



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
FRIARS OF THE ATONEMENT, INC.**

AS OF December 31, 2020

EXAMINER: James Wang

DATE OF REPORT: October 1, 2021

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

November 10, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32217, dated September 9, 2021 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Friars of the Atonement. The Fund's home office is located at Graymoor, Route 9, Garrison, New York 10524-0300.

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

1. EXECUTIVE SUMMARY

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 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 ISS's risk, return, and time horizon objectives. (See item 4A of this report)

The examiner recommends that the Investment Strategy 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 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. This is a repeated violation and recommendation from the previous examination. (See item 6 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 6 of this report)

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. (See item 7 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 Friars of the Atonement, Inc. (the "Fund") through which Friars of the Atonement, Inc. (the "Corporation") provides annuity benefits.

The prior examination was conducted as of December 31, 2015. This examination covers the period from January 1, 2016 through December 31, 2020. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2020 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 Corporation 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, 2020 to determine whether the Fund's filed 2020 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, recommendations and/or comments contained in the prior report on examination. The results of such review are contained in item 8 of this report.

3. DESCRIPTION OF FUND

A. History

The Friars of the Atonement, Inc. was chartered in 1914 is organized for the purpose of aiding in missionary activities. The Corporation established the Fund to issue gift annuity agreements in return for gifts from donors in 1957. The Superintendent of Insurance granted to the Corporation a Charitable Annuity Society special permit on June 10, 1959.

B. Structure

The management of the Corporation and the Fund and all of its affairs and property are entrusted to a board of trustees. The Corporation's treasury department makes certain that a separate account is maintained for the annuities. All accounting and reconciliation are performed by the Corporation's treasury department as well as the review of monthly account statements to ensure that calculations and fees are accurate. All other operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

C. Assets under the Board of Trustees

As of the December 31, 2020 annual financial statement, the Corporation's Board of Trustees oversaw an endowment comprising \$14,794,030 in total assets. The Fund, as of December 31, 2020, held total admitted assets of \$3,764,082.

D. Third-Party Payment Service Provider

The Fund has a custodial agreement with State Street Bank and Trust Company. The agreement's provisions include investing assets subject to the Fund's investment guidelines, periodic investment purchases and sales to meet the Fund's distribution needs and the maintaining of the Fund's books and records, including the preparation of annual federal and state income tax returns. State Street Bank and Trust Company also calculates the Fund's reserve and contacts the Fund when an annuitant has passed away.

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 Strategy Statement showed that it does not contain reference to 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 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 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 ISS’s risk, return, and time horizon objectives.

State Street Bank & Trust Company is the Fund’s investment adviser and custodian.

State Street Bank & Trust Company prepared and provided a form investment policy statement (“IPS”) to the Fund. The Fund adopted that form as its IPS. The examiner’s review of the Fund’s Investment Strategy Statement (“ISS”) revealed that the board did not approve the ISS.

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

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.

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:

	<u>December 31,</u> <u>2015</u>	<u>December 31,</u> <u>2020</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$3,427,658</u>	<u>\$3,764,082</u>	<u>\$ 336,424</u>
Liabilities	<u>\$3,026,518</u>	<u>\$2,506,857</u>	<u>\$(519,661)</u>
Minimum required fund balance	\$ 302,046	\$ 250,686	\$ (51,360)
Excess fund balance (surplus)	<u>99,902</u>	<u>1,006,539</u>	<u>907,447</u>
Total annuity fund balance	<u>\$ 401,138</u>	<u>\$1,257,225</u>	<u>\$ 856,087</u>
Total liabilities and annuity fund balance	<u>\$3,427,656</u>	<u>\$3,764,082</u>	<u>\$ 336,426</u>

The increase in assets was due to the amount of new gift annuities received over the examination period. The decrease in liabilities were due to the amount of terminated gift annuities over the examination period. The increase in annuity fund balance stems from market gains as well as the amount of new gift annuities received during the examination period.

The Fund's admitted assets, as of December 31, 2020, were invested mainly in equity securities (97.70%).

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 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 a sample of 16 newly issued gift annuities by the Fund during the examination period noted that in all 16 newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. The deviating form numbers found in the sample are 1da-I-NY, 2J-I-NY, Friars-1da-I-NY, and Friars-1da-D-NY.

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’s review of a sample of 11 annuity contracts terminated revealed that in 2 of the 11 cases (18.18%) reviewed, the Fund failed to obtain a copy of the death certificate to confirm termination of the annuity contract.

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.

7. ANNUAL STATEMENT REPORTING

The examiner's review of the Fund's annual statements for the period under examination revealed the following:

The Fund reported \$2,021 and \$19,618 in page 2, lines 8.3 and 8.4, respectively, of its 2016-2020 Annual Statements. However, the Fund did not insert the description for those assets.

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments 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 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.</p> <p>The Fund has maintained signed statements from the board members indicating that they received and read the prior report on examination.</p>
B	<p>The examiner recommends that the Fund obtain and maintain the signature of each board member indicating that they received and read the report on examination.</p> <p>The Fund has maintained signed statements from the board members indicating that they received and read the prior report on examination.</p>
C	<p>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.</p> <p>The Board of Trustees, or a committee thereof, has approved the purchase and sales of all investments and noted such approvals in the minutes.</p>
D	<p>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 to deviate from such a recommendation, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.</p> <p>The Department no longer provides guidance for diversification.</p>

<u>Item</u>	<u>Description</u>
E	<p>The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer 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 ISS's risk, return, and time horizon objectives.</p> <p>The Fund adopted an Investment Strategy Statement. However, the Investment Strategy Statement failed to include mention of the prudent investor standard. A similar recommendation appears in this report on examination.</p>
F	<p>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.</p> <p>The Fund still used gift annuity agreement forms that differ from the gift annuity agreement forms that were filed with the Superintendent. A similar violation appears in this report on examination.</p>
G	<p>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.</p> <p>The Fund still used gift annuity agreement forms that differ from the gift annuity agreement forms that were filed with the Superintendent. A similar recommendation appears in this report on examination.</p>
H	<p>The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.</p> <p>The Fund still has not used the name it agreed by the board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York. A similar recommendation appears in this report on examination.</p>

<u>Item</u>	<u>Description</u>
I	<p>The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.</p> <p>The Fund still did not prepare its annual statement in accordance with the Department's instructions. A similar recommendation appears in this report on examination.</p>

9. SUMMARY AND CONCLUSIONS

Following is 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 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 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 ISS's risk, return, and time horizon objectives.	5
B	The examiner recommends that the Investment Strategy Statement be approved by the board of trustees.	5
C	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
D	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
E	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

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
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.	8
G	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	9

Respectfully submitted,

/s/
James Wang
Senior Insurance Examiner

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

James Wang, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

/s/
James Wang

Subscribed and sworn to before me
this _____ day of _____

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, SHIRIN EMAMI, 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:

JAMES WANG

as a proper person to examine the affairs of the

***SEGREGATED GIFT ANNUITY FUND OF THE
FRIARS OF THE ATONEMENT, INC.***

and to make a report to me in writing of the condition of said

FUND

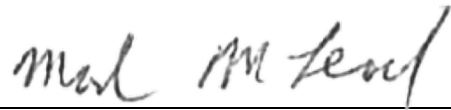
with such other information as he shall deem requisite.

*In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York*

this 9th day of September, 2021

*SHIRIN EMAMI
Acting Superintendent of Financial Services*

By:



*MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU*

