



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
NATIONAL AUDUBON SOCIETY, INC.

CONDITION:

DECEMBER 31, 2011

DATE OF REPORT:

AUGUST 24, 2012

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

ANN MARIE THOMPSON

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Shirin Emami
Acting Superintendent

December 4, 2015

Honorable Shirin Emami
Acting Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 30791 dated July 9, 2012 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the National Audubon Society, Inc., hereinafter referred to as “the Fund,” at its home office located at 225 Varick Street, 7th Floor, New York, NY 10014.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

1. EXECUTIVE SUMMARY

The examiner recommends that the board of trustees or a committee thereof, approve the purchase and sale of all investments, and note such approvals in the minutes. This is a repeat recommendation. (See item 4 of this report)

The examiner recommends that the Fund obtain brokers' advices, or other documentation to support the source transactions, and reconcile such documentation to the monthly statements provided by its custodian. (See item 4 of this report)

The examiner recommends that the Fund maintain a separate detail trial balance and general ledger for the NY segregated gift annuity fund, in order to facilitate the tracing of transactions to the NY annual statement filings. (See item 4 of this report)

The examiner recommends that the Fund obtain a record of cancelled checks for annuity distribution payments from its custodian as a source of supporting documentation and reconcile such records to the monthly statements provided by the custodian. (See item 4 of this report)

The examiner's review of a sample of transactions did not reveal any differences which materially affected the Fund's financial condition as presented in its financial statements contained in the December 31, 2011 filed annual statement. (See item 5 of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by using annuity agreement forms that were not filed with the Superintendent. The examiner recommends that the Fund file all annuity agreement forms that are in use in New York with the Superintendent. (See item 6 of this report)

The examiner recommends that the Fund exercised greater care in reviewing annuity agreements and ensuring that the annuity agreement is signed by the annuitant(s). (See item 6 of this report)

The examiner recommends that the Fund obtain adequate proof of death such as a certified copy of the death certificate or other authenticated documentation in the annuitant's file to support the termination of the annuity, and maintain the documentation for six calendar years after all elements of the claim are resolved. (See item 6 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2006. This examination covers the period from January 1, 2007 through December 31, 2011. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2011 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, 2011 to determine whether the Fund's filed 2011 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 recommendation contained in the prior report on examination. The results of such review are contained in item 7 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 National Audubon Society, Inc. (the “Society”) is organized for the purpose of engaging in educational, scientific, investigative, literary, historical, philanthropic and charitable pursuits as may be determined to further the need and advance the cause for protecting wild birds, animals, trees, and other plants, soil, water and other natural resources. Under the provisions of its by-laws, the Society is permitted to issue gift annuity agreements and it has done so since 1982. A special permit was granted to the Society by the Department on September 8, 1997, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Fund’s custodian and investment advisor is State Street Global Advisors (“State Street”). State Street also makes annuity distributions to annuitants, sends annual statements of earnings to annuitants and prepares regular accountings of the Fund’s activities. All other operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

The management of the Society and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to 36 regular voting trustees. The trustees elect a Chairman of the Board, not more than three Vice-Chairmen, a President, one or more Vice Presidents, a Secretary, a Treasurer, a Controller, and such other officers as the board of trustees deem appropriate. The number of trustees as of December 31, 2011 was 28. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

4. CORPORATE GOVERNANCE

The examiner reviewed the Fund's Investment Committee minutes. The minutes did not contain any indication that the board or the committee specifically approved the purchases and sales of the Fund's investments for 2008, 2009, 2010 and 2011.

The examiner recommends that the board of trustees or a committee thereof, approve the purchase and sale of all investments, and note such approvals in the minutes. This is a repeat recommendation.

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 Fund maintains two custodial bank accounts with State Street Global Advisors: one for the NY Gift Annuity and the other for the California Gift Annuity. The Society's fiscal year runs from July 1 through to June 30. However, to accommodate this examination, the trial balance and general ledger report was prepared on a calendar basis. In response to examination correspondence, the Fund provided its trial balance and general ledger report reflecting combined balances of both NY and California gift annuity transactions. The Fund's method of posting transactions to its general ledger is by adding the transactions appearing on both custodial bank statements and then posting the combined balances to its general ledger. The examiner requested a separate detail trial balance and general ledger which reflects only NY transactions from which the examiner can trace the NY annual statement filings for the examination period. The Fund was unable to provide a separate detail trial balance and general ledger report, and consequently, the examiner was unable to trace individual journal and adjusting entries for 2007 through 2010. The examiner was only able to trace the 2011 NY transactions entries from the 2011 Annual Statement to the combined trial balance and general ledger report using both custodial accounts.

The examiner recommends that the Fund maintain a separate detail trial balance and general ledger for the NY segregated gift annuity fund, in order to facilitate the tracing of transactions to the NY annual statement filings.

In response to examination correspondence, the Fund provided its reconciliation worksheet for the 2011 gift annuity transactions. The Fund's method of reconciliation is to compare the State Street bank statement transactions balances for NY to the NY filed annual statement balances, at year-end. The Fund does not obtain a record of cancelled checks for annuity distribution payments from its custodian. Instead, the Fund asserts that it receives a payment summary report monthly from State Street as a source of record, around the time the checks are mailed or the ACH deposit is transmitted.

The examiner recommends that the Fund obtain a record of cancelled checks for annuity distribution payments from its custodian as a source of supporting documentation and reconcile such records to the monthly statements provided by the custodian.

5. SIGNIFICANT FINANCIAL INFORMATION

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

	December 31, <u>2006</u>	December 31, <u>2011</u>	<u>(Decrease)</u>
Admitted assets	\$ <u>16,806,643</u>	\$ <u>7,420,745</u>	\$(<u>9,385,898</u>)
Liabilities	\$ <u>9,481,992</u>	\$ <u>6,259,733</u>	\$(<u>3,222,259</u>)
Minimum required surplus	\$ 948,199	\$ 625,973	\$ (322,226)
Unassigned funds (surplus)	\$ <u>6,376,452</u>	\$ <u>535,039</u>	\$(<u>5,841,413</u>)
Total surplus	\$ <u>7,324,651</u>	\$ <u>1,161,012</u>	\$(<u>6,163,639</u>)
Total liabilities and surplus	\$ <u>16,806,643</u>	\$ <u>7,420,745</u>	\$(<u>9,385,898</u>)

The decrease in assets, liabilities and surplus reflects, in part, a decrease in the total number of annuities in force. Annuities decreased from 326 with annual payment amounts of \$1,447,163 as of December 31, 2006 to a total of 261 with annual payment amounts of \$649,663 as of December 31, 2011.

The decrease in assets and unassigned funds (surplus) results from the transfer of the residual amounts from terminated charitable gift annuities to the society's general fund during the examination period: \$5,943,710 in 2007; \$182,781 in 2008; \$478,052 in 2009; \$466,454 in 2010 and \$889,504 in 2011.

The Fund's admitted assets, as of December 31, 2011, were mainly invested in common stocks (62.46%) and bonds (32.13%). All bonds held were investment grade.

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 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 reviewed a sample of 11 annuity agreements that were issued in New York during the examination period. The examiner’s review noted that in all 11 instances the annuity agreement forms used were not filed with the Superintendent.

The Fund violated Section 1110(a) of New York Insurance Law when it used annuity agreement forms that were not filed with the Superintendent.

The examiner recommends that the Fund file all annuity agreement forms that are in use in New York with the Superintendent.

The examiner’s review also noted that in three annuity agreements issued, the agreements were not signed by the annuitants.

The examiner recommends that the Fund exercised greater care in reviewing annuity agreements and ensuring that the annuity agreement is signed by the annuitant(s).

The examiner reviewed a sample of 10 terminated New York annuity agreements. The examiner’s review noted that in four instances, the Fund failed to maintain proof of death such as a certified copy of the death certificate in the annuitant’s file and in one instance, the Fund failed to provide the signed annuity agreement.

The examiner recommends that the Fund obtain adequate proof of death such as a certified copy of the annuitant’s death certificate or other authenticated documentation in the annuitant’s file to support the termination of the annuity.

7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the recommendation contained in the prior report on examination and the subsequent actions taken by the Fund in response to the recommendation:

<u>Item</u>	<u>Description</u>
A	The examiner recommended that the board of trustees or a committee thereof, approve the purchase and sale of all investments, and note such approvals in the minutes. This is a repeat recommendation. (See item 4 of this report)

8. 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 purchase and sale of all investments, and note such approvals in the minutes. This is a repeat recommendation.	5
B	The examiner recommends that the Fund obtain brokers' advices, or other documentation to support the source transactions, and reconcile such documentation to the monthly statements provided by its custodian.	5
C	The examiner recommends that the Fund maintain a separate detail trial balance and general ledger for the NY segregated gift annuity fund, in order to facilitate the tracing of transactions to the NY annual statement filings.	6
D	The examiner recommends that the Fund obtain a record of cancelled checks for annuity distribution payments from its custodian as a source of supporting documentation and reconcile such records to the monthly statements provided by the custodian.	6
E	The Fund violated Section 1110(a) of the New York Insurance Law by using annuity agreement forms that were not filed with the Superintendent.	8
F	The examiner recommends that the Fund file all annuity agreement forms that are in use in New York with the Superintendent.	8
G	The examiner recommends that the Fund exercised greater care in reviewing annuity agreements and ensuring that the annuity agreement is signed by the annuitant(s).	8
H	The examiner recommends that the Fund obtain adequate proof of death such as a certified copy of the death certificate or other authenticated documentation in the annuitant's file to support the termination of the annuity.	8

Respectfully submitted,

_____/s/
Ann Marie Thompson
Insurance Examiner

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

Ann Marie Thompson, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

_____/s/
Ann Marie Thompson

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 30791

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, 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:

ANN MARIE THOMPSON

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
NATIONAL AUDUBON SOCIETY, INC.**

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

FUND

with such other information as she 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 9th day of July, 2012

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:



MICHAEL MAFFEI
ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

