



**REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
NEW YORK BOTANICAL GARDEN  
AS OF December 31, 2021**

**EXAMINER: Hasan Ahmed**

**DATE OF REPORT: October 12, 2022**

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

NEW YORK BOTANICAL GARDEN

AS OF

DECEMBER 31, 2021

DATE OF REPORT:

OCTOBER 12, 2022

EXAMINER:

HASAN AHMED

## TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	4
3.	Description of Fund	5
	A. History	5
	B. Structure	5
	C. Assets under the board of trustees	5
	D. Third-party payment service provider	5
	E. Oversight Structure	5
4.	Investment review	7
	A. Investment strategy statement	7
	B. Monitoring	8
5.	Assets and liabilities summary	9
6.	Treatment of annuitants	10
7.	Annual statement reporting	11
8.	Prior report summary and conclusions	12
9.	Summary and conclusions	14



---

KATHY HOCHUL  
Governor

---

ADRIENNE A. HARRIS  
Superintendent

December 2, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32382, dated April 5th, 2022 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the New York Botanical Garden. The Fund's home office is located at 2900 Southern Boulevard, Bronx, New York 10458.

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 the signature of each board member indicating that they have received and read any current or future filed report on examination. (See item 3E 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 3E of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement ("ISS") 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 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 Board of Trustees, 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'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 6 of this report)

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (See item 7 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 New York Botanical Garden Segregated Annuity Fund (the "Fund") through which New York Botanical Garden (the "Organization") 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 Organization 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 violation and recommendations contained in the prior report on examination. The results of such review are contained in item 8 of this report.

### 3. DESCRIPTION OF FUND

#### A. History

The New York Botanical Garden was chartered in 1891 and is organized for the purpose of establishing and maintaining a botanical garden, museum and arboretum. The Organization established the Fund to issue gift annuity agreements in return for gifts from donors in 1993. The Superintendent of Insurance granted to the Organization a Charitable Annuity Society special permit on April 10, 2003.

#### B. Structure

The Fund is overseen by the Organization's Board of Trustees. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund. The Fund is responsible for contract payments, accounting, tax, and regulatory report filings.

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

As of the June 30, 2021 audited financial statement, the Organization's Board of Trustees oversaw an endowment comprising \$440,106,301 in total assets. The Fund, as of December 31, 2021, held total admitted assets of \$6,119,311.

#### D. Third-Party Payment Service Provider

The Fund has an agreement with Bank of America to provide segregated annuity account management and investment services. Bank of America is the custodian of the Fund's assets and provides administrative services on behalf of the Fund. Those services include record keeping, administration, and investment advisory services.

#### 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 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 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 the signature of each board member indicating that they have received and read any current or future filed report on examination.

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.

#### 4. INVESTMENT REVIEW

##### A. Investment Strategy 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.”

The examiner’s review of the Fund’s Investment Strategy Statement showed that it failed to reference 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.

Bank of America is the Fund’s investment adviser and custodian.

Bank of America prepared and provided a form investment strategy statement (“ISS”) to the Fund. The Fund adopted that form as its ISS.

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.

**B. Monitoring**

The examiner reviewed the Board of Trustees 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 Trustees, 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. 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:

	December 31, <u>2016</u>	December 31, <u>2021</u>	<u>Increase</u>
Admitted assets	\$ <u>4,300,285</u>	\$ <u>6,119,311</u>	\$ <u>1,819,026</u>
Liabilities	\$ <u>3,681,328</u>	\$ <u>3,167,232</u>	\$ <u>(514,096)</u>
Minimum required fund balance	\$ 368,133	\$ 316,723	\$ (51,410)
Excess fund balance (surplus)	<u>250,824</u>	<u>2,635,356</u>	<u>2,384,532</u>
Total annuity fund balance	\$ <u>618,957</u>	\$ <u>2,952,079</u>	\$ <u>2,333,122</u>
Total liabilities and annuity fund balance	\$ <u>4,300,285</u>	\$ <u>6,119,311</u>	\$ <u>1,819,026</u>

The increase in assets and annuity fund balance is due to new gifts added to the Fund in the amount of \$524,932 during the examination period, with \$374,932 being added in 2019. Assets and annuity fund balance also increased due to a shift from bond investments to common stocks. There were gains in the stock market during 2021, which caused the appreciation of the Fund's overall assets. Annuities decreased from 104 with annual payment amounts of \$329,594 as of December 31, 2016 to a total of 100 with annual payment amounts of \$261,241 as of December 31, 2021, which helped account for the overall decrease in liabilities.

The Fund's admitted assets, as of December 31, 2021, were invested in equity securities (94.61%).

## 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.

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

## 7. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2017, namely Schedule C – Cash, Money Market and Certificates of Deposit, states the following, in part:

“Column 6: Balance - Report the ending balance in the depository's account as of December 31 of the current year.

Report the total balance of all open depository accounts on the line, “Total Cash on Deposit”. The total amount on this line should agree with the amount reported on Page 2, Line 6.2.”

The Fund reported \$0 in cash on deposit on line 6.2 of the assets section of its filed 2017 annual statement. The Fund reported \$0 in cash on deposit on column 6 of Schedule C, Cash, Money Market and Certificates of Deposit for 2017. The Fund should have reported \$184,293 on column 6 of Schedule C, Cash, Money Market and Certificates of Deposit for 2017.

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.

## 8. 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's board of trustees review the activities of the Fund at least annually and note the same in the minutes</p> <p>The Fund still did not conduct a review of the Fund's admitted assets at least annually. A similar recommendation appears in this report on examination.</p>
B	<p>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.</p> <p>The Fund still did not conduct a review of the Fund's admitted assets at least annually. A similar recommendation appears in this report on examination.</p>
C	<p>The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain and maintain signed statements from the board members indicating that they received and read the prior report on examination.</p> <p>The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain and maintain signed statements from the board members indicating that they received and read the prior report on examination. A similar violation appears in this report on examination.</p>
D	<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 did not comply with Section 312(b) of the New York Insurance Law by failing to obtain and maintain the signature of each board member indicating that they received and read the prior report on examination. A similar recommendation appears in this report on examination.</p>
E	<p>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.</p> <p>The examiner's review revealed that the Fund does obtain and maintain a death certificate or other reliable evidence that supports such information terminating an annuity contract.</p>

<u>Item</u>	<u>Description</u>
F	<p>In aggregate, the Fund's calculated reserves are greater than the required minimum with the individual reserves remaining constant from year to year. However, given the Fund's reserve methodology, it is possible that the Fund's liabilities will exceed the available assets in the future. As such, the Fund may want to consider updating its current reserve methodology.</p> <p>The Fund's liabilities did not exceed the available assets. The Fund's current reserve methodology complies with applicable laws and regulations.</p>
G	<p>The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.</p> <p>The examiner determined that no new discrepancies were noted.</p>
H	<p>The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.</p> <p>The Fund failed to prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. A similar recommendation appears in this report on examination.</p>



## 9. SUMMARY AND CONCLUSIONS

Following are the 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.	6
B	The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they have received and read any current or future filed report on examination.	6
C	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
D	The examiner recommends that the Fund adopt an Investment Strategy Statement ("ISS") 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
E	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.	7

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
F	The examiner recommends that the Board of Trustees, 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.	8
G	The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.	11

Respectfully submitted,

\_\_\_\_\_  
/s/

Hasan Ahmed  
Senior Insurance Examiner

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

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

\_\_\_\_\_  
/s/

Hasan Ahmed

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_

*APPOINTMENT NO. 32382*

*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:*

***HASAN AHMED***

*as a proper person to examine the affairs of the*

***SEGREGATED GIFT ANNUITY FUND OF THE  
NEW YORK BOTANICAL GARDEN***

*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 5th day of April, 2022*

*ADRIENNE A. HARRIS  
Superintendent of Financial Services*

*By:*



---

***MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU***

