



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
MARIST COLLEGE

CONDITION:

DECEMBER 31, 2014

DATE OF REPORT:

AUGUST 14, 2015

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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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
Superintendent

August 24, 2016

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

Madam:

In accordance with instructions contained in Appointment No. 31315, dated June 3, 2015 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Marist College, hereinafter referred to as the "Fund." The Fund's home office is located at 3399 North Road, Poughkeepsie, New York 12601.

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 Fund is underfunded by \$15,134 as of December 31, 2014. The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain admitted assets at least equal to the greater of the sum of its reserves on its outstanding agreements and a surplus of ten percent of such reserves, or the amount of one hundred thousand dollars. (See item 5 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 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. (See item 5 of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer 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 Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms which were not filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent. (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)

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements. (See item 7 of this report)

2. SCOPE OF EXAMINATION

This is the first examination of the Fund since it received its special permit to issue gift annuity agreements in 2005. 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.

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

Marist College (the “College”) is organized for the purpose of providing education on the college level to members of the Institute of Marist Brothers, through courses leading to the degree of Bachelor of Arts and to prepare them for teaching in secondary schools of the Institute. The College began as a school for training of future Marist Brothers, but has developed into a college of arts and sciences dedicated to helping students develop the intellect and character required for enlightened, ethical and productive lives in the global community of the 21st century. Under the provisions of its by-laws, the college is permitted to issue gift annuity agreements and it has done so since 2008. A special permit was granted to the College by the Department on March 14, 2005, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

TD Bank is the Fund’s custodian and investment manager. TD bank handles the Fund’s investments and makes annuity payments to annuitants.

The management of the College and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is specified to be no less than 5 nor more than 35. As of December 31, 2014, the board consisted of 30 trustees. The board of trustees elect a Chairman, a Vice Chairman, a Treasurer, a Secretary and Assistant Secretary. The board also appoints the President of the College. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

4. CORPORATE GOVERNANCE

The examiner requested the board of trustees' minutes to determine whether the board approves the purchases and sales of investments during the examination period. The Fund responded that there are no minutes that relate specifically to the Fund, but provided copies of minutes for meetings conducted in 2013 and 2014. The examiner's review of the board minutes revealed that the minutes did not contain any information pertaining to the activities of the Fund.

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. SIGNIFICANT FINANCIAL INFORMATION

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

	<u>December 31,</u> <u>2009</u>	<u>December 31,</u> <u>2014</u>	<u>Increase</u>
Admitted assets	<u>\$21,917</u>	<u>\$84,866</u>	<u>\$62,949</u>
Liabilities	<u>\$16,140</u>	<u>\$49,975*</u>	<u>\$33,835</u>
Minimum required fund balance	\$ 1,580	\$ 4,998*	\$ 3,418
Excess fund balance (surplus)	<u>4,197</u>	<u>29,893*</u>	<u>25,696</u>
Total annuity fund balance	<u>\$ 5,777</u>	<u>\$34,891*</u>	<u>\$29,114</u>
Total liabilities and annuity fund balance	<u>\$21,917</u>	<u>\$84,866</u>	<u>\$62,949</u>

Note: Amounts denoted with an asterisk were determined during the examination. (See item 7 of this report)

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 2 with annual payment amounts of \$1,366 as of December 31, 2009 to a total of 4 with annual payments amounts of \$5,313 as of December 31, 2014.

Section 1110(b) of the New York Insurance Law states, in part:

“(b) Every such domestic corporation or association shall maintain admitted assets at least equal to the greater of (i) the sum of its reserves on its outstanding agreements, calculated in accordance with section four thousand two hundred seventeen of this chapter, and a surplus of ten per centum of such reserves, or (ii) the amount of one hundred thousand dollars...”

The Fund is required to maintain admitted assets at least equal to the greater of the sum of its reserves on its outstanding agreements and a surplus of ten percent of such reserves, or the amount of one hundred thousand dollars. The Fund reported total assets of \$84,866, net reserves of \$49,975, and minimum required surplus (ten percent of net reserves) of \$4,998 in its 2014 annual statement. The sum of the Fund's net reserves and minimum required surplus is \$54,973,

an amount less than the statutory minimum of \$100,000. Thus, the Fund is required to maintain minimum required assets of \$100,000.

The Fund is underfunded by \$15,134 as of December 31, 2014. The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain admitted assets at least equal to the greater of the sum of its reserves on its outstanding agreements and a surplus of ten percent of such reserves, or the amount of one hundred thousand dollars.

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 Fund’s custodian statement as of December 31, 2014, 22.58% of the Fund’s total assets were invested in the securities of Dodge & Cox Stk Fd #145 mutual fund and 19.13% were invested in the securities of Aston Fds Montag & Caldwell Growth Fund C I I #0234 mutual fund. The Fund’s current concentration could make it less likely that the Fund’s other assets can provide a variability to offset the risks inherent in these mutual 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 Investment Strategy Statement’s (“ISS”) 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 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.

The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer 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.

The Fund's admitted assets, as of December 31, 2014, were 100% invested in common stocks.

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 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 the two annuity agreements issued during the examination period revealed that the policy forms used by the Fund were not approved by the Superintendent.

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms which were not filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.

7. ANNUAL STATEMENT REPORTING

The Instructions for Completing Line 10a (additional reserve required by Regulation 126) in the Liabilities and Annuity Fund Balance section of the New York State Segregated Gift Annuity Fund Annual Statement for the examination period (January 1, 2010 through December 31, 2014) state, in part:

For the 2011, 2012, 2013 and 2014 Annual Statements:

“Report the amount of additional reserve required as pursuant to Department Regulation No. 126 as of December 31 of the current year. (i.e.: In accordance with Department Regulation No. 126, for 2011, 2012, 2013 and 2014, report on this line 15% of the amount reported on Line 10, for both current and prior years.)”

For the 2010 Annual Statement:

“Report the amount of additional reserve required as pursuant to Department Regulation No. 126 as of December 31 of the current year. (i.e.: In accordance with Department Regulation No. 126, for 2010, report on this line 15% of the amount reported on Line 10.) ‘Prior year’ column: report 10% of the amount on Line 10.”

The Instructions for Completing Line 20.1 (Minimum required fund balance) in the Liabilities and Annuity Fund Balance section of the New York State Segregated Gift Annuity Fund Annual Statement for the 2010, 2011, 2012, 2013 and 2014 state, in part:

“‘Current Year’ Column: A minimum required fund balance equal to 10% of the net reserve reported at Line 12 must be reported at this Line. Refer to Section 1110(b) of the New York Insurance Law. ‘Prior Year’ Column: Report prior year’s minimum required fund balance.”

The Fund failed to report the correct amount for line 10a in the Assets and Liabilities page, “Additional reserve required by Regulation 126,” in its 2010, 2011, 2012, 2013 and 2014 annual statements.

The Fund reported “Net present value of annuities” of \$12,698 as of December 31, 2010. The Fund reported an amount on line 10a for “Additional reserve required by Regulation 126” of \$3,365. In accordance with the annual statement instructions cited above, the Fund should have reported \$1,905 on that line, an amount consisting of 15% of the net present value of annuities.

The Fund therefore overstated net reserve and total liabilities by \$1,460. The Fund also overstated minimum required fund balance by \$146. The Fund understated excess fund balance (surplus) by \$1,606 and annuity fund balance by \$1,460. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$7,299 as of December 31, 2010, instead of the \$5,839 actually reported.

The Fund reported "Net present value of annuities" of \$12,337 as of December 31, 2011. The Fund reported an amount on line 10a for "Additional reserve required by Regulation 126" of \$3,269. In accordance with the annual statement instructions cited above, the Fund should have reported \$1,851 on that line, an amount consisting of 15% of the net present value of annuities. The Fund therefore overstated net reserve and total liabilities by \$1,418. The Fund also overstated minimum required fund balance by \$142. The Fund understated excess fund balance (surplus) by \$1,560 and annuity fund balance by \$1,418. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$7,727 as of December 31, 2011, instead of the \$6,309 actually reported.

The Fund reported "Net present value of annuities" of \$46,787 as of December 31, 2012. The Fund reported an amount on line 10a for "Additional reserve required by Regulation 126" of \$12,399. In accordance with the annual statement instructions cited above, the Fund should have reported \$7,018 on that line, an amount consisting of 15% of the net present value of annuities. The Fund therefore overstated net reserve and total liabilities by \$5,380. The Fund also overstated minimum required fund balance by \$538. The Fund understated excess fund balance (surplus) by \$5,918 and annuity fund balance by \$5,380. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$29,106 as of December 31, 2012, instead of the \$23,726 actually reported.

The Fund reported "Net present value of annuities" of \$45,112 as of December 31, 2013. The Fund reported an amount on line 10a for "Additional reserve required by Regulation 126" of \$11,955. In accordance with the annual statement instructions cited above, the Fund should have reported \$6,767 on that line, an amount consisting of 15% of the net present value of annuities. The Fund therefore overstated net reserve and total liabilities by \$5,187. The Fund also overstated minimum required fund balance by \$519. The Fund understated excess fund balance (surplus) by \$5,706 and annuity fund balance by \$5,187. Taking into account the above errors, the Fund should

have reported "Total Annuity Fund Balance" of \$31,056 as of December 31, 2013, instead of the \$25,869 actually reported.

The Fund reported "Net present value of annuities" of \$43,456 as of December 31, 2014. The Fund reported an amount on line 10a for "Additional reserve required by Regulation 126" of \$4,346. In accordance with the annual statement instructions cited above, the Fund should have reported \$6,518 on that line, an amount consisting of 15% of the net present value of annuities. The Fund therefore understated net reserve and total liabilities by \$2,172. The Fund also overstated minimum required fund balance by \$316. The Fund overstated excess fund balance (surplus) by \$1,857 and annuity fund balance by \$2,173. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$34,892 as of December 31, 2014, instead of the \$37,065 actually reported.

The Instructions for Completing Schedule A - Part 3 - Common Stocks section of the New York State Segregated Gift Annuity Fund Annual Statement for 2014 state, in part:

"IMPORTANT NOTE: Mutual funds (funds that invest in stocks, bonds, options or currencies) are to be reported in Schedule A - Part 3 - Common Stocks."

The examiner reviewed the Fund's Schedule D - Part 1 for other invested assets in its 2014 Annual Statement and noted that it reported holdings of \$84,866 with the description of the asset as "TD Wealth." Further review of the custodian statement revealed that this consisted of 13 mutual funds with a total market value of \$84,853.75, with the difference attributable to income earned, withdrawals, and realized gains and losses in the portfolio. As per the annual statement instructions, holdings in mutual funds should be reported as common stock. Therefore the examiner determined that the Fund should have reported common stocks with a market value of \$84,853.75, as of year-end 2014, instead of reporting this amount as other invested assets.

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

The Department's instructions for the 2010, 2011, 2012, 2013 and 2014 annual statements, namely line item 15 (Annuity Fund Balance at end of year), in its Income and Disbursements page state, in part:

Line 15 "Current Year" Column: Must equal the sum of Lines 13 and 14, as well as Page 2, Line 20.3. 'Prior Year' Column: Report prior year's Annuity Fund Balance at end of year.

The Fund erroneously reported Annuity Fund Balance of \$5,839 in the Income and Disbursements page of its 2010 Annual Statement. As calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$7,299 in its 2010 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$6,309 in the Income and Disbursements page of its 2011 Annual Statement. As calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$7,727 in its 2011 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$23,726 in the Income and Disbursements page of its 2012 Annual Statement. As calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$29,106 in its 2012 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$25,869 in the Income and Disbursements page of its 2013 Annual Statement. As calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$31,056 in its 2013 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$37,065 in the Income and Disbursements page of its 2014 Annual Statement. As calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$34,892 in its 2014 Annual Statement.

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.

8. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comment 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 Fund is underfunded by \$15,134 as of December 31, 2014.	7
C	The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain admitted assets at least equal to the greater of the sum of its reserves on its outstanding agreements and a surplus of ten percent of such reserves, or the amount of one hundred thousand dollars.	7
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 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.	7
E	The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer 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
F	The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms which were not filed with the Superintendent.	9

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G	The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.	9
H	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	12
I	The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.	13

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. 31315

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
MARIST COLLEGE**

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 3rd day of June, 2015

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD

ASSISTANT CHIEF - LIFE BUREAU

