases used by Intrust for recording transactions and balances in accounts. Many accounts were updated only at month-end and at any other date during the month, these accounts would not necessarily accurately reflect current transactions. Quoted securities were only priced at month-end and, in the case of commodities, only at quarter-end. Based on its limited inquiry of the TMAS records at both March 31, 2000 and April 30, 2000, the Receiver has found that the month-end balances must be subjected to extensive and time consuming manual reconciliation procedures and adjustments in order to ensure that the balances are complete and accurate.
38. The Receiver has analyzed the month-end reconciliation and adjustments to TMAS as of April 30, 2000 and has also considered the additional adjustments to the accounts to effectively back out cash transactions relating to hardship payments and deposits of

new funds in those accounts between April 15 and April 30, 2000. These adjustments were necessary in order to attempt to ascertain the most expedient and cost-effective approximation of account holder cash balances as of April 14, 2000. After making these adjustments, the accounts reflect a better representation of the cash balances as of April 14, 2000, the date of the commencement of the receivership, before any allocation of the Shortage, the commodities account balances and quoted securities valued as of April 30, 2000 and the continuing carrying values of other assets as at April 30, 2000. The Receiver believes that while these values do not reflect complete or fully accurate market values as at April 14, 2000, they are the most accurate proxy for market values as at April 14, 2000 that can be established within reasonable time and cost constraints.

39. The Receiver has also investigated the feasibility of preparing account balances and statements at dates earlier than April 14, 2000, for example, April 23, 1999 the date of the last transfer of funds to Intercounty, or April 30, 1999 the month-end following that final transfer. Lengthy discussions with and/or testing by Intrust employees, a software consultant utilized by Intrust, the software company which developed TMAS and other assessments made by the Receiver, have yet to indicate that it is feasible to recreate reliable historic account statements from the records of Intrust. Even if such historic account statements could be prepared, they would require very extensive and time consuming reconciliation by the Receiver to assess their accuracy, based on the work required to make such an assessment of the April 30, 2000 account balances. The Receiver believes that such a process could take a significant period of time for each historic date selected, with no assurance that the results would justify use of the statements for allocation purposes. Additionally, the likelihood that the supporting documentation exists to perform such analysis is remote, at best. As a further complication, if historic information were available, it would require applicable market values to be applied to various assets which would take additional time and might not result in a valid basis for allocation .

40. The Receiver is most conscious of the passage of time in attempting to reach a resolution of the Shortage. Many account holders and investment advisors have expressed their frustration at the continuing limitations in dealing with their accounts imposed by the Order of Administration dated April 14, 2000. The need to achieve resolution and to eliminate the applicable restrictions is just as much a matter of equity and fairness as is the desire to allocate the Shortage among different accounts on a fair and equitable basis. The Receiver believes that there must be a compromise between the time and expense required to enable the fairest possible allocation which might significantly delay the process with the desire to approve and implement an allocation as quickly as possible and remove the restrictions on the accounts. Over two months have passed since the commencement of the receivership and another month will have passed before an allocation decision is made by the Court. The Receiver believes that most account holders would be accepting of an allocation that brought this matter to a conclusion in the very near future and enabled them to deal with their accounts without restriction, as they did prior to the receivership. Given the foregoing, **the Receiver recommends that the Shortage be allocated based on the values shown on the April 30, 2000 statements to be prepared by Intrust.**

#### **COMPONENTS OF ACCOUNTS TO WHICH THE SHORTAGE SHOULD BE ALLOCATED**

41. The types of assets (cash, securities, commodities, etc.) within the accounts to which the Shortage is to be allocated to Included Account Holders must also be decided. Two alternatives for allocation have been considered: allocation against the cash balances of the trust accounts at April 14, 2000 or allocation against the entire account balance.

42. As indicated above, the preponderance of account holders has utilized the Intrust cash trust bank account, even if for only brief periods of time. However, almost all account holders also maintain the majority of their accounts in non-cash assets and their primary use of the Intrust cash trust account is as a temporary depository before

making investment or withdrawal transactions. To allocate the Shortage against only the cash balances as at April 14, 2000 would place an inappropriate penalty on account holders who normally maintain the majority of their accounts in non-cash assets but who happened to have larger cash balances at the commencement of the receivership, in many cases awaiting completion of instructions to transfer those funds elsewhere.

43. **The Receiver believes that it is more equitable to calculate and allocate the Shortage over the value of the entire account, rather than only the cash component.** This recognizes the short duration of most cash transactions in the cash trust account at Intrust and the broader base over which the Shortage would be spread.

#### **Summary of Recommendations**

44. In summary, the Receiver recommends the following:
- The Shortage of \$68.1 million be the amount allocated to account holders.
  - The Shortage be allocated to all remaining account holders whose accounts were open at April 23, 1999, the date of the last transfer of funds to Intercounty, other than land trusts, “double counted” assets and accounts for which Intrust only performed bookkeeping services and never held any assets.
  - The Shortage be allocated based on the total asset values in the accounts (including cash, securities and non-cash trust assets) maintained in TMAS as at April 30, 2000, adjusted back to April 14, 2000 as outlined above.
45. Subject to further analysis of the accounts and their balances, the Receiver believes that implementation of the above recommendations would result in an allocation of the Shortage to Included Account Holders of approximately 6% of their account balances as at April 14, 2000.

## **COLLECTION OF THE SHORTAGE FROM ACCOUNTS**

46. The Receiver is currently developing a methodology for the collection of the Shortage from Included Account Holders. The Receiver anticipates that part of this methodology will permit account holders to voluntarily contribute cash or liquidate securities to meet their allocated share of the Shortage. If account holders do not respond to this voluntary action, the Receiver anticipates that the methodology will provide the Receiver with the authority to recover from the holder's account the allocated share of the Shortage. The Receiver is cognizant of the tax and accounting issues that may arise from implementation of the allocation of the Shortage. The Receiver will be filing a report with the Court setting out its recommended methodology for approval or amendment by the Court.

## **POTENTIAL SOURCES OF RECOVERY OF SHORTAGE**

47. Although a cash trust fund Shortage currently exists which must be allocated among Intrust account holders, the Receiver intends to take appropriate actions in an effort to reduce the Shortage and the ultimate loss that may be suffered by account holders.

48. As cited in paragraph 15 above, on behalf of Intrust, the Receiver has filed suit against certain companies and persons that the Receiver believes are responsible for the loss, including Intercounty and former directors and officers of Intrust and Intercounty. Such suit seeks the recovery of approximately \$68 million in trust funds, plus interest and other damages, based on breach of contract, breach of fiduciary duty, fraud, conversion, and other causes of action. The Receiver is also investigating and, if appropriate, will consider bringing suit against additional parties that may be responsible for all or part of the trust fund Shortage.

49. Intrust also maintained certain insurance policies (such as fidelity bonds and director and officer insurance), and claims will be pursued against such policies if appropriate.

50. The Receiver is also actively attempting to sell Intrust's business to a financially responsible successor trustee, for a fair and reasonable sale price. If such sale efforts are successful, proceeds of sale may be available to assist in reducing the Shortage.
51. At this time, it is not possible to predict the amount or timing of recoveries by the Receiver from such claims, causes of action, and possible sale, or how much the trust fund shortage would be reduced by such recoveries.
52. To facilitate payment from these recoveries to account holders that are allocated the shortage, the Receiver intends to request the Court to authorize the issuance of Receivership Certificates. Such Receivership Certificates would be in the face amount of the Shortage allocated by the Court to a particular account and would be issued to accounts and account holders that are allocated the Shortage. Such Receivership Certificates would be treated as an account asset and would be payable by the Intrust estate. Under the direction of the Court, the Receiver would make payment on the Receivership Certificates from the net proceeds of recoveries on claims and causes of action against responsible persons, claims against insurance policies, the sale of Intrust's business, and such other sources as may be appropriate. At the present time, it is not possible to estimate the amount or sources of payments, if any, that might be received by account holders through any such Receivership Certificates.
53. The use of Receivership Certificates would eliminate the need for account holders to file claims against the Intrust estate for the amount of the trust fund Shortage allocated to account holders by the Court. Account holders would still have the right to file claims against the Intrust estate for other reasons, such as incorrect account balances or account statements, through a claims process to be established by the Court. The Receiver intends to file a recommendation with respect to a claims process with the Court.

## **DISCLAIMER**

54. The Receiver has performed certain analysis and other tasks in connection with the execution of its responsibilities. The nature and scope of work performed by the Receiver have been directed by the Order of Administration dated April 14, 2000. The Receiver has commenced its initial investigation and will file its report with the Court when the initial investigation is completed. Regarding the information contained herein and all references to the initial investigation, the Receiver has not formulated any conclusions regarding the adequacy of the work performed. In that regard, the Receiver has presented herein and in the referenced initial investigation the services which have been performed and the results thereof. Any users of this submission must make their own evaluation and judgment relative to the applicability and adequacy of the information for their purposes. The Receiver assumes no responsibility for such use of the referenced information.

55. The recommendations presented herein and the suggested course of action are premised on a Shortage of \$68.1 million. If the actual Shortage varies from this amount, then an over/under allocation would occur. If a variation exists, any remaining amounts would either result in account holder claims against potential future recoveries achieved by the Receiver or incremental funds distributable at a later date. While the Receiver has performed its responsibilities in a professional manner, no assurances can be provided as to the amount of the actual Shortage or the allocable base. This limitation exists due to the controls, systems, access to responsible parties, volume of information and numerous other factors impacting the reliability of Intrust's financial information.

56. The work performed which resulted in this submission did not include a detailed examination of all transactions and cannot be relied upon to disclose all errors, irregularities, or illegal acts, including fraud or defalcations that may exist. The scope of our appointment and the information described above do not constitute an attest service as that term is defined by the American Institute of Certified Public Accountants. Accordingly, the Receiver is unable to express an opinion on any of the

financial statements or other data discussed herein.

57. The foregoing is based upon available financial information and the records of Intrust. Given the state of Intrust's records and the exigencies of this proceeding, if additional information and documentation become available, it is possible that such data may affect the manner or amount by which an item or items should be reported. Such information could impact the amount of the Shortage and the allocable basis.

58. The Receiver therefore requests that the Court enter an order directing the Receiver to:

- Implement a process whereby the Receiver allocates the identified \$68.1 million Shortage to all currently existing Holders of record who were Account Holders as of April 30, 1999, except that the allocation not apply to accounts in existence as of April 30, 1999, if the accounts were of the type otherwise described in paragraphs 24 and 26 of this Report as accounts that are to be excluded. If this Recommendation is not acceptable, the Receiver asks the Court to designate some other allocation formula. In either event, , authorize the Receiver to take such actions as the Receiver may reasonably deem appropriate to give effect to this allocation among the affected account holders and issue such orders as the Receiver may reasonably request to aid in the implementation of an allocation.
- Allocate the Shortage to Account Holders based upon estimated April 14, 2000 account balances. Such balances are to be based on April 30, 2000 information, where appropriate, in order to expedite and cost-effectively execute the allocation process.
- Provide to the Court for its further consideration a report reflecting the results of the allocation process, recovery efforts, and proposed claims resolution process.

Respectfully submitted

PricewaterhouseCoopers LLP  
as Receiver of Independent Trust Corporation

by \_\_\_\_\_  
Lawrence A. Ward

June 23, 2000