



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY
TO ANIMALS**

AS OF December 31, 2020

EXAMINER: Chacko Thomas

DATE OF REPORT: January 21, 2022

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
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SEGREGATED GIFT ANNUITY FUND
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AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS
AS OF
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CHACKO THOMAS

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

August 10, 2022

Honorable Adrienne A. Harris
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 32212, dated January 4, 2022 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the American Society for the Prevention of Cruelty to Animals. The Fund's home office is located at 520 Eighth Avenue, 7th Floor, New York, NY 10018.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials. (See item 4A of this report)

The examiner's review of a sample of transactions did not reveal any differences which materially affected the Fund's financial condition as presented in its financial statements contained in the December 31, 2020 filed annual statement. (See item 5 of this report)

The examiner's review of the Fund's treatment of annuitants did not reveal significant instances which deviated from the New York Insurance Law, Department regulations and circular letters and the operating rules of the Fund. (See item 6 of this report)

2. SCOPE OF EXAMINATION

This Scope of Examination summarizes the nature of the Superintendent of the Department of Financial Services' (the "Department" or "DFS") examination and assessment of the American Society for the Prevention of Cruelty to Animals (the "Fund") through which American Society for the Prevention of Cruelty to Animals (the "ASPCA") provides annuity benefits.

The prior examination was conducted as of December 31, 2015. This examination covers the period from January 1, 2016 through December 31, 2020. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2020 but prior to the date of this report (i.e., the completion date of the examination).

This report outlines DFS's supervisory expectations or priorities and articulates DFS's general views regarding the exceptional circumstances where the ASPCA or Fund, in relation to their annuity activities, could have better adhered to statutory standards and guidance or practices or methods of dealing that are regularly observed among similar circumstances.

The Fund is subject to the solvency and examination requirements of New York Insurance Law § 1110 and of New York Insurance Law articles 1, 2, 3, 25, and 74.

The investment of the Fund's required admitted assets is subject to N.Y. Estates, Powers and Trust Law § 11-2.3. The investment of the remainder of the Fund's admitted assets is subject to N.Y. Not-for-Profit Corporation Law Article 5-a. Both establish that the trustees are to invest the assets consistent with prudent person standards.

The examination comprised a verification of assets and liabilities as of December 31, 2020 to determine whether the Fund's filed 2020 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 violations, recommendations and/or comments contained in the prior report on examination. The results of such review are contained in item 7 of this report.

3. DESCRIPTION OF FUND

A. History

The American Society for the Prevention of Cruelty to Animals is North America's first humane organization established in the Western hemisphere. It has been headquartered in New York City since its founding in 1866 where it maintains a strong local presence. The ASPCA provides effective means for the prevention of cruelty to animals throughout the United States. The ASPCA's activities are focused on four primary program areas: anti-cruelty to animals, animal health services, community outreach, public awareness communications, and grants and sponsorships to other animal welfare-related organizations. The ASPCA established the Fund to issue gift annuity agreements in return for gifts from donors in 1992. The Superintendent of Insurance granted to the ASPCA a Charitable Annuity Society special permit on March 5, 1996.

B. Structure

The management of the ASPCA and the Fund and all of its affairs and property are entrusted to a board of directors. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

C. Assets under the Board of Directors

As of the December 31, 2020 audited financial statement, the ASPCA's Board of Directors oversaw an endowment comprising \$12,629,150 in total assets. The ASPCA held investments totaling \$305,088,304 as of December 31, 2020. The Fund, as of December 31, 2020, held total admitted assets of \$10,592,910.

D. Third-party Payment Service Provider

State Street Global Advisors Trust Company ("State Street") is the custodian and investment manager. State Street also performs all administrative functions on the Fund's behalf, such as accounting, investments, and benefit payments. Landon Olbricht, CPA, aids in the completion of the New York annual filing, and is paid on a per filing basis.

4. INVESTMENT REVIEW

A. Investment Policy Statement

New York Estate Powers and Trust Law § 11-2.3(b)(3)(A) requires trustees to “pursue an overall investment strategy to enable the trustee[s] to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio.”

New York Not-for-Profit Corporation Law § 552(e)(2) requires institutions to adopt “an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.” New York Not-for-Profit Corporation Law § 552(f) provides that each “institution shall adopt a written investment policy setting forth guidelines on investments ... and delegation of management and investment functions in accord with the standards of this article.”

State Street is the Fund’s investment adviser and custodian.

State Street prepared and provided a form investment policy statement (“IPS”) to the Fund. The Fund adopted that form as its IPS.

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.

5. ASSETS AND LIABILITIES SUMMARY

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

	December 31, <u>2015</u>	December 31, <u>2020</u>	<u>Increase</u>
Admitted assets	<u>\$8,616,873</u>	<u>\$10,592,910</u>	<u>\$1,976,037</u>
Liabilities	<u>\$5,526,115</u>	<u>\$ 5,940,805</u>	<u>\$ 414,690</u>
Minimum required fund balance	\$ 551,850	\$ 592,382	\$ 40,532
Excess fund balance (surplus)	<u>2,538,908</u>	<u>4,059,723</u>	<u>1,520,815</u>
Total annuity fund balance	<u>\$3,090,758</u>	<u>\$ 4,652,105</u>	<u>\$1,561,347</u>
Total liabilities and annuity fund balance	<u>\$8,616,873</u>	<u>\$10,592,910</u>	<u>\$1,976,037</u>

The increase in assets and annuity fund balance is mainly due to the income from investments. Annuities decreased from 216 with annual payment amounts of \$825,941 as of December 31, 2015, to a total of 195 with annual payment amounts of \$563,093 as of December 31, 2020.

The Fund's admitted assets, as of December 31, 2020, were invested mainly in equity securities (98.72%).

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.

Based upon the sample reviewed, no significant findings were noted.

7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments contained in the prior report on examination and the subsequent actions taken by the Fund in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain statements signed by every board member indicating that they received and read the prior report on examination.</p> <p>The Fund obtained statements signed by the board members indicating that they received and reviewed the prior report on examination.</p>
B	<p>The examiner recommends that the Fund obtain statements signed by every board member indicating that they received and read the prior report on examination</p> <p>The Fund obtained statements signed by the board members indicating that they received and reviewed the prior report on examination</p>
C	<p>The examiner recommends that the board of directors, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.</p> <p>The review of the minutes indicated that the committee approves the investment transactions.</p>
D	<p>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 present and future.</p> <p>The Fund relied on the SOC 1 Report filed by the bank for the reconciliations of the investment transactions.</p>
E	<p>The examiner recommends that the Fund diversify its investment holdings.</p> <p>The Department no longer provides guidance on diversification.</p>
F	<p>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</p>

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 adopted an investment policy statement that referred to the prudent investor standard.

8. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.	5

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ADRIENNE A. HARRIS, 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:

CHACKO THOMAS

as a proper person to examine the affairs of the

***SEGREGATED GIFT ANNUITY FUND OF THE
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS***

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 4th day of January, 2022

*ADRIENNE A. HARRIS
Acting Superintendent of Financial Services*

By:



*MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU*

