MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK

Minutes of a Special Meeting of the Board of Directors

June 3, 1980

A Special Meeting of the Board of Directors of the Municipal Assistance Corporation For The City of New York was held at 9:30 A.M. on Tuesday, June 3, 1980, at the offices of Paul, Weiss, Rifkind, Wharton & Garrison, General Counsel to the Corporation, 345 Park Avenue, New York City.

The following Directors were present, constituting a quorum of the Board:

Felix G. Rohatyn, Chairman
Edward M. Kreisky, Vice Chairman
Francis M. Barry

George M. Brooker
Eugene J. Keilin
Robert C. Weaver

The following Representatives were present:

Jerome Belson
John P. Holmes
Leonard Nadel

Richard D. Parsons
Bradford J. Race, Jr.

The following members of the Staff were present:

Robert F. Vagt
Stephen J. Weinstein
John G. Bove
H. Andrew Decker
Maxine H. Gillman

William J. Lithgow
Terri L. Posner
Christopher H. Richmond
Margaret F. Scott
Adam Sherman

Also present by invitation of the Board were: Allen L. Thomas, Stephen E. Fox and Paul S. Pearlman of Paul, Weiss, Rifkind, Wharton & Garrison, General Counsel to the Corporation; Donald J. Robinson and John J. Keohane of Hawkins, Delafield & Wood, Bond Counsel to the Corporation; Stephen Berger, Consultant to the Corporation; Bernard Kabak, Abe Greenstein, Israel Shupper and Bernard Hecht of the Office of the State Special Deputy Comptroller; Leslie Buch and
Laressa Crockett of the City of New York; Thomas Boast of the Financial Control Board; and Gedale Horowitz and Robert Mabon of Salomon Brothers.

Financing Plans

Mr. Vagt stated that a memorandum had been distributed to the Board regarding a financing proposal calling for the use of Federal standby guarantees for City bonds, along with a proposed issuance schedule for the years 1980 through 1984, a letter from the Corporation's underwriters with regard to market access, and a memorandum from Paul, Weiss, Rifkind, Wharton & Garrison with regard to the use of the standby guarantees.

Mr. Vagt stated that this financing proposal was based on the assumption that the City would be able to sell publicly only approximately $100 million of its long-term bonds in each of the years 1981 and 1982, instead of the $300 million and $650 million which were scheduled for sale in those years as a part of the Four Year Plan. Accordingly, he continued, it was proposed that the standby guarantees be used for City sales in 1981 and 1982 in order to meet the difference between the City's public sales and the City's capital cash needs. He noted that the Corporation's revenue streams were ample to meet the City's annual capital program of between $800 million and $1 billion a year, but noted that the Corporation's market capacity was limited to between
$500 and $600 million a year. Mr. Vagt said that it was also proposed that the Corporation use its market access during the years 1981 and 1982 to raise money for the City's capital program, which would be placed in escrow for use by the City on capital projects in 1982 and 1983. He observed that such a financing package would provide the City with sufficient money to meet its capital needs during the coming four years, in the context of a complete plan to provide for all of the City's needs through 1980. He also observed that if the Corporation were to provide all of the financing for the City in the years 1981 and 1982, the negative impact on the City budget would be approximately $45 million a year.

Mr. Rohatyn stated that if the Corporation were to issue debt to its fullest capacity during 1981 and 1982 that the Corporation and the City would incur significant additional interest costs and that on June 30, 1982, the Corporation would be unable to do any more financing and the City would not have regained access to the market. He observed that such a course would be disastrous in the economic environment which was foreseen for the nation during that period. He noted that he did not see any changes coming during the next two years which would make the City's own bonds more marketable, and noted that selling $1 billion of Corporation obligations in 1981 and 1982 would strain the Corporation's market access. He stated that if the City were able to come to market earlier, that event would certainly be welcomed.
Mr. Rohatyn proposed that the Corporation request the United States Treasury Department to provide Federal guarantees to the City in 1981 and 1982 pursuant to the New York City Loan Guarantee Act of 1978, and request the State Legislature to raise the Corporation's issuance ceiling from $8.8 billion to $10 billion and to extend the time during which it may issue new debt from June 30, 1982 to December 31, 1984. He stated that the Corporation had received a letter from the State Comptroller expressing support for such a legislative program, while the Comptroller also stressed the need and desire for the City to reenter the market as swiftly as possible, which suggestions deserved full study. Mr. Rohatyn noted that he had spoken with the Governor, Mayor, leaders of the State Legislature, and City labor leaders and commercial bankers, and that all were generally in support of the proposed financing plan. He stated that he had also spoken with Deputy Treasury Secretary Roger Altman, who indicated that he had certain questions with regard to the statutory authority of the Secretary to issue the standby guarantees, but that those issues were addressed in the memorandum prepared by Paul Weiss which would be furnished to the Treasury. (At this point, Mr. Brooker and Miss Crockett joined the meeting.)

Mr. Horowitz stated that it was the continuing assumption of the Corporation's underwriters that the goal of the Corporation's activities was the City's reentry into the
public credit markets for long-term financing. He noted, however, that two more years in the context of the City's financial problems was not a lot of time. He observed that it was the opinion of the underwriters that there was a clear market limit with regard to the Corporation's ability to finance, and that the credibility of the City was the key to its ability to reenter the market. He noted that he foresaw a smaller tax-exempt market during the coming few years with many competing investments. He also noted that the municipal bond rating agencies had indicated that three years of a balanced budget by New York City would be a prerequisite to the issuance of an investment-grade rating for the City, and observed further that early reentry to the credit might result in an unnecessarily high interest cost to the City.

Mr. Rohatyn emphasized that the very purpose of the financing program which he had outlined was to return the City to the credit market. He stated that while the Corporation would continue to monitor closely the City budget, the City should not be required to bear the burdens of recession, inflation and regional imbalance which were national problems beyond its control. He also noted that the additional guarantees which were being requested would not put the Federal government at risk, in that Federal revenue streams were provided as security against the guarantees. This program, he concluded, appeared to be simple, logical and realistic.
Mr. Kresky commented that the alternative to the proposed financing plan was to wait and have to return to Washington in June 1982, which would be irresponsible.

Mr. Race reported that the State Comptroller supported the Corporation's proposed legislative changes, and that he recognized both the crucial long-term needs of the City for capital improvements and that the Corporation was the only financing vehicle presently available for such purpose. However, he noted, the Comptroller also strongly believed that it was important that the ultimate goal of the City's return to the market and total financial autonomy remain paramount. He stated that the Comptroller was considering a legislative proposal regarding the City's reentry into the credit market.

Mr. Berger said that the Staff was preparing a report on the proposed City budget which would be ready for presentation to the Board by the end of June, and observed that the proposed financing program would be critical to the City budget in the years 1981 and 1982.

Mr. Keilin stated that the likely response to the financing proposal from Washington would be that there was no present crisis and thus no need to act now. He indicated that acting now would preclude the development of a crisis two years from now.

Mr. Rohaytn stated that the key to the financing proposal was the end of Federal involvement in the City's finances by 1982.
Mr. Barry proposed a resolution that the Corporation authorize a proposal for the State legislation and the Federal actions outlined above. Dr. Weaver seconded the motion.

Upon motion duly made, second and unanimously carried, it was:

RESOLVED, that the Officers and Staff of the Corporation be and hereby are authorized and directed: to prepare and submit a request to the United States Department of the Treasury for the granting of Federal guarantees to the City of New York during the fiscal years 1981 and 1982 pursuant to the New York City Loan Guarantee Act of 1978; and to prepare and submit to the State Legislature a request for an increase in the Corporation's issuance authorization to $10 billion and an extension of its borrowing authorization to December 31, 1984.

Administrative Matters

Mr. Vagt welcomed as a Representative to the Board Mr. John P. Holmes, who had been appointed to that position by the Minority Leader of the State Assembly, Mr. James L. Emery.

Mr. Vagt noted that during the five years of the Corporation's existence the fee schedules for legal counsel had remained constant, although the rates had been low at the outset and were considerably lower than the rates which the City paid to its outside counsel; he also noted that the Corporation's expenses for such legal services had decreased markedly over the years. Accordingly, he requested that the Board authorize the Administration Committee to establish new fee schedules for the Corporation's outside counsel.
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Mr. Rohatyn expressed appreciation for the extraordinary support which the Corporation had received from the law firms which had served it for the past five years.

Upon motion duly made, seconded and unanimously carried, it was:

RESOLVED, that the Administration Committee be and hereby is authorized and directed to review the fee schedules for the legal services provided to the Corporation by General Counsel and Bond Counsel and to establish new fee schedules for each of the firms.

Adoption of Minutes

Dr. Weaver stated that the proposed Minutes for the Board of Directors meeting of March 10, 1980 had been circulated to the Board to be considered for adoption.

Upon motion duly made, seconded and unanimously carried, it was:

RESOLVED, that the Minutes of the Special Meeting of the Board of Directors held on March 10, 1980 be and hereby are adopted.

Adjournment

There being no further business before the Meeting, it was, upon motion duly made, seconded and unanimously carried, adjourned at 10:30 A.M.

Stephen J. Weinstein
Secretary
MEMORANDUM

TO: BOARD OF DIRECTORS

FROM: Robert F. Vagt

The original Four Year Plan as finally adopted in the Fall of 1978 envisioned that the City of New York would have a truly balanced budget by FY 1982 and that it would begin to reenter the public credit markets in 1981, issuing $300 million of its own debt in FY 1981 and $650 million in FY 1982. What was not, and could not be, anticipated at that time was the future course of the nation's economy. Record levels of inflation and interest rates as well as a sometimes chaotic debt market have markedly increased the degree of difficulty of achieving these twin goals by the City.

Despite the condition of the national economy and Federal policies and aid formulas which do not appropriately recognize the problems of older urban areas, the City has met every budgetary requirement to date in a timely fashion and it seems likely that it will adopt fully one year ahead of schedule an operating budget balanced according to generally accepted accounting principles. It seems equally likely, however, that the credit markets which over the period of the last several months have forced seasoned issuers to reduce the size of their bond sales or to postpone them indefinitely, will prevent the City from regaining full access according to schedule.

Therefore, consistent with the Chairman's testimony before the Senate Banking Committee in February, MAC has prepared an alternate financing program to sustain the City until it can fully sustain itself by means of the public sale of its own debt. This program is entirely consistent with, and maintains the purpose of the Four Year Plan and the Guarantee Act as adopted by the Congress, for it allows the funding of the City's capital construction requirements to be handled locally beyond the end of the Four Year Plan period through a combination of the City and MAC.
RFV MEMORANDUM
2 June 1980
Page Two

The basic outline of the program is as follows. A portion of the remaining Federal Guarantees authorized in 1978 would be used in City fiscal years 1981 and 1982 to meet the difference between the MAC private placements (issued pursuant to the current Bond Purchase Agreement) and the City's cash flow for capital construction and infrastructure rehabilitation. During that same period MAC would issue, in addition to almost $900 million of private placements, debt publicly and place the proceeds in escrow. This escrowed money, in combination with public sales of MAC debt in City fiscal years 1983-1985 would sustain the projected capital requirements during the years following the Plan period and provide the City sufficient time to gradually reenter the credit markets.

While it is true that the Corporation has the economic capacity in terms of its revenue streams and coverage covenants to carry the City in FY's 1981 and 1982 without Federal participation, it does not have the market capacity to support the projected $900 million to $1 billion per year capital program in FY 1983 and beyond solely by means of public issuances. The attached letter from MAC's senior underwriter states that the annual level of market access is significantly less than that amount. By using its public market access in FY's 1981 and 1982 in the manner described, MAC could meet the City's capital needs in FY 1983 and beyond by using the proceeds of public sales in those years coupled with the escrowed proceeds. The attached schedule presents the sources of funds and the cumulative MAC issuances.

For this program to be effected, at least two events must occur:

A. The State Legislature must increase MAC's borrowing authority from the current level of $8.8 billion to $10 billion and extend its authority to borrow for other than refunding purposes from June 1982 to December 1984. The proposed statutory amendment and the memorandum in support are attached.

B. The Secretary of the Treasury must exercise the administrative judgment given to him by the Guarantee Act and extend the Guarantees which are currently available for FY 1981 and FY 1982. Counsel to MAC have examined the issues and find such an action to be entirely appropriate under existing law; their findings are also attached.
These two actions must be taken, for otherwise there is no financing program which sees beyond the close of FY 1982:

- there would be no long-term plan to finance the requirements of the City to rehabilitate its infrastructure and sustain habitability for its citizens;

- the proposed $1.2 billion increase in MAC's borrowing authority would, at a minimum, have to be doubled; and,

- regardless of MAC's issuance authority, the absence of a plan to carry the City in the foreseeable future could substantially impair MAC's current hard-won market access because it would leave unanswered the serious questions about how the problem would be met post 1982.

* * *

This financing program is a reasonable and prudent one. It requires a minimal amount of additional formal actions, and once again distributes responsibility to the parties at interest. It should be adopted without delay.
Date: 2 June 1980
To: Robert F. Vagt
From: Andrew Decker
Re: Financing Program -- Fiscal Years 1981 to 1985

Attached is a schedule describing the financing requirements and sources of funds to support the City's capital program from fiscal years 1981 through the first half of fiscal year 1985. Aggregate City capital requirements for the period amount to approximately $4.2 billion. MAC will require approximately $313 million to meet its capital reserve requirements.

As shown on the attached schedule, it is assumed the standby guarantees are available and are utilized during fiscal years 1981 and 1982. MAC's private placements of $862 million are assumed to be available according to the existing schedule. Additionally, the schedule anticipates MAC commencing a public issuance program of $100 million per quarter during fiscal year 1981 and continuing through fiscal year 1982. The bulk of the proceeds of the eight quarterly issuances -- $762 million -- will be held in reserve to provide for the City's capital requirements during fiscal years 1983 through the first half of 1985. Additionally, MAC will undertake public sales of approximately $600 million in each of 1983 and 1984 and $300 million in the first half of 1985. To the extent the City is able to issue its own debt in the public markets, the amounts required of MAC can be reduced.

As shown at the bottom of the schedule, MAC's total issuances pursuant to Section 3033(2) of the Public Authorities Law will be approximately $10 billion by the end of December 1984.

HAD/lsd
Attachment
# Sources of Financing to Support New York City Capital Program
## 1981 to 1985

($ in millions)

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<td>787</td>
<td>1,213</td>
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<td>500</td>
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<tbody>
<tr>
<td>City - Guaranteed</td>
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<td>600</td>
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<td></td>
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<td>- Public</td>
<td>100</td>
<td>100</td>
<td>200</td>
<td>200</td>
<td>200**</td>
<td>800</td>
<td></td>
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<tr>
<td>MAC - Private</td>
<td>537</td>
<td>325</td>
<td>500</td>
<td>500</td>
<td>500</td>
<td>862</td>
<td></td>
</tr>
<tr>
<td>- Public*</td>
<td>300</td>
<td>500</td>
<td></td>
<td></td>
<td></td>
<td>138</td>
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<td>Reserve for Future City Capital</td>
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<td>1,525</td>
<td>700</td>
<td>700</td>
<td>338</td>
<td>4,500</td>
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<td></td>
<td>(450)</td>
<td>(312)</td>
<td>300</td>
<td>300</td>
<td>162</td>
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| Total MAC Issuances Pursuant to Section 3033(2) | 6,809 | 7,646 | 8,471 | 9,471 | 9,609 |

* To the extent the City is able to issue its own debt for current capital requirements in excess of the amounts indicated above, MAC's issuances in the latter years of the program will be reduced.

** Balance of fiscal year 1985 requirements are to be satisfied by City issuances.

June 2, 1980
June 2, 1980

Mr. Robert F. Vagt
Executive Director
Municipal Assistance Corporation
for the City of New York
Suite 8901
One World Trade Center
New York, New York 10048

Dear Mr. Vagt:

We have reviewed the financing proposal of the Municipal Assistance Corporation for the City of New York ("MAC"). The proposal is designed to assist the City in financing its capital program through December 1984. The proposal would provide for MAC to sell in the public market approximately (i) an aggregate of $800 million of its bonds during the City's 1981 and 1982 Fiscal Years in eight quarterly installments of approximately $100 million each, in addition to the $862 million of its bonds now scheduled to be sold privately during this period, and (ii) at least an aggregate of $1 billion of its bonds during FY '83 and '84 in quarterly installments of approximately equal amounts. In addition, the proposal calls for the sale to City and State Pension Funds of up to $900 million of federally guaranteed City bonds during FY '81 and '82.

Assuming normal market conditions, in our opinion MAC's bonds could be sold in the public market as described above at reasonable interest rates and terms if no more than approximately $600 million of MAC bonds were sold to the public during any year. We would like to stress, however, that such market access is dependent upon your proposal, or one similar to it, being adopted as the City's Financing Plan. Such a Financing Plan is necessary in order to assure the public market that the City will have access to adequate financing to meet its capital needs in an orderly manner.
If such a Financing Plan is not in place, MAC's access to the public markets could be substantially impaired. Without such a Financing Plan, there can be no assurance that MAC would be able to continue to sell its bonds in the public market in the amounts needed to assist the City in meeting its capital needs.

Very truly yours,

[Signature]

GBH/lab
MEMORANDUM IN SUPPORT
OF
AN ACT to amend the public authorities
law, in relation to extending the
debt issuance authority of the
Municipal Assistance Corporation
For The City of New York.

Purpose of the bill:

This bill would increase the debt issuance authority of
the Municipal Assistance Corporation For The City of New
York (the "Corporation") from $8.8 billion to $10 billion
and would extend through calendar year 1984 the period
during which the Corporation may issue bonds and notes.
This authorization is required in order to provide an addi-
tional source of funds for potential use by the City of New
York (the "City") to finance its capital program.

Summary of provisions of the bill:

The bill amends section three thousand thirty-three of
the Public Authorities Law (the "MAC Act") in two respects.
It amends subdivision two to increase the Corporation's
statutory limitation on debt issuance, for purposes other
than refunding and excluding notes issued to finance the
City's seasonal borrowing needs, from $8.8 billion to $10
billion. However, the additional $1.2 billion authorized to
be issued may only be issued to finance the City's capital
budget program or to make required deposits into the Corpor-
ation's capital reserve funds. The bill also amends paragraph
(a) of subdivision three to permit the Corporation to issue
obligations for all its corporate purposes through December 31,
1984. The bill would not extend the maximum maturity permitted
for obligations issued by the Corporation, which will remain
at July 1, 2008.

Existing Law:

Section 3033(2) of the Public Authorities Law authorizes
the Corporation to issue notes and bonds in an aggregate
principal amount not to exceed $8.8 billion, excluding notes
and bonds issued for refunding purposes and notes issued to
finance the City's seasonal borrowing requirements.

Section 3033(3)(a) of the Public Authorities Law provides,
among other things, that the Corporation may not issue a
bond or note for other than refunding purposes on a date
later than June 30, 1982.
Statement in Support of the Bill:

The Corporation, together with the City, the State of New York, the United States, and the New York State Financial Control Board, and with the participation of various commercial and savings banks, insurance companies, and City pension funds, implemented in November 1978 a plan of financing (the Four Year Plan) which was designed to satisfy totally the City's financing needs through June 30, 1982. Pursuant to the Four Year Plan, the Corporation was to issue its bonds both to the public and to private purchasers. In addition, the City was to issue Federally guaranteed bonds to certain City pension funds, revenue anticipation notes to the public and, if necessary, such notes to certain institutional purchasers pursuant to separate note purchase agreements. Section 3033 of the Public Authorities Law was amended in 1978 (L. 1978, c. 201) to extend the Corporation's debt issuance limitations for purposes other than refunding from $5.8 billion to $8.8 billion, and to authorize the Corporation to issue debt to finance the City's capital needs and for certain other purposes, in order to permit the Corporation to fulfill its role in the Four Year Plan. The section was also amended to permit the Corporation to issue its obligations for purposes other than refunding until June 30, 1982.

The Four Year Plan was designed to meet the financing needs of the City while the City undertook the fiscal reforms necessary to assure its full return by July 1982 to the public credit markets for long-term borrowing. It was assumed that the various agreements comprising the Four Year Plan would provide the City with sufficient funds and time to enable it to maintain essential services to its inhabitants, to undertake much needed capital improvements and to balance its budget in accordance with generally accepted accounting principles ("GAAP"). It was generally agreed that a GAAP balanced budget, which is a condition precedent to the City's receiving an investment grade rating on its bonds, and an investment grade rating would be conditions to full market re-entry.

While the Four Year Plan has functioned smoothly since its inception in November 1978, and the City has made substantial progress toward achieving a GAAP-balanced budget, various factors beyond the City's control now call into question the ability of the City to market its bonds to the public at the end of the 1982 fiscal year in sufficient quantity to meet its long-term borrowing requirements in full, and its ability to raise all of that portion of the need projected by the Four Year Plan to be financed by the City during its 1981 and 1982 fiscal years.
The Four Year Plan's schedule for market reentry by the City and the existing financing agreements assume that during its 1981 and 1982 fiscal years the City would be able to raise in the public credit markets an aggregate of approximately $950 million to finance its capital programs and that during its 1982 fiscal year, when it had achieved a GAAP-balanced budget, the credit rating services would restore the City's investment grade rating, enabling the City to meet fully its capital financing needs, projected to be approximately $1 billion annually. However, both of the major rating services have recently indicated in discussions with representatives of the City and the Corporation, and before the U.S. Senate Banking Committee, that they may be unwilling to rate City obligations as early as 1982 even though the City achieves all of the goals of the Four Year Plan.

In addition, the national economic trends which prevailed during the past two years have placed inflationary pressures on local government expenditures and have dampened bond market access for even the most seasoned issuers. Ongoing pressures in Congress and the State Legislature to reduce the level of their assistance to local governments may further strain local budgets, including the City's. These, in combination with other factors, could create difficulty for the City in meeting its goal to achieve a GAAP-balanced budget.

While the Corporation continues to encourage the City's early return to the public credit markets and its efforts to meet its financing goals, this bill provides in advance an alternative avenue for meeting the City's capital needs in the event that the City's market reentry lags behind the schedule of the Four Year Plan. Its early enactment will assure that those needs will not have to be addressed in an atmosphere of crisis, which would only serve further to exacerbate the situation. It is anticipated that the Corporation's existing issuance authority will have been fully exhausted at the time when the City may be most in need of additional financing assistance. The authority to issue additional debt is intended to be exercised by the Corporation only if the City is unable to obtain the required funds upon reasonable terms. While providing an additional source of financing for the City, this bill would underscore the overriding objective of the MAC Act -- to achieve the City's reentry to the market.

Budget Implication:

There will be no budget implications directly associated with this bill. The Corporation's bonds are issued pursuant to either its first or second general bond resolutions, both of which establish debt service funds and capital reserve
funds for the payment of debt service. Historically, the Corporation's revenues have been far in excess of the amount required to meet its debt service, at times to the extent of threefold coverage. Were the Corporation to experience a severe drop in revenues requiring it to utilize its capital reserve funds for the payment of debt service, the State would be required to replenish the funds pursuant to the moral obligation provisions of the MAC Act. The likelihood that such a substantial reduction will ever be experienced, however, is remote.
AN ACT to amend the public authorities law, in relation to extending the debt issuance authority of the municipal assistance corporation for the city of New York.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section three thousand thirty-three of the public authorities law, as amended by chapter two hundred one of the laws of nineteen hundred seventy-eight, is amended to read as follows:

2. Subject to the provisions of any contract with noteholders or bondholders, the corporation shall not issue bonds and notes in an aggregate principal amount exceeding [eight] ten billion [eight hundred million] dollars, excluding (i) bonds and notes issued to refund outstanding bonds and notes and (ii) notes issued for the purpose described in subparagraph (d) of section three thousand thirty-seven of this article, provided, however, that no bonds or notes shall be issued for any purpose other than to pay for items which are permitted by law to be included in the city's capital budget or to make deposits into the capital reserve funds established pursuant to sections three thousand thirty-six and three thousand thirty-six-a of this article if at the time such bonds or notes are issued or as a result of their issuance the aggregate principal amount of bonds and notes issued by the corporation, exclusive of bonds and notes issued for any purpose described in clause (i) or (ii) of this subdivision, exceeds eight billion eight hundred million dollars.

§2. Paragraph (a) of subdivision three of section three thousand thirty-three of such law, as amended by chapter two hundred one of the laws of nineteen hundred seventy-eight, is amended to read as follows:

(a) No note or bond (i) shall mature more than thirty years from the date of the original issue of such note or bond and, in any event, not later than July first, two thousand eight or (ii) shall be issued on a date later than [June thirtieth December thirty-first, nineteen hundred eighty-two eighty-four], unless such note or bond is a renewal or refunding of an outstanding note or bond.

§3. This act shall take effect immediately.
MEMORANDUM

To Municipal Assistance Corporation For The City of New York

From Paul, Weiss, Rifkind, Wharton & Garrison

Subject Issuance of "Standby Guarantees" by the Secretary of the United States Department of the Treasury

You have informed us that the Municipal Assistance Corporation For The City of New York (the "Corporation") and The City of New York (the "City") are currently developing methods of financing the City's capital projects during the fiscal years immediately following expiration of the four-year financing plan of the City adopted in November 1978 (the "Financing Plan"). In connection with this study, you have asked us to determine whether, under the circumstances described below, the Secretary of the United States Department of the Treasury (the "Secretary") may permissibly issue "Standby Guarantees"* pursuant to the New York City Loan Guarantee Act of 1978 (the "Guarantee Act") and the Agreement to Guarantee (the "Agreement to Guarantee"), dated as of November 15, 1978, by and among the United States of America (the "United States"), acting by and through the Secretary, the State of New York (the "State"), the City, the New York

* As used herein the term "Standby Guarantees" refers to Guarantees to be issued by the Secretary pursuant to the Agreement to Guarantee during the City's 1981 and 1982 fiscal years.
State Financial Control Board and the Corporation.

As discussed in detail below, we have concluded that the Secretary is empowered by the Guarantee Act to issue the Standby Guarantees under the circumstances described. In addition, we have concluded that the Secretary has the contractual authority under the Agreement to Guarantee to issue such Standby Guarantees in such circumstances if he were to waive -- as he has the legal right, but not the obligation to do -- the contractual requirement contained in the Agreement to Guarantee that the amount of such Standby Guarantees be reduced in any fiscal year of the City by the amount of bonds of the Corporation issued to the public during such fiscal year. (These conclusions assume, of course, that all other required conditions precedent to the issuance of such Standby Guarantees have been fulfilled.)

Statement of Facts

The Financing Plan was adopted to provide approximately $4.5 billion of long-term financing for the City during its 1979 through 1982 fiscal years. As outlined in Exhibit A to the Agreement to Guarantee, the Financing Plan includes four long-term financing components: (i) the sale of up to $1.8 billion of the Corporation's bonds to various commercial banks, savings banks and insurance companies and
four City employee pension funds (the "City Pension Funds"); (ii) the sale of up to $750 million of federally guaranteed City bonds to the City Pension Funds and two State employee pension funds (the "State Pension Funds"); (iii) sales to the public of up to $1 billion of the Corporation's bonds; and (iv) sales to the public during the City's 1981 and 1982 fiscal years of up to $950 million of City bonds that are not federally guaranteed, or, to the extent neither the City nor the Corporation is able to sell its bonds to the public in sufficient amounts on reasonable terms and conditions to fulfill this element of the Financing Plan, the United States has agreed to guarantee up to $900 million of City bonds and the City and State Pension Funds have agreed to purchase such bonds (see footnote 6 of such Exhibit A).

The major portion of the funds to be generated by the Financing Plan are to be used to finance the City's capital programs during the four years of the Plan. As stated in the report of the United States Senate Banking, Housing and Urban Affairs Committee, the primary objective of the Plan is to enable the City to regain full reentry into the long-term public credit markets, thereby permitting the City to finance its capital needs on its own after the expiration of the Plan. (S. Rep. No. 95-952, 95th Cong. 2d Sess. 8, 14.) To that end, Section 103(10) of the Guarantee Act and Section 6.16 of the Agreement to Guarantee require that the City
attempt to sell through public offerings some amount of long-term bonds during its 1981 and 1982 fiscal years, unless the Secretary "determines that such offer would be inconsistent with the financial interests of the City." (Section 6.16 of the Agreement to Guarantee.) To the extent the City is unable to sell such bonds, the Financing Plan (as outlined in Exhibit A to the Agreement to Guarantee) provides that the City's capital needs would be met during those years, in the first instance, by sales of the Corporation's bonds to the public or, if the Corporation is unable to market publicly such bonds on reasonable terms, by the sale of federally guaranteed City bonds to the City and State Pension Funds.*

You have advised us that despite the successful operation of the Financing Plan to date and the significant budgetary progress the City has made during the past few years, it has become increasingly apparent that the City will be unable to market publicly the amount of bonds required to finance its capital needs during its 1981 and 1982 fiscal years. In addition, it appears unlikely that the City will be able to sell publicly such required amount of bonds during

* It should be noted that a large portion of the City's capital needs during its 1981 and 1982 fiscal years will be met pursuant to the Financing Plan by private placements of the Corporation's bonds to various commercial banks, savings banks and insurance companies (collectively the "Financial Institutions") and the City Pension Funds pursuant to the Bond Purchase Agreement, dated as of November 15, 1978, by and among, such Financial Institutions, City Pension Funds and the Corporation.
its 1983 and 1984 fiscal years. Accordingly, alternative sources of financing will have to be arranged to enable the City to finance its capital needs during those years. You have informed us that the City's bondable capital requirements are expected to range from approximately $700 million to $1.2 billion during each of its 1981 through 1984 fiscal years.

In this regard, the Corporation has stated its intention to ask the State legislature for increased borrowing authority and an extension of its authorization to issue debt through the 1984 calendar year in order to be prepared to help the City meet its financing needs to the extent necessary during the City's 1983 and 1984 fiscal years. The Corporation has recently been advised by its managing underwriters, however, that, assuming no unforeseen dramatic changes in the economy or market conditions for municipal bonds, it is their expectation that the Corporation's ability to market publicly bonds on reasonable terms will be limited to approximately $600 million annually through the City's 1984 fiscal year. Consequently, if the Corporation were to issue such amount of bonds during the 1983 and 1984 fiscal years of the City, the proceeds of such sales, together with the limited amount of bonds that the City is expected to be able to market publicly in those years, would be insufficient to finance all of the City's projected capital needs for such years.
You are therefore considering a proposal (the "Proposed Plan") pursuant to which the Corporation would issue to the public during the City's 1981 and 1982 fiscal years the amount of bonds it is capable of issuing on reasonable terms, and set aside the proceeds of such sales to, in effect, prefund a portion of the City's capital needs for its 1983 and 1984 fiscal years. The funds derived from these sales would be available to the City to the extent required to finance the City's projected capital programs in the City's 1983 and 1984 fiscal years. Thus, the Proposed Plan would permit the City to meet all of its 1983 and 1984 capital requirements without the necessity of Federal assistance in the form of guarantees or otherwise. Thereafter, assuming the City is able to continue the budgetary progress it has made to date, it is expected that the City will regain sufficient access to the public credit markets to finance its capital projects entirely through the public sale of its bonds.

In connection with the Proposed Plan, we have reviewed the New York State Municipal Assistance Corporation Act, as amended by the Municipal Assistance Corporation For The City of New York Act (the "Act"), other laws which we considered relevant and the agreements implementing the Financing Plan and are aware of no prohibitions against the issuance of bonds by the Corporation in one year to
prefund a portion of the City's capital programs for subsequent years.* In addition, we believe such issuance of bonds would be within the Corporation's authorized purposes. We assume, of course, that you will be consulting with Hawkins, Delafield & Wood for their views with respect to any arbitrage problems which may result from the Proposed Plan.

As discussed above, the Financing Plan contemplates that the City's capital projects for its 1981 and 1982 fiscal years will be partially financed by public sales of City bonds during such years, and in the event the City is unable to sell such bonds on reasonable terms, such capital projects would be partially financed, in the first instance, by public sales of the Corporation's bonds during those years, none of which sales are currently scheduled. Because, however, the Proposed Plan contemplates that the proceeds of any public sales of the Corporation's bonds during the City's 1981 and

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* As you know, Section 3037 of the Act provides that any amounts paid to the City by the Corporation to finance the City's capital projects are to be evidenced by bonds of the City delivered to the Corporation. Although restrictions may exist with respect to the issuance of bonds by the City in one year to prefund its capital programs for subsequent years, such restrictions should not affect the Proposed Plan, because bonds of the City are to be delivered to the Corporation pursuant to Section 3037 only at the time the Corporation pays moneys to the City, which, as we interpret the Proposed Plan, will not occur until the year in which the moneys are actually required for the City's capital program.
1982 fiscal years would be used to prefund a portion of the City's 1983 and 1984 capital requirements, other funds will be required to finance the City's 1981 and 1982 capital projects. Under the Proposed Plan, such funds would be provided from sales of federally guaranteed City bonds to the City and State Pension Funds provided the Secretary is willing to issue the Standby Guarantees. Thus, you have asked us to determine whether the Secretary may permissibly issue such Standby Guarantees under the factual situation described.

**Legal Discussion**

The Guarantee Act and the Agreement to Guarantee authorize the Secretary to guarantee the payment of principal of and interest on up to $1.65 billion in aggregate principal amount of outstanding City indebtedness issued to any City or State employee pension fund during the 1979 through 1982 fiscal years of the City. Pursuant to the Guarantee Act and the Agreement to Guarantee, the Secretary has guaranteed the payment of $750 million of City bonds during the City's past two fiscal years, and is authorized pursuant to Section 2.1 of the Agreement to Guarantee to guarantee, on a standby basis, the payment of $900 million of such bonds during the City's 1981 and 1982 fiscal years if certain specified conditions are met. After reviewing the Guarantee Act and the
Agreement to Guarantee, we believe that there are three such conditions which could clearly affect the Secretary's ability to issue the "Standby Guarantees" under the Proposed Plan.

One such condition is contained in Section 103(2) of the Guarantee Act which provides that prior to the issuance of any Guarantee the Secretary must determine that:

"the city is effectively unable to obtain credit in the public credit markets or elsewhere in amounts and terms sufficient to meet the city's financing needs."

Because the Proposed Plan calls for the Corporation to raise money in the public credit markets during the same period the Standby Guarantees are to be issued, two questions may be raised with respect to the "credit elsewhere" test contained in Section 103(2). First, should the test be integrated to require that both the City and the Corporation be unable to obtain credit in the public credit markets or elsewhere prior to the issuance of any Guarantees? Second, even if the answer to that question is No, if the Corporation has raised money does it become an "elsewhere" where the City might obtain credit?

Section 103(2) of the Guarantee Act was adopted, virtually without change, from the House version of the Guarantee Act. The Senate version of such Act had provided, however, that "the Secretary determine that credit is not otherwise available to the city or a financing agent (the
Corporation] on reasonable terms before he agrees to guarantee...
any city indebtedness." (S. Rep. No. 95-952, 95th Cong. 2d Sess. 13). The adoption of the House version of the bill, and the concomitant rejection of the Senate version, we believe, evinces a Congressional intent that only the City's ability to obtain credit in the public credit markets or elsewhere be considered by the Secretary prior to the issuance of any Guarantees.*

As to the second question, although the Corporation is expected to have certain market access during the City's 1981 and 1982 fiscal years, the Corporation intends to use that access under the Proposed Plan not to finance the City's capital needs for those years but for the purpose of raising funds to enable the City to finance its capital needs, without Federal assistance, in the years following the expiration of the Financing Plan. As discussed above, this purpose is consistent with the primary objective of the Financing Plan.

* The House Report, in discussing Section 103(2), states in pertinent part that such Section:

"... requires the Secretary to determine that the city's financing needs cannot be met effectively through borrowings in the private credit market. The use of the word "effectively" is intended to create a test of the practical unavailability of credit, including maturity and rate, through the private market. The Secretary has discretion to determine when that test has been met."

Accordingly, because the Corporation will use its full available market access for this purpose, it will be unable to issue indebtedness in the public markets on reasonable terms to provide funds for the City's capital needs for the City's 1981 and 1982 fiscal years. Similarly, during the City's 1979 and 1980 fiscal years, the Corporation had certain access to the public credit markets but used that access not to finance the City's capital needs for those years but for other purposes consistent with the Financing Plan without causing the City to fail to meet the "credit elsewhere" test.

For the reasons discussed above, therefore, we believe that it would be appropriate and consistent with the Guarantee Act for the Secretary to determine that the requirements of Section 103(2) of the Guarantee Act have been satisfied in connection with the issuance of Standby Guarantees under the Proposed Plan.

Sections 2.1 and 3.3.3 of the Agreement to Guarantee provide in pertinent part that the amount of Standby Guarantees which may be issued in the City's 1981 and 1982 fiscal years shall be reduced by the amount of the Corporation's bonds publicly sold during those years. As discussed above, this requirement is consistent with the Financing Plan (as outlined in Exhibit A to the Agreement to Guarantee) which contemplates that the public sale of the Corporation's bonds act as the
first back-up to the extent the City is unable to market publicly its bonds on reasonable terms during its 1981 and 1982 fiscal years, which event now appears likely. However, since this requirement is contained only in the Agreement to Guarantee and not in the Guarantee Act, it may be waived by the Secretary in accordance with Section 7.2 of the Agreement to Guarantee, which provides in relevant part that "[t]he Secretary may waive any provision of [the] Agreement . . . which is intended for the benefit of the United States and may consent to any modification of any term [t]hereof . . . which is intended for the benefit of the United States as he may deem appropriate." Correspondingly, Section 2.1 of the Agreement to Guarantee specifically provides that the requirement that the amount of the Standby Guarantees in any year be reduced by the amount of the Corporation's bonds publicly sold during such year is subject to the Secretary agreeing otherwise. Consequently, because the Proposed Plan is designed to enable the City to finance its capital needs after the expiration of the Financing Plan without Federal assistance, which, as discussed, is similarly the ultimate objective of the Financing plan, we believe that the Secretary has the legal power to waive this requirement and that it would be appropriate for the Secretary to grant such a waiver.

The third condition which could affect the Secre-
tary's ability to issue Standby Guarantees is contained in Section 103(4) of the Guarantee Act which provides that prior to the issuance of any Guarantee the Secretary must determine that:

"during the four-year period ending June 30, 1982, the long-term and seasonal borrowing needs of the city . . . will be met through commitments from the State, an agency of the State, private sources, or through the public credit markets, in amounts which will be sufficient to enable the city, when the guarantee authority conferred by this title has terminated, to meet all of its long-term and seasonal borrowing needs through the public credit markets . . . ."

This condition would apparently be satisfied under the Proposed Plan because the primary objective of such Plan is to enable the City to finance its capital needs in the years immediately following the expiration of the Financing Plan through the public sale of the City's and the Corporation's bonds. Although literally read, Section 103(4) could be interpreted to require that the City meet on its own, without assistance from the Corporation, all of its financing needs beginning with its 1983 fiscal year, the legislative history to the Guarantee Act indicates that what is contemplated by Section 103(4) is that the City merely be able to meet its financing "needs in the credit markets without Federal assistance." (S. Rep. No. 95-952, 95th Cong., 2d Sess. 15.) In fact, the report of the Senate Banking, Housing and Urban Affairs Committee states that it is desirable
that the Corporation retain some borrowing authority after
the expiration of the Financing Plan in case such authority
is required to help the City meet its financing needs once
the guarantee authority terminates. (S. Rep. No. 95-952,
95th Cong., 2d Sess. 10.) Thus, we believe that the Secre-
tary would be able to make the determination required by
Section 103(4) under the Proposed Plan.

Accordingly, if the Secretary were to waive the
requirement contained in Sections 2.1 and 3.3.3 of the Agreement
to Guarantee, and assuming all other required conditions
precedent to the issuance of the Standby Guarantees are satis-
fied, we are aware of no legal impediments to the issuance
of the Standby Guarantees by the Secretary under the Proposed
Plan.

PWR&WG