UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5970 / February 25, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20784

In the Matter of **AMERITAS ADVISORY SERVICES, LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Ameritas Advisory Services, LLC ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. Ameritas Advisory Services, LLC, a registered investment adviser, breached its fiduciary duty to advisory clients by failing to provide full and fair disclosure regarding third-party compensation received when the advisory business was part of a dually registered investment adviser/broker-dealer firm, Ameritas Investment Company, LLC ("AIC"). In November 2021, AIC moved its advisory business that is the subject of this conduct to Ameritas Advisory Services, LLC, a separate affiliate, as part of a corporate reorganization. For purposes of this Order, the term "the Advisory Firm" is used to refer to the advisory business generally and thus refers to that business both as it is now part of Ameritas Advisory Services, LLC and when it was part of AIC when it was a dual registrant.

2. The Advisory Firm failed to provide full and fair disclosure regarding conflicts associated with AIC's receipt of certain compensation since at least February 2014: (1) revenue sharing payments from AIC's unaffiliated clearing broker ("Clearing Broker") as a result of advisory clients' investments in certain mutual funds and money market funds that paid revenue sharing to the Clearing Broker; (2) markups on Clearing Broker fees for advisory clients' transaction fees; (3) revenue received from the Clearing Broker on the rate of margin interest charged to advisory clients; and (4) an annual business development credit from the Clearing Broker based on AIC maintaining, within a range, minimum accounts, asset balances, and trading volumes in certain revenue sharing paying mutual fund programs and margin accounts. The Advisory Firm also breached its duty to seek best execution by causing certain advisory clients to invest in share classes of mutual funds and money market funds when share classes of the same funds were available to the clients that presented a more favorable value for these clients under the particular circumstances in place at the time of the transactions and breached its duty of care by failing to undertake an analysis to determine whether the particular mutual fund and money market fund share classes it recommended were in the best interests of its advisory clients. Finally, the Advisory Firm failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its practices regarding mutual fund and money market share class selection, fee markups, margin interest, business development credits, and best execution.

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[1] The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

Respondent

3. **Ameritas Advisory Services, LLC**, is a Nebraska limited liability company headquartered in Lincoln, Nebraska. It was formed in January 2020. On October 15, 2021, the investment adviser registration of AIC was transferred to Ameritas Advisory Services, LLC. AIC is a Nebraska limited liability company, headquartered in Lincoln, Nebraska, that was dually registered with the Commission as an investment adviser and broker-dealer from January 1998 until November 2021. AIC, as a dual registrant, was the recipient of the revenue sharing and other compensation described in this Order. In November 2021, AIC terminated its investment adviser registration with the Commission. At that time, AIC's investment advisory representatives, services and clients, and substantially all of the assets and liabilities of its advisory business, were transferred to Ameritas Advisory Services, LLC. AIC has since continued as a broker-dealer entity only, with its advisory business operating now as Ameritas Advisory Services, LLC. Ameritas Advisory Services, LLC and AIC share common ownership and certain management.

Revenue Sharing Payments

4. Mutual funds typically offer different types of shares or "share classes." Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among share classes is the fee structure.

5. For example, some mutual fund share classes charge higher fees to cover costs of fund distribution and shareholder services. These fees negatively affect investor returns as the charges are deducted from the mutual fund's assets. As a result, clients are often, though not always, better off investing in a mutual fund share class that does not include these additional fees versus a share class of the same fund that charges such a fee.

6. Many mutual funds pay the Clearing Broker a recurring fee to have some or all of their fund share classes offered as part of the Clearing Broker's mutual fund programs. AIC had an agreement with the Clearing Broker referred to as the Fully Disclosed Clearing Agreement ("FDCA"). Since at least February 2014, pursuant to the FDCA, the Clearing Broker would share this recurring fee (i.e., mutual fund revenue) with AIC based on its customer assets, including the Advisory Firm's advisory clients' assets, invested in certain mutual fund shares. The Advisory Firm's clients indirectly paid these fees when they were included in the expense ratio of the mutual fund share class in which they invested. The Clearing Broker did not pay AIC any form of revenue sharing for some mutual funds and certain share classes of mutual funds. As a result of the revenue sharing agreements, the Advisory Firm had an incentive to recommend mutual funds and mutual fund share classes that paid AIC revenue sharing as opposed to those that did not.

7. As an investment adviser, the Advisory Firm was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and its clients that could affect the advisory relationship. To meet this fiduciary obligation, the Advisory Firm was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that they could understand the conflicts of interest concerning its investment advice and have an informed basis on which to consent to or reject the conflicts.

No Transaction Fee Program Revenue Sharing

8. From at least February 2014, the Clearing Broker had a "no transaction fee" ("NTF") program ("NTF Program") for which it did not charge a transaction fee for the purchase or sale of mutual fund shares in the NTF Program. The Clearing Broker generally charged funds a higher recurring fee for a mutual fund's shares to be part of the NTF Program as compared to being sold outside of that program. As a result, mutual fund share classes sold through the NTF Program often had higher expense ratios than mutual fund share classes sold outside that program.

9. From at least February 2014, AIC had a revenue sharing arrangement with the Clearing Broker pursuant to which the Clearing Broker would share with AIC a portion of the recurring fee (i.e., mutual fund revenue) it received from mutual fund investments that were part of its NTF Program. The percentage that the Clearing Broker shared increased with the level of the assets held by AIC's brokerage customers, including assets held by advisory clients, who invested in those NTF mutual funds. Lower-cost share classes of those same funds were also generally available for which the Clearing Broker would have paid no or lower revenue sharing.

10. From at least February 2014, the Advisory Firm failed to provide full and fair disclosure of all material facts regarding its conflicts of interest that arose when advisory clients were invested in mutual funds and mutual fund share classes that paid it NTF revenue sharing. For example, the Advisory Firm failed to disclose that it had an incentive to invest clients in the NTF Program mutual fund shares that were generally more expensive to the Advisory Firm's clients than lower cost share classes of the same funds available outside the NTF Program.

11. In December 2018, the Advisory Firm decided that it would stop receiving NTF revenue sharing and changed its ADV Part 2A brochure in Item 2, Material Changes, to state that "Item 14-Clients Referrals and other compensation was updated to remove references to NTF Revenue Sharing as [AIC] no longer receives these payments." AIC, however, failed to take reasonable steps to ensure its Clearing Broker stopped paying NTF revenue sharing. Upon discovery that the NTF revenue sharing was still being paid in March 2021, AIC stopped receiving NTF revenue sharing.

Transaction Fee Program Revenue Sharing

12. From at least February 2014, the Clearing Broker also had a "transaction fee" ("TF") program ("TF Program") for which it charged a transaction fee for the purchase or sale of mutual fund shares in the TF Program. The Clearing Broker generally charged a mutual fund a lower recurring fee (i.e., mutual fund revenue) if it was part of the TF Program as opposed to the NTF Program.

13. Since at least February 2014, the Clearing Broker paid AIC a fixed dollar amount for each of its customers', including advisory clients', positions in TF mutual funds. The fixed dollar amount that the Clearing Broker paid to AIC increased as the amount of all positions increased.

14. From at least February 2014, the Advisory Firm failed to provide full and fair disclosure of all material facts regarding its conflicts of interest that arose when advisory clients were invested in TF mutual funds and TF mutual fund share classes that paid revenue sharing to AIC. No disclosure of the revenue sharing and the associated conflicts of interest were provided until October 2020. In October 2020, the Advisory Firm made an effort to improve disclosure in its ADV Part 2A brochure regarding TF revenue sharing and noted this addition in Item 2, Material Changes, however, this disclosure failed to disclose that AIC did not receive TF revenue sharing on certain mutual funds and certain share classes of mutual funds that also charged a transaction fee, and thus that it had an incentive to select certain mutual funds or mutual fund share classes over others for which there was a transaction fee. AIC stopped receiving TF revenue sharing from advisory accounts in September 2021.

Cash Sweep Share Class Selection and Revenue Sharing Payments

15. Since at least February 2014, the Advisory Firm recommended for advisory clients certain money market funds to hold uninvested cash that generated revenue sharing. A sweep account is a money market mutual fund ("money market fund") or bank account used by brokerages to hold cash (e.g., incoming cash deposits, dividends, or certain investment returns) until the investor or its adviser decides how to invest the money. A money market fund is a type of mutual fund registered under the Investment Company Act of 1940 and regulated pursuant to Rule 2a-7 under that Act. Money market funds generally invest in short term, highly liquid securities with limited credit risk, and are frequently used as cash sweep account options. The investment yields and expense ratio of a money market fund will differ from fund to fund and within share classes of the same fund.

16. The Clearing Broker offered AIC a revenue sharing arrangement based on customer assets invested, including advisory clients' assets, in certain share classes of money market funds. AIC was eligible to receive revenue sharing for customer assets invested in two available share classes ("Capital Reserves" and "Daily Money"). A third share class ("Retail") of the same money market funds was also available to AIC customers, including advisory clients, but the Clearing Broker did not pay AIC any revenue sharing for assets invested in the Retail class.

17. The cash sweep money market fund share classes had different annual fund expenses. The Capital Reserves was the most expensive and paid the most revenue sharing, followed by Daily Money, and then Retail, which did not pay revenue sharing. The more expensive the money market fund share class, the lower the returns for investors. For example, in 2018 the Capital Reserves, Daily Money, and Retail share classes of the Government Money Market Fund had annual performance of 0.94%, 1.19% and 1.47%, respectively. The revenue sharing created conflicts of interest for the Advisory Firm with respect to its advisory clients. For example, the Advisory Firm had an incentive to recommend the selection of the Capital Reserves and Daily Money share classes for clients, which generally provided clients lower net performance than the Retail class.

18. Since at least February 2014, the Advisory Firm did not provide full and fair disclosure regarding the conflicts of interest that arose when advisory clients' uninvested cash was invested in a higher-cost share class in the money market funds, while a lower-cost share class of the same funds was available that would not provide revenue sharing. While its ADV Part 2A brochure generally disclosed that AIC received compensation from clients' money market fund investments during this time, the disclosure was inadequate because (among other things) it was not sufficiently specific so that clients could understand the conflicts of interest concerning the Advisory Firm's advice about different share classes of money market funds. For example, nothing in the disclosure indicated that there was a third share class of the same money market fund (the Retail class) available without any revenue sharing for AIC.

19. Beginning in March 2018, AIC began rebating the revenue sharing amounts it received from investments in money market funds to advisory clients.

Transaction Fee Markups

20. The FDCA, among other things, sets forth the amounts AIC paid the Clearing Broker for providing execution, clearing, and custody for AIC's brokerage customers, which included the Advisory Firm advisory clients. The FDCA acknowledged that AIC established the fee schedule for its brokerage customers. AIC passed on to its brokerage customers, which included its advisory clients, certain Clearing Broker charges and fee markups for certain services.

21. From at least February 2014, AIC set its transaction fees at an amount that included a fee markup. Specifically, AIC had the Clearing Broker charge its customers, including advisory clients, more for transaction fees than what the Clearing Broker charged. The Advisory Firm's advisory clients paid the total fees, and AIC retained any fee markup.

22. The Advisory Firm did not provide disclosure to its advisory clients of the transaction fee markups or the conflicts of interest relating to the transaction fee markups prior to August 2018. In August 2018, the Advisory Firm revised its ADV Part 2A brochure to add disclosure concerning conflicts of interest relating to transaction fee markups.

Margin Interest Payments

23. A margin account is a type of account in which the broker-dealer lends customers cash, using the account as collateral, to purchase securities. A margin account is more risky than a cash account. Among other reasons, it increases an investor's purchasing power and thereby exposes the investor to the potential for larger losses. Margin interest is the interest charged on the amount of money loaned by the broker-dealer to the investor in the margin account.

24. Since at least February 2014, the Advisory Firm recommended to certain of its advisory clients that they enter into a margin account agreement and further recommended that certain advisory clients use margin to purchase securities recommended by the Advisory Firm. The advisory clients paid margin interest on the amount of margin in the account.

25. The FDCA provided that the Clearing Broker would charge interest to AIC on the margin accounts of AIC's brokerage customers, including those who were also advisory clients. The FDCA also provided that AIC may determine the rate of interest the Clearing Broker would charge to advisory clients on the balance in the advisory clients' margin accounts, and that AIC would earn the difference between the interest paid by advisory clients and the interest paid by AIC to the Clearing Broker. As a result, AIC received revenue that it would not have collected had it not marked up the margin interest rate the Clearing Broker charged to advisory clients. Because of the payments AIC received from the Clearing Broker, the Advisory Firm had an incentive to recommend margin accounts and to recommend clients buy securities that required the use of margin.

26. The Advisory Firm did not provide disclosure to its advisory clients of the markups on margin interest or the conflicts of interest relating to the margin program prior to October 2020. In October 2020, the Advisory Firm revised its ADV Part 2A brochure to add disclosure concerning conflicts of interest relating to the margin interest program.

Annual Business Development Credit

27. When AIC entered into the FDCA in 2013, the Clearing Broker agreed to pay AIC ten annual credits of $250,000, totaling $2,500,000 over ten years as an "annual business development credit."

28. AIC's receipt of the credit each year was dependent upon it maintaining, within a 10% range, a minimum number of accounts, asset balances, and trading volumes with the Clearing Broker and a minimum level of investment funds and/or investor accounts in NTF funds, TF funds, and margin. This created an incentive for the Advisory Firm to recommend NTF funds and TF funds to clients, and that clients use margin when purchasing securities, in order for AIC to maintain the balances necessary to earn the annual business development credit.

29. The Advisory Firm did not provide disclosure of the annual business development credit and associated conflicts of interest until March 2021. In March 2021, the Advisory Firm revised its ADV Part 2A brochure to add disclosure concerning conflicts of interest relating to the annual business development credit.

Duty of Care Failures

30. An investment adviser's fiduciary duty also includes a duty of care. To fulfill this obligation, an adviser, among other things, must provide investment advice in the best interest of its client based on the client's objectives and seek best execution for client transactions.

31. By causing certain advisory clients to invest in share classes of mutual funds or money market funds that resulted in higher revenue sharing payments from the Clearing Broker when share classes of the same funds were available to the clients that presented a more favorable value under the particular circumstances in place at the time of the transactions, the Advisory Firm violated its duty to seek best execution for those transactions. The Advisory Firm also did not fulfill its duty of care obligations when it advised clients to invest in mutual funds and money market funds without undertaking an analysis to determine whether the share classes it selected or recommended were in the best interests of its advisory clients.

Compliance Deficiencies

32. The Advisory Firm did not adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder concerning disclosure of the conflicts of interest presented by its mutual fund and money market fund share class selection, fee markups, margin interest, and the annual business development credit. In addition, while the Advisory Firm had written policies and procedures since at least 2014 that explained that it has an obligation to act in the clients' best interest, the Advisory Firm did not adequately implement those policies. Finally, the Advisory Firm failed to adopt or implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder relating to its obligation to seek best execution for its clients.

Violations

33. As a result of the conduct described above, Respondent willfully[2] violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,194-95 (1963)).

34. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

[2] "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act, "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

Disgorgement

35. The disgorgement and prejudgment interest ordered in Section IV.C is consistent with equitable principles and does not exceed the net profits from the violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors may be transferred by the Commission to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Undertakings

36. Respondent has undertaken to:

Steps Taken To Date

a. Respondent has certified that it has reviewed and corrected as necessary all relevant disclosure documents concerning NTF, TF, and money market fund revenue sharing, transaction fee markups, margin interest, the annual business development credit, and best execution.

b. Respondent has certified that it has evaluated, updated (if necessary), and reviewed for the effectiveness of their implementation, Respondent's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its practices involving NTF, TF, and money market fund revenue sharing, transaction fee markups, margin interest, the annual business development credit, and best execution.

c. In determining whether to accept the Offer, the Commission has considered the undertakings set forth in paragraph 35.a. and b. above.

Steps to Be Taken

d. Within 45 days of the entry of this Order, evaluate whether existing clients should be moved to an available lower-cost share class and move clients as necessary.

e. Within 30 days of the entry of this Order, notify affected investors (*i.e.*, those former and current clients who were financially harmed by the practices detailed above (hereinafter, "affected investors")) of the settlement terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

f. Within 50 days of the entry of this Order, certify, in writing, compliance with the undertaking(s) set forth in paragraph 36 (d) through 36(e) above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Kimberly L. Frederick, Assistant Regional Director, Asset Management Unit, Denver Regional Office, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

g. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall within ten (10) days of the issuance of this Order pay disgorgement, prejudgment interest, and a civil penalty, totaling $4,628,194 as follows:

(i) Respondent shall pay disgorgement of $3,334,804 and prejudgment interest of $543,390, consistent with the provisions of this Subsection C.

(ii) Respondent shall pay a civil penalty in the amount of $750,000, consistent with the provisions of Subsection C.

(iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected investors. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

(iv) Within ten (10) days of the issuance of this Order, Respondent shall deposit $4,628,194 (the "Fair Fund"), into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. If timely deposit into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

(v) Respondent shall be responsible for administering the Fair Fund and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(vi) Respondent shall distribute from the Fair Fund to each affected investor an amount representing the financial harm incurred by the affected investor with reasonable interest paid on such financial harm, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(vii) Respondent shall, within ninety (90) days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the Distribution to be available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) Respondent shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid. The Respondent shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

(ix) Respondent shall disburse all amounts payable to affected investors within ninety (90) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (xiii) of this Subsection C. Respondent shall notify the Commission staff of the date and the amount paid in the initial distribution.

(x) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investment account or any other factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury subject to Section 21F(g)(3) of the Exchange Act once the distribution of funds is complete and before the final accounting provided for in Paragraph xii of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

(a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(b) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(c) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Ameritas Advisory Services, LLC as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kimberly L. Frederick, Assistant Regional Director, Asset Management Unit, Denver Regional Office, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

(xi) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§1.468B.1-1.468B.5. Respondent agrees to be responsible for all tax compliance responsibilities associated with the Fair Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(xii) Within 150 days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instruction set forth in this Subsection C. The Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate any prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to Kimberly L. Frederick, Assistant Regional Director, Asset Management Unit, Denver Regional Office, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request, and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xiii) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraph 36(d)-(e) above.

By the Commission.

Vanessa A. Countryman
Secretary