

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE INVESTMENT)
OF SEGREGATED ASSETS BY SPECIAL) ORDER NO. A04-107
PERMIT HOLDERS PURSUANT TO)
P.L. 2003, C. 230)

This matter having been opened by the Commissioner of the Department of Banking and Insurance (Commissioner) pursuant to her authority at N.J.S.A. 17:1-8.1, 17:1-15e, 17B:17-13.1 et seq. and all powers expressed or implied therein; and

IT APPEARING that pursuant to N.J.S.A. 17B:17-13.1 et seq., New Jersey's law concerning charitable gift annuities, qualified organizations as defined therein are permitted, upon being issued a special permit by the Commissioner, to enter into annuity agreements under conditions that differ from those applicable to organizations deemed to be insurers; and

IT FURTHER APPEARING that N.J.S.A. 17B:17-13.1.b requires these special permit holders to maintain segregated assets to be applied solely to the payment of debts and obligations with respect to the annuity agreements and, until recently, had required such segregated assets to be invested in the same manner and subject to the same restrictions as investments of domestic insurers; and

IT FURTHER APPEARING that P.L. 2003, c. 230, enacted on January 9, 2004 and effective immediately, amended N.J.S.A. 17B:17-13.1 et seq. by requiring the segregated account assets of special permit holders to be invested

pursuant to the standards set forth in the Prudent Investor Act at N.J.S.A. 3B:20-11.1 et seq.; and

IT FURTHER APPEARING that N.J.S.A. 3B:20-11.1 et seq. requires a fiduciary as defined therein to invest trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust; and

IT FURTHER APPEARING that N.J.S.A. 3B:20-11.1 et seq. incorporates the "modern portfolio theory," which specifies that a fiduciary's investment and management decisions respecting individual assets not be evaluated in isolation, but rather be made in the context of the trust portfolio as a whole, and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust; and

IT FURTHER APPEARING that P.L. 2003, c. 230 now applies the same standards set forth at N.J.S.A. 3B:20-11.1 et seq. to special permit holders responsible for the investment of charitable annuity segregated account assets; and

IT FURTHER APPEARING that N.J.S.A. 17B:17-13.1.a requires the Commissioner to promulgate rules and regulations governing such annuity agreements and permit holders with respect to such annuity agreements; and

IT FURTHER APPEARING that N.J.S.A. 17B:17-13.1.d permits the Commissioner to issue such orders as he or she deems desirable and necessary to afford appropriate financial security to the annuitants; and

IT FURTHER APPEARING that the Commissioner intends to amend the Department's existing rules governing charitable annuities at N.J.A.C. 11:4-8 by establishing specific requirements for information to be filed with the Department relating to a special permit holder's investment of segregated account assets in accordance with N.J.S.A. 3B:20-11.1 et seq.; and

IT FURTHER APPEARING that the Commissioner has determined that it is necessary and appropriate to immediately provide notice to all special permit holders of these specific requirements and to gather information on the manner in which special permit holders are complying with N.J.S.A. 17B:17-13.1 as amended;

NOW, THEREFORE, IT IS on this 26th day of February, 2004,

ORDERED that:

1. Each special permit holder shall provide the Department with its plan of operation for the segregated account, which shall include the following:
 - a. The portion of the gift to be placed in the segregated account (i.e., whether the entire gift amount or some lesser amount is to be placed in the segregated account; if a lesser amount, how that amount will be determined);
 - b. Standards for monitoring the adequacy of the segregated account as values of the assets fluctuate (the segregated account must meet the minimum requirements of N.J.S.A. 17B:17-13.1.b and N.J.A.C. 11:4-8.4 at all times);
 - c. Contingency plans for additional sources of funding if the segregated account falls below the statutorily required minimum amount; and
 - d. An investment plan for the segregated account, which shall specify:

(1) Responsibility for oversight of the investments and whether this responsibility is delegated, such as to an investment committee or to a third party;

(2) The intended allocation of assets by categories of investments, e.g., stocks, bonds, real estate, mortgages, cash;

(3) Standards for investment quality; and

(4) Duration and liquidity of assets.

2. This information shall be submitted to the Department by April 30, 2004, at the following address:

Nancy Hritz
Chief, Valuation Bureau
Office of Life and Health
Department of Banking and Insurance
P.O. Box 325
Trenton, New Jersey 08625-0325

3. All inquiries regarding this Order are to be directed to Nancy Hritz at:

Phone: 609-292-5427 x50319
Fax: 609-633-0527
E-mail: nhritz@dobi.state.nj.us.

This Order can be found on the Department's web site at:

<http://www.njdobi.org/legsregs.htm>

2/26/04
Date

/s/ Holly C. Bakke
Holly C. Bakke, Commissioner

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