



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
ROMAN CATHOLIC DIOCESE OF OGDENSBURG, NEW YORK

CONDITION:

DECEMBER 31, 2012

DATE OF REPORT:

DECEMBER 18, 2013

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

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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

February 3, 2016

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

Madam:

In accordance with instructions contained in Appointment No. 30935, dated March 18, 2013 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Roman Catholic Diocese of Ogdensburg, New York, hereinafter referred to as “the Fund.” The Fund’s home office is located at 622 Washington Avenue, Ogdensburg, New York 13669.

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

## 1. EXECUTIVE SUMMARY

The Fund violated Section 312(b) of the New York Insurance Law by failing to retain statements signed by each of its board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund maintain the statements, signed by the board members indicating that they received and read the prior report on examination. (See item 4 of this report)

The Fund overstated its admitted assets in the 2012 annual statement by \$1,415,974, by the inclusion of an asset that was not solely in the Fund's name, and similarly overstated admitted assets in its 2009, 2010, and 2011 annual statement filings. The examiner recommends that the Fund reduce its admitted assets by the amount of its investment in the Trust Fund. This is a repeat recommendation. (See item 5 of this report)

The examiner recommends that the Fund deposit gifts received directly into its segregated account. This is a repeat recommendation. (See item 6 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2007. This examination covers the period from January 1, 2008 through December 31, 2012. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2012 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, 2012 to determine whether the Fund's filed 2012 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 recommendations and comment 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 Roman Catholic Diocese of Ogdensburg (the “Diocese”) was established by Pope Pius IX on February 16, 1872. It was incorporated under the laws of New York on April 10, 1945. The purpose of the Diocese is to support and aid charitable, benevolent, and educational organizations existing within New York or elsewhere, and more particularly within the bounds of the Roman Catholic Diocese of Ogdensburg. Under the provisions of its by-laws, the Diocese is permitted to issue gift annuity agreements and it has done so since September 11, 1992. A special permit was granted to the Diocese by the New York State Insurance Department on May 28, 1993, 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.

The Diocese outsources the payment of annuitants and beneficiaries to a custodial bank, NBT Bank. The Diocese outsources the preparation of the Fund’s annual statements to the accounting firm of Pinto, Mucenski, Hooper, Van House & Co., CPAs of Potsdam, NY. The Diocese outsources the Fund’s investment management to Manning & Napier Advisors, Inc. of Fairport, NY.

The management of the Diocese and the Fund and all of its affairs and property are entrusted to the Finance Council of the Diocese of Ogdensburg (the “Council”). The Council’s by-laws provide that the membership of the Council shall consist of at least three practicing Roman Catholics, with expertise in financial affairs and civil law, who are appointed by the bishop of the Diocese. As of December 31, 2012, the Council consisted of 11 trustees.

Members of the Council are appointed for five years, and may be appointed for further terms of five years indefinitely. If an appointed member is unable to serve and/or resigns, the bishop will appoint a successor to serve out the remaining term. The diocesan fiscal officer serves as consultant to the Council, but may not have membership in the Council.

The Council is presided over by the bishop or by his delegate. The delegate may not be the diocesan fiscal officer. A vice-chairperson is elected by the Council for a two year term. A secretary is appointed by the bishop or his delegate for a two year term which is renewable for further terms.

#### 4. CORPORATE GOVERNANCE

Section 312 of the New York Insurance Law states, in part:

“(a) The superintendent shall forward to every insurer or other person examined a copy of the report on examination as filed for public inspection . . . (b) A copy of the report shall be furnished by such insurer or other person to each member of its board of directors and each such member shall sign a statement which shall be retained in the insurer’s files confirming that such member has received and read such report . . .”

The examiner reviewed the Fund’s minutes for the examination period and did not find any documentation that indicated that the prior report, the report on examination as of December 31, 2007, was furnished to each member of the board.

The Fund violated Section 312(b) of the New York Insurance Law by failing to retain statements signed by each of its board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund maintain the statements, signed by the board members indicating that they received and read the prior report on examination.

## 5. SIGNIFICANT FINANCIAL INFORMATION

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

	<u>December 31,</u> <u>2007</u>	<u>December 31,</u> <u>2012</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$2,668,587</u>	<u>\$3,134,993</u>	<u>\$466,406</u>
Liabilities	<u>\$1,313,005</u>	<u>\$1,933,142</u>	<u>\$620,137</u>
Minimum required surplus	\$ 131,086	\$ 193,314	\$ 62,228
Unassigned funds (surplus)	<u>1,224,496</u>	<u>1,008,537</u>	<u>(215,959)</u>
Total surplus	<u>\$1,355,582</u>	<u>\$1,201,851</u>	<u>\$(153,731)</u>
Total liabilities and surplus	<u>\$2,668,587</u>	<u>\$3,134,993</u>	<u>\$466,406</u>

The increase in assets reflects an increase in the market value of investments and the total number of annuities in force. Annuities increased from 91 with annual payment amounts of \$217,386 as of December 31, 2007 to a total of 99 with annual payment amounts of \$240,895 as of December 31, 2012.

The decrease in 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: \$292,280 in 2008; \$161,000 in 2011 and \$227,758 in 2011.

The Fund's admitted assets, as of December 31, 2012, were mainly invested in the diocesan trust fund (45.17%), bonds (31.55%), and common stocks (20.27%). All bonds held were investment grade.

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

“Every such domestic corporation or association shall maintain admitted assets . . . Such assets shall be segregated as separate and distinct funds, independent of all other funds of such corporation or association, and shall not be applied to pay its debts and obligations or for any purpose except the aforesaid annuity benefits.”

The Fund reported an admitted asset in the amount of \$1,415,974 invested in a diocesan trust fund as of December 31, 2012, listed in the annual statement as “Due from Operating Fund” on page 2, Miscellaneous Assets, line 8.2 of the 2012 Annual Statement, as part of \$3,134,993 in total admitted assets. The Fund’s custodian, NBT, however confirmed total Fund assets in the amount of only \$1,712,614.95, including bonds and stocks, as of December 31, 2012. Of the \$1,422,378 difference between the amount of assets reported by the Fund and the amount confirmed by the custodian, a remaining asset amount of \$1,415,974 reported as “Due from Operating Fund” was not confirmed by NBT as an asset held in the name of the Fund. Upon inquiry, the Fund stated that when it receives a gift, it determines the amount of the reserve required for the gift annuity and invests 110% of the amount calculated in a segregated investments account dedicated for this purpose in the Diocese of Ogdensburg's Diocesan Trust Fund (the “Trust Fund”), an investment account holding the commingled investments of several diocesan institutions. The Trust Fund is therefore maintained in an account in the name of the Diocese, not that of the Fund.

Prior to 2007, the Fund’s investment in the Trust Fund was treated as a non-admitted asset and therefore deducted from total assets. However, in the 2007 annual statement and subsequently, the Fund commenced reporting an admitted asset amount for “Due from Operating Fund”. Therefore, the Fund overstated its admitted assets in the 2012 annual statement by \$1,415,974, by the inclusion of an asset that was not solely in the Fund’s name, and similarly overstated admitted assets in its 2009, 2010, and 2011 annual statement filings.

The examiner recommends that the Fund reduce its admitted assets by the amount of its investment in the Trust Fund. This is a repeat recommendation.

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

“Every such domestic corporation or association shall maintain admitted assets...Such assets shall be segregated as separate and distinct funds, independent of all other funds of such corporation or association, and shall not be applied to pay its debts and obligations or for any purpose except the aforesaid annuity benefits.”

The Fund’s procedures indicate that when gifts are received by the Fund, the gifts are first deposited in the Diocese’s general operating fund account and the proceeds are then transferred from the Diocese’s general operating fund account to the Fund’s segregated account.

The examiner recommends that the Fund deposits gifts received directly into its segregated account. This is a repeat recommendation.

## 7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are recommendations and a comment contained in the prior report on examination and the subsequent actions taken by the Fund:

<u>Item</u>	<u>Description</u>
A	<p>The Fund over stated its admitted assets in the annual statement by \$894,972.</p> <p>The Fund failed to take corrective action in response to the prior report comment. The Fund continues to overstate its admitted assets in its annual statements.</p>
B	<p>The examiner recommends that the Fund reduce its admitted assets by the amount of its investment in the Trust Fund.</p> <p>The Fund failed to take corrective action every year of the current exam period in response to the prior report comment. The Fund did not reduce its admitted assets by the amount of its investment in the Diocesan Trust Fund, in each year of the exam period. As such, the failure to correct the error noted in the prior report affected the 2009, 2010, 2011, and 2012 annual statements.</p>
C	<p>The examiner recommends that the Fund deposit gifts received directly into its segregated account.</p> <p>The Fund failed to take corrective action in response to the prior report comment. The Fund continues to deposit annuity gifts received directly into the Diocese's general operating fund account and subsequently transfers the proceeds to the Fund's segregated account.</p>

## 8. SUMMARY AND CONCLUSIONS

Following are the violation, recommendations and comment contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Fund violated Section 312(b) of the New York Insurance Law by failing to retain statements signed by each of its board members indicating that they received and read the prior report on examination.	5
B	The examiner recommends that the Fund maintain the statements, signed by the board members indicating that they received and read the prior report on examination.	5
C	The Fund overstated its admitted assets in the 2012 annual statement by \$1,415,974, by the inclusion of an asset that was not solely in the Fund's name, and similarly overstated admitted assets in its 2009, 2010, and 2011 annual statement filings.	7
D	The examiner recommends that the Fund reduce its admitted assets by the amount of its investment in the Trust Fund. This is a repeat recommendation.	7
E	The examiner recommends that the Fund deposits gifts received directly into its segregated account. This is a repeat recommendation.	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. 30935

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  
ROMAN CATHOLIC DIOCESE OF OGDENSBURG, NEW YORK**

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 18th day of March, 2013

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:

  
MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

