



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
PHILHARMONIC-SYMPHONY SOCIETY OF
NEW YORK, INC.
AS OF DECEMBER 31, 2022**

EXAMINER: Adelia Gbadamosi

DATE OF REPORT: December 11, 2023

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Superintendent

January 22, 2024

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

Madam:

In accordance with instructions contained in Appointment No. 32517, dated June 28, 2023 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Philharmonic-Symphony Society of New York, Inc. The Fund's home office is located Avery Fisher Hall, 10 Lincoln Center, New York, NY 10023.

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 Investment Policy Statement be approved by the board of directors. (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 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'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 5 of this report)

The Fund violated Section 1110(b) of the New York Insurance Law when it failed to maintain admitted assets at least equal to 110% of the total amount of reserves on its outstanding agreements. (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' ("Department" or "DFS") examination and assessment of the Philharmonic-Symphony Society of New York, Inc. Segregated Annuity Fund (the "Fund") through which the Philharmonic-Symphony Society of New York, Inc. (the "Society") provides annuity benefits.

The prior examination was conducted as of December 31, 2017. This examination covers the period from January 1, 2018 through December 31, 2022. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2022 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 adhered to statutory standards and guidance or 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, 2022 to determine whether the Fund's filed 2022 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 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 Philharmonic-Symphony Society of New York, Inc. was chartered in 1853 and is organized for the purpose of supporting, maintaining and operating a symphony orchestra in New York City. The Society established the Fund to issue gift annuity agreements in return for gifts from donors in 1984. The Superintendent of Insurance granted to the Society a Charitable Annuity Society special permit on April 23, 1993.

B. Structure

The Fund is overseen by the Society's board of directors. The Society provides oversight of the management of the investments of the Fund and reviews the policies and procedures related to the Fund.

C. Assets under the Board of Directors

As of the August 31, 2022 IRS Form 990, the board of directors oversaw an endowment comprising \$228,493,580 in total assets. The Fund, as of December 31, 2022, held total admitted assets of \$540,297.

D. Third-party Payment Service Provider

Bank of New York Mellon is the custodian of the Fund's assets. Bank of New York Mellon also performs investment management, annuity calculations and benefit payments to annuitants and prepare annual tax filings. Armanino, LLP prepares the Fund's financial statements.

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 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.

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.”

The Fund provided minutes for 2018 only. They did not contain any information regarding board approval of the Investment Policy Statement.

The examiner recommends that the Investment Policy Statement be approved by the board of directors. The examiner further 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 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 decline in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	<u>December 31,</u> <u>2017</u>	<u>December 31,</u> <u>2022</u>	<u>(Decrease)</u>
Admitted assets	<u>\$938,503</u>	<u>\$540,297</u>	<u>\$(398,206)</u>
Liabilities	<u>\$721,972</u>	<u>\$493,436</u>	<u>\$(228,536)</u>
Minimum required fund balance	\$ 72,197	\$ 49,344	\$ (22,853)
Excess fund balance (surplus)	<u>144,333</u>	<u>(2,483)</u>	<u>(146,816)</u>
Total annuity fund balance	<u>\$216,531</u>	<u>\$ 46,861</u>	<u>\$(169,670)</u>
Total liabilities and annuity fund balance	<u>\$938,503</u>	<u>\$540,297</u>	<u>\$(398,206)</u>

The decline in assets, liabilities, and annuity fund balance stemmed from the volatility of the stock market as well as terminations. The market's performance, especially in 2022, was down, which caused the assets of the Fund to decrease. Further, there was no new gift activity compared to the many terminations coming out of the Fund along with fees and annuity payments. Annuities in force decreased from 38 as of December 31, 2017 with annuity payments of \$114,915 to 23 as of December 31, 2022 with annuity payments of \$82,979.

The Fund's admitted assets, as of December 31, 2022, were invested mainly in equity securities (95.88%).

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. UNDERFUNDING

Section 1110(b) of the New York Insurance Law states, in part:

“Every such domestic corporation or association shall maintain admitted assets at least equal to the greater of (i) the sum of its reserves on its outstanding agreements . . . and a surplus of ten per centum of such reserves, or (ii) the amount of one hundred thousand dollars.”

As of December 31, 2022, the Fund reported admitted assets of \$540,297, net reserves of \$493,436, total annuity fund balance of \$46,861 and minimum required fund balance of \$49,344. The Fund is required to maintain admitted assets at least equal to \$542,780 (110% of \$493,436). Therefore, the Fund is underfunded in the amount of \$2,483.

The Fund violated Section 1110(b) of the New York Insurance Law when it failed to maintain admitted assets at least equal to 110% of the total amount of reserves on its outstanding agreements.

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is 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 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.</p> <p>The Fund provided minutes of its board and committees but there was no discussion on the activities of the Fund. A similar recommendation appears in this report on examination.</p>
B	<p>The Fund violated Section 312(b) of the New York Insurance Law by failing to maintain signed statements from the board members indicating that they received and read the prior report on examination.</p> <p>The Fund failed to take corrective action in response to this prior report comment. A similar recommendation appears in this report on examination.</p>
C	<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 failed to take corrective action in response to this prior report comment. A similar recommendation appears in this report on examination.</p>
D	<p>The examiner recommends that the Fund strengthen the diversification of its investment holdings.</p> <p>The Department no longer provides specific guidance for investment diversification.</p>

<u>Item</u>	<u>Description</u>
E	<p>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.</p> <p>The Fund adopted an Investment Strategy Statement that refers to the prudent investor standard as defined in Section 11-2.3 of the Estate, Powers and Trust Law.</p>
F	<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>No new annuities were issued during the examination period.</p>
G	<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>No new annuities were issued during the examination period.</p>
H	<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 Fund obtained death certificates for all annuities who died during the examination period.</p>

9. SUMMARY AND CONCLUSIONS

Following are the violation 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 members indicating that they received and read the prior report on examination.	5
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.	5
C	The examiner recommends that the Investment Policy Statement be approved by the board of directors and such approval be noted in the board minutes.	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 delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.	6
E	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.	6
F	The Fund violated Section 1110(b) of the New York Insurance Law when it failed to maintain admitted assets at least equal to 110% of the total amount of reserves on its outstanding agreements.	9

Respectfully submitted,

/s/
Adelia Gbadamosi
Senior Insurance Examiner

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

ADELIA GBADAMOSI, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

/s/
Adelia Gbadamosi

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 32517

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:

ADELIA GBADAMOSI

as a proper person to examine the affairs of the

***SEGREGATED GIFT ANNUITY FUND OF THE
PHILHARMONIC-SYMPHONY SOCIETY OF NEW YORK, INC.***

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

FUND

with such other information as she 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 28th day of June, 2023

*ADRIENNE A. HARRIS
Superintendent of Financial Services*

By:



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

