

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

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

JUNE 21, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

ROBERTS WESLEYAN COLLEGE

AS OF

DECEMBER 31, 2018

DATE OF REPORT:

JUNE 21, 2019

EXAMINER:

JAMES WANG

## TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of fund	4
	A. History	4
	B. Third party investment and other servicers	4
	C. Oversight Structure	4
4.	Significant financial information	7
5.	Treatment of annuitants	8
6.	Annual statement reporting	9
7.	Prior report summary and conclusions	11
8.	Summary and conclusions	12



**Department of  
Financial Services**

**KATHY HOCHUL**  
Governor

**ADRIENNE A. HARRIS**  
Superintendent

February 4, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 31921, dated May 16, 2019 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Roberts Wesleyan College, at its home office located at 2301 Westside Drive, Rochester, NY 14624.

The report indicating the results of this examination is respectfully submitted.

## 1. EXECUTIVE SUMMARY

The examiner recommends that the Fund consistently use the name that appears on the board resolution issued in accordance with Section 1110 of the New York Insurance Law in all its operations. (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's investments be further diversified. If the Fund's board of trustees reasonably determines that it is in the interest of the beneficiaries not to diversify, then a proper memorialization of either decision and the supporting rationale, should be prepared when that decision is made. (See item 3C(i) 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 5 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

This Scope of Examination summarizes the nature of the Superintendent of the Department of Financial Services' (the "Department" or "DFS") examination and assessment of the Roberts Wesleyan College Segregated Annuity Fund (the "Fund") through which the Roberts Wesleyan College (the "College") provides annuity benefits.

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).

This report outlines DFS's supervisory expectations or priorities and articulates DFS's general views regarding the exceptional circumstances where the College or Fund, in relation to their annuity activities, could have better satisfied statutory standards or 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, 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 recommendation 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 Roberts Wesleyan College was incorporated by the Board of Regents under a provisional charter as The Chili Seminary on January 14, 1869. The Board of Regents amended the charter on January 7, 1885, renaming the institute as The A. M. Chesbrough Seminary. Further amendments were effective on April 20, 1945 and April 22, 1949, which changed the name of the institution to Roberts Junior College and Roberts Wesleyan College, respectively. The College is organized for the purpose of providing an education that focuses on erudition, spiritual organization and service. Based on this mission, it develops thoughtful, spiritually mature and service-oriented people who will assist in transforming society. The College established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1953. A special permit was granted to the College by the Department on May 3, 1994, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

#### B. Third Party Investment and Other Services

The College solicits donors for new annuity agreements issued. The College's accounting office provides financial and accounting support in writing checks, cash and investment record keeping, as well as annual statement and 1099-R preparation. Charles Schwab & Company, Inc. is the custodian of the Fund's assets. LVW Advisors serves as the Fund's investment consultant.

#### C. Oversight Structure

The management of the 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 31 regular voting trustees. As of December 31, 2018, the board consisted of 22 trustees. The president of the College is selected by the board of trustees, and the officers of the College are designated by the president and approved by the board of trustees. The trustees elect a chairperson, two vice-chairpersons and a secretary. The nomination and election procedures of the trustees and their term of office are set by the by-laws.

The examiner reviewed the Fund's investment statements and brokers advices and noted that the Fund used the name and account number of the College instead of the name of the Roberts Wesleyan College Annuity Fund that appears on the statement.

The examiner recommends that the Fund consistently use the name that appears on the board resolution issued in accordance with Section 1110 of the New York Insurance Law in all its operations.

The examiner reviewed the investment transactions for the period under examination and noted that the Fund failed to obtain broker's advices or other supporting documentation for its investment transactions to reconcile such advices to the monthly statements furnished by the custodian.

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.

#### Investment Strategy and Review

##### *(i) Diversification*

New York Estate Powers and Trust Law § 11-2.3(b)(2)(C) requires a trustee to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify. Compliance is to be determined in light of facts and circumstances prevailing at the time of the investment decision.

New York Not-for-Profit Law § 552(e)(4) states,

“(4) An institution shall diversify the investments of an institutional fund unless the institution prudently determines that, because of special circumstances, the purposes of the fund are better served without diversification. An institution shall review a decision not to diversify as frequently as circumstances require, but at least annually.”

The Fund has 10.35% was invested in Vanguard FTSE Developed Markets ETF: VUG, 12.24% was invested in American Beacon the London Fund Income Equity, 11.30% was invested in Vanguard Growth ETF: VUG, and 10.37% was invested in Tweedy Browne Global Value Fund.

In addressing how to assess whether a trustee has been prudent, New York's highest court, the Court of Appeals, has held that a statute did not change the applicability of appropriate benchmarks or methodologies used to assess an investor's actions. Matter of Janes, 90 N.Y.2d 41 (1997) (affirming a judgment imposing a surcharge against petitioner for failure to diversify and



inattentiveness). Thus, one can look to aptly analogous sources for benchmarks against which to assess a charitable annuity society portfolio's diversification.

The annuity business is a type of life insurance business. This is illustrated by the required admitted asset requirement of the Charitable Annuity Society statute's reference to New York Insurance Law § 4217.

Thus, while New York Insurance Law § 1409 does not apply directly to charitable gift annuity societies, its provisions, that are applied as to annuity providers generally, are apt as instructive guides to proper diversification.

New York Insurance Law § 1409 establishes a default limit on asset concentration for all entities. Exposure to all of the issuances of any one institution is limited to ten percent of the investor's admitted assets.

As the Fund's investments include funds registered under the Investment Company Act of 1940, New York Insurance Law § 1404(a)(10) and the Department's consideration of that provision provide further guidance. When assessing a portfolio's diversification, the Department regards investments in those securities as separate and distinct from the underlying securities held by that investment company. As a result, the Department does "look through" a fund to the underlying investments.

The examiner observed no record of board oversight of diversification of the required total assets.

The examiner recommends that the Fund's investments be further diversified. If the Fund's board of trustees reasonably determines that it is in the interest of the beneficiaries not to diversify, then a proper memorialization of either decision and the supporting rationale, should be prepared when that decision is made.

#### 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>\$2,202,722</u>	<u>\$2,335,536</u>	<u>\$ 132,814</u>
Liabilities	<u>\$1,125,306</u>	<u>\$ 917,977</u>	<u>\$(207,329)</u>
Minimum required fund balance	\$ 111,391	\$ 88,293	\$ (23,098)
Excess fund balance (surplus)	<u>966,025</u>	<u>1,329,266</u>	<u>363,241</u>
Total annuity fund balance	<u>\$1,077,416</u>	<u>\$1,417,559</u>	<u>\$ 340,143</u>
Total liabilities and annuity fund balance	<u>\$2,202,722</u>	<u>\$2,335,536</u>	<u>\$ 132,814</u>

The increase in assets and annuity fund balance, per the College, is due to investment growth from stock based mutual funds over and above disbursements, as most Fund assets were held in such investments. The decrease in liabilities is due to change in net actuarial reserve which, according to the College, was due to a reduction in the number of annuities in force during the exam period.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in equity securities (83.38%).

## 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 the Fund's gift annuity agreement forms used during the examination period. In the sample selected, the examiner noted that 17 out of the 18 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.

## 6. ANNUAL STATEMENT REPORTING

The Department's instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement for the years ending December 31, 2014, December 31, 2016, and December 31, 2017, namely, Exhibit 1 – Verification of Investment Income, states the following, in part:

“Line 1...

- Column 5 should equal the amount reported for Totals in Schedule A, Part 1, Column 9.
- Column 6 should equal the sum of the amount reported for Totals in Schedule A, Part 2, Column 9, and the amount reported for Totals in Schedule A, Part 3, Column 9...”

In the Fund's filed 2014 annual statement, it reported \$12,916 in interest for bonds and \$32,264 in dividends received for stocks for the year in Exhibit 1, Line 1. In Schedule A, Part 1, the Fund reported \$0 in interest received during the year and in Schedule A, Part 3, the Fund \$45,180 in income received from common stocks during the year. The Fund should have reported \$36,020 in dividends received during the year in Schedule A, Part 3 and Exhibit 1, Line 1, Column 6, and \$9,970 in dividends received during the year from stocks that were sold in Schedule A, Part 5 and Exhibit 1, Line 2, Column 6.

A review of the Fund's filed 2016 annual statement showed that it reported \$13,835 in income from stock dividends during the year in Exhibit 1, Line 1. In Schedule A, Part 3, the Fund reported \$54,315 in income reported during the year from stocks held, and in Schedule A, Part 5, it reported \$40,480 in dividends received during the year from stocks that were sold. The Fund should have reported \$31,462 in dividends received during the year in Schedule A, Part 3 and Exhibit 1, Line 1, Column 6, and \$22,853 in dividends received during the year from stocks that were sold in Schedule A, Part 5 and Exhibit 1, Line 2, Column 6.

From the examiner's review of the Fund's filed 2017 annual statement, it was revealed that the Fund reported \$53,295 in dividends received for stocks for the year in Exhibit 1, Line 1. In addition, the Fund reported \$6,358 in dividends received for stocks sold during the year in Exhibit

1, Line 2. In Schedule A, Part 3, Column 9, the Fund reported \$59,653 in common stock income and in Schedule A, Part 5, Column 10, it reported \$6,525 in common stock dividends for stocks sold during the year. The Fund should have reported \$57,235 in dividends received during the year in Schedule A, Part 3 and in Exhibit 1, Line 1, Column 6, and \$2,418 in dividends received during the year from stocks that were sold in Schedule A, Part 5 and in Exhibit 1, Line 2, Column 6.

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

## 7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the recommendation contained in the prior report on examination and the subsequent action taken by the Fund in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Fund contract with a licensed bank or trust company to serve as the Fund's custodian for the Fund's securities.</p> <p>The Fund continued to utilize Charles Schwab, a brokerage firm and not a licensed bank or trust company, to serve as the Fund's custodian for the Fund's securities. However, the examiner's review determined that Charles Schwab is a member of the Securities Investor Protection Corporation (SIPC). Therefore, this recommendation does not appear in this report on examination.</p>

## 8. SUMMARY AND CONCLUSIONS

Following are the recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Fund consistently use the name that appears on the board resolution issued in accordance with Section 1110 of the New York Insurance Law in all its operations.	5
B	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.	5
C	The examiner recommends that the Fund's investments be further diversified. If the Fund's board of trustees reasonably determines that it is in the interest of the beneficiaries not to diversify, then a proper memorialization of either decision and the supporting rationale, should be prepared when that decision is made.	6
D	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
E	The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.	10

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. 31921**

**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:

**JAMES WANG**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
ROBERTS WESLEYAN 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 16th day of May, 2019

**LINDA A. LACEWELL**  
Acting Superintendent of Financial Services

By:

*Mark McLeod*

**MARK MCLEOD**  
DEPUTY CHIEF - LIFE BUREAU

