

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20042000193-01

TO: Market Regulation Department
NASD

RE: Oscar Gruss & Son, Inc., Respondent
CRD No. 2091

Pursuant to Rule 9216 of NASD Code of Procedure, Oscar Gruss & Son, Inc. ("OGRU" or the "firm") submits 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 the firm alleging violations based on the same factual findings.

The firm understands 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 Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, 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 the firm; and
3. If accepted:
 - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm's 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. the firm 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 the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

The firm also understands that its 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:

OGRU entered the securities industry in July 1949 as a member of NASD and its registration remains in effect. On August 12, 2004, NASD accepted an AWC by which the firm was fined \$8,000 for, among other things, failure to display customer limit orders. On September 28, 2000, NASD accepted an AWC by which the firm was fined \$4,500 for, among other things, failure to display customer limit orders. On March 17, 1999, NASD accepted an AWC by which the firm was fined \$6,000 for, among other things, deficient supervisory procedures relating to trade reporting.

I.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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, the firm specifically and voluntarily waives 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.

The firm further specifically and voluntarily waives 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

This matter arose out of three reviews conducted by the staff of the Market Regulation Department (the "staff"). In 20050000979/MRD200341087, the staff reviewed the firm's order handling for the period January 13, 2003 through March 31, 2003. In 20050000211/MRD200445906, the staff reviewed the firm's compliance with NASD's Order Audit Trail System ("OATS") rules during the period January 1, 2004 through March 31, 2004. In the 2004 Trading and Market Making Surveillance Examination of OGRU, 20042000193/MRD200343923, the staff reviewed the following¹:

- 25 customer sale orders for compliance with NASD Rules 3110 and 3370.
- 62 customer and proprietary sales in NNM securities for compliance with NASD Rule 6130.
- 26 limit orders executed as principal for compliance with NASD Rules 2110 (and IM-2110-2).
- Three non-displayed limit orders to price improve marketable orders received for compliance with NASD Rule 2320.
- Five institutional not held market orders executed as principal for compliance with NASD Rule 2320.
- 55 limit and market orders executed in a principal or riskless principal capacity for compliance with capacity reporting under NASD trade reporting and ACT rules.
- 27 orders in securities for which the firm was a market center for compliance with the order size/type classification requirements of SEC Rule 11Ac1-5, from trades reported during November 2003.
- Four groups (21 orders) security/size/order data statistics published on the firm's monthly order execution report for compliance with SEC Rule 11Ac1-5, from the report for November 2003.

¹ Unless otherwise noted, the items reviewed were from November 19-20, 2003.

- Data published on the firm's quarterly order routing report for compliance with SEC Rule 11Ac1-6, for the quarter ending December 31, 2003.
- 11 customer transactions in OTCBB and OTC equity securities for compliance with NASD Rules 3110(b) and 2320.
- 50 orders in NNM or SC Securities for compliance with NASD Rule 6955.
- 185 order/trade/records prepared and maintained in connection with the above samples, for general compliance with SEC Rules 17a-3 and 17a-4, from various trade dates in November 2003..
- 210 trades reported to ACT in connection with the above samples for general compliance with NASD Trade Reporting and ACT rules, from various trade dates in November 2003.
- 16 customer trade confirmations for compliance with SEC Rule 10b-10.
- Six persons engaged in the firm's trading and market making activities for compliance with NASD Registration rules, from trading staff in November 2003.
- The firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized for compliance with NASD Rules 2320 and 3010, based on written supervisory procedures in effect during November 2003.
- The firm's Written Supervisory Procedures in effect during November, for compliance with NASD Rules 2320 and 3010.

A. The firm hereby accepts and consents, 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:

20050000211/MRD200445906

1. During the review period OGRU transmitted to OATS 898 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained inaccurate timestamps. These inaccurate and/or incomplete reports represented more than 5% percent of all reports (16,767) transmitted by the firm during the review period.
2. The conduct described in paragraph one above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and NASD Conduct Rule 2110.

20050000979/MRD200341087

3. On 84 occasions during the period of January 13, 2003 through March 31, 2003, the firm failed to display immediately 84

20042000193/MRD200343923 (including 20050000979/MRD200341087 and 20050000211/MRD200445906) (rlf)

customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with OGRU's bid or offer in each such security.

4. The conduct described in paragraph three constitutes separate and distinct violations of SEC Rule 11Ac1-4.
5. During the review period, OGRU transmitted to OATS six reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports failed to include the correct Limit Order Display indicator for six orders.
6. The conduct described in paragraph five above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of Conduct Rule 2110.

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7. OGRU failed to identify a venue on its report on the routing of its non-directed orders in covered securities during the calendar quarter ending December 31, 2003.
8. The conduct described in paragraph seven constitutes a violation of SEC Rule 11Ac1-6(b).
9. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning best execution of agency orders, regular & rigorous review of execution quality, riskless principal trade reporting, and long/short sale reporting. Specifically, the firm's supervisory system for long/short sale reporting did not include written supervisory procedures providing for: (1) identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and/or (4) a statement as to how the completion of the step(s) included in

~~the written supervisory procedures should be documented. The firm's supervisory procedures for "regular & rigorous" review of execution quality did not provide a reasonable method for comparing its executions with other venues. The firm did not evidence reasonable supervisory review of best execution of agency orders and riskless principal trade reporting.~~

10. The conduct described in paragraph nine constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. OGRU also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$30,000 (consisting of \$5,000 for OATS violations in 20050000211/MRD200445906 and 20050000979/MRD200341087; \$15,000 for limit order display violations in 20050000979/MRD200341087; \$5,000 for SEC Rule 11Ac1-6 violations, and \$5,000 for supervisory violations in 20042000193/MRD200343923) and

An undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs IIA 9. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraphs IIA 9; and (3) the date the revised procedures were implemented

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

20042000193/MRD200343923 (including 20050000979/MRD200341087 and 20050000211/MRD200445906) (rlf)

The firm certifies that it has read and understands all of the provisions of this AWC and has 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 the firm to submit it.

10/26/05
Date

Oscar Gruss & Son, Inc.

By: Paul Becker
Name: Paul Becker
Title: Vice President, CCO

Reviewed by:

Counsel for Respondent

Accepted by NASD:

12/23/05
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President and Deputy
Department of Market Regulation

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

Attachments:
Standard Election of Payment Form

20042000193/MRD200343923 (including 20050000979/MRD200341087 and
20050000211/MRD200445906) (rlf)

Oscar Gruss & Son

INCORPORATED

October 26, 2005

74 Broad Street, New York, NY 10004-2247
Telephone: 212-952-1100 Fax: 212-747-0147

RECEIVED

2005 OCT 27 A 10:38

THE NEW YORK STOCK EXCHANGE, INC.

NASD
Market Regulation
9509 Key West Avenue
Rockville, MD 20850-3329

Re: Transmittal of Letter of Acceptance, Waiver and Consent
Exam or Investigation No. 20042000193/MRD200343923
(including 20050000979/MRD200341087 and 20050000211/
MRD200445906)

Dear Sir or Madam:

This Corrective Action Statement is submitted by the respondent. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff.

20050000211/MRD200445906

The Firm has increased its surveillance of order memorandums by having a registered principal review them intra-day to more closely monitor those individuals who may be erroneously recording inaccurate, incomplete, or improperly formatted data. In addition, the Firm will reissue its continuing education memorandum regarding the proper completion of order memorandums and the Chief Executive Officer will conduct a meeting with the firm's registered personnel regarding this matter.

Those individuals found to be recalcitrant in this area will be referred to the Chief Executive Officer for further action.

20050000979/MRD200341087

A memo has been issued to the Firm's traders reminding them of their obligation regarding customer limit orders. In addition, the Firm has contacted Bloomberg Financial Services on this issue. The Firm has taken the following steps for increased review in this area. The Firm has designated an individual who will utilize Nasdaq Web Services and a Bloomberg terminal to sample transactions to monitor the requirements of the Limit Order Display Rules. All anomalies will be reported to the Compliance Department for further action.

With regard to the Limit Order Display indicator the Firm has had Bloomberg correct the default code in this area, which effectively makes this issue moot.

Continued -

Oscar
GRUSS

MEMBER NEW YORK STOCK EXCHANGE, INC.

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The correction for this matter was completed in the first quarter of 2005. The Firm believes that it has taken the necessary steps to close this issue.

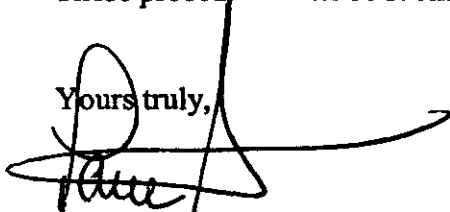
The Firm has corrected its Written Supervisory Procedures to reflect the evidencing of supervisory review of both best execution of agency orders and riskless principal trade reporting.

The Firm has determined that the method of comparing its executions with other venues had to be delineated in its procedures and has done so.

The Firm has created a method of surveillance of long and short sale reporting and has added that procedure to its WSP, which includes the identification of person(s) responsible for supervision, the supervisory steps to be taken and how documentation of the steps will be evidenced.

These procedures will be submitted within 30 days as is prescribed by the AWC.

Yours truly,

A handwritten signature in black ink, appearing to read 'Paul Becker', with a long horizontal flourish extending to the right.

Paul Becker
Vice President
Chief Compliance Officer