

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2015046904101**

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

**RE: Ameritas Investment Corp., Respondent ("AIC")
CRD No. 14869**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, AIC 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 AIC alleging violations based on the same factual findings described herein.

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ACCEPTANCE AND CONSENT

- A. AIC 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 is a general securities firm that has been registered with FINRA or its predecessor since 1984. As of November 2016, AIC had 531 branches and 1,372 registered persons.

RELEVANT DISCIPLINARY HISTORY

AIC does not have any history of relevant discipline.

OVERVIEW

For more than two years, AIC did not adequately supervise recommendations to liquidate securities in order to purchase equity-indexed annuities ("EIAs"), nor did AIC record the resulting transactions. Instead, AIC, without adequate supervision, mistakenly treated those recommendations and transactions as outside business activities.

As a result, AIC violated NASD Rule 3010(a) and FINRA Rules 2010, 3110(a), 3270, and 4511(a).

FACTS AND VIOLATIVE CONDUCT

An EIA¹ is a type of annuity contract that guarantees a minimum interest rate and may provide additional return, depending on the performance of a designated securities index. Before October 1, 2013, AIC supervised and recorded sales of EIAs by its registered representatives. On that date, AIC began treating sales of EIAs as outside business activities, based on the firm's understanding of the Dodd-Frank Act. Under its new policy, AIC required its registered representatives to notify the firm if they were selling EIAs as an outside business activity, but the firm did not adequately supervise or record those EIA sales when they resulted from a recommendation to liquidate a security in order to fund the sale. As a result, AIC also did not evaluate whether its registered persons' sales of EIAs for compensation should be treated as outside securities activities. Between October 1, 2013 and mid-2016, on at least 125 occasions AIC's registered representatives received compensation in connection with recommending the liquidation of securities in order to purchase EIAs. In mid-2016, AIC resumed supervising and recording the sales of EIAs.

Since December 1, 2014, FINRA Rule 3110(a) has required firms to "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules." Before that date, NASD Rule 3010(a) imposed similar requirements. From October 1, 2013 to mid-2016, AIC did not supervise recommendations to liquidate a security in order to purchase an EIA. As a result, AIC violated NASD Rule 3010(a) and FINRA Rule 3110(a).

FINRA Rule 3270 provides that if a firm is notified that an associated person is participating in an outside business activity for compensation, the firm must "determine whether the activity properly is characterized as an outside business activity or whether it should be treated as an outside securities activity" and record that analysis. Between October 1, 2013 and mid-2016, AIC received notice that some of its registered representatives were selling EIAs as an outside business activity for compensation; however, the firm did not determine whether those activities constituted outside securities activities. As a result, AIC violated FINRA Rule 3270.

FINRA Rule 4511(a) requires firms to "make and preserve books and records as required under the FINRA rules..." Before December 1, 2014, NASD Rule 3010(d)(1) required firms to review and endorse "in writing, on an internal record, [] all transactions." Since that date, FINRA Rule 3110(b)(2) has required firms to review "all transactions relating to ... [its] securities business" and to "evidence[] in writing" that review. From October 1, 2013 to mid-2016, AIC did not review or endorse in writing transactions resulting from recommendations to liquidate a

¹ EIAs are also known as fixed indexed annuities.

security in order to purchase EIAs. As a result, AIC violated FINRA Rule 4511(a).

Finally, violating any NASD rule or other FINRA rule constitutes a violation of FINRA Rule 2010, which provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." By virtue of violating NASD Rule 3010(a) and FINRA Rules 3110(a), 3270, and 4511(a), AIC also violated FINRA Rule 2010.

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

Censure
Fine of \$145,000

AIC agrees to pay that fine upon notice that this AWC has been accepted and the fine is due and payable. AIC has submitted an Election of Payment form showing the method by which AIC proposes to pay the fine. AIC specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the fine. 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 AIC;**
- 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 AIC; and
- C. If accepted:
 - 1. this AWC will become part of AIC'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 AIC's testimonial obligations or 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 AIC, certifies that a person duly authorized to act on its behalf has read and understood 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 in this AWC and the prospect of avoiding the issuance of a Complaint, has been made to induce AIC to submit this AWC.

12/05/2010
Date (mm/dd/yyyy)

Michael D. Burns
Ameritas Investment Corp.

By: Michael D. Burns
Chief Compliance Officer

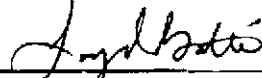
Reviewed by:

Brian Rubin
Brian Rubin
Counsel for Ameritas Investment Corp.
Sutherland Asbill & Brennan LLP
700 6th Street Northwest #700
Washington, D.C. 20001
202-383-0124 (telephone)

Accepted by FINRA:

Jan. 11, 2017
Date

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



J. Loyd Gattis III
Principal Regional Counsel
FINRA Department of Enforcement
120 West 12th Street
Kansas City, Missouri 64105
816-802-4710 (telephone)
816-421-4519 (facsimile)