



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
PHILHARMONIC-SYMPHONY SOCIETY OF NEW YORK, INC

CONDITION:

DECEMBER 31, 2017

DATE OF REPORT:

AUGUST 10, 2018

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

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EXAMINER:

JAMES WANG

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

September 28, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31741, dated April 13, 2018 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Philharmonic-Symphony Society of New York, Inc, hereinafter referred to as “the Fund,” at its home office located at Avery Fisher Hall, 10 Lincoln Center, New York, NY 10023.

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

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain statements signed by its board members indicating that they received and read the prior report on examination. This is a repeat violation. The examiner recommends that the Fund obtain and maintain statements signed by the board members indicating that they received and read the prior report on examination. (See item 3C 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 not to diversify, 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 4 of this report)

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. (See item 4 of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by using a gift annuity agreement form that differed from the gift annuity agreement form that was 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)

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)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2012. This examination covers the period from January 1, 2013 through December 31, 2017. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2017 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, 2017 to determine whether the Fund's filed 2017 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 violation and recommendations contained in the prior report on examination. The results of such review are contained in item 6 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 Philharmonic Society of New York, Inc. (the “Society”) was incorporated in New York on February 22, 1853. The name was changed to the Philharmonic-Symphony Society of New York, Inc., its present name, by a Certificate of Amendment filed with the Department of State on June 8, 1928.

The Society is organized for the purpose of supporting, maintaining and operating a symphony orchestra in New York City. The Society established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1984. A permit was granted to the Society, by the Department on April 23, 1993, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

B. Services

BNY Mellon Wealth Management (“BNY Mellon”) is the custodian and investment manager of the Fund’s assets. BNY Mellon also maintains records of all transactions for the Fund, pays the Fund’s annuitants, and prepares the Fund’s annual statements. In addition, BNY Mellon monitors the Fund on a quarterly basis to ensure that it is in compliance with the Department’s legal reserve and investment requirements.

C. Corporate Governance

The management of the Society and the Fund and all of its affairs and property are entrusted to a board of directors. The number of directors is limited to not more than sixty-five (65) elected directors and four ex-officio directors. The ex-officio positions are occupied by the President, the Executive Director, the individual who has been elected President of the Volunteer Council of the New York Philharmonic, and a representative from the Young New Yorkers for the Philharmonic. As of December 31, 2017, the board consisted of fifty-three (53) elected directors. The directors elect the Chairman of the Board, Vice Chairman, Secretary and Treasurer. The President is appointed by the board. The nomination and election procedures of the directors and their terms of office are set by the by-laws.

The examiner requested the board of directors' minutes for the examination period. The Fund provided the examiner with a copy of the board minutes for the board meetings conducted in 2014 and 2016 only, which contained evidence of board review of the Fund's activities. The Fund was unable to provide any minutes for the remainder of the examination period.

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

Section 312 of the New York Insurance Law states, in part:

“(a) The superintendent shall forward to every insurer or other person examined a copy of the report on examination . . . (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 have 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 obtain statements signed by its board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund obtain and maintain statements signed by the board members indicating that they received and read the prior report on examination.

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>2012</u>	<u>December 31,</u> <u>2017</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$1,212,398</u>	<u>\$938,503</u>	<u>\$(273,895)</u>
Liabilities	<u>\$1,095,085</u>	<u>\$721,972</u>	<u>\$(373,113)</u>
Minimum required fund balance	\$ 109,509	\$ 72,197	\$ (37,312)
Excess fund balance (surplus)	<u>7,804</u>	<u>144,333</u>	<u>136,529</u>
Total annuity fund balance	<u>\$ 117,312</u>	<u>\$216,531</u>	<u>\$ 99,218</u>
Total liabilities and annuity fund balance	<u>\$1,212,398</u>	<u>\$938,503</u>	<u>\$(273,895)</u>

The decrease in assets and liabilities reflect a decrease in in the total number of annuities in force. The increase in total annuity fund balance was due to the reserve release based on the termination of annuities. Annuities decreased from 51 with annual payment amounts of \$164,359 as of December 31, 2012 to a total of 38 with annual payment amounts of \$114,915 as of December 31, 2017.

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.”

The Fund's admitted assets, as of December 31, 2017, were mainly invested in common stock (94.37 %).

According to the 2017 annual statement, the Fund reported 84.52% of its admitted assets invested in BNY DREYFUS Funds, including: 27.48% invested in DREYFUS BASIC S&P 500 STOCK INDEX FUND, 11.36% in DREYFUS INTERNATIONAL STOCK INDEX FUND and

37.71% in DREYFUS BOND MARKET INDEX FUND. The Fund's current concentration in these funds makes it highly unlikely that the Fund's other invested assets could provide a variability to offset the risks inherent in the funds.

Based upon the concentrations in the above 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 not to diversify, 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 Investment Strategy Statement'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 the 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.

5. TREATMENT OF ANNUITANTS

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 Fund issued only one annuity in New York during the examination period. The examiner’s review of the gift annuity agreement form used by the Fund noted that it differed from the gift annuity agreements filed with the Superintendent.

The Fund violated Section 1110(a) of the New York Insurance Law by using a gift annuity agreement form 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 10 annuity contracts terminated revealed that in 2 of the 10 cases (20%) reviewed, the Fund did not 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.

6. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violation and 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 Fund violated Section 312(b) of the New York Insurance Law by failing to maintain statements signed by its board members indicating that they received and read the prior report on examination. This is a repeat violation.</p> <p>The Fund failed to take corrective actions in response to this prior report comment. (See item 3C of this report).</p>
B	<p>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 prior report on examination.</p> <p>The Fund failed to take corrective actions in response to this prior report comment. (See item 3C of this report)</p>
C	<p>The examiner recommends that the Fund's name that appears on the special permit issued in accordance with Section 1110 of the New York Insurance Law be included on all annuity benefit payment checks.</p> <p>The Fund's name is included on all annuity benefit payment checks reviewed.</p>
D	<p>The examiner recommends that the Fund maintain its assets in a custody agreement under its name, not in the name of the Society.</p> <p>The Fund now maintains its assets in a custody agreement under its name.</p>

7. 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's board of directors, or a committee thereof, review the activities of the Fund at least annually and note the same in the minutes.	5
B	The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain statements signed by its board members indicating that they received and read the prior report on examination.	5
C	The examiner recommends that the Fund obtain and maintain statements signed by the board members indicating that they received and read the prior report on examination.	5
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 not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.	7
E	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.	7

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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.	8
H	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,

/s/

James Wang
Senior Insurance Examiner

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

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

/s/

James Wang

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 31741

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:

JAMES WANG

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
PHILHARMONIC-SYMPHONY SOCIETY OF NEW YORK, 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 13th day of April, 2018

MARIA T. VULLO
Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

