



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
NEW YORK BOTANICAL GARDEN

CONDITION:

DECEMBER 31, 2016

DATE OF REPORT:

OCTOBER 20, 2017

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

ELKIN WOODS

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

November 28, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31606, dated April 20, 2017 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the New York Botanical Garden, hereinafter referred to as “the Fund,” at its home office located at 2900 Southern Boulevard, Bronx, New York 10458.

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

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain and maintain signed statements from the board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining and maintaining the signature of each board member indicating that they received and read the prior report on examination. (See item 4 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 6 of this report)

In aggregate, the Fund's calculated reserves are greater than the required minimum with the individual reserves remaining constant from year to year. However, given the Fund's reserve methodology, it is possible that the Fund's liabilities will exceed the available assets in the future. As such, the Fund may want to consider updating its current reserve methodology. (See item 7 of this report)

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements. (See item 8 of this report)

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (See item 8 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2011; this examination covers the period from January 1, 2012 through December 31, 2016. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2016, 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, 2016 to determine whether the Fund's filed 2016 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 violation and recommendations contained in the prior report on examination. The results of such review are contained in item 9 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 New York Botanical Garden (the “Organization”) is organized for the purpose of establishing and maintaining a botanical garden, museum and arboretum. The Organization has been issuing gift annuity agreements since 1993. A special permit was granted to the Organization by the Department on April 10, 2003, 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. Merrill Lynch is the custodian of the Fund’s assets and also provides administrative services on behalf of the Fund. Those services include: record keeping, administration, and investment advisory services.

The management of the Organization and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to 60 regular voting managers. As of December 31, 2016, the board consisted of 52 elected managers and seven ex-officio members. The managers elect a Chair, one or more vice-chairs, President, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, and other officers as the board of managers may appoint. The nomination and election procedures of the managers and their terms of office are set by the By-Laws.

4. CORPORATE GOVERNANCE

The examiner requested the board of trustees' minutes to determine whether the board approves the purchases and sales of investments during the examination period. The examiner's review of the board minutes revealed that the minutes did not contain any information pertaining to the activities of the Fund.

The examiner recommends that the Fund's board of trustees 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.

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

“(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 Fund was unable to provide statements signed by each board member indicating that they received and read the prior report on examination.

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain and maintain signed statements from the board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining and maintaining the signature of each board member indicating that they received and read the prior report on examination.

5. 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> <u>2011</u>	<u>December 31,</u> <u>2016</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$3,612,223</u>	<u>\$4,300,285</u>	<u>\$ 688,062</u>
Liabilities	<u>\$2,853,308</u>	<u>\$3,681,328</u>	<u>\$ 828,020</u>
Minimum required fund balance	\$ 285,331	\$ 368,133	\$ 82,802
Excess fund balance (surplus)	<u>473,584</u>	<u>250,824</u>	<u>(222,760)</u>
Total annuity fund balance	<u>\$ 758,915</u>	<u>\$ 618,957</u>	<u>\$(139,958)</u>
Total liabilities and annuity fund balance	<u>\$3,612,223</u>	<u>\$4,300,285</u>	<u>\$ 688,062</u>

The increase in assets and liabilities reflects an increase in the total number of annuities in force. Annuities increased from 90 with annual payment amounts of \$302,809 as of December 31, 2011 to a total of 104 with annual payment amounts of \$329,594 as of December 31, 2016.

The decrease in excess fund balance during the examination period was due to a net increase in actuarial reserves of \$528,679 in 2012. This increase was the result of an upward revision in reserves in 2012 that stemmed from the Fund's own internal review. This contributed to a change in annuity fund balance of \$(457,015) in 2012. The Fund received gifts totaling \$60,000 in 2012.

The Fund's admitted assets, as of December 31, 2016, were mainly invested in bonds (97.36%). All bonds held were investment grade.

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 15 annuity contracts terminated revealed that in 3 of the 15 cases (20%) 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.

7. ANNUITY RATES

The examiner's review of the Fund's reserves revealed the following concerns:

- It appears the Fund pulled reserve factors from the "Gift 3" document on the Department's website. These factors are only for annuities issued in the year specified by the document.
- The Fund does not properly reserve for last survivor annuities. The calculation of only taking a mean annuity between the two lives plus one half an additional payment is not adequate.
- The Fund calculates reserves as of the issue date of the contract and not from the valuation date.

In aggregate, the Fund's calculated reserves are greater than the required minimum with the individual reserves remaining constant from year to year. However, given the Fund's reserve methodology, it is possible that the Fund's liabilities will exceed the available assets in the future. As such, the Fund may want to consider updating its current reserve methodology.

8. ANNUAL STATEMENT REPORTING

The Fund reported \$95,381 in investment income as of December 31, 2015 in Exhibit 1 – Verification of Investment Income and line 2 of the income section in its filed 2015 annual statement. The examiner determined that the Fund should instead have reported \$78,322 in investment income.

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

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the years ended December 31, 2015 and 2016, namely Schedule C – Cash, Money Market and Certificates of Deposit, states the following, in part:

“Column 6: Balance - Report the ending balance in the depository's account as of December 31 of the current year.

Report the total balance of all open depository accounts on the line, “Total Cash on Deposit”. The total amount on this line should agree with the amount reported on Page 2, Line 6.2.”

The Fund reported \$497,868 and \$86,603 in cash on deposit on line 6.2 of the assets section of its filed 2015 and 2016 annual statements, respectively. The Fund reported \$0 in cash on deposit on column 6 of Schedule C, Cash, Money Market and Certificates of Deposit for both 2015 and 2016. The Fund should have reported \$497,868 and \$86,603 on column 6 of Schedule C, Cash, Money Market and Certificates of Deposit for 2015 and 2016.

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.

9. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Fund obtain adequate proof of death, such as a certified copy of the death certificate, and maintain such proof in the annuitant's file.</p> <p>The Fund failed to take corrective action in response to this prior report recommendation.</p>
B	<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 failed to take corrective action in response to this prior report violation.</p>
C	<p>The examiner recommends that the Fund obtain statements signed by every board member, indicating that they received and read the report on examination.</p> <p>The Fund failed to take corrective action in response to this prior report recommendation.</p>
D	<p>The examiner recommends that the Fund issue annuities with rates that adhere to the maximum rates recommended by the American Council on Gift Annuities.</p> <p>The Fund utilized rates that adhered to the maximum rates recommended by the American Council on Gift Annuities.</p>

10. 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 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 Fund violated Section 312(b) of the New York Insurance Law by failing to obtain and maintain signed statements from the board members indicating that they received and read the prior report on examination.	5
D	The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining and maintaining the signature of each board member indicating that they received and read the prior report on examination.	5
E	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.	7
F	In aggregate, the Fund's calculated reserves are greater than the required minimum with the individual reserves remaining constant from year to year. However, given the Fund's reserve methodology, it is possible that the Fund's liabilities will exceed the available assets in the future. As such, the Fund may want to consider updating its current reserve methodology.	8
G	The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.	9
H	The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.	9

APPOINTMENT NO. 31606

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:

ELKIN WOODS

as a proper person to examine the affairs of the

***SEGREGATED GIFT ANNUITY FUND OF THE
NEW YORK BOTANICAL GARDEN***

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 20th day of April, 2017

*MARIA T. VULLO
Superintendent of Financial Services*

By:

Mark McLeod

*MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU*

