

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2015043583901**

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

RE: Ameritas Investment Corp., Respondent  
Member Firm  
CRD No. 14869

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Ameritas Investment Corp. ("AIC" 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 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. Respondent 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**

AIC has been a FINRA member since June 1984. The Firm maintains its main office in Lincoln, Nebraska. AIC employs approximately 1,400 registered persons and maintains approximately 550 branch offices.

**RELEVANT DISCIPLINARY HISTORY**

AIC has no relevant formal disciplinary history.

**OVERVIEW**

Between September 2013 and July 2015 (the "Relevant Period"), AIC failed to establish, maintain, and enforce an adequate supervisory system and written supervisory procedures ("WSPs") related to the sale of multi-share class variable annuities ("VAs").

AIC also failed to establish, maintain, and enforce a supervisory system that was

reasonably designed to achieve compliance with FINRA Rule 2121 (Fair Prices and Commissions).

As a result of the foregoing conduct, the Firm violated FINRA Rule 2330(d), NASD Rule 3010 (for conduct prior to December 31, 2014), FINRA Rule 3110 (for conduct on and after December 31, 2014), and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

AIC failed to establish, maintain, and enforce an adequate supervisory system and WSPs related to the sale of multi-share class VAs.

During the Relevant Period, AIC sold 4,075 individual VA contracts, from which the Firm earned over \$58 million in revenue. Of those VA sales, AIC sold 697 L-share contracts, which totaled 17% of the Firm's overall VA sales (or approximately \$11 million in revenue). Despite the significant role that VA sales played in AIC's overall business, the Firm failed to implement an adequate supervisory system and procedures designed to reasonably ensure suitability in its multi-share class VA sales, including L-share contracts.

AIC sold VA contracts with the option of various different share classes. The B-share contract is the most common share class sold in the industry and typically has a seven-year surrender period. L-share contracts typically provide a shorter surrender period, of three to four years, than B-share contracts, which typically have a surrender period of 7 years. Insurance companies design L-share contracts so that customers pay a higher fee for the benefit of a shorter surrender period. The L-share contract provides the flexibility of a shorter surrender period and the fees associated with L-share contracts, which are assessed as long as the contract is held, are typically between 35 and 50 basis points higher annually than most B-share contracts. L-share contracts are designed for investors with short-term time horizons or who want the option of being able to surrender the L-share contract sooner than a B-share contract. Pursuant to the terms established by the insurance company manufacturers, if a purchaser chooses not to surrender an L-share contract during the surrender period, the purchaser continues to pay a higher annual fee for the life of the contract, unless the contract provides for a "persistence credit."<sup>1</sup>

Despite the fact that 17% of the VAs sold to AIC customers during the Relevant Period were L-share contracts, the Firm failed to establish and maintain WSPs related to the sale of multi-share class VAs. AIC's WSPs failed to sufficiently provide registered representatives and principals guidance or suitability considerations for sales of different VA share classes.

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<sup>1</sup> Some L-Share contracts have a specific provision, commonly called a "persistence credit," which reduces the annual fees so it is comparable to a B-share contract after the product is held for a period of time, generally seven to ten years.

More specifically, the Firm did not provide sufficient guidance to its registered representatives on the features of various available share classes the associated fees and surrender charges, and did not provide them with adequate information to compare share classes to make suitability determinations.

In addition, AIC failed to establish, maintain, and enforce WSPs or provide sufficient guidance to its registered representatives and principals on the sale of long term income riders with multi-share class VAs, particularly the combination of L-share contracts with long-term income riders.

Based on the foregoing, AIC violated NASD Rule 3010 (for conduct before December 1, 2014) and FINRA Rule 2330(d), and FINRA Rule 3110 (for conduct on and after December 1, 2014) and 2010.

AIC failed to establish and maintain a supervisory system, including WSPs, that was reasonably designed meet the requirements of FINRA Rule 2121.

FINRA Rule 2121 requires members to take the following relevant circumstances into consideration when determining the fairness of commissions: (1) the type of security involved; (2) the availability of the security in the market; (3) the price of the security; (4) the amount of money involved in the transactions; (5) disclosures to the customers; and (6) the nature of the firm's business.

During the Relevant Period, AIC's trade system listed a flat 4% default commission for all equity security transactions. Although the 4% commission rate was the Firm's default rate, representatives often discounted commissions from that rate to fit particular customer relationships during the Relevant Period. AIC disclosed its commission rates to customers when they opened their accounts.

AIC failed to determine whether the commissions it charged were reasonable based on the factors set forth in Rule 2121. Specifically, AIC failed to reasonably supervise equity securities commissions charged by its representatives that were at the 4% rate to determine whether such commissions were reasonable and fair given the considerations outlined in Rule 2121.

By virtue of the foregoing, during the Relevant Period, AIC violated NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rules 3110 (for conduct on and after December 1, 2014) and 2010.

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

1. A censure; and
2. A fine of \$180,000.

AIC agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. AIC has submitted an Election of Payment form showing the method by which the Firm proposes to pay the fine imposed.

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

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

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

AIC 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, AIC specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

AIC 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**

AIC 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 AIC;
  - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  - 4. AIC 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. AIC 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: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. AIC may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. AIC 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 AIC 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 the Firm to submit it.

Respondent Ameritas Investment Corp.

10/06/2017  
Date (mm/dd/yyyy)

By: Michael D. Burns  
Name: MICHAEL D. BURNS  
Title: Chief Compliance Officer

Reviewed by:

Brian L. Rubin  
Brian Rubin  
Counsel for Respondent  
Eversheds Sutherland (US) LLP  
700 Sixth Street, NW, Suite 700  
Washington, DC 20001-3980  
Telephone: (202) 383-0124  
Email: brianrubin@eversheds-sutherland.com

Accepted by FINRA:

11/08/2017  
Date (mm/dd/yyyy)

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

Seema Chawla  
Seema Chawla, Senior Regional Counsel  
FINRA Department of Enforcement  
120 West 12th Street, Suite 800  
Kansas City, MO 64105  
Telephone: (816) 802-4712  
Facsimile: (816) 421-4519  
Email: seema.chawla@finra.org