



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO

ANIMALS

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

NOVEMBER 4, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS
AS OF
DECEMBER 31, 2015

DATE OF REPORT:

NOVEMBER 4, 2016

EXAMINER:

AHMED SALEH

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Fund	4
4.	Corporate governance	5
5.	Significant financial information	6
6.	Treatment of annuitants	8
7.	Prior report summary and conclusions	9
8.	Summary and conclusions	10



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

December 5, 2016

Honorable Maria T. Vullo
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31451, dated April 25, 2016 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the American Society for the Prevention of Cruelty to Animals, hereinafter referred to as the "Fund," at its home office located at 520 Eight Avenue, 7th Floor, New York, NY 10018.

Wherever "Department" appears in this report, it refers to the New York State Department of Financial Services.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain statements signed by every board member indicating that they received and read the prior report on examination. The examiner recommends that the Fund obtain statements signed by every board member indicating that they received and read the prior report on examination. (See item 4 of this report)

The examiner recommends that the board of directors, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes. (See item 4 of this report)

The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian. (See item 4 of this report)

The examiner recommends that the Fund diversify its investment holdings. (See item 5 of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement ("ISS"). Such a Statement should refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law, which standard, as specified in Section 1110(b) of the New York Insurance Law, governs the manner in which the required admitted assets of a segregated gift annuity fund shall be invested. The Fund should exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio. In doing so, the Fund should take into account present and future distributions to or for the beneficiaries and create a plan to meet the needs of those distributions to establish the ISS's risk, return, and time horizon objectives. (See item 5 of this report)

The examiner's review of the Fund's treatment of annuitants did not reveal significant instances which deviated from the New York Insurance Law, Department regulations and circular letters and the operating rules of the Fund. (See item 6 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2010. This examination covers the period from January 1, 2011 through December 31, 2015. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2015, but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2015 to determine whether the Fund's filed 2015 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification. The examiner also reviewed the corrective actions taken by the Fund with respect to the recommendations contained in the prior report on examination. The results of such review are contained in item 7 of this report.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations, or rules or which require explanation or description.

3. DESCRIPTION OF FUND

The American Society for the Prevention of Cruelty to Animals (the “ASPCA”) is North America’s first humane organization established in the Western hemisphere. It has been headquartered in New York City since its founding in 1866 where it maintains a strong local presence. The ASPCA provides effective means for the prevention of cruelty to animals throughout the United States. The ASPCA’s activities are focused on four primary program areas: anti-cruelty to animals, animal health services, community outreach, public awareness communications, and grants and sponsorships to other animal welfare-related organizations. Under the provisions of its by-laws, the ASPCA is permitted to issue gift annuity agreements and it has done so since 1992. A special permit was granted to the ASPCA by the Department on March 5, 1996, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund in accordance with the authority granted by the Board of Directors of the ASPCA.

State Street Bank and Trust Company (“State Street”) is the Fund’s administrator, investment advisor, and custodian.

The management of the ASPCA and the Fund and all of its affairs and property are entrusted to a board of directors. Specifically, the Finance Committee of the board is entrusted with the management of the gift annuity fund. The number of directors is limited to not less than 12 and not more than 32 regular voting directors. The directors elect a Chairperson, a Vice Chairperson, a Secretary and a Treasurer. In addition, the directors appoint a President of the ASPCA. As of December 31, 2015, the board of directors consisted of 16 members. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

4. CORPORATE GOVERNANCE

Section 312 of the New York Insurance Law states, in part:

“(a) The superintendent shall forward to every insurer or other person examined a copy of the report on examination as filed for public inspection . . . (b) A copy of the report shall be furnished by such insurer or other person to each member of its board of directors and each such member shall sign a statement which shall be retained in the insurer’s files confirming that such member has received and read such report . . .”

The examiner reviewed the board’s signed acknowledgement statements indicating that they received and read the prior report on examination and noted that only 8 out of the 18 members serving at that time signed such statements. The Fund failed to obtain statements signed by every board member indicating that they received and read the prior report on examination.

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain statements signed by every board member indicating that they received and read the prior report on examination. The examiner recommends that the Fund obtain statements signed by every board member indicating that they received and read the prior report on examination.

The examiner reviewed the Investment Subcommittee minutes to determine if the Investment Subcommittee approved the purchases and sales of investments during the examination period. The minutes did not contain any indication that the committee approved the purchases and sales of investments during the examination period.

The examiner recommends that the board of directors, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.

The examiner reviewed the investment transactions for the period under examination and noted that the Fund did not obtain broker’s advices or other supporting documentation for its investment transactions to reconcile such advices to the monthly statements furnished by the custodian.

The examiner recommends that the Fund obtain broker’s advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian.

5. SIGNIFICANT FINANCIAL INFORMATION

The following table indicates the Fund's financial growth during the period under review:

	<u>December 31,</u> <u>2010</u>	<u>December 31,</u> <u>2015</u>	<u>Increase</u>
Admitted assets	<u>\$5,034,320</u>	<u>\$8,616,873</u>	<u>\$3,582,553</u>
Liabilities	<u>\$3,590,802</u>	<u>\$5,526,115</u>	<u>\$1,935,313</u>
Minimum required fund balance	\$ 359,080	\$ 551,850	\$ 192,770
Excess fund balance (surplus)	<u>1,084,438</u>	<u>2,538,908</u>	<u>1,454,470</u>
Total annuity fund balance	<u>\$1,443,518</u>	<u>\$3,090,758</u>	<u>\$1,647,240</u>
Total liabilities and annuity fund balance	<u>\$5,034,320</u>	<u>\$8,616,873</u>	<u>\$3,582,553</u>

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 174 with annual payment amounts of \$448,278 as of December 31, 2010 to a total of 216 with annual payment amounts of \$825,941 as of December 31, 2015.

The Fund's admitted assets, as of December 31, 2015, were invested mainly in common stocks (98.56%).

Section 1409(a) of the New York Insurance Law states,

“(a) Except as more specifically provided in this chapter, no domestic insurer shall have more than ten percent of its admitted assets as shown by its last statement on file with the superintendent invested in, or loaned upon, the securities (including for this purpose certificates of deposit, partnership interests and other equity interests) of any one institution.”

According to the 2015 annual statement on file, the Fund reported: 19.33% of its admitted assets invested in the securities of International Alpha Select CTF-ZVAL; 24.36% invested in the securities of S&P 500 Common Trust Fund-CM10CTF; and 13.57% invested in the securities of Passive Bond Market SL CTF-CMQ9. The Fund's current concentration in the

three securities makes it highly unlikely that the Fund's other assets could provide a variability to offset the risks inherent in these funds.

The examiner recommends that the Fund diversify its investment holdings. A trustee using reasonable care, skill and caution should diversify the Fund's assets. A diversification is proper when it disperses the investments' risks consistent with the Investment Strategy Statement's ("ISS") risk, return, and time horizon objectives, and the various risks in the portfolio offset each other. Section 1409 of the New York Insurance Law is instructive. Limiting exposure to any assets of any one institution to ten percent of admitted assets would reasonably assure that the risks in the investment in that institution are offset by the rest of the portfolio. If the trustee has determined that it is in the interests of the beneficiaries not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.

The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law, which standard, as specified in Section 1110(b) of the New York Insurance Law, governs the manner in which the required admitted assets of a segregated gift annuity fund shall be invested. The Fund should exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio. In doing so, the Fund should take into account present and future distributions to or for the beneficiaries and create a plan to meet the needs of those distributions to establish the ISS's risk, return, and time horizon objectives.

6. TREATMENT OF ANNUITANTS

The examiner reviewed a sample of annuity files to determine whether the annuitants were treated fairly and in accordance with the provisions of the annuity agreements. The examination also consisted of a review of the various controls involved, a check of the accuracy of the computations and the tracing of accounting data to the books of account. Based upon the sample reviewed, no significant findings were noted.

7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the recommendations contained in the prior report on examination and the subsequent actions taken by the Fund in response to each recommendation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the board of directors or a committee thereof, review the Fund's investments at least once a year and note such review in the minutes. This is a repeat recommendation.</p> <p>The examiner's review of the Investment Subcommittee minutes revealed that the Fund failed to approve the purchases and sales of its investments. Thus, a similar recommendation is contained in this report. (See item 4 of this report)</p>
B	<p>The examiner recommends that the Fund maintain a death certificate or other acceptable documentations as supporting documentation for the termination of an annuity.</p> <p>The examiner's review of a sample of annuity contracts terminated revealed that the Fund obtains a copy of the death certificate or a copy of the social security death index information for each annuity termination.</p>

8. SUMMARY AND CONCLUSIONS

Following are the violation and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain statements signed by every board member indicating that they received and read the prior report on examination.	5
B	The examiner recommends that the Fund obtain statements signed by every board member indicating that they received and read the prior report on examination.	5
C	The examiner recommends that the board of directors, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.	5
D	The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian.	5
E	The examiner recommends that the Fund diversify its investment holdings.	7
F	The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law, which standard, as specified in Section 1110(b) of the New York Insurance Law, governs the manner in which the required admitted assets of a segregated gift annuity fund shall be invested. The Fund should exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio. In doing so, the Fund should take into account present and future distributions to or for the beneficiaries and create a plan to meet the needs of those distributions to establish the ISS's risk, return, and time horizon objectives.	7

Respectfully submitted,

_____/s/
Ahmed Saleh
Insurance Examiner

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

Ahmed Saleh, being duly sworn, deposes and says that the foregoing report, subscribed by him,
is true to the best of his knowledge and belief.

_____/s/
Ahmed Saleh

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31451

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, MARIA T. VULLO, Acting Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

AHMED SALEH

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS**

and to make a report to me in writing of the condition of said

FUND

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York

this 25th day of April, 2016

MARIA T. VULLO
Acting Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

