



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
JEWISH MUSEUM

CONDITION:

DECEMBER 31, 2011

DATE OF REPORT:

AUGUST 17, 2012

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

JEWISH MUSEUM

AS OF

DECEMBER 31, 2011

DATE OF REPORT:

AUGUST 17, 2012

EXAMINER:

ANN MARIE THOMPSON

TABLE OF CONTENTS

| <u>ITEM</u> | | <u>PAGE NO.</u> |
|-------------|--------------------------------------|-----------------|
| 1. | Executive summary | 2 |
| 2. | Scope of examination | 3 |
| 3. | Description of Fund | 4 |
| 4. | Corporate governance | 5 |
| 5. | Significant financial information | 6 |
| 6. | Treatment of annuitants | 7 |
| 7. | Custodian | 8 |
| 8. | Annual statement reporting | 9 |
| 9. | Prior report summary and conclusions | 10 |
| 10. | Summary and conclusions | 11 |



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Shirin Emami
Acting Superintendent

December 7, 2015

Honorable Shirin Emami
Acting Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 30786, dated August 22, 2012 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Jewish Museum, hereinafter referred to as “the Fund,” at its home office located at 1109 Fifth Avenue, New York, NY 10128.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

1. EXECUTIVE SUMMARY

The Fund violated Section 312(b) of the New York Insurance Law by failing to maintain statements signed by its board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund obtain a signed statement by the board of directors acknowledging receipt of the report on examination. (See item 4 of this report)

The examiner's review of a sample of transactions did not reveal any differences which materially affected the Fund's financial condition as presented in its financial statements contained in the December 31, 2011 filed annual statement. (See item 5 of this report)

The Fund violated Section 1110(a) of New York Insurance Law when it used annuity agreement forms that were not filed with the Superintendent. The examiner recommends that the Fund file all annuity agreement forms with the Superintendent. (See item 6 of this report)

The examiner recommends that the Fund obtain adequate proof of death such as a certified copy of the death certificate and maintain such proof in the annuitant's file. (See item 6 of this report)

The examiner recommends that the Fund comply with OGC Opinion No. 96-50 by contracting with a licensed bank or trust company to serve as the Fund's custodian for the Fund's securities. (See item 7 of this report)

The examiner recommends that the Fund exercise due diligence in the preparation of future filed annual statements. (See item 8 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2006. This examination covers the period from January 1, 2007 through December 31, 2011. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2011 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2011 to determine whether the Fund's filed 2011 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 contained in the prior report on examination. The results of such review are contained in item 9 of this report.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations, or rules or which require explanation or description.

3. DESCRIPTION OF FUND

The Jewish Museum (the “Museum”) is organized for the purpose of presenting art and Jewish culture to an ethnically and religiously diverse audience. Under the provisions of its by-laws, the Museum is permitted to issue gift annuity agreements and it has done so since May 14, 1997. A special permit was granted to the Museum by the Department on April 25, 2003, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Fund administers the annuity contracts and serves as the primary contact for annuitants. The Museum also communicates changes in the annuity program with Cornerstone Advisors Asset Management, Inc. (CAAM). CAAM is the Fund’s investment manager and provides the following services:

- tax services;
- investment portfolio selection in consultation with staff at the Museum;
- monitors the Fund’s reserve and surplus;
- remits payments to annuitants;
- distributes periodic account statements to annuitants;
- prepares and distributes periodic performance reports including the Charles Schwab account statements; and
- prepares the Fund’s annual statements.

Charles Schwab & Company, Inc. is the Fund’s custodian for its investments; however, the Fund does not maintain a written custodial agreement with Charles Schwab & Company, Inc. Charles Schwab & Company, Inc. wires funds to the Bank of America account for distributions to annuitants.

The management of the Museum and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to not less than five and no more than 40 regular voting trustees. As of December 31, 2011, the board consisted of 39 trustees. The trustees elect a chairperson, a president, a director, three vice-chairpersons, a vice-president, a treasurer, an assistant treasurer, a secretary and an assistant secretary in accordance with the by-laws. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

4. CORPORATE GOVERNANCE

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

“(a) The superintendent shall forward to every insurer or other person examined a copy of the report on examination as filed for public inspection . . . (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 maintain 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 maintain statements signed by its board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund obtain a signed statement by the board of directors acknowledging receipt and review of the prior report on examination.

5. SIGNIFICANT FINANCIAL INFORMATION

The following table indicates the Fund's financial decline during the period under review:

| | <u>December 31,</u> <u>2006</u> | <u>December 31,</u> <u>2011</u> | <u>(Decrease)</u> |
|-------------------------------|------------------------------------|------------------------------------|--------------------|
| Admitted assets | <u>\$2,032,647</u> | <u>\$1,779,740</u> | <u>\$(252,907)</u> |
| Liabilities | <u>\$1,689,939</u> | <u>\$1,553,492</u> | <u>\$(136,447)</u> |
| Minimum required surplus | \$ 168,994 | \$ 155,349 | \$ (13,645) |
| Unassigned funds (surplus) | <u>173,714</u> | <u>70,900</u> | <u>(102,815)</u> |
| Total surplus | <u>\$ 342,708</u> | <u>\$ 226,249</u> | <u>\$(116,460)</u> |
| Total liabilities and surplus | <u>\$2,032,647</u> | <u>\$1,779,741</u> | <u>\$(252,907)</u> |

Note: Any differences are due to rounding.

The decrease in assets, liabilities and surplus reflects a decrease in the total number of annuities in force. During the examination period, annuities decreased from 23 with annual payment amounts of \$203,761 as of December 31, 2006 to a total of 22 with annual payment amounts of \$197,781 as of December 31, 2011.

The decrease in assets and unassigned funds (surplus) is also attributable to the transfer of the residual amount of terminated charitable gift annuities to the general funds of the corporation during the examination period: \$16,245 in 2007; \$74,783 in 2008 and \$75,000 in 2011.

The Fund's admitted assets, as of December 31, 2011, were mainly invested in common stocks (97.05%).

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 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 reviewed the Fund’s gift annuity agreement forms used during the examination period. The examiner noted that in all three annuity agreements issued the annuity agreement forms were not filed and approved with the Superintendent.

The Fund violated Section 1110(a) of New York Insurance Law when it used annuity agreement forms that were not filed with the Superintendent. The examiner recommends that the Fund file all annuity agreement forms with the Superintendent.

The review of three annuities terminated during the examination period revealed that the Fund did not obtain a certified copy of the death certificate. Also, the Fund was unable to provide the executed annuity agreement for one terminated annuity.

The examiner recommends that the Fund obtain adequate proof of death such as a certified copy of the death certificate and maintain such proof in the annuitant’s file.

7. CUSTODIAN

Office of General Council (OGC) Opinion No. 96-50 states, in part:

“...It has been the long-standing position of this Department that an insurer’s securities may be held only by a licensed bank and or trust company. The Department’s rationale behind this requirement is to insure that the securities are properly safeguarded. It has been the Department’s opinion that securities brokerage houses are not regulated closely enough to permit them to serve as custodians for admitted assets, despite the convenience they would provide to an insurer...”

The Fund uses Charles Schwab & Company, Inc. (“Charles Schwab”) as custodian of the Fund’s legal reserve assets. The examiner’s review determined that Charles Schwab is a brokerage firm, not a licensed bank or trust company.

The examiner recommends that the Fund comply with OGC Opinion No. 96-50 by contracting with a licensed bank or trust company to serve as the Fund’s custodian for the Fund’s securities.

8. ANNUAL STATEMENT REPORTING

A review of the filed annual statements revealed that the Fund failed to complete the annual statement filings for its New York State Segregated Gift Annuity Fund Annual Statement in accordance with the annual statement instructions.

The examiner noted errors in the preparation of the Fund's filed annual statements, as follows:

1. Page 4, General Interrogatories, item 5 of the annual statement requires that the Fund indicate the name and address of its custodian. However, in its 2009, 2010, and 2011 annual statement filings, the Fund indicated that its investment advisor, Cornerstone Advisors Asset Management, Inc., is the custodian. During the on-site examination, the examiner determined that the Fund's custodian is Charles Schwab & Company, Inc.
2. Page 3, Exhibit of Annuities In Force, of the annual statement requires that the Fund report the number and amount of annuities in-force at the beginning of the year, number and amount of annuities written and terminated during the year, and the number and amount of annuities in-force at the end of the year. The Fund did not complete the exhibit in accordance with the annual statement instructions. In all five years during the examination period, the Fund incorrectly reported the beginning and end of year number and amount of annuities in-force as well as the number and amount of annuities written and terminated. During the on-site examination, the Fund confirmed that clerical errors were made in its filed annual statements.

The examiner recommends that the Fund exercise due diligence in the preparation of future filed annual statements.

9. 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 recommended that the Fund change the name on the annuity benefit payment checks and wire transfers to the name stated in the Museum's certified board resolution.</p> <p>The Fund changed the name on the annuity benefit payment checks and wire transfers to the name stated in the Museum's certified board resolution.</p> |
| B | <p>The examiner recommended that the board of trustees, or a committee thereof, approve the purchase and sale of all investments, and note such approvals in the minutes.</p> <p>The Fund's board of trustees, or a committee thereof, approved the purchase and sale of all investments, and noted such approvals in the minutes.</p> |
| C | <p>The examiner recommended that the Fund obtain brokers' advices, or other documentation to support the source transactions, and reconcile such documentation to the monthly statements provided by its custodian.</p> <p>The Fund obtained brokers' advices and confirmations to support the source transactions, and reconciled such documentation to the monthly statements provided by its custodian.</p> |

10. 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 maintain statements signed by its board members indicating that they received and read the prior report on examination. | 5 |
| B | The examiner recommends that the Fund obtain a signed statement by the board of directors acknowledging receipt and review of the prior report on examination. | 5 |
| C | The Fund violated Section 1110(a) of New York Insurance Law when it used annuity agreement forms that were not filed with the Superintendent. | 7 |
| D | The examiner recommends that the Fund file all annuity agreement forms with the Superintendent. | 7 |
| E | The examiner recommends that the Fund obtain adequate proof of death such as a certified copy of the death certificate and maintain such proof in the annuitants file. | 7 |
| F | The examiner recommends that the Fund comply with OGC Opinion No. 96-50 by contracting with a licensed bank or trust company to serve as the Fund's custodian for the Fund's securities. | 8 |
| G | The examiner recommends that the Fund exercise due diligence in the preparation of future filed annual statements. | 9 |

Respectfully submitted,

_____/s/
Ann Marie Thompson
Insurance Examiner

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

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

_____/s/
Ann Marie Thompson

Subscribed and sworn to before me
this _____ day of _____

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, 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:

ANN MARIE THOMPSON

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
JEWISH MUSEUM**

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 22nd day of August, 2012

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:


MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

