



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

CONDITION:

DECEMBER 31, 2016

DATE OF REPORT:

OCTOBER 6, 2017

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

JUAN SOTO

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

June 8, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31604, dated April 20, 2017 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, 7<sup>th</sup> floor, New York, NY, 10014.

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 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 adopt an Investment Strategy Statement that refers to 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 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 6 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 violation and recommendations 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. (“Society”) is organized for the purpose of environmental conservation, specifically, to protect birds and the places they need. The Society has been issuing gift annuity agreements since 1982. A permit was granted to the Society by the Department on September 8, 1997 for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Society performs all of its own marketing, managing of inquiries and applications, and closing of gift annuity contracts with donors. The Society and State Street Global Advisors jointly settle terminated annuities. State Street Global Advisors is the custodian, administrator, and investment advisor for the Fund.

The management of the organization and the Fund and all of its affairs and property are entrusted to a board of directors. The number of directors is limited to no fewer than 9 and no more than 36 regular voting directors. As of December 31, 2016, the board consisted of 31 directors. The directors elect a Chair of the Board, not more than three Vice Chairs, a President, one or more Vice Presidents, a Secretary, a Treasurer, one or more Assistant Secretaries, an Assistant Treasurer, and such other officers as the Board may elect from time to time. 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 board of directors 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 directors, 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 (decline) in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	<u>December 31,</u> <u>2011</u>	<u>December 31,</u> <u>2016</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$7,420,745</u>	<u>\$10,039,306</u>	<u>\$2,618,561</u>
Liabilities	<u>\$6,259,733</u>	<u>\$ 5,890,126</u>	<u>\$ (369,607)</u>
Minimum required fund balance	\$ 625,973	\$ 589,013	\$ (36,960)
Excess fund balance (surplus)	<u>535,038</u>	<u>3,560,167</u>	<u>3,025,129</u>
Total annuity fund balance	<u>\$1,161,012</u>	<u>\$ 4,149,180</u>	<u>\$2,988,168</u>
Total liabilities and annuity fund balance	<u>\$7,420,745</u>	<u>\$10,039,306</u>	<u>\$2,618,561</u>

The decrease in liabilities reflects a decrease in the total number of annuities in force offset partially by the gift sizes of new annuities issued during the examination period. Annuities decreased from 261 with annual payment amounts of \$649,664 as of December 31, 2011 to a total of 231 with annual payment amounts of \$720,855 as of December 31, 2016.

The growth in assets and annuity fund balance can be attributed to the addition of \$5 million in new gifts compared to a decrease of \$2.5 million due to contract terminations as well as smaller changes in investment performance.

The Fund's admitted assets, as of December 31, 2016, were invested mainly in common stocks (99.31%).

According to the 2016 annual statement, the Fund reported 25.3% of its admitted assets invested in the securities of the S&P 500 CTF and 13.0% invested in the securities of the International Alpha Select CTF. The Fund's current concentration in these CTF's could make it less likely that the Fund's other assets can provide a variability to offset the risks inherent in the CTF's.

Based upon the concentrations in the above common trust 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 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.

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 refers to 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.

## 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.

The examiner's review of a sample of 6 annuity contracts terminated revealed that in 4 of the 6 cases (66.67%) 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.

## 7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violation and 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 board of directors, or a committee thereof, review the purchases and sales of investments at least annually and note such reviews in the minutes.</p> <p>The examiner's review of the Fund's board minutes revealed no indication that it reviewed investment purchases and sales. A similar recommendation appears in this report on examination.</p>
B	<p>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.</p> <p>The Fund stated that it does not receive or reconcile brokerage advices against these statements. However, a review of the Fund's custodian's SSAE 16 report on internal controls revealed an unqualified opinion evidencing satisfactory controls.</p>
C	<p>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.</p> <p>The examiner determined that the Fund maintains a separate detailed trial balance, and general ledger that is specific to the Fund, and traces transactions to the New York annual statement filings.</p>
D	<p>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.</p> <p>The examiner determined that the Fund maintains a separate detailed trial balance, and general ledger that are specific to the Fund, and traces transactions to the New York annual statement filings.</p>

<u>Item</u>	<u>Description</u>
E	<p>The Fund violated Section 1110(a) of the New York Insurance Law by using annuity agreement forms that were not filed with the Superintendent.</p> <p>The Fund has corrected this violation by filing contracts subsequently approved by the Superintendent as of January 2013. New gift annuity agreement forms were filed with and approved by the Department, are in use, and on file.</p>
F	<p>The examiner recommends that the Fund file all annuity agreement forms that are in use in New York with the Superintendent.</p> <p>The Fund has corrected this violation by filing contracts subsequently approved by the Superintendent as of January 2013. New gift annuity agreement forms were filed with and approved by the Department, are in use, and on file.</p>
G	<p>The examiner recommends that the Fund exercise greater care in reviewing annuity agreements and ensuring that the annuity agreement is signed by annuitant(s).</p> <p>The examiner's review revealed no recurrence of this finding.</p>
H	<p>The examiner recommends that the Fund obtain adequate proof of death, such as a certified copy of a death certificate or other authenticated documentation in the annuitant's file to support the termination of the annuity.</p> <p>A review of a sample of terminations revealed that the fund failed to obtain adequate proof of death to support terminations. A similar recommendation appears in this report on examination.</p>

## 8. 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 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.	6
C	The examiner recommends that the Fund adopt an Investment Strategy Statement that refers to 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.	7
D	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/\_\_\_\_\_  
Juan Soto  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Juan Soto

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

*APPOINTMENT NO. 31604*

*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:*

***JUAN SOTO***

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

***SEGREGATED GIFT ANNUITY FUND OF THE  
NATIONAL AUDUBON SOCIETY***

*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*

*MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU*

