

DENISE VOIGT CRAWFORD  
SECURITIES COMMISSIONER

DON A. RASCHKE  
DEPUTY SECURITIES COMMISSIONER

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## Texas State Securities Board

208 E. 10th Street, 5th Floor  
Austin, Texas 78701-2407  
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MEMBER

### SSB Docket No. 03-039

IN THE MATTER OF §  
THE DEALER REGISTRATION OF §  
AMERITAS INVESTMENT CORPORATION §

Order No. CAF-1536

TO: Ameritas Investment Corporation (CRD #14869)  
c/o Maria Elizabeth Sherffius, Compliance Officer  
5900 "O" Street, 4th Floor  
Lincoln, Nebraska 68510-2234

### DISCIPLINARY ORDER

Be it remembered that Ameritas Investment Corporation ("Respondent"), by and through Maria Elizabeth Sherffius, its Compliance Officer, appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this Order and Undertaking, and the Findings of Fact and Conclusions of Law contained herein.

### FINDINGS OF FACT

1. Respondent has waived (a) Respondent's rights to notice and a hearing in this matter; (b) Respondent's rights to appear and present evidence in this matter; (c) Respondent's right to appeal this Order; and (d) all other procedural rights granted to Respondent by The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2003) ("Texas Securities Act"), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.001 et seq. (Vernon Supp. 2003) ("Administrative Procedure Act").
2. Respondent has been registered as a dealer with the Securities Commissioner from June 19, 1984, through the present. Maria Elizabeth Sherffius has been the Compliance Officer of Respondent from during or about May, 2002, through the present.
3. Robert Kurtis Mauss ("Mauss") was registered with the Securities Commissioner as an agent of Respondent from August 5, 1996, through March 10, 1999, and from September 3, 1999, through June 12, 2003. On June 12, 2003, the Securities Commissioner entered a Cease and Desist and Revocation Order against Mauss

styled In the Matter of the Agent Registration of Robert Kurtis Mauss, SSB Docket No. 03-027, Order No. CDO/REV-1518. This Cease and Desist and Revocation Order revoked the registration of Mauss as an agent of Respondent.

4. The Enforcement Division of the Texas State Securities Board (the "Enforcement Division") has determined that from during or about February, 1997, through during or about October, 1998, Mauss sold approximately twenty-six fractional interests in viatical settlement contracts to approximately seventeen Texas residents for a collective purchase price of approximately \$220,562.00. All such twenty-six fractional interests in viatical settlement contracts were represented as having an estimated maturity date of by or before June, 1999. As of May, 2003, however, only six of these twenty-six fractional interests in viatical settlement contracts have matured and thereby allowed investors to receive a return on their investment.
5. The Enforcement Division has determined that from during or about the fourth quarter of 1998, through during or about February, 1999, Mauss sold investments in Medium Term Notes to approximately fifteen Texas residents for a collective purchase price of approximately \$1,400,000.00. The monies used to purchase Medium Term Notes would reportedly be used in "prime bank" financing and trading and all investors therewith were promised a fixed return on the investment on or before the end of a fixed term.
6. On or about November 23, 1998, Mauss executed an Outside Business Activity Questionnaire wherein Mauss represented that Mauss had an affiliation with companies that sold viatical settlement contracts and Medium Term Notes. Mauss thereafter provided Respondent with written documentation and sales literature that regarded the Medium Term Notes.
7. On or about February 17, 1999, Respondent, by and through its Vice President of Corporate Compliance and its Regional Vice President, determined that Mauss had violated its internal compliance rules through the offer for sale and sale of investments in viatical settlement contracts and Medium Term Notes without prior approval by Respondent. Respondent, by and through its Vice President of Corporate Compliance, directed Mauss to cease and desist such activity and to execute and submit a writing that memorialized his promise not to engage in these outside business activities. Respondent informed Mauss that his registration with Respondent would be terminated if he did not agree to submit this writing.

During or about March, 1999, Mauss decided that he did not want to represent that he would cease and desist his offer for sale and sales of investments in viatical settlement contracts and Medium Term Notes and, therefore, did not submit the aforementioned signed writing. Respondent thereafter terminated Mauss' registration as an agent of Respondent with the Securities Commissioner.

8. Pursuant to Sections 101.2(c) and 133.33(a)(4) of the Rules and Regulations of the Texas State Securities Board ("Board Rules"), the Form U-4 is required to be filed in connection with applications for agent registration with the Securities

Commissioner and the Form U-4 has the same force and effect as a Board Rule. Pursuant to Section 115.9(a)(6) of the Board Rules, a dealer registered with the Securities Commissioner must report any change in information previously disclosed to the Securities Commissioner on the Form U-4 within thirty (30) days of such change.

Respondent filed a Form U-4 in connection with the registration of Mauss during 1996 (the "1996 Form U-4") and the 1996 Form U-4 was the most recent Form U-4 on file for Mauss during March, 1999. Respondent did not amend or update the 1996 Form U-4 to reflect Mauss' affiliation with dealers in viatical settlement contracts and Medium Term Notes within the sections of the Form U-4 that reference the employment history or outside business history of Mauss.

9. Pursuant to Sections 101.2(c) and 133.33(a)(5) of the Board Rules, the Form U-5 is required to be filed in connection with the termination of an agent registration with the Securities Commissioner and the Form U-5 has the same force and effect as a Board Rule. Pursuant to Section 115.9(a)(6) of the Board Rules, a dealer registered with the Securities Commissioner must report any change in information previously disclosed to the Securities Commissioner on the Form U-5 within thirty (30) days of such change.

On or about March 10, 1999, Respondent filed a Form U-5 with the Securities Commissioner. This Form U-5 indicated that Mauss was no longer employed or otherwise affiliated with Respondent as of the date of the filing. No amendments to this Form U-5 were filed by Respondent at any time thereafter.

Question No. 15 of the Form U-5 required Respondent to disclose whether Mauss was under internal review for violating investment-related statutes, regulations, rules or industry standards of conduct at the time of his termination. Respondent did not disclose the events described in Finding of Fact No. 7 on the Form U-5 and/or on an amendment thereto.

10. On or about September 3, 1999, Respondent permitted Mauss to again become employed with Respondent and, thereafter, caused Mauss to become registered with the Securities Commissioner as an agent of Respondent. Respondent required Mauss to affirm in writing that he would not engage in sales of viatical settlement contracts and Medium Term Notes as a condition of Mauss' re-employment. On or about July 29, 1999, Mauss made such written representations to Respondent.
11. On or about September 3, 1999, Respondent submitted a Form U-4 (the "1999 Form U-4") to the Securities Commissioner in connection with the application for the registration of Mauss. Respondent, thereafter, filed amended Forms U-4 with the Securities Commissioner on September 9, 1999, August 24, 2001, and October 1, 2002 (collectively the "Amended Forms U-4").

The 1999 Form U-4 and the Amended Forms U-4 required Respondent to disclose whether Mauss voluntarily resigned, was discharged or permitted to resign based

on an allegation that Mauss violated investment-related statutes, regulations, rules or industry standards of conduct. Respondent did not disclose the events of Mauss' termination as identified in Finding of Fact No. 7 within the 1999 Form U-4 or the Amended Forms U-4.

The 1999 Form U-4 and the Amended Forms U-4 also required Respondent to represent to the Securities Commissioner that Respondent had taken appropriate steps to verify the completeness of the information contained therein. Respondent did not disclose to the Securities Commissioner within the 1999 Form U-4 and the Amended Forms U-4 that Respondent had conducted an internal review of Mauss' violation of Respondent's compliance rules and terminated Mauss' affiliation with Respondent when Mauss chose to continue his sale of viatical settlement contracts and Medium Term Notes as referenced herein.

12. The Enforcement Division has determined that from September 3, 1999, through June 12, 2003, Mauss:
  - a. Offered and sold fractionalized viatical and senior settlement contracts through Accelerated Benefits Corporation and ABC Viaticals, Inc., to approximately nineteen Texas residents for a collective purchase price of approximately \$763,298.00;
  - b. Offered and sold promissory notes to approximately sixteen Texas residents for a collective purchase price of approximately \$80,000.00 and used the funds thereby received to facilitate an investment in a speculative high-risk online trading program referred to as *Le Club Prive*;
  - c. Offered and sold units of a real estate investment trust referred to as Aspen Real Estate Investment Trust to approximately twenty Texas residents for a collective purchase price of approximately \$499,795.00;
  - d. Was subject to a Notice of Federal Tax Lien that was filed against him in Travis County, Texas, by the United States Department of the Treasury, Internal Revenue Service; and
  - e. Filed for Chapter 13 Bankruptcy in the United States Bankruptcy Court, Western District of Texas, Austin Division.
13. On or about November 30, 1999, January 30, 2001, and April 5, 2002, Mauss submitted Outside Business Activities Questionnaires to Respondent. Each Outside Business Activities Questionnaire required Mauss to disclose all activities for which compensation was earned away from Respondent. Mauss represented to Respondent in each such Outside Business Activities Questionnaire that Mauss was not engaged in any private securities transactions or any outside business activities related to private securities transactions.

14. Respondent did not sponsor, approve of, have prior knowledge of or in any way authorize the private securities transactions sold by Mauss that are identified and described in Findings of Fact Nos. 4, 5 and 12(a)-(c). As referenced herein, Mauss did not disclose the private securities transactions identified in Findings of Fact Nos. 4 and 12(a)-(c) in accordance with Respondent's internal compliance rules and as required by the 1999, 2001, and 2002 Outside Business Activities Questionnaires.
15. From October, 2002, through June 12, 2003, Mauss conducted business from the premises of 11442 N. IH-35, Suite 255, Austin, Texas 78753. As of October, 2002, Respondent was aware that Mauss conducted business on these premises and had certain files and records at this location.

Pursuant to Section 115.1(b)(1) of the Board Rules, all dealers registered with the Securities Commissioner are required to register as a "branch office" the premises where any files and records are maintained. Pursuant to Section 115.9(a)(6) of the Board Rules, a dealer registered with the Securities Commissioner must report any change in information previously disclosed to the Securities Commissioner on any application form or filing within thirty (30) days of such change.

Respondent erroneously but in good faith interpreted Section 115.1(b)(1) of the Board Rules in a manner whereby Mauss' office would not need to be registered as a branch office. Accordingly, Respondent did not register the office located at 11442 N. IH-35, Suite 255, Austin, Texas 78753, as a branch office of Respondent with the Securities Commissioner at any time from October, 2002, through June 12, 2003.

Pursuant to Section 115.2(c) of the Board Rules, a dealer may not conduct sales-related activity in any branch office location until the dealer receives notification from the Securities Commissioner that such location has been approved as a branch office location. As noted above, however, Respondent erroneously interpreted Section 115.2(b)(1) of the Board Rules in a manner whereby Mauss' office need not be registered as a branch office. Mauss therefore engaged in sales-related activities at 11442 N. IH-35, Suite 255, Austin, Texas 78753, prior to receipt of notification that these premises were approved as a branch office registered with the Securities Commissioner.

16. On or about June 13, 2003, Respondent, by and through one or more of its authorized employees, took custody of certain files and records of Mauss that were previously located on the premises of 11422 N. IH-35, Suite 255, Austin, Texas 78753.

#### UNDERTAKING

1. Respondent hereby undertakes and agrees to retain all documents, files, records, instruments or other materials relevant to or related in any way to Mauss and to maintain such in a manner designed to protect their integrity, preserve their structure and ensure their safekeeping.

2. Respondent hereby undertakes and agrees to cooperate with any investigation conducted by the Enforcement Division or any other law enforcement agency that relates to the sale of investments away from Respondent by any current or former employee, agent or independent contractor, whereby such cooperation includes, but is not limited to, providing documents, files, records, instruments or other materials and testifying in any administrative, civil and criminal proceeding brought by or on behalf of the Texas State Securities Board, any other law enforcement agency or any self-regulatory association.
3. Respondent hereby undertakes and agrees to apply with the Securities Commissioner to register as a branch office all Texas premises where any records of any agent are located within fourteen (14) days from the date of the signing and entry of this Disciplinary Order by the Securities Commissioner.
4. Respondent hereby undertakes and agrees to accurately and completely disclose those events and circumstances related to the termination of an employment relationship or other affiliation with a person registered as an agent of Respondent as required by the Form U-5.

#### CONCLUSIONS OF LAW

1. Respondent's failure to disclose Mauss' employment or other affiliation with dealers in viatical settlement contracts and Medium Term Notes on the 1996 Form U-4 constitutes a violation of Section 115.9(a)(6) of the Board Rules.
2. Respondent's failure to disclose Mauss' discharge for violation of Respondent's rules following an internal review of his activities on the Form U-5 filed with the Securities Commissioner on or about March 10, 1999, and/or on an amendment thereto constitutes a violation of Section 133.33(a)(5) of the Board Rules.
3. Respondent's failure to disclose the internal review and Mauss' unauthorized sales of viatical settlement contracts and Medium Term Notes within the 1999 Form U-4 and Amended Forms U-4 constitutes a violation of Section 133.33(a)(4) of the Board Rules.
4. Respondent's representation to the Securities Commissioner on the 1999 Form U-4 and the Amended Forms U-4 that Respondent had taken appropriate steps to verify the completeness of information contained within the 1999 Form U-4 and Amended Forms U-4 at a time when the 1999 Form U-4 and Amended Forms U-4 contained incomplete information and Respondent knew or should have known that such incomplete information was contained therein constitute violations of Section 133.33(a)(4) of the Board Rules.
5. Respondent's failure to register its branch office located at 11442 N. IH-35, Suite 255, Austin, Texas 78753, constitutes a violation of Section 115.1(b)(1) of the Board Rules.

6. Respondent's failure to report a change in its branch office location within thirty (30) days constitutes a violation of Section 115.9 of the Board Rules.
7. Respondent's failure to register the office located at 11442 N. IH-35, Suite 255, Austin, Texas 78753, as a branch office with the Securities Commissioner and Respondent's engagement in sales-related activity at such premises prior to receipt of notification from the Securities Commissioner that such location was approved as a branch office constitutes a violation of Section 115.2(c) of the Board Rules.
8. The foregoing violations of the Board Rules constitute bases for the issuance of a disciplinary order reprimanding Respondent pursuant to Section 14.A(6) of the Texas Securities Act.
9. The foregoing violations of the Board Rules constitute bases for the assessment of an administrative fine against Respondent pursuant to Section 23-1 of the Texas Securities Act.

ORDER

1. It is therefore ORDERED that Ameritas Investment Corporation is hereby REPRIMANDED.
2. It is further ORDERED that Ameritas Investment Corporation COMPLY with the terms of the Undertaking contained herein.
3. It is further ORDERED that Ameritas Investment Corporation is hereby ASSESSED AN ADMINISTRATIVE FINE in the amount of Twenty-Five Thousand Dollars (\$25,000.00). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of Twenty-Five Thousand Dollars (\$25,000.00), payable to the State of Texas, contemporaneously with the delivery of this Order.

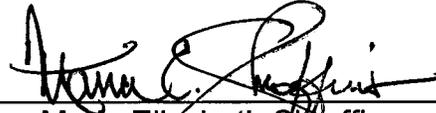
SIGNED AND ENTERED by the Securities Commissioner this 17<sup>th</sup> day of September, 2003.

*Denise Voigt Crawford*

DENISE VOIGT CRAWFORD  
Securities Commissioner

Respondent:

Ameritas Investment Corporation

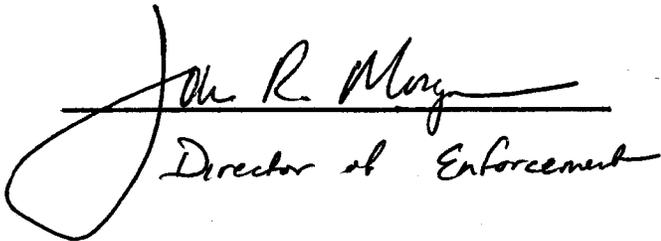


By: Maria Elizabeth Sherffius  
Compliance Officer

Approved as to Form:



Benette L. Zivley  
Director  
Inspections and Compliance Division

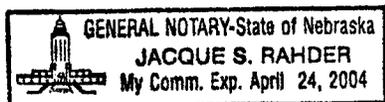


Director of Enforcement

**ACKNOWLEDGMENT**

On the 15<sup>th</sup> day of September, 2003, Ameritas Investment Corporation, by and through Maria Elizabeth Sherffius, its Compliance Officer, personally appeared before me, executed the foregoing Order, and acknowledged that:

1. Maria Elizabeth Sherffius is duly authorized to enter into the foregoing Order on behalf of Ameritas Investment Corporation;
2. Maria Elizabeth Sherffius has read the foregoing Order;
3. Ameritas Investment Corporation has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Ameritas Investment Corporation knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law contained therein; and
5. Ameritas Investment Corporation, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.



[affix notary seal here]

Jacquie S. Rahder  
Notary Public in and for  
the State of Nebraska

My commission expires on: 4-24-2004