



**REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
MEMORIAL SLOAN-KETTERING CANCER CENTER**

**AS OF December 31, 2019**

**EXAMINER: Adelia Gbadamosi**

**DATE OF REPORT: June 15, 2020**

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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KATHY HOCHUL  
Governor

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ADRIENNE A. HARRIS  
Superintendent

July 28, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32075, dated April 24, 2020 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Memorial Sloan-Kettering Cancer Center. The Fund's home office is located at 885 Second Avenue, 8<sup>th</sup> Floor, New York, New York 10017.

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 and maintaining the signature from board members indicating that they received and read the prior report on examination. (See item 3E of this report)

The examiner recommends that the Investment Strategy Statement be approved by the board of managers. (See item 4A of this report)

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials. (See item 4A of this report)

The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued. (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)

## 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 Memorial Sloan-Kettering Cancer Center Segregated Annuity Fund (the "Fund") through which Memorial Sloan-Kettering Cancer Center ("MSK" or "Center") 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 Center or Fund, in relation to their annuity activities, could have better satisfied statutory standards or to 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 recommendations contained in the prior report on examination. The results of such review are contained in item 7 of this report.

### 3. DESCRIPTION OF FUND

#### A. History

The Memorial Sloan-Kettering Cancer Center was chartered in 1960 and is organized for the purpose of providing preventive care, patient care, research and education for cancer patients. The Center established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1975. A special permit was granted to MSK by the Department on May 22, 1979, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

#### B. Structure

The management of MSK and the Fund and all of its affairs and property are entrusted to a board of managers. The managers are elected by, and are members of, the board of overseers. The Fund solicits and executes the agreements with the contract holders, calculates the annuity benefit payments, and corresponds directly with the annuitants. MSK's investment management department authorizes the Fund's purchases and sales of investments.

#### C. Assets under the Board of Managers

As of the December 31, 2019, Form 990, MSK's Board of Managers oversaw an endowment comprising \$1,208,893,000 in total assets. The Fund, as of December 31, 2019, held total admitted assets of \$27,974,206.

#### D. Third Party Payment Service Provider

State Street Global Advisors ("State Street") is the Fund's custodian and investment manager. The Fund solicits and executes the agreements with the contract holders, calculates the annuity benefit payments, and corresponds directly with the annuitants. State Street also issues the annuity benefit payments and provides accounting and investment management services on behalf of 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 the board members 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 and maintaining the signature of the board members indicating that they received and read the prior report on examination.



#### 4. INVESTMENT REVIEW

##### A. Investment Policy Statement

New York Estate Powers and Trust Law § 11-2.3(b)(3)(A) requires trustees to “pursue an overall investment strategy to enable the trustee[s] to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio.”

New York Not-for-Profit Corporation Law § 552(e)(2) requires institutions to adopt “an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.” New York Not-for-Profit Corporation Law § 552(f) provides that each “institution shall adopt a written investment policy setting forth guidelines on investments ... and delegation of management and investment functions in accord with the standards of this article.”

State Street is the Fund’s investment adviser and custodian.

State Street prepared and provided a form investment policy statement (“IPS”) to the Fund. The Fund adopted that form as its IPS.

Interrogatory 18 in the Fund’s filed 2019 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 2019 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 failed to approve the ISS. Therefore, the Fund failed to answer interrogatory 18 in the 2019 annual statement correctly.

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

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.

## 5. ASSETS AND LIABILITIES SUMMARY

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>2014</u>	<u>December 31,</u> <u>2019</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$29,179,059</u>	<u>\$27,974,206</u>	<u>\$(1,204,853)</u>
Liabilities	<u>\$21,799,295</u>	<u>\$17,841,467</u>	<u>\$(3,957,828)</u>
Minimum required fund balance	\$ 2,179,930	\$ 1,784,147	\$ (395,783)
Excess fund balance (surplus)	<u>5,199,834</u>	<u>8,348,592</u>	<u>3,148,758</u>
Total annuity fund balance	<u>\$ 7,379,764</u>	<u>\$10,132,739</u>	<u>\$ 2,752,975</u>
Total liabilities and annuity fund balance	<u>\$29,179,059</u>	<u>\$27,974,206</u>	<u>\$(1,204,853)</u>

The decrease in assets and liabilities reflects a decrease in the total number of annuities in force. Annuities decreased from 1,114 with annual payment amounts of \$3,319,178 as of December 31, 2014 to a total of 915 with annual payment amounts of \$2,611,177 as of December 31, 2019. The increase in annuity fund balance is attributable to strong investment returns during the exam period.

The Fund's admitted assets, as of December 31, 2019, were invested mainly in equity securities (95.49%) and money market mutual funds (2.73%).

## 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.

The examiner reviewed a sample of new gift annuities issued by the Fund during the examination period. In the sample selected, the examiner noted that 11 out of the 14 newly issued gift annuities reviewed had contracts which did not have the appropriate form number as approved by the Superintendent printed on the forms.

The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued.

The examiner's review of a sample of 12 annuity contracts terminated revealed that in 8 of the 12 cases (66.67%) reviewed, the Fund failed to obtain a copy of the death certificate to confirm 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.

## 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 citation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Fund diversify its investment holdings.</p> <p>The Department no longer provides guidance for diversification.</p>
B	<p>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.</p> <p>The Fund has used 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.</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 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 and maintaining the signature from board members indicating that they received and read the prior report on examination.	5
C	The examiner recommends that the Investment Strategy Statement be approved by the board of managers.	6
D	The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.	6
E	The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued.	8
F	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

Respectfully submitted,

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/s/  
Adelia Gbadamosi  
Senior Insurance Examiner

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

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

\_\_\_\_\_  
/s/  
Adelia Gbadamosi

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

**APPOINTMENT NO. 32075**

**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:

**ADELIA GBADAMOSI**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
MEMORIAL SLOAN-KETTERING CANCER CENTER**

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

**FUND**

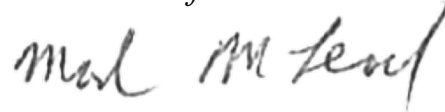
with such other information as she shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name  
and affixed the official Seal of the Department  
at the City of New York

this 24th day of April, 2020

LINDA A. LACEWELL  
Superintendent of Financial Services

By:



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MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU

