



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

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

NOVEMBER 27, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

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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

February 6, 2020

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

Madam:

In accordance with instructions contained in Appointment No. 31898, 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 Cazenovia College, hereinafter referred to as the "Fund." The Fund's home office is located at 22 Sullivan Street, Cazenovia, NY 13035.

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 statements signed by every board member indicating that they received and read the prior report on examination. The examiner recommends that the Fund obtain statements signed by every board member indicating that they received and read the report on examination. (See item 3C of this report)

The examiner recommends that the Fund's board of directors, or a committee thereof, review the activities of the Fund at least quarterly and note the same in the minutes. (See item 3C of this report)

The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period. (See item 3C of this report)

The examiner recommends that the Fund strengthen the diversification of its investment holdings. (See item 4 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 4 of this report)

The examiner's review of the Fund's treatment of annuitants did not reveal significant instances which deviated from the New York Insurance Law, Department regulations and circular letters and the operating rules of the Fund. (See item 5 of this report)

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. (See item 6 of this report)

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements. (See item 6 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 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 7 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

A. History

The Cazenovia College (the “College”) is an independent, co-educational, liberal arts college founded in 1824 in Cazenovia, New York. It is organized for the purpose of educating its students in the liberal arts and sciences and in professional fields: to foster commitment to a life informed by intellectual, ethical, and aesthetic values; to develop skills necessary for the pursuit of a meaningful vocation; and to inspire dedication to the ideal of service in their communities. The College established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 2007. A special permit was granted to the College by the Department on May 13, 2009, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

B. Services

NBT Bank is the custodian of the Fund’s assets and NBT wealth management is responsible for investment management. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

C. Corporate Governance

The management of the Cazenovia 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 36 regular voting trustees. As of December 31, 2018, the board consisted of 23 trustees. The trustees elect a chair of the board, a vice chair, a secretary, and a treasurer. 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 (“NYIL”) 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 of the College's board materials revealed that the Fund failed to obtain statements signed by every 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 statements signed by every board member indicating that they received and read the prior report on examination. The examiner recommends that the Fund obtain statements signed by every board member indicating that they received and read the report on examination.

The examiner requested copies of the minutes of the board of trustees and all committees thereof for the examination period. The examiner's review of the board minutes provided revealed that the board minutes did not contain any details concerning the review and approval of the Fund's investments for all years under review.

The examiner recommends that the Fund's board of directors, or a committee thereof, review the activities of the Fund at least quarterly and note the same in the minutes.

The examiner requested copies of the broker's advices for a sample of 10 investments purchased and sold that occurred during the examination period. The Fund failed to provide copies of the broker's advices for the transactions selected for review or any other evidence of a control relating to investment purchases and sales.

The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period.

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>214,782</u> | \$ <u>195,959</u> | \$ <u>(18,823)</u> |
| Liabilities | \$ <u>82,464</u> | \$ <u>53,023</u> | \$ <u>(29,441)</u> |
| Minimum required fund balance | \$ 8,243 | \$ 5,302 | \$ (2,941) |
| Excess fund balance (surplus) | <u>124,075</u> | <u>137,634</u> | <u>13,559</u> |
| Total annuity fund balance | \$ <u>132,318</u> | \$ <u>142,936</u> | \$ <u>10,618</u> |
| Total liabilities and annuity fund balance | \$ <u>214,782</u> | \$ <u>195,959</u> | \$ <u>(18,823)</u> |

The decrease in assets and liabilities reflects a decrease in the total number of annuities in force. Annuities decreased from three with annual payment amounts of \$7,700 as of December 31, 2013 to a total of two with annual payment amounts of \$6,250 as of December 31, 2018.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in common stocks (96.35%).

According to the custodian investment statements for the Fund's holdings as of December 31, 2018, 16.80% of the Fund's admitted assets are invested in the securities of Vanguard Total Bond Market Index Institutional and 16.15% are invested in the securities of Dodge & Cox Income Fund. The Fund's current concentration in these two securities make it less likely that the Fund's other assets could provide a variability to offset the risks inherent in this investment.

Based on the above concentrations, 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' risks consistent with the ISS'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.

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 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.

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. Based upon the sample reviewed, no significant findings were noted.

6. ANNUAL STATEMENT REPORTING

1. The Department's annual statement instructions for completing Schedule A – Part 3 in the annual statements for Segregated Gift Annuity Funds state, in part, that:

“SCHEDULE A – PART 3 - COMMON STOCKS

IMPORTANT NOTE: Mutual funds, Exchange Traded funds and Common Trust funds (funds that invest in stocks, bonds, options or currencies) are to be reported in Schedule A – Part 3 - Common Stocks.

Column 1 CUSIP Identification

CUSIP identification numbers must be listed for all publicly traded securities. If the security/mutual fund was owned during the previous year, the CUSIP will be from the previous year's Statement. If the security was purchased in the current year, the CUSIP can be obtained from the broker's confirmation or certificate....”

The examiner's review of the Fund's 2018 Annual Statement, namely Schedule A – Part 3 – Common Stocks, revealed that the Fund did not report the CUSIP information for the securities held as of December 31, 2018. The Fund's Schedule A – Part 3 – Common stocks in the 2018 Annual Statement indicated “Various Mutual Funds (ETF see schedule)” instead of listing all mutual funds or securities held as of year-end 2018. The examiner's review of the Fund's custodian confirmations for assets held at 12/31/2018 revealed that the bonds reported in Schedule A – Part 1 in the 2018 Annual Statement are instead actually bond funds that should have been reported in Schedule A – Part 3 – Common stocks in the 2018 Annual Statement. The Fund should have reported all mutual funds held as of year-end 2018 and include CUSIP information along with all information requested in the schedule. The Fund incorrectly reported bond funds as bonds in the Fund's 2014, 2015, 2016, and 2017 annual statements.

2. The Department's annual statement instructions for completing Schedule A – Part 4 (securities purchased) and Schedule A – Part 5 (securities sold) in the annual statements for Segregated Gift Annuity Funds state, in part, that:

“SCHEDULE A – PART 4
BONDS AND STOCKS ACQUIRED DURING YEAR

Report all bonds and stocks acquired during the year. Group bonds, preferred stocks and common stocks separately, with the items in each category arranged alphabetically.

Column 1 CUSIP Identification

CUSIP numbers are available from the broker's confirmation or the stock trading symbols for publicly traded securities. Leave blank for private placements...."

"SCHEDULE A – PART 5

BONDS AND STOCKS DISPOSED OF DURING YEAR

Report all bonds and stocks sold, redeemed or otherwise disposed of (including called or matured) during the year. Group bonds, preferred stocks and common stocks separately, with the items in each group arranged alphabetically. Sub-total bonds and stocks.

Column 1 CUSIP Identification

Report the CUSIP numbers from the broker's confirmation or the stock trading symbols for publicly traded securities. Leave blank for private placements...."

In Schedule A - Part 4 (securities purchased) in the Fund's 2018 Annual Statement, the Fund indicated "Various Mutual Funds/ETF (see schedule)" instead of listing each individual security purchased including the CUSIP information and all relevant information in the schedule. The Fund also indicated "Various Mutual Funds/ETF (see schedule)" for bonds and stocks sold in Schedule A – Part 4 in the 2018 Annual Statement. Moreover, the Fund continued to incorrectly classify bond funds as bonds when in fact such investments should be reported as mutual funds.

In Schedule A - Part 5 (securities sold) in the 2018 Annual Statement, the Fund incorrectly indicated "Various Mutual Funds/ETF (see schedule)" for bonds sold. Moreover, the Fund incorrectly reported bond funds as bonds in this section of the 2018 Annual Statement when these bond funds should be reported as mutual funds (common stocks). The Fund incorrectly indicated "Various Mutual Funds/ETF (see schedule)" for common stocks sold in Schedule A - Part 5 in the 2018 Annual Statement instead of listing each mutual fund sold during the year. The Fund also did not include the CUSIP information and all relevant information in the schedule for the 2018 Annual Statement. The examiner noted that the Fund incorrectly reported bond funds sold as bonds sold in the Fund's Schedule A – Part 5 in its 2014, 2015, 2016, and 2017 annual statements. These bond funds sold should have been reported as common stocks (mutual funds) sold in the relevant schedules.

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

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.

7. 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 Fund diversify its investment holdings.</p> <p>A similar recommendation is included in this report. (See item 4 of this report)</p> |
| B | <p>The examiner recommends that the Fund adopt an Investment Strategy Statement. 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 same recommendation is included in this report. (See item 4 of this report)</p> |
| C | <p>The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.</p> <p>The same recommendation is included in this report. (See item 6 of this report)</p> |
| D | <p>The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.</p> <p>The same recommendation is included in this report. (See item 6 of this report)</p> |

8. 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 obtain statements signed by every board member indicating that they received and read the prior report on examination. | 6 |
| B | The examiner recommends that the Fund obtain statements signed by every board member indicating that they received and read the report on examination. | 6 |
| C | The examiner recommends that the Fund's board of directors, or a committee thereof, review the activities of the Fund at least quarterly and note the same in the minutes. | 6 |
| D | The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period. | 6 |
| E | The examiner recommends that the Fund strengthen the diversification of its investment holdings. | 7 |
| F | The examiner recommends that the Fund adopt an 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. | 8 |
| G | The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. | 12 |

| <u>Item</u> | <u>Description</u> | <u>Page No(s).</u> |
|-------------|--|--------------------|
| H | The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements. | 12 |

APPOINTMENT NO. 31898

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
CAZENOVIA 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 17th day of May, 2019

LINDA A. LACEWELL
Acting Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

