

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018056443101**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Ameritas Investment Company, LLC ("Respondent," "Ameritas," 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 Respondent 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

Ameritas has been a FINRA member since May 1984 and maintains its headquarters in Lincoln, Nebraska. As of January 2020, the Firm had 1,090 registered persons and 402 branch offices.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

Between February 10, 2018 and August 20, 2018 (the "Relevant Period"), Ameritas provided underwriting services for a municipal issuer with which it had an active "blanket" financial advisory agreement, and thereby acted simultaneously as the issuer's financial advisor and its underwriter. Through this conduct, Ameritas violated MSRB Rule G-23.

FACTS AND VIOLATIVE CONDUCT

MSRB Rule G-23 is designed to minimize the prima facie conflict of interest that exists when a municipal securities professional acts as both financial advisor and underwriter with respect to the same issue.¹ The primary role of an underwriter is to purchase or arrange for the placement of securities in an arms-length commercial transaction between the issuer and the underwriter.² In a financial advisory relationship, however, both the issuer and financial advisor have a mutually beneficial interest in the issuance of securities.

MSRB Rule G-23(b) provides that, among other things, a financial advisory relationship is deemed to exist for purposes of Rule G-23 when a dealer enters into an agreement with an issuer to provide financial advisory services with respect to the issuance of municipal securities, including advice with respect to the structure, timing, and terms of the issue.

After November 27, 2011, the MSRB amended Rule G-23 to preclude a member firm with a financial advisory relationship to an issuance of municipal securities from acting as an underwriter for the same issuance.

During the Relevant Period, Ameritas had an active blanket financial advisory agreement with a municipal bond issuer (the "Issuer"). The agreement spanned from August 1, 2017 to December 31, 2018 but was not limited to specific issuances of bonds. Rather, the financial advisory agreement outlined Ameritas' obligations to:

assist the [Issuer] ... in review of the [Issuer's] available and possible projected revenue sources and in the development of a forecast and strategic plan recommending the most appropriate source or combination of sources to pay for any proposed capital improvement financing program(s).

The Firm's advisory obligations also included comparing and evaluating possible or potential methods of financing capital improvement programs, providing ongoing advice as to the status of the financial markets in general, assisting with the evaluation and selection of trustee services, accounting services, and underwriting or private placement services, and attending meetings with financial ratings services.

In exchange for Ameritas' services, the financial advisory agreement provided for a fee of 0.2% of the issuance size. This agreement created a financial advisory relationship between Ameritas and the Issuer for all bond issuances during the Relevant Period.

¹ MSRB Rule G-23 Interpretive Guidance, "Issuer consent: financial advisor participation in underwriting – April 10, 1984."

² MSRB Rule G-23 Interpretive Guidance, "Guidance on the Prohibition on Underwriting Issues of Municipal Securities for which a Financial Advisory Relationship Exists Under Rule G-23 – November 27, 2011."

Notwithstanding the Firm's financial advisory agreement with the Issuer, during the Relevant Period, Ameritas provided underwriting services to the Issuer on three issuances at the Issuer's requests. Ameritas attempted to mitigate potential conflicts of interest by stating in the advisory agreement that it (a) would serve as underwriter only if the issuer consented to that role in writing; and (b) would not accept compensation as a financial advisor for issuances where it was also acting as an underwriter. That attempted mitigation failed to address the conflict created for Ameritas by serving as underwriter for an issuer with which it had a blanket financial advisory agreement and, thus, a financial advisory relationship.

Therefore, by virtue of the foregoing, Ameritas violated MSRB Rule G-23.

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

1. A censure; and
2. A fine of \$10,000 (attributable entirely to Respondent's violation of MSRB Rule G-23).

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

Respondent specifically and voluntarily waives any right to claim an inability 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

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

- A. To have a Complaint issued specifying the allegations against it;
- 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, Respondent 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.

Respondent 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

Respondent understands that:

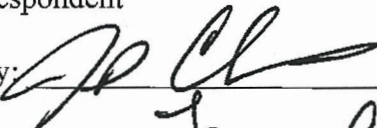
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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. Respondent 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. Respondent 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 Respondent'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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 Respondent 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 it to submit it.

Ameritas Investment Company, LLC
Respondent

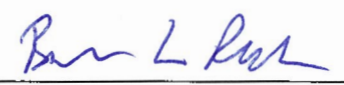
3/9/2020
Date

By: 

Print Name: James Clements

Title: VP, CCO

Reviewed by:



Brian L. Rubin
Counsel for Respondent
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Accepted by FINRA:

March 25, 2020
Date

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

A handwritten signature in cursive script that reads "Seema Chawla". The signature is written in dark ink and is positioned above a horizontal line.

Seema Chawla, Senior Counsel
FINRA Department of Enforcement
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Kansas City, MO 64105
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