

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

345 PARK AVENUE

NEW YORK, N. Y. 10022

TELEPHONE (212) 644-8000

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CABLE: LONGSIGHT, N. Y.

TELEX 12-7031

RANDOLPH E. PAUL (1946-1955)  
LOUIS S. WEISS (1927-1950)  
JOHN F. WHARTON (1927-1977)

LLOYD K. GARRISON  
COUNSEL

WRITER'S DIRECT DIAL NUMBER

(212) 644-8007

July 7, 1978

Steven Weinstein, Esq.  
Municipal Assistance Corporation  
Two World Trade Center - 45th Fl.  
New York, NY 10047

Municipal Assistance Corporation  
v. New York City Police Pension  
Fund-Article 2 and New York City  
Fire Department Pension Fund-Article  
1-B

SIMON H. RIFKIND  
HOWARD A. SEITZ  
ADRIAN W. DEWIND  
MORRIS B. ABRAM  
MORDECAI SCHULIN  
PAUL J. NEWLON  
JOSEPH S. ISEMAN  
JAMES B. LEWIS  
THEODORE C. SORESENSEN  
MARTIN KLEINBARD  
RICHARD H. PAUL  
NORMAN ZELENKO  
JOHN E. MASSENGALE  
JAY TOPKIS  
EDWARD N. COSTIKYAN  
BAYLESS MANNING  
ROBERT H. MONTGOMERY, JR.  
JOHN C. TAYLOR 3<sup>RD</sup>  
BERNARD H. GREENE  
ERNEST RUBENSTEIN  
STUART ROBINOWITZ  
ALAN N. COHEN  
JAMES L. PURCELL  
ARTHUR KALISH  
DAVID T. WASHBURN  
BERNARD FINKELSTEIN  
ARTHUR L. LIMAN  
SEYMOUR HERTZ  
WALTER F. LEINHARDT  
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ANTHONY B. KUKLIN  
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JOHN P. MCENROE  
PETER J. ROTHENBERG  
JUDITH R. THOYER  
RICHARD A. ENGELMAN  
GEORGE P. FELLEMAN  
STEVEN B. ROSENFELD  
ALBERT P. HAND  
ROBERT S. SMITH  
MAX GITTER  
JOHN J. ONEIL  
CAMERON CLARK  
LEWIS A. KAPLAN

Dear Steve:

As you requested, enclosed are copies of a draft complaint for the action by MAC against both the police and fire pension funds.

It is our understanding that MAC has decided not to commence the lawsuit this afternoon, and that a decision on whether, and when, to commence the lawsuit will be made on Monday.

Very truly yours,

  
Richard M. Zuckerman

RMZ:jbd  
Enclosure

cc: Judge Rifkind  
Robert Laufer, Esq.  
Allen Thomas, Esq.

BY HAND

RECEIVED  
JUL 10 1978  
10070  
X

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

7/7/78  
DRAFT

- - - - - x Index No.

MUNICIPAL ASSISTANCE CORPORATION : Plaintiff designates  
FOR THE CITY OF NEW YORK, : New York County as  
 : the place of trial.  
Plaintiff, : The basis of the  
 : venue is residence  
-against- : of plaintiff and  
 : defendants.

NEW YORK CITY POLICE PENSION FUND- :  
ARTICLE 2 and NEW YORK CITY FIRE : SUMMONS  
DEPARTMENT PENSION FUND-ARTICLE 1-B, :  
 : Plaintiff Municipal  
Defendants. : Assistance Corporation  
 : for the City of New  
- - - - - x York has principal  
 : offices at Two World  
 : Trade Center, New York,  
 : New York 10047 (New  
 : York County).

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this  
action and to serve a copy of your answer on the Plaintiff's  
Attorneys within 20 days after the service of this summons, exclu-  
sive of the day of service (or within 30 days after the service  
is complete if this summons is not personally delivered to you  
within the State of New York); and in case of your failure to

answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
July 7, 1978

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
Attorneys for Plaintiff  
Municipal Assistance Corporation  
For The City of New York  
345 Park Avenue  
New York, New York 10022  
(212) 644-8000

Defendants' Addresses:

New York City Police Pension Fund-Article 2  
One Police Plaza  
New York, New York 10038

New York City Fire Department Pension Fund-Article 1-B  
110 Church Street  
New York, New York 10007

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

- - - - - x

MUNICIPAL ASSISTANCE CORPORATION	:	
FOR THE CITY OF NEW YORK,	:	
	:	Index No.
Plaintiff,	:	
	:	<u>COMPLAINT</u>
-against-	:	
NEW YORK CITY POLICE PENSION FUND-	:	
ARTICLE 2 and NEW YORK CITY FIRE	:	
DEPARTMENT PENSION FUND-ARTICLE 1-B,	:	
	:	
Defendants.	:	

- - - - - x

Plaintiff Municipal Assistance Corporation For  
The City of New York ("MAC"), complaining of defendants,  
alleges:

1. Plaintiff MAC, a public benefit corporation, is  
a corporate governmental agency and instrumentality of the  
State of New York, with principal offices at Two World Trade  
Center, New York, New York 10047.

2. MAC was created by Chapters 168 and 169 of the  
Laws of 1975, enacted by the New York State Legislature on  
June 10, 1975, to assist the City of New York (the "City") in  
attempting to provide essential services to its inhabitants  
while meeting its obligations to the holders of City  
securities.

3. The City is a municipal corporation existing under the laws of the State of New York.

4. (a) Defendant New York City Police Pension Fund-Article 2 is a pension fund with principal offices at One Police Plaza, New York, New York 10038.

(b) Defendant New York City Fire Department Pension Fund-Article 1-B is a pension fund with principal offices at 110 Church Street, New York, New York 10007.

5. On or about August 17, 1977, five New York City pension funds (the "Pension Funds"), including defendants, and MAC entered into an agreement, with other parties, captioned the First Amendment to the Amended and Restated Agreement (the "Agreement") which amended and restated in its entirety a prior agreement, effective November 26, 1975 (the "Prior Agreement"). A copy of the Agreement is annexed as Exhibit A.

6. The City is a third party beneficiary of the Agreement.

7. The Prior Agreement and the Agreement are essential parts of the City's financial plans and the United States of America, the State of New York, the City, and MAC, in participating in various elements of those plans, have relied upon the Prior Agreement and the Agreement.

8. Under Paragraph 4 of the Agreement, the Pension Funds, including defendants, agreed severally to purchase during the 1977-78 fiscal year of the City (i) \$500,000,000 principal amount of serial bonds of the City, substantially in the proportions set forth in Schedule VII annexed to the Agreement and (ii) \$236,060,000 principal amount of serial bonds of the City, substantially in the proportions set forth in Schedule VIII annexed to the Agreement (collectively, the "bond purchases").

9. At the times that the Agreement and Prior Agreement were signed, all parties to the Agreement and Prior Agreement, including defendants, recognized that the City would have no alternative source for the funds which would be provided by the bond purchases.

10. The Pension Funds, including defendants, have made the purchases of serial bonds of the City set forth in Exhibit B, constituting a portion of the purchases required by the Agreement, but defendants have failed and refused to make the remainder of the bond purchases, set forth in Exhibit C.

11. Defendants' acts constitute a breach of the Agreement.

12. By reason of defendants' acts, the City and MAC have been damaged in that, among other things, the City

other and further relief as this Court deems just and proper,  
together with the costs and disbursements of this action.

Dated: New York, New York  
July 7, 1978

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
Attorneys for Plaintiff  
Municipal Assistance Corporation  
For The City of New York  
345 Park Avenue  
New York, New York 10022  
(212) 644-8000

has been deprived of the funds which would have been provided by the bond purchases.

13. Pursuant to a credit agreement entered into by the United States of America, the State of New York, the City, and the New York State Emergency Financial Control Board, dated as of December 30, 1975, which is part of the City's three-year financial plan, and under which the seasonal financing needs of the City have been met for the last two and one-half years, MAC undertook to take all reasonable steps to assure performance by all parties, including the defendants, of the Prior Agreement, which was amended and restated in the Agreement.

14. The City has no other purchaser for the bonds which were to be purchased by the defendants.

15. MAC has no adequate remedy at law.

16. MAC is entitled to specific performance of the Agreement and to an order directing the defendants, and each of them, to make the bond purchases set forth in the Agreement.

WHEREFORE, plaintiff MAC demands judgment directing the defendants, and each of them, to make the bond purchases set forth in the Agreement, and granting plaintiff MAC such



Exhibit B

Pension Fund Purchases  
Made Under Schedule VII

	<u>Principal Amount of Serial Bonds of the City Purchased</u>
New York City Employees' Retirement System .....	\$235,000,000
Teachers' Retirement System for The City of New York .....	172,000,000
New York City Police Pension Fund, Article 2 ...	0
New York City Fire Department Pension Fund, Article 1-B .....	0
Board of Education Retirement System for The City of New York .....	<u>10,000,000</u>
	\$417,000,000

Pension Fund Amortization Purchases Made  
Under Schedule VIII

	<u>Principal Amount of Serial Bonds of the City Purchased</u>
New York City Employees' Retirement System .....	\$104,665,000
Teachers' Retirement System for The City of New York .....	81,730,000
New York City Police Pension Fund, Article 2 ...	8,000,000
New York City Fire Department Pension Fund, Article 1-B .....	925,000
Board of Education Retirement System for The City of New York .....	<u>5,710,000</u>
	\$201,030,000

Exhibit C

Pension Fund Purchases Required, But Not Made,  
Under Schedule VII

	<u>Principal Amount of Serial Bonds of the City to be Purchased</u>
New York City Employees' Retirement System .....	\$ 0
Teachers' Retirement System for The City of New York .....	0
New York City Police Pension Fund, Article 2 ...	73,000,000
New York City Fire Department Pension Fund, Article 1-B .....	10,000,000
Board of Education Retirement System for The City of New York .....	<u>0</u>
	\$83,000,000

Pension Fund Amortization Purchases Required,  
But Not Made, Under Schedule VIII

	<u>Principal Amount of Serial Bonds of the City to be Purchased</u>
New York City Employees' Retirement System .....	\$ 0
Teachers' Retirement System for The City of New York .....	0
New York City Police Pension Fund, Article 2 ...	32,995,000
New York City Fire Department Pension Fund, Article 1-B .....	2,035,000
Board of Education Retirement System for The City of New York .....	<u>0</u>
	\$35,030,000

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

345 PARK AVENUE

NEW YORK, N.Y. 10022

TELEPHONE (212) 644-8000

CABLE: LONGSIGHT, N.Y.

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RANDOLPH E. PAUL (1946-1956)  
LOUIS S. WEISS (1927-1950)  
JOHN F. WHARTON (1927-1977)

LLOYD K. GARRISON  
COUNSEL

WRITER'S DIRECT DIAL NUMBER

(212) 644-8007

July 5, 1978

Steven Weinstein, Esq.  
Municipal Assistance Corporation  
Two World Trade Center  
45th Floor  
New York, NY 10047

Dear Steve:

Enclosed is a revised copy of the draft complaint  
in the possible suit against the Police and Fire Pension  
Funds.

Very truly yours,

  
Richard M. Zuckerman

RMZ:jbd  
Enclosure

BY HAND

SIMON H. RIFKIND  
HOWARD A. SEITZ  
ADRIAN W. DEWIND  
MORRIS B. ABRAM  
MORDECAI ROCHLIN  
PAUL J. NEWLON  
JOSEPH S. ISEMAN  
JAMES B. LEWIS  
THEODORE C. SORENSEN  
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ALBERT P. HAND  
ROBERT S. SMITH  
MAX GITTER  
JOHN J. O'NEIL  
CAMERON CLARK  
LEWIS A. KAPLAN

7/5/78 m

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- x		Index No.
MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK, and THE CITY OF NEW YORK,	:	Plaintiffs designate New York County as the place of trial. The basis of the venue is residence of plaintiffs and defendants.
Plaintiffs,	:	
-against-	:	
NEW YORK CITY POLICE PENSION FUND- ARTICLE 2 and, NEW YORK CITY FIRE DEPARTMENT PENSION FUND-ARTICLE 1-B,	:	<u>SUMMONS</u>
Defendants.	:	Plaintiff Municipal Assistance Corporation for the City of New York has principal offices at Two World Trade Center, New York, New York 10047 (New York County). Plaintiff The City of New York has offices at Municipal Building, New York, New York 10007 (New York County).
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To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this  
action and to serve a copy of your answer on the Plaintiffs'  
Attorneys within 20 days after the service of this summons, exclu-  
sive of the day of service (or within 30 days after the service  
is complete if this summons is not personally delivered to you  
within the State of New York); and in case of your failure to

answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
July 5, 1978

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
Attorneys for Plaintiff  
Municipal Assistance Corporation  
For The City of New York  
345 Park Avenue  
New York, New York 10022  
(212) 644-8000

ALLEN G. SCHWARTZ  
Corporation Counsel  
Attorney for Plaintiff  
The City of New York  
Municipal Building  
New York, New York 10007  
(212) 566-5500  
Attention: James G. Greilsheimer, Esq.

Defendants' Addresses:

New York City Police Pension Fund-Article 2  
One Police Plaza  
New York, New York 10038

New York City Fire Department Pension Fund-Article 1-B  
110 Church Street  
New York, New York 10007

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

- - - - - x

MUNICIPAL ASSISTANCE CORPORATION	:	
FOR THE CITY OF NEW YORK, and	:	
THE CITY OF NEW YORK,	:	Index No.
Plaintiffs,	:	<u>COMPLAINT</u>
-against-	:	
NEW YORK CITY POLICE PENSION FUND-	:	
ARTICLE 2 and, NEW YORK CITY FIRE	:	
DEPARTMENT PENSION FUND-ARTICLE 1-B,	:	
Defendants.	:	

- - - - - x

Plaintiffs Municipal Assistance Corporation For  
The City of New York ("MAC"), and The City of New York (the  
"City") complaining of defendants, allege:

1. Plaintiff MAC, a public benefit corporation, is  
a corporate governmental agency and instrumentality of the  
State of New York, with principal offices at Two World Trade  
Center, New York, New York 10047.

2. MAC was created by Chapters 168 and 169 of the  
Laws of 1975, enacted by the New York State Legislature on  
June 10, 1975, to assist the City in attempting to provide  
essential services to its inhabitants while meeting its obliga-  
tions to the holders of City securities.

3. Plaintiff City is a municipal corporation existing under the laws of the State of New York with offices at Municipal Building, New York, New York 10007.

4. (a) Defendant New York City Police Pension Fund-Article 2 is a pension fund with principal offices at One Police Plaza, New York, New York 10038.

(b) Defendant New York City Fire Department Pension Fund-Article 1-B is a pension fund with principal offices at 110 Church Street, New York, New York 10007.

5. On or about August 17, 1977, five New York City pension funds (the "Pension Funds"), including defendants, and MAC entered into an agreement, with other parties, captioned the First Amendment to the Amended and Restated Agreement (the "Agreement") which amended and restated in its entirety a prior agreement, effective November 26, 1975 (the "Prior Agreement"). A copy of the Agreement is annexed as Exhibit A.

6. The City is a third party beneficiary of the Agreement.

7. The Prior Agreement and the Agreement are essential parts of the City's financial plans and the United States of America, the State of New York, the City, and MAC, in participating in various elements of those plans, have relied upon the Prior Agreement and the Agreement.

8. Under Paragraph 4 of the Agreement, the Pension Funds, including defendants, agreed severally to purchase during the 1977-78 fiscal year of the City (i) \$500,000,000 principal amount of serial bonds of the City, substantially in the proportions set forth in Schedule VII annexed to the Agreement and (ii) \$236,060,000 principal amount of serial bonds of the City, substantially in the proportions set forth in Schedule VIII annexed to the Agreement (collectively, the "bond purchases").

9. At the times that the Agreement and Prior Agreement were signed, all parties to the Agreement and Prior Agreement, including defendants, recognized that the City would have no alternative source for the funds which would be provided by the bond purchases.

10. The Pension Funds, including defendants, have made the purchases of serial bonds of the City set forth in Exhibit B, constituting a portion of the purchases required by the Agreement, but defendants have failed and refused to make the remainder of the bond purchases, set forth in Exhibit C.

11. Defendants' acts constitute a breach of the Agreement.

12. By reason of defendants' acts, the City has been damaged in that, among other things, it has been deprived of the funds which would have been provided by the bond purchases.



13. Pursuant to a credit agreement entered into by the United States of America, the State of New York, the City, and the New York State Emergency Financial Control Board, dated as of December 30, 1975, which is part of the City's three-year financial plan, and under which the seasonal financing needs of the City have been met for the last two and one-half years, MAC undertook to take all reasonable steps to assure performance by all parties, including the defendants, of the Prior Agreement, which was amended and restated in the Agreement.

14. The City has no alternative source for the funds which were to be provided by the bond purchases.

15. The City and MAC have no adequate remedy at law.

16. The City and MAC are entitled to specific performance of the Agreement and to an order directing the defendants, and each of them, to make the bond purchases set forth in the Agreement.

WHEREFORE, plaintiffs the City and MAC demand judgment directing the defendants, and each of them, to make the bond purchases set forth in the Agreement, and granting plaintiffs the City and MAC such other and further relief as

this Court deems just and proper, together with the costs and disbursements of this action.

Dated: New York, New York  
July 5, 1978

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
Attorneys for Plaintiff  
Municipal Assistance Corporation  
For The City of New York  
345 Park Avenue  
New York, New York 10022  
(212) 644-8000

ALLEN G. SCHWARTZ  
Corporation Counsel  
Attorney for Plaintiff  
The City of New York  
Municipal Building  
New York, New York 10007  
(212) 566-5500  
Attention: James G. Greilsheimer, Esq.

Exhibit B

Pension Fund Purchases  
Made Under Schedule VII

	<u>Principal Amount of Serial Bonds of the City Purchased</u>
New York City Employees' Retirement System .....	\$235,000,000
Teachers' Retirement System for The City of New York .....	172,000,000
New York City Police Pension Fund, Article 2 ...	0
New York City Fire Department Pension Fund, Article 1-B .....	0
Board of Education Retirement System for The City of New York .....	<u>10,000,000</u>
	\$417,000,000

Pension Fund Amortization Purchases Made  
Under Schedule VIII

	<u>Principal Amount of Serial Bonds of the City Purchased</u>
New York City Employees' Retirement System .....	\$104,665,000
Teachers' Retirement System for The City of New York .....	81,730,000
New York City Police Pension Fund, Article 2 ...	8,000,000
New York City Fire Department Pension Fund, Article 1-B .....	925,000
Board of Education Retirement System for The City of New York .....	<u>5,710,000</u>
	\$201,030,000

Exhibit C

Pension Fund Purchases Required, But Not Made,  
Under Schedule VII

	<u>Principal Amount of Serial Bonds of the City to be Purchased</u>
New York City Employees' Retirement System .....	\$ 0
Teachers' Retirement System for The City of New York .....	0
New York City Police Pension Fund, Article 2 ...	73,000,000
New York City Fire Department Pension Fund, Article 1-B .....	10,000,000
Board of Education Retirement System for The City of New York .....	<u>0</u>
	\$83,000,000

Pension Fund Amortization Purchases Required,  
But Not Made, Under Schedule VIII

	<u>Principal Amount of Serial Bonds of the City to be Purchased</u>
New York City Employees' Retirement System .....	\$ 0
Teachers' Retirement System for The City of New York .....	.0
New York City Police Pension Fund, Article 2 ...	32,995,000
New York City Fire Department Pension Fund, Article 1-B .....	2,035,000
Board of Education Retirement System for The City of New York .....	<u>0</u>
	\$35,030,000

20th - 107

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE CITY OF NEW YORK and	:	
MUNICIPAL ASSISTANCE CORPORATION	:	
FOR THE CITY OF NEW YORK,	:	
	:	Index No.
Plaintiffs,	:	
	:	<u>COMPLAINT</u>
-against-	:	
NEW YORK CITY FIRE DEPARTMENT PENSION	:	
FUND-ARTICLE 1-B and NEW YORK	:	
CITY POLICE PENSION FUND-ARTICLE 2,	:	
	:	
Defendants.	:	
-----	:	x

Plaintiffs The City of New York (the "City") and  
Municipal Assistance Corporation For The City of New York  
("MAC"), complaining of defendants, allege:

1. Plaintiff City is a municipal corporation  
existing under the laws of the State of New York with  
offices at Municipal Building, New York, New York 10007.

2. Plaintiff MAC, a public benefit corporation, is  
a corporate governmental agency and instrumentality of the  
State of New York, with principal offices at Two World Trade  
Center, New York, New York 10047.

3. MAC was created by Chapters 168 and 169 of the  
Laws of 1975, enacted by the New York State Legislature on

June 10, 1975, to assist the City in attempting to provide essential services to its inhabitants while meeting its obligations to the holders of City securities.

4. (a) Defendant New York City Fire Department Pension Fund-Article 1-B is a pension fund with principal offices at 110 Church Street, New York, New York 10007.

(b) Defendant New York City Police Pension Fund-Article 2 is a pension fund with principal offices at One Police Plaza, New York, New York 10038.

5. On or about August 17, 1977, five New York City pension funds (the "Pension Funds"), including defendants, and MAC entered into an agreement, with other parties, captioned the First Amendment to the Amended and Restated Agreement (the "Agreement") which amended and restated in its entirety a prior agreement, effective November 26, 1975 (the "Prior Agreement"). A copy of the Agreement is annexed as Exhibit A.

6. The City is a third party beneficiary of the Agreement.

7. The Prior Agreement and the Agreement are essential parts of the City's financial plans and the United States of America, the State of New York, the City, and MAC, in participating in various elements of those plans, have relied upon the Prior Agreement and the Agreement.

8. Under Paragraph 4 of the Agreement, the Pension Funds, including defendants, agreed severally to purchase during the 1977-78 fiscal year of the City (i) \$500,000,000 principal amount of serial bonds of the City, substantially in the proportions set forth in Schedule VII annexed to the Agreement and (ii) \$236,060,000 principal amount of serial bonds of the City, substantially in the proportions set forth in Schedule VIII annexed to the Agreement (collectively, the "bond purchases").

9. At the times that the Agreement and Prior Agreement were signed, all parties to the Agreement and Prior Agreement, including defendants, recognized that the City would have no alternative source for the funds which would be provided by the bond purchases.

10. The Pension Funds, including defendants, have made the purchases of serial bonds of the City set forth in Exhibit B, constituting a portion of the purchases required by the Agreement, but defendants have failed and refused to make the remainder of the bond purchases, set forth in Exhibit C, and have repudiated their obligation to do so.

11. Defendants' acts constitute a breach and anticipatory breach of the Agreement.

12. By reason of defendants' acts, the City has been damaged in that, among other things, it has been deprived of the funds which would have been provided by the bond purchases.

13. By reason of defendants' acts, MAC has been  
1 damaged in that, among other things, MAC's ability to discharge  
its statutory obligation to assist the City in attempting to  
provide essential services to its inhabitants while meeting its  
obligations to the holders of City securities has been impaired.

14. Pursuant to a credit agreement entered into by  
the United States of America, the State of New York, the City,  
and the New York State Emergency Financial Control Board, dated  
as of December 30, 1975, which is part of the City's three-year  
financial plan, and under which the seasonal financing needs of  
the City have been met for the last two and one-half years, MAC  
undertook to take all reasonable steps to assure performance by  
all parties, including the defendants, of the Prior Agreement,  
which was amended and restated in the Agreement.

15. The City has no alternative source for the funds  
which were to be provided by the bond purchases.

16. The City and MAC have no adequate remedy at law.

17. The City and MAC are entitled to specific  
performance of the Agreement and to an order directing the  
defendants, and each of them, to make the bond purchases set  
forth in the Agreement.

WHEREFORE, plaintiffs the City and MAC demand judgment directing the defendants, and each of them, to make the



bond purchases set forth in the Agreement, and granting plaintiffs the City and MAC such other and further relief as this Court deems just and proper, together with the costs and disbursements of this action.

Dated: New York, New York  
June 30, 1978

ALLEN G. SCHWARTZ  
Corporation Counsel  
Attorney for Plaintiff  
The City of New York  
Municipal Building  
New York, New York 10007  
(212) 566-5500  
Attention: James G. Greilsheimer, Esq.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
Attorneys for Plaintiff  
Municipal Assistance Corporation  
For The City of New York  
345 Park Avenue  
New York, New York 10022  
(212) 644-8000

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

345 PARK AVENUE

NEW YORK, N. Y. 10022

TELEPHONE (212) 644-8000

CABLE LONGSIGHT, N. Y.

TELECOPIER (212) 644-8202

TELEX 12-7831

RANDOLPH E. PAUL 1946-1958  
LOUIS S. WEISS 1927-1950  
JOHN F. WHARTON 1927-1977

LLOYD K. GARRISON  
COUNSEL

WRITER'S DIRECT DIAL NUMBER

(212) 644-8007

June 28, 1978

Mr. Eugene Keilin  
Marilyn Friedman, Esq.  
Municipal Assistance Corporation  
Two World Trade Center - 47th Floor  
New York, NY 10047

Pension Funds

Dear Gene & Marilyn:

Enclosed are three draft complaints which we have prepared with the obligation of the pension funds to purchase city bonds, to provide for the following contingencies: (a) that all of the pension funds refused to make the purchases, (b) that the Police Pension Fund and the Fire Department Pension Fund refused to make the purchases and (c) that only the Fire Department Pension Fund refuses to make the purchases.

These draft complaints are in final form, except that we have not yet prepared tables setting forth the purchases that have been made, and which remain to be made, because we are awaiting receipt of the exact figures from Jim Greilsheimer's office.

Very truly yours,

Richard M. Zuckerman

RMA:jbd  
Enclosures

cc: James Greilsheimer, Esq.  
Judge Rifkind  
Allen Thomas, Esq.  
Robert L. Laufer, Esq.

BY HAND

SIMON H. RIFKIND  
HOWARD A. SEITZ  
ADRIAN W. DEWIND  
MORRIS E. A. L. L.  
MORDECAI ROCHLIN  
PAUL J. NEWLOI  
JOSEPH S. ISEMAN  
JAMES B. LEWIS  
THEODORE C. SORESEN  
MARTIN KLEINBERG  
RICHARD H. BALL  
NORMAN ZELMAN  
JOHN E. MASSINGALE  
JAY TOPKIS  
EDWARD N. COSTIKYAN  
BAYLESS MANNING  
ROBERT H. MONTGOMERY, JR.  
JOHN C. TAYLOR 3<sup>RD</sup>  
BERNARD H. GREENE  
ERNEST RUBENSTEIN  
STUART ROBINOWITZ  
ALAN N. COHEN  
JAMES L. PURCELL  
ARTHUR KALISH  
DAVID T. WASHBURN  
BERNARD FINXELSTEIN  
ARTHUR S. LIVAN  
SEYMOUR WERTZ  
WALTER F. LEINHARDT  
GERALD D. STERN  
ANTHONY B. KUKLIN  
MARTIN LONDON  
DAVID C. BRODHEAD  
PETER R. HAJE  
LEONARD V. QUIGLEY  
ALLAN BLUMSTEIN  
NEALE M. ALBERT  
JAY GREENFIELD  
KEVIN J. OBRIEN  
ALFRED D. YOUNGWOOD  
DONALD F. MOORE  
JOSEPH E. BROWDY  
SIDNEY S. ROSENTHAL  
ROBERT C. LAUFER  
ALLEN L. THOMAS  
PETER L. FELCHER  
MARK W. ALCOY  
JOHN P. MCENROE  
FETTER J. ROTHENBERG  
JUDITH R. THAYER  
RICHARD A. ENGELMAN  
GEORGE P. FLEEMAN  
STEVEN B. ROSENFELD  
ALBERT P. HAND  
ROBERT S. SMITH  
MAX GITTER  
JOHN J. OREIL  
CAMERON CLARK  
LEWIS A. KAPLAN

**RECEIVED**  
MUNICIPAL ASSISTANCE CORPORATION

JUN 28 '78

DBA \_\_\_\_\_  
HAD \_\_\_\_\_  
LSD \_\_\_\_\_  
RFF \_\_\_\_\_  
PCC \_\_\_\_\_  
LAH \_\_\_\_\_  
EJK \_\_\_\_\_  
WJL \_\_\_\_\_  
FGR \_\_\_\_\_  
LWS \_\_\_\_\_  
MCS \_\_\_\_\_  
SJW \_\_\_\_\_

A.M.

P.M.

MAIL

HAND

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

- - - - -		x	Index No.
THE CITY OF NEW YORK and	:		Plaintiffs designate
MUNICIPAL ASSISTANCE CORPORATION	:		New York County as
FOR THE CITY OF NEW YORK,	:		the place of trial.
	:		The basis of the
Plaintiffs,	:		venue is residence
	:		of plaintiffs and
-against-	:		defendants.
NEW YORK CITY FIRE DEPARTMENT PENSION	:		<u>SUMMONS</u>
FUND-ARTICLE 1-B and NEW YORK	:		
CITY POLICE PENSION FUND-ARTICLE 2,	:		Plaintiff The City
	:		of New York has offices
Defendants.	:		at Municipal Building,
- - - - -	x		New York, New York
			10007 (New York County).
			Plaintiff Municipal
			Assistance Corporation
			for the City of New
			York has principal
			offices at Two World
			Trade Center, New York,
			New York 10047 (New
			York County).

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiffs' Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to

answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
June 30, 1978

ALLEN G. SCHWARTZ  
Corporation Counsel  
Attorney for Plaintiff  
The City of New York  
Municipal Building  
New York, New York 10007  
(212) 566-5500  
Attention: James G. Greilsheimer, Esq.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
Attorneys for Plaintiff  
Municipal Assistance Corporation  
For The City of New York  
345 Park Avenue  
New York, New York 10022  
(212) 644-8000

Defendants' Addresses:

New York City Fire Department Pension Fund-Article 1-B  
110 Church Street  
New York, New York 10007

New York City Police Pension Fund-Article 2  
One Police Plaza  
New York, New York 10038

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- x

THE CITY OF NEW YORK and	:	
MUNICIPAL ASSISTANCE CORPORATION	:	
FOR THE CITY OF NEW YORK,	:	Index No.
Plaintiffs,	:	<u>COMPLAINT</u>
-against-	:	
NEW YORK CITY FIRE DEPARTMENT PENSION	:	
FUND-ARTICLE 1-B	:	
Defendant.	:	

----- x

Plaintiffs The City of New York (the "City") and  
Municipal Assistance Corporation For The City of New York  
("MAC"), complaining of defendant, allege:

1. Plaintiff City is a municipal corporation  
existing under the laws of the State of New York with  
offices at Municipal Building, New York, New York 10007.

2. Plaintiff MAC, a public benefit corporation, is  
a corporate governmental agency and instrumentality of the  
State of New York, with principal offices at Two World Trade  
Center, New York, New York 10047.

3. MAC was created by Chapters 168 and 169 of the  
Laws of 1975, enacted by the New York State Legislature on

June 10, 1975, to assist the City in attempting to provide essential services to its inhabitants while meeting its obligations to the holders of City securities.

4. Defendant New York City Fire Department Pension Fund-Article 1-B is a pension fund with principal offices at 110 Church Street, New York, New York 10007.

5. On or about August 17, 1977, five New York City pension funds (the "Pension Funds"), including defendant, and MAC entered into an agreement, with other parties, captioned the First Amendment to the Amended and Restated Agreement (the "Agreement") which amended and restated in its entirety a prior agreement, effective November 26, 1975 (the "Prior Agreement"). A copy of the Agreement is annexed as Exhibit A.

6. The City is a third party beneficiary of the Agreement.

7. The Prior Agreement and the Agreement are essential parts of the City's financial plans, and the United States of America, the State of New York, the City, and MAC, in participating in various elements of those plans, have relied upon the Prior Agreement and the Agreement.

8. Under Paragraph 4 of the Agreement, the Pension Funds, including defendant, agreed severally to purchase during the 1977-78 fiscal year of the City (i)

\$500,000,000 principal amount of serial bonds of the City, substantially in the proportions set forth in Schedule VII annexed to the Agreement and (ii) \$236,060,000 principal amount of serial bonds of the City, substantially in the proportions set forth in Schedule VIII annexed to the Agreement (collectively, the "bond purchases").

9. At the times that the Agreement and Prior Agreement were signed, all parties to the Agreement and Prior Agreement, including defendants, recognized that the City would have no alternative source for the funds which would be provided by the bond purchases.

10. The Pension Funds, including defendant, have made the purchases of serial bonds of the City set forth in Exhibit B, constituting a portion of the purchases required by the Agreement, but defendant has failed and refused to make the remainder of the bond purchases, set forth in Exhibit C, and has repudiated its obligation to do so.

11. Defendant's acts constitute a breach and anticipatory breach of the Agreement.

12. By reason of defendant's acts, the City has been damaged in that, among other things, it has been deprived of the funds which would have been provided by the bond purchases.

13. By reason of defendant's acts, MAC has been damaged in that, among other things, MAC's ability to discharge

its statutory obligation to assist the City in attempting to provide essential services to its inhabitants while meeting its obligations to the holders of City securities has been impaired.

14. Pursuant to a credit agreement entered into by the United States of America, the State of New York, the City, and the New York State Emergency Financial Control Board, dated as of December 30, 1975, which is part of the City's three-year financial plan, and under which the seasonal financing needs of the City have been met for the last two and one-half years, MAC undertook to take all reasonable steps to assure performance by all parties, including defendant, of the Prior Agreement, which was amended and restated in the Agreement.

15. The City has no alternative source for the funds which were to be provided by the bond purchases.

16. The City and MAC have no adequate remedy at law.

17. The City and MAC are entitled to specific performance of the Agreement and to an order directing defendant to make the bond purchases set forth in the Agreement.

WHEREFORE, plaintiffs the City and MAC demand judgment directing defendant to make the bond purchases set forth in the Agreement, and granting plaintiffs the City and MAC such other and further relief as this Court deems just



and proper, together with the costs and disbursements of this action.

Dated: New York, New York  
June 30, 1978

ALLEN G. SCHWARTZ  
Corporation Counsel  
Attorney for Plaintiff  
The City of New York  
Municipal Building  
New York, New York 10007  
(212) 566-5500  
Attention: James G. Greilsheimer, Esq.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
Attorneys for Plaintiff  
Municipal Assistance Corporation  
For The City of New York  
345 Park Avenue  
New York, New York 10022  
(212) 644-8000

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

- - - - - x Index No.

THE CITY OF NEW YORK and : Plaintiffs designate  
MUNICIPAL ASSISTANCE CORPORATION : New York County as  
FOR THE CITY OF NEW YORK, : the place of trial.  
 : The basis of the  
 : venue is residence  
Plaintiffs, : of plaintiffs and  
 : certain defendants.  
-against-

NEW YORK CITY EMPLOYEES' RETIREMENT : SUMMONS  
SYSTEM, BOARD OF EDUCATION RETIREMENT :  
SYSTEM FOR THE CITY OF NEW YORK, : Plaintiff The City  
NEW YORK CITY FIRE DEPARTMENT PENSION : of New York has offices  
FUND-ARTICLE 1-B, TEACHERS' RETIREMENT : at Municipal Building,  
SYSTEM FOR THE CITY OF NEW YORK BY AND : New York, New York  
THROUGH TEACHERS' RETIREMENT BOARD FOR : 10007 (New York County).  
THE CITY OF NEW YORK, and NEW YORK : Plaintiff Municipal  
CITY POLICE PENSION FUND-ARTICLE 2, : Assistance Corporation  
 : for the City of New  
Defendants. : York has principal  
 : offices at Two World  
- - - - - x Trade Center, New York,  
 : New York 10047 (New  
 : York County).

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this  
action and to serve a copy of your answer on the Plaintiffs'  
Attorneys within 20 days after the service of this summons, exclu-  
sive of the day of service (or within 30 days after the service  
is complete if this summons is not personally delivered to you  
within the State of New York); and in case of your failure to

answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
June 30, 1978

ALLEN G. SCHWARTZ  
Corporation Counsel  
Attorney for Plaintiff  
The City of New York  
Municipal Building  
New York, New York 10007  
(212) 566-5500  
Attention: James G. Greilsheimer, Esq.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
Attorneys for Plaintiff  
Municipal Assistance Corporation  
For The City of New York  
345 Park Avenue  
New York, New York 10022  
(212) 644-8000

Defendants' Addresses:

New York City Employees'  
Retirement System  
220 Church Street  
New York, New York 10013

Board of Education Retirement  
System for the City of New York  
65 Court Street  
Brooklyn, New York 11201

New York City Fire Department Pension  
Fund-Article 1-B  
110 Church Street  
New York, New York 10007

Teachers' Retirement System for the City  
of New York, by and through Teachers'  
Retirement Board for the City of New York  
40 Worth Street  
New York, New York 10013

New York City Police Pension Fund-Article 2  
One Police Plaza  
New York, New York 10038

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

- - - - - x

THE CITY OF NEW YORK and	:	
MUNICIPAL ASSISTANCE CORPORATION	:	
FOR THE CITY OF NEW YORK,	:	
Plaintiffs,	:	
-against-	:	Index No.
NEW YORK CITY EMPLOYEES' RETIREMENT	:	
SYSTEM, BOARD OF EDUCATION RETIREMENT	:	
SYSTEM FOR THE CITY OF NEW YORK,	:	<u>COMPLAINT</u>
NEW YORK CITY FIRE DEPARTMENT PENSION	:	
FUND-ARTICLE 1-B, TEACHERS' RETIREMENT	:	
SYSTEM FOR THE CITY OF NEW YORK BY AND	:	
THROUGH TEACHERS' RETIREMENT BOARD FOR	:	
THE CITY OF NEW YORK, and NEW YORK	:	
CITY POLICE PENSION FUND-ARTICLE 2,	:	
Defendants.	:	

- - - - - x

Plaintiffs The City of New York (the "City") and  
Municipal Assistance Corporation For The City of New York  
("MAC"), complaining of defendants, allege:

1. Plaintiff City is a municipal corporation  
existing under the laws of the State of New York with  
offices at Municipal Building, New York, New York 10007.

2. Plaintiff MAC, a public benefit corporation, is  
a corporate governmental agency and instrumentality of the  
State of New York, with principal offices at Two World Trade  
Center, New York, New York 10047.

3. MAC was created by Chapters 168 and 169 of the  
Laws of 1975, enacted by the New York State Legislature on

June 10, 1975, to assist the City in attempting to provide essential services to its inhabitants while meeting its obligations to the holders of City securities.

4. (a) Defendant New York City Employees' Retirement System is a retirement system with principal offices at 220 Church Street, New York, New York 10013.

(b) Defendant Board of Education Retirement System For the City of New York is a retirement system with principal offices at 65 Court Street, Brooklyn, New York 11201.

(c) Defendant New York City Fire Department Pension Fund-Article 1-B is a pension fund with principal offices at 110 Church Street, New York, New York 10007.

(d) Defendant Teachers' Retirement System for the City of New York, by and through Teachers' Retirement Board for the City of New York, is a retirement system with principal offices at 40 Worth Street, New York, New York 10013.

(e) Defendant New York City Police Pension Fund-Article 2 is a pension fund with principal offices at One Police Plaza, New York, New York 10038.

5. On or about August 17, 1977, the defendants and MAC entered into an agreement, with other parties, captioned the First Amendment to the Amended and Restated Agreement (the "Agreement") which amended and restated in its entirety a prior

agreement, effective November 26, 1975 (the "Prior Agreement"). A copy of the Agreement is annexed as Exhibit A.

6. The City is a third party beneficiary of the Agreement.

7. The Prior Agreement and the Agreement are essential parts of the City's financial plans, and the United States of America, the State of New York, the City, and MAC, in participating in various elements of those plans, have relied upon the Prior Agreement and the Agreement.

8. Under Paragraph 4 of the Agreement, defendants agreed severally to purchase during the 1977-78 fiscal year of the City (i) \$500,000,000 principal amount of serial bonds of the City, substantially in the proportions set forth in Schedule VII annexed to the Agreement and (ii) \$236,060,000 principal amount of serial bonds of the City, substantially in the proportions set forth in Schedule VIII annexed to the Agreement (collectively, the "bond purchases").

9. At the times that the Agreement and Prior Agreement were signed, all parties to the Agreement and Prior Agreement, including defendants, recognized that the City would have no alternative source for the funds which would be provided by the bond purchases.

10. Defendants have made the purchases of serial bonds of the City set forth in Exhibit B, constituting a portion of the purchases required by the Agreement, but

have failed and refused to make the remainder of the bond purchases, set forth in Exhibit C, and have repudiated their obligation to do so.

11. Defendants' acts constitute a breach and anticipatory breach of the Agreement.

12. By reason of defendants' acts, the City has been damaged in that, among other things, it has been deprived of the funds which would have been provided by the bond purchases.

13. By reason of defendants' acts, MAC has been damaged in that, among other things, MAC's ability to discharge its statutory obligation to assist the City in attempting to provide essential services to its inhabitants while meeting its obligations to the holders of City securities has been impaired.

14. Pursuant to a credit agreement entered into by the United States of America, the State of New York, the City, and the New York State Emergency Financial Control Board, dated as of December 30, 1975, which is part of the City's three-year financial plan, and under which the seasonal financing needs of the City have been met for the last two and one-half years, MAC undertook to take all reasonable steps to assure performance by all parties, including the defendants, of the Prior Agreement, which was amended and restated in the Agreement.

15. The City has no alternative source for the funds which were to be provided by the bond purchases.

16. The City and MAC have no adequate remedy at law.

17. The City and MAC are entitled to specific performance of the Agreement and to an order directing the defendants, and each of them, to make the bond purchases set forth in the Agreement.

WHEREFORE, plaintiffs the City and MAC demand judgment directing the defendants, and each of them, to make the bond purchases set forth in the Agreement, and granting plaintiffs the City and MAC such other and further relief as this Court deems just and proper, together with the costs and disbursements of this action.

Dated: New York, New York  
June 30, 1978

ALLEN G. SCHWARTZ  
Corporation Counsel  
Attorney for Plaintiff  
The City of New York  
Municipal Building  
New York, New York 10007  
(212) 566-5500  
Attention: James G. Greilsheimer, Esq.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
Attorneys for Plaintiff  
Municipal Assistance Corporation  
For The City of New York  
345 Park Avenue  
New York, New York 10022  
(212) 644-8000

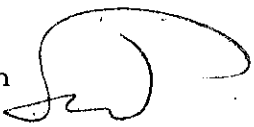


**Municipal Assistance Corporation  
For The City of New York**

MEMORANDUM

Date : 30 June 1978

To : Files

From: Steve Weinstein 

Re : Repayment of MAC Promissory Notes, 1978 Series

---

At 3:30 p.m. on Thursday, June 29, 1978, the following persons assembled in Room 1203 of the Municipal Building in the City of New York, at which time the Municipal Assistance Corporation paid the principal of and interest through June 29, 1978, on each of its Promissory Notes, 1978 Series, Numbers 1 through 6, issued June 9, 1978, and payable June 30, 1978, to each of the respective holders of such notes upon the surrender thereof and the Corporation and each of the holders executed cross-receipts to that effect, copies of which receipts are attached hereto.

Individual

Representing

Stephen J. Weinstein  
Deputy Executive Director

Municipal Assistance Corporation

Harris A. Decker  
Treasurer

Municipal Assistance Corporation

Paul M. O'Brien  
Trustee

New York City Employees'  
Retirement System

Wallace F. Sullivan  
Executive Director

Teachers' Retirement System  
For The City of New York

Donald Miller  
Deputy Executive Director

Teachers' Retirement System  
For The City of New York

John La Carrubba

Board of Education Retirement  
System for the City of New York

Paul M. O'Brien  
Third Deputy Comptroller  
The City of New York

Sinking Fund Of The City of  
New York

Paul M. O'Brien  
Third Deputy Comptroller  
The City of New York

Rapid Transit System Sinking  
Fund Of The City of New York

Paul M. O'Brien  
Third Deputy Comptroller  
The City of New York

Thornton Lurie

Fay Morales

Michael Bakalac

R. Demarest Duckworth III

Transit Unification Sinking Fund  
Of The City of New York

Hawkins, Delafield & Wood  
Bond Counsel to the Municipal  
Assistance Corporation

United States Trust Company  
of New York, Paying Agent  
for Municipal Assistance Cor-  
poration and Custodian for  
Holders

Carter, Ledyard & Milburn  
Counsel to the United States  
Trust Company of New York

C R O S S   R E C E I P T

The undersigned Fund hereby acknowledges receipt from Municipal Assistance Corporation For The City of New York (the "Corporation"), of a federal funds check payable to the order of the undersigned Fund in the amount of \$3,996,618.59, in payment in full of \$3,983,000 principal of and of \$13,618.59 interest through the date hereof on the Promissory Note, 1978 Series, of the Corporation, due June 30, 1978, No. 6 (the "Note"), held by the undersigned Fund, in full satisfaction and discharge of the obligations of the Corporation with respect to the Note held by the undersigned Fund.

The Corporation hereby acknowledges receipt of the Note from the Fund.

TRANSIT UNIFICATION SINKING FUND  
OF THE CITY OF NEW YORK (the "Fund")

By Paul M. O'Brien

MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

By Stephen W. Winston

Dated: June 29, 1978

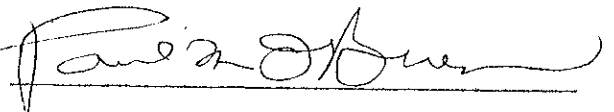
C R O S S   R E C E I P T

The undersigned Fund hereby acknowledges receipt from Municipal Assistance Corporation For The City of New York (the "Corporation"), of a federal funds check payable to the order of the undersigned Fund in the amount of \$183,279,529.97, in payment in full of \$182,655,000 principal of and of \$624,529.97 interest through the date hereof on the Promissory Note, 1978 Series, of the Corporation, due June 30, 1978, No. 1 (the "Note"), held by the undersigned Fund, in full satisfaction and discharge of the obligations of the Corporation with respect to the Note held by the undersigned Fund.

The Corporation hereby acknowledges receipt of the Note from the Fund.

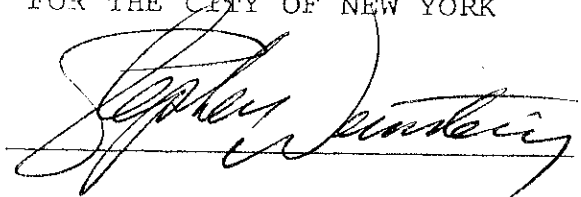
NEW YORK CITY EMPLOYEES'  
RETIREMENT SYSTEM (the "Fund")

BY



MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

BY



Dated: June 29, 1978

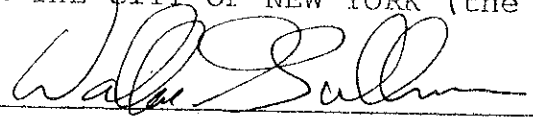
C R O S S   R E C E I P T

The undersigned Fund hereby acknowledges receipt from Municipal Assistance Corporation For The City of New York (the "Corporation"), of a federal funds check payable to the order of the undersigned Fund in the amount of \$134,142,092.82, in payment in full of \$133,685,000 principal of and of \$457,092.82 interest through the date hereof on the Promissory Note, 1978 Series, of the Corporation, due June 30, 1978, No. 2 (the "Note"), held by the undersigned Fund, in full satisfaction and discharge of the obligations of the Corporation with respect to the Note held by the undersigned Fund.

The Corporation hereby acknowledges receipt of the Note from the Fund.

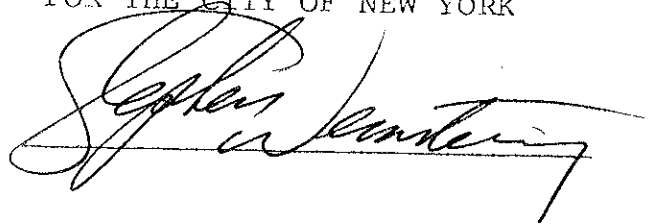
TEACHERS' RETIREMENT SYSTEM  
FOR THE CITY OF NEW YORK (the "Fund")

By



MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

By



Dated: June 29, 1978

C R O S S   R E C E I P T

The undersigned Fund hereby acknowledges receipt from Municipal Assistance Corporation For The City of New York (the "Corporation"), of a federal funds check payable to the order of the undersigned Fund in the amount of \$7,796,567.01, in payment in full of \$7,770,000 principal of and of \$26,567.01 interest through the date hereof on the Promissory Note, 1978 Series, of the Corporation, due June 30, 1978, No. 3 (the "Note"), held by the undersigned Fund, in full satisfaction and discharge of the obligations of the Corporation with respect to the Note held by the undersigned Fund.

The Corporation hereby acknowledges receipt of the Note from the Fund.

BOARD OF EDUCATION RETIREMENT  
SYSTEM FOR THE CITY OF NEW YORK (the "Fund")

BY

John La Carrubba

MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

BY

Stephen J. Santoro

Dated: June 29, 1978

C R O S S   R E C E I P T

The undersigned Fund hereby acknowledges receipt from Municipal Assistance Corporation For The City of New York (the "Corporation"), of a federal funds check payable to the order of the undersigned Fund in the amount of \$2,283,782.05, in payment in full of \$2,276,000 principal of and of \$7,782.05 interest through the date hereof on the Promissory Note, 1978 Series, of the Corporation, due June 30, 1978, No. 4 (the "Note"), held by the undersigned Fund, in full satisfaction and discharge of the obligations of the Corporation with respect to the Note held by the undersigned Fund.

The Corporation hereby acknowledges receipt of the Note from the Fund.

SINKING FUND OF THE CITY  
OF NEW YORK (the "Fund")

By Frank M. DeBor

MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

By Stephen J. Kintner

Dated: June 29, 1978

C R O S S   R E C E I P T

The undersigned Fund hereby acknowledges receipt from Municipal Assistance Corporation For The City of New York (the "Corporation"), of a federal funds check payable to the order of the undersigned Fund in the amount of \$5,138,509.61, in payment in full of \$5,121,000 principal of and of \$17,509.61 interest through the date hereof on the Promissory Note, 1978 Series, of the Corporation, due June 30, 1978, No. 5 (the "Note"), held by the undersigned Fund, in full satisfaction and discharge of the obligations of the Corporation with respect to the Note held by the undersigned Fund.

The Corporation hereby acknowledges receipt of the Note from the Fund.

RAPID TRANSIT SYSTEM SINKING  
FUND OF THE CITY OF NEW YORK (the "Fund")

BY Paul M. O'Brien

MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

BY Joseph J. Santoro

Dated: June 29, 1978



*Hawkins, Delafield & Wood*  
67 Wall Street, New York 10005

(Area Code 212) 952-4700

Cable Address: "Hawkdels New York"

Writer's Direct Dial Number

212-952-4713

June 1, 1978

C  
O  
P  
Y

Mr. William Moran  
Regional Administrator  
Securities and Exchange  
Commission  
26 Federal Plaza  
New York, New York

Dear Bill:

Pursuant to our prior practice of keeping the Staff of the Commission informed with respect to the activities of the Municipal Assistance Corporation For The City of New York, I enclose the most recent draft of an Official Statement which the Corporation proposes to use in connection with the sale to certain pension funds and sinking funds. The draft is subject to further change and amendment. It is presently intended that the Notes will be sold and delivered on Monday, June 5.

We would appreciate receiving any comments which you or other members of the Staff deem appropriate.

With kindest personal regards, I am

Very truly yours,



Donald J. Robinson

DJR:md  
Enclosure (1)  
bcc: Steven Weinstein  
Allen Thomas



State of New York  
Municipal Assistance Corporation  
For The City of New York  
Two World Trade Center  
New York, N. Y. 10047

Felix G. Rohatyn  
Chairman

Eugene Keilin  
Executive Director

(212) 488-5720

**Board Members**  
Francis J. Barry  
George M. Brooker  
Thomas A. Coleman  
Thomas D. Flynn  
George D. Gould  
Dick Netzer  
Robert C. Weaver

June 23, 1978

Writer's Direct Wire: (212) 488-

The Honorable Harrison Jay Goldin  
Comptroller of the City of New York  
Municipal Building  
New York, N.Y. 10007

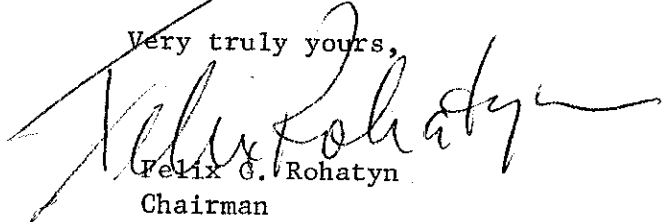
Dear Jay:

You have indicated for some time your interest in purchasing third resolution MAC bonds (MAC 3's) in lieu of the \$683 million city bonds that the pension systems are committed to buy prior to June 30, 1978. We had indicated to you, and to the other trustees, our interest in pursuing such discussions subject among other things, to legislative approval. As you know the New York State legislature did not give us legislative authority for the MAC 3's and the \$4.5 billion long-term financing plan which we are currently discussing with the federal government would not permit us to divert \$683 million of MAC bonds for this purpose without seriously weakening the plan's chances of success.

I am, however, still of the opinion that MAC 3's are an instrument that should get favorable consideration from the legislature in the future. I think they would be useful to MAC and a benefit to the City and the State. Therefore, if, as and when the New York State Legislature gives MAC authority to issue MAC 3's and, at the same time MAC has an appropriate amount of total borrowing power remaining (which may not be possible within its present debt limits), I would recommend that the MAC Board give favorable consideration to exchange all or part of the presently contemplated \$683 million city bonds for MAC 3's.

It would obviously not be appropriate for the MAC Board today to commit a future MAC Board to take an action which, in the light of circumstances at the time might not be advisable. It maybe that, as and when MAC 3's are created, a substantial part of MAC's borrowing power would still be required to finance the City and the MAC Board would obviously have to give priority to that endeavor. My recommendation is therefore subject to this caveat and can in no way be binding on the then Board.

Very truly yours,

  
Felix G. Rohatyn  
Chairman



State of New York  
Municipal Assistance Corporation  
For The City of New York

Two World Trade Center  
New York, N. Y. 10047

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Robert C. Weaver

(212) 488-5720

Writer's Direct Wire: (212) 488- 5720

17 May 1978

BY HAND

TEACHERS' RETIREMENT SYSTEM FOR THE CITY OF NEW YORK  
40 Worth Street  
New York, New York 10013

ATT: Wallace F. Sullivan

Gentlemen:

The Municipal Assistance Corporation For The City of New York (the "Corporation") and the Retirement System are parties to an Agreement effective November 26, 1975 (the "Amended and Restated Agreement"), and amended and restated effective August 17, 1977 (the "Restructuring Agreement"), among 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, including your fund (the "Pension Funds") and the New York City sinking funds. (The Amended and Restated Agreement and the Restructuring Agreement are collectively referred to herein as the "Agreement".)

Pursuant to the Agreement you have agreed to purchase your proportionate share of \$683,000,000 principal amount of serial bonds of The City of New York (the "City") as provided in Schedules VII and VIII of the Restructuring Agreement. The City has indicated that it will require funds during the week of May 22, 1978. Accordingly, pursuant to the Agreement, the Corporation expects you to complete the purchases called for in the Agreement by Friday, May 26, 1978.

Under the Amended and Restated Agreement any Pension Fund could elect to purchase bonds of the Corporation equal in principal amount to its proportionate share of City bonds, within certain stated limits. No Pension Fund exercised such an option. Therefore, in view of limitations on the Corporation's bond issuance authority at the time of the Restructuring Agreement, this option was not included in the Restructuring Agreement.

17 May 1978  
Wallace F. Sullivan  
Page Two

In light of the reservations expressed recently by certain representatives of the Pension Funds with respect to the purchase of additional City bonds at this time, the Corporation is offering each of the Pension Funds the option of purchasing its bonds in satisfaction of the Pension Funds' obligations under the Agreement, subject to the passage of State legislation which would increase the Corporation's borrowing authority. The bonds of the Corporation would be issued under a new third general bond resolution and would be purchased during the week of May 22, 1978, the same time set for the purchase of City bonds. In addition, if necessary in order to bring such purchase within the scope of Public Law 94-236, the Restructuring Agreement would be amended to provide specifically for the purchase of the Corporation's bonds.

A draft of an official statement with respect to the Corporation's proposed third resolution bonds is enclosed. The draft is currently being reviewed by our staff, directors and counsel, and is therefore subject to change. However, in order to expedite discussion of this alternative investment, we are sending you the document in preliminary form. We understand that the City is also preparing a draft of a proposed official statement which would be used in connection with your scheduled purchase of City bonds should you choose to fulfill your obligation in that manner.

We are available to discuss with you the alternative investments discussed herein.

Sincerely,

MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

By: 

Eugene J. Keilin  
Executive Director

EJK:bba

Enclosure

cc: Irving Jacobson, Esq.  
Shea, Gould, Climento, Kramer & Casey



State of New York  
Municipal Assistance Corporation  
For The City of New York

Two World Trade Center  
New York, N. Y. 10047

Eugene Keilin  
Executive Director

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Dick Netzer  
Robert C. Weaver

(212) 488-5720

Writer's Direct Wire: (212) 488-5720

17 May 1978

BY HAND

BOARD OF EDUCATION RETIREMENT SYSTEM FOR THE CITY OF NEW YORK  
65 Court Street  
Brooklyn, New York 11201

ATT: John LaCarrubba

Gentlemen:

The Municipal Assistance Corporation For The City of New York (the "Corporation") and the Retirement System are parties to an Agreement effective November 26, 1975 (the "Amended and Restated Agreement"), and amended and restated effective August 17, 1977 (the "Restructuring Agreement"), among 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, including your fund (the "Pension Funds") and the New York City sinking funds. (The Amended and Restated Agreement and the Restructuring Agreement are collectively referred to herein as the "Agreement".)

Pursuant to the Agreement you have agreed to purchase your proportionate share of \$683,000,000 principal amount of serial bonds of The City of New York (the "City") as provided in Schedules VII and VIII of the Restructuring Agreement. The City has indicated that it will require funds during the week of May 22, 1978. Accordingly, pursuant to the Agreement, the Corporation expects you to complete the purchases called for in the Agreement by Friday, May 26, 1978.

Under the Amended and Restated Agreement any Pension Fund could elect to purchase bonds of the Corporation equal in principal amount to its proportionate share of City bonds, within certain stated limits. No Pension Fund exercised such an option. Therefore, in view of limitations on the Corporation's bond issuance authority at the time of the Restructuring Agreement, this option was not included in the Restructuring Agreement.

17 May 1978  
John LaCarrubba  
Page Two

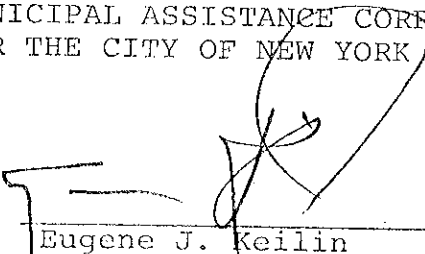
In light of the reservations expressed recently by certain representatives of the Pension Funds with respect to the purchase of additional City bonds at this time, the Corporation is offering each of the Pension Funds the option of purchasing its bonds in satisfaction of the Pension Funds' obligations under the Agreement, subject to the passage of State legislation which would increase the Corporation's borrowing authority. The bonds of the Corporation would be issued under a new third general bond resolution and would be purchased during the week of May 22, 1978, the same time set for the purchase of City bonds. In addition, if necessary in order to bring such purchase within the scope of Public Law 94-236, the Restructuring Agreement would be amended to provide specifically for the purchase of the Corporation's bonds.

A draft of an official statement with respect to the Corporation's proposed third resolution bonds is enclosed. The draft is currently being reviewed by our staff, directors and counsel, and is therefore subject to change. However, in order to expedite discussion of this alternative investment, we are sending you the document in preliminary form. We understand that the City is also preparing a draft of a proposed official statement which would be used in connection with your scheduled purchase of City bonds should you choose to fulfill your obligation in that manner.

We are available to discuss with you the alternative investments discussed herein.

Sincerely,

MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

By:   
Eugene J. Keilin  
Executive Director

EJK:bba

Enclosure



State of New York  
Municipal Assistance Corporation  
For The City of New York

Two World Trade Center  
New York, N. Y. 10047

Felix G. Rohatyn  
Chairman

Eugene Keilin  
Executive Director

Board Members  
Francis J. Barry  
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Thomas A. Coleman  
Thomas D. Flynn  
George D. Gould  
Dick Netzer  
Robert C. Weaver

(212) 488-5720

17 May 1978

Writer's Direct Wire: (212) 488-5720

BY HAND

NEW YORK CITY POLICE PENSION FUND, ARTICLE 2  
One Police Plaza  
New York, New York 10038

ATT: Daniel O'Neal Vona

Gentlemen:

The Municipal Assistance Corporation For The City of New York (the "Corporation") and the Pension Fund are parties to an Agreement effective November 26, 1975 (the "Amended and Restated Agreement"), and amended and restated effective August 17, 1977 (the "Restructuring Agreement"), among 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, including your fund (the "Pension Funds") and the New York City sinking funds. (The Amended and Restated Agreement and the Restructuring Agreement are collectively referred to herein as the "Agreement".)

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Under the Amended and Restated Agreement any Pension Fund could elect to purchase bonds of the Corporation equal in principal amount to its proportionate share of City bonds, within certain stated limits. No Pension Fund exercised such an option. Therefore, in view of limitations on the Corporation's bond issuance authority at the time of the Restructuring Agreement, this option was not included in the Restructuring Agreement.

17 May 1978  
Daniel O'Neal Vona  
Page Two

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We are available to discuss with you the alternative investments discussed herein.

Sincerely,

MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

By: 

Eugene J. Keilin  
Executive Director

EJK:bba

Enclosure





State of New York  
Municipal Assistance Corporation  
For The City of New York

Two World Trade Center  
New York, N. Y. 10047

Felix G. Rohatyn  
Chairman

Eugene Keilin  
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George D. Gould  
Dick Netzer  
Robert C. Weaver

(212) 488-5720

17 May 1978

Writer's Direct Wire: (212) 488- 5720

BY HAND

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM  
220 Church Street  
New York, New York 10013

ATT: Harold Herkommer

Gentlemen:

The Municipal Assistance Corporation For The City of New York (the "Corporation") and the Retirement System are parties to an Agreement effective November 26, 1975 (the "Amended and Restated Agreement"), and amended and restated effective August 17, 1977 (the "Restructuring Agreement"), among 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, including your fund (the "Pension Funds") and the New York City sinking funds. (The Amended and Restated Agreement and the Restructuring Agreement are collectively referred to herein as the "Agreement".)

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17 May 1978  
Harold Herkommer  
Page Two

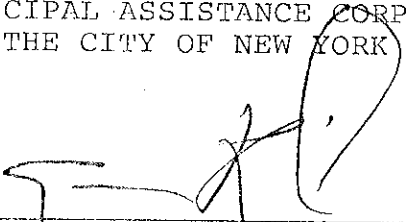
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Sincerely,

MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

By:   
Eugene J. Keilin  
Executive Director

EJK:bba

Enclosure

cc: George Lander, Esq.  
Fried, Frank, Harris, Shriver & Jacobson



State of New York  
Municipal Assistance Corporation  
For The City of New York

Two World Trade Center  
New York, N. Y. 10047

Felix G. Rohatyn  
Chairman

Eugene Keilin  
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(212) 488-5720

Board Members  
Francis J. Barry  
George M. Brooker  
Thomas A. Coleman  
Thomas D. Flynn  
George D. Gould  
Dick Netzer  
Robert C. Weaver

17 May 1978

Writer's Direct Wire: (212) 488-5720

BY HAND

NEW YORK CITY FIRE DEPARTMENT PENSION FUND,  
ARTICLE 1-B  
110 Church Street  
New York, New York 10007

ATT: Stephen J. Murphy

Gentlemen:

The Municipal Assistance Corporation For The City of New York (the "Corporation") and the Pension Fund are parties to an Agreement effective November 26, 1975 (the "Amended and Restated Agreement"), and amended and restated effective August 17, 1977 (the "Restructuring Agreement"), among 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, including your fund (the "Pension Funds") and the New York City sinking funds. (The Amended and Restated Agreement and the Restructuring Agreement are collectively referred to herein as the "Agreement".)

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17 May 1978  
Stephen J. Murphy  
Page Two

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Sincerely,

MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

By:   
Eugene J. Keilin  
Executive Director

EJK:bba

Enclosure



DEPARTMENT OF THE TREASURY  
OFFICE OF THE GENERAL COUNSEL  
WASHINGTON, D.C. 20220

May 5, 1978

To : Messrs. Cobbs, Lander, Johnson, Spirer  
and Bender and Ms. Friedman

From: John Fouhey *JF*

Re : Revised Bill Extending the Provisions of P.L. 94-236  
to a New NYC Financing Plan

I am enclosing with this memorandum a draft, dated today, of a revised bill, reflecting the various comments that have been discussed during the last few days. It has been marked to show changes from the April 28, 1978 draft.

A copy of this draft has also been furnished to Congressman Rangel, who in turn will take care of, or at least approve, distribution to members of the Joint Committee on Taxation Staff.

Enclosure

3002

Marked to show  
changes from  
4/28/78 draft

A BILL

Relating to the application of certain provisions of the Internal Revenue Code of 1954 to specified transactions by certain public employee 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

DEFINITIONS

Sec. 1. As used in this Act:

- (a) "City Plan" means any one of the New York City Employees' Retirement System, the Teachers' Retirement System for The City of New York, the New York City Police Pension Fund, Article 2, the New York City Fire Department Pension Fund, Article 1-B, and the Board of Education Retirement System for The City of New York. Reference to any City Plan shall also be deemed to include any trust forming a part thereof.
- (b) "State Plan" means any one of the New York State Employees' Retirement System, the New York Policemen's and Firemen's Retirement System and the New York State Teachers' Retirement System. Reference to any State Plan shall also be deemed to include any trust forming a part thereof.

- (c) "City" means the City of New York.
- (d) "Financing agent" means any agency or instrumentality of the State aduly authoized by the State to act on behalf of or in the interest of the City, and no other subdivision of the State, with respect to the City's financial affairs.
- (e) "City indebtedness" means indebtedness for borrowed money of (i) a Financing agent, but only if the proceeds thereof have been or are to be advanced to or applied for the benefit of the City or (ii) the City.
- (f) "Related employer" means, when used with reference to any City Plan or State Plan, the unit or units of government that are obligated to make contributions to such Plan or pay pension and retirement benefits to members and beneficiaries of such Plan.
- (g) "Secretary" means the Secretary of the Treasury of the United States of America.
- (h) "State" means the State of New York.

#### QUALIFIED STATUS

Sec. 2.(a) A City Plan or a State Plan shall not be considered to fail to satisfy the requirements of section

401(a) of the Internal Revenue Code of 1954, and shall not be considered to have engaged in a prohibited transaction described in section 503(b) of such Code, merely because such Plan:

- (1) enters into any agreement providing for purchases or other acquisitions of City indebtedness, or
  - (i) agrees to an amendment of such agreement,
  - (ii) makes any election contemplated by such agreement,
  - (iii) waives any requirement of such agreement, or
  - (iv) satisfies any other requirement of such agreement,

unless, in the case of the initial agreement or any such amendment or waiver, the Secretary shall have determined, prior to taking effect thereof, (a) that the taking effect of such agreement, amendment or waiver, as the case may be, is inconsistent with the following considerations:

- (i) (2) maintaining the ability of the Related employer --
  - (A) to make future contributions to such Plan, and
  - (B) to satisfy its future obligations to pay pension and retirement benefits to members and beneficiaries of such Plan, and



During the period covered by each agreement.

(ii) protecting the sources of funds to provide retirement benefits for members and beneficiaries of such plan;

or (b) that a substantial portion of the long-term borrowing needs of the City will not be met through commitments from the State, an agency of the State, private sources, or through capital markets; such Plan shall submit a copy of each such agreement, amendment and waiver to the Secretary promptly after the execution thereof, and the Secretary shall make the determinations contemplated by Paragraph (1) within sixty days after receipt thereof;

(2) makes any purchase or other acquisition of City indebtedness provided for by any agreement of the character described in paragraph (1), the taking effect of which agreement (and any amendment thereto and waiver thereunder) has been determined by the Secretary as not inconsistent with the considerations set forth in such paragraph, so long as such purchase or other acquisition meets the requirements of subsection (b);

(3) continues to hold any City indebtedness the purchase or acquisition of which, on the date of such purchase or acquisition, met the requirements of subsection (b).

(b) A purchase or other acquisition of City indebtedness by a City Plan or a State Plan shall be considered to meet the requirements of this subsection (b) if:

(1) (A) in the case of any City Plan, immediately after such purchase or other acquisition, the aggregate principal amount of all City indebtedness held by such Plan does not exceed fifty per centum of its total assets and the aggregate principal amount of all City indebtedness held by all City Plans does not exceed thirty-five per centum of the total assets of all City Plans, and

(B) in the case of any State Plan, the aggregate principal amount of all City indebtedness held by such Plan does not exceed ten per centum of its total assets;

9-1- for purposes of this subparagraph, "total assets" of any Plan shall mean the sum of  
(a) assets of such Plan as shown in the  
most recent annual report furnished by Section  
such Plan to the Secretary pursuant to § 3  
of this Act, and (b) assets estimated by  
the actuary of such Plan to have been received  
by such Plan from the date as at which assets  
are shown in such report through the date of  
such purchase or other acquisition, less  
assets estimated by such actuary to have been



and direction the State has covenanted will  
not be repealed, invalidated or otherwise  
substantially impaired during any period  
during which any Plan continues to hold a  
sufficient amount of City indebtedness as  
to require delivery of a report to the  
Secretary pursuant to section 3: Provided  
That any City Plan or State Plan shall  
be entitled to rely upon a determination by  
the Secretary that the scope of authority  
of such instrumentality meets the foregoing  
requirements, and any such determination  
shall be conclusive for the purpose of this  
Act;

- (3) the City has agreed to obtain and submit to  
the trustees of such Plan, as soon as practi-  
cable after the close of each fiscal year of  
the City for which delivery of a report to  
the Secretary is required by section 3, an  
opinion of independent public accountants  
setting forth the results of an audit by  
such accountants of the financial statements  
of the City for such fiscal year;

- (4) at the time of such purchase or acquisition,  
neither the City nor any Financing agent that

has issued any City indebtedness held or then to be purchased or otherwise acquired by such Plan is 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 of the State of New York (or any statute analogous in purpose or effect to any such laws or law);

- (5) the stated maturity of such City indebtedness is no more than twenty-five years from the date of issuance thereof;
- (6) the terms of such City indebtedness provides for (A) payments of interest no less frequently than annually during the entire term of such indebtedness and (B) annual required <sup>(n)</sup> installments <sup>(of)</sup> repayment of principal commencing no later than the year in which two-thirds of the stated term of such indebtedness shall have passed, and no such required installment of principal shall be less than that which is required to amortize the total outstanding principal amount of such indebtedness under a debt service schedule providing for substantially equal combined payments of principal and interest on a schedule consistent with the requirements of of this paragraph;

(7) at the time of such purchase, the sources of funds of such Plan projected by the actuary for such Plan for the current and four next succeeding fiscal years of such Plan, taken as a whole, exceed the aggregate uses of funds of such Plan projected by the actuary for such Plan for that period, taken as a whole; and

(8) such purchase or other acquisition is made on or before June 30, 1982.

#### REPORTS

Sec. 3. The trustees of each City Plan and State Plan that becomes a party to any agreement of the character described in paragraph (1) of subsection 2(a) shall, commencing with the first fiscal year of the Plan beginning after June 30, 1977 and ending with the first fiscal year of the Plan in which the amount of City indebtedness held by such Plan that had been purchased or otherwise acquired directly from the City or a Financing agent subject to the terms of this Act or Public Law 94-236 is less than 10% of its total assets, furnish to the Secretary, the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate, not later than two hundred and fifty days after the end of such fiscal year, a report setting forth in reasonable detail the sources and uses of funds

of such Plan during such fiscal year, the ~~involvements~~ <sup>assets</sup> of the Plan as at the end of such fiscal year and the projected sources and uses of funds of such Plan for the five fiscal years of the Plan next succeeding such fiscal year. Such trustees also furnish to the Secretary and such Chairmen a copy of the annual report filed by such Plan with the New York State Insurance Department for each such fiscal year not later than 30 days after the date such report is filed with the New York State Insurance Department. Such trustees shall also furnish to the Secretary and such Chairmen such additional reports and other information as the Secretary of the Treasury may reasonably require.

P.L. 94-236

Sec. 4. The provisions of P.L. 94-236 to the contrary notwithstanding: no amendment to the agreement described in subsection (a) of P.L. 94-236 shall take effect for purposes of such subsection (a) if such amendment provides for any City Plan or State Plan to purchase or otherwise acquire any City indebtedness with a stated maturity more than one year from the date of issuance thereof; and any City Plan or State Plan that becomes subject the reporting requirements of section 3 of this Act shall thereafter no longer be subject to the reporting requirements <sup>(95)</sup> subsection (c) of P.L. 94-236.

REGULATIONS

Sec. 4. The Secretary<sup>A</sup> or his delegate is authorized to prescribe such regulations as may be necessary to carry out the purposes of this Act.

EFFECTIVE DATE

Sec. 6. This Act shall be effective on and after May 1, 1978.



PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
345 PARK AVENUE  
NEW YORK, N.Y. 10022

TELEPHONE (212) 644-8000  
TELECOPIER (212) 644-8202

CABLE: LONGSIGHT, N.Y.  
TELEX 12-7831

RANDOLPH E. PAUL (1946-1956)  
LOUIS S. WEISS (1927-1950)  
JOHN F. WHARTON (1927-1977)

LLOYD K. GARRISON  
COUNSEL

WRITER'S DIRECT DIAL NUMBER

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May 1, 1978

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.

SIMON H. RIFKIND  
HOWARD A. SEITZ  
ADRIAN W. DEWIND  
MORRIS B. ABRAM  
MORDECAI ROCHLIN  
PAUL J. NEWLON  
JOSEPH S. ISEMAN  
JAMES B. LEWIS  
THEODORE C. SORENSEN  
MARTIN KLEINBERG  
RICHARD H. PAUL  
NORMAN ZELENGO  
JOHN E. MASSENGALE  
JAY TOPKIS  
EDWARD N. COSTIKYAN  
BAYLESS MANNING  
ROBERT H. MONTGOMERY, JR.  
JOHN C. TAYLOR, 3rd  
BERNARD H. GREENE  
ERNEST RUBENSTEIN  
STUART ROBINOWITZ  
JAMES L. PURCELL  
ARTHUR KALISH  
DAVID T. WASHBURN  
BERNARD FINKELSTEIN  
ARTHUR L. LIMAN  
SEYMOUR HERTZ  
WALTER F. LEINHARDT  
GERALD D. STERN  
ANTHONY B. KUKLIN  
MARTIN LONDON  
DAVID C. BRODHEAD  
PETER R. HAJE  
LEONARD V. OUGLEY  
ALLAN BLUMSTEIN  
NEALE M. ALBERT  
JAY GREENFIELD  
KEVIN J. O'BRIEN  
ALFRED D. YOUNGWOOD  
DONALD F. MOORE  
JOSEPH E. BROWDY  
SIDNEY S. ROSDEITCHER  
ROBERT L. LAUFER  
ALLEN L. THOMAS  
PETER L. FELCHER  
MARK H. ALCOTT  
JOHN P. MCENROE  
PETER J. ROTHENBERG  
JUDITH R. THOYER  
RICHARD A. ENGELMAN  
GEORGE P. FELLEMAN  
STEVEN B. ROSENFELD  
ALBERT P. HAND  
ROBERT S. SMITH  
MAX GITTER  
JOHN J. O'NEIL  
CAMERON CLARK  
LEWIS A. KAPLAN

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.\*

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\* 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,

*Paul, Weiss, Rifkind, Wharton & Garrison.*  
PAUL, WEISS, RIFKIND, WHARTON & GARRISON



# Memorandum



STATE OF NEW YORK  
WASHINGTON OFFICE

April 17, 1978

RECEIVED	
FEDERAL ASSISTANCE CORPORATION	
APR 18 1978	
DBA	
HAD	✓
LED	
MFT	✓
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RCR	✓
ENE	✓
ETS	
SDW	✓
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MAIL	
HAND	

TO: Gene Keilin

FROM: Brad Johnson *(signature)*

SUBJECT: Extension of New York City Pension Act

Enclosed are proposed amendments to the Administration's bill to extend legislation which permits investment of New York pension fund assets in City and MAC paper. The second enclosure sets forth the reasons for adopting the proposed amendments. Both documents were prepared by staff members of the Joint Tax Committee.

We would appreciate your comments as soon as possible.

Encls.

April 17, 1978

*Lesson for*

## Possible Amendments to NYC Pension Bill

1. Provision for debt service.--Requiring level debt service will ensure that pension funds will have adequate cash flow to meet their obligations to retirees; also helps assure that the City will gradually reduce its debt burden.
2. Interest rate.--Requiring that rates be comparable and Treasury to approve them is another safeguard that pension funds will get reasonable investments and not be pressured to buy securities which are not in their interest. Also helps assure that if City becomes creditworthy, debt held by pension funds will be marketable at a reasonable price.
3. Maturity.--The Treasury proposal for 25 years seems too long; the MAC debt was generally shorter. Providing an outside date for holdings will ensure that there is not a massive rollover at the last moment. Also limits exposure of pension funds, in view of inability of funds to project cash flow for more than 5 years.
4. Length of extension for suspension of self-dealing prohibitions (pension tax laws).--This is somewhat arbitrary, but the City's plan for balancing its budget is in 4 years. It seems reasonable to either examine the situation before or after that time.
5. Coverage.--Issue is whether to permit State pension funds to also make bond purchases, and also Firemen's fund, which will be broke in late summer, to make bond purchases. If bonds are sound investments, State funds could buy them without any Federal legislation, and the State trustee, Arthur Levitt, has asked that they be excluded from the legislation. The negative cash flow exclusion suggested is another protection, so that funds which are themselves in bad shape cannot be pressured into buying further risky investments.
6. Participation of other parties.--Requiring other parties, especially private parties, to buy bonds at same time pension funds buy, spreads the risk of holding the bonds, and creates further interest in City's budget and progress towards balancing it.
7. Amount of debt to be purchased.--The proposal has a declining percentage for each pension fund; the rationale is that the funds ought to slowly get out of City and MAC bonds, not be required to hold increasingly large amounts. Valuing the City and MAC bonds at higher of face or market, and valuing the other assets at market value, seems to be just a safeguard. Requiring that the security of the pension funds purchases be as good as those bought by outside parties is a safeguard against the banks getting only MAC bonds, which are backed by property tax receipts, and the pension funds getting city bonds, which have no security usually behind them.

8. Balanced budget and related fiscal requirements.--These provisions are there to assure that fiscal prudence will be observed which in turn is necessary to assure that the bonds purchased are sound. Fiscal monitor is essentially like the one under current law; balanced budget requirement is essentially the same as originally proposed by Mr. Rangel; audit requirements are also similar to those originally proposed.

9. Reports.--The original reporting requirement in P.L. 94-236 was based on good faith reporting by the funds; but they have not sent in reports to the State, and therefore have not come to the Treasury or the Committee. Also, the reports are 2 years out of date. The proposed 7-1/2 month lag is current practice under ERISA.

10. Treasury participation in agreements.--Since there is no agreement in place ahead of time, it would seem prudent to have the Treasury approve any sale of bonds to the pension funds to ensure that both the interests of the City and the pension funds are balanced. This requirement is analagous to the provision in existing law which required that Treasury approve all amendments to the original agreement.

11. Rollover limitations.--Another safeguard which seems prudent.

12. Effect of P.L. 94-236.--No new purchases or rollovers under P.L. 94-236 permitted after enactment of this bill.

April 17, 1978

Possible Amendments to NYC Pension Bill

1. Provision for debt service.--level debt service (regular equal payments).
2. Interest rate.--interest rate should be at least equal to going rate for comparable, marketable securities of investment grade quality. Treasury should so determine that interest rate is satisfactory.
3. Maturity.--shorten maximum maturity, e.g., to 15 years (Treasury recommended 25 years). Also limit holdings in future by requiring that maturity of such bonds would be 15 years from date of purchase.
4. Length of extension for suspension of self-dealing prohibitions (pension tax laws).--either 3 years or 5 years; 3 years gives Congress an opportunity to assess whether balanced budget will be realized in fourth year, while 5 years gives Congress an opportunity to review whether balanced budget occurred. 3 years probably is more desirable.
5. Coverage.--permit only 5 city pension funds to purchase instead of also permitting 4 state pension funds as did Treasury bill. Possibly exclude any pension fund whose 5-year cash flow projection is negative; this would have effect of excluding the Firemen's Fund as currently funded.
6. Participation of other parties.--possibly require participation of outside parties in addition to pension funds. Could require commercial banks to buy city or MAC notes in tandem with pension funds, e.g., banks would buy 25 or up to 50 cents per dollar of pension fund purchase. Eleven NYC banks were parties to 1975 Agreement on which P.L. 94-236 was based.
7. Amount of debt to be purchased.--
  - a) overall limitation of 35% of all pension funds' assets,
  - b) a per pension fund limitation of 48% in 1979, 43% in 1980, 38% in 1981, and 35% thereafter of net holdings of city and MAC debt,
  - c) city and MAC debt to be valued at the larger of face or market, other debt to be valued at market value (based on 5-year moving average),
  - d) security on pension fund bond purchases must be at least as good as security on bonds purchased by other parties, e.g., banks,
  - e) total purchases each year may not exceed \$750 million by pension funds, and carryforward would be available if authority not used (this figure needs to be checked out further)

3. Balanced budget and related fiscal requirements.--

- a) State fiscal monitor must be in place throughout period of bill and have full authority over city's budget per current EFCB (State fiscal monitor, Emergency Finance Control Board)
- b. balanced budget must be achieved in FY 82, and fiscal monitor must take steps, if necessary, to ensure that substantial progress is made each year,
- c. budget must be audited each year by external, independent auditor and opinion conveyed to Treasury and tax Committees promptly after close of each fiscal year.

9. Reports.--pension funds must report to Congress, Treasury and State 7 and 1/2 months after close of each fiscal year on status of funds in terms of inflow, outflow, and composition of holdings. Also provide each year 5-year cash flow projections.

10. Treasury participation in agreements.--all agreements must be positively approved by Treasury 30 days after submission, or safe haven not available. Within 15 days of decision, Treasury must notify tax Committees, and explain considerations. In deciding whether to approve or disapprove, Treasury must weight effects on pension funds and on city as under P.L. 94-236.

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12. Effect of P.L. 94-236.--no new purchases or rollovers under P.L. 94-236 permitted after enactment of this bill.

Memorandum

202-68-1311



STATE OF NEW YORK  
WASHINGTON OFFICE

April 17, 1978

TO: Don Kummerfeld  
FROM: Brad Johnson *[Signature]*  
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April 17, 1979

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Rollover limitations.--any rollovers must satisfy all requirements of legislation, e.g., rollovers are permitted if they meet limitations on new purchases.

Effect of P.L. 94-236.--no new purchases or rollovers under P.L. 94-236 permitted after enactment of this bill.



April 17, 1978

*Reasons for*

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EXCERPT FROM TAPE OF MAC BOARD MEETING OF APRIL 7, 1978  
(FGR is Felix Rohatyn; SR is Simon Rifkind)

FGR:

"I'd like to make just one point with respect to the investment of <sup>the</sup> / pension systems. We don't really have the luxury of waiting until the last moment to find out what it is that the pension systems are going to do or not because if we do run out of money and if the pension systems, for reasons that may be perfectly valid from their point of view, decide to withhold the investment, we have to be ready, it seems to me with an alternative, if we have one, or know that we don't have one. As a case test on that particular point, I would like the Judge to tell us what he sees as at least the legal situation with respect to the pension systems. Judge Rifkind?"

SR:

"The question is a simple one that also has some circles around it which are much more complicated. You are dealing with an agreement among the institutionalized organs of this city. It would be, it seems to me, a most unfortunate development if the impression got around that promises made by institutions of that character, whether they be banks or pension funds or the State or the City, were promises that were taken at less than face value. So, I would assume, that the pension funds, having entered into what I would call not only an agreement but really a treaty, because these are all high-contracting parties that have entered into this thing, that they would observe both its letter and its spirit and would live up to it as part of responsible citizenship of this community. There is a way, I call it last resort, but nevertheless

there is a last resort in this community for the adjudication of rights under contracts and I suppose, if it came to real deadlock, that this board would have no choice but to have recourse to the courts to enforce agreements made by the various parties. I am aware of the fact that all agreements are written in the English language, a wonderful system for communicating ideas of love and affection, but an inadequate instrument for the effecting of precise obligations and I have no doubt that in this community there are Tuts and Mr. Tuts who could discover small loopholes, big loopholes, what have you, but the ultimate understanding of the parties is beyond dispute. There was a legal and moral commitment to invest so much money in so many securities. And that obligation, so expressed, upon which so many people have relied, I would expect that the courts of this land would support and enforce. I do express the fond hope, Mr. Chairman, that we are speaking of the last ultimate scenario and not one that we should anticipate with great eagerness."

FGR:

"Well, there is no question of that, Judge. And we will work with the pension systems over the next month or six weeks. I just feel that it is a mistake to pretend that a problem may not be out there when it may be out there. And, God knows, that we have had and continue to have extraordinary good relationships with all the parties who have made this thing go. I don't want to get to a May 15th or a May 20th and at the last minute find us either in court or with a deadlock and without alternatives.

I think the only alternative around at this point is some kind of MAC financing if this doesn't happen. And the reason that I bring this up-to-date is not because we need to do anything right today but, if we are going to gear up for some kind of public financing, which may be the only way if there is a way in May under those circumstances, and that again is highly problematical, we have to begin the work on the prospectus and the underwriting group and the usual nonsense that we go through, reasonably soon. So I'm not trying to either be needlessly threatening or looking for a confrontation. I just think that in the soberest of worlds we have to look at alternatives. I don't question the good faith. I don't question in the slightest the cooperativeness of the union trustees or any of the trustees of the pension systems, but it may be that we will come to a point where their view of their fiduciary responsibilities and ours of our own may be diametrically in conflict without anybody being either in bad faith or looking for a fight"

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

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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 (i) 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.