

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070079590-02**

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ADMINISTRATIVE SERVICES

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Oscar Gruss & Son, Incorporated, Respondent
Broker-Dealer
CRD No. 2091

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Oscar Gruss & Son, Incorporated (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

The firm has been a member of FINRA since 1949, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On January 19, 2007, an AWC became final pursuant to which the firm was censured and fined \$10,000 for violations of NASD Rule 6955, \$7,500 for violations of NASD Rule 6130(d), and \$3,000 for violations of SEC Rule 10b-10. On August 12, 2004, an AWC became final pursuant to which the firm was censured and fined \$3,000 for violations of SEC Rule 11Ac1-4, \$3,000 for violations of SEC Rule 10b-10, and \$2,000 for violations of NASD Rule 6130(d).

20070079590 (incl. 20070118457, 20080130986)
5.15.09. (lad)

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FACTS AND VIOLATIVE CONDUCT

This matter arose from the following reviews conducted by the staff of FINRA's Market Regulation Department:

20070079590, the Trading and Market Making Surveillance ("TMMS") Examination of the firm for December 4, 2006 through January 26, 2007. A description of the areas reviewed by the staff is attached to this AWC as Exhibit 1.

20080130986, a review of the firm's compliance with NASD trade reporting rules for OTC equity securities from May 1, 2007 through August 31, 2007.

200700079590 (2007 TMMS Examination)

1. The firm failed to report to the NASD/Nasdaq Trade Reporting Facility ("NNTRF") the correct symbol indicating whether the transaction was a buy, sell, sell short, or cross for 99 transactions in Reportable Securities, and the firm failed to report to the OTC Reporting Facility ("OTCRF") the correct symbol indicating whether the firm executed nine transactions in Reportable Securities in a principal or agency capacity. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130(d).
2. The firm failed to report the correct time of execution to the OTCRF in six last sale reports of transactions in designated securities, and failed to submit to the OTCRF, for the offsetting, "riskless" portion of two "riskless" principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6620.
3. The firm failed to report to the NNTRF the cancellation of five trades previously submitted to the NNTRF, and failed to report to the NNTRF three last sale reports of transactions in designated securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632.
4. For the month of January 2007 the firm made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to the number of covered orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.

20080130986 (OTC Late Trade Reporting 2T07)

5. The firm failed, within 90 seconds after execution, to transmit to the OTCRF 515 last sale reports of transactions in OTC Equity securities. These transactions constitute 29 percent of the transactions reviewed that the firm was required to report to the OTCRF during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6620, and a pattern or practice of late reporting without exceptional circumstances in violation of NASD Rule 2110.

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

A censure and fine of \$30,000 (consisting of a fine of \$10,000 for violations of NASD Rules 2110, 4632, and 6620 (general trade reporting), \$15,000 for violations of NASD Rule 6130(d) (short sale indicator), and \$5,000 for SEC Rule 605 of Reg NMS (disclosure of order execution information)).

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the 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 National Adjudicatory Council ("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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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.

III.

OTHER MATTERS

The firm understands that:

- A. *Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;*
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. 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 finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any

proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. The firm 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 FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

6/23/09
Date

Respondent
Oscar Gruss & Son, Incorporated

By: [Signature]

Name: PAUL BECKER

Title: V.P. Chief Compliance Officer

Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Accepted by FINRA:

7/27/09
Date

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

[Signature]
Thomas R. Gira
Executive Vice President
Department of Market Regulation

The staff reviewed the following samples during TMMS examination 20070079590. Exhibit No. 1

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
26	customer and proprietary sale transactions for compliance with SEC Rules 200(g) and/or 203(b)	Jan. 16 to 26, 2007.
310	customer and proprietary sales for compliance with NASD Rule 6130	Jan. 16 to 26, 2007.
334	orders entered into the Nasdaq Singlebook for compliance with Nasdaq Rule 4755	Jan. 16 to 26, 2007.
21	cancelled trades for compliance with NASD Rules 4632(g), 6130(f) and 6620(f)	Jan. 16 to 26, 2007.
24	limit and market orders executed as principal and riskless principal for compliance with NASD Rules 2110 (and IM-2110-2), 2111, 6541 and 2320, and SEC Rules 602 and 604	Jan. 16 to 26, 2007.
3	"non displayed" limit orders and 0 marketable orders in the same securities received while holding the "non-displayed" orders for compliance with NASD Rule 2320	Jan. 16 to 26, 2007.
11	not held customer market orders for compliance with NASD Rule 2320	Jan. 16 to 26, 2007.
31	trades executed in a principal or riskless principal capacity for compliance with capacity reporting under NASD Trade Reporting and ACT rules	Jan. 16 to 26, 2007.
N/A	orders for Nasdaq securities in soft dollar accounts and related executions for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e)	Jan. 16 to 26, 2007.
0	open buy limit orders and stop sell limit orders in securities traded ex-dividend for compliance with NASD Rule 3220	Jan. 16 to 26, 2007.
N/A	trades reported and modified through a mixed capacity regulatory report for compliance with NASD Rule 6130	Jan. 16 to 26, 2007.
23	orders in securities for which the firm was a market center for compliance with the order size/type classification requirements of SEC Rule 605	Jan. 16 to 26, 2007.
4 (7 orders)	security/size/order data statistics published on the firm's monthly order execution report for compliance with SEC Rule 605	from the month of Dec. 2006.
N/A	data published on the firm's quarterly order routing report for compliance with SEC Rule 606	from the report including Oct. through Dec. 2006.

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
25	customer transactions in OTCBB and OTC equity securities for compliance with NASD Rules 3110(b) and 2320	Jan. 16 to 26, 2007.
5	persons engaged in the firm's trading and market making activities for compliance with NASD Registration rules	from trading staff in Jan. 2007.
50	orders in NNM or SC securities submitted to OATS for compliance with NASD Rule 6955	Jan. 16 to 26, 2007.
178	order/trade records prepared and maintained in connection with the above samples for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4	Jan. 16 to 26, 2007 and various trade dates in Dec. 2006.
866	trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules	Jan. 16 to 26, 2007.
36	customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10	Dec. 4 and 5, 2006.
N/A	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 WSPs in effect during Jan. 2007.
N/A	the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010	based on WSPs in effect during Jan. 2007.