REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
NATIONAL AUDUBON SOCIETY

AS OF December 31, 2021

EXAMINER: Manish Gera

DATE OF REPORT: April 6, 2023

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

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June 8, 2023

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

Madam:

In accordance with instructions contained in Appointment No. 32380, dated November 2, 2022 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the National Audubon Society, Inc. The Fund's home office is located at 225 Varick Street, 7th floor, New York, NY 10014.

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

1. EXECUTIVE SUMMARY

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

The examiner recommends that the Board of Directors, or a committee thereof, be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes. (See item 4B 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 annually and note the same in the minutes. (See item 4B 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 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 National Audubon Society, Inc. Segregated Gift Annuity Fund (the "Fund") through which National Audubon Society, Inc. (the "Society") provides annuity benefits.

The prior examination was conducted as of December 31, 2016. This examination covers the period from January 1, 2017 through December 31, 2021. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2021 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 Society 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, 2021 to determine whether the Fund's filed 2021 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 violations, recommendations and/or comments 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 National Audubon Society, Inc. is organized for the purpose of environmental conservation, specifically, to protect birds and the places they need. The Society established the Fund to issue gift annuity agreements in return for gifts from donors in 1982. The Superintendent of Insurance granted to the Society a Charitable Annuity Society special permit on September 8, 1997.

B. Structure

The Fund is overseen by the Society's board of directors. The Society handles marketing, the issuance and management of contracts, and the closing of gift annuities with donors.

C. Assets under the Board of Directors

As of the June 30, 2021 audited financial statement, the Society's Board of Directors oversaw an endowment comprising $222,140,667 in total assets. The Fund, as of December 31, 2021, held total admitted assets of $13,022,093.

D. Third-Party Payment Service Provider

The Society and State Street Global Advisors jointly settle terminated annuities. State Street Global Advisors serves as the custodian, administrator, and investment advisor for the Fund. The Society has authorized State Street to manage investment trades, issue payments and tax statements to annuitants, and provide accounting reports for the annual report to the Department. In addition, the Society contracts with PG Calc to prepare filings for states that require periodic filings, including the annual report to the Department. The Society has authorized PG Calc to subcontract additional accounting services as needed.

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."

Interrogatory 18 in the Fund's filed 2021 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 2021 annual statement showed that the Fund answered "yes" to interrogatory 18. The examiner's review of the Fund's Investment Policy Statement ("ISS") revealed that the board did not approve the IPS. Therefore, the Fund failed to answer interrogatory 18 in the 2021 annual statement correctly.

The examiner recommends that the Investment Policy Statement be approved by the board of directors.

B. Monitoring

The examiner reviewed the Board of Directors minutes to determine whether the board had been provided with a report concerning the Fund's investment of required admitted assets. The minutes failed to contain any indication that the board was provided with a report concerning the Fund's investment of required admitted assets.

The examiner recommends that the Board of Directors, or a committee thereof, be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes.

The Fund failed to provide copies of the meeting minutes of all committees of the board thereof pertaining to the Fund, upon the examiner's request.

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. ASSETS & LIABILITIES SUMMARY

The following summary table indicates the growth in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	December 31, 2016	December 31, 2021	Increase/ (Decrease)
Admitted assets	$10,039,306	$13,022,093	$2,982,787
Liabilities	$ 5,890,126	$ 6,624,330	$ 734,204
Minimum required fund balance	$ 589,013	$ 662,433	$ 73,420
Excess fund balance (surplus)	3,560,167	5,735,330	2,175,163
Total annuity fund balance	$ 4,149,180	$ 6,397,763	$2,248,583
Total liabilities and annuity fund balance	$10,039,306	$13,022,093	$2,982,787

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 231 with annual payment amounts of $720,855 as of December 31, 2016 to a total of 261 with annual payment amounts of $761,392 as of December 31, 2021.

The Fund's admitted assets, as of December 31, 2021, were invested mainly in equity securities (94.69%).

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 a sample of 13 newly issued gift annuities by the Fund during the examination period noted that in all 13 newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. The deviating form numbers found in the sample are 2J-I-NY, 1da-D-NY, and 1da-I-NY.

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 4 annuity contracts terminated revealed that in 1 of the 4 cases (25%) 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 is the recommendation contained in the prior report on examination and the subsequent actions taken by the Fund in response to each citation:

Item	Description
A	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. State Street uses a block trading method for investment transactions. However, State Street provided SOC 1 reports that presented an unqualified opinion for the design and implementation of its trading and Information Technology systems as of the year ended September 30, 2021.
B	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. The Department no longer provides specific guidance for diversification.
C	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. The Fund has complied with the recommendation.
D	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. The Fund has not complied with the recommendation. A similar finding appears in the current report.

8. SUMMARY AND CONCLUSIONS

Following are the recommendations contained in this report:

Item	Description	Page No(s).
A	The examiner recommends that the Investment Strategy Statement be approved by the board of directors.	5
B	The examiner recommends that the Board of Directors, or a committee thereof, be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes.	5
C	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.	6
D	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.	8
E	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
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,

/s/
Manish Gera
Insurance Examiner

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

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

/s/
Manish Gera

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 32380

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

*I, **ADRIENNE A. HARRIS**, 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:*

MANISH GERA

as a proper person to examine the affairs of the

SEGREGATED GIFT ANNUITY FUND OF THE NATIONAL AUDUBON SOCIETY, 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 2nd day of November, 2022

ADRIENNE A. HARRIS
Superintendent of Financial Services

By: Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU