



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
CLARKSON UNIVERSITY

CONDITION:

DECEMBER 31, 2017

DATE OF REPORT:

SEPTEMBER 28, 2018

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

MANISH GERA

## TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Fund	4
	A. History	4
	B. Services	4
	C. Corporate governance	4
4.	Significant financial information	6
5.	Treatment of annuitants	8
6.	Summary and conclusions	9



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

December 4, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31726, dated June 25, 2018 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Clarkson University, hereinafter referred to as the "Fund." The Fund's home office is located at 8 Clarkson Avenue, Potsdam, NY 13699-5546.

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 the 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 3C 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 3C 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 4 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 4 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 5 of this report)

The examiner recommends that the Fund not exceed the maximum rates recommended by the American Council on Gift Annuities. (See item 5 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 5 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2012. This examination covers the period from January 1, 2013 through December 31, 2017. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2017 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, 2017 to determine whether the Fund's filed 2017 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification. The examiner reviewed the prior report on examination which did not contain any violations, recommendations or comments.

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

#### A. History

The Clarkson University (the “University”) is organized for the purpose of providing and maintaining educational, research and service programs and granting scholastic and honorary degrees. The University established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1998. A permit was granted to the University by the Department on October 21, 2004, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

#### B. Services

The University provides oversight of the management of the investments of the Fund and reviews the policies and procedures related to the Fund. The University approves the investment strategy of the Fund. The University engages BNY Mellon to manage all of the assets of the program, remit benefit payments to the annuitants, and prepare annual tax filings. The University engages PG Calc to perform actuarial calculations used to prepare the annual statement. Olbright Kiley Group LLC performs accounting functions to prepare the annual statement.

#### C. Corporate Governance

The management of the University and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to no more than 40 regular voting trustees. As of December 31, 2017, the board consisted of 27 trustees. The trustees elect a chairperson, one or more vice chairpersons, president, treasurer and secretary. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

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 and 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 obtain and maintain signed statements from the 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 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 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.

#### 4. SIGNIFICANT FINANCIAL INFORMATION

The following summary table indicates the growth (decline) 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>2017</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$2,522,093</u>	<u>\$3,107,143</u>	<u>\$585,050</u>
Liabilities	<u>\$2,050,752</u>	<u>\$1,991,669</u>	<u>\$ (59,084)</u>
Minimum required fund balance	\$ 205,075	\$ 199,167	\$ (5,908)
Excess fund balance (surplus)	<u>266,265</u>	<u>916,307</u>	<u>650,042</u>
Total annuity fund balance	<u>\$ 471,341</u>	<u>\$1,115,474</u>	<u>\$644,134</u>
Total liabilities and annuity fund balance	<u>\$2,522,093</u>	<u>\$3,107,143</u>	<u>\$585,050</u>

The increase in assets and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 70 with annual payment amounts of \$251,814 as of December 31, 2012 to a total of 80 with annual payment amounts of \$235,816 as of December 31, 2017. The decline in liabilities can partially be attributed to a decrease in annuity reserve factors from 2012. Also contributing, as noted by the Fund, was a number of annuitants reaching or surpassing their life expectancies.

The Fund's admitted assets, as of December 31, 2017, were invested mainly in stocks (93.88%), and bonds (4.16%). All bonds held were investment grade.

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 2017 annual statement, the Fund reported: 28.52% of its admitted assets invested in Dreyfus Basic S&P 500 Index Fund. The Fund's current concentration in this fund

could make it less likely that the Fund's other assets can provide a variability to offset the risks inherent in this fund.

Based upon the concentrations in the above 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 2017 annual statement on file, the Fund reported 73.18% of its admitted assets invested in securities issued by BNY Mellon or Dreyfus, a BNY Mellon subsidiary. BNY Mellon also serves as the Fund's investment advisor. 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.

## 5. 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 6 gift annuity agreement forms used by the fund for gift annuities issued in New York during the examination period noted that in all 6 instances, 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 a sample of 6 gift annuity agreements issued in New York during the examination period revealed that in 1 instance the Fund credited rates that exceeded the maximum rates recommended by the American Council on Gift Annuities.

The examiner recommends that the Fund not exceed the maximum rates recommended by the American Council on Gift Annuities.

The examiner’s review of a sample of 9 annuity contracts terminated revealed that in 5 of the 9 cases (55.55%) reviewed, the Fund did not obtain a copy of the death certificate to confirm termination of the annuity contract.

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.

## 6. SUMMARY AND CONCLUSIONS

Following are the violations 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 the 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.	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 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 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.	8
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.	8

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	The examiner recommends that the Fund not exceed the maximum rates recommended by the American Council on Gift Annuities.	8
I	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.	8

Respectfully submitted,

\_\_\_\_\_/s/  
Manish Gera  
Insurance Examiner

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

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

\_\_\_\_\_/s/  
Manish Gera

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

*APPOINTMENT NO. 31726*

*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:*

***MANISH GERA***

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

***SEGREGATED GIFT ANNUITY FUND OF THE  
CLARKSON UNIVERSITY***

*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 June, 2018*

*MARIA T. VULLO  
Superintendent of Financial Services*

*By:*

*Mark McLeod*

***MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU***

