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

20060040590-01

REGISTRATION & DISCLOSURE  
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

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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 January 17, 2007, NASD accepted an AWC by which the firm was fined \$28,000 for, among other things, OATS violations and confirmation violations. On December 22, 2005, NASD accepted an AWC by which the firm was fined \$30,000 for, among other things, OATS violations. On August 12, 2004, NASD accepted an AWC by which the firm was fined \$8,000 for, among other things, confirmation 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 the 2006 Trading and Market Making Surveillance Examination of OGRU, 20060040590, in which the staff of the Department of Market Regulation reviewed the following<sup>1</sup>:

- 50 customer and proprietary sale transactions, for compliance with SEC Rules 200 (g) and/or 203(b).
- 225 customer and proprietary sales in NNM securities, for compliance with NASD Rule 6130.
- 21 short sales in NNM securities, for compliance with NASD Rule 3350.
- 27 cancelled trades/orders for compliance with NASD Rules 3110, 4632(g), 4642(g), 4652(g), 6420(f), and 6620(f), and SEC Rule 17a-3(a)(6) and (a)(7).
- 44 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.
- 50 limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD trade reporting and ACT rules.
- Ten not held customer market orders, for compliance with NASD Rule 2320.
- 24 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.
- Four security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5.
- Data published on the firm's quarterly order routing report, for compliance with SEC Rule 11Ac1-6, from quarterly report including December 2005.
- 14 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.
- 189 order/trade/records prepared and maintained in connection with the above samples, for general compliance with SEC Rules 17a-3 and 17a-4.
- 337 trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules.
- 39 customer trade confirmations, for compliance with SEC Rule 10b-10.
- Ten persons engaged in the firm's trading and market making activities, for

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<sup>1</sup> Unless otherwise noted, the items reviewed were from January 3-6, 2006.

- compliance with NASD Registration rules, from trading staff in January 2006.
  - The firm's Written Supervisory Procedures in effect during January 2006, 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:
1. During the review period, OGRU transmitted to OATS 16 reports that contained inaccurate, incomplete, or improperly formatted data, and in seven instances failed to submit order information to OATS. These inaccurate and/or incomplete reports, and failures to report order information, represented 46 percent of the sample reports reviewed in the TMMS examination. The conduct described constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
  2. OGRU failed on seven customer confirmations to provide written notification disclosing to its customer its correct capacity in a transaction, that the transaction was executed at an average price; and/or a correct description of its compensation. The conduct described in paragraph eight above constitutes separate and distinct violations of SEC Rule 10b-10.
- B. OGRU also consents to the imposition, at a maximum, of the following sanctions:
- A censure and a fine of \$15,000 (consisting of \$12,000 for OATS violations, and \$3,000 for customer confirmation violations).

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.

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.

Oscar Gruss & Son, Inc.

April 4, 2007  
Date

By: [Signature]  
Name: Paul Becker  
Title: Vice President  
Chief Compliance Officer

Reviewed by:

\_\_\_\_\_  
Counsel for Respondent

Accepted by NASD:

5/1/07  
Date

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

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

Attachments:  
Standard Election of Payment Form

20060040590 (rlf)

# Oscar Gruss & Son

INCORPORATED

April 4, 2007

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

Mr. Robert L. Furst  
Counsel  
Market Regulation  
NASD  
9509 Key West Avenue  
Rockville, MD 20850

Dear Mr. Furst:

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

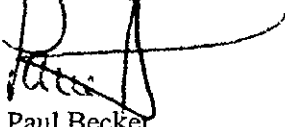
1. During the review period, the Firm transmitted to OATS 16 reports which contained inaccurate, incomplete or improperly formatted, data

The Firm has tested and reviewed its programming for submission of data to OATS. The issues, which caused the deficiencies in OATS reporting have been corrected.

2. OGRU failed on seven customer confirmations to provide written notification disclosing to its customer its correct capacity in a transaction, that the transaction was executed at an average price: and or a correct description of its compensation.

The Firm has worked with its Clearing Firm to increase the number of lines used for trailer information. In addition, a daily review of customer confirmations is undertaken to determine if the necessary disclosures are in place.

Yours truly,



Paul Becker  
Vice President  
Chief Compliance Officer

Oscar  
GRUSS

MEMBER NEW YORK STOCK EXCHANGE, INC.