



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
COLGATE UNIVERSITY

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

NOVEMBER 20, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

PABLO RAMOS

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Linda A. Lacewell
Superintendent

March 11, 2020

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

Madam:

In accordance with instructions contained in Appointment No. 31901, dated May 17, 2019 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Colgate University, hereinafter referred to as “the Fund,” at its home office located at 13 Oak Drive, Hamilton, NY 13346.

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 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 Investment Strategy Statement be approved by the board of directors. (See item 3C of this report)

The examiner recommends that the Fund strengthen the diversification of its investment holdings by investing the Fund’s assets in investments from other issuers. If the trustee has determined that it is in the interests of the beneficiaries to concentrate its invested assets in DFA, 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 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 5 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)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2013. This examination covers the period from January 1, 2014 through December 31, 2018. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2018 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, 2018 to determine whether the Fund's filed 2018 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 Colgate University (the “University”) is organized for the purpose of providing a demanding, expansive educational experience to a select group of diverse, talented, intellectually sophisticated students. The University was incorporated as The Madison University and adopted its present name on March 13, 1890. The University established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since is permitted to issue gift annuity agreements and it has done so since 1993. A special permit was granted to the University by the Department on August 31, 1994, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

B. Services

The custodian of the Fund’s assets is JPMorgan Chase Bank, National Association. The custodian of the Fund’s checking account is NBT Bank. TIAA Kaspick manages the Fund’s assets, with direct oversight by the Colgate University Treasurer's Office and the Finance Committee of the Board of Trustees of Colgate University. The investment management duties performed by TIAA Kaspick include hiring and firing managers, executing investment instructions provided by the University, monitoring the asset allocation of the Fund, rebalancing the Fund and delivering performance reports. The University has also engaged with TIAA Kaspick to provide administrative services for the Fund. These services include issuing payments to annuitants (typically quarterly), completing all required annual tax forms, maintaining financial and accounting data at the annuity contract level and reporting contract and financial data for inclusion in the University's accounting reports.

C. Corporate Governance

The management of the University and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to thirty-five regular voting trustees. As of December 31, 2018, the board consisted of 34 trustees. The trustees elect a chair of the board, a vice-chair, a secretary, and a treasurer. The board is also responsible for the

appointment of the president of the University. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

The examiner's review of the Fund's Investment Strategy Statement showed that it does not contain reference to the prudent investor standard, as specified in Section 1110(b) of the New York Insurance 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.

Interrogatory 18 in the Fund's filed 2018 annual statement states the following:

“Has the board or other governing body of the segregated gift annuity fund adopted an Investment Strategy Statement specifying guidelines for the investment of the fund's assets?”

The examiner's review of the Fund's filed 2018 annual statement showed that the Fund answered “yes” to interrogatory 18. The examiner's review of the Fund's Investment Strategy Statement (“ISS”) revealed that the board did not approve the ISS. Therefore, the Fund failed to answer interrogatory 18 in the 2018 annual statement correctly.

The examiner recommends that the Investment Strategy Statement be approved by the board of directors.

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>2013</u>	<u>December 31,</u> <u>2018</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$13,339,704</u>	<u>\$13,749,306</u>	<u>\$409,602</u>
Liabilities	<u>\$ 7,711,512</u>	<u>\$ 8,170,893</u>	<u>\$459,381</u>
Minimum required fund balance	\$ 771,151	\$ 817,089	\$ 45,938
Excess fund balance (surplus)	<u>4,857,042</u>	<u>4,761,324</u>	<u>(95,718)</u>
Total annuity fund balance	<u>\$ 5,628,193</u>	<u>\$ 5,578,413</u>	<u>\$(49,780)</u>
Total liabilities and annuity fund balance	<u>\$13,339,704</u>	<u>\$13,749,306</u>	<u>\$409,602</u>

The increase in assets and liabilities reflects an increase in the total number of annuities in force. Annuities increased from 194 with annual payment amounts of \$776,571 as of December 31, 2013 to a total of 206 with annual payment amounts of \$801,118 as of December 31, 2018.

The decrease in annuity fund balance is attributable to unrealized capital losses which were partly offset by realized capital gains.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in common stocks (98.03%). All bonds held were investment grade.

According to the 2018 annual statement, the Fund reported 29.10% of its admitted assets invested in securities issued by Dimensional Fund Advisors ("DFA"). The Fund's current concentration in the securities of DFA could make it less likely that the Fund's other assets can provide a variability to offset the risks inherent in concentration in one issuer.

Based upon the above noted concentration in the securities of one issuer, the examiner recommends that the Fund strengthen the diversification of its investment holdings by investing the Fund's assets in investments from other issuers. If the trustee has determined that it is in the interests of the beneficiaries to concentrate its invested assets in DFA, 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 issuers of the Fund's assets to reduce the risk of loss of principal. 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. Limiting exposure to the assets of any one issuer to 25% or less of admitted assets would reasonably assure that the risks in investment in that issuer 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.

The examiner reviewed a sample of five annuity contracts terminated during the examination period. The examiner determined that in two out of five cases reviewed (40%), the Fund failed to obtain a copy of the death certificate or a copy of the Social Security death index information to confirm the 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.

Section 1110(a) of 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 10 gift annuity agreements issued in New York during the examination period revealed that in three cases, the Fund used gift annuity agreement forms that differed from the gift annuity agreements filed with the Superintendent. The deviating form numbers found in the sample are 2LIFE and JT LIFE FLEX-DEF. The deviating wording for 2LIFE was, for one form, “...not subject to any joint or community interest ...” and “...to revoke and terminate the survivorship annual payments for the Survivor Annuitant” in another. The deviating wording in form JT LIFE FLEX-DEF included a different fifth paragraph in the contract as well as the replacement of the word “date” with “dates” as well as “Donor” replacing “Donors”.

The examiner’s review of the sample of 10 gift annuity contracts issued in New York also revealed that in seven cases, the Fund used a “Letter of Understanding” agreement that was signed by both the University and the annuitant. The examiner noted that language near the conclusion of the first paragraph in the Letter of Understanding paragraph may require revision. The language

states, "This policy may be amended in the future." The required revision is that the contract may only be amended by a contract endorsement which is reviewed and accepted by the Department. Further, the language should state that where any amendment reduces existing contract holder rights, prior contract holder consent would be formally required.

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. 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 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
B	The examiner recommends that the Investment Strategy Statement be approved by the board of directors.	5
C	The examiner recommends that the Fund strengthen the diversification of its investment holdings by investing the Fund's assets in investments from other issuers. If the trustee has determined that it is in the interests of the beneficiaries to concentrate its invested assets in DFA, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.	6
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.	8
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.	9
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.	9

Respectfully submitted,

_____/s/
Pablo Ramos
Senior Insurance Examiner

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

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

_____/s/
Pablo Ramos

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31901

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, **LINDA A. LACEWELL**, 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:

PABLO RAMOS

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
COLGATE UNIVERSITY**

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 17th day of May, 2019

LINDA A. LACEWELL
Acting Superintendent of Financial Services

By:



MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

