



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
MARIST COLLEGE**

AS OF December 31, 2019

EXAMINER: Moses Mugulusi

DATE OF REPORT: November 6, 2020

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

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MOSES MUGULUSI

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

August 2, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32134, dated September 11, 2020 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Marist College. The Fund's home office is located at 3399 North Road, Poughkeepsie, New York 12601

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 have received and read any current or future filed report on examination. (See item 3E of this report)

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 4A 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 prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (See item 7 of this report)

2. SCOPE OF EXAMINATION

This Scope of Examination summarizes the nature of the Superintendent of the Department of Financial Services (“Department”, or “DFS”) examination and assessment of the Marist College Segregated Annuity Fund (the “Fund”) through which Marist College (the “College”) provides annuity benefits.

The prior examination was conducted as of December 31, 2014. This examination covers the period from January 1, 2015 through December 31, 2019. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2019 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 College or Fund, in relation to their annuity activities, could have better satisfied statutory standards or adhered to 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, 2019 to determine whether the Fund’s filed 2019 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 8 of this report.

3. DESCRIPTION OF FUND

A. History

Marist College was chartered in 1946 and is organized for the purpose of providing education on the college level to members of the Institute of Marist Brothers, through courses leading to the degree of Bachelor of Arts and to prepare them for teaching in secondary schools of the Institute. The College began as a school for training of future Marist Brothers, but has developed into a College of art and sciences dedicated to helping students develop the intellect and character required for enlightened, ethical and productive lives in the global community of the 21st century. The College established the Fund to issue gift annuity agreements in return for gifts from donors in 2008. The Superintendent of Insurance granted to the College a Charitable Annuity Society special permit on March 14, 2005.

B. Structure

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

C. Assets under the Board of Trustees

As of the June 30, 2019, audited financial statement, the College's Board of Trustees oversaw an endowment \$232,891,417 in total assets. The Fund, as of December 31, 2019, held total admitted assets of \$555,196.

D. Third-party Payment Service Provider

TD Bank is the custodian and investment manager. TD Bank handles the Fund's investments, makes annuity payments to annuitants and provides other general gift management services. All other operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

E. Oversight Structure

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 examiner’s review revealed that 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 have received and read any current or future filed report on examination.

4. INVESTMENT REVIEW

A. Monitoring

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 Fund responded that there are no minutes that relate specifically to 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.

5. ASSETS AND LIABILITIES SUMMARY

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

	<u>December 31,</u> <u>2014</u>	<u>December 31,</u> <u>2019</u>	<u>Increase</u>
Admitted assets	<u>\$84,866</u>	<u>\$555,196</u>	<u>\$470,330</u>
Liabilities	<u>\$47,802</u>	<u>\$432,196</u>	<u>\$384,394</u>
Minimum required fund balance	\$ 5,313	\$ 43,220	\$ 37,907
Excess fund balance (surplus)	<u>31,752</u>	<u>79,780</u>	<u>48,028</u>
Total annuity fund balance	<u>\$37,065</u>	<u>\$123,000</u>	<u>\$ 85,935</u>
Total liabilities and annuity fund balance	<u>\$84,867</u>	<u>\$555,196</u>	<u>\$470,329</u>

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 2 with annual payment amounts of \$5,313 as of December 31, 2014 to a total of 11 with annual payment amounts of \$43,220 as of December 31, 2019.

The Fund's admitted assets, as of December 31, 2019, were invested mainly in bonds (28.92%) and equity securities (62.85%). 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.

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 3 newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. The deviating form numbers found in the sample are 1da-I-NY and 2J-DFlex-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.

7. ANNUAL STATEMENT REPORTING

The examiner reviewed the Fund's filed annual statements for the examination period. Based upon his review, the examiner noted the following:

1. The instructions for Exhibit 2 of the annual statement state the following, in part:

“Column 3 Cost

Report the amount from the “Cost” column of the various Schedules for the current year and prior year in each of the categories...”

The examiner reviewed the annual statement for 2018. In the Fund's filed 2018 annual statement, it reported \$30,416 as the prior year (2017) cost for its bonds and \$65,066 as the prior year (2018) cost for common stocks. In the filed 2017 annual statement, the Fund reported \$28,095 as the cost of bonds and \$57,150 as the cost of common stocks. The Fund should have reported \$30,416 as the cost of bonds and \$65,066 as the cost of common stocks in 2017.

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.

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comment 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 examiner recommended that the board of trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.</p> <p>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 Fund responded that there are no minutes that relate specifically to the Fund.</p>
B	<p>The Fund was underfunded by \$15,134 as of December 31, 2014.</p> <p>The examiner reviewed the records of the Fund's admitted assets for the current exam period and it was noted that the assets were \$555,196. The Fund's minimum required admitted assets as of December 31, 2019 was \$475,416. The Fund was properly funded at the end of the examination period.</p>
C	<p>The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain admitted assets at least equal to the greater of the sum of its reserves on its outstanding agreements and a surplus of ten percent of such reserves, or the amount of one hundred thousand dollars.</p> <p>The examiner reviewed the records of the Fund's admitted assets for the current exam period and it was noted that the assets were \$555,196. The Fund's minimum required admitted assets as of December 31, 2019 was \$475,416. The Fund was properly funded at the end of the examination period.</p>
D	<p>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.</p> <p>The Department no longer provides guidance on diversification.</p>

<u>Item</u>	<u>Description</u>
E	<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 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.</p> <p>The examiner's review revealed that there is an Investment Strategy Statement in place.</p>
F	<p>The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms which were not filed with the Superintendent.</p> <p>The examiner's review of the annuity agreement forms issued during the examination period revealed that the policy forms used by the Fund were not filed with the Superintendent as required by Section 1110(a) of the New York Insurance Law. A similar violation appears in this report on examination.</p>
G	<p>The examiner recommended that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.</p> <p>The examiner's review of the annuity agreements forms issued during the examination period revealed that the policy forms used by the Fund were not filed with the Superintendent as required by Section 1110(a) of the New York Insurance Law. A similar recommendation appears in this report on examination.</p>
H	<p>The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.</p> <p>The examiner reviewed the Fund's Annual Statements for the period under examination, January 1, 2015 through December 31, 2019. The examiner noted that the Fund failed to properly complete Page 3, 'EXHIBIT OF ANNUITIES IN FORCE' columns 2, 4 and 6' and those columns were left blank. However, there was enough data in the filed annual statements to remove the finding for this issue.</p>

<u>Item</u>	<u>Description</u>
I	<p data-bbox="396 268 1425 336">The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.</p> <p data-bbox="396 378 1425 592">The examiner reviewed the Fund's Annual Statements for the period under examination, January 1, 2015 through December 31, 2019. The examiner noted that the Fund failed to properly complete Page 3, 'EXHIBIT OF ANNUITIES IN FORCE' columns 2, 4 and 6' and those columns were left blank. However, there was enough data in the filed annual statements to remove the finding for this issue.</p>

9. 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 have received and read any current or future filed report on examination.	5
C	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.	6
D	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
E	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
F	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

Respectfully submitted,

_____/s/
Moses Mugulusi
Insurance Examiner

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

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

_____/s/
Moses Mugulusi

Subscribed and sworn to before me
this _____ day of _____

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, LINDA A. LACEWELL, 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:

MOSES MUGULUSI

as a proper person to examine the affairs of the

***SEGREGATED GIFT ANNUITY FUND OF THE
MARIST 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 11th day of September, 2020

*LINDA A. LACEWELL
Superintendent of Financial Services*

By:



*MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU*

