

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ##

20050006513

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

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- 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 December 22, 2005, NASD accepted an AWC by which the firm was fined \$30,000 for, among other things, OATS violations and supervisory violations regarding trade reporting. On August 12, 2004, NASD accepted an AWC by which the firm was fined \$8,000 for, among other things, confirmation violations and ACT reporting violations.

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 a review conducted by the staff of the Market Regulation Department (the "staff") of the firm's compliance with OATS rules during the period January 1, 2005 through March 31, 2005 (the "review period"), 20050024036, and the 2005 Trading and Market Making Surveillance Examination of OGRU, 20050006513, in which the staff reviewed the following¹:

- 76 customer and proprietary sale transactions, for compliance with SEC Rules 200 (g) and/or 203(b).
- 86 customer and proprietary sales in NNM securities, for compliance with NASD Rule 6130.
- 20 limit orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320, and SEC Rule 11Ac1-1 and 11Ac1-4.
- three institutional market orders, for compliance with best execution and NASD Trade Reporting and ACT rules.
- 40 limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD trade reporting and ACT rules.
- 14 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.
- Five security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5, from the monthly report for December 2004.
- Data published on the firm's quarterly order routing report, for compliance with SEC Rule 11Ac1-6, from quarterly report including December 2004.
- Ten 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.

¹ Unless otherwise noted, the items reviewed were from January 25-26, 2005.

- 148 order/trade/records prepared and maintained in connection with the above samples, for general compliance with SEC Rules 17a-3 and 17a-4.
 - 152 trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules.
 - 24 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 December 2004.
 - The firm's Written Supervisory Procedures in effect during January 2005, for compliance with NASD Rules 2320 and 3010.
- A. The firm hereby accepts and consents, without admitting or denying the 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:

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1. OGRU failed to report to OATS 8,024 Reportable Order Events ("ROEs") during the review period.
2. The conduct described in paragraph one above constitutes separate and distinct violations of NASD Rule 6955(a).

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3. During the review period, OGRU transmitted to OATS 23 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports did not include the correct limit order display indicator.
4. The conduct described in paragraph three above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
5. OGRU failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for 17 transactions in eligible securities.
6. OGRU failed to report to the Nasdaq Market Center the correct symbol indicating whether the firm executed two transactions in eligible securities in a principal or agency capacity.
7. The conduct described in paragraphs five and six constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).

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8. OGRU failed on nine occasions to provide written notification disclosing to its customer its correct capacity in a transaction, that the transaction was executed at an average price; or that the firm was a market maker.
9. The conduct described in paragraph eight above constitutes separate and distinct violations of SEC Rule 10b-10.
10. 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, trade reporting, sale transactions, backing away, OATS, and books and records. Specifically, the firm's supervisory system did not include written supervisory procedures providing for one or more of the following: (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 (or did not provide documentary evidence of the review).
11. The conduct described in paragraph ten 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 \$28,000 (consisting of \$10,000 for OATS violations in both reviews; \$7,500 ACT violations; \$7,500 for supervisory violations; and \$3,000 for customer confirmation violations; and

An undertaking to revise the firm's written supervisory procedures and supervisory enforcement with respect to the areas described in paragraph IIA 10. 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 and supervisory enforcement to address the deficiencies described in paragraph IIA 10; and (3) the date the revised procedures were implemented.

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

III.

OTHER MATTERS

- A. The firm understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it 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. The firm agrees to pay any monetary sanctions imposed on the firm upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which the firm proposes to pay any fine imposed.
- C. The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Oscar Gruss & Son, Inc.

By: Paul Becker
Name: Paul Becker
Title: V.P. CEO

Counsel for Respondent

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

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