

**NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE**

FILED
AUG - 8 2023
NATIONAL FUTURES ASSOCIATION LEGAL DOCKETING

In the Matter of)
)
OSCAR GRUSS & SON INC.) NFA Case No. 23-BCC-006
(NFA ID# 1295),)
)
Respondent.)

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association (NFA) and having found reason to believe that NFA Requirements are being, have been, or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee (Committee) issues this Complaint against Oscar Gruss & Son Inc. (Oscar Gruss).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Oscar Gruss has been an introducing broker (IB) Member of NFA. As such, Oscar Gruss was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

BACKGROUND

2. Oscar Gruss has been registered as an IB, approved as a swap firm and an NFA Member since 2015. The firm is located in New York, New York and has a branch office in London, United Kingdom.
3. Oscar Gruss offers execution-only brokerage services across several markets, including FX option and forward transactions and other derivatives products. The

firm also provides brokerage services for equity-based transactions and is regulated by the SEC and FINRA as a broker dealer.

4. Oscar Gruss currently employs 13 individuals as associated persons (APs).
5. NFA has examined Oscar Gruss periodically since 2015. In October 2022, NFA began an exam (the 2022 exam), which revealed recordkeeping, registration and supervision deficiencies at the firm.

APPLICABLE RULES

6. NFA Compliance Rule 2-10(a) requires Members to maintain adequate books and records necessary and appropriate to conduct their business including, without limitation, the records required to be kept under CFTC Regulation 1.35 for the period required under CFTC Regulation 1.31.
7. CFTC Regulation 1.35, in relevant part, requires IBs to keep full, complete, and systematic records of all transactions relating to their business of dealing in commodity interests. The Regulation also requires IBs generating over the preceding three years more than \$5 million in aggregate gross revenues from their activities as an IB to keep all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest whether transmitted by telephone, voicemail, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media (referred to as "oral pre-trade communications" if transmitted orally or as "written pre-trade communications" if transmitted in writing).

8. CFTC Regulation 1.31, in relevant part, requires IBs to keep written pre-trade communications for a period of not less than five years from the date on which the record was created and to make them readily accessible during the first two years of the five-year period. The Regulation further requires IBs obligated to keep oral pre-trade communications to retain those communications for a period of not less than one year from the date of the oral communication.
9. NFA Bylaw 301(b) provides, in pertinent part, that no person may be associated with a Member of NFA unless the person is registered as an AP and an NFA Associate.
10. NFA Compliance Rule 2-9(a) requires each Member to diligently supervise its employees and agents in the conduct of their commodity interest activities for or on behalf of the Member.

COUNT I

VIOLATIONS OF NFA COMPLIANCE RULE 2-10(a): FAILURE TO KEEP FULL, COMPLETE, AND SYSTEMATIC RECORDS OF ALL TRANSACTIONS RELATING TO OSCAR GRUSS' BUSINESS OF DEALING IN COMMODITY INTERESTS.

11. The foregoing paragraphs are realleged as if fully stated herein.
12. Since late 2019, Oscar Gruss has generated over \$5 million in aggregate gross revenues annually from its activities as an IB.
13. As a result, Oscar Gruss is obligated to make and keep oral pre-trade communications for a period of one year from the date of the communication.
14. Oscar Gruss is also required to keep written pre-trade communications for not less than five years from the communication date and maintain those

communications in a manner that makes them readily accessible during the first two years.

15. NFA's 2022 exam found that Oscar Gruss failed to comply with these recordkeeping requirements.
16. Prior to the 2022 exam, NFA provided Oscar Gruss with a questionnaire designed to obtain additional information about the firm's operations.
17. Oscar Gruss answered "no" to a question about whether the firm recorded solicitations, so NFA requested an explanation.
18. According to the firm's chief compliance officer (CCO), Oscar Gruss recorded APs' oral pre-trade communications between January 2019 and June 2020, but ceased recording them in 2020 after concluding that "recordings were not required."
19. The CCO admitted that APs communicated with customers over the telephone. However, she claimed those conversations involved market recaps, general market commentary, and current economic events and never consisted of quotes, solicitations, bids, offers, or trade instructions that led to the execution of a commodity interest transaction.
20. In addition, the CCO represented the firm instructed APs to conduct any discussion concerning quotes, solicitations, bids, offers, instructions, trading, and prices via chat or electronic messaging to ensure the firm captured and retained those communication records.
21. Oscar Gruss asserted incorrectly that the firm was "not required" to record and keep oral communications since the firm has been obligated under NFA and

CFTC requirements to keep all oral pre-trade communications that lead to the execution of a commodity interest transaction since late 2019.

22. Oscar Gruss' expectation that its APs would limit their phone discussions with customers to only general market-related matters was unrealistic. Further, the firm utilized a deficient procedure by instructing APs to move their discussions to a chat or other written medium once they led to pre-trade negotiations (*e.g.*, concerning quotes, solicitations, bids, offers).
23. NFA also reviewed a sample of APs' written communications during the 2022 exam and identified references to "call you" and "call me." However, NFA could not determine if pre-trade negotiations occurred during those calls since the firm did not record them.
24. Oscar Gruss' recordkeeping deficiencies extended to its written communications.
25. To comply with its recordkeeping obligations, Oscar Gruss utilizes a third-party message archiving platform (the archiving platform) to capture and store chat messages the firm's APs send and receive via a third-party financial data vendor's terminals (the vendor's terminals).
26. During the 2022 exam, the firm represented that it did not store chats transmitted via the vendor's terminals into the archiving platform for a period in November 2020.
27. This recordkeeping failure resulted from Oscar Gruss failing to ensure the server connection between the vendor's terminals and the archiving platform was reestablished properly after Oscar Gruss moved office locations in November 2020.

28. Oscar Gruss did not identify the issue until January 2021, when the problem came to light during the CCO's periodic review of APs' chat messages. The firm worked with the vendor to recover the missing messages, which process was completed in October 2021.
29. Oscar Gruss sent the recovered messages to the archiving platform for retention. However, during the interim, the firm failed to keep the missing records readily accessible, as required under NFA and CFTC requirements.
30. Moreover, Oscar Gruss should have discovered the missing chat messages sooner.
31. The archiving platform provides a daily email report to the firm that summarizes the vendor's message data that the archiving platform processed the prior day.
32. NFA's 2022 exam found that the daily reports the archiving platform sent to Oscar Gruss from November 13 through November 19, 2020 contained no data summary or file processing details.
33. These reports contrasted sharply with daily reports the archiving platform issued to Oscar Gruss before and after the office move when the firm's servers archived the communications properly.
34. Therefore, Oscar Gruss personnel either ignored the reports' contents or failed to notice the missing data, which delayed unnecessarily discovery of the server issue.
35. Based on the foregoing acts and omissions, Oscar Gruss is charged with violations of NFA Compliance Rule 2-10(a).

COUNT II

VIOLATIONS OF NFA BYLAW 301(b): ALLOWING UNREGISTERED INDIVIDUALS TO ACT AS ASSOCIATED PERSONS WITHOUT BEING REGISTERED IN SUCH CAPACITY AND NFA ASSOCIATES.

36. The foregoing paragraphs are realleged as if fully stated herein.
37. NFA Bylaw 301(b) provides, in part, that no person may be associated with an NFA Member unless the person is registered with the CFTC as an AP and an NFA Associate.
38. An AP is an individual who solicits orders, customers, or customer funds (or supervises persons so engaged) on behalf of an IB or other registrant (e.g., FCMs, CPOs).
39. As part of the 2022 exam, NFA reviewed FX trades that Oscar Gruss employees executed from June 1 through September 26, 2022, as well as traditional futures and options trades executed from January 1 through November 30, 2022, including written communications associated with a sample of those trades.
40. NFA also conducted fieldwork at the firm's New York office from November 1 to November 3, 2022 and observed the activities of the firm's FX trading desk.
41. These reviews found that Oscar Gruss permitted some employees to act as APs of the firm without being registered APs and NFA Associates, until the firm registered them at NFA's direction.
42. While onsite at the firm on November 1, 2022, NFA observed an Oscar Gruss employee (Employee #1) communicating with customers via chat messages. NFA also reviewed chat messages from June and September 2022, in which Employee #1 solicited customers for FX trades.

43. The firm acknowledged that Employee #1 began brokering FX trades in January 2020. However, he did not become an AP and an NFA Associate until January 2023.
44. September 8, 2022 chat messages show that another employee (Employee #2) facilitated an FX trade on the firm's behalf. Although the firm permitted Employee #2 to accept FX trades starting in March 2020, he did not become registered as an AP and an NFA Associate until March 2023.
45. A trade report and other information from the firm indicated another Oscar Gruss employee (Employee #3) executed futures trades on January 18 and 19, 2022, while January 18 chat records show he engaged in trade negotiations. The firm acknowledged that Employee #3 began brokering trades in October 2021, though he did not become registered as an AP and an NFA Associate until May 2023.
46. Similar information indicated an individual (Employee #4) was the broker for futures trades executed on January 24 and 27, 2022, while chat records for January 27, 2022 showed him accepting a futures trade from a customer of the firm.
47. At the time of these trades, Employee #4 was the director of equity sales at Oscar Gruss. According to the firm, Employee #4 began accepting futures trades from his equities customers in January 2021. Employee #4's employment with Oscar Gruss ended on January 31, 2022.
48. By reason of the foregoing acts and omissions, Oscar Gruss is charged with violations of NFA Bylaw 301(b).

COUNT III

VIOLATIONS OF NFA COMPLIANCE RULE 2-9(a): FAILING TO SUPERVISE.

49. The foregoing paragraphs are realleged as if fully stated herein.
50. Under NFA Compliance Rule 2-9(a), Oscar Gruss is obligated to diligently supervise its employees in the conduct of their commodity interest activities for or on behalf of the firm.
51. As alleged above, the recordkeeping and registration deficiencies reveal supervisory weaknesses at Oscar Gruss.
52. The firm's decisions and actions involving the failure to record and maintain all oral pre-trade communications leading to the execution of a commodity interest transaction reflect a failure supervise.
53. The supervisory shortcomings also involve the written communication deficiency described above.
54. NFA's 2022 exam found that Oscar Gruss failed to perform adequate testing after the office move to ensure the firm's archiving systems functioned properly to retain the required chat messages and that the firm should have discovered the missing chat messages sooner.
55. The 2022 exam also found Oscar Gruss utilized inadequate written procedures. For example, the firm's written supervisory procedures manual (written procedures) contained nothing about the firm's communication recordkeeping obligations under NFA and CFTC requirements or the firm's representation that it had instructed APs to conduct discussions concerning quotes, solicitations, bids, offers, instructions, trading, and prices via chat or electronic messages.

56. Further, while the firm reviewed APs' written communications periodically, the written procedures did not reference or contain details about the review process (e.g., frequency, who would perform it).
57. Oscar Gruss also utilized a lexicon list to review APs' written communications, but the list did not include terms to identify whether APs were conducting pre-trade communications by telephone. This is concerning since NFA's review of APs' written communications identified references to "call you" and "call me," as described in Count I above.
58. Oscar Gruss also utilized an inadequate trade review process, which consisted solely of a daily reconciliation to identify trade breaks between Oscar Gruss' internal systems and the prime broker involved in the transactions. Further, the firm did not have any procedure (in practice or writing) to monitor trades for unusual or concerning trends.
59. Finally, although the firm's written procedures discussed the registration of APs, the registration deficiencies found during the 2022 exam show Oscar Gruss used an inadequate monitoring system to ensure all individuals brokering commodity interest trades on the firm's behalf are registered as APs and NFA Associates.
60. Further, as alleged above in Count II, the registration deficiency continued for an extended period and involved approximately 25% of the firm's commodity interest brokers at time of the 2022 exam.
61. By reason of the foregoing acts and omissions, Oscar Gruss is charged with violations of NFA Compliance Rule 2-9(a).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying, or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association
320 South Canal Street
Suite 2400
Chicago, Illinois 60606
Attn: Legal Department-Docketing

E-Mail: Docketing@nfa.futures.org

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

POTENTIAL PENALTIES, DISQUALIFICATION, AND INELIGIBILITY

At the conclusion of the proceedings conducted in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties;

- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;

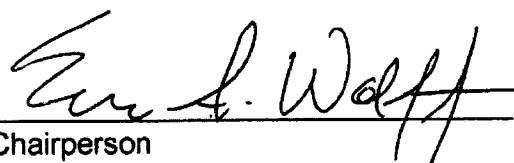
- (d) a monetary fine not to exceed \$500,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. A respondent in this matter who applies for registration in any new capacity, including as an AP with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to CFTC Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render a Respondent who is an individual ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: 8/5/2013

By: 
Chairperson

m/cxc/Complaints/Oscar Gruss Complaint