19 June 1979

To: Bobby Vagt

From: Linda Seale

Re: Difficulties with City Pension Fund Withdrawal From Four Year Financing Plan

You have asked what difficulties would be encountered if an attempt were made to continue the Four Year Financing Plan without continued participation from the City Pension Funds. The answer is that all of the other major participants in the Plan would have the option of dropping out of the Plan completely if the City Pension Funds were no longer to participate. Moreover, Treasury might have difficulty establishing its continued legal authority to issue guarantees under such circumstances in light of the legislative history of the Federal legislation authorizing guarantees.

Looking at the parties one by one, the major obstacles to continuation of the Financing Plan are as follows:

State Pension Funds: The Guaranteed Bond Purchase Agreement in Section 4.1 provides an 80% test for bonds scheduled to be sold on any closing date. In other words, no purchaser is required to buy unless 80% of the bonds scheduled to be purchased on that date are, in fact, purchased. Since the City Pension Funds are scheduled to purchase at least half of each future bond sale (except for the June 28 sale), the State Pension Funds would have the option of refusing to purchase on any closing date. It seems unlikely that the State Pension Funds would be willing to amend the Guaranteed Bond Purchase Agreement to require their continued participation without the involvement of the City Pension Funds.

Financial Institutions: Section 3.2 of the MAC Bond Purchase Agreement provides a 90% test with respect to the MAC bonds scheduled to be sold on any given closing date. Therefore, since the Pension Funds are scheduled to purchase at least 35% of each sale, any failure of the Pension Funds to purchase would result in a discharge of the Financial Institutions' obligation. There is an alternative method of satisfying the 90% test, provided in Section 3.2 of the MAC Bond Purchase Agreement: MAC can sell to the public or by direct placement to parties other than the Financial Institutions any bonds scheduled to be sold to the Pension Funds. These sales must be above and beyond the sales to the public scheduled to take place as part of the Financing Plan, i.e., $500 million in fiscal 1980. MAC would thus have to increase its public sales by approximately $200 million for fiscal 1980 to satisfy the 90% test and a 94% test which applies to total bonds sold to date in order to avoid amendment to the Bond Purchase Agreement.
In addition, there are two requirements which must be satisfied with respect to purchases under the Guaranteed Bond Purchase Agreement in order for the obligation of the Financial Institutions to remain intact. First, 90% of total bonds scheduled to be sold under the Guaranteed Bond Purchase Agreement shall have been sold and the obligation to purchase additional bonds must remain intact. I believe, although the Agreement is somewhat ambiguous, that this applies to the Guaranteed Bond Purchase Agreement as amended and, therefore, an amendment by the Treasury and the State Pension Funds to eliminate additional purchases by the City Pension Funds might satisfy this condition without sales to the City Pension Funds. The second condition is that in fiscal 1980 a sale of at least $75 million of guaranteed bonds must occur on, or no more than 30 days before, the first purchases under the MAC Bond Purchase Agreement. Once again, a purchase by the State Pension Funds would satisfy this condition. Should the State Pension Funds fail to purchase, as they would be entitled to do, and should there be no sale to the City Pension Funds, neither of these conditions would be satisfied.

Treasury: Section 3.2.11 of the Agreement to Guarantee provides that the ratio of MAC sales to date pursuant to the MAC Bond Purchase Agreement to MAC's sales scheduled pursuant to that Agreement for that fiscal year must at all times be greater than or equal to the ratio of guaranteed bonds sold during that fiscal year to guaranteed bonds scheduled to be sold during that fiscal year. It appears that, as drafted, this provision would permit additional bonds issued to the public as the alternative means of satisfying the MAC BPA 90% test to be counted as sales pursuant to the MAC BPA.

The more difficult test with respect to Treasury participation is satisfying the requirements of Section 103(4) of the Federal Guarantee legislation in light of the legislative history. Section 103(4) says that,

"The Secretary may make guarantees under this title only if . . . (4) during the 4-year period ending June 30, 1982, the long-term and seasonal borrowing needs of the City (other than borrowing assisted or to be assisted under this title) will be met through commitments from the State, an agency of the State, private sources or through public credit market 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. . . ."
The following quotation is from the report by the Senate Banking Committee in explanation of this section of the legislation:

"This means that the committee intends that such financing be available in sufficient amounts to enable the city not just to maintain solvency but to accomplish all of the actions outlined in its present 4-year financial plan, which are intended to put the City in a position to meet all of its financing needs, both long-term and short-term, in the public credit markets after the end of the four-year period . . . .

"The crux of the city's argument for long-term Federal guarantees is that it has to accomplish the full $4.5 billion in long-term financing as outlined in order to be able to restore investor confidence and get fully back in the credit markets by the end of the 4-year period . . . .

"Given the fact that the full $4.5 billion appears to be essential to accomplishing the Financial Plan and its objectives, the committee believes it is imperative that the Secretary make certain that the necessary financing commitments from other sources are in place before any guarantees whatsoever are provided under this act. This means that there must be signed commitments of a binding legal nature from all those taking private placements for the specified amounts in the Secretary's hands prior to his guaranteeing or committing to guarantee any city indebtedness. Furthermore, in view of past problems, the Secretary is directed to make certain on an ongoing basis that these commitments have been met and will be met in full as scheduled as a condition for providing further amounts of guarantees authorized under the act."

A third test which must be satisfied for Treasury to continue to issue guarantees is the "credit elsewhere" test. Section 103(2) of the Federal legislation which authorizes guarantees provides that, "The Secretary may make guarantees under this title only if . . . (2) the Secretary determines 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." Treasury representatives have, in the past, interpreted this requirement to mean that any reduction in the City's financing needs or any increase in the capacity of the City or MAC to issue bonds must reduce the amount of guaranteed bonds to be issued.
Language from the Senate Banking Committee report makes clear the Committee's perspective on how Federal guarantees are to be used, as follows:

"It should be made clear that the committee believes the primary responsibility for meeting New York City's financing needs over the next four years and restoring the city to fiscal and financial health rests at the local level with city and State officials and with the various local sources of financing. The Federal Government's role should be limited to backstopping those financing needs only to the extent that they cannot be met from local sources and to overseeing the city's progress in order to ensure that commitments are met and that nothing is done to threaten the security of the Federal investment."

In conclusion, although it is possible that MAC could sell enough bonds to the public that no amendment to the MAC Bond Purchase Agreement would be necessary for the Four Year Financing Plan to proceed, it is unlikely that it could do so and still maintain continued participation by Treasury in the Financing Plan. Failure by Treasury to issue guarantees would result in failure of the conditions imposed by Section 3.1 of the MAC Bond Purchase Agreement, thereby discharging the Financial Institutions of their obligation to proceed under the Plan.
April 24, 1979

Mr. Ralph Parks
64 Oak Lane
Rochester, New York 14610

Dear Mr. Parks:

Senator Moynihan has recently referred to the Municipal Assistance Corporation your letter of March 1, 1979, in which you inquired about the sale of bonds guaranteed by the Federal government to pension funds of the City of New York and the State of New York at a rate of 9.5% in November 1978.

As you know, the City of New York has been unable to sell bonds in the public market since 1975. In order to provide the City with necessary financing through 1982 and to enable the City to sell its own notes and bonds again to the public, the Municipal Assistance Corporation worked closely in cooperation with the City, the State, the United States Treasury, Congress, the Financial Control Board, the City's commercial banks, savings banks, and insurance companies, and the City and State pension funds to develop a financing plan in which all of the parties would be willing to participate. Many parties considered Federal participation an essential condition to their involvement in such a plan.

Congress, however, was extremely reluctant to provide any special financing assistance to New York City. One of the conditions which Congress insisted upon in authorizing guarantees of bonds to be issued by the City was that the guaranteed bonds be sold only to New York City and State pension funds, and that the guarantee continue in effect only as long as those bonds are held by the purchasing pension funds.

In fact, the 9.5% interest rate on the November 1978 guaranteed bonds of the City is only .5% higher than the rate at which Treasury bonds with comparable maturities were trading at the time that the guaranteed bonds were sold. It should be noted that both Treasury bonds and New York City bonds guaranteed by the Federal government are taxable.
April 24, 1979
Mr. Ralph Parks
Page Two

Senator Moynihan and Senator Javits both worked vigorously in support of the Federal legislation which authorized the guarantees. If there had been no such Federal assistance to New York City, the State might have been required to increase its assistance to the City.

I hope that this information is helpful to you.

Sincerely,

[Signature]

Stephen J. Weinstein
Deputy Executive Director

SJW:pas

cc: Sen. Daniel P. Moynihan
Washington, D. C., April 3, 1979

Respectfully referred to

Mr. Felix G. Rohatyn
Chairman
Municipal Assistance Corp.
Two World Trade Center
New York, New York 10047

Dear Mr. Rohatyn:

Enclosed is a letter from a constituent of mine.

Please refer all correspondence to:

Senator Daniel P. Moynihan
New York City Office
733 Third Avenue
New York, New York 10017

Att: Richard K. Eaton.

Thank you.

Enc.
64 Oak Lane
Rochester, New York 14610
March 1, 1979

The Honorable Daniel Moynihan
D-L West Davenport, New York

Sir:

Could you or a member of your staff assist me in my understanding of the New York City financing?

Why should New York City have to pay an interest rate of 9.5% for its borrowings with the New York State pension's et al with the loans having the guarantee of the Federal Government?

With the Federal guarantee it seems to me that there are numerous high-tax bracket individuals who would have underwritten these loans at a rate considerably lower than 9.5%. In juxtaposition who is paying the interest on these borrowings but all New York State residents with the various state aid programs that filter into New York City.

It would appear to me that someone had thought of a public underwriting, but I fail to understand the legal or political precedent for not exploring the use of the money and capital markets, with the Federal guarantee, to reduce the cost of government in New York State.

Your reply would be appreciated.

Sincerely,

[Signature]

Ralph R. Parks
CERTIFICATE

The undersigned hereby certifies that the copy of the resolutions of the Retirement Board the Teachers' Retirement System for the City of New York annexed hereto is a true and correct copy of the resolutions of the Retirement Board duly adopted at a meeting of such Board held on February 13, 1979 and that the same is in full force and effect on the date hereof and has not been repealed, modified or amended to the date hereof.

Dated: February 15, 1979

Wallace F. Sullivan, Executive Director
The Teachers' Retirement System for the City of New York
BOARD OF EDUCATION RETIREMENT SYSTEM
FOR THE CITY OF NEW YORK
65 COURT STREET
BROOKLYN, N.Y. 11201

CERTIFICATE

February 15, 1979

The undersigned hereby certifies that (i) annexed hereto is a true and complete copy of a resolution duly adopted by the Retirement Board of the Board of Education Retirement System for The City of New York (the "Retirement Board") at a meeting of said Retirement Board held on February 13, 1979 and that (ii) such resolution has not been repealed, modified or amended and remains in full force and effect on the date hereof.

Domenica Olszewsky
Deputy Executive Director,
Board of Education Retirement System for The City of New York
WHEREAS, the Teachers' Retirement System for The City of New York (the "System") has executed, along with certain other New York City (the "City") pension funds (collectively, including the System, the "City Funds"), a Guaranteed Bond Purchase Agreement, Bond Purchase Agreement and Loan Agreement, all dated as of November 15, 1978 (collectively, the "Agreements");

WHEREAS, it was understood by the City Funds that the allocation among them of the indebtedness to be purchased by them as a group under the Agreements would be based upon their pro rata net assets as of November 15, 1978, as computed by the chief actuary of the City Funds; and

WHEREAS, the Retirement Board (the "Board") of the System has been advised by the chief actuary of the System that there was a miscalculation in computing the respective net assets of the System and of the Board of Education Retirement System for The City of New York (the "BERS") for purposes of determining the portion to be purchased respectively by the System and the BERS of the aggregate principal amount of indebtedness pursuant to the Agreements and that such miscalculation, which involved the inclusion among such net assets of the System and the BERS of certain of the assets attributable to their respective Tax Deferred Annuity Programs; and that were such assets not so included, the net assets of the System and of the BERS would as of November 15, 1978
have constituted respectively 32.0% and 1.7% of the aggregate net assets of all the City Funds; and

WHEREAS, the Board has been advised that the other City pension funds of the City Funds have either formally or informally agreed to adjust prospectively their respective pro rata allocations of indebtedness to be purchased by them at each closing under the Agreements so as to reflect their proportionate net assets as of November 15, 1978 without giving effect to the assets allocable to the respective Tax Deferred Annuity Programs of the System or of the BERS;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. Amendments to the respective Agreements such as to alter prospectively the percentage amounts of indebtedness to be purchased under the respective Agreements by the City Funds so as to reduce the percentage of indebtedness to be purchased by the System at all future closings under the respective Agreements to 32.0% of the indebtedness to be purchased at such closings by the City Funds as a group is hereby approved, such amendments (and waivers) to be in the forms approved by the Chairman of the Board or, in his absence, the Executive Director of the System, his approval to be conclusively evidenced by his execution thereof.
2. The Chairman of the Board or, in his absence, the Executive Director of the System be, and each of them hereby is, after consultation with special counsel to the System, authorized and directed (a) to execute amendments (and waivers) approved as aforesaid in paragraph 1 of this resolution to be held in escrow by counsel to the System and (b) to submit such amendments and waivers to the United States Secretary of the Treasury for his approval pursuant to Public Law 95-497.

3. If, and only if, the United States Secretary of the Treasury either (a) does not, as to a given amendment (and waiver) executed pursuant to paragraph 2, within 60 days after the submission to him of such amendment (and waiver), disapprove it or (b) advises the System in writing or by telegram or telex or other facsimile communication at any time prior to the expiration of such 60-day period that he does not disapprove said amendment (and waiver), the Chairman of the Board of the System, or in his absence, the Executive Director of the System is hereby authorized and directed to cause said amendment (and waiver) to be delivered by counsel to the System out of escrow. Nothing herein shall authorize or direct, or be construed to authorize or direct, the Chairman or the Executive Director to cause the delivery of any given amendment (and waiver) if the United States Secretary of the Treasury indicates that he disapproves such amendment (and waiver).

4. The Chairman of the Board and the Executive Director of the System and their respective representatives are authorized and directed to take all such other actions necessary and appropriate to effectuate this resolution.
BOARD OF EDUCATION RETIREMENT SYSTEM
FOR THE CITY OF NEW YORK
65 COURT STREET
BROOKLYN, N.Y. 11201

CERTIFICATE

February 15, 1979

The undersigned hereby certifies that (i) annexed hereto is a true and complete copy of a resolution duly adopted by the Retirement Board of the Board of Education Retirement System for The City of New York (the "Retirement Board") at a meeting of said Retirement Board held on February 13, 1979 and that (ii) such resolution has not been repealed, modified or amended and remains in full force and effect on the date hereof.

[Signature]
DOMENICA OLSZEWSKY
Deputy Executive Director,
Board of Education Retirement System for The City of New York
WHEREAS, the Board of Education Retirement System for The City of New York (the "System") has executed, along with certain other New York City (the "City") pension funds (collectively, including the System, the "City Funds"), a Guaranteed Bond Purchase Agreement, Bond Purchase Agreement and Loan Agreement, all dated as of November 15, 1978 (collectively, the "Agreements");

WHEREAS, it was understood by the City Funds that the allocation among them of the indebtedness to be purchased by them as a group under the Agreements would be based upon their pro rata net assets as of November 15, 1978, as computed by the chief actuary of the City Funds; and

WHEREAS, the Retirement Board (the "Board") of the System has been advised by the chief actuary of the System that there was a miscalculation in computing the respective net assets of the System and of the Teachers' Retirement System for the City of New York (the "TRS") for purposes of determining the portion to be purchased respectively by the System and the TRS of the aggregate principal amount of indebtedness pursuant to the Agreements and that such miscalculation, which involved the inclusion among such net assets of the System and the TRS of certain of the assets attributable to their respective Tax Deferred Annuity Programs; and that were such assets not so included, the net assets of the System and of the TRS would as of November 15,
1978 have constituted respectively 1.7% and 32.0% of the aggregate net assets of all the City Funds; and

WHEREAS, the Board has been advised that the other City pension funds of the City Funds have either formally or informally agreed to adjust prospectively their respective pro rata allocations of indebtedness to be purchased by them at each closing under the Agreements so as to reflect their proportionate net assets as of November 15, 1978 without giving effect to the assets allocable to the respective Tax Deferred Annuity Programs of the System or of the TRS;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. Amendments to the respective Agreements such as to alter prospectively the percentage amounts of indebtedness to be purchased under the respective Agreements by the City Funds so as to reduce the percentage of indebtedness to be purchased by the System at all future closings under the respective Agreements to 1.7% of the indebtedness to be purchased at such closings by the City Funds as a group is hereby approved, such amendments (and waivers) to be in the forms approved by the Executive Director or, in his absence, the Deputy Executive Director of the System, his or her approval to be conclusively evidenced by his or her execution thereof.

2. The Executive Director or, in his absence, the Deputy Executive Director of the System be, and each of them hereby is, after consultation with the Corporation Counsel authorized and directed (a) to execute amendments (and waivers) approved as aforesaid in paragraph 1 of this resolution to be held
in escrow by the Corporation Counsel and (b) to submit such amendments and waivers to the United States Secretary of the Treasury for his approval pursuant to Public Law 95-497.

3. If, and only if, the United States Secretary of the Treasury either (a) does not, as to a given amendment (and waiver) executed pursuant to paragraph 2, within 60 days after the submission to him of such amendment (and waiver), disapprove it or (b) advises the System in writing or by telegram or telex or other facsimile communication at any time prior to the expiration of such 60-day period that he does not disapprove said amendment (and waiver), the Executive Director of the System, or in his absence, the Deputy Executive Director is hereby authorized and directed to cause said amendment (and waiver) to be delivered by the Corporation Counsel out of escrow. Nothing herein shall authorize or direct, or be construed to authorize or direct, the Executive Director or the Deputy Executive Director to cause the delivery of any given amendment (and waiver) if the United States Secretary of the Treasury indicates that he disapproves such amendment (and waiver).

4. The Executive Director and the Deputy Executive Director of the System and their respective representatives are authorized and directed to take all such other actions necessary and appropriate to effectuate this resolution.
POLICE PENSION FUND,
ARTICLE 2
1 POLICE PLAZA
New York, N.Y. 10038

CERTIFICATE

February 15, 1979

The undersigned hereby certifies that (i) annexed hereto
is a true and complete copy of certain resolutions duly adopted
by the Board of Trustees of the New York City Police Pension
Fund, Article 2 (the "Board of Trustees") at a meeting of said
Board of Trustees held on February 9, 1979, and that (ii) such
resolutions have not been repealed, modified or amended and
remain in full force and effect on the date hereof.

PATRICK W. LEHANE
Chief Administrative Officer
Police Pension Fund,
Article 2
BOARD OF TRUSTEES
OF
NEW YORK CITY POLICE PENSION FUND
ARTICLE 2

February 9, 1979

WHEREAS, the Police Pension Fund has been advised that the percentages as presented in the Loan Agreement, the Bond Purchase Agreement and the Guaranteed Bond Purchase Agreement, all of which Agreements are dated as of November 15, 1978, are incorrect as they relate to the proportionate assets of each City pension fund to the total assets of the City pension funds who are parties to the Agreements;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Board of Trustees hereby approves the amendments of such Agreements from 16.2 percent to 16.5 percent contingent upon the similar action by the other City pension funds who are parties to the Agreements and the subsequent consent to such amendments by all parties to the respective Agreements and the Secretary of the Treasury, both as a party to the Guaranteed Bond Purchase Agreement and pursuant to the appropriate requirements of the Pension Legislation.

2. The Board of Trustees hereby authorizes the purchase of $16,500,000 principal amount of Guaranteed Bonds subject to the same limitations and restrictions as provided for in the resolution dated the date hereof whereby the Police Pension Fund authorized the purchase of $16,200,000 of Guaranteed
Bonds and such resolution is hereby amended to reflect this change; provided, however, that all other City pension funds shall have taken the actions necessary to effectuate the provisions of section 1 of this resolution and have agreed to make the purchases, as amended, on the Closing Date hereunder.

3. The Chairman of the Board of Trustees and the Chief Administrative Officer of the Police Pension Fund and their respective representatives are authorized and directed to take all such other actions and execute such other documents as they may deem necessary and appropriate to effectuate the intent of the foregoing provisions of this resolution.
WHEREAS, the New York City Employees' Retirement System ("NYCERS") is a party to the agreement dated as of November 15, 1978 between the Municipal Assistance Corporation For The City of New York ("MAC"), certain other New York City pension funds and certain commercial banks, savings banks and insurance companies (the "MAC Bond Purchase Agreement"); and

WHEREAS, an error was made in calculating the amounts to be purchased by the pension funds set forth in Schedule I to the MAC Bond Purchase Agreement; and

WHEREAS, NYCERS amounts for the fiscal years ended 1980, 1981, and 1982 should read $111,665,000 for fiscal 1980, $111,690,000 for fiscal 1981 and $57,830,000 for fiscal 1982 (the "Adjusted Amounts"); and

WHEREAS, the Board has determined that amounts be adjusted as of February 15, 1979 with respect to future purchases to be made under the MAC Bond Purchase Agreement; and

WHEREAS, the chief actuary of NYCERS will be directed to make the computation (the "Computation") contemplated by Section 2 (d) of An Act relating to the application of certain provisions of the Internal Revenue Code of 1954 to transactions by certain public employee retirement systems created by the State of New York or any of its political subdivisions, P.L.95-497 (the "Pension Legislation") and to deliver the Computation to the Executive Director of NYCERS;

NOW, THEREFORE, be it resolved as follows:

1. The Board of Trustees hereby determines that NYCERS become a party to an amendment which provides that the amounts set forth opposite NYCERS on Schedule I to the MAC Bond Purchase Agreement be amended as of February 15, 1979 to the Adjusted Amounts; provided that the Computation shall not show that NYCERS would have a negative cash flow.

2. The Board of Trustees hereby authorizes and directs the Executive Director of NYCERS to submit such amendment to the Secretary of the Treasury in accordance with the provisions of the Pension Legislation and further authorizes and directs the Chairman of the Board of Trustees or the Executive Director to execute such amendment on behalf of NYCERS at such time as the sixty-day waiting period under the Pension Legislation shall have expired or at such earlier time as the Secretary of the Treasury shall have notified NYCERS in writing that he does not disapprove such amendment.

3. The Board of Trustees hereby authorizes and directs the Chairman of the Board of Trustees and the Executive Director to take such other action and execute such other documents as shall be necessary to effectuate the above resolution.
<table>
<thead>
<tr>
<th>EXHIBITS</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Projected Cash Flow - Fiscal Years 1979-1982 (Base Financing Plan and Standby Purchases)</td>
</tr>
<tr>
<td>II</td>
<td>Detail of Investment Income - Fiscal Years 1979-1982</td>
</tr>
<tr>
<td>III</td>
<td>City-Related Holdings as a Percentage of Total Assets - Fiscal Years 1979-1982 (Base Financing Plan and Standby Purchases)</td>
</tr>
<tr>
<td>IV</td>
<td>Calculation of City-Related Holdings as a Percentage of Total Assets - Fiscal Years 1979-1982 (Base Financing Plan and Standby Purchases)</td>
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<tr>
<td>V</td>
<td>Assumptions</td>
</tr>
<tr>
<td>VI</td>
<td>Four Year Plan Summary</td>
</tr>
<tr>
<td>VII</td>
<td>Four Year Combined Statement of Cash Sources and Uses</td>
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<table>
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<tr>
<td>A</td>
<td>Projected Cash Flow - Fiscal Years 1979-1982 (Purchases of City-Related Securities after 9/30/78 not included)</td>
</tr>
<tr>
<td>B</td>
<td>City Serial Bond Purchases - Fiscal Years 1979-1982</td>
</tr>
<tr>
<td>C</td>
<td>MAC Securities Purchases - Fiscal Years 1979-1982</td>
</tr>
<tr>
<td>D</td>
<td>Redemptions (City Bonds held as of 9/30/78)</td>
</tr>
<tr>
<td>E</td>
<td>Retirement System Assets (As of 6/30/78)</td>
</tr>
<tr>
<td>F</td>
<td>Cash Flow - Fiscal Years 1976-1978</td>
</tr>
<tr>
<td>G</td>
<td>Funding Status - Fiscal Years 1976-1978</td>
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<tr>
<td>Fiscal Year</td>
<td>Beginning Cash Balance</td>
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<td>1982</td>
<td>$1,035</td>
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<td>$1,322</td>
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**Note:** Includes both yields on investments and proceeds of maturing securities. (See Exhibit II)
### Source: Office of the Actuary

For court employees transferred to the state.

(2) Provides for the transfers of reserves to NY State Employees Retirement System (see Exhibits I).

1. Includes both yield on investments and proceeds of maturities (see Exhibit II).

<table>
<thead>
<tr>
<th>Date</th>
<th>Balance</th>
<th>Beginning Cash Balance (7/1/78)</th>
<th>Ending Cash Balance</th>
<th>Excess (Deficiency) of Net Expenses (Deficiency)</th>
<th>Distributions over Investments</th>
<th>Distributions over Investments</th>
<th>Excess (Deficiency) or Other EC Over Distributions</th>
<th>Other EC Over Distributions</th>
<th>Distributions</th>
<th>Distributions</th>
<th>Investments Income (1)</th>
<th>Grants Contributions</th>
<th>Contributions</th>
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### New York City Retirement Systems

### After Purchase Cash Flow - Fiscal Year 1979

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<th>Education Board of Education</th>
<th>Police</th>
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### Exhibits

- Exhibit I
### Schedule of Contributions (1)

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<tr>
<th></th>
<th>Cost</th>
<th>Pharmacy Benefits</th>
<th>City Contributions</th>
<th>Teachers' Contributions</th>
<th>Police Contributions</th>
<th>Social Services Contributions</th>
<th>Employees' Contributions</th>
<th>Net Income (Deficiency) of Receipts</th>
<th>Excess over Disbursements</th>
<th>Net Excess (Deficiency) of Receipts</th>
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<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td>$2,471,750</td>
<td>$22,575</td>
<td>$11,252</td>
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<td>$2,515</td>
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<td>$740</td>
<td>$850</td>
<td>$340</td>
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<tr>
<td><strong>Disbursements</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>$2,510</td>
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<td>$416</td>
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<td>$416</td>
<td>$416</td>
<td>$416</td>
<td>$416</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Source: Office of the Actuary*

(1) Includes both yield on investments and proceeds of maturities (See Exhibit II)

**Note:** All entries are in millions of dollars.
The effect of the standby purchases would be to reduce the ending cash balances by the

<table>
<thead>
<tr>
<th>Total</th>
<th>Police</th>
<th>N.Y.C. E.R.S.</th>
<th>Police</th>
<th>N.Y.C. E.R.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1.75M</td>
<td>$24M</td>
<td>$3M</td>
<td>$24M</td>
<td>$75M</td>
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</tbody>
</table>

(1) Includes both yields on investements and proceeds of matuirties. (See Exhibit II)

<table>
<thead>
<tr>
<th>$1,790</th>
<th>$811</th>
<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$1,212</td>
<td>$1,212</td>
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Begining cash balance

<table>
<thead>
<tr>
<th>$3,759</th>
<th>$2,706</th>
<th>$1,053</th>
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<tbody>
<tr>
<td>$2,925</td>
<td>$2,706</td>
<td>$1,053</td>
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<table>
<thead>
<tr>
<th>22</th>
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<th>$1,053</th>
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<tbody>
<tr>
<td>22</td>
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<td>$1,053</td>
</tr>
</tbody>
</table>

(2) Standby Purchases of City Serial Bonds:

<table>
<thead>
<tr>
<th>$1,798</th>
<th>$811</th>
<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$811</td>
<td>$1,277</td>
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</tbody>
</table>

Less: New Purchases Per Base Plan

<table>
<thead>
<tr>
<th>$1,798</th>
<th>$811</th>
<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$811</td>
<td>$1,277</td>
</tr>
</tbody>
</table>

Over Disbursements

<table>
<thead>
<tr>
<th>$1,798</th>
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<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$811</td>
<td>$1,277</td>
</tr>
</tbody>
</table>

Excess (Deficiency) of Receipts

<table>
<thead>
<tr>
<th>$1,798</th>
<th>$811</th>
<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$811</td>
<td>$1,277</td>
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</tbody>
</table>

Total Disbursements

<table>
<thead>
<tr>
<th>$1,798</th>
<th>$811</th>
<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$811</td>
<td>$1,277</td>
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</tbody>
</table>

Total Receipts

<table>
<thead>
<tr>
<th>$1,798</th>
<th>$811</th>
<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$811</td>
<td>$1,277</td>
</tr>
</tbody>
</table>

City Contributions

<table>
<thead>
<tr>
<th>$1,798</th>
<th>$811</th>
<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$811</td>
<td>$1,277</td>
</tr>
</tbody>
</table>

Employee Contributions

<table>
<thead>
<tr>
<th>$1,798</th>
<th>$811</th>
<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$811</td>
<td>$1,277</td>
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</tbody>
</table>

Employee Contributions

<table>
<thead>
<tr>
<th>$1,798</th>
<th>$811</th>
<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$811</td>
<td>$1,277</td>
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</tbody>
</table>

Total Contributions

<table>
<thead>
<tr>
<th>$1,798</th>
<th>$811</th>
<th>$1,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,798</td>
<td>$811</td>
<td>$1,277</td>
</tr>
</tbody>
</table>

Exhibit I

After Purchases Under Base Financing Plan and Standby Plan (2)

Projected Cash Flow - Fiscal Year 1981

New York City Retirement Systems

Board of Education

<table>
<thead>
<tr>
<th>$2,706</th>
<th>$1,053</th>
<th>$2,706</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2,706</td>
<td>$1,053</td>
<td>$2,706</td>
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</table>

Article 1B

<table>
<thead>
<tr>
<th>$2,706</th>
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<th>$2,706</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2,706</td>
<td>$1,053</td>
<td>$2,706</td>
</tr>
</tbody>
</table>

N.Y.C. E.R.S.

<table>
<thead>
<tr>
<th>$2,706</th>
<th>$1,053</th>
<th>$2,706</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2,706</td>
<td>$1,053</td>
<td>$2,706</td>
</tr>
</tbody>
</table>

$2,000

$1,150

$640

$500
### Exhibit I

After Purchases Under Base Financing Plan and Standby Plan (2)

New York City Retirement Systems

<table>
<thead>
<tr>
<th></th>
<th>Teachers</th>
<th>Employees</th>
<th>N.Y.C.</th>
<th>Police</th>
<th>Fire-Prep.</th>
<th>Police-J.P.</th>
<th>Board of Education</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/31/1985 (26)</td>
<td>$2,500</td>
<td>$1,189</td>
<td>$1,061</td>
<td>$32,970</td>
<td>$25,000</td>
<td>$1,750</td>
<td>$1,270</td>
<td></td>
</tr>
<tr>
<td>31/1/1986 (25)</td>
<td>$2,515</td>
<td>$1,200</td>
<td>$1,100</td>
<td>$32,925</td>
<td>$25,000</td>
<td>$1,750</td>
<td>$1,270</td>
<td></td>
</tr>
<tr>
<td>31/3/1986 (24)</td>
<td>$2,530</td>
<td>$1,210</td>
<td>$1,120</td>
<td>$32,880</td>
<td>$25,000</td>
<td>$1,750</td>
<td>$1,270</td>
<td></td>
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<tr>
<td>31/5/1986 (23)</td>
<td>$2,545</td>
<td>$1,220</td>
<td>$1,140</td>
<td>$32,835</td>
<td>$25,000</td>
<td>$1,750</td>
<td>$1,270</td>
<td></td>
</tr>
<tr>
<td>31/7/1986 (22)</td>
<td>$2,560</td>
<td>$1,230</td>
<td>$1,160</td>
<td>$32,790</td>
<td>$25,000</td>
<td>$1,750</td>
<td>$1,270</td>
<td></td>
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<tr>
<td>31/9/1986 (21)</td>
<td>$2,575</td>
<td>$1,240</td>
<td>$1,180</td>
<td>$32,745</td>
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<td>$1,750</td>
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<td></td>
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<tr>
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<td>$2,590</td>
<td>$1,250</td>
<td>$1,200</td>
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<td></td>
</tr>
<tr>
<td>31/1/1987 (19)</td>
<td>$2,605</td>
<td>$1,260</td>
<td>$1,220</td>
<td>$32,655</td>
<td>$25,000</td>
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<td></td>
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<tr>
<td>31/3/1987 (18)</td>
<td>$2,620</td>
<td>$1,270</td>
<td>$1,240</td>
<td>$32,610</td>
<td>$25,000</td>
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<td></td>
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<tr>
<td>31/5/1987 (17)</td>
<td>$2,635</td>
<td>$1,280</td>
<td>$1,260</td>
<td>$32,565</td>
<td>$25,000</td>
<td>$1,750</td>
<td>$1,270</td>
<td></td>
</tr>
<tr>
<td>31/7/1987 (16)</td>
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<td>$1,290</td>
<td>$1,280</td>
<td>$32,520</td>
<td>$25,000</td>
<td>$1,750</td>
<td>$1,270</td>
<td></td>
</tr>
<tr>
<td>31/9/1987 (15)</td>
<td>$2,665</td>
<td>$1,300</td>
<td>$1,300</td>
<td>$32,475</td>
<td>$25,000</td>
<td>$1,750</td>
<td>$1,270</td>
<td></td>
</tr>
<tr>
<td>31/11/1987 (14)</td>
<td>$2,680</td>
<td>$1,310</td>
<td>$1,320</td>
<td>$32,430</td>
<td>$25,000</td>
<td>$1,750</td>
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<tr>
<td>31/1/1988</td>
<td>$2,695</td>
<td>$1,320</td>
<td>$1,340</td>
<td>$32,385</td>
<td>$25,000</td>
<td>$1,750</td>
<td>$1,270</td>
<td></td>
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</table>

Source: Office of the Actuary.

The amount each fund is scheduled to purchase.

The effect of the standby purchase would be to reduce the ending cash balances by the

<table>
<thead>
<tr>
<th>$300 Million</th>
<th>$6 Million</th>
<th>$48 Million</th>
<th>$150 Million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>Police</td>
<td>Fire-Prep.</td>
<td>Police-J.P.</td>
</tr>
<tr>
<td>$34,894</td>
<td>$87</td>
<td>$3</td>
<td>$844</td>
</tr>
<tr>
<td>$34,879</td>
<td>$63</td>
<td>$9</td>
<td>$292</td>
</tr>
<tr>
<td>$31,135</td>
<td>$24</td>
<td>$4</td>
<td>$242</td>
</tr>
<tr>
<td>$31,116</td>
<td>$2</td>
<td>$9</td>
<td>$78</td>
</tr>
<tr>
<td>$31,096</td>
<td>$2</td>
<td>$9</td>
<td>$78</td>
</tr>
<tr>
<td>$31,076</td>
<td>$2</td>
<td>$9</td>
<td>$78</td>
</tr>
<tr>
<td>$31,056</td>
<td>$2</td>
<td>$9</td>
<td>$78</td>
</tr>
<tr>
<td>$31,036</td>
<td>$2</td>
<td>$9</td>
<td>$78</td>
</tr>
<tr>
<td>$31,016</td>
<td>$2</td>
<td>$9</td>
<td>$78</td>
</tr>
</tbody>
</table>

(1) Includes both yield on investments and proceeds of maturing. See Exhibit II.

(2) Standby purchases of City Serial Bonds.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$495</td>
<td>$500</td>
<td>$491</td>
<td>$440</td>
</tr>
<tr>
<td></td>
<td>$114</td>
<td>$147</td>
<td>$158</td>
<td>$128</td>
</tr>
<tr>
<td></td>
<td>$718</td>
<td>$789</td>
<td>$924</td>
<td>$940</td>
</tr>
<tr>
<td></td>
<td>$1,339</td>
<td>$2,516</td>
<td>$4,838</td>
<td>$6,079</td>
</tr>
<tr>
<td></td>
<td>$373</td>
<td>$350</td>
<td>$325</td>
<td>$302</td>
</tr>
<tr>
<td></td>
<td>$314</td>
<td>$262</td>
<td>$194</td>
<td>$128</td>
</tr>
<tr>
<td>N.Y.C.E.R.S. R.S.</td>
<td>$58</td>
<td>$89</td>
<td>$122</td>
<td>$122</td>
</tr>
<tr>
<td>Police</td>
<td>$36</td>
<td>$59</td>
<td>$79</td>
<td>$79</td>
</tr>
<tr>
<td>Fire Education</td>
<td>$32</td>
<td>$50</td>
<td>$67</td>
<td>$67</td>
</tr>
<tr>
<td>Total</td>
<td>$1,104</td>
<td>$1,927</td>
<td>$3,378</td>
<td>$4,634</td>
</tr>
</tbody>
</table>
| Source: Office of the Actuary
| Fiscal Year 1979 |
| Fiscal Year 1980 |
| Fiscal Year 1981 |
| Fiscal Year 1982 |

**EXHIBIT II**

**New York City Retirement Systems**

**Detail of Investment Income**

($ in millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$495</td>
<td>$500</td>
<td>$491</td>
<td>$440</td>
</tr>
<tr>
<td></td>
<td>$114</td>
<td>$147</td>
<td>$158</td>
<td>$128</td>
</tr>
<tr>
<td></td>
<td>$718</td>
<td>$789</td>
<td>$924</td>
<td>$940</td>
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<tr>
<td></td>
<td>$1,339</td>
<td>$2,516</td>
<td>$4,838</td>
<td>$6,079</td>
</tr>
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<td></td>
<td>$373</td>
<td>$350</td>
<td>$325</td>
<td>$302</td>
</tr>
<tr>
<td></td>
<td>$314</td>
<td>$262</td>
<td>$194</td>
<td>$128</td>
</tr>
<tr>
<td>N.Y.C.E.R.S. R.S.</td>
<td>$58</td>
<td>$89</td>
<td>$122</td>
<td>$122</td>
</tr>
<tr>
<td>Police</td>
<td>$36</td>
<td>$59</td>
<td>$79</td>
<td>$79</td>
</tr>
<tr>
<td>Fire Education</td>
<td>$32</td>
<td>$50</td>
<td>$67</td>
<td>$67</td>
</tr>
<tr>
<td>Total</td>
<td>$1,104</td>
<td>$1,927</td>
<td>$3,378</td>
<td>$4,634</td>
</tr>
</tbody>
</table>
ASSUMPTIONS

The following assumptions were made with respect to the analyses of the City Retirement Systems' holding of City-Related Securities, and are based on the latest data submitted by the City to the Control Board in connection with its Financial Plan to the extent that such data are relevant.

A. Allocation of New Purchases

For purposes of these computations, prospective purchases of City and MAC bonds and City short-term notes were allocated among the City Retirement Systems according to the following percentages as determined by the City Actuary on the basis of preliminary projected assets as of June 30, 1978. Actual allocations will be made according to the percentages as determined by the City Actuary on the basis of actual relative assets as shown in Attachment E. The effect of the difference between percentages used in calculations and actual percentages on the data contained herein is minimal.

| System                          | Percent of Total Purchase Used in Calculation | Actual  
|---------------------------------|---------------------------------------------|---------
| Employees' Retirement System    | 50%                                         | 49.1%   
| Teachers' Retirement System     | 32                                         | 32.9    
| Police Pension Fund             | 16                                         | 16.2    
| Board of Education Retirement System | 2                                          | 1.8     
| Fire Department Pension Fund    | 0                                          | 0.0     
| Total                           | 100%                                       | 100.0%  

B. Timing of Purchases

Purchase of City bonds and MAC bonds by the Retirement Systems in aggregate during the 1979-1982 fiscal years are assumed to occur by fiscal quarter as indicated in Tables B-1 and B-2 below. Attachments B and C set forth comparable information as to timing of purchases for each System.

Table B-1
(City Serial Bonds)

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Quarterly Distribution</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st</td>
<td>2nd</td>
</tr>
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<td>$ --</td>
<td>$150</td>
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<tr>
<td>1980 (1)</td>
<td>42</td>
<td>42</td>
</tr>
<tr>
<td>1981 (1)</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1982 (2)</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Base Financing Plan
(2) Stand-by Plan

Table B-2
(MAC Bonds)

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Quarterly Distribution</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st</td>
<td>2nd</td>
</tr>
<tr>
<td>1979</td>
<td>--</td>
<td>$ 60</td>
</tr>
<tr>
<td>1980</td>
<td>75</td>
<td>75</td>
</tr>
<tr>
<td>1981</td>
<td>75</td>
<td>75</td>
</tr>
<tr>
<td>1982</td>
<td>58</td>
<td>58</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In contrast to the 1979 fiscal year where closing delays will cause purchases to occur in the last three quarters of the fiscal year, 1980 fiscal year purchases are expected to occur more evenly before the last quarter of the fiscal year. MAC bond purchases in fiscal years 1981 and 1982 follow the 1980 pattern, except that no MAC purchases will occur in the last two quarters of fiscal year 1982 since commitments under the Bond Purchase Agreement will terminate on January 20, 1982. Stand-by purchases in fiscal years 1981 and 1982
are shown as occurring in the third and fourth quarters of such fiscal years since these purchases will take place only upon a determination that the City and MAC are unable to complete the public sale of their securities within those years.

Purchases of short-term City debt, pursuant to a Loan Agreement and as the Retirement Systems may agree with respect to fiscal years 1980-1982, are assumed to take place in each fiscal year as follows:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Quarterly Distribution</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st</td>
<td>2nd</td>
</tr>
<tr>
<td>1979</td>
<td>$ --</td>
<td>$200</td>
</tr>
<tr>
<td>1980</td>
<td>--</td>
<td>225</td>
</tr>
<tr>
<td>1981</td>
<td>225</td>
<td>225</td>
</tr>
<tr>
<td>1982</td>
<td>225</td>
<td>225</td>
</tr>
</tbody>
</table>

C. Redemptions

1. City Serial Bonds

This data includes only redemption proceeds from City bonds held by the City Retirement System as of September 30, 1978. Attachment D sets forth, in detail, the timing of such redemptions per quarter for each of the Systems.

City bonds scheduled for purchase by the Retirement Systems during the period of the Four Year Plan will begin to mature in fiscal year 1980, in limited but as yet undetermined amounts. To the extent that such bonds mature, holding of City-related securities will be reduced.
2. **MAC Bonds**

MAC Bonds scheduled for purchase by the Retirement Systems during the period of the Four Year Plan will not begin to mature until after fiscal 1982. No provisions are made in these analyses for proceeds from MAC bond maturities held by the Systems as of September 30, 1978.

D. **Asset Valuation**

Asset valuations in these analyses are in accordance with Section 2, subsection (c)(2) of the Pension Legislation. This provision in effect requires the ERISA method of valuation. Attachment E indicates the method by which an ERISA valuation of Retirement Systems' assets as of June 30, 1978 was derived.
## NEW YORK CITY
### FINANCIAL PLAN SUMMARY

#### Four-Year Financial Plan

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1979</th>
<th>FY 1980</th>
<th>FY 1981</th>
<th>FY 1982</th>
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</thead>
<tbody>
<tr>
<td><strong>REVENUES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Taxes</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>General Property Taxes</td>
<td>$3,133</td>
<td>$3,089</td>
<td>$3,081</td>
<td>$3,124</td>
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<tr>
<td>Other Taxes</td>
<td>3,206</td>
<td>3,287</td>
<td>3,388</td>
<td>3,496</td>
</tr>
<tr>
<td>Miscellaneous Revenues</td>
<td>1,391</td>
<td>1,248</td>
<td>1,275</td>
<td>1,306</td>
</tr>
<tr>
<td><strong>Grants</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>2,426</td>
<td>2,009</td>
<td>1,982</td>
<td>1,987</td>
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<tr>
<td>State</td>
<td>2,185</td>
<td>1,968</td>
<td>1,993</td>
<td>2,021</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Disallowances</td>
<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
</tr>
<tr>
<td>Unrestricted Intgovt. Aid</td>
<td>1,071</td>
<td>963</td>
<td>932</td>
<td>975</td>
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<tr>
<td><strong>Total Revenues</strong></td>
<td>$13,314</td>
<td>$12,466</td>
<td>$12,553</td>
<td>$12,811</td>
</tr>
<tr>
<td><strong>Less: Intra-City Revenues</strong></td>
<td>413</td>
<td>422</td>
<td>430</td>
<td>439</td>
</tr>
<tr>
<td><strong>Net Total Revenues</strong></td>
<td>$12,901</td>
<td>$12,044</td>
<td>$12,123</td>
<td>$12,372</td>
</tr>
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</table>

#### OBLIGATIONS

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1979</th>
<th>FY 1980</th>
<th>FY 1981</th>
<th>FY 1982</th>
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</thead>
<tbody>
<tr>
<td>PS</td>
<td>$5,724</td>
<td>$5,873</td>
<td>$6,202</td>
<td>$6,378</td>
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<tr>
<td>OTPS</td>
<td>5,969</td>
<td>5,389</td>
<td>5,537</td>
<td>5,671</td>
</tr>
<tr>
<td>Debt Service</td>
<td>1,473</td>
<td>1,314</td>
<td>1,227</td>
<td>1,186</td>
</tr>
<tr>
<td>MAC Debt Service Funding</td>
<td>483</td>
<td>520</td>
<td>563</td>
<td>566</td>
</tr>
<tr>
<td><strong>Total Obligations</strong></td>
<td>$13,649</td>
<td>$13,096</td>
<td>$13,529</td>
<td>$13,801</td>
</tr>
<tr>
<td>Less: Intra-City Expenses</td>
<td>413</td>
<td>422</td>
<td>430</td>
<td>439</td>
</tr>
<tr>
<td><strong>Net Total Obligations</strong></td>
<td>$13,236</td>
<td>$12,674</td>
<td>$13,099</td>
<td>$13,362</td>
</tr>
</tbody>
</table>

#### Surplus/(Deficit) Before Capital Fund Transfer and General Reserve

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1979</th>
<th>FY 1980</th>
<th>FY 1981</th>
<th>FY 1982</th>
</tr>
</thead>
<tbody>
<tr>
<td>(335)</td>
<td>(630)</td>
<td>(976)</td>
<td>(990)</td>
<td></td>
</tr>
<tr>
<td>Funds Transferred from Cap. Fund</td>
<td>524</td>
<td>379</td>
<td>251</td>
<td>109</td>
</tr>
<tr>
<td>Potential Loss in CETA Revenues</td>
<td>-</td>
<td>(57)</td>
<td>(57)</td>
<td>(57)</td>
</tr>
<tr>
<td>General Reserve</td>
<td>(189)</td>
<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
</tr>
<tr>
<td><strong>Gap To Be Closed</strong></td>
<td>$-</td>
<td>$(408)</td>
<td>$(882)</td>
<td>$(1,038)</td>
</tr>
</tbody>
</table>

10/6/78
# Four Year Financial Plan

## Combined Statement of Cash Sources and Uses

($ In Millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Uses of Cash</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>From Operations</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deficit (Surplus)</td>
<td>$ -</td>
<td>$(25)</td>
<td>$(25)</td>
<td>$(25)</td>
</tr>
<tr>
<td>Transfers from the Capital Fund</td>
<td>524</td>
<td>379</td>
<td>251</td>
<td>109</td>
</tr>
<tr>
<td>Increase (decrease) in accounts receivable</td>
<td>273</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Decrease (increase) in accounts payable, accrued liabilities and other liabilities</td>
<td>(304)</td>
<td>150</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Provision for disallowance of aid revenues</td>
<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
</tr>
<tr>
<td>Restricted Cash Debt Service Fund-Net Actions</td>
<td>106</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Funds Used In Operations</td>
<td><strong>$ 499</strong></td>
<td><strong>$ 404</strong></td>
<td><strong>$ 126</strong></td>
<td><strong>$ (16)</strong></td>
</tr>
<tr>
<td><strong>Capital Disbursements</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reimbursable</td>
<td>429</td>
<td>479</td>
<td>555</td>
<td>721</td>
</tr>
<tr>
<td>City</td>
<td>317</td>
<td>417</td>
<td>604</td>
<td>600</td>
</tr>
<tr>
<td><strong>Reduction of Short-Term Borrowing</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seasonal Loans</td>
<td>800</td>
<td>900</td>
<td>900</td>
<td>900</td>
</tr>
<tr>
<td>State Advance</td>
<td>800</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Disallowances Paid</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Other</td>
<td>392</td>
<td>38</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Uses</strong></td>
<td><strong>$3,337</strong></td>
<td><strong>$2,338</strong></td>
<td><strong>$2,285</strong></td>
<td><strong>$2,365</strong></td>
</tr>
<tr>
<td><strong>Sources of Cash</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Receipt of Reimbursable Capital</td>
<td>443</td>
<td>493</td>
<td>573</td>
<td>741</td>
</tr>
<tr>
<td>Proceeds from Short-Term Borrowing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seasonal Loans</td>
<td>800</td>
<td>900</td>
<td>900</td>
<td>900</td>
</tr>
<tr>
<td>State Advance</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Proceeds from sale of Serial Bonds</td>
<td>618</td>
<td>250</td>
<td>300</td>
<td>650</td>
</tr>
<tr>
<td>Transfers from MAC</td>
<td>732</td>
<td>532</td>
<td>537</td>
<td>99</td>
</tr>
<tr>
<td>Other - Mitchell Lama Proceeds</td>
<td>190</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Sources</strong></td>
<td><strong>$2,783</strong></td>
<td><strong>$2,175</strong></td>
<td><strong>$2,310</strong></td>
<td><strong>$2,390</strong></td>
</tr>
<tr>
<td><strong>Net Source (Uses) of Cash</strong></td>
<td>(554)</td>
<td>(163)</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td><strong>Cash Balance Beginning of Period</strong></td>
<td>1,052</td>
<td>498</td>
<td>335</td>
<td>360</td>
</tr>
<tr>
<td><strong>Cash Balance End of Period</strong></td>
<td><strong>$ 498</strong></td>
<td><strong>$ 335</strong></td>
<td><strong>$ 360</strong></td>
<td><strong>$ 385</strong></td>
</tr>
</tbody>
</table>

**Note:** The financing plan reflected in the above is based upon the latest available information and may require amendment when the final financing plan is put into place. Seasonal loan requirements may range from $700 to $900 million in FY 1979 and $800 to $1,000 million in FY 1980 and FY 1981.
Summary of New York City Retirement Systems
Projected Cash Flow-Fiscal Years 1979-1982
No Further Purchases of City-Related Securities
($ In Millions)

<table>
<thead>
<tr>
<th>Receipts</th>
<th>FY 1979</th>
<th>FY 1980</th>
<th>FY 1981</th>
<th>FY 1982</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Contributions</td>
<td>$ 1,241</td>
<td>$ 1,325</td>
<td>$ 1,405</td>
<td>$ 1,445</td>
<td>$ 5,416</td>
</tr>
<tr>
<td>Employee Contributions</td>
<td>209</td>
<td>215</td>
<td>223</td>
<td>229</td>
<td>876</td>
</tr>
<tr>
<td>Investment Income (1)</td>
<td>875</td>
<td>970</td>
<td>975</td>
<td>987</td>
<td>3,807</td>
</tr>
<tr>
<td><strong>Total Receipts</strong></td>
<td><strong>$ 2,325</strong></td>
<td><strong>$ 2,510</strong></td>
<td><strong>$ 2,603</strong></td>
<td><strong>$ 2,661</strong></td>
<td><strong>$10,099</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disbursements</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension Payroll</td>
<td>$ 901</td>
<td>$ 1,022</td>
<td>$ 1,107</td>
<td>$ 1,192</td>
<td>$ 4,222</td>
</tr>
<tr>
<td>Loans &amp; Excess Contribution</td>
<td>126</td>
<td>127</td>
<td>127</td>
<td>127</td>
<td>507</td>
</tr>
<tr>
<td>Other</td>
<td>163</td>
<td>91</td>
<td>91</td>
<td>91</td>
<td>436</td>
</tr>
<tr>
<td><strong>Total Disbursements</strong></td>
<td><strong>$ 1,190</strong></td>
<td><strong>$ 1,240</strong></td>
<td><strong>$ 1,325</strong></td>
<td><strong>$ 1,410</strong></td>
<td><strong>$ 5,165</strong></td>
</tr>
</tbody>
</table>

Excess (Deficiency) of Receipts over Disbursements

<table>
<thead>
<tr>
<th></th>
<th>FY 1979</th>
<th>FY 1980</th>
<th>FY 1981</th>
<th>FY 1982</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 1,135</td>
<td>$ 1,270</td>
<td>$ 1,278</td>
<td>$ 1,251</td>
<td>$ 4,934</td>
</tr>
</tbody>
</table>

Less: August 25, 1978 Investment

<table>
<thead>
<tr>
<th></th>
<th>FY 1979</th>
<th>FY 1980</th>
<th>FY 1981</th>
<th>FY 1982</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 106</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 106</td>
</tr>
</tbody>
</table>

Net Excess (Deficiency) of Receipts over Disbursements

<table>
<thead>
<tr>
<th></th>
<th>FY 1979</th>
<th>FY 1980</th>
<th>FY 1981</th>
<th>FY 1982</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 1,029</td>
<td>$ 1,270</td>
<td>$ 1,278</td>
<td>$ 1,251</td>
<td>$ 4,828</td>
</tr>
</tbody>
</table>

Beginning Cash Balance

<table>
<thead>
<tr>
<th></th>
<th>FY 1979</th>
<th>FY 1980</th>
<th>FY 1981</th>
<th>FY 1982</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 1,066</td>
<td>$ 2,095</td>
<td>$ 3,365</td>
<td>$ 4,643</td>
<td>$ 1,066</td>
</tr>
</tbody>
</table>

Ending Cash Balance

<table>
<thead>
<tr>
<th></th>
<th>FY 1979</th>
<th>FY 1980</th>
<th>FY 1981</th>
<th>FY 1982</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 2,095</td>
<td>$ 3,365</td>
<td>$ 4,643</td>
<td>$ 5,894</td>
<td>$ 5,894</td>
</tr>
</tbody>
</table>

(1) Includes both yield on investments and proceeds of maturities (See Exhibit II)

(2) Cash Balance assumes no investments after August 31, 1978 in either City Serial Bonds or Municipal Assistance Corporation Securities.

Source: Office of the Actuary
New York City Retirement Systems  
Projected Cash Flow - Fiscal Year 1979  
No Further Purchases of City-Related Securities  
($ In Millions)  

<table>
<thead>
<tr>
<th>Receipts</th>
<th>N.Y.C. Employees</th>
<th>Teachers</th>
<th>Police Article-2</th>
<th>Fire Article-1B</th>
<th>Board Of Education</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Contributions</td>
<td>$ 558</td>
<td>$ 404</td>
<td>$ 209</td>
<td>$ 50</td>
<td>$ 20</td>
<td>$ 1,241</td>
</tr>
<tr>
<td>Employee Contributions</td>
<td>108</td>
<td>48</td>
<td>39</td>
<td>6</td>
<td>8</td>
<td>209</td>
</tr>
<tr>
<td>Investment Income (1)</td>
<td>440</td>
<td>262</td>
<td>118</td>
<td>38</td>
<td>-17</td>
<td>875</td>
</tr>
<tr>
<td>Total Receipts</td>
<td>$ 1,106</td>
<td>$ 714</td>
<td>$ 366</td>
<td>$ 94</td>
<td>$ 45</td>
<td>$ 2,325</td>
</tr>
</tbody>
</table>

| Disbursements                |                  |          |                  |                  |                    |       |
| Pension Payroll              | $ 415            | $ 248    | $ 144            | $ 82             | $ 12               | $ 9   |
| Loans & Excess Contributions | 44               | 48       | 25               | 6                | 3                  | 126   |
| Other                        | 126(2)           | 24       | 6                | 2                | 5                  | 163   |
| Total Disbursements          | $ 585            | $ 320    | $ 175            | $ 90             | $ 20               | $ 1,190 |

Excess (Deficiency) of Receipts over Disbursements: $ 521 $ 394 $ 191 $ 4 $ 25 $ 1,135


Net Excess (Deficiency) of Receipts over Disbursements: $ 521 $ 394 $ 85 $ 4 $ 25 $ 1,029

Beginning Cash Balance (7/1/78): $ 474 $ 194 $ 342 $ 44 $ 12 $ 1,066

Ending Cash Balance: $ 995 $ 588 $ 427 $ 48 $ 37 $ 2,095

(1) Includes both yield on investments and proceeds of maturities (See Exhibit II)

(2) Provides for the transfers of reserves to NY State Employees Retirement System for court employees transferred to the State

(3) Cash Balance assumes no investment after August 31, 1978 in either City Serial Bonds or Municipal Assistance Corporation Securities.

Source: Office of the Actuary
## New York City Retirement System
### Projected Cash Flow - Fiscal Year 1980
#### No Further Purchases of City-Related Securities

($ In Millions)

<table>
<thead>
<tr>
<th></th>
<th>N.Y.C. Employees</th>
<th>Teachers</th>
<th>Police Article-2</th>
<th>Fire Article-1B</th>
<th>Board Of Education</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Receipts</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City Contributions</td>
<td>$ 595</td>
<td>$ 435</td>
<td>$ 225</td>
<td>$ 50</td>
<td>$ 20</td>
<td>$ 1,325</td>
</tr>
<tr>
<td>Employee Contributions</td>
<td>110</td>
<td>50</td>
<td>40</td>
<td>6</td>
<td>9</td>
<td>215</td>
</tr>
<tr>
<td>Investment Income (1)</td>
<td>491</td>
<td>289</td>
<td>137</td>
<td>35</td>
<td>18</td>
<td>970</td>
</tr>
<tr>
<td><strong>Total Receipts</strong></td>
<td>$1,196</td>
<td>$ 774</td>
<td>$ 402</td>
<td>$ 91</td>
<td>$ 47</td>
<td>$ 2,510</td>
</tr>
<tr>
<td><strong>Disbursements</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pension Payroll</td>
<td>$ 486</td>
<td>$ 268</td>
<td>$ 159</td>
<td>$ 92</td>
<td>$ 17</td>
<td>$ 1,022</td>
</tr>
<tr>
<td>Loans and Excess</td>
<td>45</td>
<td>48</td>
<td>25</td>
<td>6</td>
<td>3</td>
<td>127</td>
</tr>
<tr>
<td>Contributions (2)</td>
<td>54</td>
<td>24</td>
<td>6</td>
<td>2</td>
<td>5</td>
<td>91</td>
</tr>
<tr>
<td><strong>Total Disbursements</strong></td>
<td>$ 585</td>
<td>$ 340</td>
<td>$ 190</td>
<td>$ 100</td>
<td>$ 25</td>
<td>$ 1,240</td>
</tr>
<tr>
<td><strong>Excess (Deficiency) of Receipts over Disbursements</strong></td>
<td>$ 611</td>
<td>$ 434</td>
<td>$ 212</td>
<td>$ (9)</td>
<td>$ 22</td>
<td>$ 1,270</td>
</tr>
<tr>
<td><strong>Beginning Cash Balance</strong></td>
<td>$ 995</td>
<td>$ 588</td>
<td>$ 427</td>
<td>$ 48</td>
<td>$ 37</td>
<td>$ 2,095</td>
</tr>
<tr>
<td><strong>Ending Cash Balance</strong></td>
<td>$1,606</td>
<td>$1,022</td>
<td>$ 639</td>
<td>$ 39</td>
<td>$ 59</td>
<td>$ 3,365</td>
</tr>
</tbody>
</table>

(1) Includes both yield on investments and proceeds of maturities. (See Exhibit II)

(2) Cash Balance assumes no investment after August 31, 1978 in either City Serial Bonds or Municipal Assistance Corporation Securities.

Source: Office of the Actuary
New York City Retirement Systems
Projected Cash Flow - Fiscal Year 1981
No Further Purchases of City-Related Securities
($ In Millions)

<table>
<thead>
<tr>
<th>N.Y.C. Employees</th>
<th>Teachers</th>
<th>Police Article-2</th>
<th>Fire Article-1B</th>
<th>Board of Education</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Contributions</td>
<td>$ 640</td>
<td>$ 460</td>
<td>$ 235</td>
<td>$ 50</td>
<td>$ 20</td>
</tr>
<tr>
<td>Employee Contributions</td>
<td>115</td>
<td>52</td>
<td>41</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>Investment Income (1)</td>
<td>500</td>
<td>289</td>
<td>134</td>
<td>34</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total Receipts</strong></td>
<td><strong>$1,255</strong></td>
<td><strong>$801</strong></td>
<td><strong>$410</strong></td>
<td><strong>$90</strong></td>
<td><strong>$47</strong></td>
</tr>
</tbody>
</table>

**Disbursements**

| Pension Payroll | $ 531  | $ 293            | $ 174           | $ 92               | $ 17  | $ 1,106 |
| Loans and Excess Contributions | 45     | 48               | 25              | 6                  | 3     | 12     |
| Other | 54     | 24               | 6               | 2                  | 5     | 9      |
| **Total Disbursements** | **$ 630** | **$ 365**        | **$ 205**       | **$ 100**          | **$ 25** | **$ 1,325** |

**Excess (Deficiency) of Receipts over Disbursements**

| $ 625  | $ 436            | $ 205           | $(10)**            | $ 22  | $ 1,277 |

**Beginning Cash Balance**

| $1,606 | $1,022           | $ 639           | $ 39               | $ 59  | $ 3,364 |

**Ending Cash Balance**

| $2,231 | $1,458           | $ 844           | $ 29               | $ 81  | $ 4,644 |

(1) Includes both yield on investments and proceeds of maturities (See Exhibit II)

(2) Cash Balance assumes no investments after August 31, 1978 in either City Serial Bonds or Municipal Assistance Corporation Securities.

Source: Office of the Actuary
TO: John J. McLaughlin
FROM: Allen J. Kone
DATE: January 29, 1979
SUBJECT: LTHP

I. Statutory Authority

In the Spring of 1960 the New York State Legislature enacted a law amending the Administrative Code of the City of New York (which is a "State Law") by adding a Section 13-36.1 entitled Pension-for-increased-take-home-pay. Under this law the New York City Board of Estimate was permitted to pass a resolution under which the City assumed a fixed portion of the employee contributions to the City pension systems. (L.1960, c.507)

From 1961 through 1973 pursuant to State Legislation enacted each year, the Board of Estimate enacted annually similar resolutions whose net overall effect was to render the five major pension systems non-contributory and this gave City employees a tax free salary raise, because formerly they were required to contribute "after tax" dollars to their retirement system.

In 1974, at the urging of then Gov. Wilson, the legislature enacted a new Article 13 (Section 480) of the New York State Retirement & Social Security Law which provided in subsection (b).

"Any program under which an employer in a public retirement system funded by the State or one of its political subdivisions assumes all or part of the contribution which would otherwise be made by its employees toward retirement, which expires or terminates during nineteen hundred seventy-four is hereby extended until July first, nineteen hundred seventy-five, not withstanding the provisions of any other general, special or local law." (L.1974 c.510, §24; amended L. 1974, c.426, §6.)

The effect of this legislation was to keep the LTHP plan, as found in the NYC Administrative Code, intact but to remove the discretion—any power of the Board of Estimate as to whether or not it passed its annual resolution (and also eliminated the need for the City to pass a "home-rule" message each year before the Legislature could act).

In 1975 virtually the same language was reenacted inserting the date "until July 1, 1976" and also adding the following phrase

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan
to the end of the text: "except that commencing with the payroll period the first day of which is nearest to January first, nineteen hundred seventy-six, and until July first, nineteen hundred seventy-six, the rate of such contribution assured by the employer in any of the public retirement systems funded and maintained by a city, shall be one-half the rate of such contribution assured by such employer for the immediately preceding payroll period. (L.1975, c. 892, §1; L. 1975, c. 126, §1.) (This was the "give-back" on one half of ITMP.)

The 1976, 1977 and 1978 legislatures passed similar statutes, which in each case brought the "until" date one more year forward. (L.1976, c.491, §2; L.1977, c. 347, §1; L.1978, c.464, §7.)

Thus, the effect of this legislation, since 1975, was to reduce the amount assumed by the City by one-half but continuing the other half of ITMP. It should be noted that, under a deferral granted by the EFCB, as permitted by this legislation (L.1975, c.892, §2), City employees did not actually begin to make increased contributions until April 1, 1976. So the City only received a small budgetary benefit in FY 1978 - $42 million (due to the two-year lag).

II. Effect of Non-Reenactment of Section 480(b)

If the State Legislature does not reenact §480(b) of the Retirement and Social Security Law bringing forward the "until" phrases from 7/1/79 to 7/1/80 then the whole ITMP program lapses on 6/30/79. The NYC Administrative Code provisions would have lapsed on June 30, 1974 absent the annual updatings of §480(b). In order for any form of ITMP (one-half or all of it) to survive beyond 6/30/79 legislative action is required before that date.

III. Relationship of ITMP to The State Constitution

Pension benefits, for the most part, are protected by the New York State Constitution which states: "membership in any pension or retirement system of the State or a civil division thereof shall be a contractual relationship; the benefits of which shall not be diminished or impaired. (Art.5, §7, eff. Jan.1, 1939)

The purpose of this section was to overcome the former principle under which pension and retirement systems were subject to the will of the legislature and thus subject to diminution or impairment.

Nevertheless, both ITMP and the Heart Bill are considered exceptions to this general rule because they are temporary benefits which must be renewed annually by the State Legislature. In fact, Article 13 of the State Retirement and Social Security Law is entitled "Extension of Temporary Benefits and Supplementation Programs." If ITMP were a permanent program, then it would not be subject to
a lapse (either 1/2 or in whole) as it would come under Art.5, §7 because its benefits could not be allowed to be diminished or impaired.

Bcc: Dave Hershins
    Dr. H. Ranschburg

Attachments: NYC Administrative Code §B3-36.1
              NYS Retirement & Social Security Law §480
              NYS Constitutions Art 5 & 7
PEG Program ($ in millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Budget Gap</td>
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<td>(889)</td>
<td>(1,172)</td>
<td>(1,224)</td>
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<tr>
<td>Wage* Settlement</td>
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<td>(150)*</td>
<td>(350)</td>
<td>(540)</td>
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<tr>
<td>(City Estimate)</td>
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<tr>
<td>Adjusted Gap</td>
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<td>(1,039)</td>
<td>(1,522)</td>
<td>(1,764)</td>
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<td>373</td>
<td>393</td>
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<tr>
<td>Recurring Additional State Aid</td>
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<td>300</td>
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<td>Recurring Additional Federal Aid</td>
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<td>Remaining Gap to be Closed by City Actions</td>
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<td>(386)</td>
<td>(774)</td>
<td>(921)</td>
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<td>City Actions Set Forth in Assumptions by 3 and 4</td>
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<td>125</td>
<td>125</td>
<td>125</td>
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<tr>
<td>Additional City Actions of Recurring Nature to be Taken</td>
<td>---**</td>
<td>(251)</td>
<td>(388)</td>
<td>(147)</td>
</tr>
</tbody>
</table>

* City has reserved Westway funds ($80 million) to cover part of FY 1981 labor settlement
**Projected surplus of $247, with Westway, going into "out" years to offset cumulative three year gap of $796 million.

Case II Assumptions

1. Modest increases in Federal aid above baselines by $25 million per annum.
2. $200 million in additional state aid for FY '80, then a level escalating by $50 million thereafter.
3. Underspending of $25 million per annum.
4. "One-shot" City revenues of $100 million per annum.
5. No estimate is given for the value of "give-backs" or lower than estimated wage settlements in 1980 and 1982.
December 8, 1978

BY HAND

Mr. Malcolm J. Hood  
Senior Vice President  
UNITED STATES TRUST COMPANY  
OF NEW YORK  
130 John Street  
New York, New York 10038  

Dear Mal:

Attached are schedules which we have prepared showing the quantities and denominations of registered and coupon bonds in 1978 Series 11, 12 and 13, which the Financial Institutions and Pension Funds have indicated they wish to receive in exchange for the single registered certificate for each maturity delivered at the closing for those series on November 17, 1978.

Enclosed as back-up for the schedules are copies of the letters from each such purchaser in response to the Corporation's letter requesting such information. In all cases where registered bonds are requested to be issued or retained, you should verify the registration name directly with the individual purchasers.

As our letter of November 28 indicated, we have advised these purchasers that they may make such exchanges, at their election, in accordance with the Bond Purchase Agree-
December 8, 1978
Mr. Malcolm J. Hood
Page Two

ment dated as of November 15, 1978, commencing on January 8, 1979, and that such arrangements should be made with Pat Santivasci of the Trust Company.

Sincerely,

Stephen J. Weinstein
Deputy Executive Director

Attachments
Enclosures

SJW:pas

cc: Gerard Fernandez, Jr., Esq.
<table>
<thead>
<tr>
<th>Purchaser</th>
<th>Principal</th>
<th>For January Delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Insurance Companies</strong></td>
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<td></td>
</tr>
<tr>
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<tr>
<td>Columbian Mutual Life Insurance Company</td>
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<tr>
<td><strong>Commercial Banks</strong></td>
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<td></td>
</tr>
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<td>The Bank of New York</td>
<td>2,250,000</td>
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<tr>
<td>Chase Manhattan Bank</td>
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<td>2029 x $5,000 C</td>
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<td>Citibank</td>
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<td>119 x $100,000 C</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
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<td>Irving Trust Company</td>
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<td></td>
<td></td>
<td>4 x $5,000 C</td>
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<td>National Bank of North America</td>
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<td>320 x $5,000 C</td>
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<td><strong>Savings Banks</strong></td>
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<td>American Savings Bank</td>
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<td>93 x $100,000 R</td>
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<td></td>
<td></td>
<td>1 x $50,000 R</td>
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<tr>
<td>Central Savings Bank</td>
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<td>13 x $100,000 R</td>
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<tr>
<td></td>
<td></td>
<td>3 x $25,000 R</td>
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<tr>
<td>Dollar Savings Bank</td>
<td>4,440,000</td>
<td>888 x $5,000 C</td>
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December 8, 1978/SJW
<table>
<thead>
<tr>
<th>Purchaser</th>
<th>Principal</th>
<th>For January Delivery</th>
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<tbody>
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<td>Savings Banks (cont'd)</td>
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<td></td>
<td></td>
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<td>Franklin Savings Bank</td>
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<td>The Greenwich Savings Bank</td>
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<td>Harlem Savings Bank</td>
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<td>North Side Savings Bank</td>
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<td>Union Dime Savings Bank</td>
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<td>United Mutual Savings Bank</td>
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<td>Anchor Savings Bank</td>
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<tr>
<td></td>
<td></td>
<td>8 x $50,000 R</td>
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<td>5 x $10,000 R</td>
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<td></td>
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<td>The Dime Savings Bank of New York</td>
<td>5,585,000</td>
<td>55 x $100,000 C</td>
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<td>630 x $5,000 C</td>
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<td>Metropolitan Savings Bank</td>
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<td>Roosevelt Savings Bank</td>
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<tr>
<td>Williamsburgh Savings Bank</td>
<td>3,250,000</td>
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<tr>
<td>Purchaser</td>
<td>Principal</td>
<td>For January Delivery</td>
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<td>------------------------------</td>
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<td>Flushing Savings Bank</td>
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<tr>
<td>Queens County Savings Bank</td>
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<tr>
<td>Richmond County Savings Bank</td>
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<tr>
<td>Richmond Hill Savings Bank</td>
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<tr>
<td>Ridgewood Savings Bank</td>
<td>1,500,000</td>
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<tr>
<td>Staten Island Savings Bank</td>
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* See request for registration change.
MUNICIPAL ASSISTANCE CORPORATION
1978 Series 12 Bonds
($60,375,000 Term Bonds Due July 1, 1998)
Schedule of Conversions Effective January 8, 1979

(Each presently holds a single registered piece.)

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<thead>
<tr>
<th>Purchaser</th>
<th>Principal</th>
<th>For January Delivery</th>
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<tbody>
<tr>
<td>Pension Funds</td>
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</tr>
<tr>
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<td>$ 1,090,000</td>
<td>10 x $100,000 R</td>
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<tr>
<td>Retirement System</td>
<td></td>
<td>1 x $90,000 R</td>
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<tr>
<td>For The City of New York</td>
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<tr>
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<td>29,640,000</td>
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<td>Employees' Retirement System</td>
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<tr>
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<td>9,780,000</td>
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<tr>
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<td>19,865,000</td>
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</tr>
<tr>
<td>of New York</td>
<td></td>
<td>1 x $865,000 R</td>
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December 8, 1978/SJW
### MUNICIPAL ASSISTANCE CORPORATION
1978 Series 13 Bonds
$201,100,000 Serial Bonds due 07/01/85 through 07/01/98
Schedule of Conversions Effective January 8, 1979

<table>
<thead>
<tr>
<th>PURCHASER</th>
<th>PRINCIPAL AMOUNT</th>
<th>MATURITY</th>
<th>FOR JANUARY DELIVERY</th>
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<td><strong>Insurance Companies</strong></td>
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<td></td>
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</tr>
<tr>
<td>Metropolitan Life Insurance Company</td>
<td>$ 5,000,000</td>
<td>1987</td>
<td>1000 x $5,000 C</td>
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<tr>
<td>10,000,000</td>
<td>1988</td>
<td>2000 x $5,000 C</td>
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</tr>
<tr>
<td>10,000,000</td>
<td>1989</td>
<td>2000 x $5,000 C</td>
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</tr>
<tr>
<td>10,000,000</td>
<td>1990</td>
<td>2000 x $5,000 C</td>
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<tr>
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<td>15,000,000</td>
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<td>3000 x $5,000 C</td>
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<td>20,000,000</td>
<td>1994</td>
<td>4000 x $5,000 C</td>
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<td></td>
<td>1995</td>
<td>4000 x $5,000 C</td>
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<tr>
<td></td>
<td><strong>$110,000,000</strong></td>
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<td>Mutual Life Insurance Company of New York</td>
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<td>800,000</td>
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<td>8 x $100,000 C</td>
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<td>800,000</td>
<td>1987</td>
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<tr>
<td>1,300,000</td>
<td>1988</td>
<td>13 x $100,000 C</td>
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<td>2,100,000</td>
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<tr>
<td>200,000</td>
<td>1996</td>
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<td></td>
</tr>
<tr>
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<td>1997</td>
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<td></td>
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<tr>
<td></td>
<td>1998</td>
<td>10 x $5,000 C</td>
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<td></td>
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<td>1995</td>
<td>40 x $100,000 R</td>
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<td>United States Life Insurance Company in the City of New York</td>
<td>$ 1,000,000</td>
<td>1995</td>
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<td>Companion Life Insurance Company</td>
<td>$ 100,000</td>
<td>1985</td>
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December 8, 1978/SJW
<table>
<thead>
<tr>
<th>PURCHASER</th>
<th>AMOUNT</th>
<th>MATURITY</th>
<th>FOR JANUARY DELIVERY</th>
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<td>Equitable Life Assurance of the United States</td>
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<tr>
<td></td>
<td>$ 9,000,000</td>
<td>1986</td>
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<td>$ 4,000,000</td>
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<td>$ 5,400,000</td>
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<td>$ 2,650,000</td>
<td>1997</td>
<td>1 x $100,000 R</td>
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<td>$ 2,700,000</td>
<td>1998</td>
<td>1 x $50,000 R</td>
</tr>
<tr>
<td></td>
<td>$ 70,000,000</td>
<td></td>
<td>7 x $100,000 R</td>
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</table>
We have received no response from city officials regarding essential amendments to chapter 890 of the laws of 1975 that teacher members, as fiduciaries of the N.Y.C. Teachers Retirement System deem essential pre-requisites to participation in the four year financial plan.

We trust we will not be requested to participate in bond purchase agreements before this matter is fully resolved and all commitments in place.

Bernard Goldberg Rubin Mitchell Joseph Shannon Teacher Members

NYC Teachers Retirement System (40 Worth St New York NY 10013)

NNNN
<table>
<thead>
<tr>
<th>Item</th>
<th>1</th>
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<td>0</td>
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</tbody>
</table>

**Source:** Office of the Actuary

In the above table:

- 

Note: Accumulated contributions of active members are excluded from assets and liabilities figures shown.

* Liabilities on "shain" basis.

**Item 1(a)**

- Retiree category covered by assets, l.t.
- Percentage of liability for eligible to...

**Item 2**

- Assists available after coverage of...
- Appropriations due and unpaid...
- Assets on hand (excluding two years',...

**Item 3**

- Total
- Due to unpaid liabilities
- Non-retired
- Retired
- Eligible to retire
- Retired

**Item 4**

- Accrued liability for members of the
- Police
- Teachers
- Navy

**Attachment C**

New York City Retirement Systems

Projected Funding Status as of June 30, 1978

**New York City Retirement Systems**
Ms. Marilyn Friedman
Municipal Assistance Corporation
For The City of New York
2 World Trade Center
New York, N.Y.

Re: Revised draft of Opinion

Dear Marilyn:

We enclose a revised form of opinion letter which at this time we envision could be rendered in connection with the sale of bonds of the City of New York (the "City") to pension funds of the City or State of New York next month.

At our meeting on Monday, we requested that certain additional amendments to the Emergency Financial Control Board Act (the "Act") be enacted. The amendments relate to additional legislative findings and to a clarification of Section 10-a of the Act. We are undertaking to draft these amendments.

As with the previous draft of our opinion, please note that we have not yet fully completed our research into the validity of certain aspects of the Act. Accordingly, although we are furnishing you with the enclosed draft for discussion purposes, it may be necessary for us to further revise the opinion letter depending upon the results of our continuing research. Also, any changes in the Act may affect our opinion.
Again, as with our previous draft, please note that our ability to render an opinion in substantially the form of the enclosed draft ultimately will depend on our approval of the bonds being issued and upon the absence of any litigation which would have the effect of prohibiting us from opining as set forth in the draft.

Very truly yours,

Melvin L. Schweitzer

Enclosure
September , 1978

Honorable Harrison J. Goldin
Comptroller
The City of New York
Municipal Building
New York, New York 10017

Dear Sir:

We have acted as bond counsel in connection with the sale on this date by the City of New York in the State of New York (the "City") of $ aggregate principal amount of its % serial bonds, dated September , 1978 (the "Bonds") to (the "Purchasers") pursuant to § of the Bond Purchase Agreement dated September , 1978 (the "Purchase Agreement").

The Bonds provide that semi-annual interest thereon is payable from September , 1978, at the rate of % per annum, beginning March , 1979, on September and March in each year until maturity. The Bonds are payable in installments on September in each year beginning in 1980 in the following aggregate principal amounts:

1980 $
The bonds maturing on or before September 1988 will not be subject to redemption prior to maturity. The Bonds maturing on or after September 1988 are subject to redemption at the option of the City in whole at any time or in part in inverse order of maturity on any interest payment date as follows (expressed as percentages of the principal amount): If redeemed during the twelve month period beginning September of the years indicated,

<table>
<thead>
<tr>
<th>Year</th>
<th>Redemption Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>%</td>
</tr>
</tbody>
</table>

The United States Department of the Treasury (the "Department") has entered into an agreement (a "Guarantee") with each of the Purchasers in which the United States of America (the "United States") guarantees payment to the Purchaser, but not to any other holder of a Bond (other than a successor in interest to the Purchaser in a transaction not involving a change in beneficial interest) of the full amount of the principal and interest on the Bonds sold to the Purchaser by the City.
The City has included as a term of each of the Bonds a pledge and agreement (the "Pledge and Agreement") of the State of New York (the "State") that, until all the Bonds have been paid in full at maturity or until all the Bonds have been refunded, redeemed, defeased or otherwise discharged, or funds for this purpose have been deposited with a fiduciary, the State will not (a) substantially impair (i) the authority of the Emergency Financial Control Board (the "Board") established by the New York State Financial Emergency Act for the City of New York, constituting Chapter 868 of the Laws of 1975 as amended to the date hereof (the "State Act") to review and to disapprove or modify any financial plan of the City not in compliance with paragraphs (a), (c), (d), (e) and (f) of subdivision 1 of Section 8 of the State Act as in effect on the date the Bonds are issued, (ii) the authority of the Board to review and to disapprove certain contracts or proposed borrowings of the City or of any covered organization (as defined in the State Act), (iii) the authority of the Board to establish and adopt procedures with respect to the receipt and expenditure of City revenues, (iv) the independent maintenance of separate funds as provided in the State Act for the payment of debt service on bonds and notes of the City, including the
Bonds, (b) alter the composition of the Board so that the majority of the voting members of the Board are not officials of the State of New York or appointees of such officials, (c) terminate the existence of the Board prior to the time described in the State Act, (d) substantially modify the requirements of the State Act providing for certain audits of the financial statements of the City and for the delivery to the Board of a report thereon, or (e) alter the definition in the State Act of an emergency period or substantially alter the power of the Board to reimpose or terminate an emergency period.

We have examined such portions of the Constitution and statutes of the United States, the Constitution and statutes of the State and the Charter of the City, and such applicable court decisions as we have deemed necessary or relevant for the purposes of the opinions set forth below. We have also examined such records and made such investigation as we have deemed necessary for the purposes of such opinions, and relied upon certificates by officials and officers of the City, the State or the Department pursuant to which the Bonds have been authorized and issued and as to certain factual matters. Based upon the foregoing, we advise you that in our opinion:
1. The Bonds have been duly authorized and issued in accordance with the Constitution and statutes of the State and the Charter of the City and constitute valid and legally binding obligations of the City for the payment of which the City has validly pledged its faith and credit, and all real property within the City subject to taxation by the City is subject to the levy by the City of ad valorem taxes, without limit as to rate or amount, for payment of the Bonds and the interest thereon.

2. Under existing statutes and court decisions, interest on the Bonds will be exempt from Federal income taxes after the Bonds are sold or otherwise disposed of by the Purchasers (other than to a successor in interest in a transaction not involving a change in beneficial interest). We render no opinion as to whether interest on the Bonds is exempt from Federal income taxes before the Bonds are sold or otherwise disposed of by the Purchasers. Under existing statutes and court decisions, interest on the Bonds is exempt from State and City personal income taxes.
3. The City has validly included the Pledge and Agreement as a term of the Bonds. The Pledge and Agreement is a valid and legally binding pledge and agreement of the State.

4. Payment of the full amount of the principal and interest on the Bonds has been guaranteed by the United States to each Purchaser, but not to any other holders of Bonds, other than to a successor in interest to the Purchaser in a transaction not involving a change in beneficial interest. The Guarantee is a valid agreement of the United States and is incontestable, except for fraud or material misrepresentation on the part of any respective Purchaser.

5. The Board has been duly created under the State Act and has lawfully been granted and may exercise the power to:

   (a) consult with the City and the covered organizations as defined in the State Act (the "Covered Organizations") in the preparation of financial plans, specify the form and information to be contained in financial plans and the supporting infor-
mation required in connection therewith, and review and state its approval of any financial plan or modification of a financial plan, or state its disapproval of any financial plan or modification which it determines is incomplete or does not comply with the standards set forth in the State Act; and

(b) review and make reports and recommendations relating to the operations of the City and the Covered Organizations, audit compliance with any financial plan and obtain information from the City and the Covered Organizations relating to their respective financial conditions and needs.

6. While there is no judicial authority directly in point, if the Board exercises powers granted to it by the State Act in addition to those enumerated in paragraph 5 above, and those additional powers are exercised solely to the extent necessary to insure that (i) the City will have a financial plan which materially conforms to the standards set forth in subdivision 1 of Section 8 of the State Act and (ii) contracts entered into by the City, and borrowings of the City, are not materially inconsistent with the assumptions which enable the financial plan to conform to the
standards set forth in subdivision 1 of Section 8 of the State Act, a court should find that the exercise of those powers was authorized by the State Act and does not violate the Constitution of the State.

7. The State Act validly requires that (i) the City develop financial plans in the form, and containing the information, specified by the Board, which comply with the standards set forth in subdivision 1 of Section 8 of the State Act, (ii) the financial plans developed by the City and certain information relating thereto be submitted to the Board, (iii) the City enable a nationally recognized independent certified public accounting firm or a consortium of firms to perform an annual audit of the City’s financial statements in accordance with generally accepted auditing standards, (iv) the City establish a general debt service fund in accordance with Section 9-a of the State Act and deposit certain revenues in that fund, (v) the comptroller of the State establish a TAN debt service account and a RAN debt service account (as those terms are defined in the State Act) within the general debt service fund, pay certain sums into those accounts and make payments of principal of tax anticipation notes and revenue anticipation notes out of those accounts, (vi) the officials of the City comply with
any orders of the Board issued to those officials in the exercise of the Board's powers which are authorized by the State Act and do not violate the Constitution of the State.

8. The State Act validly prohibits the City from issuing obligations which are inconsistent with (a) the City's financial plan (whether developed by the City or adopted by the Board in the exercise of powers which are authorized by the State Act and do not violate the Constitution of the State) in effect at the time the obligations are issued or (b) the limitations set forth in subdivisions one through five of Section 9-b of the State Act.

We call your attention to the facts that (a) the enforceability of the terms and conditions of the Bonds and payment of principal and interest on the Bonds are subject to the provisions of Title 6-A of the Local Finance Law of the State and to provisions of the Federal Bankruptcy Act and may be subject to other subsequently adopted State or Federal laws relating to creditors' rights, (b) the enforceability of the Pledge and Agreement may be affected by the overriding State interest in promoting the health, safety and welfare of the people of the State and
(c) the enforceability of the Guarantee is subject to the immunity from suit, and the police and other paramount powers, of the United States government.

We wish to advise you that, with the exception of the opinion attributed to us under the caption "Legal Opinions", we did not act as counsel in connection with, nor have we participated in the preparation of, the Official Statement of the City of New York, dated September 1978, which we understand has been delivered to the Purchasers in connection with the sale of the Bonds and we express no opinion on the accuracy or completeness of the statements contained in such Official Statement.

Very truly yours,

ROGERS & WELLS
August 4, 1978

Mr. Jack Bigel
Program Planners
230 W. 41 Street
New York, NY 10036

Dear Jack:

In pursuit of internal discussions of how the pension system should fulfill our commitments to the City's four-year financing plan, we have arrived at some preliminary thoughts which we wish to share with you and get your responses.

The one aspect of the financing plan which concerns us most is the request for the pension system to purchase unguaranteed bonds at the same time that upward of $25 million of federally-guaranteed bonds are kept in a contingency reserve. Should the City succeed, during the 3rd and 4th years of the plan in selling its bonds in the public market, an event we all sincerely desire, these guarantees would never be utilized.

It will be extremely difficult to justify to our concerned constituents the purchase of unguaranteed bonds at a time when guarantees remain available and unutilized.

By restructuring the schedule to move the purchase of the unguaranteed bonds to the 3rd and 4th years, and making those purchases contingent on a possible inability of the City to market its securities to the public, the entire pension fund commitment will involve less risk and, in our opinion, become more acceptable to the City's pensioners and employees.

The City would still get the money it needs each year, as outlined in the original schedules.

The full required $4.5 billion would still be assured by the commitments of the various parties involved.

In the last two years of the plan the City would attempt to publically sell its securities in the same amounts currently contemplated. Should those sales be successful, those amounts guaranteed would no longer have to be held in reserve and could be sold to the pension systems. If the City is successful in both years, the pension systems would have to buy only a total of $190 million unguaranteed bonds as opposed to the $625 million contemplated in current schedules.
Should the City be unsuccessful, the pension funds would buy $675 unguaranteed bonds plus guaranteed bonds in the amount the City had hoped to sell, subject of course to mutual agreement in terms and conditions. Thus the full amount of Federal guarantees would be utilized and the justification for any required purchase of unguaranteed bonds would be far stronger.

Undoubtedly, the attached schedule will require further discussion and refinement. But some variation of this approval would be far more acceptable to us.

We await your comments.

Fraternally,

Joseph Shannon
Member Teachers' Retirement Board

Opelco:53
JS:ms
Encl.
(4) Each year's mix is between the commercial banks, savings banks and insurance companies to be proportionate to each.

This procedure would require the city to accept the public sales early in FY 1981 and 1982.

Note: If the city public sales are successful, a total of 1.5$ of guarantees will get the 360 as guaranteed bonds.

If sale of 650 city bonds is successful, pension funds will get the 360 as guaranteed bonds.

(2) If sale of 125 city bonds is successful, pension funds will then take 125 guaranteed bonds and balance of 190 un-

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<td>775</td>
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<td>1000</td>
<td>1175</td>
</tr>
<tr>
<td>Public Sale of MNC Bonds</td>
<td>375</td>
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<td>345</td>
<td>375</td>
</tr>
<tr>
<td>Banks, etc.-Guaranteed MNC Bonds</td>
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<td>250</td>
<td>375</td>
<td>375</td>
</tr>
</tbody>
</table>

Total Guaranteed Bonds to Pension System 900; Balance of 750 to be kept in reserve for backing of city public sales.
August 2, 1978

Hon. Albert B. Lewis
Superintendent of Insurance
Two World Trade Center
New York, New York 10047

Dear Superintendent Lewis:

This is in reply to your request for my opinion as to whether the power granted to you by Insurance Law, § 36-a to adopt standards relative to public employee pension systems includes by inference the authority to adopt regulations providing for the enforcement of compliance with such standards.

A copy of your proposed regulations was forwarded with your inquiry; however, this opinion does not specifically pass upon any of those regulations.

Public employee retirement systems have from their inception been made subject to the supervision of the Superintendent of Insurance (see, e.g., Education Law, § 523; Retirement and Social Security Law, §§ 15, 315). In some instances, that authority is limited to the extent the provisions of the Insurance Law are not in conflict with the provisions of the statute creating the pension systems (see, e.g., Retirement and Social Security Law, §§ 15, 315).

You state that prior to the enactment of Insurance Law, § 36-a, by chapter 382 of the Laws of 1973, the supervision by your Department had been limited to examinations pursuant to Article 3 of the Insurance Law.

Section 36-a, among other things, in paragraph b of subdivision 2 thereof, authorizes the Superintendent of Insurance to promulgate "standards with respect to actuarial assumptions, accounting practices, administrative efficiency, discharge of fiduciary responsibility, investment policies..."
Paragraph c authorizes the Superintendent of Insurance at least once in every five years, to make an examination into the affairs of every system, "including compliance with the standards established pursuant to paragraph (b)".

Since section 36-a authorizes the promulgation of standards as to specific matters, there is no question but that that section and Insurance Law, § 21 authorize you to adopt regulations as to those matters. However, section 36-a does not contain specific authorization for the adoption of regulations relating to the enforcement of the standards promulgated pursuant to that statute, nor did the Legislature so provide elsewhere in chapter 382. In view of the provisions of section 36-a, to the effect that it applies "notwithstanding any other provision of law" vis-a-vis the provisions of the appropriate retirement law that the superintendent's power is limited to the extent not inconsistent with the retirement laws, section 36-a should be construed so as to preserve so far as possible the integrity of both statutes and apply them harmoniously and consistently (McKinney's Statutes, §§ 221, 222; cf. Matter of Newton, 177 Misc. 877 [Surp. Ct. Westchester County, 1941], aff'd. 267 App. Div. 913, aff'd. 294 N. Y. 687).

This does not, of course, preclude any other enforcement action authorized by the Insurance Law relative to entities subject to examination and supervision, to the extent such action is not inconsistent with the appropriate retirement system statutes, including enforcement by the Attorney General pursuant to Insurance Law, § 35.

However, it is my opinion that only regulations implementing the standards specifically authorized by section 36-a may be adopted by you and regulations relating to enforcement of the standards are not so authorized.

Very truly yours,

[Signature]

LOUIS J. LEFKOWITZ
Attorney General
Mr. Harold Herkommer  
Executive Director  
New York City Employees' Retirement System  
220 Church Street  
New York, New York 10013  

Dear Hal:  

Last June, when the New York City Employees' Retirement System trustees were discussing whether or not to buy City bonds or Municipal Assistance Corporation bonds or notes, one of our associates did research which covered some of the same ground as the Corporation Counsel's May 25, 1978 Opinion No. 108,687. That research has now been embodied in a memorandum which I believe will be of interest to the trustees, and I request that copies of it be distributed to all of them and to all their alternates. If you prefer, we can make this distribution directly.

Briefly, Section 1 discusses authorities which indicate that generally trustees should not contract away their discretion by making long term commitments. These authorities are nowhere discussed in the Corporation Counsel's Opinion, even though their substance had informally been conveyed to the Corporation Counsel prior to the issuance of his Opinion. Thus, conditioning the NYCERS trustees' 1975-1978 commitment to purchase City or MAC obligations on delivery and review of a City Official Statement in form and substance satisfactory to the trustees, and thereby giving the trustees an opportunity to exercise at least some discretion with respect to each purchase, may have been not only wise but necessary to the validity of the commitment.
Section 2 casts doubt on the Corporation Counsel's opinion that the Official Statement-in-form-and-substance-satisfactory-to-the-trustees condition is not substantial and that if the condition were substantive, it would make the trustees' commitment illusory. The memorandum discusses the cases giving meaning to "substantially satisfactory" conditions and sustaining such conditions from assertions that they render agreements illusory by requiring that satisfaction be determined on a good faith or reasonable basis.

Thus, we continue to advise the NYCERS trustees that any new commitment to purchase City or MAC obligations in connection with the proposed New York City Financial Plan for the four City fiscal years 1979 through 1982, a period nearly twice as long as the period covered by the NYCERS trustees' prior commitment, be conditioned on their receiving a City or MAC Official Statement, satisfactory to the trustees. The precise wording of the condition would be changed clearly to override Opinion No. 108,687.

We will have several other recommendations to the NYCERS trustees for conditions to commitments in connection with the City's pending four year financial plan which we have been discussing with counsel to the Teachers' Retirement System and other interested counsel. We would hope to discuss the subject matter of this letter and those conditions with the trustees at their August 11, 1978 regular meeting.

The trustees may also be interested in Section 4 of the memorandum which discusses briefly that part of the Corporation Counsel's Opinion which deals with his representation of both The City of New York and City of New York pension funds.

Best regards,

Sincerely,

William Josephson

WJ:bir
Enclosure
MEMORANDUM

TO: William Josephson, Esq.
    George Lander, Esq.

FROM: Abner Zelman

DATE: July 26, 1978

SUBJECT: New York City Employees' Retirement System (4811-2)
          Enforceability of Fiduciaries' Agreement to
          Purchase Bonds Conditioned upon Delivery of Official
          Statement Satisfactory in Form and Substance

FACTS

In November 1975, the five major New York City
employee pension funds, (hereinafter "Funds"), entered into
an agreement (hereinafter "Agreement") with the Municipal
Assistance Corporation for the City of New York, (herein-
after "MAC"), which provided, inter alia, that these Funds
would purchase specified amounts of New York City (herein-
after "City") bonds during the fiscal years ending June 30,
1976, 1977 and 1978. Certain conditions are precedent to
each purchase. The Agreement was amended and restated by
the First Amendment of August 17, 1977 (hereinafter "First
Amendment").

One of the conditions of purchase is that "the City shall not be under the jurisdiction of any court
pursuant to any proceedings under the federal bankruptcy laws or pursuant to Title 6-A of the Local Finance Law (or any statute analogous in purpose or effect to any such laws or such Law)," and appears at paragraph 4(c)(ii) of the Agreement. Another is set forth in paragraph 4(c)(v), and requires "an official statement with respect to the City in form and substance satisfactory to the Trustees of such Pension Fund."¹ As of June 1, 1978, $683 million of City bonds had remained unpurchased. The City Corporation Counsel, in the 34 pages of Opinion No. 108,687, dated May 25, 1978, (hereinafter "Opinion"), takes the position that "[t]he wording of this condition requires the City . . . to provide an accurate presentation of the facts relating to the City's finances. The form and substance of the statement are to be deemed satisfactory if it is a presentation reasonably meeting the foregoing standard." Opinion at 24.

The first fourteen pages of the Opinion are devoted to a statement of the facts.

The Opinion's discussion of the substance of the issues begins on page 15 in the discussion of whether or not

¹In the Agreement each such official statement was to include "a current status of the City's financial plan as required and approved by the Emergency Financial Control Board." In the First Amendment this language was omitted as surplusage.
the Fund's trustees are obliged by the First Amendment to make the remaining purchase of City Bonds if they believe such purchase to be imprudent. The Opinion describes the interrelated actions taken by the United States, and the parties to the First Amendment. It asserts that the trustees determined the issue of prudence when they signed the Agreement two and a half years ago. Any other result would render the Agreement "illusory". Opinion at 18.

The Opinion relies heavily on the numerous cases upholding the Agreement from attack, chiefly Withers v. Teachers' Retirement System, 76 Civ. 4474 (U.S.D.C., S.D.N.Y. March 9, 1978). The plaintiff union members sought an injunction against the purchase of MAC and City bonds by the trustees of the Funds under the Agreement, alleging inter alia that it was a violation of the fiduciary duties of the trustees to enter the Agreement. The court held that the trustees of the Teachers' Retirement System acted prudently in entering into the 1975 Agreement. However, the court was not called upon in that case, or in any other, to interpret the specific terms of the Agreement or to decide the prudence of any particular purchase or whether or not any of the conditions precedent had not been complied with in connection with a particular purchase.
Sgaglione v. Levitt, 37 N.Y.2d 507 (1975) (hereinafter "Sgaglione I"), is also relied on by the Opinion. The plaintiffs, civil servants and union members, brought suit to enjoin the New York State Comptroller in his capacity as trustee of State employees' retirement systems from complying with section 14 of the New York State Financial Emergency Act for the City (1975 New York Laws chs. 868-870), which directed the Comptroller to invest retirement system funds in MAC bonds. Plaintiffs alleged that this statutory section violated section 7 article V of the New York State Constitution which prohibits the impairment of benefits of any state retirement system. In holding the section unconstitutional, the court found that the right to have an independent trustee exercise his prudent discretion in the administration of the fund is an important "benefit", observing that "under the retirement plans, an independent, or at least a separate person is vested with discretion to make what he determines to be wise investments. To strip this person, in this instance the State Comptroller, an independently elected official it so happens, of his personal responsibility and commitment to his oath of office, is to remove a safeguard integral to the scheme of maintaining the security of the sources of benefits for over half a century." 37 N.Y.2d at 512. The court further concluded that "the Legislature is powerless in the face of the constitutional non-impairment clause to mandate that he [the trustee] mindlessly invest in whatever securities
they direct . . . that discretion is his solely except as limited by the continuing power of the Legislature to expand or restrict the classes and kinds of investment in which he may place the funds in his care. It is not without significance, if not indeed particularly revealing that the Legislature found it necessary to mandate the independent 'trustee,' rather than to rely on his discretion." 37 N.Y.2d at 512-513.

Thus, in 

Sgaglione I the New York Court of Appeals would not allow the New York State legislature to direct the pension fund trustee to abandon totally his fiduciary responsibility to exercise discretion in the management of the funds entrusted to him. Can the trustees accomplish the same result contractually, as the Opinion suggests, by exercising their discretion to enter into an agreement to purchase securities over a term of years without reserving at least some rights to at least some continuing exercise of discretion? For example, what if The City, at the time of a purchase, appears to be at the brink of bankruptcy? Indeed, the City has proposed a new four-year financial plan to go into effect July 1, 1978. This plan is subject to a large number of conditions including amendment of federal legislation. The plan is not now in effect. If it does not become effective, the City's financial future is uncertain. Proceedings under Title 6-A of the New York Local Finance Law or under the federal bankruptcy laws are possible. The Opinion does not address these issues, although representatives of the Corporation Counsel have orally expressed the opinion that
only if the City is actually under the jurisdiction of any
court pursuant to Title 6-A or the federal bankruptcy laws are
the Funds relieved of their purchase obligations by paragraph 4
(c)(ii) of the First Amendment, and that paragraph 4(c)(v)
is irrelevant.

This memorandum will be limited to a discussion
of the discretion, if any, remaining to fiduciaries who
are parties to term purchase agreements and to the meaning
of paragraph 4(c)(v) of the First Amendment which relates to
the delivery of a substantially satisfactory City official
statement.

DISCUSSION

1. Power of Trustees to Contract Away Discretion.

Trustees are prohibited from granting options to
purchase entrusted property under the general rule applicable
in most American jurisdictions. 3 Scott on Trusts §190.8
(3d ed. 1967). The reason given is that "the trustee should be
at the time of sale in a position to exercise discretion as
to the amount of purchase price, and that it is improper for
him to tie himself up in advance by the giving of an option.
This is not, however, an absolute rule and may be departed
from when the circumstances justify such departure. Thus
where the sale could not otherwise be advantageously made,
it has been held proper to give such an option." Id. at

In New York, that principle is established by Matter
of Armory Board, 29 Misc. 174, 60 N.Y.Supp. 882 (Sup.Ct. N.Y.
Co. 1899), a proceeding instituted under the condemnation law
for the appraisal of realty held by the trustees of an estate.
They had entered into a 21 year lease which granted the tenant
a purchase option at a specified price. The appraisal of the
overall value of the property was unchallenged, but a motion
was heard by the court regarding the apportionment of the
value as between the interests of the trustees as lessors
and the lessee. The court held, *inter alia*, that the option
provision was invalid, hence decreasing the value of the
lessee's interest. It was stated by the court that "the
will vests in the trustees a discretionary power of sale,
but this is a power which is to be exercised when, in the
judgment of the trustees, the best interests of the estate
warrant it, and such judgment must be based upon conditions,
including values, existing at the time when the power is to
be exercised." Id.at 182, 60 N.Y.Supp. at 888. This rule is
modified somewhat by New York Estates, Powers and Trusts
Law §11-1.1(b)7, which allows the trustees to grant options
for the sale of entrusted property for not more than six months.
Other jurisdictions are substantially in accord. For example, in *Hickok v. Still*, 168 Pa. 155 (1895), the executor of an estate granted a lease on estate property which lease contained a purchase option provision for the lessee. The lessee subsequently tried to exercise that provision and brought suit for specific performance. In denying the validity of the option provision, the court stated that "this was not a use of the power, but a surrender of it for the time. It suspended the exercise of the discretion which had been given the executor ... [a] trustee cannot be permitted to deprive himself of a power conferred for the benefit of the trust, or so to fetter its exercise by himself or his successor as to defeat the purpose of the trust." *Id.* at 156.

*Hickok* was followed and expanded upon in *Moore v. Trainer*, 252 Pa. 367 (1916), where an executor leased trust property with an option to purchase to a tenant who operated a liquor store on the premises. The tenant later claimed that by purchasing the fixtures appurtenant to the property (for a sum less than the option price of the entire realty) he had effectively exercised his purchase option, and he interposed this defense when the executor/lessor brought suit for rent arrearages. He further asserted equitable ownership of the property and the right to demand that plaintiff/lessor make conveyance. In rejecting this argument, the court cited *Hickok* and then said: "Giving the option without requiring the other party to purchase was not an exercise of power to sell, but a surrender of if for the period of the lease, and therefore the option was invalid." *Id.* at 369. Accord, *Coyad v. Johnson*, 89 S.E. 37
(Sup. Ct. N.C. 1916); see Note, The Power of a Fiduciary with a Power of Sale to Grant Options and Sell for Credit, 30 Colum. L. Rev. 870 (1930); Restatement of Trusts §187 comment (h).

These authorities can be distinguished. At issue here is not the granting by trustees of a sales option but their granting of a purchase put subject to conditions precedent. But the principles underlying these authorities would seem to be equally applicable. Nevertheless, none of the above principles or authorities are cited or discussed in the Opinion or any of the authorities cited therein.

Based upon these principles and authorities, it could be argued that if the trustees of the Funds did not reserve to themselves at least some right to assess the prudence of each purchase of City bonds at the time it was to be made, the Agreement then could be held an invalid abdication of fiduciary responsibility. The Spaglione I decision relied upon in the Opinion actually could be read to support this argument. However, if the language of paragraph 4(c)(v) is construed to reserve to the Funds' trustees the right to refrain from making the investment, upon a reasonable or good faith dissatisfaction with the substantive information disclosed in the City's official statement, the Agreement would be consistent with the foregoing principles and authorities. Because of the reasonable or good faith requirement, the Agreement would not be illusory. See 3A Corbin on Contracts §644; but see Opinion at 19.
The Corporation Counsel's assertion in pages 24 and 25 of the Opinion that paragraph 4(c)(v) merely requires a complete and accurate disclosure about which disclosure the Funds' trustees are then powerless to act is nonsense. Such an interpretation renders the condition meaningless. What purpose of the trustees could it serve if they have no power to act on the disclosure made by the City? An official statement, the municipal bond equivalent of a prospectus under the federal securities acts, is by definition a disclosure document on the basis of which a purchaser decides to buy or not to buy. In most situations a purchaser's discretion is untrammeled. This is likely not the case here. But delivery of an official statement would have been a futile exercise if the trustees have no power of review and action.

The Opinion also ignores other pertinent language of the Agreement. Paragraph 1 relates to the exchange of short-term City notes held by certain banks and the Funds for long-term MAC bonds, and sub-paragraph (b) sets forth the conditions precedent to such an exchange (analogous to sub-paragraph (c) of paragraph 4).\(^2\) Condition (H) is similar to paragraph 4(c)(v), but is worded quite differently: "there shall be delivered to and for the benefit of each Bank and Pension Fund an official statement

\(^2\) The First Amendment is dated as of August 17, 1977, and the closing of the exchange was scheduled by paragraph 1(c) for September 1, 1977 or at such later date as the parties may agree.
of the Corporation with respect to 1977 Series 9 Bonds that is substantially similar in form and content to the official statement prepared for the 1977 Series 8 Bonds and the official statement prepared for the 1977 Series 9 Bonds shall not contain any untrue statement of a material fact or omit any statement of a material fact necessary to make such official statement not misleading . . . " (emphasis added) This condition would appear to be satisfied by the submission of an objectively complete and accurate disclosure statement. It seems unlikely that the same effect had been intended for paragraph 4(c)(v), which states that the official statement be "in form and substance satisfactory." If the same effect had been intended, the same language would have been used. A contract is generally interpreted in its entirety to maximize internal consistency. See 3A Corbin on Contracts §549. Finally, MAC drafted the First Amendment, and in cases of ambiguity the contract is generally to be interpreted contra proferentem. 3A Corbin on Contracts §559; Restatement 2d of Contracts §232.

2. Form and Substance Satisfactory.

We now turn to a discussion of the language of paragraph 4(c) of the First Amendment itself. Happily, this
issue is discussed in the Opinion. Here is the Opinion's discussion in its entirety at pp. 24-25:

There have been set forth above the considerations and court interpretations demonstrating that the Pension Funds' undertaking to make these bond purchases may not be interpreted as subject to cancellation by the Pension Fund Trustees during the scheduled period for such purchases on the basis of a re-examination of the "prudence" issue. The same consideration show that the "in form and substance" language of the condition precedent under discussion may not be construed as granting the Trustees the right to refuse to make bond purchases on the ground of a re-appraisal of the City's fiscal situation. The Secretary of the Treasury, in his above-mentioned letter to the City Comptroller, dated May 5, 1978, said as to this point:

"Although the Pension Funds have the right to request delivery of an official statement from the City, only a strained interpretation of that condition could read into it any requirement beyond delivery of an accurate document."

It should be noted that the Boards of Trustees of the Pension Funds have repeatedly acknowledged by resolution that Official Statements heretofore furnished them in connection with bond purchases satisfied the requirements of this condition.

Neither this part of the Opinion nor the conclusion of the Secretary of the Treasury could be considered a reasoned legal argument.
Ultimately, the effect of paragraph 4(c)(v) hinges upon the meaning of "substance." The word "substance" admits of myriad definitions depending upon the context in which it is used. We have found no cases construing the meaning of "substance" in precisely this context. However, light may be shed on the meaning of the clause "form and substance satisfactory" by comparing cases dealing with satisfactory performance where that performance consists of furnishing specified documents or guarantees.

The case closest to our situation seems to be Ward v. Flex-o-Tube Co., 194 F.2d 500 (6th Cir. 1952) (applying Michigan Law). In Ward, the vendors of all the outstanding shares of a corporation entered into a contract with the prospective purchasers under which the vendors guaranteed a stated minimum worth for the corporate assets, to be verified by audit as of a specific date, and further promised to pay in the difference between the stated minimum and any shortfall disclosed by the audit. Vendors deposited $30,000 in bonds as security for the performance of this guarantee. The purchase was concluded and several audit reports followed. Preliminary reports showed corporate assets in excess of the stated minimum, but were not accepted by the purchasers as satisfactorily showing the net worth of the company. Later reports indicated a shortfall. Vendors brought suit for a declaratory judgment stating that they had complied with the provisions of the guarantee and
were entitled to the return of their deposit; purchasers counterclaimed that, as the preliminary audit reports were not final and hence did not satisfy the guarantee agreements, and the subsequent reports showed shortfalls, they were entitled to retain the deposit and receive payment for the remainder of the disclosed deficiency. After trial, the district court found in favor of purchasers, and the Sixth Circuit affirmed.

Under the terms of the guarantee agreement, it was necessary for the vendors to satisfy the purchasers of the guaranteed net worth of the company. The court was, therefore, called upon to determine what standard of satisfaction is to be applied in such a situation. The Sixth Circuit held that a subjective standard of satisfactoriness should govern, hence the actual performance demanded by the purchaser should be required. The court stated that "this was a case involving business judgment, including the evaluation of potential or uncertain liabilities, rather than one involving mere operative or mechanical fitness or established commercial values, and that therefore the report of February 15, 1946 did not constitute on the part of the appellee legal satisfaction of the net worth of the company, when the appellee, in the exercise of its business judgment in the matter took the position, due partly to transactions not yet completed, that it was not at that time satisfied that the
net worth of the company equalled the guaranteed amount." 194 F.2d at 503 (emphasis added).

New York cases are in substantial accord. Most construe satisfactory performance clauses in the context of real estate or construction contracts. In Boston Road Shopping Center, Inc. v. Teachers' Insurance and Annuity Association of America, 13 A.D.2d 106, 213 N.Y.S.2d 522 (1st Dep't 1961), plaintiff deposited $22,000 with defendant as security for a loan that defendant promised to issue in order to finance plaintiff's construction of a shopping center. This loan was conditioned upon plaintiff's furnishing leases of prospective tenants of the center to defendant's counsel for inspection; such leases were to conform to a schedule specified in the loan agreement, and also were to be "otherwise in form satisfactory" to defendant. Upon such inspection, defendant refused to make the loan, being dissatisfied with both the quantity and quality of leases obtained. There was no dispute over defendant's right to withdraw from making the loan; however, the defendant also opted to retain the security deposit under a clause in the agreement which provided that if plaintiff failed to comply "'with all of the terms and conditions herein . . . without fault on our part, then the amount so paid as consideration for our agreements shall be retained by us in full satisfaction for our entering this agreement.'" Plaintiff sued to retrieve his deposit,
claiming that he had fulfilled all of the conditions of the agreement by engaging in a good faith effort to obtain tenants for the shopping center. The trial court directed a verdict for plaintiff, and the Appellate Division reversed.

The Appellate Court held that the plaintiff's good faith attempt to comply was inadequate to fulfill the terms of the contract. Rather, actual satisfaction of the defendant was held to be an element of compliance, which could not be fulfilled by a mere pro forma tender of documents. The court did not definitively rule as to whether good faith or reasonableness (i.e., a subjective but not malicious, as opposed to an objective determination of satisfaction) should be the controlling standard here, as there was sufficient evidence to support the more demanding reasonableness standard.

In a related case construing the same contract, Ivor B. Clark v. Boston Road Shopping Center, Inc., 207 N.Y.S.2d 582 (Sup. Ct. N.Y. Co. 1960), a broker sued Boston Road, Inc. for commission which he claimed for obtaining the initial acceptance of the defendant's first loan application by the lender, even though the mortgage loan was ultimately denied. Under the terms of the agreement between the broker and the developer, commission was to become due when the mortgage loan was granted, and such a conditional agreement as Boston Road had with TJAA did not amount to a granting of the loan, at least until the conditions thereto were
met. It was therefore necessary for the Court to interpret the Boston Road/TIAA loan agreement, and in so doing it adopted the subjective test of satisfactory performance, inferring that the intent of the parties was to make the deal contingent upon the satisfaction of the lender in the full exercise of its judgment and business discretion. The court stated that "the form and content of the loan instruments and supporting papers were not determined but were left to the discretion of the lending institution . . . the business essence of the deal, both from the standpoint of the defendant and the lending institution, was the obtaining of leases satisfactory to both parties. To expect defendant to accept or be satisfied with any kind of lease or leases is unrealistic. Likewise, unless the lender was satisfied with the security of its mortgage loan, meaning, in addition to the real and personal property the leases, rent roll, and calibre of tenants, it could refuse to make the mortgage loan." 207 N.Y.S.2d at 588-589.

In a situation similar to that of Boston Road it was held that when a mortgage is conditioned upon approval of the final construction plans of the borrower by the lending institution, the subjective standard is applied. In Rockcliff Realty Corp. v. Mutual Life Ins. Co., 50 N.Y.S.2d 851 (Sup. Ct. N.Y. Co. 1944), such a conditional agreement was entered into between developer and
and lender. The tentative plans were approved, but the final plans were rejected by the lender. Developer sued for damages, claiming reliance upon lender's approval of the tentative plans and further claiming that the variance between the tentative and final plans were insufficient to justify the lender's refusal to conclude the deal under an objective standard of reasonableness. In applying the subjective standard, the court stated that "[t]he contract here falls in the category of those requiring the exercise of individual judgment. There is a clearly expressed intention in the commitment under consideration that final plans must be approved before the loan is made. The provision is not an unusual one in that type of contract." 50 N.Y.S.2d at 853.

Therefore, New York authority upholds the proposition that when an investment is conditioned upon the borrower furnishing the lender with "satisfactory" documents relating to the investment, the standard by which the documents are to be evaluated shall be the personal satisfaction of the investor, and the scope of his discretion shall extend to the substantive conditions of the bargain, not merely the legal efficacy or formal correctness of the documents.

California cases tend to support the New York rule. In Mattei v. Hopper, 330 P.2d 625 (Sup. Ct. Cal. 1958), plaintiff developer entered into an agreement to
purchase defendant's land under the terms of which agree-
ment developer was to deposit $1000 and then have 120 days
to consummate the deal, with the duty to conclude the
purchase conditioned upon the acquisition of satisfactory
leases by developer for the proposed shopping center to
be constructed on that land. Defendant repudiated the
agreement, claiming that the conditional terms of the
contract made it illusory. The court held the contract to
be valid and not illusory, stating that "such 'satisfaction'
clauses have been given effect". 330 P.2d at 626. There is
at least a requirement of good faith in determining satis-
faction, if not a requirement of objective reasonableness;
the Mattei court saw all cases involving "satisfaction" of
a party as a condition to his performance, as falling into
one or the other of these standards. As to the situation
of the parties before it, the court held that "the factors
involved in determining whether a lease is satisfactory
to a lessor are too numerous and varied to permit the
application of a reasonable man standard as envisioned by
this line of cases ... [t]his multiplicity of factors
which must be considered in evaluating a lease shows that
this case more appropriately falls within the second line
of authorities dealing with 'satisfaction' clauses, being
those involving fancy, taste, or judgment." 330 P.2d at 627.
In *Kadner v. Shields*, 20 Cal. App. 3d 251, 97 Cal. 742 (Ct. of App. 2d Dist. 1971) the assumption by the purchaser of the first trust deed upon a house was conditioned upon his acceptance of the terms of the encumbrance, under a provision making such terms "subject to the written approval of the buyer." The buyer withheld approval and cancelled the escrow deposit that had been furnished by him under the agreement. The vendor counterclaimed for damages consisting of the difference between the contract price and the current re-sale value of the property plus interest on the down payment and upon a note payable to him, and various other specified expenses. The trial court held that buyer's dissatisfaction with the terms of the encumbrance entitled him not merely to reject the trust deed and seek alternate means of financing the deal, but to cancel the purchase agreement and retrieve his deposit as well, even though there was no specific provision making the agreement in its entirety contingent upon buyer's satisfaction with the terms of the trust deed. The Court of Appeals agreed with the trial court insofar as it found that the "surrounding circumstances and overall tenor of the agreement militate for a condition precedent." 20 Cal. App. 3d at 258, 97 Cal. at 742. However, it distinguished the Mattei line of cases and held the objective standard to be applicable here, stating: "In cases where the personal judgment test has been
applied, the situation most frequently is one of a matter of aesthetic taste and sometimes of feasibility of operation or management irrespective of financial impact . . . where the personal satisfaction test has been held to apply something more than financial impact appears to be involved, such as compatibility of personality or ease of workability of operation." 20 Cal. App. 3d at 262, 97 Cal. at 752. The decision was therefore reversed, with the court further holding that an issue of fact was raised on the reasonableness issue under the objective standard. The distinction made by the Kadner court has not been made elsewhere.

Cases from other jurisdictions are in accord with the New York and California interpretations of "satisfactory" clauses. In Pulsifer v. Walker, a New Hampshire case, 159 Atl. 426 (Sup. Ct. N.H. 1932), renewal of a lease was conditioned upon its being "satisfactory" to the lessors who subsequently refused to renew. The court held that the lessors had reserved the right to assess not only the performance by the lessees of the conditions under the lease, but the substantive profitability of the leasehold as well, and stated that the lessors "were clearly in a position where they could consider every aspect of 'said lease' and every detail of the results of their operations under it in determining whether they desired a renewal." In Ard v. Dr. Pepper Bottling Co., 202 P.2d 372 (5th Cir. 1953) (applying Mississippi
law), a manufacturer reserved the right to revoke a franchise upon determination that the franchisee's business operations were unsatisfactory according to certain standards specified in the franchise contract. The bottler/licensee in this case brought suit against the manufacturer for alleged wrongful repudiation of the agreement. The court held, inter alia, that "[i]t was not unreasonable for Dr. Pepper to reserve to its own business judgment the question of whether the agreement had been properly and faithfully performed." 202 F.2d at 377. In this case the exercise of business judgment was considered sufficient to require application of the subjective standard. This case is noted as illustration #1 to comment (a) of § 254, Restatement 2nd of Contracts. Section 254 prefers the objective standard where satisfaction of the obligor is a condition of obligor's duty to perform, and comment (a) discusses situations in which one or the other of the standards is to apply.

Finally, in Jenkins Towel Service, Inc. v. Tidewater Oil Co., 223 A.2d 84 (Supr. Ct. Penn. 1966), the purchase of a parcel of real estate to be used as the site of a service station was conditioned upon the vendor's providing the purchaser with the required city permits for curb cuts and approaches, per buyer's specifications. Permits were proffered which did not conform to buyer's needs but were in good faith the closest approximations to
them obtainable under city regulations. The buyer withdrew
from the deal, and vendor brought suit for damages based
upon the difference in sales price. At trial, verdict was
entered in favor of purchaser. On appeal, the Pennsylvania
Supreme Court affirmed the trial verdict applying the
subjective standard and noting that buyer was not held to
accept the "reasonable" alternatives even though his exact
specifications were not obtainable under the pertinent
local ordinances and administrative decisions.

None of the above authorities are discussed in the
Opinion.

3. Maturity Dates.

The remainder of the Opinion, pages twenty-six
through twenty-nine, discusses the maturity date issue.
This issue is for the most part beyond the scope of this
memorandum, but merits some attention here as to the mean-
ing of the relevant First Amendment language.

Even if the City may fulfill the terms of para-
graph 4(c)(v) by merely submitting a complete and accurate,
disclosure statement, the purchase of the bonds does not
follow automatically. There is at least one term of pur-
chase as yet to be agreed upon. The last clause of para-
graph 4(a) of the First Amendment states that "all such bonds
shall bear interest at the rate of 9% a year and shall mature
on such date or dates as shall be mutually agreed upon."
The Corporation Counsel contends, based upon the authority of two cases, that "[s]hould the City and the Pension Funds be unable to agree on the maturities of bonds to be now purchased, these prior nine purchases [reference is to prior purchases of City bonds made pursuant to the Agreement or the First Amendment] would be sufficient to establish a usage of the parties, which ... would enable a court, applying the standards of reasonableness, to determine the maturities of the bonds." Opinion at 29. The cases cited are May Metropolitan Corporation v. May Oil Burner Corporation, 290 N.Y. 260 (1943), and Metro-Goldwyn-Mayer, Inc. v. Roy Scheider, 40 N.Y.2d 1069 (1976).3/

In May, a distributor of oil burners had had a franchise agreement with the manufacturer for several years.

3 For the general proposition that when certain terms are expressly left to be agreed upon in the future, the courts will still find that a binding and enforceable contract has been made, the Opinion at page 28 cites Morris v. Ballard, 16 F.2d 1975 (Ct. App., D.C. 1926), and Corbin on Contracts, § 29, p. 32, et seq. Additionally, the Opinion at the same page asserts that "the New York Court of Appeals has affirmed decrees directing specific performance of contracts to sell real estate where the contract omitted to state the date of maturity of a mortgage to be taken by the seller or the rate of interest to be paid by the mortgagor on such a mortgage," citing Weintraub v. Kruse, 234 N.Y. 575 (1922), and Wertheimer v. Boehm, 241 N.Y. 575 (1925). Issue is not taken here with these general principles: acknowledging the validity and enforceability of a contract with terms left open, it still appears that when a specific contractual provision states that the open terms shall be "mutually agreed upon," it would be error for a court to mechanically substitute terms agreed upon in the past under different conditions.
The agreement was an annual one, renewable with different sales quota provisions each year. The contract contained a clause stating that renewal would be "automatic", provided the distributor assents to "a new quota agreement for each year which shall be in excess of the previous year's quota and to be mutually agreed upon." 290 N.Y. at 263.

When the manufacturer insisted upon raising the quota from 100 to 250 units, and, failing agreement upon that term, refused to renew the franchise, the distributor brought suit. The action was dismissed at trial, which dismissal was affirmed by the Appellate Division. The Court of Appeals modified the decision (reversing the dismissal of the aforementioned cause of action but upholding the dismissal of another, unrelated cause of action). In so doing, the Court held that the provision for terms to be mutually agreed upon in the future implied an objective standard of reasonableness which could be determined by reference to prior conduct and usage of the parties.

However, in that case there was a breach of good faith that was made manifestly evident by the disproportionate quota increase of 150% demanded by the manufacturer, when increases of prior years had been 10% or less. That holding does not necessarily apply to good faith negotiations over bond maturity dates, involving financial judgment and covering issues over which reasonable investors
could disagree. As long as good faith were shown in such negotiations, it might be unreasonable to arbitrarily hold the pension funds to a bond maturity date simply on the basis of the fact that they had consented to similar maturities in the past occasions, when financial conditions were different. Moreover, standards of past transactions had been imposed upon the parties in May pursuant to a judicial finding that there was a tacit agreement that the quota would not undergo more than a 10% increase each year. In the absence of such a finding of a prior tacit agreement among the parties as to the maturity dates of the bonds, the courts might not impose an arbitrary maturity date based upon past bond issues.

In the MGM case, the studio contracted with actor Roy Scheider to film a pilot and subsequent installments of a television series. The pilot was completed but Scheider refused to do the subsequent shows, claiming that since there had been no agreement on the starting date for work on the series, the contract was a nullity. The studio brought suit for specific performance and damages. The complaint was dismissed at trial but it was reinstated by the Appellate Division, which also entered judgment for plaintiff and remanded on the issue of damages alone. The Court of Appeals, in affirming the Appellate Division, held that, according to well established principles
of contract law, agreements leaving non-essential matters
for future determination are enforceable, with the missing
terms to be provided by some objective standard if the
parties cannot come to an agreement on them. In that case
the term was provided by proof of established custom and
practice in the industry. It is difficult to analogize this
situation to that of the parties to the Agreement and First
Amendment, whose dealings inter se have been of a sufficiently
recent origin, and have been of a sufficiently erratic and
unique nature, to avoid characterization as "established custom
and practice."

4. Corporation Counsel Conflict of Interest

The remaining pages of the Opinion discuss other
issues beyond the scope of this memorandum.

It should be noted, however, that the Opinion's
discussion on pages 30 through 32 of the conflict of interest
issues raised by the representation of City agencies with con-
flicting interests by the Corporation Counsel is, on its face,
inadequate in at least three respects. The discussion relies
on a generalized provision of the New York City
Charter, Section 394(a) which provides that the Corporation
Counsel shall be attorney and counsel for the City and every
agency thereof, and Westchester Civil Service v. Levitt, 37
N.Y.2d 519 (1975). In the case, plaintiffs sought to enjoin
the New York State Comptroller, as trustee of the New York State
employees' retirement system from purchasing State obligations
from the State Comptroller. The Court of Appeals held that
an injunction was properly denied on the ground that the

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Legislature had authorized the State Comptroller to act in both capacities. That case is distinguishable, because it involved two specific assignments of functions by the Legislature to two different public offices which happen to be held by the same public officer, not one generalized overall assignment of functions to one public officer. Also, the Opinion ignores the large number of cases sustaining the employment of separate counsel by municipal corporations where the interests of subdivisions thereof are in conflict. Some of these cases are collected in our March 26, 1976 opinion letter to Mr. Victor Gothaum, Trustee, New York City Employees' Retirement System to which the Corporation Counsel has had access. Finally, the Opinion ignores entirely the ethical considerations which the Corporation Counsel ought to consider before, on behalf of The City of New York, he sues a New York City pension fund to compel the purchase of City obligations, and he simultaneously defends such a lawsuit on behalf of the pension fund.
MEMORANDUM

TO: William Josephson, Esq.
    George Lander, Esq.

FROM: Abner Zelman

DATE: July 20, 1978

SUBJECT: New York City Employees' Retirement System (4811-2)
Enforceability of Fiduciaries' Agreement to
Purchase of Bonds Conditioned upon Delivery of
Official Statement Satisfactory in Form and Substance

FACTS

In November 1975, the five major New York City
employee pension funds, (hereinafter "Funds"), entered into
an agreement (hereinafter "Agreement") with the Municipal
Assistance Corporation for the City of New York, (herein-
after "MAC"), which provided, inter alia, that these Funds
would purchase specified amounts of New York City (herein-
after "City") bonds during the fiscal years ending June 30,
1976, 1977 and 1978. Certain conditions are precedent to
each purchaser. The Agreement was amended and restated by
the First Amendment of August 17, 1977 (hereinafter "First
Amendment").

One of the conditions of purchase is that "the City shall not be under the jurisdiction of any court
pursuant to any proceedings under the federal bankruptcy laws or pursuant to Title 6-A of the Local Finance Law (or any statute analogous in purpose or effect to any such laws or such Law)," and appears at paragraph 4(c)(ii) of the Agreement. Another is set forth in paragraph 4(c)(v), and requires "an official statement with respect to the City in form and substance satisfactory to the Trustees of such Pension Fund."
1/ As of June 1, 1978, $683 million of City bonds had remained unpurchased. The City Corporation Counsel, in the 34 pages of Opinion No. 108,687, dated May 25, 1978, (hereinafter "Opinion"), takes the position that "[t]he wording of this condition requires the City . . . to provide an accurate presentation of the facts relating to the City's finances. The form and substance of the statement are to be deemed satisfactory if it is a presentation reasonably meeting the foregoing standard." Opinion at 24.

The first fourteen pages of the Opinion are devoted to a statement of the facts.

The Opinion's discussion of the substance of the issues begins on page 15 in the discussion of whether or not

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1/In the Agreement each such official statement was to include "a current status of the City's financial plan as required and approved by the Emergency Financial Control Board." In the First Amendment this language was omitted as surplussage.
the Fund's trustees are obliged by the First Amendment to make the remaining purchase of City Bonds if they believe such purchase to be imprudent. The Opinion describes the interrelated actions taken by the United States, and the parties to the First Amendment. It asserts that the trustees determined the issue of prudence when they signed the Agreement two and a half years ago. Any other result would render the Agreement "illusory". Opinion at 18.

The Opinion relies heavily on the numerous cases upholding the Agreement from attack, chiefly *Withers v. Teachers' Retirement System*, 76 Civ. 4474 (U.S.D.C., S.D.N.Y. March 9, 1978). The plaintiff union members sought an injunction against the purchase of MAC and City bonds by the trustees of the Funds under the Agreement, alleging *inter alia* that it was a violation of the fiduciary duties of the trustees to enter the Agreement. The court held that the trustees of the Teachers' Retirement System acted prudently in entering into the 1975 Agreement. However, the court was not called upon in that case, or in any other, to interpret the specific terms of the Agreement or to decide the prudence of any particular purchase or whether or not any of the conditions precedent had not been complied with in connection with a particular purchase.
Saggionone v. Levitt, 37 N.Y.2d 507 (1975) (hereinafter "Saggionone I"), is also relied on by the Opinion. The plaintiffs, civil servants and union members, brought suit to enjoin the New York State Comptroller in his capacity as trustee of State employees' retirement systems from complying with section 14 of the New York State Financial Emergency Act for the City (1975 New York Laws chs. 868-870), which directed the Comptroller to invest retirement system funds in MAC bonds. Plaintiffs alleged that this statutory section violated section 7 article V of the New York State Constitution which prohibits the impairment of benefits of any state retirement system. In holding the section unconstitutional, the court found that the right to have an independent trustee exercise his prudent discretion in the administration of the fund is an important "benefit", observing that "under the retirement plans, an independent, or at least a separate person is vested with discretion to make what he determines to be wise investments. To strip this person, in this instance the State Comptroller, an independently elected official it so happens, of his personal responsibility and commitment to his oath of office, is to remove a safeguard integral to the scheme of maintaining the security of the sources of benefits for over half a century." 37 N.Y.2d at 512. The court further concluded that "the Legislature is powerless in the face of the constitutional non-impairment clause to mandate that he [the trustee] mindlessly invest in whatever securities
they direct . . . that discretion is his solely except as limited by the continuing power of the Legislature to expand or restrict the classes and kinds of investment in which he may place the funds in his care. It is not without significance, if not indeed particularly revealing that the Legislature found it necessary to mandate the independent 'trustee,' rather than to rely on his discretion." 37 N.Y.2d at 512-513.

Thus, in *Saglieone I*, the New York Court of Appeals would not allow the New York State legislature to direct the pension fund trustee to abandon totally his fiduciary responsibility to exercise discretion in the management of the funds entrusted to him. Can the trustees accomplish the same result contractually, as the Opinion suggests, by exercising their discretion to enter into an agreement to purchase securities over a term of years without reserving at least some rights to at least some continuing exercise of discretion? For example, what if The City, at the time of a purchase, appears to be at the brink of bankruptcy? Indeed, the City has proposed a new four-year financial plan to go into effect July 1, 1978. This plan is subject to a large number of conditions including amendment of federal legislation. The plan is not now in effect. If it does not become effective, the City's financial future is uncertain. For example, proceedings under Title 6-A of the New York Local Finance Law or under the federal bankruptcy laws are possible. The Opinion does not address this issue, although representatives of the Corporation Counsel have orally expressed the opinion that
only if the City is actually under the jurisdiction of any court pursuant to Title 6-A or the federal bankruptcy laws are the Funds relieved of their purchase obligations by paragraph 4(c)(ii) of the First Amendment and paragraph 4(c)(v) is irrelevant.

This memorandum will be limited to a discussion of the discretion, if any, remaining to fiduciaries who are parties to term purchase agreements and to the meaning of paragraph 4(c)(v) of the First Amendment which relates to the delivery of a substantially satisfactory City official statement.

DISCUSSION

1. Power of Trustees to Contract Term Discretion.

Trustees are prohibited from granting options to purchase entrusted property under the general rule applicable in most American jurisdictions. 3 Scott on Trusts §190.8 (3d ed. 1967). The reason given is that "the trustee should be at the time of sale in a position to exercise discretion as to the amount of purchase price, and that it is improper for him to tie himself up in advance by the giving of an option. This is not, however, an absolute rule and may be departed
from when the circumstances justify such departure. Thus where the sale could not otherwise be advantageously made, it has been held proper to give such an option." Id. at 1573-1574. See 83 A.L.R. 2d 1310 (1962).

In New York, that principle is established by Matter of Armory Board, 29 Misc. 174, 60 N.Y.Supp. 882 (Sup.Ct. N.Y. Co. 1899), a proceeding instituted under the condemnation law for the appraisal of realty held by the trustees of an estate. They had entered into a 21 year lease which granted the tenant a purchase option at a specified price. The appraisal of the overall value of the property was unchallenged, but a motion was heard by the court regarding the apportionment of the value as between the interests of the trustees as lessors and the lessee. The court held, inter alia, that the option provision was invalid, hence decreasing the value of the lessee's interest. It was stated by the court that "the will vests in the trustees a discretionary power of sale, but this is a power which is to be exercised when, in the judgment of the trustees, the best interests of the estate warrant it, and such judgment must be based upon conditions, including values, existing at the time when the power is to be exercised." Id. at 182, 60 N.Y.Supp. at 888. This rule is modified somewhat by New York Estates, Powers and Trusts Law §11-1.1(b)7, which allows the trustees to grant options for the sale of entrusted property for not more than six months.
Other jurisdictions are substantially in accord. For example, in *Hickok v. Still*, 168 Pa. 155 (1895), the executor of an estate granted a lease on estate property which lease contained a purchase option provision for the lessee. The lessee subsequently tried to exercise that provision and brought suit for specific performance. In denying the validity of the option provision, the court stated that "this was not a use of the power, but a surrender of it for the time. It suspended the exercise of the discretion which had been given the executor . . . [a] trustee cannot be permitted to deprive himself of a power conferred for the benefit of the trust, or so to fetter its exercise by himself or his successor as to defeat the purpose of the trust." *Id.* at 156.

_Hickok_ was followed and expanded upon in *Moore v. Trainer*, 252 Pa. 367 (1916), where an executor leased trust property with an option to purchase to a tenant who operated a liquor store on the premises. The tenant later claimed that by purchasing the fixtures appurtenant to the property (for a sum less than the option price of the entire realty) he had effectively exercised his purchase option, and he interposed this defense when the executor/lessor brought suit for rent arrearages. He further asserted equitable ownership of the property and the right to demand that plaintiff/lessor make conveyance. In rejecting this
argument, the court cited Hickok and then said: "Giving the option without requiring the other party to purchase was not an exercise of power to sell, but a surrender of if for the period of the lease, and therefore the option was invalid." Id. at 369. Accord, Coyad v. Johnson, 89 S.E. 37 (Sup. Ct. N.C. 1916); see Note, The Power of a Fiduciary with a Power of Sale to Grant Options and Sell for Credit, 30 Colum. L. Rev. 870 (1930); Restatement of Trusts §187 comment (h).

None of the above principles or authorizes are cited or discussed in the Opinion or any of the authorities cited therein.

Based upon these authorities, it could be argued that if the trustees of the Funds did not reserve to themselves at least some right to assess the prudence of each purchase of City bonds at the time it was to be made, the Agreement then could be held an invalid abdication of fiduciary responsibility. The Sgaglione I decision relied upon in the Opinion, actually could be read to support this argument.

If the language of 4(c)(v) is, however, determined to reserve to the Funds' trustees the right to refrain from making the investment, upon a reasonable or good faith dissatisfaction with the substantive information disclosed in the City's official statement, the Agreement would be consistent with the duties of a trustee. Because of the reasonable or good faith requirement, the Agreement would not be illusory. See 3A Corbin on Contracts §644; but see Opinion at 18.
The Corporation Counsel's assertion in pages 24 and 25 of the Opinion that paragraph 4(c)(v) merely requires a complete and accurate disclosure about which disclosure the Funds' trustees are then powerless to act is nonsense. Such an interpretation renders the condition meaningless. What purpose of the trustees could it serve if they have no power to act on the disclosure made by the City? An official statement, the municipal bond equivalent of a prospectus under the federal securities acts, is by definition a disclosure document on the basis of which a purchaser decides to buy or not to buy. In most situations a purchaser's discretion is untrammeled. This is likely not the case here. But delivery of an official statement would have been a futile exercise if the trustees have no power of review and action.

The Opinion also ignores other pertinent language of the Agreement. Paragraph 1 relates to the exchange of short-term City notes held by certain banks and the Funds for long-term MAC bonds, and paragraph (b) sets forth the conditions precedent to such an exchange (analogous to paragraph (c) of section 4).2/ Condition (H) is parallel to 4(c)(v), but is worded quite differently: "there shall be delivered to and for the benefit of each Bank and Pension Fund an official statement

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2 The First Amendment is dated as of August 17, 1977, and the closing of the exchange was scheduled by paragraph 1(c) for September 1, 1977 or at such later date as the parties may agree.

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of the Corporation with respect to 1977 Series 9 Bonds that is substantially similar in form and content to the official statement prepared for the 1977 Series 8 Bonds and the official statement prepared for the 1977 Series 9 Bonds shall not contain any untrue statement of a material fact or omit any statement of a material fact necessary to make such official statement not misleading . . . " (emphasis added)

This condition would appear to be satisfied by the submission of an objectively complete and accurate disclosure statement. It seems unlikely that the same effect had been intended for paragraph 4(c)(v), which states that the official statement be "in form and substance satisfactory."

If the same effect had been intended, the same language would have been used. A contract is generally interpreted in its entirety to maximize internal consistency. See 3A Corbin on Contracts, § 549. Finally, MAC drafted the First Amendment, and in cases of ambiguity the contract is generally to be interpreted contra proferentem. 3A Corbin on Contracts §559; Restatement 2d of Contracts §232.

2. Form and Substance Satisfactory.

We now turn to a discussion of the language of paragraph 4(c) of the First Amendment itself. Happily, this
issue is discussed in the Opinion. Here is the Opinion's discussion in its entirety at pp. 24-25:

There have been set forth above the considerations and court interpretations demonstrating that the Pension Funds' undertaking to make these bond purchases may not be interpreted as subject to cancellation by the Pension Fund Trustees during the scheduled period for such purchases on the basis of a re-examination of the "prudence" issue. The same considerations show that the "in form and substance" language of the condition precedent under discussion may not be construed as granting the Trustees the right to refuse to make bond purchases on the ground of a re-appraisal of the City's fiscal situation. The Secretary of the Treasury, in his above-mentioned letter to the City Comptroller, dated May 5, 1978, said as to this point:

'Although the Pension Funds have the right to request delivery of an official statement from the City, only a strained interpretation of that condition could read into it any requirement beyond delivery of an accurate document.'

It should be noted that the Boards of Trustees of the Pension Funds have repeatedly acknowledged by resolution that Official Statements here-tofore furnished them in connection with bond purchases satisfied the requirements of this condition.

Neither this part of the Opinion nor the conclusion of the Secretary of the Treasury could be considered a reasoned legal argument.
Ultimately, the effect of paragraph 4(c)(v) hinges upon the meaning of "substance." The word "substance" admits of myriad definitions depending upon the context in which it is used. We have found no cases construing the meaning of "substance" in precisely this context. However, light may be shed on the meaning of the clause "form and substance satisfactory" by comparing cases dealing with satisfactory performance where that performance consists of furnishing specified documents or guarantees.

The case closest to our situation seems to be Ward v. Flex-o-Tube Co., 194 F.2d 500 (6th Cir. 1952) (applying Michigan Law). In Ward, the vendors of all the outstanding shares of a corporation entered into a contract with the prospective purchasers under which the vendors guaranteed a stated minimum worth for the corporate assets, to be verified by audit as of a specific date, and further promised to pay in the difference between the stated minimum and any shortfall disclosed by the audit. Vendors deposited $80,000 in bonds as security for the performance of this guarantee. The purchase was concluded and several audit reports followed. Preliminary reports showed corporate assets in excess of the stated minimum, but were not accepted by the purchasers as satisfactorily showing the net worth of the company. Later reports indicated a shortfall. Vendors brought suit for a declaratory judgment stating that they had complied with the provisions of the guarantee and
were entitled to the return of their deposit; purchasers counterclaimed that, as the preliminary audit reports were not final and hence did not satisfy the guarantee agreements, and the subsequent reports showed shortfalls, they were entitled to retain the deposit and receive payment for the remainder of the disclosed deficiency. After trial, the district court found in favor of purchasers, and the Sixth Circuit affirmed.

Under the terms of the guarantee agreement, it was necessary for the vendors to satisfy the purchasers of the guaranteed net worth of the company. The court was, therefore, called upon to determine what standard of satisfaction is to be applied in such a situation. The Sixth Circuit held that a subjective standard of satisfactoriness should govern, hence the actual performance demanded by the purchaser should be required. The court stated that "this was a case involving business judgment, including the evaluation of potential or uncertain liabilities, rather than one involving mere operative or mechanical fitness or established commercial values, and that therefore the report of February 15, 1946 did not constitute on the part of the appellee legal satisfaction of the net worth of the company, when the appellee, in the exercise of its business judgment in the matter took the position, due partly to transactions not yet completed, that it was not at that time satisfied that the
net worth of the company equalled the guaranteed amount." 194 F.2d at 503 (emphasis added).

New York cases are in substantial accord. Most construe satisfactory performance clauses in the context of real estate or construction contracts. In Boston Road Shopping Center, Inc. v. Teachers' Insurance and Annuity Association of America, 13 A.D.2d 106, 213 N.Y.S.2d 522 (1st Dep't 1961), plaintiff deposited $22,000 with defendant as security for a loan that defendant promised to issue in order to finance plaintiff's construction of a shopping center. This loan was conditioned upon plaintiff's furnishing leases of prospective tenants of the center to defendant's counsel for inspection; such leases were to conform to a schedule specified in the loan agreement, and also were to be "otherwise in form satisfactory" to defendant. Upon such inspection, defendant refused to make the loan, being dissatisfied with both the quantity and quality of leases obtained. There was no dispute over defendant's right to withdraw from making the loan; however, the defendant also opted to retain the security deposit under a clause in the agreement which provided that if plaintiff failed to comply "'with all of the terms and conditions herein... without fault on our part, then the amount so paid as consideration for our agreements shall be retained by us in full satisfaction for our entering this agreement." Plaintiff sued to retrieve his deposit,
claiming that he had fulfilled all of the conditions of the agreement by engaging in a good faith effort to obtain tenants for the shopping center. The trial court directed a verdict for plaintiff, and the Appellate Division reversed. The Appellate Court held that the plaintiff's good faith attempt to comply was inadequate to fulfill the terms of the contract. Rather, actual satisfaction of the defendant was held to be an element of compliance, which could not be fulfilled by a mere pro forma tender of documents. The court did not definitively rule as to whether good faith or reasonableness (i.e., subjective but not malicious, or an objective determination of satisfaction) should be the controlling standard here, as there was sufficient evidence to support the more demanding reasonableness standard.

In a related case construing the same contract, Ivor B. Clark v. Boston Road Shopping Center, Inc., 207 N.Y.S.2d 582 (Sup. Ct. N.Y. Cty. 1960), a broker sued Boston Road, Inc. for commission which he claimed for obtaining the initial acceptance of the defendant's first loan application by the lender, even though the mortgage loan was ultimately denied. Under the terms of the agreement between the broker and the developer, commission was to become due when the mortgage loan was granted, and such a conditional agreement as Boston Road had with TIAA did not amount to a granting of the loan, at least until the conditions thereto were
met. It was therefore necessary for the Court to interpret
the Boston Road/TIAA loan agreement, and in so doing it
adopted the subjective test of satisfactory performance,
inferring that the intent of the parties was to make the
deal contingent upon the satisfaction of the lender in the
full exercise of its judgment and business discretion. The
court stated that "the form and content of the loan instru-
ments and supporting papers were not determined but were
left to the discretion of the lending institution . . .
the business essence of the deal, both from the standpoint
of the defendant and the lending institution, was the obtaining
of leases satisfactory to both parties. To expect defendant
to accept or be satisfied with any kind of lease or leases
is unrealistic. Likewise, unless the lender was satisfied
with the security of its mortgage loan, meaning, in addition
to the real and personal property the leases, rent roll, and
calibre of tenants, it could refuse to make the mortgage
loan." 207 N.Y.S.2d at 588-589.

In a situation similar to that of Boston Road
it was held that when a mortgage is conditioned upon
approval of the final construction plans of the borrower
by the lending institution, the subjective standard is
applied. In Rockcliff Realty Corp. v. Mutual Life Ins. Co.,
50 N.Y.S.2d 851 (Sup. Ct. N.Y. Co. 1944), such a condi-
tional agreement was entered into between developer and
and lender. The tentative plans were approved, but the final plans were rejected by the lender. Developer sued for damages, claiming reliance upon lender's approval of the tentative plans and further claiming that the variance between the tentative and final plans were insufficient to justify the lender's refusal to conclude the deal under an objective standard of reasonableness. In applying the subjective standard, the court stated that "[t]he contract here falls in the category of those requiring the exercise of individual judgment. There is a clearly expressed intention in the commitment under consideration that final plans must be approved before the loan is made. The provision is not an unusual one in that type of contract." 50 N.Y.S.2d at 853.

Therefore, New York authority upholds the proposition that when an investment is conditioned upon the borrower furnishing the lender with "satisfactory" documents relating to the investment, the standard by which the documents are to be evaluated shall be the personal satisfaction of the investor, and the scope of his discretion shall extend to the substantive conditions of the bargain, not merely the legal efficacy or formal correctness of the documents.

California cases tend to support the New York rule. In Mattei v. Hopper, 330 P.2d 625 (Sup. Ct. Cal. 1958), plaintiff developer entered into an agreement to
purchase defendant's land under the terms of which agree-
ment developer was to deposit $1000 and then have 120 days
to consummate the deal, with the duty to conclude the
purchase conditioned upon the acquisition of satisfactory
leases by developer for the proposed shopping center to
be constructed on that land. Defendant repudiated the
agreement, claiming that the conditional terms of the
contract made it illusory. The court held the contract to
be valid and not illusory, stating that "such 'satisfaction'
clauses have been given effect". 330 P.2d at 626. There is
at least a requirement of good faith in determining satis-
faction, if not a requirement of objective reasonableness;
the Mattei court saw all cases involving "satisfaction" of
a party as a condition to his performance, as falling into
one or the other of these standards. As to the situation
of the parties before it, the court held that "the factors
involved in determining whether a lease is satisfactory
to a lessor are too numerous and varied to permit the
application of a reasonable man standard as envisioned by
this line of cases ... [t]his multiplicity of factors
which must be considered in evaluating a lease shows that
this case more appropriately falls within the second line
of authorities dealing with 'satisfaction' clauses, being
those involving fancy, taste, or judgment." 330 P.2d at 627.
In Kadner v. Shields, 20 Cal. App. 3d 251, 97 Cal. 742 (Ct. of App. 2d Dist. 1971) the assumption by the purchaser of the first trust deed upon a house was conditioned upon his acceptance of the terms of the encumbrance, under a provision making such terms "subject to the written approval of the buyer." The buyer withheld approval and cancelled the escrow deposit that had been furnished by him under the agreement. The vendor counterclaimed for damages consisting of the difference between the contract price and the current re-sale value of the property plus interest on the down payment and upon a note payable to him, and various other specified expenses. The trial court held that buyer's dissatisfaction with the terms of the encumbrance entitled him not merely to reject the trust deed and seek alternate means of financing the deal, but to cancel the purchase agreement and retrieve his deposit as well, even though there was no specific provision making the agreement in its entirety contingent upon buyer's satisfaction with the terms of the trust deed. The Court of Appeals agreed with the trial court insofar as it found that the "surrounding circumstances and overall tenor of the agreement militate for a condition precedent." 20 Cal. App. 3d at 258, 97 Cal. at 742. However, it distinguished the Mattei line of cases and held the objective standard to be applicable here, stating: "In cases where the personal judgment test has been
applied, the situation most frequently is one of a matter of aesthetic taste and sometimes of feasibility of operation or management irrespective of financial impact . . . where the personal satisfaction test has been held to apply something more than financial impact appears to be involved, such as compatibility of personality or ease of workability of operation." 20 Cal. App. 3d at 262, 97 Cal. at 752. The decision was therefore reversed, with the court further holding that an issue of fact was raised on the reasonableness issue under the objective standard. The distinction made by the Kadner court has not been made elsewhere.

Cases from other jurisdictions are in accord with the New York and California interpretations of "satisfactory" clauses. In Pulsifer v. Walker, a New Hampshire case, 159 Atl. 426 (Sup. Ct. N.H. 1932), renewal of a lease was conditioned upon its being "satisfactory" to the lessors who subsequently refused to renew. The court held that the lessors had reserved the right to assess not only the performance by the lessees of the conditions under the lease, but the substantive profitability of the leasehold as well, and stated that the lessors "were clearly in a position where they could consider every aspect of 'said lease' and every detail of the results of their operations under it in determining whether they desired a renewal." In Ard v. Dr. Pepper Bottling Co., 202 F.2d 372 (5th Cir. 1953) (applying Mississippi
law), a manufacturer reserved the right to revoke a franchise upon determination that the franchisee's business operations were unsatisfactory according to certain standards specified in the franchise contract. The bottler/licensee in this case brought suit against the manufacturer for alleged wrongful repudiation of the agreement. The court held, inter alia, that "[i]t was not unreasonable for Dr. Pepper to reserve to its own business judgment the question of whether the agreement had been properly and faithfully performed." 202 F.2d at 377. In this case the exercise of business judgment was considered sufficient to require application of the subjective standard. This case is noted as illustration #1 to comment (a) of § 254, Restatement 2nd of Contracts. Section 254 prefers the objective standard where satisfaction of the obligor is a condition of obligor's duty to perform, and comment (a) discusses situations in which one or the other of the standards is to apply.

Finally, in Jenkins Towel Service, Inc. v. Tidewater Oil Co., 223 A.2d 84 (Supr. Ct. Penn. 1966), the purchase of a parcel of real estate to be used as the site of a service station was conditioned upon the vendor's providing the purchaser with the required city permits for curb cuts and approaches, per buyer's specifications. Permits were proffered which did not conform to buyer's needs but were in good faith the closest approximations to
them obtainable under city regulations. The buyer withdrew from the deal, and vendor brought suit for damages based upon the difference in sales price. At trial, verdict was entered in favor of purchaser. On appeal, the Pennsylvania Supreme Court affirmed the trial verdict applying the subjective standard and noting that buyer was not held to accept the "reasonable" alternatives even though his exact specifications were not obtainable under the pertinent local ordinances and administrative decisions.

None of the above authorities are discussed in the Opinion.

3. Maturity Dates.

The remainder of the Opinion, pages twenty-six through twenty-nine, discusses the maturity date issue. This issue is for the most part beyond the scope of this memorandum, but merits some attention here as to the meaning of the relevant First Amendment language.

Even if the City may fulfill the terms of paragraph 4(c)(v) by merely submitting a complete and accurate disclosure statement, the purchase of the bonds does not follow automatically. There is at least one term of purchase as yet to be agreed upon. The last clause of paragraph 4(a) of the First Amendment states that "all such bonds shall bear interest at the rate of 9% a year and shall mature on such date or dates as shall be mutually agreed upon."
The Corporation Counsel contends, based upon the authority of two cases, that "[s]hould the City and the Pension Funds be unable to agree on the maturities of bonds to be now purchased, these prior nine purchases [reference is to prior purchases of City bonds made pursuant to the Agreement or the First Amendment] would be sufficient to establish a usage of the parties, which . . . would enable a court, applying the standards of reasonableness, to determine the maturities of the bonds." Opinion at 29. The cases cited are May Metropolitan Corporation v. May Oil Burner Corporation, 290 N.Y. 260 (1943), and Metro-Goldwyn-Mayer, Inc. v. Roy Schneider, 40 N.Y.2d 1069 (1976).3/

In May, a distributor of oil burners had had a franchise agreement with the manufacturer for several years.

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3 For the general proposition that when certain terms are expressly left to be agreed upon in the future, the courts will still find that a binding and enforceable contract has been made, the Opinion at page 28 cites Morris v. Ballard, 16 F.2d 1975 (Ct. App., D.C. 1926), and Corbin on Contracts, § 29, p. 82, et seg. Additionally, the Opinion at the same page asserts that "the New York Court of Appeals has affirmed decrees directing specific performance of contracts to sell real estate where the contract omitted to state the date of maturity of a mortgage to be taken by the seller or the rate of interest to be paid by the mortgagor on such a mortgage," citing Weintraub v. Kruse, 234 N.Y. 575 (1922), and Wertheimer v. Boehm, 241 N.Y. 575 (1925). Issue is not taken here with these general principles; acknowledging the validity and enforceability of a contract with terms left open it still appears that when a specific contractual provision states that the open terms shall be mutually agreed upon," it would be error for a court to mechanically substitute terms agreed upon in the past under different conditions.
The agreement was an annual one, renewable with different sales quota provisions each year. The contract contained a clause stating that renewal would be "automatic", provided the distributor assents to "a new quota agreement for each year which shall be in excess of the previous year's quota and to be mutually agreed upon." 290 N.Y. at 263.

When the manufacturer insisted upon raising the quota from 100 to 250 units, and, failing agreement upon that term, refused to renew the franchise, the distributor brought suit. The action was dismissed at trial, which dismissal was affirmed by the Appellate Division. The Court of Appeals modified the decision (reversing the dismissal of the aforementioned cause of action but upholding the dismissal of another, unrelated cause of action). In so doing, the Court held that the provision for terms to be mutually agreed upon in the future implied an objective standard of reasonableness which could be determined by reference to prior conduct and usage of the parties.

However, in that case there was a breach of good faith that was made manifestly evident by the disproportionate quota increase of 150% demanded by the manufacturer, when increases of prior years had been 10% or less. That holding does not necessarily apply to good faith negotiations over bond maturity dates, involving financial judgment and covering issues over which reasonable investors
could disagree. As long as good faith were shown in such negotiations, it might be unreasonable to arbitrarily hold the pension funds to a bond maturity date simply on the basis of the fact that they had consented to similar maturities in the past occasions, when financial conditions were different. Moreover, standards of past transactions had been imposed upon the parties in May pursuant to a judicial finding that there was a tacit agreement that the quota would not undergo more than a 10% increase each year. In the absence of such a finding of a prior tacit agreement among the parties as to the maturity dates of the bonds, the courts might not impose an arbitrary maturity date based upon past bond issues.

In the MGM case, the studio contracted with actor Roy Scheider to film a pilot and subsequent installments of a television series. The pilot was completed but Scheider refused to do the subsequent shows, claiming that since there had been no agreement on the starting date for work on the series, the contract was a nullity. The studio brought suit for specific performance and damages. The complaint was dismissed at trial but it was reinstated by the Appellate Division, which also entered judgment for plaintiff and remanded on the issue of damages alone. The Court of Appeals, in affirming the Appellate Division, held that, according to well established principles
of contract law, agreements leaving non-essential matters for future determination are enforceable, with the missing terms to be provided by some objective standard if the parties cannot come to an agreement on them. In that case the term was provided by proof of established custom and practice in the industry. It is difficult to analogize this situation to that of the parties to the Agreement and First Amendment, whose dealings inter se have been of a sufficiently recent origin, and have been of a sufficiently erratic and unique nature, to avoid characterization as "established custom and practice."

The remaining pages of the Opinion discuss other issues beyond the scope of this memorandum.

It should be noted, however, that the Opinion's discussion on pages 30 through 32 of the conflict of interest issues raised by the representation of City agencies with conflicting interests by the Corporation Counsel is, on its face, inadequate in at least two respects. The discussion relies on a generalized provision of the New York City Charter, Section 394(a) which provides that the Corporation Counsel shall be attorney and counsel for the City and every agency thereof, and Westchester Civil Service v. Levitt, 37 N.Y.2d 519 (1975). In the case, plaintiffs sought to enjoin the New York State Comptroller, as trustee of the New York State employees' retirement system from purchasing State obligations from the State Comptroller. The Court of Appeals held that an injunction was properly denied on the ground that the
Legislature had authorized the State Comptroller to act in both capacities. That case is distinguishable, because it involved two specific assignments of functions by the Legislature to two different public offices which happen to be held by the same public officer, not one generalized overall assignment of functions to one public officer. Also, the Opinion ignores the large number of cases sustaining the employment of separate counsel by municipal corporations where the interests of subdivisions thereof are in conflict. Some of these cases are collected in our March 26, 1976 opinion letter to Mr. Victor Gothaum, Trustee, New York City Employees' Retirement System to which the Corporation Counsel has had access. Finally, the Opinion ignores entirely the ethical considerations which the Corporation Counsel ought to consider before, on behalf of The City of New York, he sues a New York City pension fund to compel the purchase of City obligations, and he simultaneously defends such a lawsuit on behalf of the pension fund.
Board of Trustees of the New York
City Fire Department Pension
Fund, Article 1-B
C/o Commissioner Stephen J. Murphy,
Chairman
110 Church Street
New York, New York

Gentlemen:

Reference is made to the Second Amendment to
the Amended and Restated Agreement (the "Second Amendment")
made as of the 8th day of June, 1978 by and among the Corporation,
the five New York City Pension Funds (the "Pension Funds"),
including the New York City Fire Department Pension Fund,
Article 1-B (the "Fire Fund") and certain other parties.

In the course of the negotiations among The City of
New York (the "City"), the Corporation and the Fire Fund,
representatives of the City informed the Fire Fund and representa-
tives of the Corporation that the City agreed that it would not
seek enforcement of any rights it might have against the Fire
Fund pursuant to Paragraph 4(a) of the Amended and Restated
Agreement as amended by the First Amendment (dated November 26,
1975 and August 17, 1977, respectively, among all of the parties
to the Second Amendment) against the Fire Fund without simul-
taneously seeking enforcement of any such rights it may have
against any other Pension Fund.
This is to confirm that, in view of such agreement by the City, the Corporation also agreed that it would not seek enforcement of any rights it might have against the Fire Fund pursuant to Paragraph 4(a) of such Amended and Restated Agreement, as amended by the First Amendment, without simultaneously seeking enforcement of any such rights it might have against any other Pension Funds.

Very truly yours,

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK

By__________________________________________

cc: James Greilsheimer, Esq.
    Office of the Corporation Counsel
    Bruce Simon, Esq.
    Allen L. Thomas, Esq.
Honorable Louis J. Lefkowitz
Attorney General
State of New York
Two World Trade Center
New York, NY 10047

Dear General Lefkowitz:

Section 36-a of the Insurance Law, added by Chapter 382 of the Laws of 1973, in subdivision 2(b) thereof, empowered the Superintendent of Insurance to promulgate standards with respect to certain operations of actuarially funded public retirement and pension systems. Pursuant to such authority, the Superintendent has prepared certain standards (proposed Regulation 85 (11 NYCRR 136)) and has included a provision for enforcement of these standards (proposed 11 NYCRR 136.9) as well as for standards to be established in the future. Systems that will be affected by these standards have questioned the authority of the Superintendent to enforce his standards stating, in part, that Section 36-a neither expressly nor impliedly provides for or contemplates an enforcement or compliance component, except so far as it may be required in connection with the examination process.

Section 36-a itself is silent with respect to this matter and a review of the legislative history of Chapter 382, which also dealt with other items involving public employees, does not indicate that the Legislature considered enforcement.

It is a maxim of statutory construction that where legislative intent is not clear, it may be ascertained through a consideration of the purpose of the enactment (McKinney's Statutes § 592(b)) and of the mischief to be remedied (McKinney's Statutes § 95).

This Department was given the authority through the various statutes establishing public pension systems to examine their affairs in accordance with the Insurance Law. Such examinations were conducted in accordance with Article 3 of the Insurance Law. These examinations revealed practices that the Department felt were worthy of criticism. Such criticism were made and accompanied by recommendations for correction and were, for the most part, ignored by the systems concerned.
These facts were before the Legislature when it was considering Chapter 382. It is reasonable to assume that the Legislature sought to remedy the apparent evils by the enactment of Section 36-a and giving the Superintendent of Insurance the authority to both establish standards and enforce them. In addition, necessarily concommitant with the power to supervise and establish standards is the power to enforce.

For the above reasons, this Department believes that the Superintendent of Insurance is authorized by Section 36-a of the Insurance Law to enforce the standards statutorily mandated to be established by him (see proposed 11 NYCRR 136.9 attached).

In view of the foregoing, your opinion is requested indicating the Superintendent's authority under Section 36-a of the Insurance Law.

Very truly yours,

Albert B. Lewis
Superintendent of Insurance

Enclosure
May 25, 1978

Mr. Harrison J. Goldin
Comptroller of the City
of New York
Municipal Building
New York, New York 10007

Dear Comptroller Goldin:

As you know, it has been the established procedure for the past several decades that the City of New York's contributions to the Teachers' Retirement System be paid on a monthly basis on the fifteenth day of each month. As you also know, the Teachers' Retirement Board was informed by your representative that the contribution of $35,779,504.94, due on May 15, 1978, would not be forthcoming.

Since this interruption of our cash flow presents a number of serious problems among which are the loss of approximately $5,500 in daily interest and the need to liquidate securities in order to meet benefit payrolls, we must strongly protest this action taken by your office. The Teachers' Retirement Board urges that the Office of the Comptroller immediately make this payment, which is now past due; and all subsequent contributions and payments as required by law on a timely basis.

Sincerely,

WALLACE F. SULLIVAN
Executive Director

WFS:ac
Composition of Pension Fund Boards of Trustees and Required Approvals for Investments

Summary: The pension funds that took part in the Amended and Restated Agreement of 1975 (the "City Pension Funds") and that may now purchase City or MAC securities are the five City actuarial systems:

1. the New York City Employees' Retirement System;
2. the Teachers' Retirement System for the City of New York;
3. the Board of Education Retirement System for the City of New York;
4. the New York City Police Pension Fund, Article 2; and
5. the New York City Fire Department Pension Fund, Article 1-B

The power of each City Pension Fund to invest may be delegated in its entirety or with any limitations, including limitations with respect to the type and amount of investments, to the City Comptroller.
The New York City Employees' Retirement System

The New York City Employees' Retirement System is administered by a board of trustees pursuant to §B3-2.1 of Title B, Chapter 3, Volume 2, Administrative Code of the City of New York at p. 71. (hereinafter cited in the form "2 Adm. Code 71, Ch. 3, Tit. B, §B3-2.1"). The members of the board and their respective votes are:

1. a representative of the Mayor - 1 vote;
2. the president of the City Council or his designee - 1 vote;
3. the Comptroller - 1 vote;
4. the president of each borough - 1/5 vote per president; and
5. the chief executive officer of each of the three employee organizations representing the largest number of employees who are members of the retirement system - 1 vote per chief.

Id. at 72.

The total of possible votes is seven. Each act of the board, to be effective, must be adopted by at least 3-3/5 votes, the same number required to constitute a quorum. Id.

The members of the board are the trustees of the funds provided for by the title establishing the New York City Employees' Retirement System. Id. at 102, §B3-22.0. They have full power to make investments, subject to the limitations and restrictions imposed by law upon the making and disposing of investments by savings banks. Id.
The Teachers' Retirement System

A retirement board is responsible for the administration of the Teachers' Retirement System. The retirement board members are:

1. the president of the board of education or his designee;
2. the Comptroller;
3. two appointees of the Mayor, one of whom is to be a member of the board of education; and
4. three members of the retirement association elected from the contributors.

3 Adm. Code 208, Ch. 20, §B20-5.0.

Although weighted voting is not specified, it is achieved indirectly by a specification that the concurrence of the Comptroller or of one member appointed by the Mayor, of a member elected by the retirement association and of at least two other members is necessary for a decision of the board. Id. at 216, §B20-11.0.

The members of the retirement board are the trustees of the funds provided for by the title establishing the board. Id. at 225, §B20-31.0. They have exclusive control and management of such funds and may make investments, as in the case of the New York City Employees' Retirement System, subject
to the limitations and restrictions imposed upon the making and disposing of investments by savings banks.

The Police Pension Fund, Article 2

The Police Pension Fund, Article 2, is administered by a board of trustees. 2-A Adm. Code 353, Ch. 18, Art. 2, §B18-13.0. The members of the board and their respective votes are:

1. the police commissioner - 1 1/2 votes;
2. the Comptroller - 1 1/2 votes;
3. a representative of the Mayor - 1 1/2 votes;
4. the city director of finance - 1 1/2 votes;
5. the president of the Patrolmen's Benevolent Association (PBA) - 1 vote;
6. the PBA's first vice-president - 1 vote;
7. the PBA's second vice-president - 1 vote;
8. the PBA's chairman of the board of trustees - 1 vote;
9. the president of the Captains' Endowment Association - 1/2 vote;
10. the president of the Lieutenants' Benevolent Association - 1/2 vote;
11. the president of the Sargents' Benevolent Association - 1/2 vote;
12. the president of the Detectives' Endowment Association - 1/2 vote.

Id.
Every act of the board of trustees requires adoption of a resolution by a vote of at least 7/12 of the whole number of votes authorized to be cast. Id. The maximum number of votes is 12.

The members of the board are the trustees of the funds provided for by the title establishing the board. Id. at 373, §B18-28.0. They may make investments, as in the case of other City Pension Funds, subject to the limitations imposed upon savings banks, with certain designated modifications not here relevant. Id.

The Fire Department Pension Fund, Article 1-B

The Fire Department Pension Fund, Article 1-B, is "headed" by a board of trustees. 2-A Adm. Code 486, Ch. 19, Art. 1-B. The members of the board and their respective votes are:

1. the fire commissioner - 3 votes;
2. the Comptroller - 3 votes;
3. a representative of the Mayor - 3 votes;
4. the city director of finance - 3 votes;
5. the president of the Uniformed Firemen's Association (UFA) - 2 votes;
6. the UFA vice-president - 2 votes;
7. the UFA treasurer - 2 votes;
8. the UFA chairman of the board of trustees - 2 votes;
9. three elected members of the UFA executive board (a lieutenant (1 1/2 vote), a captain (1 vote), and an officer with a rank above captain (1 vote)) - 2 1/2 votes; and

10. the president of the Uniformed Pilots and Marine Engineers Association - 1 vote.

Id.

Every act of the board of trustees requires adoption of a resolution by a vote of at least 7/12 of the whole number of votes authorized to be cast. Id. The maximum number of votes is 24.

The member of the board are the trustees of the funds provided for by the title establishing the board. Id. at 500, §B19-7.69. They may make investments subject to the same limitations applicable to the Police Pension Fund, Article 2.

The Board of Education Retirement System

This system administers the retirement funds established for the clerical and administrative staff of the Board of Education. According to a conversation with a clerk in the office of the System, the board of trustees consists of the seven members of the Board of Education, plus two members elected by the employees covered by the System. A check with the Comptroller's Press Office confirmed that he was not a
member. I did not find the System described in the Administrative Code of the City.

Delegation of Investing Powers to Comptroller

The power of trustees to invest the funds of a pension fund or retirement system "maintained, administered, or supported" by the City may be delegated, in its entirety or with limitations, to the Comptroller of the City. 7 Adm. Code 62, Ch. 49, Title E, § E49-2.0. The delegation is to be in writing and to be filed in the office of the body delegating the power and in the office of the Comptroller. The delegating body may elect to reassume the power delegated by filing a written revocation of the delegation in its office and in the office of the Comptroller. Binding commitments made by the comptroller pursuant to delegation of power are unaffected by any termination, expiration or revocation of the delegation and the comptroller is empowered to discharge any such binding commitment according to its terms. Id.

It is assumed that the Teachers' Retirement System and the Board of Education Retirement System are "maintained" or "supported" by the City even though the Board is not subject to direct Mayoral control and that therefore these systems would have the same power of delegation as the other three city pensions funds.
Because of the power of delegation, the Comptroller may have been empowered to make all relevant investment decisions for some or all of the City Pension Funds. Assuming that he is so empowered, the respective board of trustees could reassume their powers. Whether they would do so to override a reluctance of the Comptroller to make investments in City or MAC obligation, based on assertions of fiduciary responsibilities, is questionable.

Neither the Comptroller's office nor any boards of trustees of the City Pension Funds have been contacted to determine if any delegation of investing power has in fact been made.

In addition to the possibility of delegation of power to the Comptroller, special note should be made of the requirement that the Comptroller or one of two appointees of the Mayor concur in any decisions of the board responsible for administering the Teachers' Retirement System. Although one of the two appointees might be expected to approve the investment decision, failure of the Comptroller to agree would be likely to make that decision more difficult than in the case of other boards where failure of the Comptroller to agree simply shifts the responsibility to the entire majority of the board in question.
Need for Prospectus

Union spokesmen have asserted that they require a "prospectus" before they can agree to the purchase of City bonds. See, e.g., Statement of Victor Gotbaum, reported in the New York Post, May 9, 1978, p. 11, Col. 2.

The Administrative Code does not specify the documents required or procedures to be followed in determining the suitability of an investment. The City Pension Funds are authorized to establish rules and regulations applicable to their conduct of operations, and it is possible - though perhaps unlikely - that such regulations specify the need for an offering document.
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Pension Fund Sinking Fund Report

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Options:
- 3 = Option No.
- 12/79 = Start Date
- 06/79 = Issue Date
- 9.00% = Interest Rate
- 8 = No. of Terms

Title: Pension Plan New & Renewal (B)

New Benefit Report
MEMORANDUM

Date: 3 May 1978

To: MAC Board of Directors

From: Eugene Keilin

Re: Pension Fund Investments

City pension funds are scheduled to make approximately $683 million in long-term loans for the benefit of the City during the week of May 22. Under the agreement with the pension funds executed in November 1975, which formed the basis for Federal loans, the pension funds promised to invest approximately $2.5 billion in City or MAC bonds over the two and one-half years ending this June. Until now, all of these investments have been made in City bonds at 9% interest except that in June, 1977, MAC substituted a $250 million public sale of MAC bonds at 7-1/2% for an equal amount of pension fund investments. Recently, representatives of the pension funds have questioned whether the funds should continue to invest in City bonds, as the City's ability to obtain long-term financing after June 30 continues to be uncertain.

We have considered the possibility and practicality of litigation to enforce the scheduled investments in City bonds. At the same time, we are exploring whether the pension fund trustees would invest in MAC bonds rather than City bonds, and we asked Paul, Weiss whether substituting MAC bonds for City bonds would be authorized by and consistent with the pension funds' agreement.

A copy of the letter from Paul, Weiss is attached. It indicates that the MAC Board is authorized to offer the pension funds an investment in MAC bonds (subject to the passage of State legislation increasing MAC's bonding authority) and that such an investment would be consistent with the intention of the parties to the November, 1975 Agreement. In effect, the Board must make a judgment whether such an offer is in the best interest of MAC's bondholders and the City.
We have been encouraged by the discussions we have had to date with pension fund representatives, but caution that we do not have a firm agreement with the trustees, and that any agreement will require adoption of State legislation and approval by the Secretary of the Treasury.

The Proposal

We are exploring the purchase by the pension funds of $683 million in MAC bonds to substitute for the $683 million in City bonds they would have acquired otherwise. Those bonds would have the same serial maturities as the City bonds would have had. While the interest rate on the City bonds would have been 9%, we expect to negotiate a lower rate of interest on the MAC bonds.

In order to preserve as much economic capacity as possible for future public sales of MAC First and Second Resolution bonds, we have proposed that the pension funds purchase bonds issued under a new general bond resolution -- the Corporation's third. Proceeds from these new third resolution bonds would be used by MAC to purchase City serial bonds of similar maturity and coupon, although the timing of the payment of interest on and principal of City bonds would be arranged to coincide with MAC's funding schedule rather than its payment schedule. In consequence, under the proposed bond resolution and the MAC Act, the new bond would have the following support:

- The "spill over" of sales tax, stock transfer tax and State per capita aid not needed to provide for MAC First and Second Resolution bonds.

- A Capital Reserve Fund, which we would expect to be filled with bond proceeds at the time of original issuance.

- A State "moral obligation", which attaches to the Capital Reserve Fund requirement of all MAC bonds.

- The City serial bond purchased by MAC; moneys derived from the repayment of the City's serial bonds would be available for repayment of the new MAC bond.

For the pension funds, this proposal offers the revenues from the City bond with the added security of the State revenues available to MAC and the MAC Capital Reserve Fund. For the Corporation, the proposal offers the prospect of completing the pension funds' scheduled investments with a security that does not impair our ability
to provide coverage for future issues of First and Second Resolution bonds. For the City the proposal offers lower interest costs and a new financing vehicle.

The Third Resolution Bond

Under the proposal, Third Resolution bonds could not be issued unless revenues available to the Corporation and not needed for First or Second Resolution bonds provide coverage equal to 1.5 times maximum debt service on all Third Resolution bonds. In addition, sales tax and per capita aid revenues would have to provide at least 1.0 coverage.

The following Table indicates the coverage available for Third Resolution bonds on the basis of current revenues and currently outstanding First and Second Resolution bonds.

(In $ Millions)

<table>
<thead>
<tr>
<th>Revenue available to MAC for First Resolution Purposes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Tax(^1/)</td>
</tr>
<tr>
<td>Stock Transfer Tax(^2/)</td>
</tr>
<tr>
<td><strong>Less:</strong></td>
</tr>
<tr>
<td>Peak Annual Debt Service on Outstanding First Resolution Bonds</td>
</tr>
<tr>
<td><strong>Spill-over available</strong></td>
</tr>
<tr>
<td><strong>Plus:</strong></td>
</tr>
<tr>
<td>Per Capita Aid (Net)</td>
</tr>
<tr>
<td><strong>Total Revenue Available for Second Resolution Purposes</strong></td>
</tr>
<tr>
<td><strong>Less:</strong></td>
</tr>
<tr>
<td>Peak Annual Debt Service on Outstanding Second Resolution Bonds</td>
</tr>
<tr>
<td><strong>Spill-over available</strong></td>
</tr>
</tbody>
</table>

**Composition:**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Tax</td>
<td>$277.6</td>
</tr>
<tr>
<td>Stock Transfer</td>
<td>240.6</td>
</tr>
<tr>
<td>Per Capita Aid</td>
<td>350.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$868.2</td>
</tr>
</tbody>
</table>
3 May 1978
MAC Board of Directors
Page Four

Coverage Limitation

- 1.5 times for all Revenue $ 578.8
- 1.0 times for Sales Tax and Per Capita Aid 627.6

Peak Annual Debt Service on Proposed Issue

108.7

NOTES:
1/ Twelve months ended March 31, 1978.
2/ Twelve months ended March 31, 1978, less estimated 25% surcharge.
3/ Peak year occurs in 1980 under constitutionally prescribed formula respecting City debt.

After providing for for payment of the Third Resolution bonds, remaining revenues in any fiscal year would be available to service MAC notes which could be issued to meet part of the City's need for seasonal financing. Using the figures outlined above, approximately $500 million in sales tax and per capita aid would be available for payment of MAC notes.

As noted above, MAC will retain the flexibility to issue additional First and Second Resolution bonds. The maximum debt service permitted on First Resolution bonds is $425 million, and the maximum permissible debt service on Second Resolution bonds, using current revenues and based on coverage tests in existing bond resolutions, is $539 million, a total of $964 million. At these levels, current revenues would produce a "spill-over" available for debt service on the Third Resolution bonds of $538 million, of which $109 million will be required for debt service on the bonds proposed to be issued to the pension funds.

The City Bond

As the purchaser of a City bond, MAC would acquire rights on a parity with those of all other holders of City general obligation debt. MAC would expect, and would demand, full payment of the City bond in accordance with its terms. Payments made on the City bond would be available to meet the funding requirements for the new MAC bonds. The value of these scheduled payments as security for the MAC Third Resolution bondholder will be increased substantially to the extent the City implements new fiscal disciplines. The City is expected to make public its proposals for
these disciplines in the near future, and MAC will take a particular interest in those aspects of the proposals designed to improve investor security, such as the terms of City bond covenants and the responsibility of the fiscal monitor with respect to the City's budget and financial plan.

From the City's point of view, MAC's acquisition of a City bond will leave the City in nearly the same budgetary position it would have been had the pension funds purchased City bonds directly. To the extent that the City makes payments on the City bond as scheduled, MAC will have funds to meet the requirements on its own bonds without calling on its State revenue streams. Because the Capital Reserve Fund for the Third Resolution bonds is expected to be funded with bond proceeds, the Capital Reserve Fund requirement will have no current impact on the City's budget. However, the timing of payments on City bonds and MAC funding requirements cannot be matched exactly, and the issuance of $683 million in Third Resolution bonds will have a budget impact of $18 million in fiscal year 1978. This budget impact is expected to be more than offset over the life of the bonds by the reduced interest cost on the MAC bonds.

Further Steps

At this point, we have no assurance that the proposal we have outlined will be accepted by the trustees of the pension funds. In addition, the proposal requires the consent of the Secretary of the Treasury, who has indicated some skepticism concerning the proposal.

Moreover, to implement an investment in MAC bonds, two steps are prerequisites, and both can be time consuming without cooperation from all parties.

First, there is the need to pass legislation increasing MAC's bonding authority, authorizing MAC to invest in City bonds issued for capital purposes, and making other technical changes necessary to create the Third Resolution bond. This legislation has been discussed with legislative staff, representatives of the pension funds, Clearing House banks and other financial institutions; and City and State officials. Like any complicated piece of legislation, each party might write the bill in slightly different ways, but we believe there should be no disagreement in principle with its purposes and provisions. We will be in Albany this afternoon to arrange for introduction of the bill.
Second, MAC must secure the consent of all parties to the Restructuring Agreement to the proposed investment in MAC bonds. This includes each of the employee pension funds as well as the clearing house banks. Each of the pension fund boards must schedule meetings and prepare to act promptly on the proposal, so that it may be forwarded to the Secretary of the Treasury for his review and approval.
Municipal Assistance Corporation  
For The City of New York  
2 World Trade Center  
New York, New York  10047

Pension Fund Obligations  
Under the Restructuring  
Agreement

Gentlemen:

Municipal Assistance Corporation For The City  
of New York (the "Corporation"), the eleven New York City  
Commercial Banks that are members of the New York Clearing  
House Association, Inc., the five New York City pension  
funds (the "Pension Funds") and the New York City sinking  
funds entered into an agreement effective November 26, 1975  
(the "Amended and Restated Agreement") that provided, among  
other things, for the investment by the Pension Funds of an  
aggregate of $2.5 billion in bonds of The City of New York  
(the "City") or in bonds of the Corporation.

May 1, 1978
The Amended and Restated Agreement was a key inducement to the Federal Government to adopt the Seasonal Loan Act and enter into the Credit Agreement with the City. The Amended and Restated Agreement and the Federal Seasonal Loan program formed the foundation on which was built the three-year financial plan for the City's 1976-1978 fiscal years (the "Three-Year Plan").

The Amended and Restated Agreement was amended by the parties in 1977 with the consent of the Secretary of Treasury under the Seasonal Loan Act. The Amended and Restated Agreement as so amended in 1977 is called the "Restructuring Agreement" and such agreements are collectively called the "Agreement."

Pursuant to paragraph 4 of the Restructuring Agreement, the obligations of the Pension Funds to provide financing for the City for the remainder of the Three-Year Plan were reaffirmed with respect to the unfulfilled portion of such obligations under the Amended and Restated Agreement.*

* The Amended and Restated Agreement provided that the Pension Funds could elect to invest in bonds of the Corporation instead of City bonds. In practice, however, the Pension Funds elected to purchase only City bonds. Therefore, upon the Corporation's request, because of limitations on the Corporation's bond issuance authorization, this option was eliminated from the Restructuring Agreement.
The Pension Funds are scheduled to purchase, in mid-May 1978, subject only to the fulfillment of certain specified conditions, each of which has been, or is expected to be, fulfilled at or prior to such purchases, an aggregate of up to approximately $683,000,000 principal amount of serial bonds of the City.

It has been reported in the press that one or more of the trustees of the Pension Funds have indicated that the Pension Funds might not consummate the purchases required by the Restructuring Agreement if certain events, none of which is specified in the Restructuring Agreement as a condition to closing, fail to occur.

You have asked us two questions related to the obligations of the Pension Funds under the Agreement:

First, you have asked us whether the obligations of the Pension Funds to make the purchases called for by the Agreement are now legally enforceable by the Corporation.

Second, you have asked us whether the Corporation would be authorized to sell its bonds or notes to the Pension Funds in substitution for the bonds of the City now scheduled to be purchased by the Pension Funds under the Agreement and,
if so, whether such purchases of the Corporation's bonds or notes would be consistent with, and satisfy the obligations of the parties under, the Agreement.

In this connection, we have reviewed the Agreement, the facts and circumstances surrounding the execution of the Amended and Restated Agreement as well as the Restructuring Agreement, and the course of conduct of the parties under the Agreement.

In answer to your first question, in our view, the ultimate understanding of the parties to the Agreement is beyond dispute. The Pension Funds have legally and morally bound themselves, subject only to the fulfillment of certain specified conditions, to make the investments called for by the Agreement. This commitment of the Pension Funds to finance the City has been relied upon not only by the other parties to the Agreement but also by the City, the State of New York and the Federal Government.

We have no doubt, however, that if the Corporation were to attempt to enforce such commitment against unwilling Pension Funds, such Pension Funds might be able to construct colorable arguments in support of a refusal to honor their commitment. One of these arguments would, presumably, focus
on the fact that the Agreement does not specify precise
maturity dates for the bonds to be purchased. Another would,
presumably, deal with the obligation of the City to deliver
an Official Statement in connection with such sales. The
Pension Funds would argue that the disclosures in such Official
Statement would provide them with an opportunity to re-evaluate
their prior commitment to purchase City bonds. In addition,
the trustees of the Pension Funds could argue that their
fiduciary duty to the beneficiaries of their Funds prohibits
them from making what they now deem to be imprudent investments
in the City, despite their contractual obligation to do so.

Although we would expect the courts of the State
to enforce the obligations of the Pension Funds under the
Agreement if called upon to do so, the arguments that may be
raised by the Pension Funds may not easily be resolved by
summary judgment. Therefore, any litigation would, in our
view, be time-consuming and difficult. Accordingly, we could
not predict that any such litigation would be brought to a
satisfactory conclusion by the Corporation prior to June 30,
1978 when the Three-Year Plan expires. Therefore, the litigation
alternative may not be a realistic one for the Corporation
within the tight time schedule under which the City and the
Corporation are now operating.
In answer to the second question, in our view, the purchase of the Corporation's bonds or notes in substitution for City bonds is authorized by, and would be consistent with, the Agreement and would fulfill the obligations of the Pension Funds under the Agreement. The history of the negotiations of the Amended and Restated Agreement and of the Restructuring Agreement clearly shows that the Pension Funds' fundamental commitment was to provide financing to the City in connection with the Three-Year Plan and that the choice of financing vehicle -- City bonds or the Corporation's bonds -- was a secondary consideration. Indeed, as noted above, under the original Agreement alternative investments were provided for. The alternative of investing in the Corporation's bonds was dropped from the Restructuring Agreement for technical reasons totally extraneous to the purposes and intent of the underlying Agreement.

Accordingly, discharge of the obligations of the Pension Funds under the Agreement through purchases of the Corporation's bonds or notes in substitution for City bonds is, in our view, consistent with the Agreement.
We note that a technical addendum to the Restructuring Agreement will be required in order to bring a purchase of the Corporation's bonds or notes within the scope of Public Law 94-236. Public Law 94-236 was enacted in connection with the Amended and Restated Agreement and at a time when the purchase of the Corporation's bonds was authorized by that Agreement. Accordingly, such an addendum would be consistent with the original intent of 94-236. Such a technical addendum must, under 94-236, be submitted to the Secretary of the Treasury.

We also note that amendments to the Corporation's statutory authorization will be required in order to give the Corporation the authority to sell bonds to the Pension Funds in the amounts required and to remit the proceeds to the City. These amendments are now required because issuances of the Corporation's obligations subsequent to the date of the Amended and Restated Agreement have reduced the Corporation's unused bonding authority. We have reviewed drafts of the necessary amendments and understand that they have been presented to representatives of the State Legislature.

The Board of Directors of the Corporation has an obligation under the statutes creating the Corporation to act
in the best interests of the City as well as in the interests of the Corporation's Bondholders. In our view, therefore, the Board is both authorized and obligated to search for alternatives to litigation, that may be ineffective as a practical matter, in order to accomplish the task of having the Pension Funds fulfill their commitment to finance the City for the balance of the current fiscal year.

Very truly yours,

[Signature]

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Pension Funds' Investments in MAC and City Bonds

Correspondence, Notes and Memos

1975-1979
Municipal Assistance Corporation
For The City of New York
2 World Trade Center
New York, New York 10047

Pension Fund Obligations under the
Restructuring Agreement

Gentlemen:

Municipal Assistance Corporation For The City of New York (the "Corporation"), the eleven New York City Commercial Banks that are members of the New York Clearing House Association, Inc., the five New York City pension funds (the "Pension Funds") and the New York City sinking funds are parties to the First Amendment to the Amended and Restated Agreement made as of the 17th day of August, 1977 (the "Restructuring Agreement"). The Restructuring Agreement is the successor to the Amended and Restated Agreement among the same parties dated as of November 26, 1975. (Such Amended and Restated Agreement and the Restructuring Agreement are collectively referred to as the "Agreements".)
Pursuant to paragraph 4 of the Restructuring Agreement, the Pension Funds have agreed to purchase an aggregate of up to $736,060,000 principal amount of serial bonds of The City of New York (the "City"), subject to various terms and conditions more fully set out therein.

It has been reported in the press that one or more of the trustees of the Pension Funds have indicated that the Pension Funds might not consummate the purchases required by the Restructuring Agreement if certain other events not contemplated by the Restructuring Agreement fail to occur. Such purchases are now scheduled to occur in mid-May 1978.

You have asked us to advise you with respect to the obligations of the Pension Funds to make the investments provided for in the Restructuring Agreement. In this connection, we have reviewed the Restructuring Agreement, the facts and circumstances surrounding the execution of the Restructuring Agreement as well as the Amended and Restated Agreement, and the course of conduct of the parties under the Agreements.

In our view, the ultimate understanding of the parties to the Agreements is beyond dispute. The Pension Funds have legally and morally bound themselves, subject
only to the fulfillment of certain specified conditions, to make the investments called for by paragraph 4 of the Restructuring Agreement. This commitment of the Pension Funds to invest in City bonds in a timely fashion has been relied upon not only by the other parties to the Agreements but by the City, the State of New York and the Federal Government.

The course of conduct among the parties to the Agreements in the 2-1/2 years since the execution of the Amended and Restated Agreement has clarified whatever ambiguities may have been thought to have existed in these Agreements and has better defined the obligations of the parties thereunder. For example, although no minimum or maximum maturity of the serial bonds referred to in the Agreements is specified therein, the parameters of such maturities seem to have been well defined by the parties in their actual dealings under these Agreements.

We are also aware that, pursuant to paragraph 4(c)(v) of the Restructuring Agreement, the Pension Funds are entitled to receive upon request an official statement of the City at the time of each investment. (A similar provision was contained in the Amended and Restated Agreement.) In each closing to date at which such an official statement was called for, an official statement of the City has been
delivered to the Pension Funds. Accordingly, the scope and content of such an official statement has been agreed to by the parties to those transactions. The risks inherent in the City's financial condition and the expiration of the current three-year plan, including the expiration of the Federal Credit Agreement, at the end of this fiscal year have been thoroughly described in official statements of the City previously delivered to and accepted by the Pension Funds under the Agreements. In absence of a significant change in circumstances prior to the required investment, an official statement substantially similar to the last official statement of the City delivered to the Pension Funds should satisfy the condition stated in the Restructuring Agreement.

We have no doubt that, if one or more of the Pension Funds were to attempt to ignore its obligations under the letter and spirit of the Restructuring Agreement, it might construct a colorable argument in support of its position under various provisions of the Restructuring Agreement such as the two referred to above. We would expect, however, the courts of this State to enforce the obligation of the Pension Funds under the Restructuring Agreement if called upon to do so.
The Board of Directors of the Corporation has an obligation under the statutes creating the Corporation to act in the best interests of the City as well as in the best interests of the Corporation's Bondholders. If Pension Funds were to refuse to honor their commitments under the Restructuring Agreement, we believe that the Board would have discretion, in consultation with officials of the City, to make a judgment as to whether it is in the best interests of the City for the Corporation to take legal action against the Pension Funds under the Restructuring Agreement.

Very truly yours,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Municipal Assistance Corporation
For The City of New York

MEMORANDUM

Date: 28 March 1978
To: Eugene Keilin
From: Marilyn F. Friedman
Re: Pension Fund Purchases of City or MAC Bond

Pursuant to paragraph 4-a of the First Amendment to the Amended and Restated Agreement, the pension funds agree to purchase during the 1977-78 fiscal year of the City (1) up to $500,000,000 of City bonds (emphasis added), and (ii) $236,060,000 of City bonds. All of the bonds are to bear interest at nine percent per annum and ought to mature on such date or dates as shall be mutually agreed upon. The obligation of the pension funds to purchase such bonds is conditioned upon each of the following facts being true on the date of a particular purchase:

(a) no prior default by the City on its bond payments;
(b) no City bankruptcy;
(c) State indemnification law still in effect;
(d) the City shall have made to the pension funds all contributions and other payments required by law to have been made;
(e) the City shall have delivered to the pension funds in connection with each purchase, an Official Statement in form and substance satisfactory to the trustees of such pension funds;
(f) the Federal indemnification law shall still be in effect and the purchase shall not have been found to be inconsistent with the relevant provisions of such act;

(g) the Seasonal Financing Act shall be in effect, the Credit Agreement shall be in effect, and the City shall not be in default in payments on any notes issued by the City pursuant to the Credit Agreement;

(h) there shall have been delivered to counsel to the pension funds an approving opinion of bond counsel and such other documents as counsel shall reasonably request in form and substance satisfactory to such counsel;

(i) and no other party to the Amendment shall be in breach of any provision thereof.

In order to assay the extent to which the pension funds are committed to make purchases of City bonds this spring, one must review each of the conditions to the purchases and set forth each of the circumstances under which such conditions may not be capable of being met by the City.

1. The City and the pension funds must mutually agree on the maturity dates of the bonds to be purchased. Several points must be made in connection with this condition. First, there is no standard of reasonableness in connection with a pension fund refusal to purchase bonds of a maturity desired by the
City. Second, even if such a standard could be implied, a pension demand for short maturities might be considered to be reasonable. Indeed, it should be remembered in this regard that last June, when the pension funds insisted on purchasing bonds having seven-year maturities, the City chose not to challenge that demand as being unreasonable; instead, the City turned to MAC, which issued bonds of longer maturities. The City could take the position that its actions last June should not be considered a condonation of the pension funds' right to demand short-maturity bonds pursuant to this section. The City would argue that under a provision similar to this in the Amended and Restated Agreement, the pension funds have, since the execution of the Agreement, purchased bonds having relatively long maturities. The section must be read in the context of the entire Agreement, which has as one of its major purposes, the establishment of a rational debt service schedule for the City. Clearly, a demand for short maturity bonds would not be in keeping with the spirit of the Agreement as a whole.

2. Conditions (a) through (d) set forth above involve no subjective determinations and would appear capable of being met.

3. The fulfillment of condition (e) set forth above, relating to the delivery of an Official Statement by the City, does involve subjective determinations by the trustees of the pension funds. Again, the Agreement as a whole sets forth
no standard for acceptance or rejection by the trustees of the City's Official Statement. Here, one would have to review the Official Statements delivered to the pension funds previously in connection with their purchases under the Agreement. It would seem that the only reasonable standard of rejection would be that the new Official Statement presented facts materially more adverse than the facts presented in Official Statements previously accepted by the pension funds. It would further seem that the materiality should relate to the City's ability to pay principal of and interest on the bonds when due. Under this standard, there would seem to be few statements of fact which could justify rejection by the trustees. Previous Official Statements clearly disclosed that following the expiration of the Seasonal Loan Agreement in June 1978, the City would have severe problems maintaining a balanced budget, as required by State law, and would have great difficulty raising funds to fulfill its capital requirements. Thus, a disclosure of this nature, would not seem to justify rejection. Only if the City were to be required to go one step further, that is, to disclose that it could not balance its budget or its financial plan in future years or that it could not raise sufficient funds to meet its capital requirements, would the trustees have the right to reject the Official Statement. To elaborate on this point, if the Federal government were to grant the City sufficient financial aid to meet its
requirements under the four-year plan, the pension fund trustees would not be in a position to reject the Official Statement even though the Official Statement disclosed that the success of the four-year plan was by no means certain. Under this scenario, the pension funds would not have materially less assurance of payments than they have had previously. Even if the Federal government were to grant aid for only one year, but were to leave the door open to further aid if necessary, the pension fund trustees would not seem to be in a position to reject the Official Statement. If, however, the Federal government either granted one-year aid with an absolute statement that no further aid would be granted, or if the Federal government refused all aid entirely, then the pension fund trustees might be justified in rejecting the Official Statement, since the City has stated publicly, and, one would assume, will state in the Official Statement, that under such conditions it probably could not survive the next few years.

There may be other changes in the Official Statement, not directly affecting the ability of the City to pay principal of and interest on the bonds, which would trigger a right of rejection on the part of the pension fund trustees. As an example, if the Mayor shall have submitted an unbalanced budget to the Board of Estimate and the City Council or if it shall appear for other reasons that the budget will
in fact be unbalanced either for 1978 or 1979, the trustees might have a right to reject the Official Statement. Under such circumstances, it would be expected that the Emergency Financial Control Board, or a successor, would exercise a materially greater role in controlling the fiscal affairs of the City than it has previously exercised. The trustees would argue that the uncertainties arising out of that set of facts is a material adverse change from the facts disclosed in prior Official Statements.

4. Conditions (f) through (g) involve no subjective judgment as to whether or not they have been fulfilled.

5. Pursuant to condition (h), delivery of the bonds is to be accompanied by delivery of an opinion as to legality by bond counsel and "such other documents as counsel for the pension funds shall reasonably request in form and substance satisfactory to such counsel." Here, again, while the language of the condition permits subjective judgment as to the nature and substance of documents to be delivered, history should be the prime determinant of adequacy.

6. Condition (i) to the effect that no other party to the Amendment shall be in breach of any provision thereof, should be capable of objective determination.

I have briefly reviewed the other provisions of the Agreement and believe that it is unlikely that any party to the Agreement shall be in breach at the time the pension purchases are required to be made.
March 6, 1978

Mr. Stephen J. Weinstein
Deputy Executive Director
Municipal Assistance Corporation
for the City of New York
Two World Trade Center
New York, New York 10047

Dear Mr. Weinstein:

While your letter of March 1 to Comptroller Levitt posed no specific question, I hasten to give you our reaction.

Your idea that State-operated pension funds might buy $500 million of subordinated and unguaranteed MAC notes during the first few months of New York City's 1979 fiscal year is unacceptable to the Comptroller as trustee of two of those funds.

As I am sure you know, it is generally agreed that pension funds should be invested primarily for the long term. To the extent they invest in short-term paper, it is on a temporary basis while awaiting the availability of favorable long-term opportunities. Therefore short-term investments are limited to highly liquid securities and usually to obligations maturing within a few months. There is serious doubt whether the MAC notes in question would be liquid. They would also not mature for nine to eleven months. A request for a roll-over at maturity cannot be ruled out.

If your coverage projections are sound, however, it appears that the notes would be attractive to other investors who can accept some risk, can profit from generous tax-free income, and are interested in nine to eleven month paper.

Sincerely,

[Signature]
First Deputy Comptroller
1 March 1978

The Honorable Arthur J. Levitt
Comptroller of the State of New York
270 Broadway
23rd Floor
New York, New York 10007

Dear Mr. Levitt:

If Federal legislation is enacted to provide long-term loans or bond guarantees for The City of New York rather than a renewal of the Federal Seasonal Loan Program, alternative forms of seasonal financing for the City will be required after June 1978. Part of the seasonal financing could be provided by issuing MAC notes to be purchased by State Pension Funds. These notes would be issued during the first few months of the 1979 fiscal year (between July and September 1978) and be payable at the end of the 1979 fiscal year (in April and June 1979). (It is assumed that these notes would be issued only as part of a comprehensive plan which provides for all of the City's seasonal and long-term financing requirements.)

MAC would issue these notes under a new General Note Resolution, to be adopted by the Corporation. Such Note Resolution would provide, among other things, that the notes would have a charge or lien with respect to State per capita aid payable to the City pursuant to Section 54 of the State Finance Law ("Per Capita Aid"), State sales and compensating use taxes imposed by Section 1107 of Article 28 of the State Tax Law ("Sales Tax") and the State tax on sale or transfer of stock or other certificates imposed by Section 270 of Article 12 of the State Tax Law ("Stock Transfer Tax"), all of which are available to the Corporation under its enabling legislation.
MAC projects that a total of $1.5 billion in revenues will be available to it in fiscal 1978 from the three State sources, as follows: $914 million in Sales Tax; $250 million in Stock Transfer Tax; and $350 million in Per Capita Aid (net of possible prior claims).

In fiscal 1979, assuming the levels of State tax collections and State aid projected in the City's four-year financial plan, a total of $1.65 billion would be available to MAC as follows: $959 million in Sales Tax; $250 million in Stock Transfer Tax; and $442 million in Per Capita Aid (net of possible prior claims).

Obligations issued by the Corporation under its First General Bond Resolution adopted July 2, 1975 ("First Resolution") are payable out of the Sales Tax and Stock Transfer Tax revenues. Obligations issued by the Corporation under its Second General Bond Resolution adopted November 25, 1975 ("Second Resolution") are payable out of the State Per Capita Aid, and, subject to prior claim of First Resolution obligations, out of the Sales and Stock Transfer Tax revenues.

Aggregate 1979 MAC debt service funding requirements on all obligations currently outstanding are $312,657,000 under the First Resolution, and $195,703,000 under the Second Resolution, for a total of $508,360,000. Accordingly, there would be more than $1 billion available to MAC in fiscal 1979 to cover debt service on the proposed notes, after providing for all debt service funding requirements for all MAC obligations presently outstanding, as required by the First and Second Resolutions.

MAC is entitled to receive Per Capita Aid on June 25 of each year, and is entitled to receive Sales Tax and Stock Transfer Tax revenues, as collected, on October 12, January 12, April 12, and June 30 of each year. To maximize the true seasonal financing for the City, the notes would be payable to the extent possible at the end of June 1979 in order to minimize the revenues which MAC would have to take earlier in the year. Accordingly, the payment schedule would be constructed from June 1979 backwards. City projections indicate that the following amounts would be available to MAC in April and June, after meeting all First Resolution and Second Resolution funding requirements in fiscal 1979:

- June 30, 1979 -- $140 million Sales Tax;
- June 25, 1979 -- $392 million Per Capita Aid;
- April 12, 1979 -- $164 million Sales Tax.
1 March 1978
Arthur J. Levitt
Page Three

The Stock Transfer Tax revenues, projected to be $250 million in 1979, are also available to MAC, but are not included in the above calculations.

Using the above Sales Tax and Per Capita Aid projections, MAC could expect to receive approximately $696 million in revenues during April and June after providing funding for its First and Second Resolution bonds. These revenues could provide for payment of principal and interest on MAC notes on April 12, 1979 and June 30, 1979. If $500 million in notes were issued, the expected revenues of $696 million would provide coverage of principal and interest of approximately 1.3 to 1.0.

Sincerely,

THE MUNICIPAL ASSISTANCE CORPORATION
FOR THE CITY OF NEW YORK

[Signature]
Stephen J. Weinstein
Deputy Executive Director

cc: Sidney Schwartz

SJW:bba
IN THE STATE OF NEW YORK
REGULATION NO. 85
(11 NYCHRR 136)

PROCLAMATION OF STANDARDS WITH RESPECT TO ACTUARILY FUND PUBLIC RETIREMENT SYSTEMS IN NEW YORK STATE

I, Albert B. Lewis, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 10, 11, and 36-a of the Insurance Law of the State of New York, do hereby promulgate the following Part 136 of Title 11 of the Official Compilation of Codes, Rules and Regulations (Regulation No. 85), to take effect immediately upon filing with the Secretary of State, to read as follows:

Section 136.1 Preamble:

A. Subdivision 2 of Section 36-a of the Insurance Law, as added by Chapter 302 of the laws of 1973, authorizes the Superintendent of Insurance to promulgate certain standards with respect to the public retirement and pension systems of the State of New York or of a municipality thereof. Specifically, the subdivision provides as follows:

"2. Notwithstanding any other provision of law, including the administrative code of the city of New York, the superintendent shall, in addition to any other powers conferred upon him by law, have the following authority with respect to any system:

"(b) To promulgate and amend from time to time, after consultation with the permanent commission on public employee pension and retirement systems and the administrative heads of systems and after a public hearing, standards with respect to actuarial assumptions, accounting practices, administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness."

B. This Regulation is designed to implement the legislative intent contained in the foregoing.

Section 136.2 Definitions: The following words and phrases, as used in this Regulation, unless a different meaning is plainly required by the context, shall have the following meanings:

A. "Retirement System" shall mean, as the context may require, any of the following public employee retirement systems:

(1) The New York State Employees' Retirement System;
(2) The New York State Police and Firemen's Retirement System;
(3) The New York State Teachers' Retirement System;
(4) The New York City Employees' Retirement System;
(5) The Police Pension Fund, Article 2 (New York City);
(6) The Fire Department Pension Fund, Article 1-B (New York City);
(7) The New York City Teachers' Retirement System; and
(8) The Board of Education Retirement System of the City of New York.

B. "Administrative Head" shall mean, if not otherwise defined by law, the board of trustees of a Retirement System, in their individual and collective capacities.

C. "Governmental Unit" shall mean New York State, any political subdivision thereof, or public authority created by such Governmental Unit.

Section 130.3 Actuarial Assumptions:
(to be promulgated)

Section 130.4 Accounting Practices:

A. All records, including work papers for the preparation of the annual statement filed with the Insurance Department, shall be available to the Department's examiners and shall not be destroyed unless authorized by the Superintendent.

B. Books of account and records of each retirement system shall be maintained by fiscal years for which the system files its reports, in permanent and legible form and in such condition that legible copies can be reproduced from them.

C. Each system shall maintain a classification of its accounts, numbered and titled, together with an accurate description of the content of each account by debit and credit. Such classification of accounts shall be consistent with the requirements of the annual statement form prescribed by the Superintendent.

D. Each system shall maintain records which set forth the expenses incurred by it or on its behalf in the course of its operations.

E. No authorization for a disbursement shall be valid unless signed by two signatories designated by the Administrative Head.

F. Monthly bank reconciliations shall be prepared by persons other than those handling receipts and disbursements.

G. Each system shall have on its staff an internal auditor who shall report directly to the Administrative Head and shall submit to the Administrative Head regular reports of the audits of the system's records and accounting procedures including recommendations for improvement and correction.

Section 130.5 Administrative Efficiency:
(to be promulgated)

Section 130.6 Discharge Of Fiduciary Responsibilities:
A. The Administrative Heads are fiduciaries and as such shall act solely in the interests of the members and beneficiaries of the systems they administer. They shall perform their responsibilities in a manner consistent with those of a reasonably prudent person exercising care, skill and caution.

B. The assets of a system shall at all times be under the control of the Administrative Head.

C. No investment or loan transaction shall be made by a system unless the same has been approved by the Administrative Head. The Administrative Head may delegate its powers of investment to a committee or agent of the Administrative Head within well-defined established guidelines. Such committee or agent shall render timely written reports of its activities to the Administrative Head under a schedule to be established by the Administrative Head and shall render special reports whenever requested by the Administrative Head. Does every investor have to be notified in the end.

D. In respect to the delegation of investment powers, the Administrative Head shall periodically review:

1. the present holdings in the investment account;
2. any marked changes in the account during the preceding period;
3. the reasons for such changes and the results achieved thereby;
4. the investment activity in the account including the rate of turnover; and
5. any other factors the Administrative Head considers pertinent to an analysis of the financial performance and planning, consistent with its obligation as a fiduciary.

E. The Administrative Head shall adopt, as shall be deemed necessary, such mortality, service and other tables recommended by the system's actuaries and certify the rates of deduction from compensation and ascertain contributions by the employers computed to be necessary to pay the benefits authorized under the provisions of law. The Administrative Head shall submit to the Superintendent, in writing, reasons for failure to adopt the recommendations of the actuary as presented to it.

F. The Administrative Head shall not reverse, reject, or unduly delay the adoption of the recommendations of a system's medical board in the performance of its statutory duty, unless such rejection, reversal or delay is supported by objective reasons recorded in the minutes of the meetings of the Administrative Head.

G. The Administrative Head shall ascertain when contributions to a system are due and institute appropriate procedures to enforce prompt payment thereof. Contributions which are more than three months overdue during a fiscal year shall be reported to the Superintendent by a schedule appended to the annual statement filed with the Insurance Department.

H. The Administrative Head, and its consultants, agents and employees, shall not

1. deal with the assets of a system for their own account;
2. act in any capacity in any transaction involving a system on behalf of a party whose interests are adverse to a system or its members;
receive any consideration from any party in connection with a
transaction involving a system’s funds or its assets; or
(4) own or maintain any indicia of ownership or personal interest
in any assets of a system other than an interest in the system
as a member or beneficiary.

I. The Administrative Head shall record and maintain proper minutes of
its meetings, and shall furnish such minutes promptly to the Superintendent.

Section 136.7 Investment Policies:
(To be promulgated)

Section 136.8 Financial Soundness:
(To be promulgated)

Section 136.9 Enforcement:

A. Failure to implement provisions of applicable law shall be regarded
as a breach of fiduciary responsibility.

B. Any Administrative Head, executive or employee of a pension system
subject to supervision by the Superintendent of Insurance who willfully
violates or knowingly participates in a violation of any standard promulgated
pursuant to Section 36-a of the Insurance Law shall be guilty of a breach of
fiduciary responsibility.

C. In any case where, after notice and a hearing, the Superintendent finds
that any public pension fund has been depleted by reason of any wrongful or
negligent act or omission of the Administrative Head or any other person, he
may transmit a copy of his findings to the Attorney General, who may bring
an action in the name of the people of the State, or intervene in an action
brought by or on behalf of a member, for the recovery of such depletion for
the benefit of the members and such other persons as may have an interest in
the fund.

D. In addition to any other remedies available to the Superintendent of
Insurance, he may, after notice and hearing, transmit a finding of breach
of fiduciary responsibility to the person or organization responsible for the
appointment and removal of said trustee or other person along with any
recommendations the Superintendent may have as to future action against said
trustee or other person. Pending action by the appointing or removing
authority, the Superintendent of Insurance may suspend a trustee from all
activities with the public pension system, except such privileges that flow
from membership in the system.

E. The Superintendent of Insurance, in lieu of recommending removal
of a trustee or other person or suspending a trustee, may by order require
said trustee or other person to pay to the people of this State a penalty
in a sum not exceeding five hundred dollars for each offense.
F. The office of any trustee against whom a proceeding is pending, or a recommendation for removal has been made, shall be considered vacant for the purpose of selecting a temporary replacement until action has been taken by an appointing or removing authority.

I, ALBERT B. LEWIS, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is Regulation No. 85 (11 NYCCR 136), promulgated by me on the __________ day of __________, 1978, pursuant to the authority granted by Sections 10, 21 and 36-a of the Insurance Law of the State of New York. Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Bulletin on April ______________, 1978.

Dated: ______________, 1978
Municipal Assistance Corporation  
For The City of New York

MEMORANDUM

Date: 15 November 1977
To: Eugene Keilin
From: Andrew Decker
Re: Pension Fund and Bank Holdings of City and MAC Debt

The following are the estimated holdings of City long-term and MAC debt of various banks and the City Pension funds.

($ millions)

<table>
<thead>
<tr>
<th>Banks</th>
<th>Debt Maturing</th>
<th>Debt Maturing</th>
<th>Total City</th>
<th>Total MAC *</th>
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<tr>
<td></td>
<td>Before 12/31/79</td>
<td>After 12/31/79</td>
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<tr>
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<td>17.8</td>
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<td>14.5</td>
<td>19.1</td>
<td>119.1</td>
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<td>Chase Manhattan</td>
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<td>67.9</td>
<td>255.1</td>
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<tr>
<td>Chemical</td>
<td></td>
<td></td>
<td>36.6</td>
<td>292.8</td>
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<td>Citibank</td>
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<td>81.6</td>
<td>239.3</td>
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<td>Irving Trust</td>
<td>39.8</td>
<td>17.3</td>
<td>57.1</td>
<td>84.7</td>
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<tr>
<td>Marine Midland</td>
<td></td>
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<td>27.9</td>
<td>30.8</td>
</tr>
<tr>
<td>Manufacturers Hanover</td>
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<td>10.2</td>
<td>223.1</td>
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<td>Morgan Guaranty</td>
<td>N.A.</td>
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<td>178.9</td>
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<td>National Bank N.A.</td>
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<td>34.5</td>
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<td>United States Trust</td>
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<td>1.0</td>
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<td><strong>Total Bank Holdings</strong></td>
<td><strong>353.7</strong></td>
<td><strong>1,483.0</strong></td>
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</table>

* After the Restructuring Agreement.
MEMORANDUM To Eugene Keilin  
15 November 1977  
Page Two

<table>
<thead>
<tr>
<th>Pension Funds (as of June 1977)</th>
<th>Debt Maturing Before 6/30/82</th>
<th>Debt Maturing After 6/30/82</th>
<th>Total City</th>
<th>Total* MAC</th>
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<tbody>
<tr>
<td>All funds purchased prior to July 1, 1975</td>
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<td></td>
<td></td>
<td>339.7</td>
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<td>Purchased after July 1, 1975</td>
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<td>N.Y.C.E.R.S.</td>
<td>513.9</td>
<td>304.1</td>
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<td>Teachers</td>
<td>387.3</td>
<td>205.7</td>
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<td>Bd. of Ed.</td>
<td>22.2</td>
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<td>34.1</td>
<td>14.7</td>
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<td>Police (Art. 2)</td>
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<td>83.3</td>
<td>247.6</td>
<td>128.7</td>
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<td>Fire (Art. 2)</td>
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<td>1110.6</td>
<td>616.1</td>
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<td>Total Pension Funds</td>
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<td>2,066.4</td>
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<td>Total Banks and Pension Funds</td>
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<tr>
<td>Total General City Debt</td>
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<td>Outstanding at June 30, 1977</td>
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<td></td>
<td></td>
<td>7,092.4</td>
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* After Restructuring Agreement.
<table>
<thead>
<tr>
<th>Date</th>
<th>CITY Funded Debt*</th>
<th>CITY Short-term Debt</th>
<th>MAC Funded Debt</th>
<th>MAC Short-term Debt</th>
<th>State Advance</th>
<th>TOTAL</th>
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<td>June 30, 1973</td>
<td>$ 6,002.6</td>
<td>$ 2,522.2</td>
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<td>$ 8,524.8</td>
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<td>June 30, 1974</td>
<td>6,728.7</td>
<td>3,421.0</td>
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<td>10,149.7</td>
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<td>June 30, 1975</td>
<td>6,798.0</td>
<td>4,540.2</td>
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<td>---</td>
<td>$ 800</td>
<td>12,138.2</td>
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<td>June 30, 1976</td>
<td>6,542.7</td>
<td>2,071.3</td>
<td>$ 3,676.8</td>
<td>$ 273.5</td>
<td>800</td>
<td>13,164.3</td>
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<td>June 30, 1977</td>
<td>6,918.4</td>
<td>1,027.7</td>
<td>4,139.1</td>
<td>---</td>
<td>800</td>
<td>12,885.2</td>
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<td>June 30, 1978</td>
<td>6,606.0</td>
<td>0</td>
<td>5,158.3**</td>
<td>---</td>
<td>800</td>
<td>12,584.3</td>
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NOTES: * Net of sinking fund assets. For information with respect to the City's sinking funds, see "City Indebtedness -- Funded Debt".

** Assumes no new debt outstanding for balance of 1978.
<table>
<thead>
<tr>
<th>Year of Maturity</th>
<th>NYC Brnch Ret Syst</th>
<th>Teachers Ret Syst</th>
<th>Bd of Edu Ret Syst</th>
<th>Police Art 2</th>
<th>Fire 1-B</th>
<th>Fire 1-A</th>
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<td>1978</td>
<td>400,000</td>
<td>280,000</td>
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<td>1979</td>
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<td>1981</td>
<td></td>
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<tr>
<td>1982</td>
<td>9,180,500</td>
<td>6,276,500</td>
<td>87,000</td>
<td>1,001,000</td>
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<td>7,866,500</td>
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<td>87,000</td>
<td>711,000</td>
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<td>1986</td>
<td>22,367,500</td>
<td>15,356,500</td>
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<td>5,128,000</td>
<td>1,466,000</td>
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<td>6,218,000</td>
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<td>1,128,000</td>
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<td>1,128,000</td>
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<td>1994</td>
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<td>2001</td>
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<td>140,000</td>
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<td>TOTAL</td>
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Total: $15000
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<tr>
<th>Date</th>
<th>Police</th>
<th>Fire</th>
<th>Total</th>
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<tr>
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<td>34,000</td>
<td>59,000</td>
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<tr>
<td>11-25-59</td>
<td>25,000</td>
<td>34,000</td>
<td>59,000</td>
</tr>
<tr>
<td>DATE MATURITY</td>
<td>N/AERS</td>
<td>TEACHERS</td>
<td>POLICE</td>
</tr>
<tr>
<td>---------------</td>
<td>--------</td>
<td>----------</td>
<td>--------</td>
</tr>
<tr>
<td>1961-12-31</td>
<td>$765,000</td>
<td>$1,500,000</td>
<td>$37,000</td>
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<tr>
<td>1962-12-31</td>
<td>$776,000</td>
<td>$820,000</td>
<td>$20,000</td>
</tr>
<tr>
<td>FY 1963-64</td>
<td>$776,000</td>
<td>$970,000</td>
<td>$57,000</td>
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<tr>
<td>1964-12-31</td>
<td>$776,000</td>
<td>$665,000</td>
<td>$57,000</td>
</tr>
<tr>
<td>FY 1965-66</td>
<td>$776,000</td>
<td>$665,000</td>
<td>$57,000</td>
</tr>
</tbody>
</table>

**TOTAL**:
- N/AERS: $5,400,000
- TEACHERS: $4,500,000
- POLICE: $350,000
- ARMY, NAVY: $3,500,000
- FIRE/FD: $1,250,000
- TOTAL: $14,200,000
MEMORANDUM FROM

JAN 7 1977

JOHN C. BURTON
DEPUTY MAYOR FOR FINANCE

January 3, 1977

TO: Mr. Eugene J. Keilin

For your information -- as we discussed.
December 28, 1976

Dear Abe:

A good friend of mine who represents Clint Murchison's firm here has given me this interesting memo. Perhaps you could have some of your technicians take a look at it.

Kindest regards,

Abraham D. Beame
Mayor
City of New York
City Hall
New York, New York 10007
December 8, 1976

Honorable Robert F. Wagner
425 Park Avenue
New York, New York 10022

Dear Mayor Wagner:

It was good talking with you this morning and having the opportunity to review the suggestion I made yesterday to Jim Brigham, Assistant to the Deputy Mayor for Finance. Jim is an officer of Morgan Guaranty Trust Company, presently on loan to The City of New York.

It is my understanding that various union pension funds presently hold about two-and-one-half billion dollars of 9% New York City obligations, all of which are tax exempt. This tax exemption is of no value to the pension funds since they have no tax obligation in the first instance.

Private investors in the 70% income tax bracket would buy these bonds if they were not concerned with The City's credit rating. I therefore suggest that a plan be developed to have the various pension funds switch their New York City Bond investments to U.S. Treasury Notes and use these Treasury Notes as guarantee of the New York City Bonds which can then be marketed to private investors through the major banks and financial institutions.

The premise of this proposal is that we are presently wasting the tax exemption, but by this scheme can capture it and substantially reduce New York City's interest costs.

The following figures might illustrate our thoughts better:

1. Present Annual Interest Cost: 9% on $2,500,000,000=$225,000,000

2. Assuming that New York City tax exempt Bonds guaranteed by U.S. Treasury Notes can be sold to investors in the 70% tax bracket at 4% interest cost

   = $100,000,000

3. Loss of interest income to pension funds presently receiving 9%: $2,500,000,000 New York City Bonds at 9%

   =$225,000,000

   $2,500,000,000 U.S. Treasury Notes,

   say at 6.2%

   =$170,000,000

   Revenue short fall of $55,000,000 to be made up by
December 8, 1976
Honorable Robert F. Wagner

The City to equalize income to pension funds. This will require some special ingenious structuring.

4. Net Result to City: 4% interest on $2,500,000,000 = $100,000,000

- Make-up Fund to cover revenue short fall to present pension funds holding New York City Bonds = $55,000,000
- Total Cost to The City at Present = $155,000,000 vs. $225,000,000
- Net Savings = $70,000,000

Another Morgan Guaranty Vice President, who is part of their Investment Banking Group and was present at this luncheon felt that the banks and the investment community could successfully sell the New York City Bonds, backed by Treasury Notes, as described above. My own feeling is that the 4% interest cost of this completely safe and tax exempt paper might even be high.

I fully realize that some very special structuring and work with the IRS will be required, but there may not be an easier way to save $70,000,000 annually and also use the same concept for future New York City financing where City and State union pension funds might otherwise be reluctant to purchase additional New York City Bonds.

Sincerely,

Ralph J. Bachenheimer

RJE/mc
November 23, 1976

TO:       Felix G. Rohatyn
FROM:     Paul G. Giddings

RE:       Possible State Pension Sale of MAC Bonds

Don Robinson and John Keohane of Hawkins, Delafield informed me last Thursday that they had heard in confidence that the State was requesting transfer of our Series G bonds from registered to coupon bonds. These are the State pension systems' holdings of $50 million, of which $21.7 million is at 11% maturing 1983-85. We regard this as an indication that the pension systems are preparing for a sale of these bonds. (This was before the Moratorium decision.)

cc:  George D. Gould
     Donna Shalala
     Edward M. Kresky
     Allen L. Thomas

encl
$50,000,000

MAC G

Rates: Various - 8.5, 9, 9.5, 10, 10.5, 10.75, 3/11%
Dated: 8/1/75
Delivered: 8/21/75
First Coupon: 2/1/76
Due: 2/1/77-85

DEBT SERVICE SCHEDULE

<table>
<thead>
<tr>
<th>PAYMENT PERIOD</th>
<th>PRINCIPAL</th>
<th>INTEREST</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 2/2/75 3/1/76</td>
<td>$2,504,828.00</td>
<td>$2,504,828.00</td>
<td></td>
</tr>
<tr>
<td>2 2/2/76 2/1/77</td>
<td>$3,755,000.00</td>
<td>$3,755,000.00</td>
<td></td>
</tr>
<tr>
<td>3 2/2/77 2/1/78</td>
<td>$4,996,000.00</td>
<td>$4,996,000.00</td>
<td></td>
</tr>
<tr>
<td>4 2/2/78 2/1/79</td>
<td>$6,232,000.00</td>
<td>$6,232,000.00</td>
<td></td>
</tr>
<tr>
<td>5 2/2/79 2/1/80</td>
<td>$7,468,000.00</td>
<td>$7,468,000.00</td>
<td></td>
</tr>
<tr>
<td>6 2/2/80 2/1/81</td>
<td>$8,700,000.00</td>
<td>$8,700,000.00</td>
<td></td>
</tr>
<tr>
<td>7 2/2/81 2/1/82</td>
<td>$9,932,000.00</td>
<td>$9,932,000.00</td>
<td></td>
</tr>
<tr>
<td>8 2/2/82 2/1/83</td>
<td>$11,164,000.00</td>
<td>$11,164,000.00</td>
<td></td>
</tr>
<tr>
<td>9 2/2/83 2/1/84</td>
<td>$12,396,000.00</td>
<td>$12,396,000.00</td>
<td></td>
</tr>
<tr>
<td>10 2/2/84 2/1/85</td>
<td>$13,628,000.00</td>
<td>$13,628,000.00</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>$50,000,000.00</td>
<td>$32,724,975.00</td>
<td>$82,724,975.00</td>
</tr>
</tbody>
</table>

Sale: N.Y.S. Pension Funds
Accrued Interest: $287,202.78

Computer File: MACG
MEMORANDUM

TO: THE TRUSTEES OF THE NEW YORK CITY PENSION FUNDS

From: Herbert Elish

Date: July 20, 1976

Enclosed please find a corrected copy of the material distributed at the meeting on July 19, 1976. The revised copy contains additional information requested by certain of the Trustees at the meeting.

cc: Deputy Mayor Axelson
Comptroller Goldin
1. Debt outstanding—City of New York and Municipal Assistance Corporation, as of June 30, 1975 and June 30, 1976

<table>
<thead>
<tr>
<th>($ millions)</th>
<th>6/30/75</th>
<th>6/30/76</th>
<th>CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of New York—Long Term</td>
<td>6,798.0</td>
<td>6,285.2</td>
<td>-512.8</td>
</tr>
<tr>
<td>-Short Term</td>
<td>4,540.2</td>
<td>2,071.1</td>
<td>-2,469.1</td>
</tr>
<tr>
<td>City—Total</td>
<td>11,338.2</td>
<td>8,356.3</td>
<td>-2,981.9</td>
</tr>
<tr>
<td>MAC</td>
<td>---</td>
<td>3,547.2</td>
<td>+3,547.2</td>
</tr>
<tr>
<td>Total—City and MAC</td>
<td>11,338.2</td>
<td>11,903.5</td>
<td>+565.3</td>
</tr>
</tbody>
</table>

NOTES:

a. City figures for 6/30/76 estimated from most recent Financial Plan data.

b. City long-term debt excludes Sinking Fund debt, as these are considered to be fully funded by the Sinking Fund assets.

c. City short-term debt excludes notes held by the Municipal Assistance Corporation, but includes a $250 million BAN held by the State of New York. Short-term debt in moratorium or subject to contractual stretch-out is $1821.1 million, including holdings of banks, pension funds and sinking funds.

d. MAC debt excludes $402.3 million which was funded in fiscal year 1976 for future payments of principal.

e. Debt of other agencies and public benefit corporations is not included.
2. The following table shows for fiscal year 1976 the financing and funding accomplished or arranged by the Municipal Assistance Corporation and the resulting effects on the City of New York:

a. New financing for the City of New York

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Corporation sold long-term bonds to raise</td>
<td>$3,078,685</td>
</tr>
<tr>
<td>The Corporation sold short-term notes to raise</td>
<td>298,500</td>
</tr>
<tr>
<td>The Corporation arranged an agreement by City pension funds to supply the City with long-term financing</td>
<td>2,530,000</td>
</tr>
</tbody>
</table>

The Corporation helped to arrange for the Federal government to supply short-term seasonal financing 2,300,000

Total new money for the City $8,207,185

b. Funding of short-term notes of the City of New York

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>First and second exchange offers of the Corporation's long-term bonds for City notes</td>
<td>598,135</td>
</tr>
<tr>
<td>Exchange by City sinking funds of City bonds for City notes</td>
<td>200,000</td>
</tr>
<tr>
<td>Total City notes funded by bonds of the City and the Corporation</td>
<td>798,135</td>
</tr>
<tr>
<td>Total Financing/Funding made available to the City</td>
<td>$9,005,320</td>
</tr>
</tbody>
</table>

c. As a result of these actions, the City was able to fund a reduction in short-term debt in moratorium or subject to contractual stretch-out from $4,540,200 on June 30, 1975 to $1,821,140 on June 30, 1976 2,719,060

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund its estimated 1976 deficit</td>
<td>1,065,000</td>
</tr>
<tr>
<td>Fund its projected 1977 deficit</td>
<td>686,000</td>
</tr>
<tr>
<td>Finance its long-term capital expenditures for 1976 through 1978</td>
<td>1,841,000</td>
</tr>
<tr>
<td>Finance its 1976 seasonal needs</td>
<td>298,500</td>
</tr>
<tr>
<td>Finance its 1977-78 seasonal needs</td>
<td>2,300,000</td>
</tr>
<tr>
<td>Total use of financing/funding by the City</td>
<td>$8,909,560</td>
</tr>
</tbody>
</table>

1. Excludes $250 million note held by State because the note is not subject to moratorium. This note is included on page 1.
3. The restructuring of MAC debt agreed to by the November 26, 1975 Agreement altered the holdings of the banks, pension funds and sinking funds from various interest rates and maturities to bonds bearing 6% interest and subject to repayment with substantially level debt service for 10 years.

MAC's current proposal is for a second restructuring in which the parties to the November 26 Agreement would forego amortization for 5 years, receiving 6% interest only for that period, and then receive the same schedule of 6%-10% year substantially level debt service which is now scheduled.

This proposed second restructuring would have the following effect on the income of each party for the initial 5 years:

<table>
<thead>
<tr>
<th>Holdings</th>
<th>Debt Service Income Present</th>
<th>Debt Service Income Proposed</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYC Employee Retirement System</td>
<td>275,000</td>
<td>37,364</td>
<td>16,500</td>
</tr>
<tr>
<td>NYC Teachers Retirement System</td>
<td>275,000</td>
<td>37,364</td>
<td>16,500</td>
</tr>
<tr>
<td>Board of Education</td>
<td>10,000</td>
<td>1,359</td>
<td>600</td>
</tr>
<tr>
<td>NYC Policeman's Retirement System</td>
<td>85,000</td>
<td>11,549</td>
<td>5,100</td>
</tr>
<tr>
<td>NYC Fireman's Retirement System</td>
<td>20,000</td>
<td>2,717</td>
<td>1,200</td>
</tr>
<tr>
<td>TOTAL - Pensions</td>
<td>665,000</td>
<td>90,352</td>
<td>39,900</td>
</tr>
<tr>
<td>Commercial Banks</td>
<td>1,011,823</td>
<td>137,474</td>
<td>60,709</td>
</tr>
<tr>
<td>Sinking Funds</td>
<td>131,500</td>
<td>17,867</td>
<td>7,890</td>
</tr>
<tr>
<td>ALL PARTIES TOTAL</td>
<td>1,808,323</td>
<td>245,693</td>
<td>108,499</td>
</tr>
</tbody>
</table>

The Proposed amount represents 6% interest on the Holdings which would continue to be paid. The Change column reflects the deferral of principal payments for 5 years.

(Detail of Columns 2 and 4 does not add to the total due to rounding.)
The debt service savings to MAC, and indirectly to the City, are different from the debt service payments received by the Pension Funds due to the Capital Reserve Fund requirements contained in the MAC legislation and bond resolutions. The following table shows the effect on MAC, and therefore the City, of the proposed second restructuring.

<table>
<thead>
<tr>
<th></th>
<th>Debt Service Funding Requirement ($000)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Present</td>
</tr>
<tr>
<td></td>
<td>DEBT SERVICE</td>
</tr>
<tr>
<td>Pension Funds</td>
<td>90,352</td>
</tr>
<tr>
<td>Commercial Banks</td>
<td>137,474</td>
</tr>
<tr>
<td>Sinking Funds</td>
<td>17,867</td>
</tr>
<tr>
<td></td>
<td>245,693</td>
</tr>
<tr>
<td></td>
<td>Proposed</td>
</tr>
<tr>
<td></td>
<td>DEBT SERVICE</td>
</tr>
<tr>
<td>Pension Funds</td>
<td>39,900</td>
</tr>
<tr>
<td>Commercial Banks</td>
<td>60,709</td>
</tr>
<tr>
<td>Sinking Funds</td>
<td>7,890</td>
</tr>
<tr>
<td></td>
<td>108,499</td>
</tr>
</tbody>
</table>

(Detail does not add to totals due to rounding.)

Due to the Capital Reserve Fund requirements, these savings would be realized for 4 rather than 5 years.
BASIS OF COMPUTING DEBT SERVICE

A schedule of substantially level debt service at 6% for 10 years would theoretically require payments of $135.87 per year per $1000 of debt outstanding. However, MAC's debt service schedules are prepared on the basis of rounding principal payments to each pension fund to the nearest $5000, the denomination of the bonds. Because MAC cannot pay less than the level debt service amount, the consequence is to have very slightly higher payments in the earlier years, and slightly lower payments in the later years. These payments resemble a mortgage in that the principal portion of the payment rises each year and interest, paid only on the remaining balance, declines each year. As an example, here are the actual debt service payments to the pension funds on their $665 million of MAC bonds in the first, fifth and tenth years:

<table>
<thead>
<tr>
<th>($000)</th>
<th>YEAR 1</th>
<th>YEAR 5</th>
<th>YEAR 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal</td>
<td>50,470</td>
<td>63,710</td>
<td>85,235</td>
</tr>
<tr>
<td>Interest</td>
<td>39,900</td>
<td>26,658</td>
<td>5,114</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>90,370</strong></td>
<td><strong>90,368</strong></td>
<td><strong>90,349</strong></td>
</tr>
</tbody>
</table>

The 10-year total of debt service payment is $903,519,200, or an average of $90,351,920 per year. Therefore, $90,352,000 was used as the average annual amount in the previous schedules, even though there may not be any one year in which this is the actual amount.

In computing debt service funding requirements, a Capital Reserve Fund must be added. The Capital Reserve, simply stated, builds at 25% per year for 4 years to an amount equal to one year's debt service payments. The Capital Reserve Fund is required both by statute and by the MAC bond resolutions.
Board of Trustees
New York City Employees'
Retirement System
Attention: Hon. Melvin Goldstein
Executive Director
220 Church Street
New York, N.Y. 10013

Retirement Board
New York City Teachers'
Retirement System
Attention: Hon. Wallace F. Sullivan,
Executive Director
220 Church Street
New York, N.Y. 10013

Board of Trustees
Police Pension Fund,
Article 2
Attention: Deputy Commissioner
Daniel O'Neal Vona
1 Police Plaza,
New York, N.Y. 10038

Board of Trustees, Fire Department
Pension Fund, Article 1-B
Attention: Deputy Commissioner
Stephen J. Murphy
110 Church Street
New York, N.Y. 10007

Retirement Board
Board of Education
Retirement System
Attention: Hon. Joseph Antoinette,
Executive Director
65 Court Street
Brooklyn, N.Y. 11201

Re: Purchases of City Bonds by Retirement Systems and Pension Funds, scheduled for July 1, 1976
OPINION NO. 108,336

Hon. Harrison J. Goldin
City Comptroller
Attention: Hon. Sol Lewis
Third Deputy Comptroller

Room 707
Municipal Building
New York, N.Y. 10007

Municipal Assistance
Corporation for The
City of New York
Attention: Mr. James Keegan
2 World Trade Center
New York, N.Y. 10047

Gentlemen:

This office has been informed by the office of
the City Comptroller that purchases of $125,000,000 of City
bonds by the above-mentioned Retirement Systems and Pension
Funds (such Systems and Funds being hereinafter referred to
as "Pension Funds") have been scheduled for July 1, 1976.

We are informed that these bond purchases have
been scheduled under Paragraph 7 of the Amended and Restated
Agreement made as of November 26, 1975 by the Municipal As-
sistance Corporation for the City of New York ("MAC"), cer-
tain banks, the Pension Funds and the City Sinking Funds.
Paragraph 7 provides that subject to certain provisions here-
inafter described, the Pension Funds agree to make certain
purchases of City bonds in accordance with a schedule allo-
cating the purchases among the respective Pension Funds.

Paragraph 7 (e) of the Agreement provides that the
obligations of the Pension Funds to purchase City bonds pur-
suant to Paragraph 7 "shall be subject to agreement to and
fulfillment of such agreements by all parties referred to in
this Paragraph 7 and shall be conditioned upon each of the
following facts being true on the date of each such purchase.***." There is set forth in Paragraph 7 (e), after the quoted lan-
guage, a listing of 9 conditions which are required to be satis-
fied with respect to any purchase of City bonds under Para-
graph 7, in order that the Pension Funds may be obligated to
make such purchase.
With regard to the above-described bond purchases scheduled for July 1, 1976, this office has conducted a review in order to determine whether there has been compliance with:

(1) the above-quoted preliminary requirement of Paragraph 7 (e) that all parties mentioned therein have fulfilled their agreements thereunder; and

(2) the above-mentioned 9 conditions.

Attached to this opinion as Exhibits "A" to "M", inclusive, are certain certifications and documents which show, in relation to the bond purchases scheduled for July 1, 1976, satisfaction of certain conditions of the Agreement and such substantial compliance with other conditions as to constitute satisfaction thereof.

I. SATISFACTION OF PRELIMINARY REQUIREMENT OF PARAGRAPH 7 (e) REGARDING FULFILLMENT OF AGREEMENTS OF PARTIES REFERRED TO IN SUCH PARAGRAPH

The office of the City Comptroller has informed this office that the following purchases of City bonds by the Pension Funds have taken place under the Agreement of November 26, 1975:
## Combined Total of Purchases of December 5, 1975, December 15, 1975 and March 26, 1976

<table>
<thead>
<tr>
<th>Dates</th>
<th>Purchaser</th>
<th>Amount</th>
<th>Percent of Total Dec. 5, Dec. 15, 1975 and March 26, 1976</th>
<th>Prescribed proportion of required purchases of $2.5 billion 1976 Purchases under Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 5, 1975</td>
<td>N.Y. City Employees' Retirement System</td>
<td>$235,000,000</td>
<td>47%</td>
<td>47%</td>
</tr>
<tr>
<td>December 15, 1975</td>
<td>N.Y. City Teachers' Retirement System</td>
<td>$172,000,000</td>
<td>34.4%</td>
<td>34.4%</td>
</tr>
</tbody>
</table>
OPINION NO. 108,336

<table>
<thead>
<tr>
<th>Dates</th>
<th>Purchaser</th>
<th>Combined Amount</th>
<th>Percent of Total Dec. 5, Dec. 15, 1975 and March 26, 1976 Purchases</th>
<th>Prescribed proportion of required purchases of $2.5 billion under Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 5, 1975,</td>
<td>N.Y. City Police Pension Fund, Article 2</td>
<td>$73,000,000</td>
<td>14.6%</td>
<td>14.6%</td>
</tr>
<tr>
<td>December 15, 1975 and</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>March 26, 1976</td>
<td>N.Y. City Fire Department Pension Fund, Article 1-B</td>
<td>$10,000,000</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>N.Y. City Board of Education Retirement System</td>
<td>$10,000,000</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total as of March 26, 1976</td>
<td></td>
<td>$500,000,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(The foregoing shows compliance with the provisions of Paragraph 7(b) of the Agreement calling for purchases of "up to $500,000,000 serial bonds of the City" by the Pension Funds prior to June 30, 1976)

Purchases of December 17, 1975
(pursuant to paragraph 7 [a] of Agreement of November 26, 1975)

<table>
<thead>
<tr>
<th>Date</th>
<th>Purchaser</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 17, 1975</td>
<td>N.Y. City Employees' Retirement System</td>
<td>$20,000,000</td>
</tr>
<tr>
<td></td>
<td>N.Y. City Teachers' Retirement System</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>
Purchases scheduled for July 1, 1976.

<table>
<thead>
<tr>
<th>Date</th>
<th>Purchaser</th>
<th>Amount</th>
<th>Percentage of combined purchases up to and including July 1, 1976*</th>
<th>Prescribed proportion of required purchases of $2.5 billion under Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 1976</td>
<td>N.Y. City Employees' Retirement System</td>
<td>$58,700,000</td>
<td>47%</td>
<td>47%</td>
</tr>
<tr>
<td></td>
<td>N.Y. City Teachers' Retirement System</td>
<td>$43,000,000</td>
<td>34.4%</td>
<td>34.4%</td>
</tr>
<tr>
<td></td>
<td>N.Y. City Police Pension Fund, Article 2</td>
<td>$18,300,000</td>
<td>14.6%</td>
<td>14.6%</td>
</tr>
<tr>
<td></td>
<td>N.Y. City Fire Department Pension Fund, Article 1-B</td>
<td>$2,500,000</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td>N.Y. City Board of Education Retirement System</td>
<td>$2,500,000</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$125,000,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*These purchases do not include the purchases of $30,000,000 of City bonds made by the New York City Employees' Retirement System and the New York City Teachers' Retirement System on December 17, 1975, as described above. Under the provisions of Paragraph 7(a) of the Agreement, these purchases were required to be made by these systems in addition to their prescribed shares of the required purchases of $2.5 billion, as set forth in Schedule B attached to the Agreement.
OPINION NO. 108,336

On the basis of the foregoing, it is the opinion of this office that as of the date of this opinion, all of the parties to the Agreement referred to in Paragraph 7 thereof have fulfilled their agreements thereunder.

II. SATISFACTION OF 9 CONDITIONS
SET FORTH IN PARAGRAPH 7 (e)

The 9 conditions and the certifications showing satisfaction thereof by reason of full or substantial compliance therewith, are as follows:

1. Condition set forth in Paragraph 7 (e) (i)

This condition, as set forth in the Agreement of November 26, 1975, reads as follows:

"(i) the City shall have timely paid when due principal and interest on all bonds of the City outstanding at such time," [the time of the bond purchase]

Attached hereto as Exhibit "A" is a certification by the City Comptroller, dated July 1, 1976, attesting that the terms of this condition have been met by the City.

2. Condition set forth in Paragraph 7 (e) (ii)

This condition reads as follows:

"(ii) the City shall not be under the jurisdiction of any court pursuant to any proceedings under the federal bankruptcy laws or pursuant to title 6A of the Local Finance Law (or any statute analogous in purpose or effect to any such laws or such Law)."

The Corporation Counsel hereby certifies that this condition has been met in that the City is not under the jurisdiction of any court pursuant to any proceedings under the Federal bankruptcy laws or pursuant to title 6A of the Local Finance Law (or any statute analogous in purpose or effect to any such laws or such Law).
3. **Condition set forth in Paragraph 7 (e) (iii)**

This condition reads as follows:

"(iii) a State law containing provisions with respect to the legal status of the Pension Funds and their Trustees' responsibilities, satisfactory to such Trustees, shall have been enacted and shall be effective."

This condition has been met through the enactment of Chapter 890 of the Laws of 1975, which was approved by the Governor on December 5, 1975 and has been in effect since that date. By a certificate executed on December 5, 1975, in behalf of the Trustees of each of the Pension Funds, the Trustees of each such Fund agreed that Chapter 890 is satisfactory to them and fulfills this condition.

4. **Condition set forth in Paragraph 7 (e) (iv)**

This condition reads as follows:

"(iv) the City shall have made to the Pension Funds all contributions and other payments required by law."

There is set forth in the above-mentioned certification of the City Comptroller, attached hereto as Exhibit "A", a further certification that the City has made to the Pension Funds all contributions and other payments required by law. The City Comptroller, under the terms of the Pension Fund laws, is the custodian of their moneys and as such, receives in their behalf all required City contributions to the Pension Funds.

5. **Condition set forth in Paragraph 7 (e) (v)**

This condition reads as follows:

"(v) the City shall, in connection with each purchase prior to February 1, 1976, or the first date on which the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a
report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in the form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board,"

Attached hereto as Exhibits "B", "C", "D", "E" and "F" are certified copies of resolutions adopted by the Boards of Trustees of the Pension Funds which, among other things, (i) authorize and approve the purchases of bonds scheduled to be made by the Pension Funds in question on July 1, 1976 and (ii) acknowledge that delivery to each Board and its representative, prior to such purchase, of the latest update of the official statement of the City, will constitute compliance with and satisfaction of the above-quoted condition of Paragraph 7 (e) (v) with respect to such purchase.

6. Condition set forth in Paragraph 7 (e) (vi)

This condition reads as follows:

"(vi) the Internal Revenue Service shall have ruled, or the Congress of the United States shall have provided, that such purchases of obligations by the Pension Funds pursuant to this Agreement shall not constitute prohibited transactions or otherwise adversely affect the qualified status of the Pension Funds for the purposes of the Internal Revenue Code of 1954, as amended,"

Attached hereto as Exhibit "G" is a copy of Public Law 94-236 which was enacted by the Congress of the United States and approved by the President on March 19, 1976. In the opinion of the Corporation Counsel, through the enactment of this legislation, the Congress has provided that the purchases of City bonds by the Pension Funds pursuant to the Agreement
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of November 26, 1975, including the purchases scheduled for July 1, 1976, shall not constitute prohibited transactions or otherwise adversely affect the qualified status of the Pension Funds for the purposes of the Internal Revenue Code of 1954, as amended. Accordingly, above-quoted condition (vi) is satisfied by the enactment of this legislation.

7. **Condition set forth in Paragraph 7 (e) (vii)**

This condition reads as follows:

"(vii) the Federal legislation referred to in Paragraph 6 above shall have been enacted and shall be in force,"

Paragraph 6 of the Agreement reads as follows:

"6. Each of the agreements referred to in Paragraphs 3 and 5 is subject to agreement to and fulfillment of such agreements by all other parties referred to in such Paragraphs 3 and 5 and to enactment prior to February 1, 1976 of Federal Legislation that would provide, by way of guarantees or otherwise, for the seasonal financing needs of the City over the period from the effective date thereof through a date not earlier than June 30, 1978, in a maximum amount of not less than $2,300,000,000 at any time outstanding.

On December 10, 1975, the President of the United States approved Public Law 94-143 enacted by the Congress. This Federal statute provides for the seasonal financing needs of the City under terms and conditions meeting the requirements of Paragraph 6 of the Agreement. Accordingly, the enactment of this Federal legislation satisfies condition (vii).

8. **Condition set forth in Paragraph 7 (e) (viii)**

This condition reads as follows:

"(viii) at the time of any such purchase, there shall have been delivered to and for the benefit of each Pension Fund an unqualified approving opinion as to legality from
recognized bond counsel and such other documents as counsel for the Pension Funds shall reasonably request in form and substance satisfactory to such counsel."

The office of the Corporation Counsel has been advised by the office of the City Comptroller that the firm of Rogers & Wells, Esqs., 200 Park Ave., New York, N.Y. 10017, recognized bond counsel, is acting as bond counsel with respect to the bond purchases scheduled for July 1, 1976. Rogers & Wells, Esqs., have delivered to the office of the Corporation Counsel a copy (in final form) of the opinion which they will render as bond counsel in connection with such bond purchases. After examination of this opinion, it is the conclusion of the Corporation Counsel that it constitutes an unqualified approving opinion as to the legality of the bonds which are to be purchased by the Pension Funds on July 1, 1976.
9. Condition set forth in Paragraph 7 (e) (ix)

This condition reads as follows:

"(ix) no other party to this Agreement shall be in breach of any provision hereof."

Under the provisions of Paragraph 5 of the Agreement, the banks, the Pension Funds and the Sinking Funds have agreed in substance that as of February 1, 1976, subject to the fulfillment of certain conditions, their MAC bonds (which bear interest at rates varying from 6% to 11% per year and have varying maturities) will bear interest at the rate of 6% per year and will be payable on a substantially level debt service basis from February 1, 1977 to February 1, 1986.

Under the provisions of Paragraph 5:

(i) certain of the MAC bonds held by the banks, as well as by the Pension Funds and Sinking Funds, if such Funds so elect, are to be adjusted as above described through amendments to the original Series Resolutions of MAC under which the bonds were issued (the "Amending Procedure"); and

(ii) certain other MAC bonds are to be so adjusted through an exchange for new MAC bonds to be issued pursuant to MAC's First General Bond Resolution adopted July 2, 1975 and a new series resolution called the "1976 Series BB Resolution" (the "Exchange Procedure"). The Exchange Procedure is also available to the Pension Funds and Sinking Funds, at their election, as a method of adjusting the interest rate and maturities of their MAC bonds as above described.

In order to carry out the provisions of Paragraph 5 of the Agreement, certain amendments to sections 203 and 902 of the above-mentioned First General Bond Resolution are necessary, as well as certain amendments to the MAC resolutions governing 1975 Series C, D, E, H and J bonds held by the banks.

As appears from the letter to this office from Herbert Elish, Executive Director of MAC, dated June 29, 1976, and from the letter to this office from Paul, Weiss, Rifkind, Wharton & Garrison,
General Counsel to MAC, also dated June 29, 1976:

a. MAC, by a notice to bondholders dated May 25, 1976, requested consents to the amendments to sections 203 and 902 of the First General Bond Resolution and the amendments to the Series C, D, E, H and J Resolutions;

b. The steps required to effect such amendments have been taken, including the granting of the requisite consents to such amendments by bondholders, and such amendments will become conclusively binding after expiration of a 30-day period terminating mid-night, July 16, 1976, unless a court determination directs otherwise;

c. The banks have delivered to MAC their written elections as to whether they will proceed as to their holdings of particular bonds under the Amending Procedure or the Exchange Procedure;

d. MAC is aware that the Pension Funds and the Sinking Funds have elected to proceed, as to their holdings of bonds, under the Exchange Procedure;

e. MAC and its General Counsel believe that on the basis of the foregoing, all parties to the Agreement intend to complete the restructuring of MAC bonds called for by Paragraph 5 of the Agreement prior to the next interest payment date, which is August 1, 1976, the formal closing date being presently scheduled for July 19, 1976.

Attached hereto as Exhibits "J", "K", "L", "M" and "N" are certified copies of resolutions of the Boards of Trustees of the Pension Funds, each of which sets forth, among other things, an election by the Pension Fund to exchange its holdings of MAC bonds pursuant to the Exchange Procedure.
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Attached hereto as Exhibit "O" is a copy of a letter, dated July 1, 1976, sent to MAC by the Third Deputy Comptroller in which the Comptroller's office confirms to MAC the election of the Sinking Funds to exchange their holdings of MAC bonds pursuant to the Exchange Procedure.

In view of the foregoing, it is the opinion of this office that the banks, the Pension Funds, the Sinking Funds and MAC, as of the date of this opinion, are to be considered to be in substantial compliance with the provisions of Paragraph 5 of the Agreement.
III. MATURITY DATES OF BONDS TO BE PURCHASED

It is provided in effect in Paragraph 7(b) of the Agreement of November 26, 1975, that the bonds which are to be purchased by the Pension Funds on July 1, 1976 "shall mature on such date or dates as shall be mutually agreed upon". Each of the Resolutions attached hereto as Exhibits "B", "C", "D", "E" and "F" contains an assent by the Board of Trustees of the Pension Fund in question that the maturities of the bonds which it is to purchase on July 1, 1976 shall be as set forth in the schedule incorporated in the Resolution.

IV. FULFILLMENT OF CONDITION OF PENSION FUND RESOLUTIONS THAT FEDERAL LOAN OF $500,000,000 BE MADE TO THE CITY

Paragraph 2 of each of the Pension Fund Resolutions attached hereto as Exhibits "B", "C", "D", "E" and "F" provides that the authorization for the purchase of City bonds by the Pension Fund in question scheduled for July 1, 1976, as set forth in Paragraph 1 of the Resolution, shall not be effective and that such purchase shall not be made unless prior to the consummation of such purchase, a new loan of $500,000,000 is made to the City by the Secretary of the Treasury of the United States under Public Law 94-143 (the New York City Seasonal Financing Act of 1975).

The office of the City Comptroller has informed this office that such a loan is in process and that prior to the consummation of the bond purchases scheduled for July 1, 1976, the following documents will be submitted to the office of the Corporation Counsel as proof that such loan has been made:

(1) A written notification to this office from the Third Deputy City Comptroller that such loan has been made;

(2) A form issued by the Federal Reserve Bank of New York showing that Federal funds in the amount of $500,000,000 have been transferred to an account of the Chase Manhattan Bank with such Federal Reserve Bank, to the credit of the Finance Administration of the City of New York; and
OPINION NO. 108,336

(3) A letter from Chase Manhattan Bank, signed by an officer thereof, advising that the Chase Manhattan Bank has credited the Finance Administration of the City of New York with the sum of $500,000,000.

CONCLUSIONS

In summary, it is my opinion that:

1. Except as indicated below, all of the conditions of the Agreement of November 26, 1975 required to be satisfied in order to obligate the Pension Funds to make the bond purchases scheduled for July 1, 1976, have either been satisfied by occurrence of the prescribed actions or events or have been so substantially complied with as to be deemed to be satisfied in the instance where the issue of substantial compliance was discussed above.

2. The condition of Paragraph 7 (e) (v) relating to furnishing of an official statement of the City will be complied with and satisfied upon delivery of the latest update of the official statement as above described.

3. The condition of Paragraph 7 (e) (viii) as to delivery of an opinion by bond counsel will be satisfied upon delivery of the opinion of Rogers & Wells, Esqs. described above.

4. The conditions of the Pension Fund Resolutions, (copies of which are hereto attached as Exhibits "B", "C", "D", "E" and "F") will be satisfied upon submission to this office, prior to the consummation of the City bond purchases scheduled for July 1, 1976, of the above-described documentary proof of the making of a $500,000,000 Federal loan to the City.

Sincerely,

[Signature]

Corporation Counsel

16
EXHIBIT "A"

OFFICE OF THE COMPTROLLER
OF THE CITY OF NEW YORK

July 1, 1976

Hon. W. Bernard Richland
Corporation Counsel
law Department
Municipal Building
New York, N. Y.

Re: Purchases of City bonds by
City Retirement Systems
and Pension Funds scheduled
for July 1, 1976

Sir:

You have requested this office to advise you as to
whether, in connection with the above-mentioned scheduled
bond purchases, certain conditions specified in Paragraph 7
(e) of the Agreement of November 26, 1975 among the Municipal
Assistance Corporation for The City of New York, certain banks,
five City Retirement Systems and Pension Funds and the City
Sinking Funds have been satisfied.

The conditions in question appear in the following
language of Paragraph 7 (e):

"(e) The obligations of the Pension
Funds to purchase bonds pursuant to this
Paragraph 7 shall be subject to agree-
ment to and fulfillment of such agree-
ments by all parties referred to in
this Paragraph 7 and shall be conditioned
upon each of the following facts being

EXHIBIT "A"
true on the date of each such purchase:
(i) the City shall have timely paid
when due principal and interest on all
bonds of the City outstanding at such
time, *** (iv) the City shall have
made to the Pension Funds all contri-
butions and other payments required
by law, ***

Please be advised that conditions (i) and (iv) have
been satisfied with respect to the above-mentioned scheduled
purchases. This office hereby certifies:

(1) That the City has timely paid
when due principal and interest on all
bonds of the City now outstanding; and

(2) That the City has made to the
Retirement Systems and Pension Funds all
contributions and other payments required
by law.

Sincerely,

[Signature]

SOL LEWIS
Third Deputy Comptroller
WHEREAS, under the terms of the Amended and Restated Agreement (the "Agreement") made as of November 26, 1975 by the Municipal Assistance Corporation for the City of New York, certain banks, the New York City Employees' Retirement System and the other four actuarially funded retirement systems of the City and four City Sinking Funds, it was agreed that these five retirement systems (the "Pension Funds"), subject to certain conditions, shall purchase $2.53 billion of City bonds; and

WHEREAS, Paragraph 7(b) of the Agreement provides that the Pension Funds shall purchase *** during the 1976-1977 fiscal year of the City up to $1,500,000,000 principal amount of serial bonds of the City ***; and

WHEREAS, the Office of the City Comptroller has informed the Board of Trustees that the City desires that the Pension Funds, pursuant to the terms of the Agreement, purchase a total of $125,000,000 principal amount of City serial bonds on July 1, 1976, of which the New York City Employees' Retirement System is to purchase $58,200,000 principal amount of bonds; and

WHEREAS, Paragraph 7(e)(v) of the Agreement provides as follows:

"(e) The obligations of the Pension Funds to purchase bonds pursuant to this Paragraph 7 shall be subject to the agreement to and fulfillment of such agreements by all parties referred to in this Paragraph 7 and shall be conditioned upon each of the following facts being true on the date of each such purchase. *** (v) the
City shall, in connection with each purchase prior to February 1, 1976, or the first date on which the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board; ** **; and

WHEREAS, the Board of Trustees has been informed that the City has been and is putting forth its best efforts to complete an official statement as promptly as is practicable; and

WHEREAS, the City has delivered to the Board of Trustees a proof of an official statement with respect to the City, dated June 12, 1976; and

WHEREAS, the office of the City Comptroller has informed the Board of Trustees that prior to the consummation of the requested purchases of City bonds by the Pension Funds to take place on July 1, 1976, there will be delivered to the Board of Trustees, or its representative, the latest update of the official statement of the City;

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:
1. Subject to the provisions of paragraph 2 of this resolution, the Board of Trustees hereby authorizes and approves the purchase by the New York City Employees' Retirement System, on July 1, 1976, of $58,700,000 principal amount of City serial bonds bearing interest at the rate of 9% a year and having maturities as follows:

<table>
<thead>
<tr>
<th>Principal Amount</th>
<th>Maturity Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>$14,675,000</td>
<td>1/1/78</td>
</tr>
<tr>
<td>$14,675,000</td>
<td>1/1/79</td>
</tr>
<tr>
<td>$14,675,000</td>
<td>1/1/80</td>
</tr>
<tr>
<td>$14,675,000</td>
<td>1/1/81</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$58,700,000</strong></td>
</tr>
</tbody>
</table>

2. The authorization and approval of such purchase to be made on July 1, 1976 as set forth in paragraph 1 of this resolution shall be void and of no effect and such purchase shall not be made unless after June 24, 1976 and prior to the consummation of such purchase the Secretary of the Treasury of the United States shall have made a loan of not less than $500,000,000 to the City of New York pursuant to Public Law 94-143, known as the New York City Seasonal Financing Act of 1975.

3. The Board of Trustees hereby acknowledges that with respect to such purchase of City bonds requested for July 1, 1976, the delivery to the Board of Trustees or its representative, prior to the consummation of such purchase, of the latest update of the official statement of the City, will constitute compliance with and satisfaction of the above-quoted condition of paragraph 7(e)(v) of the Agreement.
4. Prior to the purchase of bonds on July 1, 1976 as above described, the Corporation Counsel will furnish to the Board of Trustees an opinion stating that the conditions set forth in Paragraph 7(e) of the Agreement and this resolution have been satisfied as to such purchase.

The foregoing is a true copy of a resolution adopted by the Board of Trustees on 6/24/76

(Signed) [Signature]

Executive Director
"WHEREAS, under the terms of the Amended and Restated Agreement (the "Agreement") made as of November 28, 1975 by the Municipal Assistance Corporation for the City of New York, certain banks, the New York City Retirement System and the other four actuarially funded retirement systems of the City and four City Sinking Funds, it was agreed that those five retirement systems (the "Pension Funds"), subject to certain conditions, shall purchase $2.53 billion of City bonds; and

WHEREAS, Paragraph 7 (b) of the Agreement provides that the Pension Funds shall purchase * * * during the 1976-1977 fiscal year of the City up to $1,500,000,000 principal amount of serial bonds of the City * * *; and

WHEREAS, the Office of the City Comptroller has informed the Board of Trustees that the City desires that the Pension Funds, pursuant to the terms of the Agreement, purchase a total of $125,000,000 principal amount of City serial bonds on July 1, 1976, of which the New York City Teachers' Retirement System is to purchase $43,000,000 principal amount of bonds; and

WHEREAS, Paragraph 7(e)(v) of the Agreement provides as follows:

"(a) The obligations of the Pension Funds to purchase bonds pursuant to this Paragraph 7 shall be subject to the agreement to and fulfillment of such agreements by all parties referred to in this Paragraph 7 and shall be conditioned upon each of the following facts being true on the date of each such purchase. * * * (v) the City shall, in connection with each purchase prior to February 1, 1976, or the first date on which the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board, * * *; and

WHEREAS, The Board of Trustees has been informed that the City has been and is putting forth its best efforts to complete an official statement as promptly as is practicable; and

WHEREAS, the City has delivered to the Board of Trustees a proof of an official statement with respect to the City, dated June 22, 1976; and

WHEREAS, the office of the City Comptroller has informed the Board of Trustees that prior to the consummation of the requested purchases of City bonds by the Pension Funds to take place on July 1, 1976, there will be delivered to the Board of Trustees, or its representative, the latest update of the official statement of the City:

EXHIBIT "C"
1. Subject to the provisions of paragraph 2 of this resolution, the Board of Trustees hereby authorizes and approves the purchase by the New York City Teachers' Retirement System, on July 1, 1976, of $43,000,000 principal amount of City serial bonds bearing interest at the rate of 9% a year and having maturities as follows:

<table>
<thead>
<tr>
<th>Principal Amount</th>
<th>Maturity Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,750,000</td>
<td>1/1/78</td>
</tr>
<tr>
<td>$10,750,000</td>
<td>1/1/79</td>
</tr>
<tr>
<td>$10,750,000</td>
<td>1/1/80</td>
</tr>
<tr>
<td>$10,750,000</td>
<td>1/1/81</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$43,000,000</strong></td>
</tr>
</tbody>
</table>

2. The authorization and approval of such purchase to be made on July 1, 1976 as set forth in paragraph 1 of this resolution shall be void and of no effect and such purchase shall not be made unless after June 24, 1976 and prior to the consummation of such purchase the Secretary of the Treasury of the United States shall have made a loan of not less than $500,000,000 to the City of New York pursuant to Public Law 94-143, known as the New York City Seasonal Financing Act of 1975.

3. The Board of Trustees hereby acknowledges that with respect to such purchase of City bonds requested for July 1, 1976, the delivery to the Board of Trustees or its representative, prior to the consummation of such purchase, of the latest update of the official statement of the City, will constitute compliance with and satisfaction of the above-quoted condition of paragraph 7(e)(v) of the Agreement.

4. Prior to the purchase of bonds on July 1, 1976 as above described, the Corporation Counsel will furnish to the Board of Trustees an opinion stating that the conditions set forth in Paragraph 7(e) of the Agreement and this resolution have been satisfied as to such purchase.

I hereby certify that the above is a true and exact copy of a resolution adopted by the Retirement Board at its meeting held on June 24, 1976.

Wallace F. Sullivan, Executive Director
WHEREAS, under the terms of the Amended and Restated Agreement (the "Agreement") made as of November 26, 1975 by the Municipal Assistance Corporation for the City of New York, certain banks, the New York City Police Pension Fund, Article 2, and the other four actuarially funded retirement systems of the City and four City Sinking Funds, it was agreed that these five retirement systems (the "Pension Funds"); subject to certain conditions, shall purchase $2.53 billion of City bonds; and

WHEREAS, Paragraph 7(b) of the Agreement provides that the Pension Funds shall purchase ** during the 1976-1977 fiscal year of the City up to $1,500,000,000 principal amount of serial bonds of the City **; and

WHEREAS, the Office of the City Comptroller has informed the Board of Trustees that the City desires that the Pension Funds, pursuant to the terms of the Agreement, purchase a total of $125,000,000 principal amount of City serial bonds on July 1, 1976, of which the New York City Police Pension Fund, Article 2, is to purchase $18,300,000 principal amount of bonds; and

WHEREAS, Paragraph 7(e)(v) of the Agreement provides as follows:

"(e) The obligations of the Pension Funds to purchase bonds pursuant to this Paragraph 7 shall be subject to the agreement to and fulfillment of such agreements by all parties referred to in this Paragraph 7 and shall be conditioned upon each of the following facts being true on the date of each such purchase. ** (v) the

EXHIBIT "D"
City shall, in connection with each purchase prior to February 1, 1976, or the first date on which the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board, * * *; and

WHEREAS, the Board of Trustees has been informed that the City has been and is putting forth its best efforts to complete an official statement as promptly as is practicable; and

WHEREAS, the City has delivered to the Board of Trustees a proof of an official statement with respect to the City, dated June 23, 1976; and

WHEREAS, the office of the City Comptroller has informed the Board of Trustees that prior to the consummation of the requested purchases of City bonds by the Pension Funds to take place on July 1, 1976, there will be delivered to the Board of Trustees, or its representative, the latest update of the official statement of the City;

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:
1. Subject to the provisions of paragraph 2 of this resolution, the board of Trustees hereby authorizes and approves the purchase by the Police Pension Fund, Article 2, on July 1, 1976, of $18,300,000 principal amount of City serial bonds bearing interest at the rate of 9% a year and having maturities as follows:

<table>
<thead>
<tr>
<th>PRINCIPAL AMOUNT</th>
<th>MATURITY DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>$4,575,000</td>
<td>1/1/77</td>
</tr>
<tr>
<td>$4,575,000</td>
<td>1/1/78</td>
</tr>
<tr>
<td>$4,575,000</td>
<td>1/1/80</td>
</tr>
<tr>
<td>$4,575,000</td>
<td>1/1/81</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$18,300,000</strong></td>
</tr>
</tbody>
</table>

2. The authorization and approval of such purchase to be made on July 1, 1976 as set forth in paragraph 1 of this resolution shall be void and of no effect and such purchase shall not be made unless after June 24, 1976 and prior to the consummation of such purchase the Secretary of the Treasury of the United States shall have made a loan of not less than $500,000,000 to the City of New York pursuant to Public Law 94-143, known as the New York City Seasonal Financing Act of 1975.

3. The Board of Trustees hereby acknowledges that with respect to such purchase of City bonds requested for July 1, 1976, the delivery to the Board of Trustees or its representative, prior to the consummation of such purchase, of the latest update of the official statement of the City, will constitute compliance with and satisfaction of the above-quoted condition of paragraph 7(c)(v) of the Agreement.
4. Prior to the purchase of bonds on July 1, 1976 as above described, the Corporation Counsel will furnish to the Board of Trustees an opinion stating that the conditions set forth in Paragraph 7(c) of the Agreement and this resolution have been satisfied as to such purchase.
RESOLUTION

WHEREAS, under the terms of the amended and restated agreement (the "Agreement") made as of November 26, 1975 by the Municipal Assistance Corporation for the City of New York, certain banks, the New York City Fire Department Pension Fund, Article 1-B, and the other four actuarially funded retirement systems of the City and four City Sinking Funds, it was agreed that these five retirement systems (the "Pension Funds"), subject to certain conditions, shall purchase $2.53 billion of City bonds; and

WHEREAS, Paragraph 7(b) of the Agreement provides that the Pension Funds shall purchase ** during the 1976-1977 fiscal year of the City up to $1,500,000,000 principal amount of serial bonds of the City **; and

WHEREAS, the Office of the City Comptroller has informed the Board of Trustees that the City desires that the Pension Funds, pursuant to the terms of the Agreement, purchase a total of $125,000,000 principal amount of City serial bonds on July 1, 1976, of which the New York City Fire Department Pension Fund, Article 1-B, is to purchase $2,500,000 principal amount of bonds; and

WHEREAS, Paragraph 7(e)(v) of the Agreement provides as follows:

"(e) The obligations of the Pension Funds to purchase bonds pursuant to this Paragraph 7 shall be subject to the agreement to and fulfillment of such agreements by all parties referred to in this Paragraph 7 and shall be conditioned upon each of the following facts being true on the date of each such purchase. ***(v) the
City shall, in connection with each purchase prior to February 1, 1976, or the first date on which the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board; and

WHEREAS, the Board of Trustees has been informed that the City has been and is putting forth its best efforts to complete an official statement as promptly as is practicable; and

WHEREAS, the City has delivered to the Board of Trustees a proof of an official statement with respect to the City, dated June 22, 1976; and

WHEREAS, the office of the City Comptroller has informed the Board of Trustees that prior to the consummation of the requested purchases of City bonds by the Pension Funds to take place on July 1, 1976, there will be delivered to the Board of Trustees, or its representative, the latest update of the official statement of the City;

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:
1. Subject to the provisions of paragraph 2 of this resolution, the Board of Trustees hereby authorizes and approves the purchase by the New York City Fire Department Pension Fund, Article 1-B, on July 1, 1976, of $2,500,000 principal amount of City serial bonds bearing interest at the rate of 9% a year and having maturities as follows:

<table>
<thead>
<tr>
<th>Principal Amount</th>
<th>Maturity Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>$625,000</td>
<td>1/1/73</td>
</tr>
<tr>
<td>$625,000</td>
<td>1/1/79</td>
</tr>
<tr>
<td>$625,000</td>
<td>1/1/80</td>
</tr>
<tr>
<td>$625,000</td>
<td>1/1/81</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,500,000</strong></td>
</tr>
</tbody>
</table>

2. The authorization and approval of such purchase to be made on July 1, 1976 as set forth in paragraph 1 of this resolution shall be void and of no effect and such purchase shall not be made unless after June 24, 1976 and prior to the consummation of such purchase the Secretary of the Treasury of the United States shall have made a loan of not less than $500,000,000 to the City of New York pursuant to Public Law 94-143, known as the New York City Seasonal Financing Act of 1975.

3. The Board of Trustees hereby acknowledges that with respect to such purchase of City bonds requested for July 1, 1976, the delivery to the Board of Trustees or its representative, prior to the consummation of such purchase, of the latest update of the official statement of the City, will constitute compliance with and satisfaction of the above-quoted condition of paragraph 7(e)(v) of the Agreement.
4. Prior to the purchase of bonds on July 1, 1976 as above described, the Corporation Counsel will furnish to the Board of Trustees an opinion stating that the conditions set forth in Paragraph 7(a) of the Agreement and this resolution have been satisfied as to such purchase.

This is to certify that the above Resolution was duly adopted by the Board of Trustees at the Special Board of Trustee Meeting of June 23, 1976.

[Signature]

Lieut. David C. Tobin
Operational Secretary
TO THE BOARD OF RETIREMENT:

RESOLUTION

WHEREAS, under the terms of the Amended and Restated Agreement (the "Agreement") made as of November 26, 1975 by the Municipal Assistance Corporation for the City of New York, certain banks, the Board of Education Retirement System of the City of New York and the other four actuarially funded retirement systems of the City and four City Sinking Funds, it was agreed that these five retirement systems (the "Pension Funds"), subject to certain conditions, shall purchase $2.53 billion of City bonds; and

WHEREAS, Paragraph 7(b) of the Agreement provides that the Pension Funds shall purchase during the 1976-1977 fiscal year of the City up to $1,500,000,000 principal amount of serial bonds of the City; and

WHEREAS, the Office of the City Comptroller has informed the Retirement Board that the City desires that the Pension Funds, pursuant to the terms of the Agreement, purchase a total of $125,000,000 principal amount of City serial bonds on July 1, 1976, of which the Board of Education Retirement System is to purchase $2,500,000 principal amount of bonds; and

WHEREAS, Paragraph 7(a)(v) of the Agreement provides as follows:

"(a) The obligations of the Pension Funds to purchase bonds pursuant to this Paragraph 7 shall be subject to the agreement to and fulfillment of such agreements by all parties referred to in this Paragraph 7 and shall be conditioned upon each of the following facts being true on the date of each such purchase." * * *(v) the
City shall, in connection with each purchase prior to February 1, 1976, or the first date on which the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board, \* \* \*; and

WHEREAS, the Retirement Board has been informed that the City has been and is putting forth its best efforts to complete an official statement as promptly as is practicable; and

WHEREAS, the City has delivered to the Retirement Board a proof of an official statement with respect to the City, dated June 22, 1976; and

WHEREAS, the office of the City Comptroller has informed the Retirement Board that prior to the consummation of the requested purchases of City bonds by the Pension Funds to take place on July 1, 1976, there will be delivered to the Retirement Board, or its representative, the latest update of the official statement of the City;

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:
1. Subject to the provisions of paragraph 2 of this resolution, the Retirement Board hereby authorizes and approves the purchase by the Board of Education Retirement System, on July 1, 1976, of $2,500,000 principal amount of City serial bonds bearing interest at the rate of 9% a year and having maturities as follows:

<table>
<thead>
<tr>
<th>PRINCIPAL AMOUNT</th>
<th>MATURITY DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>$625,000</td>
<td>1/1/78</td>
</tr>
<tr>
<td>$625,000</td>
<td>1/1/79</td>
</tr>
<tr>
<td>$625,000</td>
<td>1/1/80</td>
</tr>
<tr>
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<td>1/1/81</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$2,500,000</strong></td>
</tr>
</tbody>
</table>

2. The authorization and approval of such purchase to be made on July 1, 1976 as set forth in paragraph 1 of this resolution shall be void and of no effect and such purchase shall not be made unless after June 24, 1976 and prior to the consummation of such purchase the Secretary of the Treasury of the United States shall have made a loan of not less than $500,000,000 to the City of New York pursuant to Public Law 94-143, known as the New York City Seasonal Financing Act of 1975.

3. The Retirement Board hereby acknowledges that with respect to such purchase of City bonds requested for July 1, 1976, the delivery to the Retirement Board or its representative, prior to the consummation of such purchase, of the latest update of the official statement of the City, will constitute compliance with and satisfaction of the above-quoted condition of paragraph 7(e)(v) of the Agreement.
4. Prior to the purchase of bonds on July 1, 1976 as above described, the Corporation Counsel will furnish to the Retirement Board an opinion stating that the conditions set forth in Paragraph 7(e) of the Agreement and this resolution have been satisfied as to such purchase.

A certified copy of a resolution adopted at a meeting of the Board of Retirement held on June 30, 1976.

[Signature]

Executive Director, Board of Retirement
Public Law 94-143
94th Congress, H. R. 10481
December 9, 1975

An Act

To authorize the Secretary of the Treasury to provide seasonal financing for the city of New York.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "New York City Seasonal Financing Act of 1973".

FINDINGS AND DECLARATIONS

SEC. 2. The Congress makes the following findings and declarations:
(1) It is necessary for the city of New York to obtain seasonal financing from time to time because the city's revenues and expenditures, even when in balance on an annual basis, are not received and disbursed at equivalent rates throughout the year.
(2) At the present time the city is or may be unable to obtain such seasonal financing from its customary sources.
(3) It is necessary to assure such seasonal financing, in order that the city of New York may maintain essential governmental services.

DEFINITIONS

SEC. 3. As used in this Act:
(a) "City" and "State" mean the city and State of New York, respectively.
(b) "Financing agent" means any agency duly authorized by State law to act on behalf or in the interest of the city with respect to the city's financial affairs.
(c) "Secretary" means the Secretary of the Treasury.

LOANS

SEC. 4. (a) Upon written request of the city or a financing agent, the Secretary may make loans to the city or such financing agent subject to the provisions of this Act, but in the case of any loan to a financing agent, the city and such agent shall be jointly and severally liable thereon.
(b) Each such loan shall mature not later than the last day of the city's fiscal year in which it was made, and shall bear interest at an annual rate 1 per centum per annum greater than the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such loan, as determined by the Secretary at the time of the loan.

SECURITY FOR LOANS

SEC. 5. In connection with any loan under this Act, the Secretary may require the city and any financing agent and, where he deems necessary, the State, to provide such security as he deems appropriate.

89 STAT. 797

EXHIBIT "G"
The Secretary may take such steps as he deems necessary to realize upon any collateral in which the United States has a security interest pursuant to this section to enforce any claim the United States may have against the city or any financing agent pursuant to this Act. Notwithstanding any other provision of law, Acts making appropriations may provide for the withholding of any payments from the United States to the city, either directly or through the State, which may be or may become due pursuant to any law and offset the amount of such withheld payments against any claim the Secretary may have against the city or any financing agent pursuant to this Act. With respect to debts incurred pursuant to this Act, for the purposes of section 3466 of the Revised Statutes (31 U.S.C. 191) the term “person” includes the city or any financing agent.

**LIMITATIONS AND CRITERIA**

31 USC 1505.

Sec. 6. (a) A loan may be made under this Act only if the Secretary determines that there is a reasonable prospect of repayment of the loan in accordance with its terms and conditions. In making the loan, the Secretary may require such terms and conditions as he may deem appropriate to ensure repayment. The Secretary is authorized to agree to any modification, amendment, or waiver of any such term or condition as he deems desirable to protect the interests of the United States.

(b) At no time shall the amount of loans outstanding under this Act exceed the aggregate $2,300,000,000.

(c) No loan shall be provided under this Act unless (1) the city and all financing agents shall have repaid according to their terms all prior loans under this Act which have matured, and (2) the city and all financing agents shall be in compliance with the terms of any such outstanding loans.

**REMEDIES**

31 USC 1506.

Sec. 7. The remedies of the Secretary prescribed in this Act shall be cumulative and not in limitation of or substitution for any other remedies available to the Secretary or the United States.

**FUNDING**

- There is hereby established in the Treasury a New York City Seasonal Financing Fund to be administered by the Secretary. The fund shall be used for the purpose of making loans pursuant to this Act. There is authorized to be appropriated to such fund the sum of $2,300,000,000. All funds received by the Secretary in the payment of principal of any loan made under this Act shall be paid into the fund. All income from loans and investments made from the fund shall be covered into the Treasury as miscellaneous receipts. Moneys in the fund not needed for current operations may be invested in direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof. After all loans made pursuant to this Act have been repaid, the balance of the fund shall be returned to the general fund of the Treasury.

(b) The Secretary is authorized to sell, assign, or otherwise transfer from the fund any note or other evidence of any loan made pursuant to this Act to the Federal Financing Bank and, in addition to its other powers, such Bank is authorized to purchase, receive, or otherwise acquire the same.
December 9, 1975 - 3 - Pub. Law 94-143

(c) There are authorized to be appropriated such sums as may be necessary to pay the expenses of administration of this Act.

INSPECTION OF DOCUMENTS

Sec. 9. At any time a request for a loan is pending or a loan is outstanding under this Act, the Secretary is authorized to inspect and copy all accounts, books, records, memorandums, correspondence, and other documents of the city or any financing agent relating to its financial affairs.

AUDITS

Sec. 10. (a) No loan may be made under this Act for the benefit of any State or city unless the General Accounting Office is authorized to make such audits as may be deemed appropriate by either the Secretary or the General Accounting Office of all accounts, books, records, and transactions of the State, the political subdivision, if any, involved, and any agency or instrumentality of such State or political subdivision. The General Accounting Office shall report the results of any such audit to the Secretary and to the Congress.

TERMINATION

Sec. 11. The authority of the Secretary to make any loan under this Act terminates on June 30, 1978. Such termination does not affect the carrying out of any transaction entered into pursuant to this Act prior to that date, or the taking of any action necessary to preserve or protect the interests of the United States arising out of any loan under this Act.

Approved December 9, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-632 Pt. 1 (Comm. on Banking, Currency and Housing), Pt. 2 (Comm. on Ways and Means).
SENATE REPORT No. 94-443 (Comm. on Banking, Housing and Urban Affairs).
CONGRESSIONAL RECORD, Vol. 121 (1975):
Dec. 2, considered and passed House,
Dec. 3-5, considered and passed Senate,
89 STAT. 799
June 29, 1976

Bernard Friedlander, Esq.
Municipal Building
Room 1550
New York, New York 10007

Dear Mr. Friedlander:

In connection with a proposed sale of New York City Bonds to certain of the New York City Pension Funds, you have asked us for a letter as to the status of Paragraph 5 of the Agreement made as of November 26, 1975 (the "Agreement") among the Municipal Assistance Corporation for the City of New York ("MAC"), certain New York City Banks (the "Banks"), New York City Pension Funds (the "Pension Funds") and New York City Sinking Funds (the "Sinking Funds").

The following actions, among others, have been taken to date to effectuate Paragraph 5:

1. MAC requested, by its Notice to the Holders of Bonds Issued Under the First General Bond Resolution Adopted July 2, 1975 (the "Notice"), and received the requisite consents of Bondholders to amendments to Section 902 and Section 203 of
the First General Bond Resolution Adopted July 2, 1975 (the "Resolution"), which amendments were necessary to carry out Paragraph 5;

2. MAC requested and received the requisite consents of Bondholders to amend its Series C, D, E, H and J Resolutions, which amendments were necessary to carry out Paragraph 5;

3. MAC requested and received from each of the Banks, their written elections as to whether they would proceed, as to their particular Bonds, under the Amending Procedure or the Exchange Procedure, as defined in the Notice;

4. You have advised MAC that the Pension Funds and the Sinking Funds have each elected to proceed, as to their particular Bonds, under the Exchange Procedure;

5. MAC published on June 14, 1976 in the New York Times a notice that the consents required to effectuate the Agreement had been received and on June 16, 1976 MAC delivered to United States Trust Company, Trustee under the Resolution, proof of such publication.

Under the Resolution, the amendments to the Resolution and the Series Resolutions referred to above will be conclusively binding at the expiration of 30 days after the filing of the proof of publication with the Trustee, referred to in 5 above, except in the event of a final decree of a court of competent jurisdiction setting aside such amendments in a legal or equitable proceeding for such purpose commenced within such 30-day period. The 30-day period expires midnight, July 16, 1976.
Based upon the foregoing, we believe that all parties to the Agreement intend to complete the restructuring of MAC Bonds called for by Paragraph 5 thereof prior to the next Interest Payment Date, which is August 1, 1976. The formal closing date is scheduled for July 19, 1976, but counsel has advised us that the closing could be delayed a few days if the printing of the Bonds or other closing details of that type are not completed in time.

Very truly yours,

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK

By

Herbert Elish
Executive Director
Bernard Friedlander, Esq.
Municipal Building
Room 1550
New York, New York 10007

June 29, 1976

Dear Mr. Friedlander:

In connection with a proposed sale of New York City Bonds to certain of the New York City Pension Funds, you have asked us, as general counsel to the Municipal Assistance Corporation for the City of New York ("MAC"), for a letter as to the status of Paragraph 5 of the Agreement made as of November 26, 1975 (the "Agreement") among MAC, certain New York City Banks (the "Banks"), New York City Pension Funds (the "Pension Funds") and New York City Sinking Funds (the "Sinking Funds").

The following actions, among others, have been taken to date to effectuate Paragraph 5:

1. MAC requested, by its Notice to the Holders of Bonds Issued Under the First General Bond Resolution Adopted July 2, 1975 (the "Notice"), and received the requisite consents of...
Bondholders to amendments to Section 902 and Section 203 of the First General Bond Resolution Adopted July 2, 1975 (the "Resolution"), which amendments were necessary to carry out Paragraph 5;

2. MAC requested and received the requisite consents of Bondholders to amend its Series C, D, E, H and J Resolutions, which amendments were necessary to carry out Paragraph 5;

3. MAC requested and received from each of the Banks, their written elections as to whether they would proceed, as to their particular Bonds, under the Amending Procedure or the Exchange Procedure, as defined in the Notice;

4. You have advised MAC that the Pension Funds and the Sinking Funds have each elected to proceed, as to their particular Bonds, under the Exchange Procedure;

5. MAC published on June 14, 1976 in the New York Times a notice that the consents required to effectuate the Agreement had been received and on June 16, 1976 MAC delivered to United States Trust Company, Trustee under the Resolution, proof of such publication.

Under the Resolution, the amendments to the Resolution and the Series Resolutions referred to above will be conclusively binding at the expiration of 30 days after the filing of the proof of publication with the Trustee, referred to in 5 above, except in the event of a final decree of a court of competent jurisdiction setting aside such amendments in a legal or equitable proceeding for such purpose commenced within such 30-day period. The 30-day period expires midnight, July 16, 1976.
Based upon the foregoing, we believe that all parties to the Agreement intend to complete the restructuring of MAC Bonds called for by Paragraph 5 thereof prior to the next Interest Payment Date, which is August 1, 1976. The formal closing date is scheduled for July 19, 1976, but could be delayed a few days if the printing of the Bonds or other closing details of that type are not completed in time.

Please let us know if you need any further information.

Very truly yours,

Paul, Weiss, Rifkind, Wharton & Garrison
RESOLVED, that in addition to the authority heretofore conferred on them, the Comptroller of the City of New York and the Executive Director of this Retirement System are hereby authorized and directed to take all steps necessary to carry out the obligations of this Retirement System incurred pursuant to the Amended and Restated Agreement made as of November 26, 1975 (the "Agreement") among the Municipal Assistance Corporation For The City of New York (the "Corporation"), certain New York City Commercial Banks. New York City Pension Funds (including this Retirement System) and New York City Sinking Funds, including, but not limited to, (i) the execution of such consents as may be requested by the Corporation to the amendment of Sections 203 and 502 of the General Bond Resolution of the Corporation dated July 2, 1975 to enable the Corporation to implement the Agreement, the execution of such consents, however, to be subject to the approval of counsel for this Retirement System and the receipt by such counsel of such documents as may reasonable be requested; and (ii) the exchange by this Retirement System of an aggregate of $275,000,000 principal amount of 1975 Series F, I, L, N, Q, T and W Bonds of the Corporation held by this Retirement System for 1976 Series BB Bonds of the Corporation in the same aggregate principal amount, such 1976 Series BB Bonds to mature on February 1 in each year from February 1, 1977 to February 1, 1986, in approximately such amounts as shall be set forth below and to bear interest at the rate of 6% per annum payable semi-annually on August 1 and February 1 of each year, commencing on August 1, 1976, and to contain such other terms as shall be legally required by the Agreement, the General Bond Resolution or otherwise:

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<thead>
<tr>
<th>Maturity Date</th>
<th>Principal Amount Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/ 1/77</td>
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</tr>
<tr>
<td>2/ 1/86</td>
<td>$35,210,000.00</td>
</tr>
</tbody>
</table>

$275,000,000.00

THE FOREGOING IS A TRUE COPY OF A RESOLUTION ADOPTED BY THE BOARD OF TRUSTEES ON MAY 7 1976. (SIGNED)  
Executive Director  
EXHIBIT "J"
"RESOLVED, That the Comptroller of the City of New York and the Chairman of the Teachers' Retirement Board for the Teachers' Retirement System for the City of New York are hereby authorized and directed to take the following steps necessary to carry out the obligations of this Retirement System incurred pursuant to the Amended and Restated Agreement made as of November 26, 1975 (the "Agreement") among the Municipal Assistance Corporation for the City of New York (the "Corporation"), certain New York City Commercial Banks, New York City Pension Funds (including this Retirement System) and New York City Sinking Funds: (i) the execution of a consent, in the form annexed hereto, to the amendment of Sections 203 and 902 of the General Bond Resolution of the Corporation dated July 2, 1975 to enable the Corporation to implement the Agreement, the execution of such consent, however, to be subject to the approval of counsel for this Retirement System and the receipt of such counsel of such documents as may reasonably be requested; and (ii) the exchange by this Retirement System of an aggregate of $275,000,000, principal amount of 1975 Series F, I, N, T, U, and Z Bonds of the

EXHIBIT "K"
Corporation held by this Retirement System for for 1976 Series BB Bonds of the Corporation in the same aggregate principal amount, such 1976 Series BB Bonds to mature on February 1 in each year from February 1, 1977 to February 1, 1986, in approximately such amounts as shall be set forth below and to bear interest at the rate of 6% per annum payable semi-annually on August 1 and February 1 of each year, commencing on August 1, 1976.

<table>
<thead>
<tr>
<th>Maturity Date</th>
<th>Principal Amount Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-1-77</td>
<td>$20,865,000.00</td>
</tr>
<tr>
<td>2-1-78</td>
<td>22,110,000.00</td>
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<tr>
<td>2-1-79</td>
<td>23,445,000.00</td>
</tr>
<tr>
<td>2-1-80</td>
<td>24,850,000.00</td>
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<td>2-1-81</td>
<td>26,345,000.00</td>
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<td>2-1-82</td>
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<td>2-1-83</td>
<td>29,595,000.00</td>
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<td>2-1-85</td>
<td>33,255,000.00</td>
</tr>
<tr>
<td>2-1-86</td>
<td>35,250,000.00</td>
</tr>
<tr>
<td></td>
<td>$275,000,000.00</td>
</tr>
</tbody>
</table>

Respectfully submitted,

WALLACE F. SULLIVAN

Executive Director

I hereby certify that the foregoing is a true and exact copy of a resolution adopted by the Teachers' Retirement Board at its Special Meeting on Friday, June 4, 1976.

Wallace F. Sullivan, Executive Director
NEW YORK CITY POLICE PENSION FUND, ARTICLE 2

RESOLVED, that in addition to the authority heretofore conferred on them, the Comptroller of The City of New York and the Acting Chairman of the Board of Trustees of this Pension Fund are hereby authorized and directed to take all steps necessary to carry out the obligations of this Pension Fund incurred pursuant to the Amended and Restated Agreement made as of November 26, 1975 (the "Agreement") among the Municipal Assistance Corporation For The City of New York (the "Corporation"), certain New York City Commercial Banks, New York City Pension Funds (including this Pension Fund) and New York City Sinking Funds, including, but not limited to, (i) the execution of such consents as may be requested by the Corporation to the amendment of Sections 202 and 902 of the General Bond Resolution of the Corporation dated July 2, 1975 to enable the Corporation to implement the Agreement, the execution of such consents, however, to be subject to the approval of counsel for this Pension Fund and the receipt by such counsel of such documents as may reasonably be requested; and (ii) the exchange by this Retirement System of an aggregate of $85,000,000 principal amount of 1975 Series F, I, L, N and T Bonds of the Corporation held by this Pension Fund for 1976 Series BB Bonds of the Corporation in the same aggregate principal amount, such 1976 Series BB Bonds to mature on February 1, in each year from February 1, 1977 to February 1, 1986, in approximately such amounts as shall be set forth below and to bear interest at the rate of 6% per annum payable semi-annually on August 1 and February 1 of each year, commencing on August 1, 1976.
and to contain such other terms as shall be legally required by
the Agreement, the General Bond Resolution or otherwise:

<table>
<thead>
<tr>
<th>Maturity Date</th>
<th>Principal Amount Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/1/77</td>
<td>$6,455,000.00</td>
</tr>
<tr>
<td>2/1/78</td>
<td>6,840,000.00</td>
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<td>2/1/80</td>
<td>7,680,000.00</td>
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<td>2/1/81</td>
<td>8,145,000.00</td>
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<td>2/1/82</td>
<td>8,630,000.00</td>
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<td>2/1/83</td>
<td>9,145,000.00</td>
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<tr>
<td>2/1/85</td>
<td>10,285,000.00</td>
</tr>
<tr>
<td>2/1/86</td>
<td>10,890,000.00</td>
</tr>
</tbody>
</table>

$85,000,000.00
NEW YORK CITY FIRE DEPARTMENT PENSION FUND, ARTICLE 1-B

RESOLVED, that in addition to the authority heretofore conferred on them, the Comptroller of The City of New York and the Board of Trustees, the Acting Chairman of/of this Pension Fund are hereby authorized and directed to take all steps necessary to carry out the obligations of this Pension Fund incurred pursuant to the Amended and Restated Agreement made as of November 26, 1975 (the "Agreement") among the Municipal Assistance Corporation For The City of New York (the "Corporation"), certain New York City Commercial Banks, New York City Pension Funds (including this Pension Fund) and New York City Sinking Funds, including, but not limited to, (i) the execution of such consents as may be requested by the Corporation to the amendment of Sections 203 and 902 of the General Bond Resolution of the Corporation dated July 2, 1975 to enable the Corporation to implement the Agreement, the execution of such consents, however, to be subject to the approval of counsel for this Pension Fund and the receipt by such counsel of such documents as may reasonably be requested; and (ii) the exchange by this Pension Fund of an aggregate of $20,000,000 principal amount of 1975 Series F, I, L and N Bonds of the Corporation held by this Pension Fund for 1976 Series BB Bonds of the Corporation in the same aggregate principal amount, such 1976 Series BB Bonds to mature on February 1 in each year from February 1, 1977, to February 1, 1986, in approximately such amounts as shall be set forth.

EXHIBIT "M"
below and to bear interest at the rate of 6% per annum payable semi-annually on August 1 and February 1 of each year, commencing on August 1, 1976, and to contain such other terms as shall be legally required by the Agreement, the General Bond Resolution or otherwise:

<table>
<thead>
<tr>
<th>Maturity Date</th>
<th>Principal Amount Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/1/77</td>
<td>$1,520,000.00</td>
</tr>
<tr>
<td>2/1/78</td>
<td>1,610,000.00</td>
</tr>
<tr>
<td>2/1/79</td>
<td>1,700,000.00</td>
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<td>2/1/80</td>
<td>1,805,000.00</td>
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<tr>
<td>2/1/81</td>
<td>1,920,000.00</td>
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<td>2/1/82</td>
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<td>2/1/85</td>
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<tr>
<td>2/1/86</td>
<td>2,550,000.00</td>
</tr>
</tbody>
</table>

$20,000,000.00

This is to certify that the above resolution was duly adopted by the Board of Trustees of the New York City Fire Dept. Pension Fund on July 8, 1976 at a special Board of Trustee meeting.

[Signature]

Lieut. David C. Tobin
Operational Secretary
TO THE BOARD OF RETIREMENT:

RESOLVED, that in addition to the authority heretofore conferred on them, the Comptroller of the City of New York and the Executive Director of this Retirement System are hereby authorized and directed to take all steps necessary to carry out the obligations of this Retirement System incurred pursuant to the Amended and Restated Agreement made as of November 26, 1975 (the "Agreement") among the Municipal Assistance Corporation, for the City of New York (the "Corporation"), certain New York City Commercial Banks, New York City Pension Funds (including this Retirement System) and New York City Sinking Funds, including but not limited to, (i) the execution of such consents as may be requested by the Corporation to the amendment of Sections 203 and 902 of the General Bond Resolution of the Corporation dated July 2, 1975 to enable the Corporation to implement the Agreement, the execution of such consents, however, to be subject to the approval of counsel for this Retirement System and the receipt by such counsel of such documents as may reasonably be requested; and (ii) the exchange by this Retirement System of an aggregate of $10,000,000 principal amount of 1975 Series L, N and W Bonds of the Corporation held by this Retirement System for 1976 Series BB Bonds of the Corporation in the same aggregate principal amount, such 1976 Series BB Bonds to mature on February 1 in each year from February 1, 1977 to February 1, 1986, in approximately such amounts as shall be set forth.

A certified copy of this resolution adopted at a meeting of the Board of Retirement held on May 18, 1976.
below and to bear interest at the rate of 6% per annum payable semi-
annually on August 1 and February 1 of each year, commencing on August 1, 1976, and to contain such other terms as shall be legally required by
the Agreement, the General Bond Resolution or otherwise:

<table>
<thead>
<tr>
<th>MATURITY DATE</th>
<th>PRINCIPAL AMOUNT DUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/1/77</td>
<td>$ 760,000.00</td>
</tr>
<tr>
<td>2/1/78</td>
<td>800,000.00</td>
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<td>2/1/79</td>
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<td>2/1/85</td>
<td>1,215,000.00</td>
</tr>
<tr>
<td>2/1/86</td>
<td>1,285,000.00</td>
</tr>
<tr>
<td></td>
<td>$10,000,000.00</td>
</tr>
</tbody>
</table>

Executive Director
Board of Education Retirement System

A certified copy of a resolution
adopted by the Board of Retirees, May 18, 1976

[Signature]
July 1, 1976

Hon. Horace Malash
Executive Director
Municipal Assistance Corporation for the City of New York
2 World Trade Center
New York, N.Y. 10047

Re: Obligations of Sinking Funds under Paragraph 5 of Amended and Restated Agreement made as of November 26, 1975

Gentlemen:

Please be advised that in fulfillment of the obligations of the Sinking Fund of the City of New York, the Rapid Transit Sinking Fund of the City of New York and the Water Sinking Fund of the City of New York under Paragraph 5 of the Amended and Restated Agreement made as of November 26, 1975 among the Municipal Assistance Corporation for the City of New York ("MAC"), certain New York City Commercial Banks, certain New York City Pension Funds and New York City Sinking Funds, the Comptroller of the City of New York, acting in behalf of the above-named Sinking Funds (being the only Sinking Funds which hold MAC bonds), has elected that the above-named Sinking Funds shall exchange an aggregate of $131,500,000 principal amount of 1975 Series K, P, R and S Bonds of MAC held by these Sinking Funds for 1976 Series BB Bonds of MAC in the same aggregate principal amount, such 1976 Series BB Bonds to be in registered form, to bear interest at the rate of 6% per annum and to be payable in accordance with the applicable schedules hereto attached.

Sincerely,

SOL LEWIS
Third Deputy Comptroller

Attachments

EXHIBIT "O"
<table>
<thead>
<tr>
<th>DEBT SERVICE PERIOD</th>
<th>PRINCIPAL</th>
<th>INTEREST</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
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<td>475,000.00</td>
<td>375,000.00</td>
<td>850,000.00</td>
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<tr>
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<td>346,500.00</td>
<td>881,500.00</td>
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<td>851,200.00</td>
</tr>
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<td>2/ 2/79 - 2/ 1/80</td>
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<td>849,100.00</td>
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<tr>
<td>2/ 2/80 - 2/ 1/81</td>
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<td>845,200.00</td>
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<tr>
<td>2/ 2/81 - 2/ 1/82</td>
<td>630,000.00</td>
<td>214,500.00</td>
<td>844,500.00</td>
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<td>850,700.00</td>
</tr>
<tr>
<td>2/ 2/83 - 2/ 1/84</td>
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<td>851,200.00</td>
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<tr>
<td>2/ 2/84 - 2/ 1/85</td>
<td>755,000.00</td>
<td>93,300.00</td>
<td>848,300.00</td>
</tr>
<tr>
<td>2/ 2/85 - 2/ 1/86</td>
<td>300,000.00</td>
<td>48,000.00</td>
<td>348,000.00</td>
</tr>
<tr>
<td>GRAND TOTALS</td>
<td>6,250,000.00</td>
<td>2,240,700.00</td>
<td>8,490,700.00</td>
</tr>
</tbody>
</table>

Note:

Debt service period covers payments made from August 1, 1976 to final payment on February 1, 1986. The initial interest payment on February 1, 1976 is not included in the above debt service schedule.

Assumptions:

1. Annual interest rate of 6.0 percent.

2. Annual principal repayment amount rounded to nearest $5,000.

3. Substantially level debt service.
# Water Sinking Fund of the City of New York

## Total Bond Holdings

<table>
<thead>
<tr>
<th>Payment Period</th>
<th>Principal</th>
<th>Interest</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 2/2/76</td>
<td>$1,315,900.00</td>
<td>$1,039,500.00</td>
<td>$2,354,500.00</td>
</tr>
<tr>
<td>2 2/2/77</td>
<td>$1,325,000.00</td>
<td>$960,600.00</td>
<td>$2,355,600.00</td>
</tr>
<tr>
<td>3 2/2/78</td>
<td>$1,475,000.00</td>
<td>$876,900.00</td>
<td>$2,351,900.00</td>
</tr>
<tr>
<td>4 2/2/79</td>
<td>$1,665,000.00</td>
<td>$788,400.00</td>
<td>$2,353,400.00</td>
</tr>
<tr>
<td>5 2/2/80</td>
<td>$1,799,000.00</td>
<td>$694,500.00</td>
<td>$2,354,500.00</td>
</tr>
<tr>
<td>6 2/2/81</td>
<td>$1,760,000.00</td>
<td>$594,900.00</td>
<td>$2,354,900.00</td>
</tr>
<tr>
<td>7 2/2/82</td>
<td>$1,865,000.00</td>
<td>$489,300.00</td>
<td>$2,354,300.00</td>
</tr>
<tr>
<td>8 2/2/83</td>
<td>$1,975,000.00</td>
<td>$377,400.00</td>
<td>$2,352,400.00</td>
</tr>
<tr>
<td>9 2/2/84</td>
<td>$2,095,000.00</td>
<td>$258,900.00</td>
<td>$2,353,900.00</td>
</tr>
<tr>
<td>10 2/2/85</td>
<td>$2,220,000.00</td>
<td>$133,200.00</td>
<td>$2,352,200.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$17,325,000.00</strong></td>
<td><strong>$6,213,600.00</strong></td>
<td><strong>$23,538,600.00</strong></td>
</tr>
</tbody>
</table>

**Note:**

Debt service period covers payments made from August 1, 1976 to final payment on February 1, 1986. The initial interest payment on February 1, 1976 is not included in the above debt service schedule.

**Assumptions:**

1. Annual interest rate of 6.0 percent.
2. Annual principal repayment amount rounded to nearest $5,000.
3. Substantially level debt service.
<table>
<thead>
<tr>
<th>DEBT SERVICE PERIOD</th>
<th>PRINCIPAL</th>
<th>INTEREST</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/ 2/76 - 2/ 1/77</td>
<td>8,190,000.00</td>
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<td>14,665,500.00</td>
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<tr>
<td>2/ 2/77 - 2/ 1/78</td>
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<td>9,984,100.00</td>
<td>14,664,100.00</td>
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<tr>
<td>2/ 2/78 - 2/ 1/79</td>
<td>9,200,000.00</td>
<td>5,463,300.00</td>
<td>14,663,300.00</td>
</tr>
<tr>
<td>2/ 2/79 - 2/ 1/80</td>
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<td>4,911,300.00</td>
<td>14,666,300.00</td>
</tr>
<tr>
<td>2/ 2/80 - 2/ 1/81</td>
<td>10,335,000.00</td>
<td>4,326,000.00</td>
<td>14,661,000.00</td>
</tr>
<tr>
<td>2/ 2/81 - 2/ 1/82</td>
<td>10,955,000.00</td>
<td>3,705,900.00</td>
<td>14,660,900.00</td>
</tr>
<tr>
<td>2/ 2/82 - 2/ 1/83</td>
<td>11,615,000.00</td>
<td>3,048,600.00</td>
<td>14,663,600.00</td>
</tr>
<tr>
<td>2/ 2/83 - 2/ 1/84</td>
<td>12,310,000.00</td>
<td>2,351,700.00</td>
<td>14,661,700.00</td>
</tr>
<tr>
<td>2/ 2/84 - 2/ 1/85</td>
<td>13,055,000.00</td>
<td>1,613,100.00</td>
<td>14,668,100.00</td>
</tr>
<tr>
<td>2/ 2/85 - 2/ 1/86</td>
<td>13,830,000.00</td>
<td>829,900.00</td>
<td>14,659,900.00</td>
</tr>
<tr>
<td><strong>GRAND TOTALS</strong></td>
<td><strong>107,925,000.00</strong></td>
<td><strong>38,709,300.00</strong></td>
<td><strong>146,634,300.00</strong></td>
</tr>
</tbody>
</table>

Note:

Debt service period covers payments made from August 1, 1976 to final payment on February 1, 1986. The initial interest payment on February 1, 1976 is not included in the above debt service schedule.

Assumptions:

1. Annual interest rate of 6.0 percent.
2. Annual principal repayment amount rounded to nearest $5,000.
3. Substantially level debt service.
Board of Trustees
Fire Department
Pension Fund,
Article 1-B

Gentlemen:

This is in response to your oral request for an opinion as to whether the members of the Board of Trustees of the Fire Department Pension Fund, Article 1-B would be indemnified if they should vote to adopt a resolution authorizing the City Comptroller and the Acting Chairman of the Board of Trustees to take steps, as hereinafter described, to effectuate certain contractual obligations of the Pension Fund. These obligations are set forth in paragraph 5 of the Amended and Restated Agreement made as of November 26, 1975 (the "Agreement") among the Municipal Assistance Corporation For The City of New York ("M.A.C.") and certain New York City Commercial Banks, New York City Pension Funds (including this Pension Fund) and New York City Sinking Funds.

In my opinion the Trustees would be so indemnified, for the reasons set forth below.

Paragraph 5 of the Agreement provides in substance that:

(1) as of February 1, 1976, the M.A.C. bonds held by the banks, the pension funds and the sinking funds shall bear interest at the rate of 6% (instead of interest at higher rates originally provided for in these bonds); and

(2) subject to an optional alternative applicable to certain M.A.C. bonds held by the banks (but not to the M.A.C. bonds held by the pension funds and sinking funds), the M.A.C. bonds held by the banks, the pension funds and the sinking funds are to be subject to a ten-year, level payment, debt service schedule ending on February 1, 1986; and

(3) the banks, the pension funds and the sinking funds may, under prescribed conditions, elect (i) to have the M.A.C. bonds presently
OPINION NO. 108,331

held by them stamped to show that interest and principal thereon are payable pursuant to the Agreement, or (ii) to exchange their M.A.C. bonds for new bonds issued by M.A.C. under its First General Bond Resolution dated July 2, 1975 (i.e. new bonds having the same backing and security as the M.A.C. bonds presently held by the banks, pension funds and sinking funds). The new bonds are to bear interest at 6% and are to be payable under the ten-year, level payment plan described above.

The resolution in question would in substance authorize the City Comptroller and the Acting Chairman to take certain steps to carry out the above-described contractual obligations of the Fire Pension Fund, Article 1-B, which it undertook when it voted to become a party to the Agreement of November 26, 1975.

These steps are in substance:

(a) the execution of consents, with the approval of the Corporation Counsel, to certain amendments to sections 203 and 902 of the First General Bond Resolution of M.A.C. dated July 2, 1975; and

(b) the exchange by the Fire Pension Fund Article 1-B of its present holdings of $20,000,000 principal amount of M.A.C. bonds issued under such General Bond Resolution for new M.A.C. bonds of the same aggregate principal amount issued under the same Bond Resolution, bearing interest at the rate of 6% and payable under a ten-year level payment, debt service schedule ending on February 1, 1986.

The $20,000,000 principal amount of M.A.C. bond holdings here involved were acquired by purchases made by the Fire Pension Fund, Article 1-B on August 20, 1975, and September 5, 15 and 25, 1975.

Subdivision a of §1 of Laws 1975, Ch. 890 provides that specified City retirement systems and pension funds, including the Fire pension fund, Article 1-B, "may, in their discretion, purchase obligations of the city of New York or obligations of the municipal assistance corporation for the
OPINION NO. 108,331

city of New York without regard to the percentage of the assets of any such system or fund invested in such obligations and without regard to the percentage of outstanding obligations of such issuer held or to be held by such system or fund."

Subdivision b of §1 of Chapter 890 reads as follows:

"b. For the purchase of the obligations and the sale of assets as described in this act, the trustees of such retirement systems and funds in determining investments by such systems and funds may consider, in addition to other appropriate factors recognized by law, the extent to which such investments will (a) maintain the ability of the city of New York (1) to make future contributions to such systems and funds and (2) to satisfy its future obligations to pay pension and retirement benefits to members and beneficiaries of such systems and funds and (b) protect the sources of funds to provide retirement benefits for members and beneficiaries of such systems and funds."
OPINION NO. 108,331

Subdivision a of §2 of Chapter 890 provides in part that "the city of New York shall save harmless and indemnify all members of the board, officers, employees, trustees, fiduciaries and investment advisors of any such system or fund from financial loss arising out of any claim, demand, suit, action or judgment for alleged negligence, waste or breach of fiduciary duty (a) resulting from the purchase by such systems and funds of any obligations of the city of New York or the municipal assistance corporation for the city of New York from such city or corporation or (b) resulting from the sale of any assets held in such systems and funds to produce sufficient revenues to purchase such obligations, provided that such person shall, within eight days after the date on which he is served with any summons, complaint, process, notice, demand, claim or pleading, deliver the original or a true copy thereof to the corporation counsel of the city of New York.***"

Under the terms of §5 of Chapter 890, the provisions of §§ 1 and 2 of that statute "shall be retroactive to and shall be deemed to have been in full force and effect from and after November twenty-third, nineteen hundred seventy-five, and such provisions shall terminate on December thirty-first, nineteen hundred eighty, provided, however, that nothing herein contained shall be deemed to diminish the indemnification provided by section two of this act for investment and sales made in accordance with the provisions of this act during the period commencing November twenty-third, nineteen hundred seventy-five, and ending on December thirty-first, nineteen hundred eighty." (emphasis supplied)

Chapter 890 became law on December 5, 1975. The Legislature enacted Chapter 890 after the Agreement of November 26, 1975 was executed and after it was made known that the Trustees of the City retirement systems and pension funds had requested such legislation, among other things, as a protection for the Trustees with respect to retirement system and pension fund actions called for by the Agreement. By making §§ 1 and 2 of Chapter 890 retroactive to November 23, 1975, the Legislature manifested a clear intent that the standards for trustee investment decisions set forth in § 1 and the indemnification provisions set forth in § 2 shall be applicable to investment actions taken by the boards of trustees of the retirement systems and pension funds in carrying out system and fund commitments of the kind here involved, as set forth in the Agreement.

The term "purchase", as used in §§ 1 and 2 of Chapter 890 includes the exchange of bonds here involved.
OPINION NO. 108,331

The common meaning in law of "purchase" is (Blacks Law Dictionary, 4 Ed.):

"Transmission of property from one person to another by voluntary act and agreement, founded on a valuable consideration."

The term "purchase", as used in statutes, has often been held to include exchanges of property. Keeler v. Murphy, 3 P. (2d) 950, 952 (Dist. Ct. App., 1st Dist., Div. 2, Cal., 1931) and cases cited therein.

Subdivision 1 of §179 of the Retirement and Social Security Law, as amended effective September 8, 1975, provides in part that "obligations of the municipal assistance corporation for the city of New York are reasonable, prudent, proper and legal investments for any fund described in subdivision one of section one hundred seventy-six of this article [a state or N.Y. City public pension fund] or for any board member, officer, employee, trustee or fiduciary thereof to make on behalf of such fund."

Subdivision 2 of §179 provides in part that no member of the board of trustees or fiduciary of a public pension system "shall incur or suffer any liability whatsoever to any person beneficially interested in such system by reason of any investment of the monies thereof in obligations of the municipal assistance corporation for the city of New York and each such system shall save harmless and indemnify all members of the board, officers, employees, trustees, fiduciaries and investment advisors" of such a public pension fund "from financial loss arising out of any claim, demand, suit, action or judgment for alleged negligence, waste or breach of fiduciary duty by reason of any investment of any monies of such fund in obligations of the municipal assistance corporation for the city of New York provided that such person shall, within five days after the date on which he is served with any summons, complaint, process, notice, demand, claim or pleading, deliver the original or a true copy thereof to the legal advisor of such system. ***"

Chapter 890 of the Laws of 1975 added to §179 a new subdivision 3 making that section inapplicable to purchases of obligations of M.A.C. or the City made by specified City-maintained pension funds (including the Fire Pension Fund, Article 1-B) from M.A.C. or the City after November 23, 1975. However, new subdivision 3 also provides that "nothing herein contained shall be deemed to diminish the indemnification provided for purchases made by the New York City Employees'
OPINION NO. 108,331

retirement system, the board of education retirement system of the city of New York, the New York City police pension funds and fire department pension funds in obligations of the municipal assistance corporation for the city of New York and obligations of the city of New York from the municipal assistance corporation for the city of New York and the city of New York on and after September ninth, nineteen hundred seventy-five, but prior to November twenty-third, nineteen hundred seventy-five, in accordance with the provisions of this section."

You are advised that if the Board of Trustees of the Fire Pension Fund, Article 1-B adopts the resolution in question, which provides for effectuation of the Pension Fund's obligations under paragraph 5 of the Agreement, each Trustee will be protected with respect to such action by the indemnification statutes discussed above.

Sincerely,

[Signature]

Corporation Counsel
Mr. Herbert Elish
Executive Director
Municipal Assistance Corporation
Two World Trade Center
New York, New York 10047

Dear Herb:

John Koehane and I met today with Sol Lewis and other representatives from the Controller's Office, Bernie Friedlander from Corporation Counsel's Office, and Susan Friedwald, assistant to Tom Roche, regarding the restructuring as it effects Bonds held by the Pension Funds. I believe we have reached an understanding with these people as to the procedures to be followed for the Pension Funds. However, Sol Lewis said that a formal presentation will have to be made to the Trustees of the various Pension Funds, especially since the Funds are being asked to consent to amendments to the General Bond Resolution in order to carry out the restructuring. He asked that I attend the regularly-scheduled meetings of the various Pension Funds to describe MAC's proposal and answer questions. The first of these meetings for the New York City Employees Retirement System, is being set for Monday, May 10.

In connection with that meeting, I promised Sol Lewis that we would have a brief memorandum of MAC's proposal available by Friday for him to distribute to the Trustees in advance of the Monday meeting. I will suggest to Sol that the memorandum go to all Trustees of all of the Funds. The other meetings are scheduled for later in May, by which time the formal requests for consents will have been published and mailed to all bondholders. It is hoped that the Trustees will go over the proposal and actually vote on the consents at these later meetings. A
second meeting of the Employees' Retirement Fund will be held in early June for voting on the consents. In short, Sol believes it will be useful to outline the proposal on Monday even though the formal consents will not then be ready.

I think it would be most useful if you could attend these meetings with me.

The schedule is as follows:

New York City Employees' Retirement System, May 10 (time to be determined)

Teachers' Retirement System, May 21, 2:30 p.m.

New York City Police Pension Fund, May 24, 10:00 a.m.

New York City Fire Department Pension Fund, May 28, 10:00 a.m.

Board of Education Retirement System -- a special meeting to be called during the month of May.

Let me know your views.

Sincerely yours,

Judith R. Thoyer

JRT/ao

cc: Mr. Tamagni
    Mr. Heineman
    Mr. Thomas

BY HAND
March 31, 1976

Mr. James R. Keegan
Deputy Executive Director
Municipal Assistance Corporation
Two World Trade Center
New York, New York 10047

Dear Mr. Keegan:

In reply to your letter dated March 24, 1976 I enclose a schedule setting forth the holdings, by series, of First General Resolution Municipal Assistance Corporation Bonds for each of the New York City Pension Funds and Sinking Funds on November 26, 1976.

Sincerely,

Sol Lewis
Acting Third Deputy Comptroller

SL/bjs
Enc.

cc: Marschall Smith
    Paul, Weiss, Rifkind, Wharton & Garrison (w/o enc)
    Frederick R. Cummings
    Paul, Weiss, Rifkind, Wharton & Garrison (w/o enc)
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Signature: [Signature]

Page Title: Municipal Asssistance Gap for the City of New York Purchases by Retirement Systems As at January 3-9-76
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**Total**

141,500000 183,500000 125,000000 450,000000
March 24, 1976

Mr. Sol Lewis
Acting Third Deputy Comptroller
Municipal Building-Room 822
New York, New York 10007

BY HAND

Dear Mr. Lewis:

This Corporation requests:

A schedule setting forth the holdings, by series, of First General Resolution Municipal Assistance Corporation Bonds for each of the New York City Pension Funds and Sinking Funds; and

A certification that the holdings identified in the schedule are subject to Amended and Restated Agreement dated November 26, 1975.

Please forward the above to me at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

James R. Keegan
Deputy Executive Director
INTERNAL REVENUE CODE OF 1954—NEW YORK RETIREMENT SYSTEMS

An Act relating to the application of certain provisions of the Internal Revenue Code of 1954 to New York retirement systems created by the State of New York or any of its political subdivisions,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) any pension plan or trust which, on December 31, 1975, was a party to the amended and restated agreement of November 26, 1975, set forth on pages 521296, 521316, and 521346 of the Congressional Record published on such date, and any trust forming a part of such a plan, shall not be considered to fail to satisfy the requirements set forth in subsection (a) of the Internal Revenue Code of 1954, and shall not be considered to have engaged in a prohibited transaction described in section 351(a) of such Code, merely because such plan or trust does any or all of the following:

(1) (A) enters into such agreement or agrees to an amendment of such agreement;
(B) foresees from any act prohibited by such agreement;
(C) acquires or holds any obligation the acquisition or holding of which is provided for by such agreement;
(D) makes any election provided for by such agreement;
(E) enters a waiver of any requirement of such agreement;
(F) after the expiration of such agreement, holds any obligation acquired or held pursuant to such agreement;
(G) performs any other act provided for by such agreement;
(H) on or after August 30, 1975, and before January 1, 1976, considers, for purposes of determining investments to be made by the plan or trust, the extent to which such investments will—

(A) maintain the ability of the city of New York—
(i) to make future contributions to the plan or trust,
(ii) to satisfy its future obligations to pay pension and retirement benefits to members and beneficiaries of such plan or trust, and
(iii) to protect the sources of funds to provide retirement benefits for members and beneficiaries of the plan or trust; or

(2) after December 31, 1975, considers, for purposes of determining whether to retain investments held on December 31, 1975, the factors enumerated in paragraph (1).

For purposes of paragraph (1), the acquisition or holding of any obligation of the Municipal Assistance Corporation for the city of New York on or before August 30, 1975, and before November 26, 1975, shall be considered an acquisition or holding provided for by such agreement.

(b) In the case of—

(1) any amendment to the agreement described in subsection (a) which relates to the application of the factors set forth in subsection (a) to the requirements of section 351(a) or 951(h) of the Internal Revenue Code of 1954 and which is adopted after December 31, 1975, and

LEGISLATIVE HISTORY:

Report to congressional committees.

Regulations.

Please be advised of the following differences of interest due February 2, 1976 on the holdings of the various retirement systems of Municipal Assistance Corp. (MAC) Bonds which was credited or failed to be credited by the United States Trust Company.

My concern is: Was the public or banks holding similar bonds overpaid too?

<table>
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<tr>
<th>System</th>
<th>Series</th>
<th>Par Value</th>
<th>Date Purchased</th>
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TOTAL INTEREST OVERPAID ON MAC BONDS ——— 700,027.76
February 11, 1976

Mr. Wallace F. Sullivan  
Executive Director  
Teachers' Retirement System  
40 Worth Street  
New York, New York 10013

Dear Mr. Sullivan:

Confirming our telephone conversation of this date, please be advised that I will be happy to attend your February 19 Board Meeting. However, due to a previously scheduled commitment to meet with Deputy Mayor Zuccotti at 2 pm, I will not be able to be there promptly at 2:30 pm. I would appreciate it if you could convey this information to your Board. I will be there just as quickly as possible.

Sincerely yours,

[Signature]

Herbert Elish
February 9, 1976

Mr. Herbert Elish
Executive Director
Municipal Assistance Corporation
For The City of New York
Two World Trade Center
New York, New York 10047

Dear Mr. Elish:

In reference to the request contained in your letter dated February 5, 1976, I wish to inform you that the Teachers' Retirement Board convened a special meeting of the Board on February 6, 1976. At this meeting the Board considered your request and, by resolution, authorized me as Executive Director to sign the instrument contained in your letter of February 5, 1976.

The Teachers' Retirement Board, at this meeting, expressed concern over the short notice given with respect to this matter. They have asked me to communicate with you in order to invite you to the next regular meeting of the Teachers' Retirement Board to be held on February 19, 1976. This meeting shall be held in the offices of the Teachers' Retirement System at 40 Worth Street, Manhattan, in Room 1405 at 2:30 P.M.

I sincerely hope you will be able to attend this meeting and would appreciate an early confirmation of your attendance.

Sincerely,

WALLACE P. SULLIVAN
Executive Director

WPS:jt
February 10, 1976

Dear Mr. Goldberg:

In accordance with your recent request, enclosed please find a copy of Mr. Tron's letter of January 12, 1976 to Mr. Herbert Elish concerning investments by the New York City Teachers Retirement Board in securities of the Corporation.

We understand that you have no record of any written response to the enclosed letter. If any further information comes to light in this connection, please let us know as promptly as possible.

Very truly yours,

Dean B. Allison

Daniel Goldberg, Esq.
General Counsel
The Municipal Assistance Corporation
for the City of New York
Two World Trade Center
New York, New York 10047

Dean B. Allison

DBA:ckk
Enclosure
Introduced to the Committee on Ways and Means
February 4, 1970

By R. Knarr, Jr., Price, and Al. Cannata

Substitutions
State of New York or any of the political
proposals transportation systems created by the
specialized transactions by certain public com-
on the Internal Revenue Code of 1964 to
relating to the application of certain provisions

BILL

to Session H.R. 1170

54th Congress
January 8, 1976

The Honorable Hugh L. Carey  
Governor  
State of New York  
Executive Chamber  
Albany, New York 12224

Dear Hugh:

As you know, the November 26, 1975 Agreement (the "Agreement") among the Municipal Assistance Corporation for the City of New York, eleven major banks, four New York City sinking funds and five New York City employee pension funds (the five pension funds are hereinafter collectively referred to as the "Retirement Systems") contemplates that the Retirement Systems will purchase an aggregate of $2.53 billion of New York City bonds during the three-year period ending June 30, 1978. Such purchases are an integral part of the three-year financial plan to avert the bankruptcy of the City.

The commitment by the Retirement Systems to purchase bonds of the City in the amounts contemplated by the Agreement creates a special problem for such systems under the Internal Revenue Code (the "Code") which could result in the loss of their tax-exempt status. Under Section 503 (b) of the Code, the purchases of City bonds contemplated by the Agreement may be deemed by the Internal Revenue Service to constitute "prohibited transactions," the consummation of which would result in the loss to such systems of their tax-exempt status. The Agreement recognizes this problem. Paragraph 7(a) (vi) of the Agreement conditions the obligation of the Retirement Systems to purchase City bonds upon the Internal Revenue Service ruling on the Congress providing by appropriate legislation that the purchases of City bonds by
the Retirement Systems will not constitute prohibited transactions or otherwise adversely affect the tax exempt status of the Retirement Systems. While the Internal Revenue Service, as an emergency matter, has indicated to us by letter that the initial purchases of city bonds made by the Retirement Systems last month would not be deemed "prohibited transactions," the Service has expressly refused to give any further assurances and has indicated that legislation must be obtained to cover any future purchases of city obligations by the Retirement Systems.

Since it is impossible to obtain further rulings from the Internal Revenue Service, legislation is thus the only alternative. If enacted into law, the proposed amendments to the Code which I have enclosed would achieve the desired result by assuring the Retirement Systems of their tax exempt status by declaring them to be tax exempt organizations under Code Section 501 and by excluding them from the prohibited transaction rules of Code Section 503.

The prohibited transaction rules are designed to protect the integrity of the portfolio of an employee retirement plan by restricting its ability to lend money to or to engage in other acts of self-dealing with the employer. Although there may be some situations where the prohibited transaction rules should be applicable to municipal plans, that is not the case where, as here, a municipal employer is obligated, independent of the assets of the retirement fund, to pay all retirement benefits. The general obligation of the municipality backed by its taxing power is a sufficient substitute to the prohibited transaction rules. The enclosed proposed legislation is designed to create just such a limited exception to the prohibited transaction rules of the Code.

*See the New York City Administrative Code Section B3-21.0 of the Title B of Chapter 3, Section B20-30.0 of Title B of Chapter 20, Section B18-27.0 of Article 2 of Title B of Chapter 18, and Section B19-7.68 of Article 1-B of Title B of Chapter 19.*
The Service has indicated that it would support our efforts for a legislative solution and recognizes the urgency of our problem. The enclosed proposal, however, has not yet been circulated to them or anyone else.

Since the City must sell more bonds to the Retirement Systems in February, immediate action by the Congress is essential. I respectfully request that you ask the chairman of the House Ways and Means and the Senate Finance Committees to sponsor the enactment by the Congress of the enclosed amendments to the Internal Revenue Code of 1954. I, my staff and our attorneys are available to meet with you and your staff at any time to assist you in this regard and to discuss the required legislation so that it may be forwarded to Washington at the earliest possible date.

Sincerely,

[Signature]
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</tr>
<tr>
<td>Benefit and Other Payments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Income</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment Income</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Contributions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employer Contributions</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**New York City and MAC Securities**

- **Total Additions of Collateralized Loans**: $31,809
- **New Purchases**: $30,309
- **Proceeds of New Purchases from Net Addition**: $623
- **Closing at End of Year**: $331

**Assets - Beginning of Year**

- **1977-78**: $77,719
- **1976-77**: $87,442
- **1975-76**: $89,169

**Variance**

- **Variance 1**: 10.4%
- **Variance 2**: 11.3%
- **Variance 3**: 10.5%

**Variance Figures in Millions of Dollars**
1. Employer Contributions for the Fiscal Year 1975-76 were obtained from the Actuary’s letter to the Retirement Systems.

Employer Contributions for the later Fiscal Years were estimated to increase at the rate of 10% a year. When finally calculated, they will be determined on the following bases -

<table>
<thead>
<tr>
<th>Year</th>
<th>Calculated on Payroll Base Of</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975-76</td>
<td>June 30, 1974</td>
</tr>
<tr>
<td>1976-77</td>
<td>June 30, 1975</td>
</tr>
<tr>
<td>1977-78</td>
<td>June 30, 1976</td>
</tr>
</tbody>
</table>

It is assumed there will be no reduction in Employer Contributions on account of "excess interest".

2. Employee Contributions were assumed to remain constant at their present level.

3. Investment income was calculated on the basis of the average of the total assets during the year by using the following rates of investment income.

<table>
<thead>
<tr>
<th>Securities</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAC Securities</td>
<td>9.0%</td>
</tr>
<tr>
<td>All Other Assets</td>
<td>6.0%</td>
</tr>
</tbody>
</table>

4. Benefits and Other Payments include all disbursements listed in the Comptroller's Report, other than those relating to the buying and selling of securities.
Re: Purchases of City Bonds by
New York City Employees' Retirement System and New York
City Teachers' Retirement System, 12/17/75

Board of Trustees
New York City Employees' Retirement System
220 Church Street
New York, New York 10013

Attention: Hon. Melvin Goldstein
           Executive Director

Board of Trustees
New York City Teachers' Retirement System
220 Church Street
New York, New York 10013

Attention: Hon. Wallace F. Sullivan
           Executive Director

Board of Trustees
Police Pension Fund, Article 2
1 Police Plaza
New York, New York 10038

Attention: Hon. Daniel O'Neal Vona
           Deputy Commissioner

Board of Trustees
Fire Department, Pension Fund, Article 1-B
110 Church Street
New York, New York 10007

Attention: Hon. Stephen J. Murphy
           Deputy Commissioner

Board of Trustees
Board of Education Retirement System
65 Court Street
Brooklyn, New York 11201

Attention: Hon. Joseph Antoinette
           Executive Director
Hon. Harrison J. Goldin  
City Comptroller  
Municipal Building - Room 707  
New York, New York 10007

Attention: Hon William T. Scott  
Third Deputy Comptroller

Municipal Assistance Corporation  
For The City of New York  
Two World Trade Center  
New York, New York 10047

Attention: Mr. James Keegan

Gentlemen:

In Opinion No. 108,265 issued by the Corporation Counsel on December 15, 1975, it is in effect stated in part that all conditions required to be met in order to obligate the New York City Employees' Retirement System and the New York City Teachers' Retirement System to make purchases of $30,000,000 principal amount of City bonds as scheduled for December 17, 1975, had either been satisfied by occurrence of the prescribed actions or events or had been waived by the Pension Funds, except that a letter from General Counsel to the Municipal Assistance Corporation For The City of New York was being awaited with regard to satisfaction of the preliminary requirement of Paragraph 7(e) of the Agreement of November 26, 1975 in relation to such purchases and satisfaction of the condition set forth in Paragraph 7(e)(ix) of such Agreement in relation thereto.

Attached hereto as Exhibit "A" is a letter from General Counsel to such Corporation, dated December 16, 1975, stating in effect that such preliminary requirement and condition have been satisfied as to such purchases.

Accordingly, it is my opinion that all conditions of the Agreement of November 26, 1975 required to be satisfied in order to obligate these Retirement Systems to make such purchases scheduled for December 17, 1975 have either been satisfied by occurrence of the prescribed actions or events or have been waived by these Retirement Systems.

Sincerely,

W. Bernard Richland
AGREEMENT made as of the 24th day of November, 1975, among the Municipal Assistance Corporation for the City of New York (the "Corporation") and each of the undersigned New York City Commercial Banks (the "Banks"), New York City Pension Funds (the "Pension Funds") and the New York City Sinking Funds (the "Sinking Funds").

The Corporation is proposing to offer to exchange certain of its bonds (the "MAC Bonds") for certain outstanding short-term obligations of the City of New York, listed on Schedule A attached hereto (the "City Notes") pursuant to an official statement of the Corporation (the "Official Statement"), a draft of which, dated November 19, 1975, was heretofore delivered to representatives of each of the Banks, Pension Funds and Sinking Funds (the "Exchange Offer").

The parties hereto agree as follows:

1. Each of the Banks and Pension Funds hereby agrees not to tender or otherwise offer for exchange any City Notes held by it for MAC Bonds pursuant to the Exchange Offer. Each of the Banks and Pension Funds understands that, as a result of it not tendering or otherwise offering for exchange its City Notes pursuant to the Exchange Offer, under the provisions of the New York State Moratorium Act for the City of New York enacted by the State Legislature at an extraordinary session and signed by the Governor on November 15, 1975 (the "Moratorium Act"), its City Notes will be subject to the moratorium therein provided for (the "Moratorium").

2. Notwithstanding any determination by any court of competent jurisdiction or by the State Legislature applicable generally to all City Notes subject to the Moratorium which determination is not by its specific terms made applicable to the Banks or Pension Funds, that results in an increase in the rate of interest paid upon the City Notes subject to the Moratorium, each of the Banks and Pension Funds hereby agrees that, after the scheduled date of maturity thereof, no interest need be paid on City Notes held by it subject to the Moratorium in excess of a rate of 5% a year.

3. Each of the Banks and Pension Funds hereby agrees (a) at the termination of the "moratorium period" under the Moratorium Act and any renewal or extension thereof, to purchase short-term notes of the City, bearing interest at the rate of 6% a year, in an amount equal to the principal amount of City Notes held by it on the date hereof, upon or in payment of the principal amount of such City Notes, and (b) thereafter, from time to time, to purchase other short-term notes of the City, bearing interest at the rate of 6% a year, in an amount equal to the principal amount of the short-term notes purchased by it under (a) above, upon or in payment of the principal amount of any other short-term notes purchased by it pursuant to this Paragraph 3; provided that the final maturity date of the last short-term note of the City required to be purchased hereunder shall be no earlier than July 1, 1986 or the end of the moratorium period if the Moratorium is renewed or extended, whichever is later; and further provided that the City timely pays the interest with respect to the City Notes at their stated rate to the scheduled date of maturity thereof and thereafter timely pays interest with respect to the City Notes and such short-term notes at the rate of 6% a year.

4. The Sinking Funds hereby represent that the only short-term notes of the City held by them are bond anticipation notes dated January 13, 1975 and maturing January 13, 1976, in aggregate principal amount of $200,000,000 (the "Sinking Fund BANs"). The Sinking Funds hereby agree to purchase serial bonds of the City, bearing interest at the rate of 6% a year, in aggregate principal amount of $200,000,000 upon or in payment of the Sinking Fund BANs. The bonds so purchased by the Sinking Funds shall mature and be subject to payment of such annual installments of principal as shall be necessary, after first taking into account the other holdings of the Sinking Funds, to meet the legal obligations of the Sinking Funds.

5. Each of the Banks, Pension Funds and Sinking Funds hereby agrees promptly to exchange bonds of the Corporation, in an amount at least equal to the amount of bonds of the Corporation that
were heretofore purchased by it from the Corporation, for newly issued bonds of the Corporation issued pursuant to the first General Bond Resolution of the Corporation, dated July 2, 1975, bearing interest at the rate of 6% a year and maturing on February 1, 1986, subject to mandatory sinking fund payments calculated to provide for level debt service to February 1, 1986. Subject to the completion of such exchanges, the Corporation hereby agrees not to issue any new bonds of the Corporation based upon debt service savings to the Corporation resulting from such exchanges.

6. Each of the agreements referred to in Paragraphs 3 and 5 is subject to agreement to and fulfillment of such agreements by all other parties referred to in such Paragraphs 3 and 5 and to enactment of Federal Legislation that would provide, by way of guarantees or otherwise, for the seasonal financing needs of the City, over the period from the effective date thereof through a date not earlier than June 30, 1978, in a maximum amount of not less than $2,500,000,000.

7. The Pension Funds hereby agree to purchase serial bonds of the City, substantially in the proportions set out in Schedule B, in the principal amount of $2,530,000,000 as follows:

(a) Prior to January 1, 1976, $30,000,000 serial bonds of City bearing interest at the rate of 6% a year; (it being understood that urban renewal notes of the City in the amount of $30,000,000, dated April 18, 1973 and maturing December 17, 1975, and held by the Pension Funds, are to be paid with proceeds of federal grant funds segregated therefor);

(b) As soon as possible but prior to June 30, 1976, up to $500,000,000 serial bonds of the City; during the 1976-1977 fiscal year of the City up to $1,500,000,000 principal amount of serial bonds of the City; during the 1977-1978 fiscal year of the City up to $500,000,000 principal amount of serial bonds of the City; all such bonds shall bear interest at the rate of 9% a year;

(c) To the extent the City is required by law to amortize, prior to June 30, 1978, any principal of the bonds of the City purchased by the Pension Funds pursuant to this Paragraph 7, the Pension Funds agree to purchase additional serial bonds of the City in an amount equal to such principal amortization and bearing interest at the rate of 9% a year;

(d) Any Pension Fund may, at its election, purchase MAC Bonds (issued pursuant to its second General Bond Resolution), up to an amount equal to its proportionate share of the difference between $1,600,000,000 and the principal amount of MAC Bonds issued pursuant to the Exchange Offer, in fulfillment of its obligation to purchase an equal amount of bonds of the City pursuant to this Paragraph 7, and any such MAC Bonds so purchased shall bear interest at the rate of 8% a year and mature July 1, 1986, subject to mandatory sinking fund payments calculated to provide for level debt service to July 1, 1986;

(e) The obligations of the Pension Funds to purchase bonds pursuant to this Paragraph 7 shall be subject to agreement with respect thereto from all other parties referred to in this Paragraph 7 and shall be conditioned upon each of the following facts being true on the date of each such purchase: (i) the City shall have timely paid when due principal and interest on all bonds of the City outstanding at such time, (ii) the City shall not be under the jurisdiction of any court pursuant to any proceedings under the federal bankruptcy laws or pursuant to title 6A of the Local Finance Law, (iii) a State law containing provisions with respect to the legal status of the Pension Funds and their Trustees' responsibilities, satisfactory to such Trustees, shall have been enacted and shall be effective, (iv) the City shall have made to the Pension Funds the contributions and other payments required by law, (v) prior to February 1, 1976, or the first date on which the first federal seasonal financing moneys have been received by the City (whichever is earlier), the City shall deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board, and (vi) the Internal Revenue Service shall have ruled, or the Congress of the United States shall have provided, that purchases of
obligations by the Pension Funds pursuant to this Agreement shall not constitute prohibited transactions or otherwise adversely affect the qualified status of the Pension Funds for the purposes of the Internal Revenue Code of 1954, as amended, and (vii) the President of the United States shall have announced his intention to support or not to veto the Federal Legislation referred to in Paragraph 6 above; and

(f) If any of the Pension Funds elects not to make any purchases of bonds of the City as a result of a failure of any conditions set forth in clauses (iii), (v) or (vi) of Paragraph 7(c), such Pension Fund shall nevertheless, as soon as possible but prior to June 30, 1976, purchase its proportionate share of $500,000,000 of MAC Bonds pursuant to Paragraph 7(d) above.

In Witness Whereof, each of the parties have caused this instrument to be executed by its duly authorized officer as of the date first above written.

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK

By ........................................

Banks

FIRST NATIONAL CITY BANK

By ........................................

BANKERS TRUST COMPANY

By ........................................

UNITED STATES TRUST COMPANY

By ........................................

THE CHASE MANHATTAN BANK

By ........................................

MARINE MIDLAND BANK

By ........................................

NATIONAL BANK OF NORTH AMERICA

By ........................................
PENSION FUNDS

New York City Employees' Retirement System
By ...........................................

Board of Education Retirement System for the City of New York
By ...........................................

New York City Fire Department Pension Fund
By ...........................................

Teachers' Retirement System for the City of New York
By ...........................................

New York City Police Pension Fund
By ...........................................

SINKING FUNDS

Sinking Fund of the City of New York
By ...........................................

Water Sinking Fund of the City of New York
By ...........................................

Rapid Transit Sinking Fund of the City of New York
By ...........................................

Transit Unification Sinking Fund of the City of New York
By ...........................................
<table>
<thead>
<tr>
<th>Type</th>
<th>Amount</th>
<th>Date of Issue</th>
<th>Date of Maturity</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.A.N.</td>
<td>$400.0</td>
<td>12/13/74</td>
<td>12/11/75</td>
</tr>
<tr>
<td>R.A.N.</td>
<td>500.0</td>
<td>1/13/75</td>
<td>1/12/76</td>
</tr>
<tr>
<td>R.A.N.</td>
<td>120.0</td>
<td>1/13/75</td>
<td>1/12/76</td>
</tr>
<tr>
<td>R.A.N.</td>
<td>290.0</td>
<td>2/14/75</td>
<td>2/13/76</td>
</tr>
<tr>
<td>B.A.N.</td>
<td>341.270</td>
<td>3/14/75</td>
<td>3/12/76</td>
</tr>
<tr>
<td>B.A.N.</td>
<td>150.0</td>
<td>3/14/75</td>
<td>3/12/76</td>
</tr>
<tr>
<td>B.A.N.</td>
<td>220.0</td>
<td>6/30/75</td>
<td>5/28/76</td>
</tr>
<tr>
<td>T.A.N.</td>
<td>90.0</td>
<td>6/11/75</td>
<td>6/10/76</td>
</tr>
<tr>
<td>T.A.N.</td>
<td>190.0</td>
<td>6/11/75</td>
<td>6/10/76</td>
</tr>
<tr>
<td>B.A.N.</td>
<td>51.5</td>
<td>6/11/75</td>
<td>6/11/76</td>
</tr>
<tr>
<td>B.A.N.</td>
<td>250.0</td>
<td>10/17/75</td>
<td>10/1/76</td>
</tr>
<tr>
<td>B.A.N.</td>
<td>59.875</td>
<td>10/17/75</td>
<td>10/15/76</td>
</tr>
<tr>
<td>R.A.N.</td>
<td>6.750</td>
<td>11/10/75</td>
<td>11/9/76</td>
</tr>
</tbody>
</table>
December 16, 1975

Hon. W. Bernard Richland  
Corporation Counsel  
Law Department  
Municipal Building  
New York, New York  10007

Dear Sir:

You have requested us, as general counsel to Municipal Assistance Corporation For The City of New York, a corporate governmental agency and instrumentality of the State of New York constituting a public benefit corporation (the "Corporation"), to furnish you our opinion as to the matters herein set forth in connection with the sale of $30,000,000 principal amount of bonds of The City of New York scheduled to take place on December 17, 1975, pursuant to the Agreement made as of November 26, 1975 (the "Agreement") among the Corporation, certain New York City commercial banks, New York City Pension Funds (the "Pension Funds") and New York City Sinking Funds.

In this connection, we have examined the Agreement and have made such further examinations of law and fact as we considered necessary in order to form the opinions herein expressed.

In particular, for purposes of rendering this opinion, we were advised by the Office of the Comptroller of The City of New York that the following purchases by the Pension Funds of bonds of The City of New York have taken place under the Agreement:

EXHIBIT "A"
Hon. W. Bernard Richland

<table>
<thead>
<tr>
<th>Purchaser</th>
<th>Total Amounts Purchased on Dec. 5 &amp; Dec. 15, 1975</th>
<th>Percent of Total</th>
<th>Proportion Under Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYC Employees' Retirement System</td>
<td>$150,000,000</td>
<td>47.6%</td>
<td>47%</td>
</tr>
<tr>
<td>Teachers' Retirement System for The City of New York</td>
<td>$108,000,000</td>
<td>34.3%</td>
<td>34.4%</td>
</tr>
<tr>
<td>NYC Police Pension Fund, Article 2</td>
<td>$45,000,000</td>
<td>14.3%</td>
<td>14.6%</td>
</tr>
<tr>
<td>NYC Fire Department Pension Fund, Article 1B</td>
<td>$6,000,000</td>
<td>1.9%</td>
<td>2%</td>
</tr>
<tr>
<td>Board of Education Retirement System for The City of New York</td>
<td>$6,000,000</td>
<td>1.9%</td>
<td>2%</td>
</tr>
</tbody>
</table>

$315,000,000

December 16, 1975

In addition, for purposes of rendering this opinion, we were advised by the Office of the Comptroller of The City of New York that certain Pension Funds hold urban renewal notes of The City of New York dated April 18, 1975 and maturing December 17, 1975 (the "URNs"), in the principal amounts set forth below, that the URNs are to be paid in full on December 17, 1975, and that such Pension Funds will purchase bonds of The City of New York on December 17, 1975, in the principal amounts set forth below:
<table>
<thead>
<tr>
<th>Pension Fund</th>
<th>Amount of UrNs Held</th>
<th>Amount of Bonds of The City of New York To be Purchased</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYC Employees' Retirement System</td>
<td>$20,000,000</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>Teachers' Retirement System of The City of New York</td>
<td>$10,000,000</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

Based upon the foregoing, we are of the opinion that:

1. As of the date hereof, all parties to the Agreement referred to in Paragraph 7 thereof have fulfilled their agreements thereunder; and

2. As of the date hereof, to the best of our knowledge, no other party to the Agreement is in breach of any provision thereof.

Very truly yours,

[Signature]

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Board of Trustees
New York City Employees' Retirement System
Attention: Hon. Melvin Goldstein
Executive Director
220 Church Street
New York, N.Y. 10013

Board of Trustees
New York City Teachers' Retirement System
Attention: Hon. Wallace P. Sullivan,
Executive Director
220 Church Street
New York, N.Y. 10013

Board of Trustees
Police Pension Fund,
Article 2
Attention: Deputy Commissioner
Daniel O'Neal Vona
1 Police Plaza,
New York, N.Y. 10038

Board of Trustees, Fire Department
Pension Fund, Article 1-B
Attention: Deputy Commissioner
Stephen J. Murphy
110 Church Street
New York, N.Y. 10007

Board of Trustees
Board of Education
Retirement System
Attention: Hon. Joseph Antoinette,
Executive Director
65 Court Street
Brooklyn, N.Y. 11201

Re: Purchases of City Bonds by Retirement Systems and Pension Funds, scheduled for December 15th, 1975 and December 17th, 1975
OPINION NO. 108,265

Hon. Harrison J. Goldin
City Comptroller
Attention: Hon. William T. Scott,
Third Deputy Comptroller

Room 707
Municipal Building
New York, N.Y. 10007

Municipal Assistance
Corporation for The
City of New York
Attention: Mr. James Keegan
2 World Trade Center
New York, N.Y. 10047

Gentlemen:

This office has been informed by the office of
the City Comptroller that a purchase of $185,000,000 of
City bonds by the above-mentioned Retirement Systems and
Pension Funds (such Systems and Funds being hereinafter
referred to as "Pension Funds") has been scheduled for
December 15, 1975, that a purchase of $20,000,000 of
City bonds by the New York City Employees' Retirement
System has been scheduled for December 17, 1975 and that
a purchase of $10,000,000 of City bonds by the New York
City Teachers' Retirement System has likewise been scheduled
for December 17, 1975. We are informed that these bond
purchases have been scheduled under Paragraph 7 of the
Agreement executed on November 26, 1975 by the Municipal
Assistance Corporation for the City of New York ("MAC"),
certain banks, the Pension Funds and the City Sinking
Funds. Paragraph 7 provides that subject to certain
provisions hereinafter described, the Pension Funds agree
to make certain purchases of City bonds in accordance
with a schedule allocating the purchases among the re-
spective Pension Funds.

Paragraph 7 (e) of the Agreement provides that
the obligations of the Pension Funds to purchase City bonds
pursuant to Paragraph 7 "shall be subject to agreement to
and fulfillment of such agreements by all parties referred
to in this Paragraph 7 and shall be conditioned upon each
of the following facts being true on the date of each such
purchase: ***." There is set forth in Paragraph 7 (e),
OPINION NO. 108,265

after the quoted language, a listing of 9 conditions which are required to be satisfied with respect to any purchase of City bonds under Paragraph 7, in order that the Pension Funds may be obligated to make such purchase.

With regard to the above-described bond purchases scheduled for December 15, 1975 and December 17, 1975, this office has conducted a review in order to determine whether there has been compliance with or waiver of:

(1) the above-quoted preliminary requirement of Paragraph 7 (e) that all parties mentioned therein have fulfilled their agreements thereunder; and

(2) the above-mentioned 9 conditions.

Our review shows that with respect to the above-mentioned purchases scheduled for December 15, 1975, the preliminary requirement of Paragraph 7 (e) has been satisfied and also that the 9 conditions have been satisfied in 7 instances and waived by the Pension Funds in 2 instances.

Our review further discloses that as is explained infra:

(i) it may be anticipated that prior to December 17, 1975, adequate assurance will be furnished that the preliminary requirement of Paragraph 7 (e) has been satisfied as to purchases scheduled for December 17, 1975, and that one of the 9 conditions has been satisfied with regard thereto; and

(ii) six of the remaining 8 conditions are satisfied in relation to such December 17, 1975 purchases and the other 2 conditions have been waived with respect thereto.

The satisfaction or waiver of the foregoing items (except where further assurance as to the December 17, 1975 purchases is awaited as above explained) is established by the certifications set forth in this opinion and by the certifications and waivers contained in supporting documents attached hereto as Exhibits "A" to "G", inclusive.
OPINION NO. 108,265

I. EXECUTION OF AMENDED AND
RESTATED AGREEMENT OF
NOVEMBER 26, 1975

The letter to this office, dated December 12, 1975, from Paul, Weiss, Rifkind, Wharton & Garrison, General Counsel to MAC, which is attached hereto as Exhibit "A", shows that the Agreement of November 26, 1975, as amended and restated, appears to have been executed by all parties thereto.

II. SATISFACTION OF PRELIMINARY
REQUIREMENT OF PARAGRAPH 7 (e)
REGARDING FULFILLMENT OF
PARTIES' AGREEMENTS

The above-mentioned letter dated December 12, 1975 from General Counsel to MAC establishes that all parties referred to in Paragraph 7 have to date fulfilled their agreements thereunder in relation to the purchases scheduled for December 15, 1975. It is anticipated that prior to December 17, 1975, a similar assurance will be furnished by General Counsel to MAC as to the purchases scheduled for December 17, 1975.

III. SATISFACTION OR WAIVER OF 9 CONDITIONS
SET FORTH IN PARAGRAPH 7 (e)

The 9 conditions and the certifications showing satisfaction or waiver thereof are as follows:

1. Condition set forth in Paragraph 7 (e) (i)

This condition, as set forth in the Agreement of November 26, 1975, reads as follows:

"(i) the city shall have timely paid when due principal and interest on all bonds of the City outstanding at such time," [the time of the bond purchase]

Attached hereto as Exhibit "B" is a certification by the City Comptroller, dated December 15, 1975, attesting that the terms of this condition have been met by the City.

2. Condition set forth in Paragraph 7 (e) (ii)

This condition reads as follows:
OPINION NO. 108,265

"(ii) the City shall not be under the jurisdiction of any court pursuant to any proceedings under the federal bankruptcy laws or pursuant to title 6A of the Local Finance Law (or any statute analogous in purpose or effect to any such laws or such Law)."

The Corporation Counsel hereby certifies that this condition has been met in that the City is not under the jurisdiction of any court pursuant to any proceedings under the Federal bankruptcy laws or pursuant to title 6A of the Local Finance Law (or any statute analogous in purpose or effect to any such laws or such Law).

3. Condition set forth in Paragraph 7 (e) (iii)

This condition reads as follows:

"(iii) a State law containing provisions with respect to the legal status of the Pension Funds and their Trustees' responsibilities, satisfactory to such Trustees, shall have been enacted and shall be effective."

This condition has been met through the enactment of Chapter 890 of the Laws of 1975, which was approved by the Governor on December 5, 1975 and has been in effect since that date. By a certificate executed on December 5, 1975, in behalf of the Trustees of each of the Pension Funds, the Trustees of each such Fund agreed that Chapter 890 is satisfactory to them and fulfills this condition. A copy of Chapter 890 is hereto attached as Exhibit "H".

4. Condition set forth in Paragraph 7 (e) (iv)

This condition reads as follows:

"(iv) the City shall have made to the Pension Funds all contributions and other payments required by law,"

There is set forth in the above-mentioned certification of the City Comptroller, attached hereto as Exhibit "B", a further certification that the City
OPINION NO. 108,265

has made to the Pension Funds all contributions and other payments required by law. The City Comptroller, under the terms of the Pension Fund laws, is the custodian of their moneys and as such, receives in their behalf all required City contributions to the Pension Funds.

5. Condition set forth in Paragraph 7 (e) (v)

This condition reads as follows:

"(v) the City shall, in connection with each purchase prior to February 1, 1976, or the first date on which the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board,"

Attached hereto as Exhibits "C", "D", "E", "F" and "G", are certifications by each of the Pension Funds, issued by the Executive Director thereof or by the Chairman or Acting Chairman of its Board of Trustees, stating that with respect to the bond purchases scheduled for December 15th and 17th, 1975, the Pension Funds waive compliance with above-quoted condition (v).

6. Condition set forth in Paragraph 7 (e) (vi)

This condition reads as follows:

(vi) the Internal Revenue Service shall have ruled, or the Congress of the United States shall have provided, that such purchases of obligations by the Pension Funds pursuant to this Agreement shall not constitute prohibited transactions or otherwise adversely affect the qualified status of the
Pension Funds or the purposes of the Internal Revenue Code of 1954, as amended,"

The above-mentioned certifications by the Pension Funds attached hereto as Exhibits "C", "D", "E", "F" and "G" also contain a certification stating that with respect to the bond purchases scheduled for December 15th and 17th, 1975, the Pension Funds waive compliance with above-quoted condition (vi).

7. **Condition set forth in Paragraph 7 (e) (vii)**

This condition reads as follows:

"(vii) the Federal legislation referred to in Paragraph 6 above shall have been enacted and shall be in force,"

Paragraph 6 of the Agreement reads as follows:

"6. Each of the agreements referred to in Paragraphs 3 and 5 is subject to agreement to and fulfillment of such agreements by all other parties referred to in such Paragraphs 3 and 5 and to enactment prior to February 1, 1976 of Federal Legislation that would provide, by way of guarantees or otherwise, for the seasonal financing needs of the City, over the period from the effective date thereof through a date not earlier than June 30, 1978, in a maximum amount of not less than $2,300,000,000 at any time outstanding."

On December 10, 1975, the President of the United States approved Public Law 94-143 enacted by the Congress. This Federal statute provides for the seasonal financing needs of the City under terms and conditions meeting the requirements of Paragraph 6 of the Agreement. Accordingly, the enactment of this Federal legislation satisfies condition (vii).

8. **Condition set forth in Paragraph 7 (e) (viii)**

This condition reads as follows:

"(viii) at the time of any such purchase, there
shall have been delivered to and for the benefit of each Pension Fund an unqualified approving opinion as to legality from recognized bond counsel and such other documents as counsel for the Pension Funds shall reasonably request in form and substance satisfactory to such counsel.

The office of the Corporation Counsel has been advised by the office of the City Comptroller that Wachtell, Lipton, Rosen & Katz, Esqs., 299 Park Avenue, New York, N.Y. 10017, recognized bond counsel, will act as bond counsel in connection with the bond purchases scheduled for December 15th and 17th, 1975 and that such counsel are prepared to deliver to and for the benefit of each Pension Fund, an unqualified approving opinion as to the legality of the bonds to be purchased by such Pension Fund on the applicable above-mentioned date or dates. Accordingly, condition (viii) is satisfied.

9. Condition set forth in Paragraph 7 (e) (ix)

This condition reads as follows:

"(ix) no other party to this Agreement shall be in breach of any provision hereof."

The letter to this office from General Counsel to MAC, attached hereto as Exhibit "A", shows that with respect to the bond purchases scheduled for December 15th, 1975, none of the parties to the Agreement of November 26, 1975 is in breach of the Agreement. Accordingly, condition (ix) is satisfied as to such purchases. It is anticipated that prior to December 17th, 1975, a similar assurance will be received from General Counsel to MAC as to satisfaction of condition (ix) in relation to the bond purchases scheduled for December 17th, 1975.

IV. MATURITY DATE OF BONDS TO BE PURCHASED

It is provided in effect in Paragraph 7 (b) of the Agreement of November 26, 1975, that the bonds which are to be purchased by the Pension Funds on December 15th and 17th, 1975 "shall mature on such date or dates as shall be mutually agreed upon". Each of the certificates of waiver and agreement to maturity dates by the Pension Funds attached hereto as Exhibits "C", "D", "E", "F" and "G" contains an agreement by the
Board of Trustees of the Pension Fund in question that the maturities of the bonds which it is to purchase on the applicable December 15th and/or December 17th, 1975 dates shall be as set forth in the schedule attached to such certificate.

V. CORPORATION COUNSEL OPINIONS IN RELATION TO FUTURE PURCHASES OF CITY BONDS BY THE PENSION FUNDS

This office is informed that the Boards of Trustees of the Pension Funds have requested that in connection with each future purchase of City bonds by the Pension Funds pursuant to Paragraph 7 of the Agreement of November 26, 1975, the Corporation Counsel shall issue an opinion advising as to whether the conditions and requirements of the Agreement to be met in order to obligate the Pension Funds to make the purchase have been satisfied or waived. You are informed that such an opinion will be issued with respect to each such purchase.

In summary, it is my opinion that (except where further assurance from General Counsel to MAC is awaited as to the December 17th, 1975 bond purchases, as above explained), all of the conditions of the Agreement of November 26, 1975 required to be satisfied in order to obligate the Pension Funds to make the bond purchases scheduled for December 15th and 17th, 1975 have either been satisfied by occurrence of the prescribed actions or events or have been waived by the Pension Funds.

Sincerely,

[Signature]

Corporation Counsel

CC:
Paul, Weiss, Rifkind, Wharton & Garrison
Attention: Judith R. Thoyer
345 Park Avenue
New York, N.Y. 10022

Fried, Frank, Harris, Shriver & Jacobson, Esqs.
Attention: William Josephson, Esq.
120 Broadway
New York, N.Y. 10005
December 12, 1975

Hon. W. Bernard Richland
Corporation Counsel
Law Department
Municipal Building
New York, New York 10007

Dear Sir:

You have requested us, as general counsel to Municipal Assistance Corporation For The City of New York, a corporate governmental agency and instrumentality of the State of New York constituting a public benefit corporation (the "Corporation"), to furnish you our opinion as to the matters herein set forth in connection with the sale of $185,000,000 principal amount of bonds of The City of New York, scheduled to take place on December 15, 1975, pursuant to the Agreement made as of November 26, 1975 (the "Agreement") among the Corporation, certain New York City commercial banks, New York City Pension Funds (the "Pension Funds") and New York City Sinking Funds.

In this connection, we have examined the Agreement and have made such further examinations of law and fact as we considered necessary in order to form the opinions herein expressed.

In particular, for purposes of rendering this opinion, we were advised by the Office of the Comptroller of the City that the following purchases by the Pension Funds of bonds of The City of New York have taken place under the Agreement:

EXHIBIT "A"
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<td>13.1%</td>
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<td>2,000,000</td>
<td>1.5%</td>
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</tr>
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<td>Board of Education Retirement System for The City of New York</td>
<td>2,000,000</td>
<td>1.5%</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$130,000,000</td>
<td></td>
<td></td>
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</table>

Based upon the foregoing, we are of the opinion that:

1. The Agreement has been executed and delivered by the Corporation and appears to have been executed and delivered by all other parties thereto; and

2. As of the date hereof, all parties to the Agreement referred to in Paragraph 7 thereof have fulfilled their agreements thereunder; and

3. As of the date hereof, no other party to the Agreement is in breach of any provision thereof.

Very truly yours,

Paul, Weiss, Rifkind, Wharton & Garrison

Paul, Weiss, Rifkind, Wharton & Garrison
EXHIBIT "B"

OFFICE OF THE COMPTROLLER
OF THE CITY OF NEW YORK

December 15, 1975

Hon. W. Bernard Richland
Corporation Counsel
Law Department
Municipal Building
New York, N.Y. 10007

Re: Purchases of City bonds by
City Retirement Systems
and Pension Funds scheduled
for December 15, 1975 and
December 17, 1975

Sir:

You have requested this office to advise you as to
whether, in connection with the above-mentioned scheduled bond
purchases, certain conditions specified in Paragraph 7 (e) of
the Agreement of November 26, 1975 among the Municipal Assis-
tance Corporation for The City of New York, certain banks,
five City Retirement Systems and Pension Funds and the City
Sinking Funds have been satisfied.

The conditions in question appear in the following
language of Paragraph 7 (e):

"(e) The obligations of the Pension
Funds to purchase bonds pursuant to this
Paragraph 7 shall be subject to agree-
ment to and fulfillment of such agree-
ments by all parties referred to in
this Paragraph 7 and shall be conditioned
upon each of the following facts being
true on the date of each such purchase:
(i) the City shall have timely paid when due principal and interest on all bonds of the City outstanding at such time, *** (iv) the City shall have made to the Pension Funds all contributions and other payments required by law, ***."

Please be advised that conditions (i) and (iv) have been satisfied with respect to the above-mentioned scheduled purchases. This office hereby certifies:

(1) That the City has timely paid when due principal and interest on all bonds of the City now outstanding; and

(2) That the City has made to the Retirement Systems and Pension Funds all contributions and other payments required by law.

Sincerely,

[Signature]

WILLIAM T. SCOTT
Third Deputy Comptroller
EXHIBIT "C"
NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

CERTIFICATE OF WAIVER AND AGREEMENT TO MATURITY DATES

Hon. Abraham D. Beame
Mayor of the City of New York
City Hall
New York, N.Y. 10007

Hon. Harrison J. Goldin
Comptroller of the City of New York
Municipal Building
New York, N.Y. 10007

December 15, 1975
Re: Purchases of City bonds by City Retirement Systems and Pension Funds scheduled for December 15, 1975 and December 17, 1975

Gentlemen:

The Agreement entered into on November 26, 1975 by the Municipal Assistance Corporation for the City of New York, certain banks, five City Retirement Systems and Pension Funds and the City Sinking Funds provides, among other things, that subject to certain conditions, these Retirement Systems and Pension Funds shall make certain purchases of City bonds.

Paragraph 7 (e) (v) of the Agreement sets forth one of these conditions in the following language:

"(e) The obligations of the Pension Funds to purchase bonds pursuant to this Paragraph 7 shall be subject to agreement to and fulfillment of such agreements by all parties referred to in this Paragraph 7 and shall be conditioned upon each of the following facts being true on the date of each such purchase: *** (v) the City shall, in connection with each purchase prior to February 1, 1976, or the first date on which

EXHIBIT "C"
the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board."

The Board of Trustees desires to receive either a report of essential facts or an official statement of the City.

However, the Board recognizes that in the brief period since the execution of the Agreement, it has not been possible for the City to complete such documents, although efforts to do so are in progress with the objective of achieving this result as soon as possible.

For the purposes of the above-mentioned bond purchases scheduled for December 15, 1975 and December 17, 1975, the Board of Trustees hereby waives compliance with the above-quoted condition of Paragraph 7 (e) (v).

An additional condition of Paragraph 7 (e) of the Agreement is set forth in item (vi) thereof, which reads as follows:
"(vi) the Internal Revenue Service shall have ruled, or the Congress of the United States shall have provided, that such purchases of obligations by the Pension Funds pursuant to this Agreement shall not constitute prohibited transactions or otherwise adversely affect the qualified status of the Pension Funds for the purposes of Internal Revenue Code of 1954, as amended,"

We hereby acknowledge receipt of a copy of the letter from Internal Revenue Service dated December 5, 1975 communicating the view that $130,000,000 of City bond purchases by City Retirement Systems would not constitute prohibited transactions in violation of certain provisions of the Internal Revenue Code or violate certain other provisions of that Code. We note that the purchases scheduled for December 15th and 17th, 1975 are not different in principle from the December 5, 1975 purchases referred to by Internal Revenue Service. Additionally, remedial legislation in connection with Paragraph 7 (e) (vi) is under consideration in the Congress of the United States.

The Board of Trustees therefore waives the condition of Paragraph 7 (e) (vi) for the purposes of the above-mentioned bond purchases scheduled for December 15, 1975 and December 17, 1975.

The Board of Trustees hereby agrees to the maturity dates of the City bonds to be purchased on the applicable
December 15th and/or December 17th, 1975 dates, as such maturity dates are set forth in the attached schedule.

THE BOARD OF TRUSTEES

BY MELVIN GOLDSTEIN
EXECUTIVE DIRECTOR
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December 15, 1975

* Plus 2 days accrued intererst
Hon. Abraham D. Beame  
Mayor of the City of New York  
City Hall  
New York, N.Y. 10007

December 15, 1975

Hon. Harrison J. Goldin  
Comptroller of the City  
of New York  
Municipal Building  
New York, N.Y. 10007

Re: Purchases of City bonds
by City Retirement Systems and Pension Funds scheduled for
December 15, 1975 and December 17, 1975

Gentlemen:

The Agreement entered into on November 26, 1975 by the
Municipal Assistance Corporation for the City of New York, certain
banks, five City Retirement Systems and Pension Funds and the
City Sinking Funds provides, among other things, that subject
to certain conditions, these Retirement Systems and Pension
Funds shall make certain purchases of City bonds.

Paragraph 7 (e) (v) of the Agreement sets forth one of
these conditions in the following language:

"(e) The obligations of the Pension Funds to purchase bonds
pursuant to this Paragraph 7 shall be subject to agreement to and ful-
fillment of such agreements by all parties referred to in this Paragraph
7 and shall be conditioned upon each of the following facts being true on
the date of each such purchase:**

(v) the City shall, in connection with each purchase prior to February
1, 1976, or the first date on which

EXHIBIT "D"
the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board.'

The Board of Trustees desires to receive either a report of essential facts or an official statement of the City.

However, the Board recognizes that in the brief period since the execution of the Agreement, it has not been possible for the City to complete such documents, although efforts to do so are in progress with the objective of achieving this result as soon as possible.

For the purposes of the above-mentioned bond purchases scheduled for December 15, 1975 and December 17, 1975, the Board of Trustees hereby waives compliance with the above-quoted condition of Paragraph 7 (e) (v).

An additional condition of Paragraph 7 (e) of the Agreement is set forth in item (vi) thereof, which reads as follows:
"(vi) the Internal Revenue Service shall have ruled, or the Congress of the United States shall have provided, that such purchases of obligations by the Pension Funds pursuant to this Agreement shall not constitute prohibited transactions or otherwise adversely affect the qualified status of the Pension Funds for the purposes of Internal Revenue Code of 1954, as amended,"

We hereby acknowledge receipt of a copy of the letter from Internal Revenue Service dated December 5, 1975 communicating the view that $130,000,000 of City bond purchases by City Retirement Systems would not constitute prohibited transactions in violation of certain provisions of the Internal Revenue Code or violate certain other provisions of that Code. We note that the purchases scheduled for December 15th and 17th, 1975 are not different in principle from the December 5, 1975 purchases referred to by Internal Revenue Service. Additionally, remedial legislation in connection with Paragraph 7 (e) (vi) is under consideration in the Congress of the United States.

The Board of Trustees therefore waive the condition of Paragraph 7 (e) (vi) for the purposes of the above-mentioned bond purchases scheduled for December 15, 1975 and December 17, 1975.

The Board of Trustees hereby agrees to the maturity dates of the City bonds to be purchased on the applicable
December 13th and/or December 17th, 1975 dates, as such maturity dates are set forth in the attached schedule.

THE BOARD OF TRUSTEES

BY WALLACE P. SULLIVAN
EXECUTIVE DIRECTOR
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*Plus 2 days accrued interest.*

December 15, 1975

New York City Teachers' Retirement System

December 15, 1975

Sale of Bonds to Pension Funds
EXHIBIT "F"
POLICE PENSION FUND,
ARTICLE 2

CERTIFICATE OF WAIVER AND AGREEMENT
TO MATURITY DATES

Hon. Abraham D. Beame
Mayor of the City of New York
City Hall
New York, N.Y. 10007

December 15, 1975

Re: Purchases of City bonds
by City Retirement
Systems and Pension
Funds scheduled for
December 15, 1975 and
December 17, 1975

Hon. Harrison J. Goldin
Comptroller of the City
of New York
Municipal Building
New York, N.Y. 10007

Gentlemen:

The Agreement entered into on November 26, 1975 by the
Municipal Assistance Corporation for the City of New York, certain
banks, five City Retirement Systems and Pension Funds and the
City Sinking Funds provides, among other things, that subject
to certain conditions, those Retirement Systems and Pension
Funds shall make certain purchases of City bonds.

Paragraph 7 (e) (v) of the Agreement sets forth one of
these conditions in the following language:

"(e) The obligations of the
Pension Funds to purchase bonds
pursuant to this Paragraph 7 shall
be subject to agreement to and ful-
fillment of such agreements by all
parties referred to in this Paragraph
7 and shall be conditioned upon each
of the following facts being true on the
date of each such purchase: ***
(v) the City shall, in connection
with each purchase prior to February
1, 1976, or the first date on which

EXHIBIT "F"
the first seasonal financing money
have been received by the City pur-
suant to the Federal Legislation re-
ferred to in Paragraph 6 (whichever
is earlier), deliver to any Pension
Fund so requesting a report of es-
sential facts of the City in the
form promulgated by the State Depart-
ment of Audit & Control, and in
connection with each purchase there-
after shall deliver to any Pension
Fund so requesting an official
statement with respect to the City
in form and substance satisfactory
to the Trustees of the Pension
Funds, each of which shall include
a current status of the City's
financial plan as required and
approved by the Emergency Financial
Control Board."

The Board of Trustees desires to receive either a
report of essential facts or an official statement of the
City.

However, the Board recognizes that in the brief period
since the execution of the Agreement, it has not been possible
for the City to complete such documents, although efforts to
do so are in progress with the objective of achieving this
result as soon as possible.

For the purposes of the above-mentioned bond purchases
scheduled for December 15, 1975 and December 17, 1975, the
Board of Trustees hereby waives compliance with the above-
quoted condition of Paragraph 7 (e) (v).

An additional condition of Paragraph 7 (e) of the
Agreement is set forth in item (vi) thereof, which reads as
follows:
"(vi) the Internal Revenue Service
shall have ruled, or the Congress of
the United States shall have provided,
that such purchases of obligations by
the Pension Funds pursuant to this
Agreement shall not constitute prohi-
bited transactions or otherwise ad-
versely affect the qualified status
of the Pension Funds for the purposes
of Internal Revenue Code of 1954, as
amended."

We hereby acknowledge receipt of a copy of the letter
from Internal Revenue Service dated December 5, 1975 communi-
cating the view that $130,000,000 of City bond purchases by
City Retirement Systems would not constitute prohibited trans-
actions in violation of certain provisions of the Internal
Revenue Code or violate certain other provisions of that Code.
We note that the purchases scheduled for December 15th and
17th, 1975 are not different in principle from the December
5, 1975 purchases referred to by Internal Revenue Service.
Additionally, remedial legislation in connection with Para-
graph 7 (e) (vi) is under consideration in the Congress of
the United States.

The Board of Trustees therefore waives the condition
of Paragraph 7 (e) (vi) for the purposes of the above-mentioned
bond purchases scheduled for December 15, 1975 and December
17, 1975.

The Board of Trustees hereby agrees to the maturity
dates of the City bonds to be purchased on the applicable
December 15th and/or December 17th, 1975 dates, as such maturity dates are set forth in the attached schedule.

THE BOARD OF TRUSTEES

BY DANIEL O'NEAL VONA
ACTING CHAIRMAN
BOARD OF TRUSTEES
June 15, 1978

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**New York City Police Fund**

December 15, 1977

**Sale of Bonds to Pension Funds**
CERTIFICATE OF WAIVER AND AGREEMENT
TO MATURITY DATES

Hon. Abraham D. Beame
Mayor of the City of New York
City Hall
New York, N.Y. 10007

Hon. Harrison J. Goldin
Comptroller of the City of New York
Municipal Building
New York, N.Y. 10007

Re: Purchases of City bonds by City Retirement Systems and Pension Funds scheduled for December 15, 1975 and December 17, 1975

December 15, 1975

Gentlemen:

The Agreement entered into on November 26, 1975 by the Municipal Assistance Corporation for the City of New York, certain banks, five City Retirement Systems and Pension Funds and the City Sinking Funds provides, among other things, that subject to certain conditions, these Retirement Systems and Pension Funds shall make certain purchases of City bonds.

Paragraph 7 (e) (v) of the Agreement sets forth one of these conditions in the following language:

"(e) The obligations of the Pension Funds to purchase bonds pursuant to this Paragraph 7 shall be subject to agreement to and fulfillment of such agreements by all parties referred to in this Paragraph 7 and shall be conditioned upon each of the following facts being true on the date of each such purchase: ***(v) the City shall, in connection with each purchase prior to February 1, 1976, or the first date on which

EXHIBIT "P"
the first seasonal financing money
have been received by the City pur-
suant to the Federal Legislation re-
ferred to in Paragraph 6 (whichever
is earlier), deliver to any Pension
Fund so requesting a report of es-
sential facts of the City in the
form promulgated by the State Depart-
ment of Audit & Control, and in
connection with each purchase there-
after shall deliver to any Pension
Fund so requesting an official
statement with respect to the City
in form and substance satisfactory
to the Trustees of the Pension
Funds, each of which shall include
a current status of the City's
financial plan as required and
approved by the Emergency Financial
Control Board,"

The Board of Trustees desires to receive either a
report of essential facts or an official statement of the
City.

However, the Board recognizes that in the brief period
since the execution of the Agreement, it has not been possible
for the City to complete such documents, although efforts to
do so are in progress with the objective of achieving this
result as soon as possible.

For the purposes of the above-mentioned bond purchases
scheduled for December 15, 1973 and December 17, 1975, the
Board of Trustees hereby waives compliance with the above-
quoted condition of Paragraph 7 (e) (v).

An additional condition of Paragraph 7 (e) of the
Agreement is set forth in item (vi) thereof, which reads as
follows:

-2-
"(vi) the Internal Revenue Service shall have ruled, or the Congress of the United States shall have provided, that such purchases of obligations by the Pension Funds pursuant to this Agreement shall not constitute prohibited transactions or otherwise adversely affect the qualified status of the Pension Funds for the purposes of Internal Revenue Code of 1954, as amended."

We hereby acknowledge receipt of a copy of the letter from Internal Revenue Service dated December 5, 1975 communicating the view that $130,000,000 of City bond purchases by City Retirement Systems would not constitute prohibited transactions in violation of certain provisions of the Internal Revenue Code or violate certain other provisions of that Code.

We note that the purchases scheduled for December 15th and 17th, 1975 are not different in principle from the December 5, 1975 purchases referred to by Internal Revenue Service. Additionally, remedial legislation in connection with Paragraph 7 (a) (vi) is under consideration in the Congress of the United States.

The Board of Trustees therefore waive the condition of Paragraph 7 (e) (vi) for the purposes of the above-mentioned bond purchases scheduled for December 15, 1975 and December 17, 1975.

The Board of Trustees hereby agree to the maturity dates of the City bonds to be purchased on the applicable
December 15th and/or December 17th, 1975 dates, as such maturity dates are set forth in the attached schedule.

THE BOARD OF TRUSTEES

BY STEPHEN J. MURPHY
ACTING CHAIRMAN
BOARD OF TRUSTEES
6/15/79

DATE

0.0 Water

PURPOSE

0.0

AMOUNT

TOTAL

New York Fire Department

Pension Fund

December 15, 1979

Sale of Bonds to Pension Funds
CERTIFICATE OF WAIVER AND AGREEMENT TO MATURITY DATES

December 15, 1975

Hon. Abraham D. Beame
Mayor of the City of New York
City Hall
New York, N.Y. 10007

Hon. Harrison J. Goldin
Comptroller of the City
of New York
Municipal Building
New York, N.Y. 10007

Re: Purchases of City bonds by City Retirement Systems and Pension Funds scheduled for December 15, 1975 and December 17, 1975

Gentlemen:

The Agreement entered into on November 26, 1975 by the Municipal Assistance Corporation for the City of New York, certain banks, five City Retirement Systems and Pension Funds and the City Sinking Funds provides, among other things, that subject to certain conditions, these Retirement Systems and Pension Funds shall make certain purchases of City bonds.

Paragraph 7 (e) (v) of the Agreement sets forth one of these conditions in the following language:

"(e) The obligations of the Pension Funds to purchase bonds pursuant to this Paragraph 7 shall be subject to agreement to and fulfillment of such agreements by all parties referred to in this Paragraph 7 and shall be conditioned upon each of the following facts being true on the date of each such purchase: ***(v) the City shall, in connection with each purchase prior to February 1, 1976, or the first date on which

EXHIBIT "G"
the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board."

The Board of Trustees desires to receive either a report of essential facts or an official statement of the City.

However, the Board recognizes that in the brief period since the execution of the Agreement, it has not been possible for the City to complete such documents, although efforts to do so are in progress with the objective of achieving this result as soon as possible.

For the purposes of the above-mentioned bond purchases scheduled for December 15, 1975 and December 17, 1975, the Board of Trustees hereby waives compliance with the above-quoted condition of Paragraph 7 (e) (v).

An additional condition of Paragraph 7 (e) of the Agreement is set forth in item (vi) thereof, which reads as follows:
"(vi) the Internal Revenue Service shall have ruled, or the Congress of the United States shall have provided, that such purchases of obligations by the Pension Funds pursuant to this Agreement shall not constitute prohibited transactions or otherwise adversely affect the qualified status of the Pension Funds for the purposes of Internal Revenue Code of 1954, as amended."

We hereby acknowledge receipt of a copy of the letter from Internal Revenue Service dated December 5, 1975 communicating the view that $130,000,000 of City bond purchases by City Retirement Systems would not constitute prohibited transactions in violation of certain provisions of the Internal Revenue Code or violate certain other provisions of that Code.

We note that the purchases scheduled for December 15th and 17th, 1975 are not different in principle from the December 5, 1975 purchases referred to by Internal Revenue Service. Additionally, remedial legislation in connection with Paragraph 7 (e) (vi) is under consideration in the Congress of the United States.

The Board of Trustees therefore waives the condition of Paragraph 7 (e) (vi) for the purposes of the above-mentioned bond purchases scheduled for December 15, 1975 and December 17, 1975.

The Board of Trustees hereby agrees to the maturity dates of the City bonds to be purchased on the applicable
December 15th and/or December 17th, 1975 dates, as such maturity dates are set forth in the attached schedule.

THE BOARD OF TRUSTEES

BY JOSEPH ANTOINETTE
EXECUTIVE DIRECTOR

-4-
## Sale of Bonds to Pension Funds

**December 15, 1975**

<table>
<thead>
<tr>
<th>FUND</th>
<th>TOTAL AMOUNT</th>
<th>PURPOSE</th>
<th>MATURITY DATE</th>
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<td>1.250M Water</td>
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<td>Retirement System</td>
<td></td>
<td>2.750M Water</td>
<td>6/15/78</td>
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</table>
AN ACT

in relation to authorizing the purchase by
certain retirement systems and pension funds
of the city of New York of obligations of the
city of New York and obligations of the munici-
pal assistance corporation for the city of New York and to amend the retirement and
social security law in relation to indemnifi-
cation provided for certain investments in
municipal assistance corporation obligations
and obligations of the City of New York.

The People of the State of New York, repre-
represented in Senate and Assembly, do enact as
follows:
Section 1. a. Notwithstanding any inconsistent provisions of law, the trustees of the New York City Employees' Retirement System, the Board of Education Retirement System of the City of New York, the Teachers' Retirement System of the City of New York, the New York City Police Pension Funds and Fire Department Pension Funds and such retirement systems and funds may, in their discretion, purchase obligations of the city of New York or in obligations of the Municipal Assistance Corporation for the city of New York without regard to the percentage of the assets of any such system or fund invested in such obligations and without regard to the percentage of outstanding obligations of such issuer held or to be held by such system or fund.

b. For the purchase of the obligations and the sale of assets in accordance with the provisions of this section, the trustees of such retirement systems and funds, in determining investments by such systems and funds may consider, in addition to other appropriate factors recognized by law, the extent to which such investments will (a) maintain the ability of the city of New York (1) to make future contributions to such systems and funds and (2) to satisfy its future obligations to pay pension and retirement benefits to members and beneficiaries of such systems and funds and (b) protect the sources of funds to provide retirement benefits for members and beneficiaries of such systems and funds.
B 2. a. notwithstanding any other provision of law, including the provisions of subdivision one of section seventeen of the public officers law, the city of New York shall save harmless and indemnify all members of the board, officers, employees, trustees, fiduciaries and investment advisors of any such system or fund from financial loss arising out of any claim, demand, suit, action or judgment for alleged negligence, waste or breach of fiduciary duty (a) resulting from the purchase by such systems and funds of any obligations of the city of New York or the municipal assistance corporation for the city of New York from such city or corporation or (b) resulting from the sale of any assets held in such systems and funds to produce sufficient revenues to purchase such obligations, provided that such person shall, within eight days after the date on which he is served with any summons, complaint, process, notice, demand, claim or pleading, deliver the original or a true copy thereof to the corporation counsel of the city of New York. Upon such delivery the corporation counsel of the city of New York shall assume control of the representation of such person in connection with such claim, demand, suit, action or proceeding. Such person shall cooperate fully with the corporation counsel of the city of New York or any other person designated to assume such defense in respect of such representation or defense.
b. Upon service upon the city of New York of a final judgment against the city of New York not subject to further appeal, requiring the payment of money to any such system or fund by any person saved harmless pursuant to this section, the city shall not later than ninety days thereafter pay the amount of such judgment to such system or fund. If such city fails to make payment within such time period, the city controller shall establish a special fund to pay such judgment and thereafter shall deposit in such fund the proceeds of all payments to the city of New York of city personal income taxes, to the extent not otherwise required by law or for essential services as determined by the emergency financial control board. Essential services shall include but not be limited to provision for the payment of pension benefits. Nothing herein contained shall be deemed to limit any other rights to or remedies for the payment of pension benefits.

c. Payment by the city of New York pursuant to this subdivision in satisfaction of any such judgment of any amount in excess of ten million dollars may be paid in level installments of principal and interest aggregating not less than ten million dollars per year over a period of not more than twenty years, with interest at a rate of six per centum per annum on the unpaid balance, so long as such payment in installments is not so long deferred as to materially impair the ability of the city on behalf of which a judgment has been rendered to pay pension benefits when due. Enforcement of any judgment against a person indemnified hereunder shall be stayed. Payment by the city of New York in accordance with this subdivision shall be made from such special fund except to the extent that such city makes all or part of such payments from other funds available to it.
§ 3. The city retirement systems and funds shall continue as separate and distinct bodies corporate with the power to borrow money, and pledge as collateral therefor such assets as they may deem advisable for the purpose of purchasing, in their discretion, obligations of the state, the city of New York or the municipal assistance corporation for the city of New York, and such other powers as may be conferred upon them by law.

All assets of the city retirement systems and funds, including to the extent not otherwise provided by law, all dividends, interest and other income herefrom, are and shall hereafter continue to be held in trust for the sole and exclusive purpose of providing for pension benefits and such benefits, if any, as may be payable pursuant to variable supplements programs for members and beneficiaries of such system or fund, including the defraying of administrative expenses (1) to the extent that such expenses have been authorized by the city of New York and (2) if the city of New York shall not have provided the funds to pay such expenses as they fall due. No creditor of the city of New York shall have any claim against the assets of such system or fund, by virtue of his status as such creditor; provided, however, this sentence shall not be interpreted to deny to a pensioner or beneficiary of a city retirement system or fund any causes of action against the city or a retirement system or fund by virtue of his status as such pensioner or beneficiary.

The moneys and investments of each city retirement system or fund if held by the comptroller of the city of New York shall not be commingled with any other moneys or investments held by such comptroller.
§ 4. Section one hundred seventy-nine of the retirement and social security law is hereby amended by adding thereto a new subdivision, to be subdivision three, to read as follows:

3. The provisions of this section shall not be applicable to purchases made by the New York city employee retirement system, the board of education retirement system of the city of New York, the teachers' retirement system of the city of New York, the New York city police pension funds and fire department pension funds in obligations of the municipal assistance corporation for the city of New York and the city of New York from the municipal assistance corporation for the city of New York and the city of New York after November twenty-third, nineteen hundred seventy-five, but nothing herein contained shall be deemed to diminish the indemnification provided for purchases made by the New York city employees' retirement system, the board of education retirement system of the city of New York, the New York city police pension funds and fire department pension funds in obligations of the municipal assistance corporation for the city of New York and the city of New York from the municipal assistance corporation for the city of New York and the city of New York on and after September ninth, nineteen hundred seventy-five, but prior to November twenty-third, nineteen hundred seventy-five, in accordance with the provisions of this section.

§ 5. This act shall take effect immediately, except that the provisions of sections one through three shall be retroactive to and shall be deemed to have been in full force and effect from and after November twenty-third, nineteen hundred seventy-five, and such provisions shall terminate on December thirty-first, nineteen hundred eighty, provided, however,
that nothing herein contained shall be deemed to diminish the indemification provided by Section two of this act for investment and sales made in accordance with the provisions of this act during the period commencing November twenty-third, nineteen hundred seventy-five, and ending on December thirty-first, nineteen hundred eighty.

FISCAL NOTE—There will be no cost to any such city as a result of the enactment of this legislation.

Source: The Senate Committee on Finance and the Assembly Committee on Ways and Means.
WACHTELL, LIPTON, ROSEN & KATZ
299 PARK AVENUE
NEW YORK, N.Y. 10017

December 4, 1975

Honorable Donald C. Alexander
Commissioner of Internal Revenue
Internal Revenue Service
Washington, D.C. 20224

Attention: Assistant Commissioner, Employee Plans and Exempt Organizations

Re: Proposed Purchase of New York City Serial Bonds by New York City Employees' Retirement System and Teachers' Retirement System of the City of New York

Dear Mr. Alexander:

On behalf of the New York City Employees' Retirement System (no employer identification no.) (the "Employees' Retirement System") and the Teachers' Retirement System of the City of New York (employer identification no. 13-6164308) (the "Teachers' System") (the Employees' Retirement System and the Teachers' System herein sometimes collectively referred to as the "Trusts"), rulings are hereby requested with respect to the consequences, if any, of the transactions hereinafter described upon the tax exempt status of the Trusts.

The substance of these requests is being discussed with representatives of your office at a pre-filing conference today. Due to the possible far-reaching consequences of the transactions described herein to the City of New York (the "City"), and to the nation, accelerated consideration is respectfully requested.
The Trusts

The Employees' Retirement System was created in 1920 by an act of the New York State Legislature which appears, as modified, at Section B3-1.0 et seq. of Title B of Chapter 3 of the New York City Administrative Code. The Teachers' System was established in 1917 by an act of the New York State Legislature which appears, as modified, at Section B20-1.0 et seq. of Title B of Chapter 20 of the New York City Administrative Code. The Employees' Retirement System has approximately 209,000 members who are presently employed by the City and approximately 60,000 members who are retired or former employees of the City. The Teachers' System has approximately 75,000 members who are currently employed by the City and approximately 25,000 members who are former or retired employees of the City. The City is a substantial contributor to each of the Trusts. Such contributions are made on an actuarially determined basis.

The Employees' Retirement System was determined, by letter of May 1, 1956 from the District Director for the Manhattan District (a copy of which is enclosed herewith as Exhibit A) to be a qualified trust under Section 401(a) of the Internal Revenue Code of 1954 as amended (the "Code") and exempt from federal income tax under the provisions of Code Section 501(a). The Teachers' System was determined, by letter of July 2, 1940 from the Deputy Commissioner of Internal Revenue and by letter of April 14, 1958 from the District Director for the District of Manhattan (copies of which are enclosed herewith as Exhibit B) to be a qualified trust under Code Section 401(a) and exempt from federal income tax under the provisions of Code Section 501(a). Subsequently, by letter dated August 7, 1972 (a copy of which is enclosed herewith as Exhibit C), the Teachers' System was notified that the Internal Revenue Service would henceforth treat it not as an organization exempt under Section 501(c)(11) but as a unit or department of the City and as such not only exempt from tax but exempt from the requirement of filing income tax returns and annual information Forms 990. Each of the Trusts maintains its books on a June 30 fiscal year end basis. As additional background the Investment Management Report of the Comptroller of the City of New York is enclosed herewith as Exhibit D.

Background of Proposed Transaction and Request for Accelerated Consideration

As part of the overall New York City, New York State and Federal plan to resolve the financial crisis facing the City, it is contemplated that the City's pension
plans, including the two Trusts, will purchase significant amounts of City bonds which, as indicated above, will be secured by the faith and credit of the City. Such purchases constitute an integral part of the plan to avert bankruptcy on the part of the City. Notwithstanding President Ford's approval in principal of the extension of short term credit to the City and the passage of such legislation by the House of Representatives, the City faces a $130,000,000 cash short fall with respect to the salaries of its employees which are due Friday, December 5. Five of the City's employee benefit plans, including the two Trusts, have agreed, in principle, to provide such funds pursuant to their general commitment to take whatever steps are reasonably necessary to enable the City to avoid bankruptcy and to regain financial stability. (The November 26, 1975 Agreement among the Municipal Assistance Corporation for the City of New York, the City Pension Funds, the City Sinking Funds and the clearinghouse banks under which the pension funds agreed to purchase such City obligations is annexed as Exhibit E.) However, they find themselves on the horns of a dilemma.

Failing the purchase described herein, the City faces the prospect of immediate bankruptcy on December 5, 1975 unless alternative means of financing become available to the City before that time. (See the letter to Assistant Commissioner Lurie from Third Deputy Controller William Scott, attached hereto as Exhibit F.) The only apparent alternative would seem to be the loan of $130,000,000 from the Municipal Assistance Corporation ("Big Mac"). However, like New York City, Big Mac could only obtain such funds from the five Trusts. Those Trusts, particularly the Teachers' Trust, have indicated an unwillingness to purchase Big Mac bonds or obligations since such obligations are not backed by the City's unlimited taxing power but are rather subject to annual appropriations by the State Legislature. Further, they are longer term than the New York City bonds. From the City's standpoint, Big Mac bond proceeds are not a viable substitute since they are restricted as to their applicability to operating expenses of the City. As of today, only $96 million, or less than the immediately needed $130 million, is authorized for these purposes.

In committing themselves to the very bond purchases which seem imperative to prevent the City's bankruptcy, however, the trustees face a possible loss of their tax exempt status if they are deemed to have engaged in a prohibited transaction with the City within the meaning of Section 503(b) of the Code or if in the alternative such purchase is deemed to constitute a diversion of funds of the Trust for a purpose
other than the exclusive benefit of the participants thereof within the meaning of the Treas. Reg. §1.401-2.

Since action must be taken by the Trustees early on the morning of Friday, December 5, 1975, it is respectfully requested that the ruling be given accelerated consideration.

The Proposed Transaction

The proposed transaction, constituting the first step in the series of intended investments, calls for various of the employee pension plans covering City employees, including the Trusts, to acquire $130,000,000 of 9% serial bonds of the City (the "Bonds"), half of which will mature in approximately four years, the other half in approximately eight years. Approximately 49% of the principal amount of the Bonds will be purchased by the Employees' Retirement System and approximately 34% thereof will be purchased by the Teachers' System. The transaction must close no later than the morning of Friday, December 5, 1975 in order to avert what would otherwise be an act of insolvency by the City.

The Bonds will be general purpose serial bonds secured by the faith and credit of the City. Such general obligations are secured by the unlimited power of the City to levy real estate taxes to pay the principal of and interest on such indebtedness. (Article 8, Section 10, New York State Constitution) The assessed valuation of City taxable real estate for the fiscal year 1975-1976 was approximately $39 billion. The Bonds will stand on equal footing with bonds previously issued in the aggregate amount of approximately $7 billion. (Enclosed herewith as Exhibit G is the Comptroller of the City of New York's Report on the City's Debt-Incurring Power and Unencumbered Margin as of August 31, 1975.) The first installment of these bonds will be payable eighteen months from the date such bonds were issued with succeeding installments payable annually thereafter. Thus, as a matter of law, these obligations are backed by the faith and credit of the City of New York and by unlimited ad valorem taxes on all of the taxable property of the City.

Rulings Requested

On the basis of the foregoing information, it is respectfully requested that you rule that:

1. The purchases by the Employees' Retirement System and the Teachers' System of approximately $63.7 million and $44.2 million of the Bonds respectively, will
not constitute a prohibited transaction within the meaning of Code Section 503(b)(1).

2. The aforesaid purchases will not be deemed to be a diversion of the assets of either of the Trusts to a purpose other than for the exclusive benefit of members thereof within the meaning of Treas. Reg. §1.401-2.

Discussion

1. Under Code Section 4975(g)(2) governmental pension plans, such as those funding the Trusts, are not subject to the tax on prohibited transactions imposed on most organizations by that provision. Indeed, under Section 4(b) of the Employees' Retirement Income Security Act of 1974 ("ERISA"), governmental plans are generally excluded from the provisions of Title I of the Act under the Labor Department's jurisdiction, and other limitations on ERISA's application to governmental pension plans have left much of Title II inapplicable as well. By specific amendment to Code Section 503(a)(1)(B), however, ERISA subjected such plans to the old prohibited transactions rules set forth in that Section. No regulations interpreting how these rules should be applied in the case of governmental pension plans have yet been proposed. We submit, however, that the only transactions described in subsection (b) which could conceivably be deemed relevant here, are those in Paragraphs (1) and (4): the lending of income or corpus without adequate security or the purchase of securities for more than adequate consideration from a "... person who has made a substantial contribution to the [Trust]." The question on which a favorable ruling is requested is whether the purchase of the bonds exposes the Trusts to the first of these prohibited transactions. We respectfully submit it should not. The regulations issued under Section 503(b)(1), not surprisingly, do not address themselves to the peculiar characteristics of municipal employers. Regs. Section 1.503(c)-1(b)(1) offers two examples of adequate security: mortgages or liens upon property and accommodation endorsements of financially solvent, unrelated guarantors. As pointed out, the bonds here are backed by the taxing power of the City, and thus, derivatively, the in rem rights of the City against taxable, assessable property within its jurisdiction. Moreover, the City's obligation to pay the full amount of principal and interest of its indebtedness may not, as a matter of law, be discharged in a bankruptcy proceeding. Concededly, this is not a mortgage, but it is a substantial and significant security, which in some ways is far preferable to any liens on specific property of a private employer which are unavoidably at the hazard of market value fluctuations.
Honorable Donald C. Alexander  
December 4, 1975  
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It is also true that the liability of the taxpayers to New York City is not an accommodation endorsement within the contemplation of the Regulations. However, while there is no direct secondary liability on the Bonds as such being undertaken by City taxpayers, their continued liability, enforceable by the City summarily, should be regarded as accomplishing the equivalent of accommodation endorsements, particularly in light of the City's power and responsibility to enforce exactions sufficient to service its debt under Article VIII, Section 10 of the New York State Constitution.

2. The proposed transactions will not result in the use or diversion of assets of either of the Trusts to purposes other than for the exclusive benefit of the beneficiaries of such Trusts within the meaning of Code Section 401(a)(2). The Bonds will represent a quid pro quo receipt for the funds expended for their purchase, and, therefore, cannot constitute a diversion of assets. This point is made clear by the prohibited transaction rules of Code Section 503(b) which would be obviated if every purchase of an employer's securities were deemed to constitute a "diversion" of assets. This view is supported by the approach of Regs. Section 1.401-2(a). Clearly, the Trusts' purchase of the Bonds represents a reasonable use of their funds since such purchase is part of an overall scheme directed to end the financial emergency of the City. A portion of the funds derived from these purchases will enable the City to maintain its ability to make future contributions to the Trusts and to insure the City's ability to make required contributions for the benefit of members and pensioners. It is thus clear that the Bonds themselves constitute adequate consideration for the money expended for their purchase and, therefore, such purchases do not constitute a violation of Code Section 401(a)(2).

* * *

To the best of the knowledge of the undersigned, none of the issues presented by this request are pending before any other office of the Internal Revenue Service. A power of attorney authorizing each of Charles T. Mederrick,
and the undersigned to represent New York City Employees' Retirement System and Teachers' Retirement System of the City of New York are submitted herewith. If there should be any doubt as to your ability to issue any of the rulings requested herein, the privilege of a conference is requested. If additional information is requested, or in the event that a conference is necessary, please do not hesitate to call either Charles T. Mederrick, Esq. or the undersigned, at area code (212) 371-9200, collect.

Respectfully submitted,

MCF:mlj
Mr. Felix G. Rohatyn, Chairman
Municipal Assistance Corporation
2 World Trade Center
New York, New York 10048

Dear Mr. Rohatyn:

It is with a great deal of amazement that we have learned that the Emergency Financial Control Board, in the three-year fiscal plan for New York City, is considering the inclusion of a provision to use advance estimated interest earnings on pension fund investments to reduce City contributions to these funds. This is precisely the kind of deficit financing that has gotten the City in trouble in the past and that the Control Board was designed to eliminate. It is pertinent to note that the Hon. Hugh L. Carey in commenting on the bill authorizing the use of precisely this same device for the 1975-1976 fiscal year budget, stated (in his memorandum filed with Senate Bill Number 6804): "The practice sanctioned by the legislation is a prime example of the type of fiscal 'gimmicky' resorted to by New York City, with the knowledge and consent of State officials in Albany, which over the years has caused immeasurable harm to the City's fiscal underpinnings." We thought we had assurances that such device would never be resorted to again. Its authorization would diminish the already inadequate funding of the New York City pension systems by $135,000,000 and $165,000,000, respectively, in the next two fiscal years.

As a device, this gimmick is impermissible in that it credits future interest earnings on a City obligation that is calculated on a "two year lag basis." However, it can be evaluated properly only in considering it in aggregate with the other funding factors in our pension system.

The funding of the New York City Teachers' Retirement System has been experiencing a continuing adverse trend in recent years. We now have a deficit of over $2 billion dollars. We are at the point where we no longer can supply the reserves to fund even
the liabilities of members already retired. We have virtually no reserves to cover our liabilities for active members who have not yet retired. The following table of values give an abbreviated picture of our financial condition:

(1) Liabilities a/c Past Service for all active members:

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(2) Assets available to fund liabilities a/c active members:

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<td>$.579 billion</td>
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(3) Unfunded accrued Liability (1) - (2)

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<td>$1.968 billion</td>
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(4) Reserves available to pay accrued benefits as a percentage to total liabilities on account of active members:

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<td></td>
<td>6.2%</td>
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These figures would be even grimmer if we valued our assets "at market" rather than at a very unrealistic "book value." These figures would be much grimmer if they were based on a realistic mortality table rather than on a table adopted in 1943 that understates the expected longevity of our members.

We cannot condone the crediting of excess interest earnings beyond the year for which the City obligations are computed. We say that with full realization of the fiscal problems facing our City. We would be pleased to have an opportunity to confer with you further on the matter.

Sincerely yours,

Bernard Goldberg
Reuben W. Mitchell
Joseph Shannon

cc: Mr. Thomas D. Flynn
Dr. Donna Shalala
Dr. Robert Weaver
Mr. Francis T. Barry
Dr. Richard Metzer
Mr. John A. Coleman
Mr. George Gould
Mr. William Ellinghaus
This is the only copy of the letter that is out of my hands. I'm looking forward to hearing from you Tuesday A.R. on 5P7-9040.

[Signature]

RECEIVED
OCT 28 1975

CLIFFER W. MYCHEW