



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

MUSEUM OF JEWISH HERITAGE: A LIVING MEMORIAL  
TO THE HOLOCAUST, INC

CONDITION:

DECEMBER 31, 2017

DATE OF REPORT:

AUGUST 29, 2018

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EXAMINER:

HASAN AHMED

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

November 13, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31739, dated April 13, 2018 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Museum of Jewish Heritage: A Living Memorial to the Holocaust, Inc. hereinafter referred to as the "Fund." The Fund's home office is located at 36 Battery Place, New York, NY 10280.

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 trustees, or a committee thereof, review the activities of the Fund at least annually and note the same in the minutes. (See item 3C of this 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 3C 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 3C 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 not to diversify, 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 4 of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement that refers 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 4 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 5 of this report)

The examiner recommends that upon the death of an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract. (See item 5 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 2013. This examination covers the period from October 25, 2013 through December 31, 2017. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2017 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, 2017 to determine whether the Fund's filed 2017 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

#### A. History

The Museum of Jewish Heritage: A Living Memorial to the Holocaust, Inc. (the “Museum”) was created for the purposes of providing a space for visitors from around the world to come together and discover Jewish life before, during and after the Holocaust. The Museum established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1997. A permit was granted to the museum, by the Department on October 25, 2013, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

#### B. Services

Bank of America Merrill Lynch (Bank of America) is the custodian of the Fund's assets. Bank of America also performs investment management, benefit payments to annuitants, annuity calculations and preparation of the annual statement. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund

#### C. Corporate Governance

The management of the Museum and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to a minimum of 5, and a maximum of 36, elective trustees. As of December 31, 2017, the board consisted of 33 trustees. The trustees may elect or appoint a Chairman, Vice Chairmen, Founding Chairmen, Honorary Chairmen, a Secretary, a Treasurer, Counsel, a Director, and such other officers as they may determine. The nomination and election procedures of the trustees and their term of office are set by the by-laws.

The examiner requested the board of trustees’ minutes for the examination period (2013-2017). The Fund provided the examiner with a copy of the board minutes for the board meetings conducted in 2015 and 2017 only. The examiner reviewed the board minutes to determine whether the board approved the activities of the Fund during the examination period. The minutes did not contain any indication that the board approved the activities of the Fund during the examination period.

The examiner recommends that the Fund's board of trustees, or a committee thereof, review the activities of the Fund at least annually and note the same in the minutes.

The examiner reviewed the meeting minutes provided by the Fund 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.

The examiner reviewed the investment transactions for the period under examination and noted that the Fund did not obtain broker's advices 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.

#### 4. SIGNIFICANT FINANCIAL INFORMATION

The following summary table indicates the growth (decline) in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

|  | <u>December 31,</u><br><u>2013</u> | <u>December 31,</u><br><u>2017</u> | <u>Increase</u><br><u>(Decrease)</u> |
|--|------------------------------------|------------------------------------|--------------------------------------|
| Admitted assets                            | <u>\$355,760</u>                   | <u>\$179,414</u>                   | <u>\$ (176,346)</u>                  |
| Liabilities                                | <u>\$340,443</u>                   | <u>\$ 75,215</u>                   | <u>\$ (265,228)</u>                  |
| Minimum required fund balance              | \$ 34,044                          | \$ 7,521                           | \$ (26,523)                          |
| Excess fund balance (surplus)              | <u>(18,728)</u>                    | <u>96,678</u>                      | <u>115,406</u>                       |
| Total annuity fund balance                 | <u>\$ 15,317</u>                   | <u>\$104,199</u>                   | <u>\$ 88,882</u>                     |
| Total liabilities and annuity fund balance | <u>\$355,760</u>                   | <u>\$179,414</u>                   | <u>\$(176,346)</u>                   |

The decrease in assets and liabilities reflects a decrease in the total number of annuities in force. The increase in total annuity fund balance is due to the release of reserves based on the termination of annuities. Annuities decreased from 13 with annual payment amounts of \$84,464 as of December 31, 2013 to a total of 7 with annual payment amounts of \$12,730 as of December 31, 2017.

The Fund's admitted assets, as of December 31, 2017, were invested mainly in common stocks (99.96%).

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 2017 annual statement, the Fund reported 19.24% of its admitted assets invested in: the securities of DOUBLELINE TOTAL RETURN; 17.13% in the securities of BLACKROCK EQTY DIVIDEND; 14.62% in the securities of ISHARES TR RUSSELL 2000;

and 12.75% in the securities of JP MORGAN STRATEGIC. The Fund's current concentration in these funds could make it less likely that the Fund's other assets can provide a variability to offset the risks inherent in the these securities.

Based upon the concentrations in the above 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 not to diversify, 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 Investment Strategy Statement'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's review of the Fund's Investment Strategy Statement showed that the it does not contain reference to the prudent investor standard, as specified in Section 1110(b) of the New York Insurance Law.

The examiner recommends that the Fund adopt an Investment Strategy Statement that refers 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.

## 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 a sample of four gift annuity agreements issued in New York during the examination period revealed that in four out of the four cases (100%), 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 reviewed a sample of ten (10) terminated annuity files in New York to determine whether adequate documentation was maintained for the terminated annuity files. The examiner’s review revealed that in one out of the ten cases (10%) reviewed, the Fund did not obtain a copy of the death certificate to confirm termination of the annuity contract.

The examiner recommends that upon the death of an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.

## 6. 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 trustees, or a committee thereof, review the activities of the Fund at least annually and note the same in the minutes.  | 6                  |
| 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.  | 6                  |
| C           | 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.   | 6                  |
| 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 not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.  | 8                  |
| E           | The examiner recommends that the Fund adopt an Investment Strategy Statement that refers 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. | 8                  |

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| F           | 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.                   | 9                  |
| 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 upon the death of an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract. | 9                  |

Respectfully submitted,

\_\_\_\_\_/s/  
Hasan Ahmed  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
Hasan Ahmed

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

*APPOINTMENT NO. 31739*

*NEW YORK STATE*

***DEPARTMENT OF FINANCIAL SERVICES***

*I, MARIA T. VULLO, 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:*

***HASAN AHMED***

*as a proper person to examine the affairs of the*

***SEGREGATED GIFT ANNUITY FUND OF THE  
MUSEUM OF JEWISH HERITAGE: A LIVING MEMORIAL TO THE HOLOCAUST***

*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 13th day of April, 2018*

*MARIA T. VULLO  
Superintendent of Financial Services*

*By:*

*Mark McLeod*

*MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU*

