



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
AMERICAN FRIENDS OF MAGEN DAVID ADOM

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

NOVEMBER 9, 2016

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

September 15, 2017

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

Madam:

In accordance with instructions contained in Appointment No. 31448, 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 American Friends of Magen David Adom, hereinafter referred to as the "Fund." The Fund's home office is located at 352 Seventh Avenue Suite 400, New York, NY 10001.

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's board of directors review the activities of the Fund at least annually and note the same in the minutes. (See item 4 of the report)

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 the 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 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. 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 that differed from the gift annuity agreement forms that were 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 not exceed the maximum rates recommended by the American Council on Gift Annuities. (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

This is the first examination of the Fund since it received its special permit to issue gift annuity agreements in 2011. This examination covers the period from September 30, 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.

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

American Friends of Magen David Adom (the “Corporation”) is the authorized fundraising and advocacy organization in the United States of America, supporting the lifesaving efforts of Magen David Adom, in Israel, and representing it in the United States in all matters. Magen David Adom in Israel is mandated by the Knesset to be the nation’s emergency medical first responders. Magen David Adom also provides 97% of the total blood needs of the State of Israel, and 100% of the blood for the Israel Defense Forces. The Corporation has been issuing gift annuity agreements since 2001, per board resolution. A permit was granted to the Corporation by the Department on September 30, 2011, for the purpose of issuing 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.

Comerica Bank & Trust, N.A. (“Comerica”) is the Fund’s custodian and investment manager. Comerica also performs all administrative functions on the Fund’s behalf, such as accounting, investments, benefit payments, tax reporting and the filing of the annual statements.

The management of the Corporation and the Fund and all of its affairs and property are entrusted to a board of directors. The number of directors is limited to not less than 15 and not more than 34 regular voting directors. As of December 31, 2015, the board consisted of 18 directors. The directors are nominated by the nominating committee, and elected by the majority of the board present at the meeting. The officers of the Corporation shall be a Chair, no more than four Vice-Chairs, a Secretary, a Treasurer, a Chief Executive Officer and a President, if elected. The CEO shall be appointed by the board. The nomination and election procedures of the trustees and their term of office are set by the by-laws.

#### 4. CORPORATE GOVERNANCE

The examiner requested the board of trustees' minutes for the examination period. The Fund provided the examiner with a copy of the board minutes for the board meetings conducted in 2012, 2013 and 2014 only.

The examiner recommends that the Fund's board of directors review the activities of the Fund at least annually and note the same in the minutes.

The examiner reviewed the board of trustees' 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 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:

	December 31, <u>2011</u>	December 31, <u>2015</u>	<u>Increase</u>
Admitted assets	<u>\$3,631,324</u>	<u>\$6,739,945</u>	<u>\$3,108,621</u>
Liabilities	<u>\$2,507,537</u>	<u>\$4,229,279</u>	<u>\$1,721,742</u>
Minimum required fund balance	\$ 250,754	\$ 422,928	\$ 172,174
Excess fund balance (surplus)	<u>873,034</u>	<u>2,087,738</u>	<u>1,214,704</u>
Total annuity fund balance	<u>\$1,123,788</u>	<u>\$2,510,666</u>	<u>\$1,386,878</u>
Total liabilities and annuity fund balance	<u>\$3,631,325</u>	<u>\$6,739,945</u>	<u>\$3,108,620</u>

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 192 with annual payment amounts of \$374,130 as of December 31, 2011 to a total of 302 with annual payment amounts of \$561,939 as of December 31, 2015.

The increase in total admitted assets from December 31, 2011 to December 31, 2015 was due to an addition of 166 charitable gift annuities, with a face value of \$4,401,225. The new additional charitable gift annuities resulted in an increase in required annuity payments, in the amounts described in the prior paragraph. The increase in liabilities reflects an increase in the total number of annuities in force, which required additional reserves of \$2,314,372 as of December 31, 2015. During the same captioned period, 56 gift annuity contracts were terminated due to the deaths of the annuitants and the reserves for each of the annuity contracts were removed from the inventory of annuities in force.

The Fund's admitted assets, as of December 31, 2015, were invested solely in common stocks (96.89%).

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 2015 annual statement, the Fund reported 28.88% of its admitted assets invested in the securities of DBX ETF TR EAFE Currency - Hedged Equity Fund Exchange Traded Fund (“ETF”) and 21.43% invested in the securities of Vanguard Short-Term Investment-Grade Admiral 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 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 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 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.

## 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 gift annuity agreement forms used by the fund for gift annuities issued in New York during the examination period noted that in all 7 instances, the Fund used gift annuity agreement forms that differed from the gift annuity agreements filed with the Superintendent.

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were 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.

The examiner’s review of 25 gift annuity agreements issued in New York during the examination period revealed that in all instances the Fund used annuity rates that exceeded the rates recommended by the American Council on Gift Annuities.

The examiner recommends that the Fund not exceed the maximum rates recommended by the American Council on Gift Annuities.

## 7. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2015 state, in part:

(10) All amounts are to be reported based upon annuities issued in all states, except for states that mandate a legally required segregated and distinct trust account for that particular state's annuitants (e.g., California).

The Instructions for the Exhibit of Annuities in Force section of the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2015 state, in part:

**IMPORTANT NOTE:** For all calendar years (Columns 1 through 9), the number, annualized amount of payments on annuities in force, and reserve thereon should exclude California business and business from any state(s) that mandate a legally required segregated and distinct trust account for that particular state's annuitants.

The examiner's review of the Fund's reserve listing provided in conjunction with its 2015 Annual Statement revealed that the Fund included 63 annuities issued in California with total reserves of \$1,204,279 as of December 31, 2015. The examiner determined that the Fund failed to adhere to the Department's annual statement instructions which state that the Fund is required to report any amounts for its annuity program, exclusive of annuities issued in states such as California that mandate a legally required segregated and distinct trust account.

The Department's instructions for completing the Income section of the New York State Segregated Gift Annuity Fund Annual Statement for the years ended December 31, 2015, 2014, 2012 and 2011 state, in part, that:

Line 1 'Current Year' Column: Should reflect the gross amount of gifts received during the year conditioned upon annuity agreements.

The examiner traced the amounts reported for gifts received by the Fund during the examination period as reported in the income section of its annual statements for each of the years

under review. The examiner determined that the amount reported for gifts received was understated in its 2015 annual statement by \$126,000, while the amount reported in its 2014 annual statement was overstated by \$126,000. The examiner also determined that the Fund overstated in its annual statements the amounts reported for gifts received by \$289,192 as of year-end 2012 and by \$27,000 as of year-end 2011.

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2015 for Schedule B - Money Market Mutual Funds state (in part):

“Mutual funds (funds that invest in stocks, bonds, options or currencies) are to be reported in Schedule A – Part 3 - Common Stocks.”

The Fund reported cash on deposit of \$201,388 in Schedule C its 2015 Annual Statement. The examiner determined that the amount reported as cash on deposit was instead amounts in the Federated Government Obligations Fund, a bond mutual fund, and therefore should have been reported instead as common stock, namely as an item in Schedule A, Part 3, in the 2015 Annual Statement.

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

## 8. 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's board of directors review the activities of the Fund at least annually and note the same in the minutes.	5
B	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
C	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
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 Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent.	8
F	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.	8

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	The examiner recommends that the Fund not exceed the maximum rates recommended by the American Council on Gift Annuities.	8
H	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	10

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. 31448

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:

**JUAN SOTO**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
AMERICAN FRIENDS OF MAGEN DAVID ADOM**

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

