

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
CATHOLIC NEAR EAST WELFARE ASSOCIATION

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

OCTOBER 25, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

CATHOLIC NEAR EAST WELFARE ASSOCIATION

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EXAMINER:

ADELIA GBADAMOSI

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## Department of Financial Services

**KATHY HOCHUL**  
Governor

**ADRIENNE A. HARRIS**  
Superintendent

February 3, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 31897, dated May 16, 2019 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Catholic Near East Welfare Association at its home office located at 1011 First Avenue, New York, NY 10022.

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

## 1. EXECUTIVE SUMMARY

The examiner recommends that the Investment Strategy Statement (“ISS”) be approved by the board of directors. (See item 3C(i) of this report)

The examiner recommends that the Fund’s investments be further diversified. If the Fund’s board of trustees reasonably determines that it is in the interest of the beneficiaries not to diversify, then a proper memorialization of either decision and the supporting rationale, should be prepared when that decision is made. (See item 3C(ii) of this report)

The examiner recommends that the Fund resubmit its annuity agreement forms and add a separate line on which the issue date on the new contract can be written for as long as it does not appear on the lower left page corner of the contract. (See item 5 of this report)

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (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' (the "Department" or "DFS") examination and assessment of the Catholic Near East Welfare Association Segregated Annuity Fund (the "Fund") through which the Catholic Near East Welfare Association (the "Association") provides annuity benefits.

The prior examination was conducted as of December 31, 2013. This examination covers the period from January 1, 2014 through December 31, 2018. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2018 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 College or Fund, in relation to their annuity activities, could have better satisfied statutory standards or adhered to 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, 2018 to determine whether the Fund's filed 2018 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 comment contained in the prior report on examination. The results of such review are contained in item 7 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

#### A. History

The Catholic Near East Welfare Association is organized for the purpose of supporting the pastoral mission and institutions of the Eastern Catholic churches, to provide humanitarian assistance to those in need without regard to nationality or creed, to promote Christian unity and inter-religious understanding and collaboration and to educate people in the West about the history, cultures, peoples and churches of the East. The Association established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1967. A special permit was granted to the Association by the Department on December 11, 1973 authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

#### B. Third Party Investment and Other Servicers

Merrill Lynch Trust Company is the Fund's custodian and investment manager. Bolton Consulting conducts the annual reserve valuation. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

#### C. Oversight Structure

The management of the Catholic Near East Welfare Association and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to nine regular trustees, one of whom shall be the Archbishop of New York, the remainder of the trustees are elective. As of December 31, 2018, the board consisted of five trustees. The Archbishop of New York shall, ex officio, be president and treasurer to coincide with the term of his office as Archbishop of New York. The trustees elect a vice-president, secretary general and associate secretary general. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

## Investment Strategy and Review

### *(i) 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) calls for “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) states 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.”

Interrogatory 18 in the 2018 annual statement states the following:

“Has the board or other governing body of the segregated gift annuity fund adopted an Investment Strategy Statement specifying guidelines for the investment of the fund’s assets?”

The examiner’s review of the Fund’s filed 2018 annual statement showed that the Fund answered “yes” to interrogatory 18. The examiner’s review of the Fund’s Investment Strategy Statement revealed that the board failed to approve the ISS. Therefore, the Fund failed to answer interrogatory 18 in the 2018 annual statement correctly.

The examiner recommends that the Investment Strategy Statement be approved by the board of directors.

### *(ii) Diversification*

New York Estate Powers and Trust Law § 11-2.3(b)(2)(C) requires a trustee to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify. Compliance is to be determined in light of facts and circumstances prevailing at the time of the investment decision.

New York Not-for-Profit Law § 552(e)(4) states,

“(4) An institution shall diversify the investments of an institutional fund unless the institution prudently determines that, because of special circumstances, the purposes of the fund are better served without diversification. An institution shall



review a decision not to diversify as frequently as circumstances require, but at least annually.”

The Fund has 20.58% of its admitted assets invested in iShares Core U.S. Aggregate Bond ETF and 17.40% of its admitted assets invested in the iShares Russell 1000 ETF.

In addressing how to assess whether a trustee has been prudent, New York’s highest court, the Court of Appeals, has held that a statute did not change the applicability of appropriate benchmarks or methodologies used to assess an investor’s actions. *Matter of Janes*, 90 N.Y.2d 41 (1997) (affirming a judgment imposing a surcharge against petitioner for failure to diversify and inattentiveness). Thus, one can look to aptly analogous sources for benchmarks against which to assess a charitable annuity society portfolio’s diversification.

The annuity business is a type of life insurance business. This is illustrated by the required admitted asset requirement of the Charitable Annuity Society statute’s reference to New York Insurance Law § 4217.

Thus, while New York Insurance Law § 1409 does not apply directly to charitable gift annuity societies, its provisions, that are applied as to annuity providers generally, are apt as instructive guides to proper diversification.

New York Insurance Law § 1409 establishes a default limit on asset concentration for all entities. Exposure to all of the issuances of any one institution is limited to ten percent of the investor’s admitted assets.

As the Fund’s investments include funds registered under the Investment Company Act of 1940, New York Insurance Law § 1404(a)(10) and the Department’s consideration of that provision provide further guidance. When assessing a portfolio’s diversification, the Department regards investments in those securities as separate and distinct from the underlying securities held by that investment company. As a result, the Department does “look through” a fund to the underlying investments.

The examiner observed no record of board oversight of diversification of the required total assets.

The examiner recommends that the Fund’s investments be further diversified. If the Fund’s board of trustees reasonably determines that it is in the interest of the beneficiaries not to diversify, then a proper memorialization of either decision and the supporting rationale, should be prepared when that decision is made.

#### 4. SIGNIFICANT FINANCIAL INFORMATION

The following summary table indicates the decline in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	December 31, <u>2013</u>	December 31, <u>2018</u>	<u>(Decrease)</u>
Admitted assets	<u>\$8,168,982</u>	<u>\$6,854,832</u>	<u>\$(1,314,150)</u>
Liabilities	<u>\$6,663,735</u>	<u>\$5,745,766</u>	<u>\$ (917,969)</u>
Minimum required fund balance	\$ 649,551	\$ 493,275	\$ (156,276)
Excess fund balance (surplus)	<u>855,696</u>	<u>615,791</u>	<u>(239,905)</u>
Total annuity fund balance	<u>\$1,505,247</u>	<u>\$1,109,066</u>	<u>\$ (396,181)</u>
Total liabilities and annuity fund balance	<u>\$8,168,982</u>	<u>\$6,854,832</u>	<u>\$(1,314,150)</u>

The decrease in assets, liabilities and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 740 with annual payment amounts of \$811,188 as of December 31, 2013 to a total of 554 with annual payment amounts of \$634,934 as of December 31, 2018.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in equity securities (93.76%).

## 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.

The examiner compared the policy forms used during the examination period to those on file with the Department and noted that the Fund substituted the year of the contract for the date on the policy form.

The examiner recommends that the Fund resubmit its annuity agreement forms and add a separate line on which the issue date on the new contract can be written for as long as it does not appear on the lower left page corner of the contract.

## 6. ANNUAL STATEMENT REPORTING

The instructions for Schedule A, Part 3 of the annual statement state the following, in part:

“Column 4 No. of Shares

Report the number of shares owned as of December 31 of the current year. (Do not include any shares that were sold, redeemed or disposed of during the year)

Column 5 Cost

Report the actual consideration paid to purchase the security/mutual fund, including broker’s commission and incidental expenses.”

In the Fund’s filed 2018 annual statement, it failed to report the number of shares for the following common stocks held:

<b>Name of Security</b>
iShares Short-Term Corporate Bond ETF
iShares iBoxx\$ High Yield Corporate Bond ETF
iShares JP Morgan Emerging Market Bond ETF
iShares Russell 1000 ETF
iShares Core MSCI EAFE ETF
iShares International Select Dividend ETF
iShares MSCI EAFE Small Cap ETF
iShares Core MSCI Emerging Markets ETF
Wisdom Tree Emerging Markets Small Cap Dividend ETF

In addition, the Fund failed to report the cost of its common stock investments in column 5 of Schedule A, Part 3, Common Stocks.

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.

## 7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the recommendations and comment 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 board of trustees, or a committee thereof, approve the purchase and sale of all investments and that such approvals be noted in the board minutes.</p> <p>The board of trustees approved the purchases and sale of all investments and that approval was noted in the board minutes during the examination period.</p>
B	<p>During 2013, the Fund in coordination with its custodian and investment manager, Merrill Lynch Trust Company, decided to change the asset allocation model from individual stocks and bonds to exchange traded funds (“ETFs”) holding baskets of stocks and bonds in order to diversify the Fund’s investment portfolio and make transactions simpler and more cost effective. The asset allocation of the ETFs consists of 2% invested in cash, 48% invested in fixed income, and 50% invested in equities.</p> <p>The Fund continues to invest in exchange traded funds (ETF’s).</p>
C	<p>The examiner recommends that the Fund prepare the exhibit of annuities in its annual statements in accordance with the Department’s annual statement instructions.</p> <p>The examiner determined that new discrepancies were noted in the Fund’s filed annual statements. A similar recommendation appears in this report on examination.</p>

8. SUMMARY AND CONCLUSIONS

Following are the recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Investment Strategy Statement be approved by the board of directors.	5
B	The examiner recommends that the Fund's investments be further diversified. If the Fund's board of trustees reasonably determines that it is in the interest of the beneficiaries not to diversify, then a proper memorialization of either decision and the supporting rationale, should be prepared when that decision is made.	6
C	The examiner recommends that the Fund resubmit its annuity agreement forms and add a separate line on which the issue date on the new contract can be written for as long as it does not appear on the lower left page corner of the contract.	8
D	The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.	9



APPOINTMENT NO. 31897

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, LINDA A. LACEWELL, Acting 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  
CATHOLIC NEAR EAST WELFARE ASSOCIATION**

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 16th day of May, 2019

LINDA A. LACEWELL  
Acting Superintendent of Financial Services

By:

*Mark McLeod*

MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU

