



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
FRIARS OF THE ATONEMENT, INC.

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

DECEMBER 9, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

MATTHEW POLVINO

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

June 15, 2017

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

Madam:

In accordance with instructions contained in Appointment No. 31455, dated November 29, 2016 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Friars of the Atonement, Inc., hereinafter referred to as “the Fund.” The Fund’s home office is located at Graymoor, Route 9, Garrison, New York 10524-0300.

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 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 report on examination. (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 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. (See item 5 of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement ("ISS"). 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 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 use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York. (See item 6 of this report)

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. (See item 7 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 8 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 Friars of the Atonement, Inc. (the “Corporation”) is organized for the purpose of aiding in missionary activities. Under the provisions of its by-laws, the Friars of the Atonement, Inc. is permitted to issue gift annuity agreements and it has done so since 1957. A special permit was granted to the Corporation by the Department on June 10, 1959, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Friars of the Atonement, Inc.’s treasury department makes certain that a separate account is maintained for the annuities. All accounting and reconciliation is performed by the Friars of the Atonement, Inc.’s treasury department as well as the review of monthly account statements to ensure that calculations and fees are accurate. The Fund has a custodial agreement with State Street Bank and Trust Company. The agreement’s provisions include investing assets subject to the Fund’s investment guidelines, periodic investment purchases and sales to meet the Fund’s distribution needs and the maintaining of the Fund’s books and records, including the preparation of annual federal and state income tax returns. State Street Bank and Trust Company also calculates the Fund’s reserve and contacts the Fund when an annuitant has passed away.

The management of the Corporation and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to five (5) regular voting members. As of December 31, 2015, the board consisted of 5 trustees. The members of the board include the canonically elected Minister General and four Councilors General of the Religious Congregation known as the Franciscan Friars of the Atonement (“FFA”). The directors elect a President, who is the Superior General of the FFA, a Vice President, who is the Vicar General of the FFA, a Secretary, who is the Secretary General of the FFA, and a Treasurer, who is the Treasurer General of the FFA. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

4. CORPORATE GOVERNANCE

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 maintain 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 maintain signed statements from the board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund obtain and maintain the signature of each board member indicating that they received and read the report on examination.

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 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.

5. SIGNIFICANT FINANCIAL INFORMATION

The following 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>5,251,192</u>	\$ <u>3,427,656</u>	\$(<u>1,823,536</u>)
Liabilities	\$ <u>3,416,817</u>	\$ <u>2,751,359*</u>	\$ <u>(665,458)</u>
Minimum required fund balance	\$ 320,615	\$ 274,530*	\$ (46,085)
Excess fund balance (surplus)	<u>1,513,760</u>	<u>401,767*</u>	<u>(1,111,993)</u>
Total annuity fund balance	\$ <u>1,834,375</u>	\$ <u>676,297*</u>	\$(<u>1,158,078</u>)
Total liabilities and annuity fund balance	\$ <u>5,251,192</u>	\$ <u>3,427,656</u>	\$(<u>1,823,536</u>)

Note: Items denoted with an asterisk were determined during the examination. See item 7 of this report.

The decrease in assets, liabilities and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 505 with annual payment amounts of \$441,351 as of December 31, 2010 to a total of 412 with annual payment amounts of \$326,415 as of December 31, 2015.

The Fund's admitted assets, as of December 31, 2015, were invested mainly in common stocks (97.23%).

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: 29.36% of admitted assets invested in the securities of SPDR S&P 500 ETF Trust; 23.95% invested in the securities of Vanguard Total Bond Market Exchange Traded Fund (“ETF”); and 19.37% of invested in the securities of SPDR MSCI ACWI EX-US ETF. The Fund’s current concentration could make it less likely that the Fund’s other assets can provide a variability to offset the risks inherent in these funds.

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.

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 the 15 gift annuity agreement forms used by the fund for gift annuities issued in New York during the examination period noted that in 8 instances, the Fund used gift annuity agreement forms that differed from the gift annuity agreements filed with the Superintendent.

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.

The examiner's review of a sample of benefit payments made to annuitants during the examination period revealed that the name of the Corporation, not the Fund's name, appeared on the annuity benefit checks.

The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.

7. ANNUAL STATEMENT REPORTING

The examiner's review of the Fund's annual statements for the period under examination revealed the following:

1. The Fund reported \$3,020,461 in page 2, line 10b in its 2015 Annual Statement; however, the Fund reported a reserve of \$3,019,832 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 a reserve of \$3,020,461 as of December 31, 2015 in its exhibit of annuities in force.
2. The Fund overstated its annuities in force on its 2015 Annual Statement. The Fund reported \$2,387,219 as the net present value of annuities on line 10 of its 2015 annual statement. The Fund also reported 412 annuities in force with annualized payments of \$326,415 on the Exhibit of Annuities in Force in its filed 2015 annual statement. The Fund should have reported \$2,196,330 on line 10 of its filed annual statement and should have reported 403 annuities with annualized payments of \$296,957 in its Exhibit of Annuities in Force.

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

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 recommended that the Fund include the form numbers on the gift annuity forms which it uses to issue annuities.</p> <p>A review of the policy forms used did not reveal any instances in which the Fund failed to include form numbers.</p>
B	<p>The examiner recommended that the Fund change the name on its investment account to reflect the name on the application for the special permit issued by the Superintendent.</p> <p>A review of the name on the investment account revealed that it reflected the name on the application for the special permit.</p>
C	<p>The examiner recommended that the Fund change the name on its checking account to reflect the name on the application for the special permit issued by the Superintendent.</p> <p>A similar recommendation appears in this report on examination.</p>

9. 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 Fund violated Section 312(b) of the New York Insurance Law by failing to maintain signed statements from the board members indicating that they received and read the prior report on examination.	6
B	The examiner recommends that the Fund obtain and maintain the signature of each board member indicating that they received and read the report on examination.	6
C	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.	6
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 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.	8
E	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.	8

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
F	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
G	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
H	The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.	10
I	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	11

Respectfully submitted,

_____/s/
Matthew Polvino
Insurance Examiner

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

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

_____/s/
Matthew Polvino

Subscribed and sworn to before me
this _____ day of _____

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:*

MATTHEW POLVINO

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
FRIARS OF THE ATONEMENT, INC.**

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 29th day of November, 2016

MARIA T. VULLO
Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

