

MUNICIPAL ASSISTANCE CORPORATION  
FOR THE CITY OF NEW YORK

Minutes of a Special Meeting of the Board of Directors  
December 29, 1975

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A Special Meeting of the Board of Directors of the Municipal Assistance Corporation for the City of New York, a corporate governmental agency and instrumentality of the State of New York constituting a public benefit corporation (the "Corporation"), was held at 345 Park Avenue, New York, New York, on December 29, 1975, at 9:30 A.M.

Attendance:

The following Directors were present

Felix G. Rohatyn, Chairman  
John A. Coleman  
Thomas D. Flynn  
George D. Gould  
Robert C. Weaver  
Donna Shalala

constituting a quorum of the Board.

The following Representatives to the Board of Directors were present:

Zane Klein  
Edward M. Kresky  
Leonard Nadel  
Nicholas L. Pitaro

The following members of the staff were present:

Herbert Elish  
Daniel B. Goldberg  
James R. Keegan  
John Scanlon

Also present by invitation of the Board were: Donald J. Robinson of Hawkins, Delafield & Wood, Bond Counsel to the Corporation; Judith Thoyer, Allen Thomas and Fred Cummings of Paul, Weiss, Rifkind, Wharton & Garrison, General Counsel to the Corporation.

Also present was Steve Orlow, representing Borough President Mannes.

The Chairman noted the presence of Mr. Steve Orlow, representing the Borough President of Queens. He stated that Mr. Orlow was welcome to remain at the meeting, but that the invitation extended by the Board for attendance by the members of the New York City Board of Estimate at the meetings of the Board was intended as an invitation for their personal attendance. He noted that the members of the Board of Estimate are officially represented by Zane Klein, Esq., so that additional representation was not necessary. Mr. Klein noted that the oral notice of the present meeting to the Offices of the members of the Board of Estimate had been taken to include the members or their representatives, and that Mr. Orlow's attendance was based upon that understanding of the scope of the invitation. The Chairman stated that he wished to clarify the scope of the invitation so that it included the members of the Board of Estimate individually and not representatives other than Mr. Klein.

#### Seasonal Loans by United States

Mr. Thomas reported that the City required approximately \$240 million dollars on or about December 31st as a loan from the United States under the recent legislation. He stated that the interest rate agreed upon between the City and the United States was the maximum amount permitted by

the statute, i.e., 1 percent over the current United States borrowing rate on loans of the same maturity.

He reported that sub-section 9d of section 3038 of the Public Authorities Law requires the Corporation to review any proposed borrowing by the City by the issuance of short-term obligations to others and requires 20 days' notice by the City to the Corporation of the proposed issuance. He advised both he and Mr. Gould had studied the proposed loan agreement under which the approximately \$240 million dollars of obligations would be issued and that it was their opinion that the proposed loan was consistent with section 3038 and should be approved by the Corporation.

WHEREUPON, following a determination by the Board that the five day notice of intention to issue short-term obligations to the United States of America given by the City, in lieu of the twenty-day notice required by Section 3038(9) (d) of the Public Authorities Law, was not so substantial a failure to comply as effectively to constitute a waiver of such condition, the following resolution was duly made, seconded and unanimously adopted:

RESOLVED that pursuant to the provisions of The Municipal Assistance Corporation for the City of New York Act, as amended, the issuance and sale by The City of New York (the "City") on or about December 30, 1975 of \$240,000,000 principal amount of short-term obligations of the City to the United States of America or any agency thereof, at an interest rate determined in accordance with the provisions of the New York City Seasonal Financing Act of 1975, are hereby approved.

FURTHER RESOLVED that the notice provisions of section 3038 (9) (d) of the Municipal Assistance Corporation for the City of New York Act, are hereby waived with respect to the issuance of the short-term obligations of the City described above.

Mr. Thomas expressed the view that future take-downs by the City under the credit agreement between the City and the United States pursuant to the New York City Seasonal Financing Act of 1975 should now become routine and he suggested that future actions pursuant to the aforesaid sub-section 9d of section 3038 might well be delegated to the Finance Committee. In the discussion Dr. Shalala raised the question of requiring compliance with the 3-year Financial Plan.

WHEREUPON, the following resolution was duly moved, seconded and unanimously adopted:

RESOLVED, that the Finance Committee is hereby authorized on behalf of the Corporation to take any action required to be taken by the Corporation pursuant to section 3038 9d of the Public Authorities Law, including, without limitation, a waiver or relaxation of any notice requirement therein, with regard to the issuance of short-term obligations by the City of New York to the United States pursuant to the New York City Seasonal Financing Act of 1975, provided that such issuance is in accord with the proposed Credit Agreement between the City and the United States now before this meeting; and provided, further, that such issuance shall be consistent with the 3-year Financial Plan for the City of New York.

Mr. Thomas recalled that in connection with the first loan by the United States to the City under said Act, the United States had required access as a source of payment to certain State Aid to Education payable to the City, and that certain notes of the City held by the

Corporation were payable from the same source. He recalled that it was the policy of the Corporation not to require payment of such City notes and that recommendation had been made to the Legislature to permit the Corporation to destroy such City obligations, although the Legislature has not yet so acted. Therefore, at the time of the first said loan by the United States a poll had been taken of the members of the Board to sanction the release of the Corporation's right, and, the poll having been favorable, such release had been given. To complete the record, Mr. Thomas requested ratification of such release at this meeting, and upon motion duly made, seconded and unanimously adopted, such ratification was given.

Flushing National Bank Suit,  
Challenging Moratorium

Mr. Thomas reported that the Corporation's motion for summary judgment had been granted by the Supreme Court, Special Term, in the suit by the Flushing National Bank against the Corporation and others to have the moratorium legislation declared unconstitutional. He noted that Justice Baer's opinion declaring the statute constitutional and upholding the 6 percent rate of City notes subject to moratorium had followed closely the arguments in the Corporation's brief.

He reported that the plaintiff's application for an injunction requiring the Corporation to extend its Exchange Offer beyond December 29 had also been denied, but that the plaintiff had applied to a Justice of the Appellate Division, First Department, for a stay which would have the effect of requiring extension of the Offer until final judgment was rendered in the litigation. At the time of this meeting, Judge Rifkind, who had argued the case orally on behalf of the Corporation before the Supreme Court, was opposing the proposed stay. (Secretary's Note: After the meeting adjourned, the Justice to whom the application for stay was made referred the application to the full bench of the Appellate Division. During the latter part of the afternoon, the full Appellate Division unanimously rejected the application.)

#### Exchange Offer

Mr. Scanlon reported that the aggregate amount of exchanges through Wednesday, December 24, was approximately \$70,000,000.

Mr. Thomas reviewed the arguments for and against a possible extension of the Offer beyond its present scheduled expiration time of 11:59 P.M. December 29, 1975. The discussion included the possibility of a wholly new exchange offer which might be made after the final resolution of pending litigation affecting the moratorium.

The Chairman requested views on the possibility of voluntary exchanges with individual holders of City notes after the expiration of the present Exchange Offer. While no legal opinion was expressed with regard to the Corporation's power to do so, the sense of the meeting was that such individual agreements would invite litigation and were otherwise inadvisable.

(At this point Mr. Flynn joined the meeting.)

Mr. Kresky suggested that the Board should take no further action to extend the expiring Exchange Offer until after pending litigation challenging the moratorium was finally decided. He also suggested that it was advisable to announce at once that the Exchange Offer was not being extended so that holders of City notes would not forego exchanges in the belief that the Board was considering extension. Mr. Kresky's suggestion was unanimously adopted; Messrs. Scanlon, Thomas and Goldberg were directed to agree on the terms of a press release describing the Board's action, and the following resolution was duly moved, seconded and unanimously adopted:

RESOLVED, that the pending Exchange Offer by the Corporation of its bonds for certain notes of the City of New York subject to legislative moratorium, shall terminate at 11:59 P.M. on December 29, 1975.

The Chairman called attention to a portion of the opinion by Justice Baer in the Flushing National Bank case, in which the Justice recommended, but did not require, that holders of small amounts of City notes be excluded from the moratorium. It was the sense of the meeting that the Corporation shared the concern of Justice Baer for the particular hardships which the moratorium visits on persons of small means holding City notes. However, after full discussion the conclusion was regrettably reached that there was no practical way of complying with the Justice's suggestion. The realities were that if holders of low denominations of City notes were given special consideration, there would be mass exchanges of high denomination notes for low denomination notes, with possible transfers to qualifying persons in order to take advantage of the special consideration desired and that the entire purpose of the moratorium legislation could thus easily be thwarted.

Mr. Gould said that he had considered the possibility that proof might be required as to the period during which notes were held, but that since they are in bearer form this, too, was not practical.

As a result of the discussion instruction was given that the release being prepared to advise of the

termination of the Exchange Offer, or a separate release, should include a statement that Justice Baer's recommendation had been seriously considered and that, while the Board was sympathetic with its objectives, no practical way had been found to effect the recommendation.

Credit Agreement for  
Seasonal Financing

Mr. Gould reported on the negotiations over the past weekend with representatives of the United States Treasury Department on the proposed terms and signatories of a credit agreement under which the United States would make the loans called for by the New York City Seasonal Financing Act of 1975. He reported that the effort of the Corporation's representatives, including himself, was to remain outside of the negotiations and to resist the continuing efforts by the Treasury representatives to require the Corporation to be a signatory-party to the agreement.

It was reported that on December 26th Mr. Gould had met with Mr. Gerard of the Treasury Department in an effort to resolve the problem and that thereafter Mr. Gould had met with Messrs. Rohatyn and Rifkind to arrive at a recommendation which was then conveyed by Messrs. Gould and Rifkind to Mr. Gerard. At this latter meeting Judge Rifkind stated that the Seasonal Financing Act did not permit the Secretary of the Treasury to designate the

Corporation as the new borrower to which it would make a loan for the benefit of the City of New York.

As a result of this meeting substantial revisions were made in the terms of the agreement as it had originally been submitted for the Corporation's signature. Mrs. Thoyer reported that most of the changes proposed by the Corporation's representatives were accepted and as a result under the new proposed language the Corporation would no longer really be a party to the agreement. What is stated is that if the Corporation does become a borrower, it will abide by certain stated terms. She identified one provision which the Treasury had retained in the proposed agreement which was objectionable to Judge Rifkind: that the Corporation will not unreasonably withhold its consent to a Treasury designation of the Corporation as a borrower thereunder.

Discussion was had on the effect and advisability of retaining this proposed provision, and various alternatives were considered. In the course of the discussion it was reported that the proposed agreement called for signature not only of the Corporation but by the respective legislative leaders of the State Legislature, a suggestion which Mr. Kresky found unrealistic. After full discussion the following resolution was duly moved, seconded and unanimously adopted:

RESOLVED that the form, terms and provisions of Article 11 of the proposed Credit Agreement among the United States of America, the State of New York, The City of New York and the Emergency Financial Control Board, as such form, terms and provisions may be revised by the Chairman of the Finance Committee or the Treasurer after consultation with General Counsel to the Corporation, are hereby approved and agreed to on behalf of the Corporation; and

FURTHER RESOLVED that the Chairman of the Finance Committee and the Treasurer are each severally hereby authorized and empowered to execute the Credit Agreement on behalf and in the name of the Corporation, with respect to Article 11 thereof, with such changes therein as the person so executing such Credit Agreement shall approve after consultation with General Counsel to the Corporation, such approval to be evidenced by the signature of such person to the Credit Agreement on behalf of the Corporation.

Appointment of Outside  
Auditors

Mr. Flynn called attention to the proposal before the Board by Price, Waterhouse & Company, to act as the Corporation's outside auditor. After discussion the following resolution was duly moved, seconded and unanimously adopted:

RESOLVED that Price, Waterhouse & Company be, and it hereby is, appointed as the outside auditor of the Corporation to serve in accordance with its written proposal of December 5, 1975, as placed before the Meeting.

Small Denomination Bonds

At the suggestion of Mr. Weaver, Mr. Goldberg was directed to send a letter to all Directors and Representatives with regard to the tentative decisions of the Board as to characteristics of the issuance of small denomination bonds.

There being no further business to come before the meeting it was, on motion, adjourned.



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Daniel B. Goldberg  
Secretary