

File No. - \_\_\_\_\_  
SEC  
Mail Processing  
Section

MAR 23 2012

SECURITIES AND EXCHANGE COMMISSION Washington DC  
WASHINGTON, D.C. 20549 405

APPLICATION FOR AN ORDER UNDER SECTION 202(a)(11)(H) OF THE  
INVESTMENT ADVISERS ACT OF 1940 ("ADVISERS ACT")  
DECLARING THE APPLICANT TO BE A  
PERSON NOT WITHIN THE INTENT OF THE ADVISERS ACT

GRUSS & CO. INC.  
777 S Flagler Drive  
Suite 801E  
West Palm Beach, FL 33401

All communications, notices, and orders to:

Martin E. Lybecker, Esq.  
Perkins Coie LLP  
Suite 600  
700 Thirteenth Street, N.W.  
Washington, D.C. 20005

This Application (including Exhibits) consists of 13 pages.

UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)	
	)	
Gruss & Co. Inc.	)	APPLICATION FOR AN ORDER
777 S Flagler Drive	)	UNDER SECTION 202(a)(11)(H) OF THE
Suite 801E	)	INVESTMENT ADVISERS ACT OF 1940
West Palm Beach, FL 33401	)	DECLARING THE APPLICANT TO BE
File No. -	)	A PERSON NOT WITHIN THE INTENT
	)	OF THE ADVISERS ACT
	)	
	)	
	)	
	)	

Gruss & Co. Inc. (“Family Office” or “Office”), a Delaware corporation, hereby files this application (“Application”) for an Order of the Securities and Exchange Commission (“Commission”) under Section 202(a)(11)(H) of the Investment Advisers Act of 1940 (“Advisers Act”) declaring it to be a person not within the intent of the Advisers Act to the extent that it cannot satisfy all of the conditions in Rule 202(a)(11)(G)-1 (“Family Office Rule”) under the Advisers Act. For the reasons discussed below, the Office believes that the Order requested is fully consistent with the policies and purposes of the Advisers Act and the Family Office Rule.

I. BACKGROUND

The Office is a multi-generational single-family office which provides services to the family and descendants of Joseph S. Gruss. The Office is wholly owned directly or indirectly by Martin D. Gruss. The Office is operated for the benefit of the lineal descendants of Joseph S. Gruss, the sisters of a spouse of a lineal descendant of Joseph S. Gruss and the spouses of such sisters (collectively, the “Gruss Family” or “Family”). Other than the exception that will be discussed below, (i) each of the persons served by the Office is a “family client” as that term is defined in paragraph (d)(4) of the Family Office Rule (collectively, “Family Clients”), *i.e.*, the Office has no investment advisory clients other than the Family Clients as required by paragraph (b)(1) of the Family Office Rule, (ii) the Office is otherwise owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule, and (iii) the Office does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule.

The Office's services include asset allocation advice, investment due diligence, investment management, recordkeeping assistance, federal and state tax advice, coordination of professional relationships with accountants, attorneys and unaffiliated discretionary wealth managers, management and administration of the various Family investment entities, real estate management, management and administration of trusts for Gruss Family members, including providing trustees, as well as numerous other responsibilities (collectively, the "Services"). The Office provides some or all of the Services to Family Clients. Any Service provided by the Office that relates to investment advice about securities or may otherwise be construed as advisory in nature is referred in this application as an "Advisory Service." As represented above, the Office offers Advisory Services only to Family Clients, and does not hold itself out to the public as an investment adviser.

The Advisory Services consist of providing asset allocation advice and investment due diligence (including due diligence on potential unaffiliated discretionary wealth managers) for Family Clients. These activities primarily involve, but are not limited to, evaluating investment opportunities in hedge funds, private equities, publicly traded securities, commodities, and real estate investments.

The Office is paid for its Services by the Family Clients. Not all of the Family Clients pay a fee to the Office for Services, and not all Family Clients receive Advisory Services from the Office. The Office does not operate with the purpose of generating a profit for its owners, but rather collects fees to pay its operating expenses and the salaries of the professionals it employs. As of the date of this Application, the Office has 26 employees.

#### REQUEST FOR AN ORDER

Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. . . ."

The Office falls within the definition of an investment adviser under Section 202(a)(11). The Family Office Rule provides an exemption from registration that applies to the Office and would provide an exemption for the Office but for several facts set forth below. Because the Office has regulatory assets under management of more than \$100 million, it is not prohibited from registering with the Commission under Section 203A(a) of the Advisers Act.

In sum, the Applicants would be required to register under Section 203(a) of the Advisers Act, notwithstanding that (i) the Office does not hold itself out to the public as an investment adviser, (ii) the Advisory Services make up a relatively small portion of the overall Services that are actually performed by the Office, (iii) the fees charged by the Office are intended to cover only its employees' salaries and other expenses to provide Services to the Gruss Family, and (iv) the Office is a "family office" for the Gruss Family and will not offer its Services to anyone other than Family Clients. Rather than registering with the Commission under the Advisers Act, the Office requests, instead, that the Commission issue it an Order pursuant to Section 202(a)(11)(H)

declaring it not to be a person within the intent of the Advisers Act to the extent that it cannot rely on the Family Office Rule.

## II. DISCUSSION

### A. Certain Persons Who Are Not Described in the Definition of “Family Member” in the Family Office Rule

The Family Office Rule contains a definition of “family member” that omits certain persons that many families would regard as an integral part of their “family.” Here, the Office has provided services to two sisters of a spouse of a lineal descendant of Joseph S. Gruss and the spouses of such sisters. The sister of a spouse of a lineal descendant is one such person in a “family” omitted from the definition of “family member” under the Family Office Rule. If the family tree were otherwise, and the sisters were instead spouses of lineal descendants of Joseph S. Gruss rather than the sisters of a spouse of a lineal descendant, there would be no question that each of the persons being served by the Office would be a Family Member as defined in paragraph (d)(6) of the Family Office Rule.

### B. There Is No Public Interest in Requiring the Applicant to Be Registered Under the Advisers Act

The Office is a private organization that was formed to be the “family office” for the Gruss Family. The Office’s clients are comprised solely of the Family Clients, other than two sisters of a lineal descendant’s spouse and the spouses of such sisters. The Office does not have any public clients. Indeed, the Office’s Services are exclusively tailored to the needs of the Gruss Family. The presence of two sisters of a spouse of a lineal descendant of Joseph S. Gruss and the spouses of such sisters does not create any public interest that would require the Office to be registered under the Advisers Act that is different in any manner than the considerations that apply to a “family office” that complies in all respects with the Family Office Rule.

## III. PRECEDENT

The relief requested in this Application is substantially similar to that granted by the Commission in at least ten instances. In the Matter of Donner Estates, Inc., Investment Advisers Act Release No. 21 (November 3, 1941) (corporation all of the stock of which was held in trust for the benefit of members of a single family and which furnishes investment advisory services to a trust created by and for the benefit of the same family, and to a charitable trust and a charitable corporation created by a member of such family); In the Matter of The Pitcairn Company, Investment Advisers Act Release No. 52 (March 2, 1949) (corporation whose business consists of holding, investing, and reinvesting its funds for a family all of whom are the spouses, descendants, or spouses of descendants of three brothers); In the Matter of Roosevelt & Son, Investment Advisers Act Release No. 54 (August 31, 1949) (general partnership organized to manage and supervise investments in real and personal property for the account of the firm and for the estates and trusts in which various members of the family have an interest or are beneficiaries); In the Matter of Moreland Management Company, Investment Advisers Act Release No. 1705 (March 10, 1998) (corporation, all the stock of which was held in trust for the benefit of one family, including both the first and second wife of the common ancestor, which

provided a wide array of services, including some investment advisory services, for that trust and other clients who were members of the family, or entities created by them); In the Matter of Bear Creek Inc., Investment Advisers Act Release No. 1931 (March 9, 2001) (corporation served as the trustee of trusts created by and for the sole benefit of members of a family, including the spouse of the common ancestor, its investment activities made up only a small portion of the overall services that it provided, and most of the compensation that it received was for services other than the rendering of investment advice); In the Matter of Parkland Management Company, L.L.C., Investment Adviser Release No. 2362, (February 24, 2005) (company provided investment advisory services to the family, including the sister of a spouse of a lineal descendant of the common ancestor, the mother and two children of such sister, and foundations created by members of the family.); In the Matter of Adler Management, L.L.C., Investment Advisers Act Release No. 2500 (March 21, 2006) (Adler was organized to serve exclusively for the members of a family, including the spouse of the common ancestor, its entities and charities. Adler also provided services other than advisory services to several entities, each of which was owned by members of that family as well as, in specified circumstances, by certain key employees of Applicant); In the Matter of Slick Enterprises, Inc., Investment Advisers Act Release No. 2736 (March 22, 2008) (company was owned exclusively by one family member and organized as a “family office” to provide a wide array of services, including some investment advisory services, to the family, including the widow of the common ancestor, and entities created by and for the benefit of the family); In the Matter of Woodcock Financial Management Company, LLC, Investment Advisers Act Release No. 2773 (August 26, 2008) (company manages investments and performs incidental services exclusively for the family, including the wife of the common ancestor, her children from a former marriage and their lineal descendants, and entities created by and for the benefit of, the family, and receives fees only to allow the company to recover its direct and overhead expenses without generating a profit); In the Matter of WLD Enterprises, Inc., Investment Advisers Act Release No. 2807 (November 14, 2008) (company organized as a “family office” to provide a wide array of services, including some investment advisory services, to the family, including the spouse of the common ancestor, the brother of the common ancestor, the spouse and lineal descendants of such brother, the spouses of the lineal descendants of such brother, certain employees, and entities created by or for the benefit of, the family).

#### IV. PROCEDURAL MATTERS

Pursuant to Rule 0-4(f) under the Advisers Act, the Office states that its address is indicated on the first page of this Application. The Applicant further states that all written or oral communications concerning this Application should be directed to:

Martin E. Lybecker, Esq.  
Perkins Coie LLP  
Suite 600  
700 Thirteenth Street, N.W.  
Washington, D.C. 20005  
(202) 434-1674

All requirements for the execution and filing of this Application on behalf of the Office have been complied with and are in accordance with the Articles of Incorporation and By-Laws

of the Office, and the undersigned officer of the Office is fully authorized to execute this Application. **The Office has adopted the Resolution attached as Exhibit A authorizing the filing of the application. The Verifications required by Rule 0-4(d) under the Advisers Act are attached as Exhibit B and the Proposed Notice of the proceeding initiated by the filing of this application, required by Rule 0-4(g) under the Advisers Act, is attached as Exhibit C.**

#### V. REQUEST FOR ORDER OF EXEMPTION

For the foregoing reasons, the Office requests that the Commission issue an Order under Section 202(a)(11)(H) of the Advisers Act declaring it not to be a person within the intent of the Advisers Act.

##### Applicants' Conditions:

1. The Applicant will offer and provide Advisory Services only to the Gruss Family, and will not hold itself out to the public as an investment adviser.
2. The Office will at all times be wholly-owned by Family Clients and exclusively owned and controlled (directly or indirectly) by one or more Family Members and/or family entities.
3. All the existing and future Family Clients that are investment entities (a) are excluded from the definition of "investment company" under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940, and (b) are owned and controlled exclusively by Family Clients.

The Applicant submits that the Order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

# **EXHIBIT A**

**AUTHORIZATION OF GRUSS & CO. INC**

**RESOLVED**, that the officers of Gruss & Co. Inc. are authorized and directed to prepare, execute and file, or to cause to be prepared, executed and filed, with the Securities and Exchange Commission an application or applications pursuant to 202(a)(11)(H) of the Investment Advisers Act of 1940 (the "Act"), or such other sections thereof or rules thereunder as may be necessary or appropriate, for an order or orders, or amended order or orders, declaring it to be a person not within the intent of the Act.

**RESOLVED FURTHER**, that any officer of Gruss & Co. Inc. is authorized to take such further action, and to make such representations on behalf of Gruss & Co. Inc., in any matters relating to such application or any amendment thereto as they or any of them may approve as necessary or desirable.

I, Martin D. Gruss, President of Gruss & Co. Inc., do hereby certify that the above resolutions were duly adopted by Gruss & Co. on March 7, 2012.

Witness my hand this 7 day of March, 2012.

  
\_\_\_\_\_  
Martin D. Gruss  
President

## **EXHIBIT B**

DECLARATION OF APPLICANT

State of Florida County of Palm Beach, SS: \_\_\_\_\_

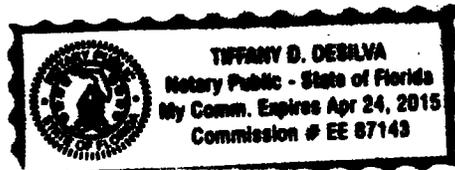
The undersigned being duly sworn deposes and says that he has duly executed the attached Application for an Order under Section 202(a)(11)(H) of the Investment Advisers Act of 1940 (“Advisers Act”) Declaring the Applicant to be a Person Not Within The Intent of the Advisers Act dated , 2012, for and on behalf of Gruss & Co. Inc. (“Family Office”); that he is the President of such Family Office; and that all action by family clients, family members, and family entities necessary to authorize deponent to execute and file such instrument has been taken. Deponent further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

(Signature) \_\_\_\_\_  
(Type or print name beneath) Martin D. Gruss

Subscribed and sworn to before me a Notary Public this 7 day of March, 2012.

*[Handwritten Signature]*

My commission expires April 24, 2015.



## **EXHIBIT C**

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA- / 803- ]

Gruss & Co. Inc.; Notice of Application

[Date]

Agency: Securities and Exchange Commission (“SEC” or “Commission”).

Action: Notice of Application for Exemption under the Investment Advisers Act of 1940 (“Advisers Act”).

Applicant: Gruss & Co. Inc. (“Applicant”).

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(H) of the Advisers Act from section 202(a)(11) of the Advisers Act.

Summary of Application: Applicant requests that the Commission issue an order declaring it to be a person not within the intent of the Advisers Act to the extent that it cannot satisfy all of the conditions in Rule 202(a)(11)(G)-1 (“Family Office Rule”) under the Advisers Act.

Filing Dates: The application was filed on March 23, 2012.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on [Date] and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested.

Persons may request notification of a hearing by writing to the Commission’s Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549. Applicant, Gruss & Co. Inc., c/o Martin E. Lybecker, Perkins Coie LLP, Suite 600, 700 Thirteenth Street, N.W., Washington, D.C. 20005.

For Further Information Contact: [ **Name(s), Title(s)** ], at (202) 551-6787 (Office of Investment Adviser Regulation, Division of Investment Management).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 100 F Street, NE, Washington DC 20549-0102 (telephone (202) 551-5850).

Applicant's Representations:

1. Applicant represents that it is a multi-generational single-family office that provides services to the family and descendants of Joseph S. Gruss. The Applicant is operated for the benefit of the lineal descendants of Joseph S. Gruss, and two sisters of a spouse of a lineal descendant of Joseph S. Gruss and the spouses of such sisters (collectively, the "Gruss Family" or "Family").

2. Applicant represents that, other than the exception discussed below, it is owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule.

3. Applicant represents that other than the exception discussed below, (i) each of the persons served by the Applicant is a "family client" as that term is defined in paragraph (d)(4) of the Family Office Rule (collectively, "Family Clients"), *i.e.*, the Applicant has no investment advisory clients other than the Family Clients as required by paragraph (b)(1) of the Family Office Rule and (ii) the Applicant does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule.

4. Applicant represents that it provides both advisory services and non-advisory services to Family Clients (collectively, the “Services”). The non-advisory services include, but are not limited to, federal and state tax advice, recordkeeping assistance, coordination of professional relationships with accountants and attorneys, management and administration of the various Family investment entities, real estate management, management and administration of trusts for Gruss Family members, including providing trustees, as well as numerous other responsibilities. The advisory services consist of providing asset allocation advice and investment due diligence (including due diligence on potential unaffiliated discretionary wealth managers) for Family Clients (“Advisory Services”). These activities primarily involve, but are not limited to, evaluating investment opportunities in hedge funds, private equities, publicly traded securities, commodities, and real estate investments. The Applicant provides some or all of the Services to Family Clients.

5. Applicant represents that it is paid for its Services by the Family Clients. Not all of the Family Clients however pay a fee to the Applicant for Services, and not all Family Clients receive Advisory Services from the Applicant. Applicant further represents that it does not operate with the purpose of generating a profit for its owners, but rather collects fees to pay its operating expenses and the salaries of the professionals it employs.

6. Applicant represents that it does not and will not solicit or accept investment advisory clients from the public.

Applicant’s Legal Analysis:

1. Section 202(a)(11) of the Advisers Act defines the term “investment adviser” to mean “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing

in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities . . . .”

2. Applicant falls within the definition of an investment adviser under Section 202(a)(11). Because the Applicant has regulatory assets under management of more than \$100 million, it is not prohibited from registering with the Commission under Section 203A(a) of the Advisers Act. The Family Office Rule provides an exemption from registration for the Applicant but for the several facts set forth below.

3. The Family Office Rule contains a definition of “family member” that omits certain persons that many families would regard as an integral part of their “family.” Applicant has provided services to two sisters of a spouse of a lineal descendant of Joseph S. Gruss and the spouses of such sisters. The sister of a spouse of a lineal descendant is one such person in a “family” omitted from the definition of “family member” under the Family Office Rule. If the family tree were otherwise, and the two sisters were instead spouses of lineal descendants of Joseph S. Gruss rather than the sisters of a spouse of a lineal descendant, there would be no question that each of the persons being served by the Applicant would be a Family Member as defined in paragraph (d)(6) of the Family Office Rule.

4. Applicant requests that the SEC declare it and its employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11). Applicant states that there is no public interest in requiring the Applicant to be registered under the Advisers Act that is different in any manner than the considerations that apply to a Family Office that complies in all respects with the Family Office Rule.

Applicant's Conditions:

1. Applicant will offer and provide Advisory Services only to the Gruss Family, and will not hold itself out to the public as investment adviser.

2. Applicant will at all times be wholly-owned by Family Clients and exclusively owned and controlled (directly or indirectly) by one or more Family Members and/or family entities.

3. All the existing and future Family Clients that are investment entities: (a) are excluded from the definition of "investment company" under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940, and (b) are owned and controlled exclusively by Family Clients.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth Murphy  
Secretary