



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
AMERICAN CIVIL LIBERTIES UNION FOUNDATION

CONDITION:

DECEMBER 31, 2014

DATE OF REPORT:

AUGUST 24, 2015

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

HASAN AHMED

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

July 14, 2016

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

Madam:

In accordance with instructions contained in Appointment No. 31298, dated August 14, 2015 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the American Civil Liberties Union Foundation, hereinafter referred to as the "Fund," at its home office located at 125 Broad Street, 18th Floor, New York, New York 10004.

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 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 risk, return, and time horizon parameters of the Investment Strategy Statement (“ISS”). (See item 4 of this report)

The examiner recommends that the Fund use 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 5 of this report)

The examiner recommends that the Fund obtain copies of the death certificates of annuitants for annuity contracts terminated. (See item 5 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2009. This examination covers the period from January 1, 2010 through December 31, 2014. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2014 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, 2014 to determine whether the Fund's filed 2014 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

The American Civil Liberties Union Foundation (the “Foundation”) is organized for the purpose of encouraging, sponsoring, and facilitating the cultivation and dissemination of knowledge and understanding of the various civil liberties and civil rights which are protected by the Constitution and laws of the United States. Under the provisions of its by-laws, the Foundation is permitted to issue gift annuity agreements and it has done so since 1989. A special permit was granted to the Foundation by the Department on June 21, 1995, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

State Street Bank and Trust Company (“State Street Bank”) is the investment manager and custodian of the Fund’s assets. State Street Bank is responsible for the following functions: issuance of annuity benefit payments; compilation of annual annuitant reporting information; preparation and mailing of annual 1099R’s to annuitants; calculation of reserves; and, preparation of financial data and records utilized in the preparation of the statutory annual report.

The management of the Foundation and the Fund and all the affairs and property of such are entrusted to a board of directors. The number of directors consists of not less than three regular voting directors. As of December 31, 2014, the board consisted of 13 directors. The directors elect a president, one or more vice presidents, a secretary, and a treasurer. The nomination and election procedures of the directors and their terms of office are set by the by-laws.

4. SIGNIFICANT FINANCIAL INFORMATION

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

	December 31, <u>2009</u>	December 31, <u>2014</u>	<u>Increase</u>
Admitted assets	\$ <u>12,293,923</u>	\$ <u>15,102,519</u>	\$ <u>2,808,596</u>
Liabilities	\$ <u>9,407,501</u>	\$ <u>9,670,755</u>	\$ <u>263,254</u>
Minimum required fund balance	\$ 940,750	\$ 967,075	\$ 26,325
Excess fund balance (surplus)	<u>1,945,672</u>	<u>4,464,689</u>	<u>2,519,017</u>
Total annuity fund balance	\$ <u>2,886,422</u>	\$ <u>5,431,764</u>	\$ <u>2,545,342</u>
Total liabilities and annuity fund balance	\$ <u>12,293,923</u>	\$ <u>15,102,519</u>	\$ <u>2,808,596</u>

The Fund experienced an increase in assets, liabilities and annuity fund balance despite a decrease in the total number of annuities in force. This is due to receipt of new gifts of higher average amount during the examination period compared to the prior examination period. Annual payments increased from \$1,142,865 as of December 31, 2009 to \$1,189,899 as of December 31, 2014; in contrast, annuities in force decreased from 654 as of December 31, 2009 to 635 as of December 31, 2014.

The increase in assets and annuity fund balance is also attributable to realized capital gains in the Fund's investments. Specifically, the Fund reported realized capital gains of \$2,147,263 in 2012 and \$604,260 in 2014 respectively.

The Fund's admitted assets, as of December 31, 2014, were mainly invested in common stocks (96.65%).

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 2014 annual statement on file, the Fund reported 15.35% invested in the securities of Internat Alpha Sel Common Trust Fund (“CTF”) and 27.79% invested in the securities of S&P 500 CTF. The Fund’s current concentration in the two investment funds could make it less likely that the Fund’s other assets can provide a variability to offset the risks inherent in the aforementioned investment 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 assets under its management. A diversification is proper when it disperses the investments’ risks consistent with the ISS’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.

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.

The examiner's review of a sample of checks issued on behalf of the Fund during the examination period revealed that the name of the Foundation, not the Fund's name, appeared on the checks.

The examiner recommends that the Fund use 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.

The examiner's review of a sample of five annuity contracts terminated revealed that in two of the five cases (40%) reviewed, the Fund did not obtain a copy of the death certificate to confirm termination of the annuity contract. In the two cases in which the Fund did not obtain a copy of the death certificate, the Fund obtained a copy of the obituary for each annuity termination.

The examiner recommends that the Fund obtain copies of the death certificates of annuitants for annuity contracts terminated.

6. 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 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.	6
B	The examiner recommends that the Fund use 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.	7
C	The examiner recommends that the Fund obtain copies of the death certificates of annuitants for annuity contracts terminated.	7

Respectfully submitted,

_____/s/
Hasan Ahmed
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. 31298

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ANTHONY J. ALBANESE, Acting 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
AMERICAN CIVIL LIBERTIES UNION FOUNDATION**

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 14th day of August, 2015

ANTHONY J. ALBANESE
Acting Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
ASSISTANT CHIEF - LIFE BUREAU

