



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
NEW YORK PUBLIC RADIO

CONDITION:

DECEMBER 31, 2016

DATE OF REPORT:

AUGUST 18, 2017

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

CHACKO THOMAS

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

November 10, 2017

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

Madam:

In accordance with instructions contained in Appointment No. 31607, dated April 20, 2017 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the New York Public Radio, hereinafter referred to as “the Fund,” at its home office located at 160 Varick Street, New York, NY 10013.

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 recommends that the board of trustees, 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 use on the custodian agreement and any associated accounts the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York. (See item 4 of this report)

The examiner recommends that the Fund contract with a licensed bank or trust company to serve as the Fund's custodian for its securities. (See item 4 of this report)

The examiner recommends that the Fund strengthen the diversification of its investment holdings. If the trustee has determined that it is in the interests of the beneficiaries to deviate from such a recommendation, then it should memorialize the reasons for that determination in terms of the Investment Strategy Statement's ("ISS") risk, return, and time horizon parameters. (See item 5 of this report)

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. (See item 5 of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent. (See item 6 of this report)

The examiner recommends that upon the death of an annuitant the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract. (See item 6 of this report)

## 2. SCOPE OF EXAMINATION

This is the first examination of the Fund since it received its special permit to issue gift annuity agreements in 2012. This examination covers the period from April 27, 2012 through December 31, 2016. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2016 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, 2016 to determine whether the Fund's filed 2016 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification.

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 Public Radio (“radio station”) is organized for the purpose of producing innovative public radio programs, podcasts, and live events that touch a passionate community of people on air, online and in person and to reshape radio for a new generation of listeners with groundbreaking, award-winning programming. The radio station has been issuing gift annuity agreements since 1998. A permit was granted to the radio station by the Department on April 27, 2012, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law. The Fund outsourced its investment management and various back office functions including annuity payments, database of gifts, reserves and liability reporting to Cornerstone Institutional Investors, LLC. The Fund also utilizes the services of OSGroup for the preparation of annual statements. All other operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

Morgan Stanley Smith Barney LLC is the Fund’s custodian.

The management of the radio station and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to not less than five (5) and not more than forty-five (45) regular voting trustees. As of December 31, 2016, the board consisted of 40 trustees. The trustees elect the Chair of the Board of Trustees, one or more Vice Chairs, a President, a Secretary and a Treasurer. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

#### 4. CORPORATE GOVERNANCE AND INTERNAL CONTROLS

The examiner reviewed the board of trustees' minutes to determine whether the board approved the purchases and sales of investments during the examination period. The minutes did not contain any indication that the board approved the purchases and sales of investments during the period.

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

The examiner's review of the Fund's custodian agreement and associated account noted that these are under the name of "New York Public Radio, C/O Michelle Halliburton [other names omitted], New York, NY 10013-1220", not in the name of the "WNYC CGA SEG Reserve Fund" as stated in the board resolution submitted with the permit application.

The examiner recommends that the Fund use on the custodian agreement and any associated accounts the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.

Morgan Stanley Smith Barney LLC, (Morgan Stanley) performs custody services on behalf of the Fund. The examiner determined that Morgan Stanley is a brokerage firm, not a licensed bank or trust company.

The examiner recommends that the Fund contract with a licensed bank or trust company to serve as the Fund's custodian for its securities.

## 5. SIGNIFICANT FINANCIAL INFORMATION

The following summary table indicates the growth in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	<u>December 31,</u> <u>2012</u>	<u>December 31,</u> <u>2016</u>	<u>Increase</u>
Admitted assets	\$ <u>1,845,986</u>	\$ <u>1,974,184</u>	\$ <u>128,198</u>
Liabilities	\$ <u>1,221,529</u>	\$ <u>1,249,952</u>	\$ <u>28,423</u>
Minimum required fund balance	\$ 122,153	\$ 124,995	\$ 2,842
Excess fund balance (surplus)	<u>502,304</u>	<u>599,237</u>	<u>96,933</u>
Total annuity fund balance	\$ <u>624,457</u>	\$ <u>724,232</u>	\$ <u>99,775</u>
Total liabilities and annuity fund balance	\$ <u>1,845,986</u>	\$ <u>1,974,184</u>	\$ <u>128,198</u>

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. The number of annuities increased from 28 as of December 31, 2012 to a total of 38 as of December 31, 2016. However, the annual payment amount decreased from \$130,975 to \$124,348. The decrease is mainly due to the termination of one annuity with an annual payment amount of \$72,000 during the examination period.

The Fund's admitted assets, as of December 31, 2016, were invested mainly in mutual funds (95.0%).

According to the 2016 filed annual statement, the Fund reported 28.1% of its admitted assets invested in the securities of RIDGEWORTH SEIX CORE BD I (STIGX), 27.7% in SPDR S&P 500 ETF TRUST (SPY) and 13% invested in the securities of JOHN HANCOCK GLB ABS RET STR I (JHAIX). The Fund's current concentration could make it less likely that the Fund's other assets can provide a variability to offset the risks inherent in these funds.

The examiner recommends that the Fund strengthen the diversification of its investment holdings. If the trustee has determined that it is in the interests of the beneficiaries to deviate from such a recommendation, then it should memorialize the reasons for that determination in terms of

the ISS's risk, return, and time horizon parameters. 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.

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.

Section 1110(a) of the New York Insurance Law states, in part:

"... Every such corporation or association shall, before making such agreement, file with the superintendent copies of its forms of agreements with annuitants..."

The examiner's review of the 18 gift annuity agreement forms used by the fund for gift annuities issued in New York during the examination period noted that in 4 instances (joint annuities), the Fund used gift annuity agreement forms that differed from the gift annuity agreements filed with the Superintendent.

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.

The examiner's review of terminated annuity contracts during the examination period revealed that in 4 out of 7 (57%) cases, the Fund did not obtain a copy of the death certificate to confirm termination of the annuity contract. Instead, the Fund obtained a copy of the obituary for the cases in which the Fund did not obtain a copy of the death certificate.

The examiner recommends that upon the death of an annuitant the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.

## 7. 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 board of trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.	6
B	The examiner recommends that the Fund use on the custodian agreement and any associated accounts the name it agreed to by board resolution as part of its permit application to the Department for a permit to issue charitable gift annuities in New York.	6
C	The examiner recommends that the Fund contract with a licensed bank or trust company to serve as the Fund's custodian for its securities.	6
D	The examiner recommends that the Fund strengthen the diversification of its investment holdings. If the trustee has determined that it is in the interests of the beneficiaries to deviate from such a recommendation, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.	7
E	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.	8

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
F	The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent.	9
G	The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.	9
H	The examiner recommends that upon the death of an annuitant the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.	9

Respectfully submitted,

\_\_\_\_\_/s/  
Chacko Thomas  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
Chacko Thomas

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

APPOINTMENT NO. 31607

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, MARIA T. VULLO, 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:

**CHACKO THOMAS**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
NEW YORK PUBLIC RADIO**

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

**FUND**

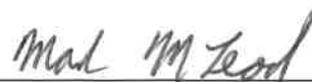
with such other information as he shall deem requisite.

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

this 20th day of April, 2017

MARIA T. VULLO  
Superintendent of Financial Services

By:



MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU

