REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
MUSEUM OF MODERN ART
AS OF DECEMBER 31, 2023

EXAMINER: Adelia Gbadamosi

DATE OF REPORT: October 1, 2025

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November 17, 2025

Honorable Kaitlin Asrow
Acting Superintendent of Financial Services
New York, New York 10004

Dear Kaitlin Asrow:

In accordance with instructions contained in Appointment No. 32634, dated June 21, 2024 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Museum of Modern Art. The Fund's home office is located at 11 West 53rd Street, New York, New York 10019.

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 directs 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. (See item 3E of this report)

The Fund should use the name, as agreed upon by resolution of the board of trustees, for its custodian account. (See item 3E of this report)

The Investment Strategy Statement should be approved by the board of trustees. (See item 4A of this report)

The Fund should 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'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)

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 (the "Fund") of the Museum of Modern Art through which the Museum of Modern Art (the "Museum") provides annuity benefits.

The prior examination was conducted as of December 31, 2018. This examination covers the period from January 1, 2019 through December 31, 2023. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2023 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 Museum 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, 2023 to determine whether the Fund's filed 2023 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 7 of this report.

3. DESCRIPTION OF FUND

A. History

The Museum of Modern Art was chartered in 1929 as an educational institution. Its mission is to encourage an ever deeper understanding and enjoyment of modern and contemporary art by its diverse local, national and international audiences. The Museum established a program to issue gift annuity agreements in return for gifts from donors in 1998. The Superintendent of Insurance granted the Museum a Charitable Annuity Society special permit on February 17, 1999.

B. Structure

The Fund is overseen by the Museum'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, 2023 Internal Revenue Service Form 990, the Museum's board of trustees oversaw an endowment consisting of 157 individual funds comprising $1,080,493,857 in total assets. The Fund, as of December 31, 2023, held total admitted assets of $1,217,296.

D. Third-party Service Providers

BNY Mellon is the Fund's investment manager and the custodian of the Fund's assets. PG Calc issues quarterly distributions to the annuitants and prepares the annual statements and reserve listings.

E. Corporate Governance

Section 312(b) of the New York Insurance Law states, in part:

> "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 directs 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.

The examiner's review of the Fund's custodial account revealed that the account is in the name of the Museum of Modern Art, not in the name of the Fund as agreed by resolution of the board of trustees filed with the Department.

The Fund should use the name, as agreed upon by resolution of the board of trustees, for its custodian account.

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 ("ISS") revealed that the board did not approve the ISS.

The Investment Strategy Statement should be approved by the board of trustees.

The Museum prepared and provided a custom-tailored investment strategy statement ("ISS") for the Fund. The Fund adopted it as its ISS.

The Fund should 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, 2018	December 31, 2023	Increase (Decrease)
Admitted assets	$1,527,301	$1,217,296	$(310,005)
Liabilities	$1,363,134	$1,042,365	$(320,769)
Minimum required fund balance	$ 136,313	$ 104,236	$ (32,077)
Excess fund balance (surplus)	27,853	70,695	42,842
Total annuity fund balance	$ 164,167	$ 174,931	$ 10,764
Total liabilities and annuity fund balance	$1,527,301	$1,217,296	$(310,005)

The decline in total assets was due to a decrease in the market value of stocks. Total liabilities decreased due to a reduction in annuities in force. Annuities decreased from 47 with annual payment amounts of $170,306 as of December 31, 2018 to a total of 38 with annual payment amounts of $157,810 as of December 31, 2023. The increase in annuity fund balance was due to the decrease in liabilities exceeding the decline in total assets.

The Fund's admitted assets, as of December 31, 2023, were invested mainly in equity securities (95.71%).

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 VIOLATION & RECOMMENDATIONS

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 Fund violated New York Insurance Law § 312(b) by failing to obtain signed statements from the board members indicating that they received and read the prior report on examination. The Fund failed to take corrective action in response to this prior report violation. A similar violation appears in this report on examination.
B	The examiner recommends that the Fund comply with New York Insurance Law § 312(b) by obtaining the signature of each board member indicating that they have received and read any current or future filed report on examination. The Fund failed to take corrective action in response to this prior report recommendation. A similar violation appears in this report on examination.
C	The examiner recommends that the Fund adopt an Investment Policy Statement. Such a Statement should refer to the prudent investor standard as defined in Estates, Powers and Trusts Law § 11-2.3, which standard, as specified in New York Insurance Law § 1110(b), 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 Fund adopted an Investment Strategy Statement which refers to the prudent investor standard.
D	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. The Department no longer provides specific guidance for investment diversification.

Item	Description
E	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 the examination period, the Fund obtained and maintained death certificates that support such information terminating an annuity contract.

8. VIOLATION & RECOMMENDATIONS

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 obtain signed statements from the board members indicating that they received and read the prior report on examination.	5
B	The examiner directs 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.	5
C	The Fund should use the name, as agreed upon by the resolution of the board of trustees, for its custodial account.	5
D	The Investment Strategy Statement should be approved by the board of trustees.	6
E	The Fund should 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

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. 32634

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 MODERN ART

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 21st day of June, 2024

ADRIENNE A. HARRIS
Superintendent of Financial Services

By: Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU