REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
MUSEUM OF JEWISH HERITAGE:
A LIVING MEMORIAL TO THE HOLOCAUST

AS OF DECEMBER 31, 2022

EXAMINER: Adelia Gbadamosi

DATE OF REPORT: August 7, 2024

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September 24, 2024

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

Dear Adrienne A. Harris:

In accordance with instructions contained in Appointment No. 32515, dated May 17, 2023 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Museum of Jewish Heritage: A Living Memorial to the Holocaust. The Fund's home office is located at 36 Battery Place, New York, New York 10280.

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 maintain 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 adopt an Investment Policy 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 IPS's risk, return, and time horizon objectives. (See item 4A of this report)

The examiner recommends that the Investment Policy Statement be approved by the Board of Trustees. (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 Fund's board of trustees, 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)

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 Segregated Gift Annuity Fund of the Museum of Jewish Heritage: A Living Memorial to the Holocaust (the "Fund") through which the Museum of Jewish Heritage: A Living Memorial to the Holocaust (the "Museum") 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 Foundation 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 recommendations and violation 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 Museum of Jewish Heritage: A Living Memorial to the Holocaust, Inc. was chartered in 1984 and is organized for the purpose of providing a space for visitors from around the world to come together and discover Jewish life before, during and after the Holocaust. The Museum established the Fund to issue gift annuity agreements in return for gifts from donors in 1997. The Superintendent of Insurance granted to the Museum a Charitable Annuity Society special permit on October 25, 2013.

B. Structure

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

C. Assets under the Board of Trustees

As of the June 30, 2022 IRS Form 990, the Museum'**s** Board of Trustees oversaw an endowment comprising $2,344,482 in total assets. The Fund, as of December 31, 2022, held total admitted assets of $161,944.

D. Third-party Service Providers

Bank of America Merrill Lynch ("Bank of America") is the Fund's custodian and investment manager. Bank of America also performs annuity calculations, prepares the annual statement, and distributes benefit payments to annuitants. PG Calc has been engaged by Bank of America to assist with some administrative duties and perform reserve calculations.

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.

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 examiner's review of the Fund's Investment Policy Statement revealed 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 Policy 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 IPS's risk, return, and time horizon objectives.

The examiner's review of the Fund's Investment Policy Statement ("IPS") revealed that the board did not approve the IPS.

The examiner recommends that the Investment Policy Statement be approved by the Board of Trustees.

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

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 Trustees and all committees thereof for the examination period. The Fund failed to provide copies of the meetings of the board of trustees and all committees thereof pertaining to the Fund.

The examiner recommends that the Fund's Board of Trustees, or a committee thereof, review the activities of the Fund at least annually and note the same 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, 2017	December 31, 2022	Increase (Decrease)
Admitted assets	$179,414	$161,944	$(17,470)
Liabilities	$ 75,215	$ 20,209	$(55,006)
Minimum required fund balance	$ 7,521	$ 2,021	$ (5,500)
Excess fund balance (surplus)	96,678	139,714	43,036
Total annuity fund balance	$104,199	$141,735	$ 37,536
Total liabilities and annuity fund balance	$179,414	$161,944	$(17,470)

The decrease in assets was due to unrealized losses. The decrease in liabilities reflects a decrease in the total number of annuities in force. Annuities decreased from 7 with annual payment amounts of $12,730 as of December 31, 2017 to a total of 2 with annual payment amounts of $1,590 as of December 31, 2022. The increase in annuity fund balance was due to the transfer of beneficiary funds from deceased annuitants.

The Fund's admitted assets, as of December 31, 2022, were invested mainly in equity securities (95.42%).

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. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violation and recommendations 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 Fund's board of trustees, or a committee thereof, review the activities of the Fund at least annually and note the same in the minutes. The Fund failed to take corrective action in response to this prior report comment. A similar recommendation appears in this report on examination.
B	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. The Fund failed to take corrective action in response to this prior report comment. A similar recommendation appears in this report on examination.
C	The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian. The Fund failed to take corrective action in response to this prior report comment. However, the examiner did not obtain broker's advices for this examination, but obtained the SOC 1 report of the Fund's custodian and investment advisor.
D	The examiner recommends that the Fund strengthen the diversification of its investment holdings. The Department no longer provides specific guidance on investment diversification.
E	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 failed to take corrective action in response to this prior report comment. A similar recommendation appears in this report on examination.

Item	Description
F	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 Fund did not issue any new annuities during the examination period.
G	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 Fund did not issue any new annuities during the examination period.
H	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. During this examination period, the Fund obtained and maintained death certificates that supported the terminating of an annuity contract.

8. SUMMARY AND CONCLUSIONS

Following are the violation and recommendations contained in this report:

Item	Description	Page No(s).
A	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.	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 Fund adopt an Investment Policy 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 IPS's risk, return, and time horizon objectives.	6
D	The examiner recommends that the Investment Policy Statement be approved by the Board of Trustees.	6
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.	6

Item	Description	Page No.(s)
F	The examiner recommends that the Board of Trustees, or a committee thereof, review the activities of the Fund and note the same in the minutes.	7

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. 32515

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 MUSEUM OF JEWISH HERITAGE: A LIVING MEMORIAL TO THE HOLOCAUST

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 17th day of May, 2023

ADRIENNE A. HARRIS
Superintendent of Financial Services

By: Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU