



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
BARUCH COLLEGE FUND

CONDITION:

DECEMBER 31, 2017

DATE OF REPORT:

AUGUST 8, 2018

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

DONNA TAYLOR

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Linda A. Lacewell
Acting Superintendent

June 10, 2019

Honorable Linda A. Lacewell
Acting Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31721 dated April 13, 2018 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Baruch College Fund, hereinafter referred to as the “Fund.” The Fund’s home office is located at 135 East 22nd Street, New York, NY 10010.

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

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

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. (See item 3C of this report)

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 Investment Strategy Statement's ("ISS") risk, return, and time horizon parameters. (See item 4 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 5 of this report)

The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued. (See item 5 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 5 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2012. This examination covers the period from January 1, 2013 through December 31, 2017. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2017 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, 2017 to determine whether the Fund's filed 2017 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification. The examiner reviewed the prior report on examination which did not contain any violations, recommendations or comments.

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

A. History

The Baruch College Fund is an educational corporation organized for the purpose of generating, encouraging, and promoting the educational welfare of the students of the Baruch College of the City University of New York as granted by the Board of Regents of the State of New York. The Fund established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1969. A special permit was granted to the Fund by the Department on August 28, 2008, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

B. Services

The Fund's potential annuitants are primarily from the alumni of Baruch College. Future Funds LLC, a fundraising and planned giving firm, provides fundraising strategies to the Fund, as well as Harvest FRC and Wilson-Bennett Technologies. BNY Mellon Bank ("BNY Mellon") is the Fund's custodian and investment manager. BNY Mellon prepares the annual statements, calculates the reserves, and processes the annuity benefits on behalf of the Fund. The Fund also maintains a licensing agreement with PG Calc, Inc. for gift annuity software to manage the Fund's gift annuity program. Prime Buchholz is the investment advisor for the investment committee. All other operations related to the issuance, maintenance and settlement of annuity agreements are performed by the Fund.

C. Corporate Governance

The management of the Corporation and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to 50 regular voting trustees. As of December 31, 2017, the board consisted of 48 regular voting trustees. The trustees elect a Chair, President, Vice President, Secretary, Treasurer, and such other officers as the by-laws or board of trustees shall from time to time provide. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

The examiner reviewed the Board of Trustees, Budget and Finance, and Investment Committee minutes to determine whether the Board and its committees thereof approved the purchases and sales of investments during the examination period. The minutes did not contain any indication that the committee approved the purchases and sales of investments during the examination period.

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.

4. SIGNIFICANT FINANCIAL INFORMATION

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:

	<u>December 31,</u> <u>2012</u>	<u>December 31,</u> <u>2017</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$3,125,703</u>	<u>\$3,360,635</u>	<u>\$ 234,932</u>
Liabilities	<u>\$2,136,252</u>	<u>\$1,434,552</u>	<u>\$ (701,700)</u>
Minimum required fund balance	\$ 213,625	\$ 143,455	\$ (70,170)
Excess fund balance (surplus)	<u>775,826</u>	<u>1,782,628</u>	<u>1,006,802</u>
Total annuity fund balance	<u>\$ 989,451</u>	<u>\$1,926,083</u>	<u>\$ 936,632</u>
Total liabilities and annuity fund balance	<u>\$3,125,703</u>	<u>\$3,360,635</u>	<u>\$ 234,932</u>

The increase in assets and annuity fund balance is attributable to an increase in the market value of investments in common stocks. The increase in the annuity fund balance was also attributable to the non-withdrawal of two terminated annuities from the Fund's portfolio.

The decrease in liabilities reflects a decrease in annuity payments despite the increase in annuities in force during the examination period. Annuity payments decreased from \$317,646 as of December 31, 2012 to \$230,785 as of December 31, 2017. Annuities in force increased from 23 as of December 31, 2012 to a total of 28 as of December 31, 2017.

The Fund's admitted assets, as of December 31, 2017, were invested mainly in common stocks (97.19%).

Section 1409(a) of the New York Insurance Law states,

“(a) Except as more specifically provided in this chapter, no domestic insurer shall have more than ten percent of its admitted assets as shown by its last statement on file with the superintendent invested in, or loaned upon, the securities (including for this purpose, certificates of deposit, partnership interests and other equity interests) of any one institution.”

According to the 2017 annual statement, the Fund reported: 44.58% of its admitted assets invested in iShares Russell 3000 ETF, 27.58% of its invested assets invested in iShares Core US Aggregate Bond ETF, and 15.04% of its admitted assets invested in iShares MSCI EAFE ETF. The Fund's current concentration in these three stock funds could make it highly unlikely that the Fund's other assets could provide a variability to offset the risks inherent in these stock funds.

Based upon the concentration in the above funds, 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. A trustee using reasonable care, skill and caution should diversify the Fund's assets. A diversification is proper when it disperses the investments' risks consistent with the Investment Strategy Statement's risk, return, and time horizon objectives, and the various risks in the portfolio offset each other. Section 1409 of the New York Insurance Law is instructive. Limiting exposure to any assets of any one institution to ten percent of admitted assets would reasonably assure that the risks in the investment in that institution are offset by the rest of the portfolio.

5. 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 the nine (9) gift annuity agreement forms used by the Fund for gift annuities issued in New York during the examination period noted that in one (1) instance, the Fund used gift annuity agreement forms that differed from the gift annuity agreements filed with the Superintendent.

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 reviewed the Fund’s gift annuity agreement forms used during the examination period. The examiner noted that eight (8) out of the 9 gift annuity agreement forms used by the Fund did not have the appropriate form number as approved by the Superintendent printed on the forms.

The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued.

The examiner’s review of a sample of five (5) annuity contracts terminated revealed that in all 5 (100%) cases reviewed, the Fund did not obtain a copy of the death certificate to confirm the termination of the annuity contract. Instead, the Fund obtained obituaries in three (3) cases and in the other two (2) cases the Fund was informed by family members.

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.

6. 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 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.	5
B	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.	7
C	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.	8
D	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.	8
E	The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued.	8
F	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.	9

Respectfully submitted,

/s/

Donna Taylor
Senior Insurance Examiner

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

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

/s/

Donna Taylor

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 31721

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, MARIA T. VULLO, 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:

DONNA TAYLOR

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
BARUCH COLLEGE FUND**

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 13th day of April, 2018

MARIA T. VULLO
Superintendent of Financial Services

By:



MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

