

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
PHILHARMONIC-SYMPHONY SOCIETY OF NEW YORK, INC.

CONDITION:

DECEMBER 31 2012

DATE OF REPORT:

JULY 3, 2013

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

PHILHARMONIC-SYMPHONY SOCIETY OF NEW YORK, INC.

AS OF

DECEMBER 31, 2012

DATE OF REPORT:

JULY 3, 2013

EXAMINER:

DENISE SAUNDERS

## 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	7
7.	Custodial account	7
8.	Prior report summary and conclusions	8
9.	Summary and conclusions	9



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

---

Andrew M. Cuomo  
Governor

Anthony J. Albanese  
Acting Superintendent

November 25, 2015

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

Sir:

In accordance with instructions contained in Appointment No. 30932, dated March 18, 2013 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Philharmonic-Symphony Society of New York, Inc., hereinafter referred to as “the Fund,” at its home office located at Avery Fisher Hall, 10 Lincoln Center, New York, NY 10023.

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 maintain statements signed by its board members indicating that they received and read the prior report on examination. This is a repeat violation. (See item 4 of this report)

The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining and maintaining the signature of each board member indicating that they received and read the prior report on examination. (See item 4 of this report)

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, 2012 filed annual statement. (See item 5 of this report)

The examiner recommends that the Fund's name that appears on the special permit issued in accordance with Section 1110 of the New York Insurance Law be included on all annuity benefit payment checks. (See item 6 of this report)

The examiner recommends that the Fund maintain its assets in a custody agreement under its name, not in the name of the Society. (See item 7 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2007. This examination covers the period from January 1, 2008 through December 31, 2012. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2012 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, 2012 to determine whether the Fund's filed 2012 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 violation and 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 Philharmonic Society of New York, Inc. (the “Society”) was incorporated in New York on February 22, 1853. The name was changed to the Philharmonic-Symphony Society of New York, Inc., its present name, by a Certificate of Amendment filed with the Department of State on June 8, 1928.

The Society is organized for the purpose of supporting, maintaining and operating a symphony orchestra in New York City. Under the provisions of its by-laws, the Society is permitted to issue gift annuity agreements and it has done so since 1984. A special permit was granted to the Society by the Department on April 23, 1993, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

BNY Mellon Wealth Management (the “BNY Mellon”) is the custodian and investment manager of the Fund’s assets. BNY Mellon also maintains records of all transactions for the Fund, pays the Fund’s annuitants, and prepares the Fund’s annual statements. In addition, BNY Mellon monitors the Fund on a quarterly basis to ensure that it is in compliance with the Department’s legal reserve and investment requirements.

The management of the Society and the Fund and all of its affairs and property are entrusted to a board of directors. The number of directors is limited to not more than fifty (50) elected directors and four ex-officio directors. The ex-officio positions are occupied by the President, the Executive Director, the individual who has been elected President of the Volunteer Council of the New York Philharmonic, and a representative from the Young New Yorkers for the Philharmonic. As of December 31, 2012, the board consisted of fifty (50) elected directors. The directors elect the Chairman of the Board, Vice Chairman, Secretary and Treasurer. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

#### 4. CORPORATE GOVERNANCE

Section 312(b) of the New York Insurance Law States, in part:

“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 failed to maintain statements signed by each 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 maintain statements signed by its board members indicating that they received and read the prior report on examination. This is a repeat violation.

The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining and maintaining the signature of each board member indicating that they received and read the prior report on examination.



## 5. SIGNIFICANT FINANCIAL INFORMATION

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

	December 31, <u>2007</u>	December 31, <u>2012</u>	<u>(Decrease)</u>
Admitted assets	<u>\$1,511,634</u>	<u>\$1,212,398</u>	<u>\$(299,236)</u>
Liabilities	<u>\$1,264,214</u>	<u>\$1,095,085</u>	<u>\$(169,129)</u>
Minimum required surplus	\$ 126,421	\$ 109,509	\$ (16,912)
Unassigned funds (surplus)	<u>120,998</u>	<u>7,804</u>	<u>(113,194)</u>
Total surplus	<u>\$ 247,420</u>	<u>\$ 117,312</u>	<u>\$(130,107)</u>
Total liabilities and surplus	<u>\$1,511,634</u>	<u>\$1,212,398</u>	<u>\$(299,236)</u>

Note: Any differences are due to rounding.

The decrease in assets, liabilities and surplus reflects a decrease in the total number of annuities in force. Annuities decreased from 59 with annual payment amounts of \$187,559 as of December 31, 2007 to a total of 51 with annual payment amounts of \$164,359 as of December 31, 2012.

The Fund's admitted assets, as of December 31, 2012, were mainly invested in common stock (97.83 %). The Fund does not hold any bonds.

## 6. TREATMENT OF ANNUITANTS

The examiner's review of a sample of eight annuity benefit payments made to annuitants during the examination period revealed that only the name of the custodian, not the Fund's name, appeared on the annuity benefit checks.

The examiner recommends that the Fund's name that appears on the special permit issued in accordance with Section 1110 of the New York Insurance Law be included on all annuity benefit payment checks.

## 7. CUSTODIAL ACCOUNT

The examiner noted that the BNY Mellon custody account is not in the Fund's name. The account is in the name of the Society, "Philharmonic-Symphony Society of New York."

The examiner recommends that the Fund maintain its assets in a custody agreement under its name, not in the name of the Society.

## 8. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The Fund violated Section 312(b) of the New York Insurance Law by failing to maintain statements signed by its board members indicating that they received and read the prior report on examination.</p> <p>The Fund failed to take corrective actions in response to this prior report comment. (See item 4 of this report)</p>
B	<p>The examiner recommends that the board of directors approve investment transactions and note these approvals in the minutes. There was a similar recommendation in the prior report on examination</p> <p>The Fund's Investment Committee approved the Fund's investment transactions during the examination period.</p>

## 9. SUMMARY AND CONCLUSIONS

Following are the violation and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No.</u>
A	The Fund violated Section 312(b) of the New York Insurance Law by failing to maintain statements signed by its board members indicating that they received and read the prior report on examination. This is a repeat violation.	5
B	The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining and maintaining the signature of each board member indicating that they received and read the prior report on examination.	5
C	The examiner recommends that the Fund's name that appears on the special permit issued in accordance with Section 1110 of the New York Insurance Law be included on all annuity benefit payment checks.	7
D	The examiner recommends that the Fund maintain its assets in a custody agreement under its name, not in the name of the Society.	7

Respectfully submitted,

\_\_\_\_\_/s/  
Denise Saunders  
Insurance Examiner

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

DENISE SAUNDERS, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

\_\_\_\_\_/s/  
Denise Saunders

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

APPOINTMENT NO. 30932

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:

**DENISE SAUNDERS**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
PHILHARMONIC-SYMPHONY SOCIETY OF NEW YORK, INC.**

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

**FUND**

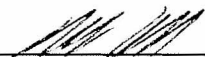
with such other information as she shall deem requisite.

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

this 18th day of March, 2013

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:



MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

