



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
LINCOLN CENTER FOR THE PERFORMING ARTS, INC.**

AS OF December 31, 2021

EXAMINER: Hasan Ahmed

DATE OF REPORT: December 21, 2023

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

January 30, 2024

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

Madam:

In accordance with instructions contained in Appointment No. 32378, dated October 25th, 2022, and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Lincoln Center for the Performing Arts. The Fund's home office is located at 70 Lincoln Center Plaza, New York, NY 10023-6583.

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 of directors 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 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 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 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 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)

The examiner recommends that the Fund maintain a copy of the annuity agreement and a copy of the canceled check and documentary evidence showing proof of residuum transfer in its documentation for terminated contracts. (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") examination and assessment of the Lincoln Center for the Performing Arts, Inc. Gift Annuity Fund (the "Fund") through which Lincoln Center for the Performing Arts, Inc. (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 College 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

Lincoln Center for the Performing Arts, Inc. is organized for the purpose of sustaining, encouraging and promoting musical and performing arts, including opera, concerts, ballet, drama and other forms of artistic expression. The Organization established the Fund to issue gift annuity agreements in return for gifts from donors in 1996. The Superintendent of Insurance granted to the Organization a Charitable Annuity Society special permit on February 11, 1997.

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 June 30, 2021 audited financial statement, the Organization's Board of Directors oversaw an endowment comprising \$335,514,195 in total assets. The Fund, as of December 31, 2021, held total admitted assets of \$934,099.

D. Third Party Payment Service Provider

The Fund has a service agreement with Bank of New York Mellon ("BNY Mellon") for certain administrative and investment management related services. Services provided by BNY Mellon include annuity payments, annual statement preparation, investment transactions, investment advisory services, and the calculation of reserve liabilities.

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 Fund failed to obtain statements signed by each member of its board of directors 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 of directors 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 did not 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 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.”

BNY Mellon is the Fund’s investment adviser and custodian.

BNY Mellon prepared and provided a form investment policy statement (“IPS”) to the Fund. The Fund adopted that form as its IPS.

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

New York Estate Powers and Trust Law § 11-2.3(c)(1) requires trustees to exercise care, skill and caution in periodically reviewing the delegee’s exercise of the delegated function and compliance with the scope and terms of the delegation.

New York Not-for-Profit Corporation Law § 554(a)(3) provides that, when delegating investment functions, an institution must monitor its agents’ performance and compliance with the scope and terms of each’s respective delegation. In so doing, the institution must use the care that an ordinarily prudent person in a like position would exercise under similar circumstances.

The examiner requested the minutes of the board of directors and all committees thereof for the examination period. The Fund provided the examiner with a copy of the board minutes for meetings conducted in 2020 only.

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.

The examiner reviewed the Board of Directors minutes to determine if the board had been provided with a report concerning the Fund's investment of required admitted assets. The minutes did not 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.

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>	Increase (Decrease)
Admitted assets	<u>\$858,135</u>	<u>\$934,099</u>	<u>\$ 75,964</u>
Liabilities	<u>\$764,315</u>	<u>\$599,833</u>	<u>\$(164,482)</u>
Minimum required fund balance	\$ 76,431	\$ 59,983	\$ (16,448)
Excess fund balance (surplus)	<u>17,388</u>	<u>274,282</u>	<u>256,894</u>
Total annuity fund balance	<u>\$ 93,820</u>	<u>\$334,265</u>	<u>\$ 240,445</u>
Total liabilities and annuity fund balance	<u>\$858,135</u>	<u>\$934,099</u>	<u>\$ 75,964</u>

The decrease in liabilities reflects a decrease in the total number of annuities in force. Annuities decreased from 22 with annual payment amounts of \$99,496 as of December 31, 2016, to a total of 19 with annual payment amounts of \$87,467 as of December 31, 2021. The increase in assets and annuity fund balance is attributable to investment gains and income being reinvested back into the Fund.

The Fund's admitted assets, as of December 31, 2021, were mainly invested in equity securities (96.7%).

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 2 newly issued gift annuities by the Fund during the examination period noted that in 1 newly issued annuity, the Fund used a form that differed from the gift annuity agreements filed with the Superintendent. The deviating form number found in the sample is 2Sda-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 3 annuity contracts terminated revealed that in 2 of the 3 cases (67%) 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.

The examiner’s review of a sample of 3 annuity contracts terminated revealed that in 3 of the 3 cases (100.0%) reviewed, the Fund did not maintain a copy of the canceled check and documentary evidence showing proof of residuum transfer for each sample terminated contract.

The examiner recommends that the Fund maintain a copy of the annuity agreement and a copy of the canceled check and documentary evidence showing proof of residuum transfer in its documentation for terminated contracts.

7. 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 directors review the activities of the Fund at least annually and note the same in the minutes.</p> <p>The Fund failed to review the activities of the Fund at least annually and note the same in the minutes. A similar finding appears in this report on examination.</p>
B	<p>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.</p> <p>The Department no longer provides specific guidance on the diversification of investment holdings.</p>
C	<p>The examiner recommends that the Fund avoid or mitigate situations that have the appearance of a conflict of interest, by paying greater scrutiny to any high concentrations in investments that are either issued or sponsored by the investment manager and establishing a Board of Directors (or a committee thereof) or senior management-level policy or procedures related to conflicts of interest for investment managers.</p> <p>The Department no longer provides specific guidance on diversification of investment holdings in relation to conflicts of interest.</p>
D	<p>The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement form that differed from the gift agreement forms that were filed with the Superintendent.</p> <p>The Fund used gift annuity agreement form that differed from the gift agreement forms that were filed with the Superintendent. A similar finding appears in this report on examination.</p>

<u>Item</u>	<u>Description</u>
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 failed to file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent. A similar finding appears in this report on examination.</p>
F	<p>The examiner recommends that upon the death of the annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports the termination of an annuity contract.</p> <p>The Fund failed to obtain and maintain a death certificate or other reliable documentary evidence that supports the termination of an annuity contract. A similar finding appears in this report on examination.</p>

8. 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 Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board of directors 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 review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegates to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.	7
E	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.	8
F	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.	8
G	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.	10

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	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.	10
I	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.	10
J	The examiner recommends that the Fund maintain a copy of the annuity agreement and a copy of the canceled check and documentary evidence showing proof of residuum transfer in its documentation for terminated contracts.	10

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. 32378

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
LINCOLN CENTER FOR THE PERFORMING ARTS, INC.***

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

FUND

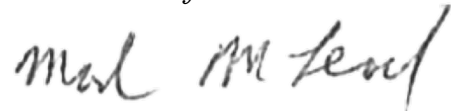
with such other information as he shall deem requisite.

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

this 25th day of October, 2022

ADRIENNE A. HARRIS
Superintendent of Financial Services

By:



MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

