



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
JULLIARD SCHOOL, INC.

CONDITION:

DECEMBER 31, 2016

DATE OF REPORT:

SEPTEMBER 11, 2017

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

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EXAMINER:

HASAN AHMED

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Linda A. Lacewell  
Acting Superintendent

February 15, 2019

Honorable Linda A. Lacewell  
Acting Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31601, dated April 20th, 2017 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Juilliard School, Inc., hereinafter referred to as “the Fund,” at its home office located at 60 Lincoln Center Plaza, 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 obtain and maintain signed statements from all board members indicating that they received and read the prior report on examination. 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 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 strengthen the diversification of its investment holdings. 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 Investment Strategy Statement's ("ISS") risk, return, and time horizon parameters. (See item 5 of this report)

The examiner recommends that the Fund avoid or mitigate situations that have the appearance of a conflict of interest, by paying greater scrutiny to any high concentrations in investments that are either issued or sponsored by the investment advisor and establishing a Board of Directors (or a committee thereof) or senior management-level policy or procedures related to conflicts of interest for investment advisors. (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)

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (See item 7 of this report)

The examiner recommends that the Fund prepare and maintain a trial balance, general ledger, and transaction registers that reconcile to its filed annual statements. (See item 8 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2011. This examination covers the period from January 1, 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. 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 9 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 Juilliard School (the “School”) is organized for the purpose of educating talented musicians, dancers and actors so that they may achieve the highest artistic standards, as well as becoming leaders in their professions. The School has been issuing gift annuity agreements since 1995. A special permit was granted to the organization by the Department on July 1, 1997, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

BNY Mellon is the custodian of the Fund’s securities. BNY Mellon also prepares the annual statement, mails annuity payments to annuitants, and processes and mails 1099-R tax forms to annuitants on behalf of the Fund. The Fund handles all other operations related to the issuance, maintenance and settlement of annuity agreements.

The management of the School and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to a maximum of 35 regular voting trustees. The trustees elect a Chairman, a Vice Chairman, a President, and a secretary. The number of trustees as of December 31, 2016 was 31. 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:

“(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 failed to obtain statements signed by each board member indicating that they received and read the prior report on examination. Instead, the Fund obtained statements from each member of the audit committee, in lieu of the full board.

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

The examiner reviewed the Planned Giving Committee minutes to determine whether the Planned Giving Committee 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 trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.

## 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:

	December 31, <u>2011</u>	December 31, <u>2016</u>	Increase (Decrease)
Admitted assets	<u>\$3,499,913</u>	<u>\$5,990,541</u>	<u>\$2,490,628</u>
Liabilities	<u>\$2,452,377</u>	<u>\$3,880,958</u>	<u>\$1,428,582</u>
Minimum required fund balance	\$ 245,238	\$ 388,096	\$ 142,858
Excess fund balance (surplus)	<u>802,299</u>	<u>1,721,487</u>	<u>919,188</u>
Total annuity fund balance	<u>\$1,047,536</u>	<u>\$2,109,583</u>	<u>\$1,062,046</u>
Total liabilities and annuity fund balance	<u>\$3,499,913</u>	<u>\$5,990,541</u>	<u>\$2,490,628</u>

Assets, liabilities and annuity fund balance increased despite a decrease in the total number of annuities in force. Annuities decreased from 97 with annual payment amounts of \$315,211 as of December 31, 2011 to a total of 65 with annual payment amounts of \$466,003 as of December 31, 2016.

The increase in assets and annuity fund balance is attributable to gift receipts of \$1,506,969 in 2016. The increase in assets and annuity fund balance during the exam period is further attributable to realized capital gains of \$504,015 in 2014, unrealized capital gains of \$380,736 in 2013, and investment income of \$82,348 in 2012.

The increase in liabilities is mainly attributable to an increase in net actuarial reserves.

The Fund's admitted assets, as of December 31, 2016, were invested mainly in common stock (99.82%).

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 2016 annual statement on file, the Fund reported: 20.63% invested in the securities of Dreyfus Altern Divers STR-Y. The Fund's current concentration in the fund makes it less likely that the Fund's other assets could provide a variability to offset the risks inherent in the fund.

Based upon the concentration in the above mutual fund, 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 not to diversify, 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 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.

According to the 2016 annual statement on file, the Fund reported 40.00% of its admitted assets invested in securities issued by BNY Mellon. This relationship may create a conflict of interest that can negatively impact the interests of the Fund's annuitants.

The examiner recommends that the Fund avoid or mitigate situations that have the appearance of a conflict of interest, by paying greater scrutiny to any high concentrations in investments that are either issued or sponsored by the investment advisor and establishing a Board of Directors (or a committee thereof) or senior management-level policy or procedures related to conflicts of interest for investment advisors.

## 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. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2016 state, in part:

(10) All amounts are to be reported based upon annuities issued in all states, except for states that mandate a legally required segregated and distinct trust account for that particular state's annuitants (e.g., California).

The Instructions for the Exhibit of Annuities in Force section of the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2016 state, in part:

**IMPORTANT NOTE:** For all calendar years (Columns 1 through 9), the number, annualized amount of payments on annuities in force, and reserve thereon should exclude California business and business from any state(s) that mandate a legally required segregated and distinct trust account for that particular state's annuitants.

The examiner's review of the Fund's reserve listing provided in conjunction with its 2016 Annual Statement revealed that the Fund included 6 annuities issued in California with total reserves of \$334,967 as of December 31, 2016. The examiner determined that the Fund failed to adhere to the Department's annual statement instructions which state that the Fund is required to report any amounts for its annuity program, exclusive of annuities issued in states such as California that mandate a legally required segregated and distinct trust account.

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.

## 8. ANNUAL STATEMENT WORKPAPERS

The examiner requested a copy of the Fund's trial balance, general ledger, and transaction registers for the Fund's 2016 annual statement. The Fund was unable to produce a copy of the Fund's trial balance, general ledger, and transaction registers for the 2016 annual statement or for any annual statements filed during the period under examination.

The examiner recommends that the Fund prepare and maintain a trial balance, general ledger, and transaction registers that reconcile to its filed annual statements.

## 9. 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 citation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Fund maintain the statements, signed by the board members indicating that they received and read the prior report on examination, for the examiner's review during the ensuing examination.</p> <p>The Fund's audit committee signed the statements showing that they received and read the report on examination. These statements were presented to the examiner. This was done in lieu of the entire Board signing such statements. This is a repeat recommendation.</p>
B	<p>The examiner recommends that the board of directors or a committee thereof, document in the board minutes its review of the Fund's purchase and sale of investments at least annually. This is repeat recommendation.</p> <p>The examiner's review revealed no evidence of board or committee approval of the investment transactions, though there was evidence of review of investment concentrations. A similar recommendation appears in this report on examination.</p>

## 10. 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 and maintain signed statements from all board members indicating that they received and read the prior report on examination.	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. This is a repeat recommendation.	5
C	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.	5
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 not to diversify, 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 that the Fund avoid or mitigate situations that have the appearance of a conflict of interest, by paying greater scrutiny to any high concentrations in investments that are either issued or sponsored by the investment advisor and establishing a Board of Directors (or a committee thereof) or senior management-level policy or procedures related to conflicts of interest for investment advisors.	7
F	The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.	9
G	The examiner recommends that the Fund prepare and maintain a trial balance, general ledger, and transaction registers that reconcile to its filed annual statements.	10

Respectfully submitted,

\_\_\_\_\_/s/  
Hasan Ahmed  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
Hasan Ahmed

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

*APPOINTMENT NO. 31601*

**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:

**HASAN AHMED**

*as a proper person to examine the affairs of the*

**SEGREGATED GIFT ANNUITY FUND OF THE  
JUILLIARD SCHOOL**

*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

