

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
GENERAL SYNOD COUNCIL OF THE REFORMED CHURCH IN AMERICA

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

JULY 31, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
GENERAL SYNOD COUNCIL OF THE REFORMED CHURCH IN AMERICA  
AS OF  
DECEMBER 31, 2015

DATE OF REPORT:

JULY 31, 2016

EXAMINER:

ANN MARIE THOMPSON

## TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Fund	4
4.	Significant financial information	5
5.	Treatment of annuitants	7
6.	Annual statement reporting	8
7.	Barnabas Foundation	10
8.	Prior report summary and conclusions	11
9.	Summary and conclusions	12



## Department of Financial Services

**KATHY HOCHUL**  
Governor

**ADRIENNE A. HARRIS**  
Acting Superintendent

November 16, 2021

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

Madam:

In accordance with instructions contained in Appointment No. 31457 dated April 25, 2016 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the General Synod Council of the Reformed Church in America, hereinafter referred to as the “Fund.” The Fund’s home office is located at 475 Riverside Drive, New York, NY 10115.

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 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 Investment Strategy Statement's ("ISS") risk, return, and time horizon parameters. (See item 5 of this report)

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. (See item 5 of this report)

The Church violated Section 243.2(b)(1) of Department Regulation No. 152 by failing to maintain the policy record for each annuity contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. (See item 6 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)

The examiner recommends that the Fund prepare its annual statements according to the Department's annual statement instructions. (See item 7 of this report)

The Fund violated Section 1110(b)(ii) of the New York Insurance Law by failing to segregate its assets as a separate and distinct fund, independent of all other funds commingled at Barnabas. The examiner recommends that the Fund maintain proceeds of gifts in, and transact annuity payments directly from, accounts in its own name in a licensed bank or trust company. (See item 8 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2010. This examination covers the period from January 1, 2011 through December 31, 2015. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2015 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, 2015 to determine whether the Fund's filed 2015 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 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 General Synod Council of the Reformed Church in America (“Church”) is organized for the purpose, together with all other churches of Christ, of ministering to the total life of all people by preaching, teaching, and the proclamation of the gospel of Jesus Christ, the Son of God, and by all Christian good works. Under the provisions of its by-laws, the Church is permitted to issue gift annuity agreements and has done so since 1985. A special permit was granted to the Church by the Department on February 22, 2006, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

Prior to January 1, 2014, all operations related to the issuance, maintenance and settlement of annuity agreements, except annuity payments, were handled by the Fund. As of January 1, 2014, the Fund no longer accepted new charitable gift annuities directly.

The examiner noted that Barnabas Foundation, an Illinois non-profit foundation, was the custodian of the Fund’s assets. In mid-2012, Barnabas Foundation took over the investments and administration of the General Synod Council’s planned giving investments, including annuities, pooled income and unitrusts from the Fund’s prior custodian, State Street Bank. The Fund’s assets are invested in the Foundation’s Common Trust Fund according to the terms of the participation agreement. Further, the Foundation operates the Fund in accordance with the Declaration of Trust for Barnabas Foundation Common Trust Fund.

The management of the Church of the all of its affairs and property are entrusted to a board of trustees. As of December 31, 2015, the board consisted of 29 members. The board elects a President, Vice President, Secretary, Treasurer and other officers elected in accordance with the by-laws and the Book of Church Order (BCO). The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

#### 4. SIGNIFICANT FINANCIAL INFORMATION

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

	<u>December 31,</u> <u>2010</u>	<u>December 31,</u> <u>2015</u>	<u>(Decrease)</u>
Admitted assets	<u>\$1,919,235</u>	<u>\$1,229,555</u>	<u>\$(689,680)</u>
Liabilities	<u>\$1,467,645</u>	<u>\$1,017,687</u>	<u>\$(449,958)</u>
Minimum required fund balance	\$ 146,765	\$ 101,769	\$ (44,997)
Excess fund balance (surplus)	<u>304,825</u>	<u>110,099</u>	<u>(194,726)</u>
Total annuity fund balance	<u>\$ 451,590</u>	<u>\$ 211,868</u>	<u>\$(239,722)</u>
Total liabilities and annuity fund balance	<u>\$1,919,235</u>	<u>\$1,229,555</u>	<u>\$(689,680)</u>

The decrease in assets, liabilities and annuity fund balance is attributable to the change in fair market value of investments. The amount of annuities also decreased as contracts terminated. Annuities decreased from 167 with annual payment amounts of \$246,412 as of December 31, 2010 to a total of 123 with annual payment amounts of \$163,411 as of December 31, 2015.

The Fund's admitted assets, as of December 31, 2015, were invested mainly in various funds within the Barnabas Foundation Common Trust Fund (101.31%).

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 2015 annual statement, the Fund reported 17.66% of its admitted assets invested in the securities of the Barnabas Global Equities Common Trust Fund (“CTF”) and 15.05% invested in the Barnabas Opportunistic Fixed Income CTF. The Fund's current



concentration in these CTF's makes it highly unlikely that it could provide a variability to offset the risks inherent in the CTF.

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. A trustee using reasonable care, skill, and caution should diversify the Fund's assets. A diversification is proper when it disperses the investments' risk consistent with the Investment Strategy Statement's ("ISS") 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 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.

## 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.

11 NYCRR Section 243.2 (Insurance Regulation 152) states, in part:

“(b) Except as otherwise required by law or regulation, an insurer shall maintain:

- (1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer...”

The examiner reviewed a sample of 13 annuity agreements that were terminated during the examination period. In 4 cases reviewed, the Fund was unable to find the issued application for the terminated contract. As such, the examiner was unable to accurately confirm the issue state of the annuity agreement and the beneficiary of the proceeds.

The Fund violated Section 243.2(b)(1) of Department Regulation No. 152 by failing to maintain the policy record for each annuity contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer.

In 8 out of the 13 cases reviewed, the Fund failed to obtain a copy of the death certificate.

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. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the New York Segregated Gift Annuity Fund Annual Statement ("Annual Statement") state the following:

"Column 1 'Reserve' - The amount reported on Line 1 (i.e., the current year) should agree with the amount reported at Page 2, Line 10b."

The Fund reported \$1,017,687 in page 2, line 10b in its 2015 Annual Statement; however, the Fund reported a reserve of \$884,945 in column 1, line 1 in the exhibit of annuities in force of its 2015 Annual Statement which does not agree with the amount reported in page 2, line 10b. The examiner determined that the Fund should have reported reserve of \$1,017,687 in its exhibit of annuities in force.

The Fund reported \$1,073,818 in page 2, line 10b in its 2014 Annual Statement; however, the Fund reported a reserve of \$933,755 in column 1, line 1 in the exhibit of annuities in force of its 2014 Annual Statement which does not agree with the amount reported in page 2, line 10b. The examiner determined that the Fund should have reported reserve of \$1,073,818 in its exhibit of annuities in force.

The Fund reported \$1,207,623 in page 2, line 10b in its 2013 Annual Statement; however, the Fund reported a reserve of \$1,050,107 in column 1, line 1 in the exhibit of annuities in force of its 2013 Annual Statement which does not agree with the amount reported in page 2, line 10b. The examiner determined that the Fund should have reported reserve of \$1,207,623 in its exhibit of annuities in force.

The Fund reported \$1,155,859 in page 2, line 10b in its 2012 Annual Statement; however, the Fund reported a reserve of \$1,005,095 in column 1, line 1 in the exhibit of annuities in force of its 2012 Annual Statement which does not agree with the amount reported in page 2, line 10b. The examiner determined that the Fund should have reported reserve of \$1,155,859 in its exhibit of annuities in force.

The Fund reported \$1,381,116 in page 2, line 10b in its 2011 Annual Statement; however, the Fund reported a reserve of \$1,315,349 in column 1, line 1 in the exhibit of annuities in force of its 2011 Annual Statement which does not agree with the amount reported in page 2, line 10b.

The examiner determined that the Fund should have reported reserve of \$1,512,651 in its exhibit of annuities in force and on page 2, line 10b.

The examiner recommends that the Fund prepare its annual statements according to the Department's annual statement instructions.

## 7. BARNABAS FOUNDATION

As part of the Fund's decision to cease issuing new gift annuities as of January 1, 2014, it engaged Barnabas Foundation, Inc. ("Barnabas") to perform various services on its behalf. The Fund seems to have ceased all servicing of the gift annuities that it has issued, since that date. Those services include custody services, recordkeeping, disbursement, settlement and maintenance, tax reporting, investment and valuation functions. If a donor wished to donate a gift and establish an annuity with the Fund as a beneficiary, the annuity would be set up, issued, maintained and settled by Barnabas, after January 1, 2014. The examiner determined that Barnabas is not a licensed bank or trust company. The custodian for the securities of the Barnabas Foundation is Private Bank and Trust Company.

Section 1110(b)(ii) of the New York Insurance Law states, in part:

"...Such assets shall be segregated as separate and distinct funds, independent of all other funds of such corporation or association, and shall not be applied to pay its debts and obligations or for any purpose except the aforesaid annuity benefits...."

During the examiner's review of annuity distribution payments, the examiner noted that annuity payments were not made from a segregated account in the name of the Fund. Barnabas utilizes an account in its own name at Chase Bank to make charitable gift annuity payments on the Fund's behalf, without any mention of the Fund on the disbursement. The Fund stated that future payment reports after January 1, 2014 will be generated from Barnabas' gift annuity software and is segregated into payments made via ACH and those made via check. Annuity payments are deducted from the Fund's Gift Annuity Pool using the custodian's accounting software, several days prior to the payment due date. Therefore, the Fund commingled the segregated charitable gift annuity funds with the other funds of Barnabas. Barnabas should have maintained a segregated bank account for solely all of the Fund's assets, as well as accounts for solely all of the Fund's annuity payments.

The Fund violated Section 1110(b)(ii) of the New York Insurance Law by failing to segregate its assets as a separate and distinct fund, independent of all other funds commingled at Barnabas. The examiner recommends that the Fund maintain proceeds of gifts in, and transact annuity payments directly from, accounts in its own name in a licensed bank or trust company.

## 8. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the board of trustees, or a committee thereof, approve the purchase and sale of all investments, and note such approvals in the minutes.</p> <p>The Fund's Investment Advisory Committee failed to approve the purchase and sale of all investments, and note such approvals in the minutes. However, the Committee conducts a review of the Fund's investment portfolio. Therefore, no recommendation for investment portfolio review appears in this report on examination.</p>
B	<p>The examiner recommends that the Fund exercise due care and prepare its annual statements in accordance with the Department's instructions for completing the New York State Segregated Gift Annuity Fund Statement.</p> <p>A similar recommendation appears in this report on examination.</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 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.	6
B	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.	6
C	The Fund violated Section 243.2(b)(1) of Department Regulation No. 152 by failing to maintain the policy record for each annuity contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer.	7
D	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
E	The examiner recommends that the Fund prepare its annual statements according to the Department's annual statement instructions.	9

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
F	The Fund violated Section 1110(b)(ii) of the New York Insurance Law by failing to segregate its assets as a separate and distinct fund, independent of all other funds commingled at Barnabas.	10
G	The examiner recommends that the Fund maintain proceeds of gifts in, and transact annuity payments directly from, accounts in its own name in a licensed bank or trust company.	10



Respectfully submitted,

\_\_\_\_\_/s/  
Ann Marie Thompson  
Insurance Examiner

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

Ann Marie Thompson, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

\_\_\_\_\_/s/  
Ann Marie Thompson

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

*APPOINTMENT NO. 31457*

*NEW YORK STATE*

***DEPARTMENT OF FINANCIAL SERVICES***

*I, MARIA T. VULLO, 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:*

***ANN MARIE THOMPSON***

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

***SEGREGATED GIFT ANNUITY FUND OF THE  
GENERAL SYNOD COUNCIL OF THE REFORMED CHURCH IN AMERICA***

*and to make a report to me in writing of the condition of said*

***FUND***

*with such other information as she 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 25th day of April, 2016*

***MARIA T. VULLO***  
*Acting Superintendent of Financial Services*

*By:*

*Mark McLeod*  
\_\_\_\_\_  
***MARK MCLEOD***  
***DEPUTY CHIEF - LIFE BUREAU***

