





## 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. Structure	4
	C. Assets under the board of directors	4
	D. Third-party payment service provider	4
4.	Investment review	5
	A. Investment strategy statement	5
5.	Assets and liabilities summary	6
6.	Treatment of annuitants	7
7.	Prior report summary and conclusions	8
8.	Summary and conclusions	9

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KATHY HOCHUL  
Governor



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ADRIENNE A. HARRIS  
Superintendent

June 7, 2023

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

Madam:

In accordance with instructions contained in Appointment No. 32370, dated May 27th, 2022, and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Consumer Reports. The Fund's home office is located at 101 Truman Avenue, Yonkers, NY 10703.

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

## 1. EXECUTIVE SUMMARY

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 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' (the "Department" or "DFS") examination and assessment of the Consumer Reports Segregated Annuity Fund (the "Fund") through which Consumer Reports (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 7 of this report.

### 3. DESCRIPTION OF FUND

#### A. History

Consumer Reports, Inc. is organized for the purpose of obtaining and providing consumers information and counsel on consumer goods and services. The Organization established the Fund to issue gift annuity agreements in return for gifts from donors in 1999. The Superintendent of Insurance granted to the Organization a Charitable Annuity Society special permit on October 8, 2003.

#### B. Structure

The Fund is overseen by the Organization's board of directors. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

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

As of the May 31, 2021 audited financial statement, the Organization's Board of Directors oversaw investments comprising \$364,539,000 in total assets. The Organization does not maintain an endowment. The Fund, as of December 31, 2021, held total admitted assets of \$14,688,066.

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

PNC Institutional Asset Management is the Fund's custodian and investment manager. The Fund has a service agreement with PNC for certain investment related services, including cash flow management, the processing of investment transactions, and advising the Fund on regulatory compliance requirements.

#### 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.

PNC Institutional Asset Management is the Fund’s investment adviser and custodian (“PNC”). PNC 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.



## 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>12,064,684</u>	\$ <u>14,688,066</u>	\$ <u>2,623,382</u>
Liabilities	\$ <u>8,306,411</u>	\$ <u>7,972,633</u>	\$ <u>(333,778)</u>
Minimum required fund balance	\$ 830,641	\$ 797,263	\$ (33,378)
Excess fund balance (surplus)	<u>2,927,632</u>	<u>5,918,170</u>	<u>2,990,538</u>
Total annuity fund balance	\$ <u>3,758,273</u>	\$ <u>6,715,433</u>	\$ <u>2,957,160</u>
Total liabilities and annuity fund balance	\$ <u>12,064,684</u>	\$ <u>14,688,066</u>	\$ <u>2,623,382</u>

The increase in assets and annuity fund balance is due to the appreciation in the market value of the Fund's investments during the examination period. The decrease in liabilities is due to the decline in annuities in force. Annuities decreased from 604 with annual payment amounts of \$826,437 as of December 31, 2016 to a total of 537 with annual payment amounts of \$774,376 as of December 31, 2021.

The Fund's admitted assets, as of December 31, 2021, were invested in equity securities (94.65%), and money market mutual funds (5.14%).

## 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's review of a sample of 5 annuity contracts terminated revealed that in 1 of the 5 cases (20%) 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 violations 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 each board member indicating that they received and read the prior report on examination.</p> <p>The Fund maintained statements signed by each board member indicating that they received and read the prior report on examination.</p>
B	<p>The examiner recommends that the Fund maintain the statements, signed by the board members indicating that they received and read the prior report on examination, for the examiner's review during the ensuing examination.</p> <p>The Fund maintained statements signed by each board member indicating that they received and read the prior report on examination.</p>
C	<p>The examiner recommends that the board of directors, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.</p> <p>The Organization reviewed the Fund's investments at least annually and memorialized the review in the minutes.</p>
D	<p>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.</p> <p>The Fund used gift annuity agreement forms that were filed with the Superintendent.</p>
E	<p>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.</p> <p>The Fund filed with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.</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 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.	5
B	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
C	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

Respectfully submitted,

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/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. 32370*

*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  
CONSUMER REPORTS***

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

***FUND***

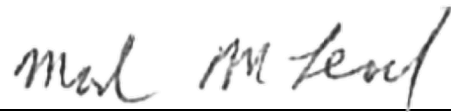
*with such other information as he shall deem requisite.*

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

*this 27th day of May, 2022*

*ADRIENNE A. HARRIS  
Superintendent of Financial Services*

*By:*



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

