

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LUIS PERELMAN and LUIS PERELMAN TRUST  
FBO GAY PERELMAN, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

INTERTRUST TECHNOLOGIES CORPORATION,  
CREDIT SUISSE FIRST BOSTON CORPORATION,  
SALOMON SMITH BARNEY INC., BANCOSTON  
ROBERTSON STEPHENS, INC., MORGAN  
STANLEY & CO. INCORPORATED, MERRILL  
LYNCH, PIERCE FENNER & SMITH  
INCORPORATED, VICTOR SHEAR, DAVID C.  
CHANCE, PETER VAN CUYLENBURG, ERWIN N.  
LENOWITZ, EDMUND J. FISH AND DAVID VAN  
WIE,

Defendants.

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Index No.

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

Plaintiffs, by their undersigned attorneys, individually and on behalf of the Class described below, upon information and belief, based upon, inter alia, the investigation of counsel, which includes, among other things, a review of public announcements made by defendants, Securities and Exchange Commission ("SEC") filings made by defendants, and press releases, and media reports, except as to the paragraph applicable to the named plaintiffs which is alleged upon personal knowledge, bring this Complaint (the "Complaint") against defendants named herein, and allege as follows:

## **SUMMARY OF ACTION**

1. This is a securities class action alleging that the Registration Statement and Prospectus dated October 26, 1999 for the issuance and initial public offering of 6,500,000 shares of InterTrust Technologies Corp. common stock (the "IPO"), and the Registration Statement and Prospectus dated April 6, 2000 for the sale of 5,475,000 shares of InterTrust Technologies Corp. common stock (the "Secondary Offering") (collectively, the "Offerings") contained material misrepresentations and/or omissions. The Registration Statement and Prospectus dated October 26, 1999 are referred to collectively herein as the "IPO Prospectus." The Registration Statement and Prospectus dated April 6, 2000 are referred to collectively herein as the "Secondary Prospectus." The Initial and Secondary Prospectuses are referred to collectively herein as the "Prospectuses."

2. Defendants are InterTrust Technologies Corp. ("InterTrust") and six members of its senior management team, who were responsible for the materially false and misleading statements made in the Prospectuses. Also named as defendants are four underwriters of the IPO, and three underwriters of the Secondary Offering, each of whom engaged in a pattern of conduct to surreptitiously extract inflated commissions greater than those disclosed in the Offerings materials, among other acts of misconduct.

## **JURISDICTION**

3. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. § 78aa), Section 22 of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. § 77v) and 28 U.S.C. § 1331. 4.

Plaintiffs bring this action pursuant to the Securities Exchange Act of 1934 as amended (15

U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5), and pursuant to Sections 11 (15 U.S.C. § 77k), 12(a)(2) (15 U.S.C. § 77l) and 15 (15 U.S.C. § 77o) of the Securities Act of 1933. Venue is proper in this District as defendants conduct business in this District and many of the wrongful acts alleged herein took place or originated in this District.

5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

### **PARTIES**

6. Plaintiffs Luis Perelman and Luis Perelman Trust FBO Gay Perelman purchased shares of InterTrust Technologies Corp. as set forth in the attached certification.

7. Defendant InterTrust Technologies Corp. ("InterTrust") is a Delaware corporation whose principal place of business is 4750 Patrick Henry Blvd., Santa Clara, California. According to the IPO Prospectus, InterTrust "developed a general purpose digital rights management, or DRM, platform to serve as a foundation for providers of digital information, technology, and commerce services to participate in a global e-commerce system for digital commerce," and licensed the DRM platform to partners. In the IPO, pursuant to the IPO Prospectus, InterTrust issued to the investing public 6,500,000 shares of common stock at a price of \$18 per share, and, in the Secondary Offering, pursuant to the Secondary Prospectus, InterTrust issued to the investing public 5,475,000 shares of common stock at a price of \$35.00 per share.

8. Defendant Credit Suisse First Boston Corp. ("Credit Suisse") was, at all relevant times herein, a registered broker-dealer and member of the National Association of Securities Dealers, Inc.

("NASD"). Credit Suisse was a co-lead underwriter of the Offerings and substantially participated in the wrongs alleged herein. At all relevant times, Credit Suisse had a duty to promptly disseminate truthful and accurate information with respect to the Offerings and InterTrust.

9. Defendant Salomon Smith Barney, Inc. ("Salomon") was, at all relevant times herein, a registered broker-dealer and member of the National Association of Securities Dealers, Inc.

("NASD"). Salomon was a co-lead underwriter of the Offerings and substantially participated in the wrongs alleged herein. At all relevant times, Salomon had a duty to promptly disseminate truthful and accurate information with respect to the Offerings and InterTrust.

10. Defendant BancBoston Robertson Stephens ("Robertson Stephens") was, at all relevant times herein, a registered broker-dealer and member of the National Association of Securities Dealers, Inc. ("NASD"). Robertson Stephens was a member of the Secondary Offering underwriter group and substantially participated in the wrongs alleged herein. At all relevant times, Robertson Stephens had a duty to promptly disseminate truthful and accurate information with respect to the Offerings and InterTrust.

11. Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") was, at all relevant times herein, a registered broker-dealer and member of the National Association of Securities Dealers, Inc. ("NASD"). Morgan Stanley was a member of the IPO underwriting group and substantially participated in the wrongs alleged herein. At all relevant times, Morgan Stanley had a duty to promptly disseminate truthful and accurate information with respect to the IPO and InterTrust.

12. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") was, at all relevant times herein, a registered broker-dealer and member of the National Association of

Securities Dealers, Inc. ("NASD"). Merrill Lynch was a member of the IPO underwriting group and substantially participated in the wrongs alleged herein. At all relevant times, Merrill Lynch had a duty to promptly disseminate truthful and accurate information with respect to the Secondary Offering and InterTrust.

13. Defendants Credit Suisse, Salomon, Robertson Stephens and Morgan Stanley are collectively referred to herein as the IPO Underwriter Defendants, and together with Merrill Lynch, are collectively referred to herein as the "Underwriter Defendants."

14. Defendants Credit Suisse, Salomon and Merrill Lynch are collectively referred to herein as the "Secondary Offering Underwriter Defendants."

15. Defendant Victor Shear ("Shear") was, at all relevant times, InterTrust's Chairman of the Board and Chief Executive Officer. Shear signed the Prospectuses.

16. Defendant David C. Chance ("Chance") was at all relevant times InterTrust's Executive Vice Chairman. Chance signed the Prospectuses.

17. Defendant Peter van Cuylenburg ("van Cuylenburg") was InterTrust's President and Chief Operating Officer, and an InterTrust director on the date the IPO Prospectus became effective. van Cuylenburg signed the IPO Prospectus.

18. Erwin N. Lenowitz ("Lenowitz") was at all relevant times InterTrust's Vice Chairman of the Board, Chief Financial Officer and Secretary. Lenowitz signed the Prospectuses.

19. Edmund J. Fish ("Fish") was at all relevant times InterTrust's Senior Operating Officer, Executive Vice President and a director of InterTrust. Fish signed the Prospectuses.

20. David Van Wie ("Van Wie") was at all relevant times Senior Vice President of Research and a director of InterTrust. Van Wie signed the Prospectuses.

21. Shear, Chance, van Cuylenburg, Lenowitz, Fish and Van Wie are referred to collectively herein as the "Individual Defendants."

### **CLASS ACTION ALLEGATIONS**

22. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities who acquired the common stock of InterTrust pursuant or traceable to the false and misleading Prospectuses between October 26, 1999 and December 6, 2000 (the "Class").

23. Members of the Class are so numerous that joinder of all members is impracticable. Specifically:

a. There were 6,500,000 shares of InterTrust common stock issued pursuant to the IPO Prospectus and 5,475,000 shares of InterTrust Common stock issued pursuant to the Secondary Prospectus.

b. While the exact number of Class members is unknown to plaintiffs at this time and can only be ascertained through appropriate discovery, plaintiffs believe that there are thousands of Class members who acquired InterTrust shares pursuant to the Prospectuses.

24. Plaintiffs' claims are typical of the claims of the other members of the Class. Plaintiffs and the other members of the Class have sustained damages because of defendants' unlawful activities alleged herein. Plaintiffs have retained counsel competent and experienced in class and securities litigation and intend to prosecute this action vigorously. The interests of the Class will be fairly and

adequately protected by plaintiffs. Plaintiffs have no interests which are contrary to or in conflict with those of the Class which plaintiffs seek to represent.

25. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiffs knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

26. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact of common to the Class are:

- a. whether the federal securities laws were violated by defendants' acts as alleged herein;
- b. whether the Prospectuses omitted and/or misrepresented material facts about the Offerings;
- c. whether defendants participated directly or indirectly in the course of conduct complained of herein; and
- d. whether the members of the Class have sustained damages as a result of defendants' conduct, and the proper measure of such damages.

#### **CONTROLLING PERSON LIABILITY**

27. The Individual Defendants, by reason of their executive positions and board membership, were controlling persons of the Company and had the power and influence, and exercised

the same, to cause InterTrust to engage in the conduct complained of herein. Thus, the Individual Defendants controlled the public dissemination of the false and misleading information in the Prospectus and were controlling persons of the Company as set forth in Section 15 of the Securities Act.

**SUBSTANTIVE ALLEGATIONS**

**The Initial Public Offering**

28. On October 26, 1999 InterTrust and the Individual Defendants commenced the initial public offering of 6,500,000 shares of InterTrust common stock pursuant to the IPO Prospectus. According to the IPO Prospectus, proceeds of the IPO were for general corporate purposes, including working capital.

29. The Prospectus cover stated, in relevant part:

6,500,000 Shares

{LOGO OF INTERTRUST}

Common Stock  
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[. . .] Of the 6,500,000 shares for sale in this offering, the underwriters have reserved, at our request, up to 1,300,000 shares for sale at the initial public offering price to current and potential customers, others with whom we do business, existing stockholders, employees, and friends of InterTrust. In addition, the underwriters have an option to purchase a maximum of 975,000 additional shares to cover over-allotments of shares. [. . .]

	Price to Public -----	Underwriting Discounts and Commissions -----	Proceeds to InterTrust Technologies Corporation -----
Per Share.....	\$18.00	\$1.26	\$16.74

Total.....	\$117,000,000	\$8,190,000	\$108,810,000
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30. With regard to over-allotments, the IPO Prospectus stated:

We have granted to the underwriters a 30-day option to purchase on a pro rata basis up to 975,000 additional shares at the initial public offering price less the underwriting discounts and commissions. This option may be exercised only to cover any over-allotments of common stock.

31. The IPO Prospectus further stated:

The underwriters propose to offer the shares of common stock initially at the public offering price on the cover page of this prospectus and to selling group members at that price less a concession of \$0.76 per share. The underwriters and selling group members may allow a discount of \$0.10 per share on sales to other brokers/dealers. After the initial public offering, the public offering price and concession and discount to brokers/dealers may be changed by the representatives.

32. Thus according to the IPO Prospectus, the Underwriting Group was to receive discounts and commissions of \$1.26 per share, or a total of \$8,190,000, based on the spread between the per share proceeds to InterTrust of (\$16.74) and the Offering price to the public (\$18.00 per share).

33. Pursuant to the IPO Prospectus, InterTrust agreed to sell the IPO Underwriter Defendants 4,190,000 of the 6,500,000 IPO shares, with Credit Suisse receiving 2,850,000 shares, Salomon receiving 1,140,000 shares and Robertson Stephens and Morgan Stanley each receiving 100,000 shares.

34. The market anticipated that the price of the InterTrust shares would skyrocket in subsequent trading and investors who bought at the IPO price of \$18 per share could make huge

profits by reselling the shares at much higher prices in the aftermarket. Consequently, the right to purchase shares at the Offering price of \$18 per share was extremely valuable and highly coveted.

35. On October 27, 1999, InterTrust shares began trading pursuant to the IPO. The stock opened to the public at \$39 per share, and rose to an intra-day high of \$55 before closing at \$54.38 for a first-day gain of \$36.38 per share, or 202 percent over the IPO price. By the end of the following week, the stock had traded as high as \$92.50 before closing on November 11, 1999 at \$90.50, for a gain of \$72.50 or 403 percent over the IPO price.

36. Unbeknownst to investors, and contrary to the representations on the cover page of the IPO Prospectus and other related statements in the IPO Prospectus set forth above, the IPO Underwriter Defendants solicited and received additional, excessive and undisclosed commissions from certain investors in exchange for which it allocated to those investors material portions of the restricted number of InterTrust shares issued in connection with the IPO.

37. The additional, excessive and undisclosed commissions were paid by, among other means, the following practice: in exchange for IPO share allocations, customers agreed to and did pay the IPO Underwriter Defendants excessive commissions on transactions in other securities (commissions greater than those contemplated under NASD and SEC regulations – and which, when added to the seven percent commission disclosed on the front page of the Prospectus, caused the IPO Underwriter Defendants to receive greater underwriting commissions and fees than were disclosed in the InterTrust Prospectus). In some cases, the amount of the commissions was determined ex post facto by arrangements including specific formulas tied to investors' profits on the Offering.

38. In addition, and unbeknownst to investors, the IPO Defendants entered into agreements with customers whereby the IPO Underwriter Defendants agreed to allocate InterTrust shares to those customers in the Offering in exchange for which the customers agreed to purchase additional InterTrust shares in the aftermarket at pre-determined prices. Such tie-in arrangements were designed to and did maintain, distort and/or inflate the market price for InterTrust shares in the aftermarket and were thus an undisclosed benefit to the IPO Underwriter Defendants with respect to the additional shares that they had an option to purchase as well as a method of locking-in additional commissions on transactions in InterTrust securities that otherwise would have been left to the free choice of its customers.

39. As a result of the undisclosed practices set forth herein, during the Class Period, including the time of the Secondary Offering, InterTrust shares traded at artificially high levels. On December 9, 1999, they reached a high of \$187.25 per share. Between January and April 2000, the shares continued to trade at levels well above the offering price. On February 14, 2000 InterTrust shares closed at \$194.<sup>1</sup> On March 7, 2000, InterTrust shares closed at \$93.6875. By April 6, 2000, on the eve of the Secondary Offering, InterTrust shares closed at \$36, still 333% above the \$18 (pre-split) offering price.

40. Unbeknownst to investors who purchased in the after-market, this increase in share price was a result, in part, of the tie-in arrangements, which locked in demand for InterTrust shares in the after-market at levels well above the Offering price, thereby unlawfully and deceptively manipulating the market in InterTrust shares.

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<sup>1</sup>On February 25, 2000, before the market opened, InterTrust stock split two-for-one. The share prices referenced hereinafter are adjusted to reflect the split.

## The Secondary Offering

41. On April 6, 2000, InterTrust and the Individual Defendants filed the Secondary Prospectus stating that InterTrust was selling 5,475,000 shares of InterTrust common stock pursuant to the Secondary Prospectus.

42. The Secondary Prospectus cover stated, in relevant part:

We are selling 5,475,000 shares of common stock and the selling shareholders are selling 2,830,000 shares of common stock. We will not receive any of the proceeds from the shares of common stock offered by the selling shareholders.

Our common stock is quoted on the Nasdaq Stock Market's National Market under the symbol ITRU. On April 6, 2000, the last reported sale price of our common stock was \$36 per share.

The underwriters have an option to purchase from us and the selling stockholders a maximum of 821,250 additional shares to cover over-allotments of shares. [ . . . ]

	Price to Public	Underwriting Discounts and Commissions	Proceeds to InterTrust Technologies Corporation	Proceeds to Selling Stockholders
	-----	-----	-----	-----
Per Share.....	\$35.00	\$1.84	\$33.16	\$33.16
Total.....	\$191,625,000	\$10,074,000	\$87,708,200	\$93,842,800

43. Thus according to the Secondary Prospectus, the underwriting group was to receive discounts and commissions of \$1.84 per share, or a total of \$10,074,000, based on the spread between the per share proceeds to InterTrust and the selling stockholders of (\$33.16) and the Offering price to the public (\$35.00 per share). Pursuant to the Secondary Prospectus InterTrust agreed to sell the Secondary Offering Underwriters 3,091,268 shares issued in connection with the Secondary

Offering, with Credit Suisse receiving 2,122,614 shares, Salomon receiving 884,423 shares and Merrill Lynch receiving 84,231 shares.

44. Regarding the selling price of the Secondary Offering shares and the underwriting discounts and commissions, the IPO Prospectus also stated:

We and several of the selling stockholders have granted to the underwriters a 30-day option to purchase on a pro rata basis up to 821,250 additional shares at the initial offering price less the underwriting discounts and commissions. This option may be exercised only to cover any over-

allotments of common stock.

The underwriters propose to offer the shares of common stock initially at the public offering price on the cover page of this prospectus and to selling group members at that price less a concession of \$1.10 per share. The underwriters and the selling group members may allow a discount of \$0.10 per share on sales to other broker/dealers. After the initial public offering, the public offering price and concession and discount to broker/dealers may be changed by the representatives.

45. During the IPO, as set forth in ¶¶36-38, and hereinafter, the IPO Underwriter Defendants solicited and received additional, excessive and undisclosed commissions from certain investors in exchange for which it allocated to those investors substantial blocks of InterTrust shares issued in connection with the Offering. The Secondary Prospectus was materially false and misleading because it failed to disclose these secret arrangements and their inflationary effect on the market for InterTrust shares.

46. While defendant Merrill Lynch was not an underwriter of the IPO, Merrill Lynch and the other Underwriter Defendants each participated in the scheme to manipulate the aftermarket for IPO shares. Therefore, each Underwriter Defendant profited from the artificially inflated secondary offering price of the InterTrust shares; each Underwriter Defendants knew of the improper, undisclosed practices set forth in ¶¶36-38 herein and that such practices had artificially inflated the secondary offering price of the InterTrust shares; and each Underwriter Defendant knew that the Secondary Prospectus was materially false and misleading due to its failure to disclose these improper practices.

**The Truth Begins To Emerge**

47. The truth began to emerge on December 6, 2000, when The Wall Street Journal began to publish articles regarding a joint SEC and U.S. Attorneys' investigation into the payment by certain investors of extra-large, undisclosed "kickbacks" for allocations in initial "hot IPOs."

48. With regard to the joint SEC and U.S. Attorneys' investigation of Credit Suisse, and other underwriters, The Wall Street Journal stated, in an article published on December 7, 2000:

Federal authorities have launched an investigation examining whether Wall Street securities firms have asked some big investors to pay unusually large trading commissions in exchange for hot initial public-stock offerings, people familiar with the matter say.

\* \* \* \*

The authorities are scrutinizing ways in which Wall Street dealers may have sought and obtained larger-than-typical commissions in return for giving coveted allocations of IPOs to certain investors. Some of the arrangements could have included specific formulas tied to investors' profits on offerings, the people familiar with the probe say. Many of the offerings doubled or more in their first day of trading during an IPO mania that began in late 1998.

An early focus of the investigation is the Credit Suisse First Boston unit of Credit Suisse Group, the people say. In a statement, the firm confirmed the inquiry. "We have received requests from governmental agencies for information regarding the allocations of shares to investors in IPOs," CSFB [*i.e.* Credit Suisse] said. [Emphasis added.]

\* \* \* \*

In most cases, a majority of IPO shares are allocated to institutional investors, including fast-trading hedge funds, which cater to wealthy individuals; these funds are among Wall Street dealers' best customers because they routinely generate the largest stock-trading commissions. The probe focuses on whether some investors and dealers took that arrangement a step further by linking IPO profits to commission levels in ways that came to resemble kickbacks to the dealers from the investors, the people say.

\* \* \* \*

***For example, at times dealers asked investors to pay commissions equaling 25% to 40% or more of the investors IPO profits on those particular dealers' IPOs, according to traders and people with knowledge of the probe. In other instances, investors paid***

*big commissions to a dealer the day after receiving a lucrative IPO allocation, according to one person with knowledge of the probe.*

*Sometimes, traders say, the commissions were routed to dealers through a series of trades, sometimes with offsetting purchases and sales of equal amounts of the same stock conducted solely to generate commissions.* [Emphasis added.]

\* \* \* \*

Some traders have recounted conversations with Credit Suisse First Boston sales people, contending that they urged investors to boost their commissions with the firm's trading desk, citing investors' profits on CSFB-led IPOs. Indeed some traders say such "step-it-up" calls from Wall Street firms to investors were not uncommon.

Robert Meglio, a trader at Oracle Partners hedge fund, which specializes in biotechnology and health-care stocks, said in an August interview that his CSFB salesman told him: "You've made \$2 million in IPO profits but you've paid us \$500,000 in commissions" Mr. Meglio added in the interview: "They were saying, 'Listen, can you step it up?'"

Mr. Meglio says he declined.

49. Credit Suisse did not deny the account in the preceding paragraph. Rather, according to the article:

Responding to the account, CSFB said: "In the normal course of customer relationships on Wall Street, sales people in any investment bank discuss levels of business and ask for more business."

50. An article in [The Wall Street Journal](#) on the investigation, published on December 13, 2000, also singled out Credit Suisse:

The Credit Suisse First Boston unit of Credit Suisse Group has been an early focus of the probe. That firm, as well as Goldman and Morgan Stanley, dominated the market for the kind of high-octane IPOs that initially surged in price after the offerings. The three firms accounted for 53.1% of all IPOs dollar volume since mid-1998, according to Thomson Financial Securities Data, a Newark, N.J. data service.

Credit Suisse has confirmed receiving inquiries about its IPO allocations, which it says were in line with industry practice.

51. On April 20, 2001, The Wall Street Journal reported that two senior employees in Credit Suisse's technology group had been placed on administrative leave and that the employees were John Schmidt ("Schmidt"), a top manager in the group, and Michael Grunwald ("Grunwald"), who reports to him.

52. On May 15, 2001, The Wall Street Journal, citing "people familiar with the situation," reported that Credit Suisse had informed Schmidt and Grunwald that, "an internal review found that they violated firm policy in allocating initial public stock offerings." The article further reported that:

The development regarding Messrs. Schmidt and Grunwald comes as a half dozen or more CSFB employees have been notified that they face possible disciplinary action by NASD's regulatory unit, NASDR, Inc. These other employees haven't been placed on administrative leave.

The employees notified of possible NASDR charges include Andrew S. Benjamin, formerly head of the firm's private-client services unit, which caters to wealthy individuals and hedge funds; George W. Coleman, a senior global stocktrading executive; Thomas E. Fusco, a salesman who dealt with institutional investors; and John P. Coen, a private-client broker in New York, according to the records.

The names of the other employees couldn't be determined. ***According to people familiar with the matter, the potential NASDR charges involve receiving inflated commissions on trades with big institutional clients that got IPO allocations from CSFB.*** Messrs. Benjamin, Coen, Coleman and Fusco all deny wrongdoing. [. . .]

Among the broad rules governing IPO sales, as set by the NASD, is the "free riding and withholding" rule, which requires underwriters to fully and fairly distribute shares of an IPO. Charging unusually large commissions on other trades in exchange for extra shares of an IPO could be considered a violation of that rule because it would give the underwriters an effective economic stake in the stock, according to securities lawyers.

Another regulatory provision involves the "fair dealing" rule, which requires brokers to deal with their customers fairly and honestly. Among the violations of such a rule, according to the NASD, is the "establishment of fictitious accounts in order to execute transactions which otherwise would be prohibited, such as the purchase of hot issues, or to disguise transactions which are against firm policy." [Emphasis added.]

53. As of the date of the filing of this complaint, the price of InterTrust' common stock is \$2.27.

**Defendants' False and Misleading Statements  
and Violations of SEC and NASD Regulations**

54. The statements in the Prospectuses and referenced in ¶¶29-32 and 42-44 were materially false and misleading because they contained the following misstatements and/or omissions of material facts, among others:

(a) that the IPO Underwriter Defendants had solicited and received additional, excessive and undisclosed fees, commissions and other economic benefits in connection with the allocation of Offering shares by virtue of the acts, conduct and transactions described above; and

(b) that the IPO Underwriter Defendants had entered into tie-in and other similar arrangements with certain customers, as described herein, which were designed to and did maintain, distort and/or inflate the market price for InterTrust shares in the aftermarket.

55. InterTrust was required to comply with SEC regulations in connection with the Prospectuses. Item 501 of Regulation S-K specifically governs the forepart of the Registration Statement and outside front cover page of the Prospectuses. Item 501(b)(3) required InterTrust to disclose therein the underwriters' discounts and commissions and Item 501(b)(8) required InterTrust to identify the "nature of the underwriting arrangements."

56. The Prospectuses violated Regulation S-K and were materially false and misleading because they failed to show in the tables, or to otherwise disclose the true commissions received by the IPO Underwriter Defendants and the actual nature of the underwriting arrangements.

57. Item 508 of SEC Regulation S-K specifically governs disclosures in the Prospectus regarding the Plan of Distribution of the Offering shares. With regard to underwriter compensation, Regulation S-K, Item 508 (e) provides:

*Underwriters Compensation.* Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. In addition, include in the table all other items considered by the National Association of Securities Dealers to be underwriting compensation for purposes of that Association's Rules of Fair Practice.

Instructions to Paragraph 508(e)

1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Show separately in each table the cash commissions paid by the registrant and selling security holders. *Also show in the table commissions paid by other persons. Disclose any finder's fee or similar payments in the table.* [Emphasis added.]

58. The Prospectuses violated Regulation S-K and were false and misleading because they failed to show in the table, or to otherwise disclose, that the IPO Underwriter Defendants received additional and excessive commissions "paid by other persons."

59. With regard to offering transactions, Regulation S-K, Item 508 (l) (1) required as follows:

Briefly describe any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. ***Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transaction that affects the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price.*** Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time. [Emphasis added.]

60. The Prospectuses violated Regulation S-K and were materially false and misleading because they failed to disclose that, in connection with the IPO, the IPO Underwriter Defendants

intended to conduct, and that they subsequently did conduct, transactions that stabilized and affected the offered security's price, as set forth herein.

61. NASD, which operates subject to SEC oversight, is the self-regulatory organization of the securities industry responsible for the regulation of the NASDAQ Stock Market. Since the Offering occurred on the NASDAQ market, The Underwriter Defendants were subject to NASD conduct rules.

62. NASD Conduct Rule 2110 requires that: "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles." The NASD publishes guidelines to the Conduct Rules. Guideline IM-2110-1 (b) states that it is a violation of Rule 2110 for a member to "fail to make a bona fide public distribution at the public offering price of securities of a public offering which trade at a premium in the secondary market."

63. The Underwriter Defendants violated NASD conduct rule 2110, and the Prospectuses were materially false and misleading, because the Prospectuses contained the following misstatements and/or omissions of material fact: The Underwriter Defendants did not make a bona fide public distribution of the IPO securities because they accepted kickbacks in exchange for IPO allocations, took steps to stabilize and distort the market for InterTrust shares and thereby offered the securities to the public at prices in excess of the public offering price of the securities.

64. NASD Conduct Rule 2440 governs Fair Prices and Commissions and, in relevant part, requires that a member:

shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any

service he may have rendered by reason of his experience in and knowledge of such security and market therefor.

65. Guideline IM-2440 states, in relevant part,

It shall be deemed a violation of Rule 2110 and Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable. [. . .] (a)(4) A mark-up of 5% or even less may be considered unfair or unreasonable under the 5% policy.

66. The Underwriter Defendants violated NASD Conduct Rules 2110 and 2440, and the Prospectuses were materially false and misleading, because the Prospectuses contained the following misstatements and/or omissions of material fact: in connection with the Offering and aftermarket sales of the shares, the IPO Underwriter Defendants charged customers commissions that were unfair, unreasonable, and in excess of 5% as consideration for receiving allocations of shares in the Offering.

67. Moreover, in the SEC Division of Market Regulation, Staff Legal Bulletin No. 10, dated August 25, 2000, the SEC specifically stated that the tie-in arrangements alleged herein are a violation of Regulation M, which governs market manipulation. Indeed, the Staff Legal Bulletin states:

Tie-in agreements are a particularly egregious form of solicited transaction prohibited by Regulation M. As far back as 1961, the Commission addressed reports that certain dealers participating in distributions of new issues had been making allotments to their customers only if such customers agreed to make some comparable purchase in the open market after the issue was initially sold. The Commission said that such agreements may violate the anti-manipulative provisions of the Exchange Act, particularly Rule 10b-6 (which was replaced by Rules 101 and 102 of Regulation M) under the Exchange Act, and may violate other provisions of the federal laws.

Solicitations and tie-in agreements for aftermarket purchases are manipulative because they undermine the integrity of the market as an independent pricing mechanism for the offered security. Solicitations for aftermarket purchases give purchasers in the offering the impression that there is a scarcity of the offered securities. This can stimulate demand and support the pricing of the offering. Moreover, traders in the aftermarket will not know that the aftermarket demand, which may appear to validate the offering price, has been stimulated by the distribution

participants. Underwriters have an incentive to artificially influence aftermarket activity because they have underwritten the risk of the offering, and a poor aftermarket performance could result in reputational and subsequent financial loss.

68. Accordingly, defendants have violated Rules 101 and 102 of Regulation M.

**COUNT I**  
**(Against All Defendants**  
**For Violation of Section 11 of the Securities Act of 1933)**

69. Plaintiffs repeat and reallege the allegations set forth above as if set forth fully herein, except to the extent that any such allegation may be deemed to sound in fraud.

70. InterTrust is named as the issuer of the InterTrust shares offered pursuant to the IPO Prospectus dated October 26, 1999 and the Secondary Prospectus dated April 6, 2000 and is therefore strictly liable to plaintiffs and the class. Shear and Chance are named in this count as officers who signed the Prospectuses. van Cuylenburg is named in this count as a director at the time the IPO Prospectus became effective and as a person who signed the Initial Prospectus. Lenowitz, Fish and Van Wie are named as persons who were directors of InterTrust on the dates the Prospectuses became effective and as persons who signed the Prospectuses.

71. Credit Suisse, Salomon, Robertson Stephens and Morgan Stanley are named in this count the underwriters with respect to the Offerings and Merrill Lynch is named in this count with respect to the Secondary Offering.

72. As set forth above, there were untrue statements of material fact, or omissions of material fact, from the Prospectuses.

73. This action is brought within one year after discovery of the untrue statements and omissions in and from the Prospectuses should have been made through the exercise of reasonable diligence, and within three years of the effective date of the Prospectuses.

74. By virtue of the foregoing, plaintiffs and the other members of the class are entitled to damages under Section 11 as measured by the provisions of Section 11(e), from the defendants and each of them, jointly and severally.

**COUNT II**  
**(Against The Underwriter Defendants**  
**For Violation of Section 12(a)(2) of the Securities Act of 1933)**

75. Plaintiffs repeat and reallege the allegations set forth above as if set forth fully herein, except to the extent that such allegation may be deemed to sound in fraud.

76. This Count is brought pursuant to Section 12(a)(2) of the Securities Act, 15 U.S.C. § 771(a)(2), on behalf of the Class against the Underwriter Defendants.

77. The statements referred to herein above were each made in a "prospectus" as that term is defined in Section 2(a)(10) of the Securities Act, 15 U.S.C. § 77b(a)(10), contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed to disclose material facts. The Underwriter Defendants acted to sell shares of InterTrust in the form of common stock by way of the Prospectuses. The actions included participating in the preparation of the Prospectuses and other materials used in the sale of InterTrust shares.

78. Plaintiffs and the other members of the Class purchased or acquired the Company's common stock pursuant to a Prospectuses. Plaintiffs and the other members of the class did not know,

or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in or made in connection with the Prospectuses.

79. By reason of the conduct alleged herein, the Underwriter Defendants violated Section 12(a)(2) of the Securities Act. Accordingly, purchasers who acquired InterTrust shares in the Offerings and pursuant to the Prospectuses have the right to rescind and recover the consideration paid for the Company's shares and may rescind and tender their shares of the Company to the defendant sued herein. Class members who have sold their InterTrust shares are entitled to rescissory damages.

80. Less than three years has elapsed from the time that the securities upon which this Count is brought were sold to the public to the time of the filing of this action. Less than one year has elapsed from the time when plaintiffs discovered or reasonably could have discovered the facts upon which this Count is based to the time of the filing of this action.

**COUNT III**  
**(Against The Individual Defendants)**  
**For Violation of Section 15 of the Securities Act**

81. Plaintiffs repeat and reallege the allegations set forth above as if set forth fully herein, except to the extent that such allegation may be deemed to sound in fraud.

82. Shear, Chance, Lenowitz, Fish and Van Wie are alleged to be Controlling Persons with respect to the Offerings of InterTrust shares through stock ownership, agency or otherwise, and van Cuylenburg is alleged to be a Controlling Person through stock ownership, agency or otherwise with respect to the IPO.

83. Because of their positions of control with respect to the Offerings and their knowledge of InterTrust' business, Shear, Chance, Lenowitz, Fish and Van Wie and van Cuylenburg are controlling persons within the meaning of Section 15 of the Securities Act.

84. By virtue of the foregoing, plaintiffs and the other members of the Class are entitled to damages against the Shear, Chance, Lenowitz, Fish, Van Wie and van Cuylenburg jointly and severally.

**COUNT IV**  
**(For Violations Of Section 10(b) Of The**  
**1934 Act And Rule 10b-5 Promulgated**  
**Thereunder Against The Underwriter Defendants)**

85. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

86. During the Class Period, the Underwriter Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiffs and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of InterTrust common stock; and (iii) cause plaintiffs and other members of the Class to purchase InterTrust stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, the Underwriter Defendants, and each of them, took the actions set forth herein.

87. The Underwriter Defendants : (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain

artificially high market prices for InterTrust common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. The Underwriter Defendants are sued as primary participants in the wrongful and illegal conduct charged herein.

88. In addition to the duties of full disclosure imposed on the Underwriter Defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, they each had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and S-K (17 C.F.R. § 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and performance so that the market prices of the Company's publicly traded securities would be based on truthful, complete and accurate information.

89. The Underwriter Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the Offerings of InterTrust common shares of InterTrust stock as specified herein, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of InterTrust securities during the Class Period.

90. The Underwriter Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were readily available to them.

91. The Underwriter Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing, inter alia, (a) that the Underwriter Defendants received additional, excessive and undisclosed commissions from its customers in exchange for allocations of Offerings' stock; (b) that the Underwriter Defendants had arranged for its customers to purchase InterTrust shares in the after-market, which artificially inflated and sustained the after-market price of InterTrust shares and thereby benefitted the Underwriter Defendants; and (c) that the Underwriter Defendants also received undisclosed commissions in the form of excessive commissions from its customers in connection with the purchase of other securities.

92. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of InterTrust's common stock was artificially inflated during the Class Period. In ignorance of the fact that the market price of InterTrust' shares were artificially inflated, and relying directly or indirectly on the false and misleading statements made by the Underwriter Defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by the Underwriter Defendants but not disclosed in public statements by the Underwriter Defendants during the Class Period, plaintiffs and the other members of the Class acquired InterTrust common stock during the Class Period at artificially inflated high prices and were damaged thereby.

93. At the time of said misrepresentations and omissions, plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiffs and the other members of the Class and the marketplace known that the price of InterTrust shares had been artificially inflated by the Underwriter Defendants' fraudulent scheme, plaintiffs and other members of

the Class would not have purchased or otherwise acquired their InterTrust securities during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

94. By virtue of the foregoing, the Underwriter Defendants each violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

95. As a direct and proximate result of the Underwriters Defendants' wrongful conduct, plaintiffs and the other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**WHEREFORE**, plaintiffs, on behalf of themselves and on behalf of the Class, pray for judgment as follows:

A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and certifying plaintiffs as representatives of the Class and their counsel as class counsel;

B. Against defendants, jointly and severally for damages suffered, as a result of defendants' violation of the securities laws;

C. Awarding plaintiffs and other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;

D. Awarding rescission or recessionary damages to members of the class who no longer hold their InterTrust stock; and

E. Awarding such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

DATED: May 24, 2001

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