



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
MANHATTAN COLLEGE

CONDITION:

DECEMBER 31, 2017

DATE OF REPORT:

JUNE 14, 2018

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

PHILIP YOUSSEF

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Linda A. Lacewell
Superintendent

December 6, 2019

Honorable Linda A. Lacewell
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31738, 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 Manhattan College, hereinafter referred to as “the Fund,” at its home office located at 4513 Manhattan College Parkway, Riverdale, NY 10471.

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 Fund violated Section 312(b) of the New York Insurance Law by failing to obtain 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 the signature of each board member indicating that they received and read the prior report on examination. (See item 3C of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement (“ISS”) 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 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 risk, return, and time horizon parameters. (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 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 6 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2012. This examination covers the period from January 1, 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. The examiner reviewed the prior report on examination which did not contain any violations, recommendations or comments.

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 Manhattan College (the “College”) is organized for the purpose of providing a contemporary, person-centered educational experience characterized by high academic standards, reflection of faith, values and ethics, and life-long career preparation. The College established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1994. A special permit was granted to the college, by the Department on November 21, 2003, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

B. Services

Manhattan College uses the services of TD Bank for the management and investment functions of the charitable gift annuity fund. The investments manager abides by the College Board of Trustees investment objectives.

TD Bank is responsible for providing Manhattan College with various reports, including on its reserves. TD Bank also processes and distributes quarterly payments to annuitants. Annually, TD Bank will provide tax information needed by annuitants to prepare their tax returns.

All other operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund, including the issuance of gift annuities and the preparation of the annual statement.

TD Bank is the Fund’s custodian bank.

C. Corporate Governance

The management of the College and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to no more than 37 regular voting trustees. As of December 31, 2017, the board consisted of 31 trustees. The trustees elect a chairman of the board, two vice chairs, president, treasurer, and a secretary. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

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 failed to obtain 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 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 the signature of each board member indicating that they received and read the prior report on examination.

The examiner’s review of the Fund’s Investment Strategy Statement revealed that it failed to refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts 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.

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> <u>2012</u>	<u>December 31,</u> <u>2017</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$1,650,453</u>	<u>\$1,331,722</u>	<u>\$(318,731)</u>
Liabilities	<u>\$1,394,041</u>	<u>\$ 780,488</u>	<u>\$(613,553)</u>
Minimum required fund balance	\$ 139,404	\$ 78,048	\$ (61,356)
Excess fund balance (surplus)	<u>117,008</u>	<u>473,186</u>	<u>356,178</u>
Total annuity fund balance	<u>\$ 256,412</u>	<u>\$ 551,234</u>	<u>\$ 294,822</u>
Total liabilities and annuity fund balance	<u>\$1,650,453</u>	<u>\$1,331,722</u>	<u>\$(318,731)</u>

The decrease in assets and liabilities reflects a decrease in the total number of annuities in force. Annuities decreased from 65 with annual payment amounts of \$163,031 as of December 31, 2012 to a total of 40 with annual payment amounts of \$76,689 as of December 31, 2017. The increase in annuity fund balance comes from gains in the market value of the Fund's investments.

The Fund's admitted assets, as of December 31, 2017, were invested mainly in common stocks (88.71%) and money market mutual funds (4.51%).

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: 36.67% of its admitted assets invested in Spdr S&P 500 ETF Trust, 11.87% in Ishares Iboxx USD Investment Grade Corporate Bond ETF, 11.67% in Ishares Msci EAFE ETF and 11.57% in Ishares 7-10 Year Treasury Bond ETF. The Fund's current concentration in these ETF's could make it highly unlikely that the Fund's other assets can provide a variability to offset the risks inherent in these funds.

Based upon the concentrations in the above ETF's, 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.

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 4 newly issued gift annuities by the Fund during the examination period noted that in those 4 newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. The deviating form number found in the sample is 2J-SP-D-NY.

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.

6. 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, 2013 and December 31, 2014, namely, the income section, states the following, in part:

“Line 3: “Current Year” Column: Should agree with the sum of Schedule A, Part 5, Column 8, Totals - Bonds and Stocks plus Schedule D – Part 3, Column 8, Totals – Other Invested Assets.”

In the Fund's filed 2013 annual statement, it reported realized capital gains of \$400,933 in Line 3 of the Income section. In Schedule A, Part 5, Column 8, the Fund reported \$0 in realized capital gains. The examiner's review of the filed 2014 annual statement revealed that the Fund reported \$8,391 in realized capital gains in Line 3 of the Income section and \$0 in Schedule A, Part 5, Column 8.

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2014, 2015, 2016, and 2017, namely, Note 2 of the Notes to the Annual Statement, states the following, in part:

“Annuity Payments to donors and others

Generally, it is expected that the amount of annuity payments that the Segregated Gift Annuity Fund makes during the year will be approximately the amount calculated by comparing the Annualized Amount of Annuity Payments at the beginning of the year and the amount outstanding at the end of year, as reported in the Exhibit of Annuities In Force (Page 3, Columns 3 and 9). If the amount reported on Page 3, Line 8 is significantly different than the amount so calculated, OR if the Society reports "0" on Page 3, Line 8, provide an explanation at this Note.”

The examiner noted the following discrepancies between the annuity payments reported on Page 3, Line 8 of the Fund's filed annual statement and the annuity payments reported in the Exhibit of Annuities In Force, Page 3, Columns 3 and 9:

Year	2014	2015	2016	2017
Annuity Payments Per P. 3, Line 8 (Disbursements Section)	\$66,575	\$62,107	\$61,567	\$67,028
Annuity Payments, Beginning of Year, Exhibit of Annuities In-Force (P. 3, Col. 3)	\$81,543	\$85,105	\$71,858	\$75,458
Annuity Payments, End of Year, Exhibit of Annuities In-Force (P. 3, Col. 9)	\$85,105	\$71,858	\$75,458	\$76,689

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2013, namely, Income and Disbursements page line 15, Annuity Fund Balance at end of year, states the following, in part:

"...Line 15...

Current Year" Column: Must equal the sum of Lines 13 and 14, as well as Page 2, Line 20.3: Prior Year" Column: Report prior year's Annuity Fund Balance at end of year."

The Fund reported \$1,223,303 as its Annuity Fund Balance as of year-end 2013 on line 15 of the Income and Disbursements page of the annual statement. In the liabilities section, line 15, the Fund reported an Annuity Fund Balance of \$1,158,192.

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2013, 2014, 2016 and 2017, namely Line 1 of Exhibit 1 – Verification of Investment Income states the following, in part:

"Line 1...

...Column 6 should equal the sum of: (1) the amount reported for Totals in Schedule A, Part 2, Column 9, and (2) the amount reported for Totals in Schedule A, Part 3, Column 9..."

The examiner noted the following differences between the dividends received reported in Exhibit 1, Line 1, Column 6 of the Fund's filed annual statement and the dividends reported in Schedule A, Part 3, Column 9:

Year	2013	2014	2016	2017
Dividends Received, Exhibit 1, Line 1, Column 6	\$30,611	\$23,159	\$25,114	\$24,320
Dividends Received, Schedule A, Part 3, Column 9	\$0	\$24,306	\$23,367	\$0

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2015, namely Line 5 of Exhibit 1 – Verification of Investment Income states the following, in part:

“...Line 5...

... Column 6 should equal the amount reported for Sub-Totals - Stocks in Schedule A, Part 4, Column 7.”

A review of the Fund's filed 2015 annual statement showed that it reported \$0 in accrued income and dividends paid in 2015. However, in Schedule A, Part 4, Column 7, the Fund reported \$24,850 in accrued income and dividends paid. This is the same amount as the Income received during the year on Schedule A, Part 3, Column 9.

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.

7. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations 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 obtain signed statements from the board members indicating that they received and read the prior report on examination.	5
B	The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they received and read the prior report on examination.	5
C	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
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.	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

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
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
G	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.	11

Respectfully submitted,

/s/

Philip Youssef
Insurance Examiner

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

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

/s/

Philip Youssef

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 31738

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:

PHILIP YOUSSEF

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
MANHATTAN COLLEGE**

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:

mal mcleod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

