



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
ROMAN CATHOLIC DIOCESE OF OGDENSBURG, NEW YORK

CONDITION:

DECEMBER 31, 2017

DATE OF REPORT:

DECEMBER 11, 2018

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

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EXAMINER:

ASHOK REDDY

## 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.	Prior report summary and conclusions	9
7.	Summary and conclusions	10



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Linda A. Lacewell  
Acting Superintendent

March 18, 2019

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

Madam:

In accordance with instructions contained in Appointment No. 31743, dated October 31, 2018 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Roman Catholic Diocese of Ogdensburg, New York, hereinafter referred to as “the Fund”. The Fund’s home office is located at 622 Washington Street, Ogdensburg, NY 13669.

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 3C of this report)

The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian. (See item 3C of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement ("ISS") that references 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 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 ISS's 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 examiner's review of the Fund's treatment of annuitants did not reveal significant instances which deviated from New York Insurance Law, Department regulations and circular letters and the operating rules of the Fund. (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 also reviewed the corrective actions taken by the Fund with respect to the violation, recommendations and comment contained in the prior report on examination. The results of such review are contained in item 6 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

#### A. History

Roman Catholic Diocese of Ogdensburg, New York (“Diocese”) was established by Pope Pius IX on February 16, 1872. It was incorporated under the laws of New York on April 10, 1945. The purpose of the Diocese is to support and aid charitable, benevolent, and educational organizations existing within New York or elsewhere, and more particularly within the bounds of the Roman Catholic Diocese of Ogdensburg. The Diocese established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1992. A special permit was granted to the Diocese by the New York State Insurance Department on May 26, 1993, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

#### B. Services

Roman Catholic Diocese of Ogdensburg, New York outsources the payment of annuitants and beneficiaries to a custodial bank, NBT Bank. PG Calc software is used for the administration of the Fund. The Diocese outsources the preparation of the Fund’s annual statements to the accounting firm of Pinto, Mucenski, Hooper, Van House & Co., CPAs of Potsdam, New York. The Diocese outsources the Fund’s investment management to Manning & Napier Advisors, Inc. of Fairport, New York.

#### C. Corporate Governance

The management of Roman Catholic Diocese of Ogdensburg, New York and the Fund and all of its affairs and property are entrusted to the Trustees of the Diocese of Ogdensburg (the “Trustees”). There is also a Finance Council (“Council”) which serves as an advisory body for the Trustees. The Council’s by-laws provide that the membership of the Council shall consist of at least three practicing Roman Catholics, with expertise in financial affairs and civil law, who are appointed by the bishop of the Diocese. As of December 31, 2017, there were three trustees and 12 members of the Finance Council.

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.

The examiner reviewed the investment transactions for the period under examination and noted that the Fund did not obtain broker's advices or other supporting documentation for its investment transactions to reconcile such advices to the monthly statements furnished by the custodian.

The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian.

The examiner's review of the Fund's Investment Strategy Statement revealed that it failed to refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law.

The examiner recommends that the Fund adopt an Investment Strategy Statement that references 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.

#### 4. SIGNIFICANT FINANCIAL INFORMATION

The following summary table indicates the 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>\$3,134,993</u>	<u>\$1,253,361</u>	<u>\$(1,881,632)</u>
Liabilities	<u>\$1,933,142</u>	<u>\$ 620,048</u>	<u>\$(1,313,094)</u>
Minimum required fund balance	\$ 193,314	\$ 62,005	\$ (131,309)
Excess fund balance (surplus)	<u>1,008,537</u>	<u>571,308</u>	<u>(437,229)</u>
Total annuity fund balance	<u>\$1,201,851</u>	<u>\$ 633,313</u>	<u>\$ (568,538)</u>
Total liabilities and annuity fund balance	<u>\$3,134,993</u>	<u>\$1,253,361</u>	<u>\$(1,881,632)</u>

The decrease in assets, liabilities and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 99 with annual payment amounts of \$240,895 as of December 31, 2012 to a total of 53 with annual payment amounts of \$59,172 as of December 31, 2017.

The Fund's admitted assets, as of December 31, 2017, were invested mainly in bonds (51.46%) and common stocks (45.17%).

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 on file, the Fund reported: 20.62% of its admitted assets invested in the securities of Manning & Napier – Unconstrained Bond S. 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 bond 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 25.64% of its admitted assets invested in securities issued by Manning & Napier. Manning & Napier 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. Based upon the sample reviewed, no significant findings were noted.

## 6. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violation, recommendations and comment contained in the prior report on examination and the subsequent actions taken by the Fund:

<u>Item</u>	<u>Description</u>
A	<p>The Fund violated Section 312(b) of the New York Insurance Law by failing to retain statements signed by each of its board members indicating that they received and read the prior report on examination.</p> <p>The Fund obtained statements signed by each of its board members indicating that they have received and read the prior report on examination.</p>
B	<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.</p> <p>The Fund obtained statements signed by each of its board members indicating that they have received and read the prior report on examination.</p>
C	<p>The Fund overstated its admitted assets in the 2012 annual statement by \$1,415,974, by the inclusion of an asset that was not solely in the Fund's name, and similarly overstated admitted assets in its 2009, 2010, and 2011 annual statement filings.</p> <p>The Fund rectified the annual statements during the examination period to reflect the proper amount of admitted assets.</p>
D	<p>The examiner recommends that the Fund reduce its admitted assets by the amount of its investment in the Trust Fund. This is a repeat recommendation.</p> <p>The Fund rectified the annual statements starting during the examination period to reflect the proper amount of admitted assets.</p>
E	<p>The examiner recommends that the Fund deposit gifts received directly into its segregated account. This is a repeat recommendation.</p> <p>The Fund made arrangements with its custodian bank to directly deposit gifts into the segregated account.</p>

## 7. SUMMARY AND CONCLUSIONS

Following are the 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	5
B	The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian.	5
C	The examiner recommends that the Fund adopt an Investment Strategy Statement that references 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.	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

Respectfully submitted,

\_\_\_\_\_/s/  
Ashok Reddy  
Senior Examiner

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

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

\_\_\_\_\_/s/  
Ashok Reddy

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

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:

**ASHOK REDDY**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
ROMAN CATHOLIC DIOCESE OF OGDENSBURG, NEW YORK**

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 31st day of October, 2018

MARIA T. VULLO  
Superintendent of Financial Services

By:

*Mark McLeod*

MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU

