



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
NEW YORK BOTANICAL GARDEN

CONDITION:

DECEMBER 31, 2011

DATE OF REPORT:

FEBRUARY 5, 2013

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

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OF THE

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EXAMINER:

HUGHROY MIGHTY

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Anthony J. Albanese  
Acting Superintendent

September 30, 2015

Honorable Anthony J. Albanese  
Acting Superintendent of Financial Services  
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30793, dated July 6, 2012 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the New York Botanical Garden, hereinafter referred to as “the Fund,” at its home office located at 2900 Southern Boulevard, Bronx, New York 10458.

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 examiner's review of a sample of transactions did not reveal any differences which materially affected the Fund's financial condition as presented in its financial statements contained in the December 31, 2011 filed annual statement. (See item 4 of this report)

The examiner recommends that the Fund obtain adequate proof of death, such as a certified copy of the death certificate, and maintain such proof in the annuitant's file. (See item 5 of this report)

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. (See item 6 of this report)

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 6 of this report)

The examiner recommends that the Fund issue annuities with rates that adhere to the maximum rates recommended by the American Council on Gift Annuities. (See item 7 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2006; this examination covers the period from January 1, 2007 through December 31, 2011. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2011, 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, 2011 to determine whether the Fund's filed 2011 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 recommendation contained in the prior report on examination. The results of such review are contained in item 8 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 New York Botanical Garden (the “organization”) is organized for the purpose of establishing and maintaining a botanical garden, museum and arboretum. Under the provisions of its by-laws, the organization is permitted to issue gift annuity agreements and it has done so since 1993. A special permit was granted to the organization by the Department on April 10, 2003, 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.

Merrill Lynch is the custodian of the Fund’s assets, who also provides administrative services on behalf of the Fund. Services provided by Merrill Lynch include: record keeping, administration and investment advisory services with respect to the Fund. The management of the organization and the Fund and all of its affairs and property are entrusted to a board of managers. The number of managers is limited to 55 regular voting managers. As of December 31, 2011, the board consisted of 53 elected managers and seven ex-officio members. The managers elect a Chair, one or more vice-chairs, President, Treasurer, Assistant Treasurer, Secretary, and Assistant Secretary. The nomination and election procedures of the managers and their terms of office are set by the By-Laws.

#### 4. SIGNIFICANT FINANCIAL INFORMATION

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

	December 31, <u>2006</u>	December 31, <u>2011</u>	<u>Increase</u>
Admitted assets	<u>\$2,176,152</u>	<u>\$3,612,223</u>	<u>\$1,436,071</u>
Liabilities	<u>\$1,892,106</u>	<u>\$2,853,308</u>	<u>\$ 961,202</u>
Minimum required surplus	\$ 189,211	\$ 285,331	\$ 96,120
Unassigned funds (surplus)	<u>94,835</u>	<u>473,584</u>	<u>378,749</u>
Total surplus	<u>\$ 284,046</u>	<u>\$ 758,915</u>	<u>\$ 474,869</u>
Total liabilities and surplus	<u>\$2,176,152</u>	<u>\$3,612,223</u>	<u>\$1,436,071</u>

The increase in assets, liabilities and surplus reflects an increase in the total number of annuities in force. Annuities increased from 62 with annual payment amounts of \$213,178 as of December 31, 2006 to a total of 90 with annual payment amounts of \$302,809 as of December 31, 2011.

The Fund's admitted assets, as of December 31, 2001 were mainly invested in bonds (89.73%) and cash (9.63%). All bonds held were investment grade.

## 5. TREATMENT OF ANNUITANTS

The examiner reviewed a sample of 15 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.

The examiner reviewed a sample of eight terminated annuities to ensure the Fund maintains appropriate documentation supporting the removal of the amounts from the reserve liability. In four instances, the examiner noted that there was no death certificate in the annuitant's file; however, the annuitants' files contained copies of the obituaries of the deceased annuitants.

The examiner recommends that the Fund obtain adequate proof of death such as a certified copy of the death certificate and maintain such proof in the annuitant's file.

## 6. 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 Fund provided statements signed by 49 out of the 62 board members that confirms that 49 out of the 62 board members 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.

## 7. ANNUITY RATES

The examiner's review of a sample of 15 annuities issued during the examination period revealed that in 2 out of 15 annuities, the Fund exceeded the annuity rate recommended by the American Council on Gift Annuities.

The examiner recommends that the Fund issue annuities with rates that adhere to the maximum rates recommended by the American Council on Gift Annuities.

## 8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the recommendation contained in the prior report on examination and the subsequent actions taken by the Fund in response to the citation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommended that the board of managers or a committee thereof, approve the purchase and sale of all investments, and note such approvals in the board minutes.</p> <p>The examiner's review revealed that the New York Botanical Garden's Board of Managers Investment Committee approved the Fund's investment policy.</p>

## 9. 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 examiner recommends that the Fund obtain adequate proof of death, such as a certified copy of the death certificate, and maintain such proof in the annuitant's file.	6
B	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.	7
C	The examiner recommends that the Fund obtain statements signed by every board member, indicating that they received and read the report on examination.	7
D	The examiner recommends that the Fund issue annuities with rates that adhere to the maximum rates recommended by the American Council on Gift Annuities.	8

Respectfully submitted,

\_\_\_\_\_/s/  
Hughroy Mighty  
Insurance Examiner

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

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

\_\_\_\_\_/s/  
Hughroy Mighty

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, BENJAMIN M. LAWSKY, 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:

**HUGHROY MIGHTY**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
NEW YORK BOTANICAL GARDEN**

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 6th day of July, 2012

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:



MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

