

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005000293901

TO: Department of Enforcement
NASD

RE: Sanford C. Bernstein & Co., LLC, Respondent, CRD No. 104474
Charles Bradley "Brad" Hintz, Respondent, CRD No. 1590170

Pursuant to Rule 9216 of NASD Code of Procedure, Respondents Sanford C. Bernstein & Co. LLC ("Sanford Bernstein" or the "firm") and Charles Bradley "Brad" Hintz ("Hintz") (collectively the "Respondents") submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondents alleging violations based on the same factual findings.

Respondents understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents; and
3. If accepted:
 - a. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondents;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the Respondents' disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

- d. Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondents' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondents also understand that their experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

Sanford Bernstein has been a registered broker-dealer and NASD member since 1969. Its principal offices are located in New York City. Sanford Bernstein engages primarily in institutional research and trading- and brokerage-related services principally for institutional customers. Sanford Bernstein employs approximately 107 research analysts in 2 offices in New York City and London. Sanford Bernstein was acquired by Alliance Capital Management L.P. in 2000 and is currently a subsidiary of Alliance. Sanford Bernstein has no prior relevant formal disciplinary history.

Hintz entered the securities industry in 1986 as a registered representative of a member of NASD. Hintz joined Sanford Bernstein as a research analyst in November 2000 and is currently the firm's lead research analyst covering the securities industry. Hintz currently holds series 7, 27, 63, 86 and 87 licenses. Hintz has no prior formal disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

Sanford Bernstein and Hintz specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondents;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written

decision issued; and

- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondents specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

SUMMARY

NASD prohibits a research analyst from engaging in securities transactions that are contrary to the analyst's recommendation, forbids an analyst from effecting any transactions in a security the analyst covers during a proscribed period before and after issuing a report on the company, and requires an analyst to disclose in research reports any holdings in the covered securities. As described below, Sanford Bernstein and Hintz, one of its research analysts, violated these proscriptions.

By the end of 2004, Hintz held a substantial amount of stock in Lehman Brothers Holdings, Inc., and options to purchase stock in Morgan Stanley, both received as compensation when he was an officer at the respective firms. While he covered Morgan Stanley and Lehman Brothers at Sanford Bernstein he maintained a favorable rating on those companies. Sanford Bernstein was on notice of all aspects of Hintz's holdings when it hired him and at all times thereafter.

Hintz's Morgan Stanley options were set to expire in January 2005. Hintz wanted to exercise those options and sell all the resultant Morgan Stanley stock he would acquire, as well as all of his Lehman Brothers stock, to realize the substantial value of the securities and to diversify his portfolio. He could not do so under NASD rules, however, because the transactions would be contrary to his recommendations. On Hintz's behalf, Sanford Bernstein initially sought an exemption from NASD rules from the regulators. When that effort was unsuccessful, Sanford Bernstein developed a plan that it believed, erroneously, would allow Hintz to dispose of his holdings in Morgan Stanley and Lehman Brothers without violating NASD rules. Under Sanford Bernstein's plan, which was reviewed and approved by the firm's legal and compliance department and senior management, Hintz would "terminate" coverage of both stocks by issuing a "final" report at least five days before the sale of the securities, execute the Morgan Stanley options and sell his entire holdings in Morgan Stanley and Lehman Brothers in January 2005, then resume coverage at least 30 days after the sale of the securities.

The plan was executed. On December 23, 2004 the firm and Hintz issued the reports purportedly terminating coverage on each company and Hintz disposed of his entire holdings in January 2005 with the intention of resuming coverage approximately 30 days thereafter.

Sanford Bernstein's plan was developed to avoid the Rule's prohibition on effecting transactions contrary to the investment recommendations, and it did not comply with NASD rules. Coverage was not terminated under NASD Rule 2711 because the firm intended Hintz to resume coverage of both stocks shortly after Hintz's stock sale. Since there was no bona fide termination of coverage, the investment recommendations on both companies remained in force and the stock sales in January 2005 violated NASD rules.

Moreover, Hintz violated NASD rules as a result of stock transactions in a discretionary account that Hintz held at a domestic trust company, and Sanford Bernstein failed to supervise the activity in the discretionary account with a view towards preventing the violations. Although personnel at the trust company had trading authority over the account, Hintz controlled the investment parameters for the account. The account effected numerous transactions on Hintz's behalf in six stocks Hintz covered that were contrary to his recommendations and that occurred during the proscribed black-out period surrounding the issuance of his research reports. Sanford Bernstein and Hintz also failed to disclose properly Hintz's holdings in these six stocks in Hintz's research reports on those companies. Both Hintz and Sanford Bernstein were on notice of these transactions since both received monthly statements for the account. Until February 2003, however, Hintz did nothing to prevent the violative transactions from occurring. In February 2003, Hintz verbally instructed the trust company to sell the securities in companies he covered and changed the investment guidelines for the account to prohibit future transactions in such securities. Thereafter, Hintz and Sanford

Bernstein did not review the statements for his account and therefore did not discover the trust company's failure to divest the securities of two companies Hintz covered. Despite Hintz's subsequent instructions to the trust company, the trust company did not sell one of the securities until July 2003, and the other security remained in the account until January 2004.

Accordingly, Sanford Bernstein was responsible for violations of NASD Rules 2711(g)(2) and 2711(g)(3) and violated NASD Rules 2711(h), 2711(i), 3010, 3110 and 2110 as well as Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4 thereunder and Hintz violated NASD Rules 2711(g)(2), 2711(g)(3), and 2711(h).

1. NASD RULES GOVERNING RESEARCH ANALYST CONFLICTS OF INTEREST (NASD RULE 2711)

NASD Rule 2711 contains several prohibitions that are relevant to this matter.

First, Rule 2711(g)(3) prohibits a research analyst account from effecting a transaction that is contrary to the analyst's investment recommendation on that company. A "research analyst account" is any account in which an analyst or member of the analyst's household has a financial interest and over which the analyst has discretion or control, except for blind trusts. A violation of this provision cannot be cured by disclosure. There is an exception to this rule to allow an analyst to engage in a transaction to accommodate "an unanticipated significant change in the personal financial circumstances" of the analyst, but Hintz could not avail himself of this exception.

Second, Rule 2711(g)(2) prohibits a research analyst account from effecting any transaction in a security an analyst covers 30 days before or five days after the analyst issues a report on the company. There is no requirement under this provision of 2711 that the transaction be contrary to the analyst's recommendation.

Third, Rule 2711(f)(5) provides that a member may terminate its research coverage of a company by issuing notice of termination and making available a final research report on the company. As demonstrated by the legislative history of the Rule, NASD deliberately used "terminate" to denote something more than a temporary cessation or suspension of coverage.

Fourth, Rule 2711(h)(1) requires disclosure in a research report of any financial interest held by the analyst or a member of the analyst's household in the subject company.

Finally, Rule 2711(i) requires a firm to establish policies and procedures to comply with the requirements of Rule 2711.

NASD first proposed Rule 2711 on February 8, 2002. NASD issued its response to comments on May 2, 2002 and the SEC approved Rule 2711 on May 10, 2002. A Notice to Members on the rule was issued on June 26, 2002. The effective date of Rule 2711 was July 9, 2002, except for certain firms that were allowed additional time until November 6, 2002 if the firms requested an extension and satisfied certain conditions. Sanford Bernstein did not apply for this extension, rendering this extension irrelevant for Sanford Bernstein analysts, including Hintz.

2. WHILE EMPLOYED AT MORGAN STANLEY AND LEHMAN BROTHERS, HINTZ RECEIVED SUBSTANTIAL AMOUNTS OF SECURITIES AS DEFERRED COMPENSATION

Hintz was the Treasurer for Morgan Stanley from 1986 to 1996, and the Chief Financial Officer for Lehman Brothers from March 1996 to July 1998. As part of his compensation as Treasurer for Morgan Stanley in 1994, Hintz was awarded 68,178 options in early 1995 that were set to expire as worthless if not exercised before January 31, 2005. These options vested in March 1997, and Hintz could have exercised them and sold his stock in Morgan Stanley before NASD Rule 2711(g)(3) became effective. He did not do so.

As part of his compensation as CFO of Lehman Brothers in 1996, Hintz received 54,054 performance stock units that gave him rights to restricted shares of stock. Through certain adjustments in the number of stock units to account for stock splits, dividend reinvestments and tax implications on the acquisition of the stock, Hintz received 71,209 shares of Lehman stock in November 2002 that were free and clear.

3. SANFORD BERNSTEIN PERMITTED HINTZ TO SELL STOCK CONTRARY TO HIS FAVORABLE RECOMMENDATIONS

Sanford Bernstein was on notice that Hintz could have exercised his Morgan Stanley options at any time after March 30, 1997 and well before the adoption or effective date of Rule 2711. Sanford Bernstein was aware of all of Hintz's holdings, including his large stakes in Morgan Stanley and Lehman Brothers, from the time that he first became associated with the firm in 2000.

Hintz's Morgan Stanley options were set to expire on January 31, 2005. Rather than exercise his options and sell his Morgan Stanley stock at the time Rule 2711 became effective in 2002, Hintz decided to wait to exercise his options until closer to the time they would expire to maximize the economic value of the options. The firm knew that Hintz had not sold these positions notwithstanding regulatory restrictions in place due to Rule 2711. The restricted stock in Lehman Brothers Hintz received became freely tradable on November 30, 2002, after the effective date for Rule 2711(g)(3)'s prohibition against trading contrary to an analyst's recommendations.

During the relevant period, Hintz and Sanford Bernstein maintained favorable ratings on Morgan Stanley and Lehman Brothers. Morgan Stanley was rated "market-perform" until November 10, 2003, when it was upgraded to "outperform" (Sanford Bernstein's highest rating) and that rating was maintained thereafter. Lehman Brothers was rated "outperform" until June 20, 2003 when it was downgraded to "market-perform" and that rating was maintained thereafter. Given these favorable ratings, NASD Rule 2711(g)(3) prevented Hintz from selling his holdings in either company because the transaction would be contrary to the investment recommendations.

A. SANFORD BERNSTEIN SOUGHT INTERPRETIVE RELIEF TO ALLOW THE STOCK SALES

At the end of 2003, with the January 2005 deadline to exercise his Morgan Stanley options approaching, Hintz wanted to divest himself of his holdings in Morgan Stanley and Lehman Brothers to realize the substantial gain in the value of the securities and to diversify his portfolio. Thus, on December 1, 2003, Hintz asked Sanford Bernstein to preapprove the transfer of his Lehman Brothers stock to his domestic trust company account, with a view towards selling the stock through that account. On December 5, 2003, Sanford Bernstein's Director of Compliance instructed Hintz not to effect the transfer until the Director of Compliance and an in-house attorney could determine the appropriate course of action. Sanford Bernstein's Director of Compliance thereafter determined that the firm would not permit Hintz to sell his Lehman Brothers stock through his account at a domestic trust company because the account was subject to the restrictions in NASD Rule 2711(g)(3) and the sales would be contrary to the investment recommendations on Lehman Brothers.

Hintz then sought Sanford Bernstein's guidance on how to exercise his Morgan Stanley options and sell his Lehman Brothers stock. In response to Hintz's request, starting in early 2004, Sanford Bernstein pursued an interpretation to allow Hintz to sell his holdings without violating the prohibitions in NASD Rule 2711 (and companion NYSE Rule 472). On September 8, 2004, Sanford Bernstein, on behalf of Hintz, sent a draft letter to NASD and the NYSE requesting an interpretation that Hintz be permitted to sell his holdings in light of certain "hardships" that it claimed fell within the exception to the Rule for "unanticipated significant change in the personal financial circumstances" of the analyst. Sanford Bernstein explained to the regulators that Hintz had to sell some of the Morgan Stanley securities received from the options exercise to pay the taxes and costs associated with the exercise, even though it was on notice that Hintz had sufficient cash and liquid securities to cover the costs of the options exercise without selling any Morgan Stanley stock. Sanford Bernstein also represented to the regulators, among other things, that Hintz faced a "hardship" because a disproportionately large part of his net worth was tied up in his Lehman Brothers and Morgan Stanley holdings making it necessary for him to liquidate his position in both companies. The need to

diversify is not, however, the type of "unanticipated significant change in personal financial circumstances" contemplated by the exception to Rule 2711(g)(3).

In early December 2004, the NYSE, on behalf of the regulators, told Sanford Bernstein that the NYSE and NASD did not have the authority to grant the requested relief under Rule 2711.

B. SANFORD BERNSTEIN DEVELOPED AN ALTERNATIVE PLAN TO ALLOW THE STOCK SALES

After hearing from the NYSE, Sanford Bernstein developed a plan pursuant to which Hintz would purportedly terminate coverage of Morgan Stanley and Lehman Brothers, issue "final" reports on each company, sell his holdings in both stocks, and restart coverage 30 days after these transactions.

In developing this plan, the firm did not sufficiently consider alternatives that would not have caused a violation of Rule 2711. For example, the firm assumed Hintz had to sell at least part of the stock received pursuant to the exercise of his Morgan Stanley options to cover the taxes and costs associated with the option exercise. At the time, the firm was on notice that Hintz had sufficient cash and other liquid assets available to cover such taxes and costs. Nor did the firm adequately consider the possibility that Hintz could simply continue to own his Lehman Brothers stock and Morgan Stanley stock received pursuant to his options exercise until he could dispose of the securities without violating Rule 2711.

C. PURSUANT TO SANFORD BERNSTEIN'S PLAN, HINTZ SUSPENDED COVERAGE AND DISPOSED OF HIS HOLDINGS

Following the firm's guidance, on December 23, 2004, Hintz published two reports stating that Sanford Bernstein was "terminating" coverage on Morgan Stanley and Lehman Brothers and rating the stocks outperform and market-perform respectively. Hintz announced that he would exercise his Morgan Stanley options, sell all of his holdings in both companies, and resume coverage in early February 2005.

The firm and Hintz claimed in Hintz's reports on both companies that the "alternative open" to allow the stock sales was to "terminate" coverage. Indeed, the Morgan Stanley report emphasized this point by quoting Joseph Heller's Catch-22: "That's some catch, that Catch-22."

Sanford Bernstein approved both reports for publication.

Pursuant to Sanford Bernstein's plan, on January 6, 2005, Hintz sold his entire holding of Lehman Brothers stock (71,209 shares) at \$87.2342 per share, realizing

\$6,208,866.43 (after commissions). On January 7, 2005, Hintz exercised 46,370 options in Morgan Stanley and sold all of the shares he received as a result. He received \$2,192,837.30 from the stock sale, paid \$884,632.23 in taxes and transaction costs, and therefore netted \$1,305,886.57.

Sanford Bernstein was responsible for a violation of NASD Rule 2711(g)(3). Despite the firm's characterization that the December 23, 2004 reports on Morgan Stanley and Lehman Brothers "terminated" coverage of those companies, the reports did not effectively terminate coverage of either company because coverage was dropped solely to avoid the restrictions of the NASD rules and because coverage was to resume shortly after the stock sales. The firm's favorable investment recommendations therefore remained in force and the stock sales in January 2005 could not occur without violating NASD Rules.

4. HINTZ HELD SECURITIES IN COVERED COMPANIES IN ONE OF HIS ACCOUNTS

Until January 2004, Hintz held securities in six companies he covered in a discretionary account maintained at a domestic trust company. Although the account was discretionary, it was not a blind trust for purposes of Rule 2711 since Hintz could and did set the investment parameters for the account and was aware of the holdings in the account. Therefore, Hintz's discretionary account was subject to the provisions in Rule 2711 prohibiting transactions contrary to his recommendations and prohibiting transactions 30 days before or five days after issuing a research report. Moreover, the holdings in these stocks were required to be disclosed in any research report on the companies.

A. HINTZ VIOLATED RULE 2711 THROUGH TRANSACTIONS IN HIS DISCRETIONARY ACCOUNT

Hintz opened his discretionary account with a domestic trust company in 1999. The account sought to mimic the after-tax return of the Russell 1000. As of July 2002, the effective date of the trading contrary and blackout provisions of 2711, Hintz held securities in several broker dealers at the same time he covered those stocks.

Through this account, Hintz engaged in two types of transactions (at no profit to him) that violated Rule 2711. First, between August 2002 and January 2004, Hintz's account engaged in 27 transactions in six broker dealers that were contrary to his and Sanford Bernstein's then-current ratings for those stocks, thereby violating NASD Rule 2711(g)(3).

Second, between August 2002 and January 2004, Hintz's account engaged in 39 transactions in the shares of six companies in the blackout period set forth in NASD Rule 2711 (30 days before and five days after the publication of a research report),

thereby violating NASD Rule 2711(g)(2). These 39 transactions affected 49 research reports.

Sanford Bernstein and Hintz were on notice of the transactions in the account because each received copies of Hintz's monthly statements for his account. Sanford Bernstein failed to properly review the accounts and lacked appropriate procedures mandating review of violative transactions. In fact, in certain instances, the firm failed to keep the account statements, thus preventing it from effectively reviewing them for violative transactions.

In February 2003, Sanford Bernstein told Hintz that the discretionary account was subject to the provisions of Rule 2711. On February 13, 2003, Hintz e-mailed the firm's Director of Compliance to indicate that he had verbally instructed the domestic trust company to eliminate his holdings in the eight stocks he covered. The Director of Compliance e-mailed Hintz back the next day and told him that his discretionary account was not exempt from the rules. Nevertheless, Hintz and Sanford Bernstein failed to conduct an adequate review of his statements and failed to take action to prevent violations of NASD rules. Both Sanford Bernstein and Hintz continued to receive monthly statements for the account and were on notice that the account continued to hold stock in two companies Hintz covered. While Hintz reiterated his instructions to the trust company in May 2003, one security was not sold until July 1, 2003, and the other was sold in two transactions in November 2003 and January 2004. Each transaction was contrary to Sanford Bernstein and Hintz's then current rating on the companies.

B. SANFORD BERNSTEIN AND HINTZ DID NOT DISCLOSE HINTZ'S OWNERSHIP IN CERTAIN STOCKS

Sanford Bernstein and Hintz did not disclose that Hintz owned stock in six broker dealers in his account at the domestic trust company in 60 research reports on those companies between August 2002 and December 2003, thus violating NASD Rule 2711(h)(1).

5. SANFORD BERNSTEIN FAILED TO IMPLEMENT SYSTEMS AND PROCEDURES REASONABLY DESIGNED TO PREVENT AND DETECT VIOLATIONS OF RULE 2711 IN ANALYSTS' DISCRETIONARY ACCOUNTS

Sanford Bernstein did not establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with Rule 2711 relating to the personal trading of Hintz and other analysts in discretionary accounts.

Sanford Bernstein, through its parent Alliance Capital, had in effect a Code of Ethics and Statement of Policy and Procedures Regarding Personal Securities

Transactions dated April 2002. Among other things, this Code imposed certain general restrictions on trading during blackout periods and trading contrary to a research analyst's recommendations. Sanford Bernstein's procedures, however, provided its research analysts the opportunity to maintain discretionary accounts trading outside of the firm's approved designated brokers.

Sanford Bernstein's policies and procedures subjected all research analyst securities transactions in non-discretionary accounts to pre-clearance or review by the firm's compliance department prior to execution. The firm, however, did not follow this procedure with respect to transactions in discretionary accounts. The firm also did not review research analyst discretionary account confirmations after the transaction was consummated because it did not require duplicate confirmations to be sent to the firm in accordance with its policies and procedures. Additionally, the firm also failed to properly review research analyst discretionary account statements to identify transactions that violated Rule 2711 and filed statements without any review for compliance with Rule 2711.

Sanford Bernstein did not formally change its procedures regarding discretionary accounts when Rule 2711 was adopted or became effective to implement Rule 2711's trading restrictions. The firm waited almost a year after Rule 2711 was adopted to issue a new set of formal procedures, but those procedures did not implement a system to ensure that analysts' transactions in discretionary accounts did not violate Rule 2711. The firm's systems and procedures currently are not designed to provide reasonable assurance that transactions in analysts' discretionary accounts comply with Rule 2711.¹

6. VIOLATIONS

SALES OF SECURITIES INCONSISTENT WITH RECOMMENDATIONS – SALES OF MORGAN STANLEY AND LEHMAN BROTHERS

As described above, Sanford Bernstein was responsible for a violation of NASD Rules 2711(g)(3)² and violated Rule 2110³ by permitting the sales of Morgan Stanley and Lehman Brothers in January 2005 when there was a favorable recommendation on those companies.

¹ Sanford Bernstein's procedures relating to trading in discretionary accounts have yet to be modified to conform to the findings herein. As noted below, as part of this AWC, the firm is undertaking a review of its procedures with respect to discretionary accounts.

² NASD Rule 2711(g)(3) provides that "[n]o research analyst account may purchase or sell any security or any option on or any derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the member."

³ NASD Rule 2110 provides that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

TRANSACTIONS INCONSISTENT WITH RECOMMENDATIONS – DISCRETIONARY ACCOUNT

As described above, Hintz violated NASD Rules 2711(g)(3) and 2110 when between August 2002 and January 2004, Hintz, through his discretionary account, engaged in 27 transactions in the stock of six companies that were inconsistent with the firm's and Hintz's recommendations in the firm's research reports.

TRADING DURING RESTRICTED PERIODS BEFORE AND AFTER PUBLICATION OF RESEARCH REPORTS

As described above, Hintz violated NASD Rules 2711(g)(2)⁴ and 2110 when Hintz engaged in 39 transactions between August 2002 and January 2004 in his discretionary account in six stocks during the restricted period under Rule 2711(g)(2) (30 days prior to or 5 days after the publication of a research report concerning these covered securities). During the period, Sanford Bernstein and Hintz published 49 research reports associated with the violations of the blackout.

FAILURE TO DISCLOSE OWNERSHIP OF SECURITIES IN RESEARCH REPORTS

As described above, Sanford Bernstein and Hintz violated NASD Rules 2711(h)(1)⁵ and 2110 when the firm and Hintz published 60 research reports between August 2002 and December 2003 on six stocks without disclosing the fact that Hintz held long positions in securities in those companies.

SUPERVISION

As described above, Sanford Bernstein violated NASD Rules 3010,⁶ 2711(l)⁷ and 2110 by failing to establish, maintain and enforce written supervisory procedures

⁴ NASD Rule 2711(g)(2) provides in pertinent part: "[n]o research analyst may purchase or sell any security issued by a company that the research analyst follows, or any option on or derivative of such security, for a period beginning 30 calendar days before and ending five calendar days after the publication of a research report concerning the company or a change in a rating or price target of the company's securities"

⁵ NASD Rule 2711(h)(1) provides that "[a] member must disclose in research reports . . . (A) if the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest"

⁶ NASD Rule 3010 provides in pertinent part that "[e]ach member shall establish and maintain a system to supervise the activities of each registered representative and associated persons that is reasonably designed to achieve compliance with the applicable securities laws and regulations and with the Rules of this Association. . . . Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of

reasonably designed to achieve compliance with Rule 2711 and failed to adequately supervise Hintz's securities transactions in conformity with Rule 2711. Also, between April 2002 and January 2004, Sanford Bernstein failed to supervise with a view to preventing violations of Rule 2711 in certain research analyst discretionary accounts.

BOOKS AND RECORDS – FAILURE TO MAINTAIN DUPLICATE ACCOUNT STATEMENTS

As described above, Sanford Bernstein violated the books and records provisions of the federal securities laws and NASD Rules -- NASD Rule 3110,⁸ Section 17(a) of the Securities Exchange Act and Rule 17a-4 thereunder -- by failing to maintain books and records in connection with its failure to retain 11 duplicate monthly statements from Hintz's discretionary account and 13 duplicate monthly statements from another Hintz brokerage account as well as another four monthly account statements from three other firm analyst discretionary accounts that were provided to the firm pursuant to NASD Rule 3050.⁹

B. Sanctions

Respondent **Sanford Bernstein** also consents to the imposition, at a maximum, of the following sanctions:

1. a censure; and
2. a fine in the amount of \$350,000.

Respondent **Hintz** also consents to the imposition, at a maximum, of the following sanctions:

1. a censure; and

registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of this Association."

⁷ NASD Rule 2711(i) provides in relevant part "[e]ach member subject to this rule must adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of this rule."

⁸ NASD Rule 3110 provides in pertinent part that "[e]ach member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The record keeping format, medium, and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934."

⁹ NASD Rule 3050 provides that executing members shall "transmit duplicate copies of confirmations, statements, or other information with respect to" an associated person's account with a member.

2. a fine in the amount of \$200,000.

Respondent **Sanford Bernstein** further consents to undertake the following:

1. **Review of Procedures.** Sanford Bernstein shall undertake a comprehensive review of its policies and procedures concerning transactions in discretionary accounts maintained by its research analysts. Within 60 days of Notice of Acceptance of this AWC, the Chief Executive Officer and Director of Compliance of Sanford Bernstein shall certify in writing to the staff that the firm has sufficient policies and procedures to ensure that discretionary accounts maintained by its research analysts are in compliance with all applicable provisions of NASD Rule 2711, that the firm has sufficient policies and procedures in place to review trading in analysts' discretionary accounts, and that the firm has in place adequate policies and procedures to provide reasonable assurance that violations of Rule 2711's prohibitions on trading contrary to an analyst's investment recommendation and trading during the proscribed black out period do not occur. For good cause shown, and upon receipt of a timely application, NASD staff may extend the certification deadline set forth above.
2. **Re-launch Announcement of AWC and Its Findings.** Any research report resuming coverage of Morgan Stanley and/or Lehman Brothers by Sanford Bernstein shall notify investors of this AWC and include a copy of this AWC in its entirety as an appendix thereto.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. Respondents Sanford Bernstein and Hintz understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. Respondents Sanford Bernstein and Hintz agree to pay any monetary sanctions imposed on them upon notice that this AWC has been accepted and that such payments are due and payable and have attached an

Election of Payment form showing the method by which they propose to pay any fine imposed.

- C. Respondents Sanford Bernstein and Hintz specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondents Sanford Bernstein and Hintz certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce them to submit it.

1/3/2006
Date

Sanford C. Bernstein & Co. LLC,
Respondent

By: 
Lisa A. Shalett
Chairman and Chief Executive
Officer

Reviewed by:

Robert M. Romano, Esq.
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178-0060
(212) 309-7083

Counsel for Respondent Sanford Bernstein

1/6/06
Date

Charles Bradley Hintz
Charles Bradley Hintz, Respondent

Reviewed by:

[Signature]
Julian W. Friedman, Esq.
Stillman & Friedman, P.C.
425 Park Avenue
New York, NY 10022
(212)223-0200

Counsel for Respondent Hintz

Accepted by NASD:

2/8/06
Date

Signed on behalf of the Director of ODA,
by delegated authority

[Signature]
James E. Day, Chief Counsel
NASD Department of Enforcement

This Corrective Action Statement is Submitted by Respondent. It does not Constitute Factual or Legal Findings by the NASD, nor does it Reflect the Views of the NASD or its Staff.

January 11, 2006

National Association of Securities Dealers
1735 K Street, NW
Washington, DC 20006-1500
Attn: Barry Goldsmith, Esq.

Re: Charles Bradley Hintz, CRD No. 1590170

Dear Mr. Goldsmith:

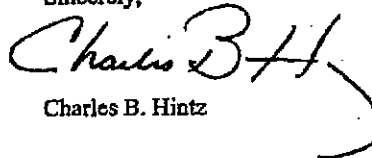
On January 4, 2006, I executed an NASD Letter of Acceptance Waiver and Consent (AWC). The AWC states that through my equity index account No. [REDACTED] at U.S. Trust, I engaged in prohibited transactions that were contrary to my current investment ratings on covered securities, which resulted in a violation of NASD Rule 2711.

In the future, I will promptly review my end of month account statements¹ from the U.S. Trust equity index account No. [REDACTED] when I receive them and I will diligently examine each trade shown in these statements to ensure compliance with my portfolio investment restrictions relating to holdings of covered stocks.

I have scheduled a meeting with U.S. Trust representatives on January 18, 2006, to discuss the management of equity index account No. [REDACTED], to emphasize the importance of strict adherence by the U.S. Trust portfolio manager to the account investment guidelines and to ensure that all account prohibitions² are now being followed by the portfolio manager. Furthermore, I will review with U.S. Trust its internal controls, to ensure that potential future investment guideline revisions relating to NASD regulatory changes will never again result in prohibited transactions in this account.

I have also scheduled a meeting with Bernstein's Compliance Department on February 1, 2006, to confirm that U.S. Trust equity index account statements are now being promptly and thoroughly reviewed by the Compliance Department, that my research disclosure reflects current regulatory standards for holdings in an equity index account and that the Bernstein Compliance Department is confident that the investment guidelines and prohibitions of U.S. Trust equity index account No. [REDACTED] properly comply with NASD standards for an equity research analyst.

Sincerely,


Charles B. Hintz

cc: Peter K. Scaturro
Chief Executive Officer
U.S. Trust
114 West 47th Street
New York, NY
10036

¹ A bank trust department is not required to send confirmations to its clients at the time a trade is made.

² The US Trust Account is prohibited from holding shares of A.G. Edwards, Bear Stearns, Goldman Sachs, Lehman Brothers, J.P. Morgan Chase, Merrill Lynch, Charles Schwab and Morgan Stanley.