



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

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

JUNE 16, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

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EXAMINER:

ASHOK REDDY

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

November 29, 2016

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

Madam:

In accordance with instructions contained in Appointment No. 31460, dated April 25, 2016 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Le Moyne College, hereinafter referred to as the “Fund.” The Fund’s home office is located at 1419 Salt Springs Road, Syracuse, NY 13214.

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 obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian. (See item 4 of this report)

The examiner recommends that the Fund diversify its investment holdings. (See item 5 of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement ("ISS"). 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 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 6 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

The prior examination was conducted as of December 31, 2010. This examination covers the period from January 1, 2011 through December 31, 2015. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2015 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, 2015 to determine whether the Fund's filed 2015 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 Le Moyne College (the “College”) is organized for the purpose of: establishing, operating and maintaining a college for the instruction of men and women in the learned languages and in the liberal and useful arts, philosophy and science, and to maintain and conduct all such departments of knowledge as may be conducive to the attainment of those ends, including research in the various fields above set forth, but not thereby limiting in any way the purposes herein set forth. Under the provisions of its by-laws, the College is permitted to issue gift annuity agreements and it has done so since 2006. A special permit was granted to the College by the Department on September 7, 2006, 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.

KeyBank National Association is the Fund’s custodian and investment manager.

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 limited to 40 regular voting trustees. As of December 31, 2015, the board consisted of 36 trustees. The trustees elect a Chair, a Vice Chair, and a Board Secretary. The nomination and election procedures of the trustees and their term of office are set by the by-laws. The officers of the College shall be elected by the Board of Trustees and shall consist of a President, a Vice President for Finance and Treasurer, and a college secretary.

4. CORPORATE GOVERNANCE

The examiner reviewed the board of trustees' minutes to determine if the board approved the purchases and sales of investments. 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 trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.

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.

5. SIGNIFICANT FINANCIAL INFORMATION

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

| | <u>December 31,</u> <u>2010</u> | <u>December 31,</u> <u>2015</u> | <u>(Decrease)</u> |
|--|------------------------------------|------------------------------------|--------------------|
| Admitted assets | <u>\$788,026</u> | <u>\$685,182</u> | <u>\$(102,844)</u> |
| Liabilities | <u>\$649,751</u> | <u>\$559,856</u> | <u>\$ (89,895)</u> |
| Minimum required fund balance | \$ 64,975 | \$ 55,986 | \$ (8,989) |
| Excess fund balance (surplus) | <u>73,300</u> | <u>69,340</u> | <u>(3,960)</u> |
| Total annuity fund balance | <u>\$138,275</u> | <u>\$125,326</u> | <u>\$ (12,949)</u> |
| Total liabilities and annuity fund balance | <u>\$788,026</u> | <u>\$685,182</u> | <u>\$(102,844)</u> |

Note: Any differences are due to rounding.

The decrease in assets, liabilities and annuity fund balance reflects the fact that no gifts were received during 2012, 2014, and 2015. Annuities increased from nine with annual payment amounts of \$66,182 as of December 31, 2010 to eleven with annual payment amounts of \$70,486 as of December 31, 2015.

From January 1, 2011 through December 31, 2015 the Fund's total assets declined by \$102,844. During the five year period the Fund had: an overall total investment return of \$186,696; payments to beneficiaries of approximately \$348,519; and two new charitable gifts totaling \$70,213, less one death release of reserves to the College of \$11,234 which was from the termination of a 2010 annuity received in 2011. The Fund's liabilities are recalculated by its actuary each year and are reduced based on age and market impact.

The Fund's admitted assets, as of December 31, 2015, were mainly invested in common stocks (98.85%).

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 18.12% invested in the securities of IShares S&P 500 Barra Growth Index Exchange Traded Fund (“ETF”) and 11.63% invested in the securities of IShares S&P 500 Barra Value Index ETF. The Fund’s current concentration in the two ETFs makes it highly unlikely that the Fund’s other assets could provide a variability to offset the risks inherent in the two ETFs.

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. 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.

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 benefit payments made to annuitants during the examination period revealed that only the name of the KeyBank National Association Trust Division, not the Fund's name, appeared on the annuity benefit 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.

7. ANNUAL STATEMENT REPORTING

The Fund reported 0 for the number of annuities in force as of December 31, 2015 in the Exhibit of Annuities in Force in its 2015 annual statement. The examiner determined that the Fund should have reported 11 for the number of annuities in force as of December 31, 2015.

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

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 obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian. | 5 |
| C | The examiner recommends that the Fund diversify its investment holdings. | 7 |
| D | 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 |
| E | 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. | 8 |
| F | The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements. | 9 |

Respectfully submitted,

_____/s/
Ashok Reddy
Insurance Examiner

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

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

_____/s/
Ashok Reddy

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31460

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, **MARIA T. VULLO**, 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:

ASHOK REDDY

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
LE MOYNE COLLEGE**

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 25th day of April, 2016

MARIA T. VULLO
Acting Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

