



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGEGRATED GIFE ANNUITY FUND

OF THE

AMERICAN ASSOCIATES, BEN-GURION UNIVERSITY

OF THE NEGEV, INC.

CONDITION:

DECEMBER 31, 2013

DATE OF REPORT:

NOVEMBER 21, 2014

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EXAMINER:

ADELIA GBADAMOSI

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Acting Superintendent

May 23, 2016

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

Madam:

In accordance with instructions contained in Appointment No. 31132, dated April 8, 2014 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the American Associates, Ben-Gurion University of the Negev, Inc., hereinafter referred to as “the Fund,” at its home office located at 1430 Broadway 8<sup>th</sup> Floor, New York, New York 10018.

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 diversify its investment holdings. (See item 4 of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement. 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 4 of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that were not filed with the Superintendent. The examiner recommends that the Fund submit to the Superintendent any gift annuity agreement forms used during the examination period that have not been previously filed with the Superintendent. (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)

The examiner recommends that the Fund contract with a licensed bank or trust company to serve as custodian for the Fund's securities. (See item 6 of this report)

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. (See item 7 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2008. This examination covers the period from January 1, 2009 through December 31, 2013. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2013 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, 2013 to determine whether the Fund's filed 2013 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 contained in the prior report on examination. The results of such review are contained in item 8 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 American Associates, Ben-Gurion University of the Negev, Inc., (the “University”) was organized for the purpose of promoting, encouraging, aiding and advancing higher and secondary education, research and training in all branches of knowledge in Israel and elsewhere. Under the provisions of its by-laws, the organization is permitted to issue gift annuity agreements and it has done so since 1994. A special permit was granted to the organization by the Department on February 17, 1999, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Fund maintains a services agreement and an investment management agreement with Kaspick & Company, LLC (“Kaspick”). Under the services agreement, Kaspick performs accounting functions and annual reserve valuations on behalf of the Fund, administers annuity benefit payments to annuitants, and is responsible for the preparation of 1099R tax forms. Under the investment management agreement, Kaspick selects the Fund’s custodian and manages the Fund’s investments. The Fund’s custodian, as selected by Kaspick, is TIAA Trust Company. TIAA Trust Company has designated Charles Schwab & Company, Inc. (“Charles Schwab”) as the Fund’s sub-custodian.

The management of the University and the Fund and all of its affairs and property are entrusted to the board of directors. The elected board of directors shall consist of not less than 3, nor more than 250 persons. As of December 31, 2013 the Board of Directors was composed of 67 members. The directors elect a president, vice presidents, a treasurer, and a secretary. 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:

	<u>December 31,</u> <u>2008</u>	<u>December 31,</u> <u>2013</u>	<u>Increase</u>
Admitted assets	<u>\$5,049,322</u>	<u>\$7,067,738</u>	<u>\$2,018,416</u>
Liabilities	<u>\$4,212,338</u>	<u>\$5,181,920</u>	<u>\$ 969,582</u>
Minimum required annuity fund balance	\$ 421,234	\$ 518,192	\$ 96,958
Excess fund balance (surplus)	<u>415,750</u>	<u>1,367,626</u>	<u>951,876</u>
Total annuity fund balance	<u>\$ 836,984</u>	<u>\$1,885,818</u>	<u>\$1,048,834</u>
Total liabilities and annuity fund balance	<u>\$5,049,322</u>	<u>\$7,067,738</u>	<u>\$2,018,416</u>

The increase in assets, liabilities and surplus reflects an increase in annual payments. Annual payments increased from \$728,340 as of December 31, 2008 to \$735,902 as of December 31, 2013; however, annuities in force decreased from 179 as of December 31, 2008 to 169 as of December 31, 2013.

The increase in assets and surplus is also attributable to the increase in the market value of investments in common stocks.

The Fund's admitted assets, as of December 31, 2013, were invested mainly in common stocks (87.31%) and money market mutual funds (12.69%).

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 2013 annual statement on file, the Fund reported 24.12% invested in the securities of PIMCO Low Duration Fund. The Fund's current concentration in the above mutual

fund makes it highly unlikely that the Fund's other assets could provide a variability to offset the risks inherent in this fund.

The examiner recommends that the Fund diversify its investment holdings. 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 ("ISS") 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. 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.

The examiner recommends that the Fund adopt an Investment Strategy Statement. 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. 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 11 gift annuity agreements issued in New York during the examination period revealed that in all 11 instances the Fund used gift annuity agreement forms which were not filed with the Superintendent.

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that were not filed with the Superintendent. The examiner recommends that the Fund submit to the Superintendent any gift annuity agreement forms used during the examination period that have not been previously filed with the Superintendent.

The examiner’s review of a sample of 12 annuity contracts terminated revealed that in 4 out of 12 (33%) cases reviewed, the Fund did not obtain a copy of the death certificate to confirm termination of the annuity contract. Instead, the Fund obtained a copy of the obituary for the four cases in which the Fund did not obtain a copy of the death certificate.

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

## 6. CUSTODIAN

The Fund's investment management agreement with Kaspick states that Kaspick selects the Fund's custodian. Kaspick selected TIAA Trust Company FSB as the Fund's custodian. TIAA in turn designated Charles Schwab & Company, Inc. ("Charles Schwab") as the Fund's sub-custodian. The examiner determined that Charles Schwab is not a licensed bank or trust company.

The examiner recommends that the Fund contract with a licensed bank or trust company to serve as custodian for the Fund's securities.

## 7. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2013 for Schedule C - Cash, Money Market, Certificates of Deposit, state (in part):

“This Schedule shows all banks, trust companies, savings and loan associations in which deposits were maintained by the Segregated Gift Annuity Fund at any time during the year and the balances, if any, as of December 31 of the current year....”

The Department's Instructions for Completing the Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2013 for Schedule B - Money Market Mutual Funds, state (in part):

“Report only money market mutual funds in this Schedule. Examples of money market mutual funds are funds that invest solely in money market instruments, such as commercial paper, Treasury bills and other highly liquid securities....”

The Fund reported Cash on deposit of \$896,937 in its 2013 Annual Statement, namely Schedule C. The examiner determined that the amount reported as Cash on deposit should have been reported as Market value of money market mutual funds, namely Schedule B in the 2013 Annual Statement.

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.

## 8. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The Fund violated Section 312(b) of the New York Insurance Law by failing to maintain statements signed by its board members indicating that they received and read the prior report on examination.</p> <p>The Fund obtained statements signed by its board members indicating that they received and read the report on examination. The Fund maintains the signed statements on file.</p>

## 9. 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 Fund diversify its investment holdings.	6
B	The examiner recommends that the Fund adopt an Investment Strategy Statement. 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
C	The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that were not filed with the Superintendent.	7
D	The examiner recommends that the Fund submit to the Superintendent any gift annuity agreement forms used during the examination period that have not been previously filed with the Superintendent.	7
E	The examiner recommends that the Fund obtain copies of the death certificates of annuitants for annuity contracts terminated.	7
F	The examiner recommends that the Fund contract with a licensed bank or trust company to serve as custodian for the Fund's securities.	8
G	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	9

Respectfully submitted,

\_\_\_\_\_/s/  
Adelia Gbadamosi  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
Adelia Gbadamosi

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

APPOINTMENT NO. 31132

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:

**ADELIA GBADAMOSI**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
AMERICAN ASSOCIATES, BEN-GURION UNIVERSITY OF THE NEGEV**

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 8th day of April, 2014

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:



MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

