



**REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
AMERICAN FRIENDS OF MAGEN DAVID ADOM  
AS OF December 31, 2020**

**EXAMINER: Chacko Thomas**

**DATE OF REPORT: December 7, 2021**

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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KATHY HOCHUL  
Governor



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ADRIENNE A. HARRIS  
Superintendent

August 16, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32209, dated November 16, 2021 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the American Friends of Magen David Adom. The Fund's home office is located at 352 Seventh Avenue Suite 400, New York, NY 10001.

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

## 1. EXECUTIVE SUMMARY

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 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, 2020 filed annual statement. (See item 5 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 6 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 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)

## 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 American Friends of Magen David Adom Segregated Annuity Fund (the "Fund") through which American Friends of Magen David Adom (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 7 of this report.

### 3. DESCRIPTION OF FUND

#### A. History

American Friends of Magen David Adom was chartered in 1940 and is organized to be the authorized fundraising and advocacy organization in the United States of America, supporting the lifesaving efforts of Magen David Adom, in Israel, and representing it in the United States in all matters. Magen David Adom in Israel is mandated by the Knesset to be the nation's emergency medical first responders. The Corporation established the Fund to issue gift annuity agreements in return for gifts from donors in 2001. The Superintendent of Insurance granted to the Corporation a Charitable Annuity Society special permit on September 30, 2011.

#### B. Structure

The management of the Corporation and the Fund and all of its affairs and property are entrusted to a board of directors. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

#### C. Assets under the Board of Directors

As of the December 31, 2020, audited financial statement, the Corporation's Board of Directors oversaw an endowment comprising \$10,583,146 in total assets. The Fund, as of December 31, 2020, held total admitted assets of \$4,552,892.

#### D. Third Party Payment Service Provider

State Street Global Advisors Trust Company ("State Street") is the custodian and investment manager. State Street also performs all administrative functions on the Fund's behalf, such as accounting, investments, and benefit payments. Prior to 2018, many of these services were handled by Comerica.

#### 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) 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.”

State Street is also the Fund’s investment adviser and custodian.

State Street prepared and provided a form investment policy statement (“IPS”) to the Fund that the Fund provided to the examiner as its adopted IPS.

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 delegates 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 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>Decrease</u>
Admitted assets	<u>\$6,739,945</u>	<u>\$4,552,892</u>	<u>\$(2,187,053)</u>
Liabilities	<u>\$4,229,279</u>	<u>\$2,675,798</u>	<u>\$(1,553,481)</u>
Minimum required fund balance	\$ 422,928	\$ 267,580	\$ (155,348)
Excess fund balance (surplus)	<u>2,087,738</u>	<u>1,609,514</u>	<u>(478,224)</u>
Total annuity fund balance	<u>\$2,510,666</u>	<u>\$1,877,094</u>	<u>\$ (633,572)</u>
Total liabilities and annuity fund balance	<u>\$6,739,945</u>	<u>\$4,552,892</u>	<u>\$(2,187,053)</u>

The decrease in assets, liabilities and annuity fund balance is mainly due to the transfer of California annuities and related assets and liabilities to a separate fund. The decrease also reflects a decrease in the total number of annuities in force. Annuities decreased from 302 with annual payment amounts of \$561,939 as of December 31, 2015 to a total of 258 with annual payment amounts of \$383,827 as of December 31, 2020.

The Fund's admitted assets, as of December 31, 2020, were invested mainly in equity securities (96.7%).

## 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 9 newly issued gift annuities by the Fund during the examination period noted that in 4 newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. In three of the deviating forms, the Fund used the language “This represents an annuity rate of %” and “...running from the date hereof, through June 30, 2017”. Further, the clauses in these forms were out of order compared to the forms filed with the superintendent. These forms were issued under policy form number 1-L. In one of the forms used, the Fund used a form that had yet to be accepted with the Department: Form 2J-I-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 reviewed a sample of new gift annuities issued by the Fund during the examination period. In the sample selected, the examiner noted that 3 out of the 9 newly issued gift annuities reviewed had contracts which 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 4 annuity contracts terminated revealed that in 4 of the 6 cases (66.67%) reviewed, the Fund did not 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. 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 examiner recommended that the Fund's board of directors review the activities of the Fund at least annually and note the same in the minutes.</p> <p>The examiner's review of the board minutes revealed that the finance committee reviews the activities of the Fund.</p>
B	<p>The examiner recommended 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 examiner's review of the board minutes revealed that the finance committee reviews the investment activities of the Fund.</p>
C	<p>The examiner recommended 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 issues guidance for diversification.</p>
D	<p>The examiner recommended 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.</p>

<u>Item</u>	<u>Description</u>
E	<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 forms used by the Fund to issue six of the annuities varied from the approved forms. A similar violation appears in this report on examination.</p>
F	<p>The examiner recommended 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 forms used the Fund varied from the forms approved by the Department. A similar recommendation appears in this report on examination.</p>
G	<p>The examiner recommended that the Fund not exceed the maximum rates recommended by the American Council on Gift Annuities.</p> <p>A review of the annuities issued during the examination period indicated that the Fund did not exceed the maximum rates for annuities issued in New York.</p>
H	<p>The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.</p> <p>A review of annual statements filed during the examination period revealed no new discrepancies.</p>

## 8. 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 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
B	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.	7
C	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.	7
D	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.	7
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.	8

Respectfully submitted,

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/s/

Chacko Thomas  
Senior Insurance Examiner

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

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

\_\_\_\_\_  
/s/

Chacko Thomas

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

***NEW YORK STATE***

***DEPARTMENT OF FINANCIAL SERVICES***

*I, **ADRIENNE A. HARRIS**, 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:*

***CHACKO THOMAS***

*as a proper person to examine the affairs of the*

***SEGREGATED GIFT ANNUITY FUND OF THE  
AMERICAN FRIENDS OF MAGEN DAVID ADOM***

*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 16th day of November, 2021*

***ADRIENNE A. HARRIS***  
*Acting Superintendent of Financial Services*

*By:*



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***MARK MCLEOD***  
***DEPUTY CHIEF - LIFE BUREAU***

