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REGISTRATION & DISCLOSURE

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006006364302**

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

RE: Ameritas Investment Corp., Respondent
B/D No. 14869

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent, Ameritas Investment Corp. ("Ameritas"), 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 Ameritas alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Ameritas 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

Ameritas has been a member of FINRA (f/k/a NASD or National Association of Securities Dealers) since 1984. Its principal offices are located in Lincoln, Nebraska. Ameritas is a full-service brokerage firm with approximately 1,900 registered representatives working in 870 branch offices.

Relevant Prior Disciplinary History

In July 2008, the Nebraska Department of Banking and Finance found that Ameritas failed to include certain required disclosures in an advertisement the firm placed in a newspaper. The firm was fined \$10,000.

In September 2007, Ameritas entered into a consent order with the Florida Office of Financial Regulation, which found that the firm failed to supervise two registered representatives in Florida in connection with, among other things, seminar presentations to clients. The firm was fined \$65,000.

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Overview

During the period October 2003 through December 2005, Ameritas, through one registered representative, NZ, used communications with the public in the form of written financial plans, which contained misleading statements and omitted material information. The plans were created by NZ, who provided them to customers. Ameritas also failed to ensure that the communications were approved by a registered principal at the firm prior to use with customers, and failed to file the communications with FINRA. As a result, Ameritas violated NASD Rules 2210, IM-2210-2, 2220, and 2110. In addition, Ameritas failed reasonably to supervise the activities of NZ, including her use of communications with the public and her recommendations to fund the purchase of securities with proceeds from mortgage transactions. As a result, Ameritas violated NASD Rules 3010(a) and 2110.

Facts And Violative Conduct

Ameritas violated NASD Rules 2210, IM-2210-2, 2220 and 2110 based on the use of misleading communications with the public

During the period October 2003 through December 2005, NZ was registered with Ameritas and was licensed to sell certain securities products, including variable universal life ("VUL") policies. During that time, NZ also conducted a college planning business through which she gave seminars on college funding and planning at schools and other locations for parents with children approaching college age.

Following her presentations at the seminars, NZ would offer to meet with parents to discuss, among other things, options for providing funding for college. After meeting with parents and obtaining financial information, she generally would present customers with a written financial plan that included recommendations to purchase insurance and securities products, including VUL policies. A VUL policy is a whole life insurance policy that allows the policy holder to allocate a portion of the premium amount to a separate account comprised of investment funds, called subaccounts, within the insurance company's portfolio of stocks, bonds, and other investments. Because a portion of the premium payment is invested in the subaccounts, the customer's premium payment may increase depending on how the investments in the subaccounts perform.

NZ provided approximately 220 customers with financial plans during the period October 2003 through December 2005. While many customers had a common investment objective of college funding, each customer's overall financial situation (income, assets, liabilities, etc.) was different. Nevertheless, the financial plans were substantially similar for each customer. For instance, most of the financial plans recommended that the customer refinance an existing home mortgage, or obtain a second mortgage, to consolidate debt and obtain additional cash to fund the plan. Most of the plans also recommended that the customer purchase a VUL policy issued by an Ameritas affiliate using the excess cash flow or lump sums received from refinancing a home mortgage

and/or from funds from exchanging a variable annuity. In addition, some of the plans included recommendations to invest in covered call options.

Over 90 of NZ's customers who were provided a plan purchased one or more VUL policies. In most instances the money used to fund these securities products came, at least indirectly, from a mortgage refinancing or a home equity loan. Ameritas did not know that a source of funds to purchase the VUL policies was proceeds from a mortgage refinancing or a home equity loan.

The financial plans that NZ provided to customers were misleading in many respects, and were complicated and confusing. In many instances, the plans did not identify the investment that was being recommended (in nearly every instance, a VUL policy), and it was not clear from the plans what the source of funds was to be used to pay for the investments. The plans did not provide a basic explanation of the VUL policy's features, costs and charges (including, if applicable, surrender charges). They also did not disclose that VUL policies involve investment risks, including possible loss of principal invested, and did not disclose the risks associated with taking out a larger mortgage for debt consolidation and investment purposes. With respect to the "cash flow analysis" contained in each plan, the hypothetical performance results were oversimplified, incomplete, and did not contain the hypothetical illustrations and disclosures (including the cost of insurance, fees and expenses) required by IM-2210-2. In addition, the plans did not disclose that, to be successful, customers would have to show strict adherence to the many complicated aspects of the plan for its 20-year duration, a degree of financial discipline that many of the customers had not previously shown.

The plans also included misleading statements that either were promissory of successful investment results or failed to reflect the risks associated with securities-related investments. For instance, most of the plans stated:

- "Based upon the personal and financial information that you provided, this report demonstrates the most cost efficient method(s) for you to enhance your retirement, while funding your child's/children's college education."
- "We have taken into consideration your present retirement situation ... and have recommended strategies that will not only contain your college costs, but increase your retirement funds as well."

Several plans also recommended covered call options. The customers for whom covered call options were recommended met with another Ameritas registered representative located in the same office as NZ, who was licensed to sell those securities, to discuss this investment strategy. However, the financial plans failed to disclose that options are not suitable for all investors, and failed to disclose any risks associated with options trading. In addition, the plans contained covered call performance projections, which are prohibited by FINRA rules.

Ameritas became aware of NZ's use of the misleading financial plans in 2004. While Ameritas instructed NZ to cease using the financial plans and attempted to work with her for over a year to make changes to the plans so that they would comply with NASD rules, NZ continued to use financial plans with customers that were misleading and that omitted material information.

The financial plans prepared by NZ constitute sales literature governed by Rule 2210. Rule 2210(b) requires that such materials be approved by a registered principal and Rule 2210(c) requires that sales materials concerning variable products be filed with FINRA's Advertising Regulation Department. The financial plans used by NZ were never approved by a registered principal at Ameritas. Moreover, the firm never filed any of the financial plans with the Advertising Regulation Department of FINRA.

Ameritas, through NZ, provided written financial plans to customers and prospective customers that failed to provide a sound basis for evaluating the products being recommended, contained misleading information, and omitted material information. As a result, Ameritas violated NASD Rules 2210(d)(1)(A) and (B), IM-2210-2, 2220(d)(2), and 2110. Ameritas also violated NASD Rules 2210(b)(1), 2220(b) and 2110 by failing to have a registered principal approve the financial plans, and Rules 2210(c)(2)(A) and 2110 by failing to file the financial plan with FINRA's Advertising Regulation Department.

Ameritas violated NASD Rules 3010(a) and 2110 by failing to adequately supervise the activities of NZ

During the period October 2003 through December 2005, Ameritas failed reasonably to supervise the activities of NZ. During that period, NZ provided financial plans to over 200 clients and prospective customers that contained misleading statements and omitted material information.

Ameritas knew that the financial plans used by NZ were not compliant with the firm's procedures and with FINRA's rules. When Ameritas learned of this, the firm instructed her not to use the plans. The firm attempted to work with NZ to address these problems and made several recommendations over the course of a year to change the plans by removing misleading information and adding required disclosures. However, only a few of the changes were implemented by NZ, and she continued to use plans that violated FINRA's rules. Certain individuals at the firm knew of her continued use of the financial plans. Ameritas nonetheless failed to take sufficient action to ensure that NZ was not using the plans until they were compliant with FINRA rules and approved by a registered principal. As a result of Ameritas' failure to adequately supervise NZ, she continued to use misleading communications with customers for over a year after Ameritas first became aware of her use of the plans.

During the time period that Ameritas was aware that NZ was using misleading financial plans, NZ sold a number of VUL policies to customers that were unsuitable based on each client's financial situation and needs. Ameritas failed to adequately supervise NZ's

recommendations to these customers, including her recommendation that they use mortgage proceeds to fund securities transactions.

Ameritas' procedures required supervisory approval if funds from a mortgage transaction were to be "directly or indirectly, funnel[ed] through to the broker/dealer for purposes of investment." NZ recommended that most of her customers refinance their mortgages and, at least indirectly, use the proceeds from a refinancing transaction to fund the purchase of VUL policies. Many customers followed NZ's recommendation and used mortgage proceeds to fund the purchase of VUL policies. While the strategy used by NZ was known by certain individuals at Ameritas, the registered principals who approved NZ's VUL sales were not aware that the funds used to purchase the VUL policies came, at least indirectly, from mortgage refinancing transactions.

By failing reasonably to supervise the activities of NZ, including her use of misleading customer communications and her recommendations that customers use mortgage proceeds to fund the purchase of VUL policies, Ameritas violated NASD Rules 3010(a) and 2110.

B. Ameritas also consents to the imposition of the following sanctions:

1. A censure; and
2. a fine in the amount of \$100,000.

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

Ameritas 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.

II.

WAIVER OF PROCEDURAL RIGHTS

Ameritas specifically and voluntarily waives the following rights granted under FINRA'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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Ameritas 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.

Ameritas 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

Ameritas 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 Ameritas; and
- C. If accepted:
 - 1. this AWC will become part of Ameritas's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Ameritas;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Ameritas's disciplinary record;

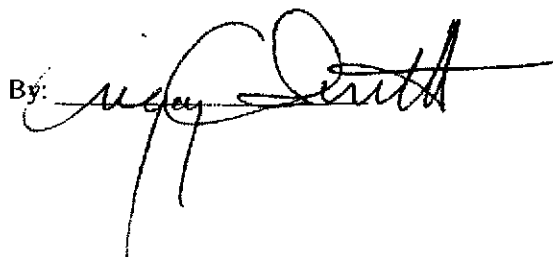
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. Ameritas may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Ameritas 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 Ameritas's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. Ameritas may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Ameritas 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 Ameritas has agreed to its 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 Ameritas to submit it.

2-4-09
Date

Ameritas Investment Corp.
Respondent

By: 

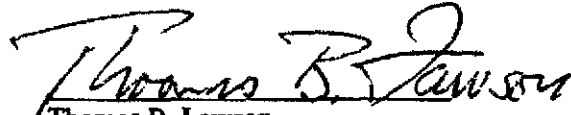
Reviewed by:

Brian L. Rubin
Brian L. Rubin, Esquire
Sutherland Asbill & Brennan, LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415
Counsel for Respondent

Accepted by FINRA:

2/24/09
Date

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

A handwritten signature in cursive script, reading "Thomas B. Lawson".

Thomas B. Lawson
Chief Counsel
FINRA Department of Enforcement
1801 K Street, NW
Washington, DC 20006