The purpose of this memo is to set forth the issues raised by the Summary of Terms distributed August 15, 1978 by the Clearing House Banks.

1. Security for the Bonds: The term sheet states that the State Covenant will secure the MAC bonds. It should be made clear that loss of this security alone will not effect either default or mandatory prepayment.

2. Amounts, Maturities and Closing Dates:

a. There is a request that one series be issued for all bonds to avoid small issues of serials in the future. We must determine whether this can be done.

b. The commitments of the purchasers are deemed to be on an annual and noncumulative basis. We have stated that we will accept such a provision if
stated annual commitments are not subject to reduction. Treasury insists on cumulative commitment not subject to reduction so long as Treasury has open commitments.

c. Each purchase by parties is to be made in proportion to the commitment of such party for the entire fiscal year. It would seem that there should be some flexibility in this approach, at least for the first sale.

d. Purchasers are released from their commitments if delivery is not made on the closing date, as it may be adjourned up to a maximum of 60 days. Similarly, there should be some flexibility here -- City has objected to imposition of limit on delay.

3. **Optional Call Provisions:** Call premiums are stated to be 2.5% in the 11th year, reducing 5% per year to par in the 16th year. This is 1/2% more than we have agreed to.

4. **Mandatory Call Provisions:** MAC is to redeem the bonds at principal plus accrued interest in the event of a violation of the State Covenant, an unappealable determi-
nation by a Court that a material provision of the EFCB Act is invalid or unenforceable, or if the Federal government shall accelerate any City bonds. We have stated that such provision is flatly unacceptable.

5. Debt Restrictions:

a. Total outstanding bonded indebtedness is limited to 8.8 billion; issuance of bonds other than under First or Second General Bond Resolutions is prohibited; issuance of First Resolution Bonds is permitted only up to 3.75 billion; issuance of Second Resolution Bonds is permitted only up to 5.05 billion. Limitations on First and Second General Resolution Bonds are exclusive of refunding bonds but refunding of First Resolution Bonds is prohibited beyond original maturity. We have stated that these limitations are unacceptable.

b. Notes issued by MAC are to be payable only from revenues that would otherwise go to the City; notes are to have coverage margin similar to that contained in the Second General Bond Resolution; roll-overs of Notes are prohibited; and Notes are to be issued for seasonal financing purposes only. We and the City have indicated that the limitation on purpose is unacceptable.
6. Conditions to Execution of Bond Purchase Agreement:

a. An Official Statement shall be delivered to the purchasers at least two business days prior to the execution of the Bond Purchase Agreement, which Official Statement shall contain "material information concerning the City and the State relevant to MAC or the Bond". It would seem that the form and substance of the Official Statement should be tied to Official Statement hitherto issued.

b. Police and Fire shall be required to have purchased all of their bonds under the Amended and Restated Agreement. We have indicated that this should not be a condition to the new deal.

c. The Coalition Economic Agreement between the City and the several labor unions which are signatories thereto shall have been approved by the EFCB and all major City labor contracts for '79 and '80 shall either be subject to the Coalition Economic Agreement or shall have been approved by the EFCB as consistent with the Financial Plan. Exceptions to the above are to be set forth on a schedule which shall be "satisfactory" to the purchasers. I don't know whether this is acceptable or not.
d. Union ratification of labor contract for fiscal years '79 and '80 shall have become reasonably effective or shall be reasonably assured.

e. The EFCB shall have approved a Four-Year Financial Plan with respect to the City and the Board of Education and shall have approved One-Year Financial Plans for all other covered organizations. I do not know whether this is feasible.

f. The EFCB Act shall have been reenacted with a home rule message. City has questioned ability to obtain message.

7. **Special Conditions to Initial Purchase:** An agreement shall have been executed by the City in which it covenants to comply with the EFCB Act as amended and it covenants not to violate short-term debt limits as in effect on the date of the Bond Purchase Agreement. The City is resisting these covenants.

8. **Conditions to Each Purchase:**

   a. The financial institutions have proposed a 90% test respecting financing requirements. Each purchaser is required to go forward with a sale
provided (i) 90% in aggregate principal amount of
the MAC bonds scheduled to be purchased by the
financial institution purchasers at the closing
are being purchased, (ii) at least 90% of MAC
bonds scheduled to be purchased by the Pension
Funds at each closing shall be purchased, and,
(ii) at least 90% in aggregate principal amount of
the MAC bonds scheduled to have been purchased by
the financial institution purchasers and the
Pension Funds, respectively, prior to such closing,
shall have been purchased. This is a modification
of an all-or-none approach previously discussed.
Treasury has proposed a variation under which a
purchaser will be required to fund its commitment
at each closing if at least 90% in principal
amount of the total commitments scheduled to be
funded at that date are funded. There is ongoing
discussion about the procedure to be followed if
less than 90% is purchased under either test.
Treasury has proposed that the sale be required to
go forward if either an action has been brought
against the defaulting purchasers or their commit-
ments are being filled by others.

b. Guaranteed bonds to be purchased for any particular
year are required to be purchased prior to the
first takedown of MAC bonds in such fiscal year.
We have objected to this proposal.
c. The EFCB is required to certify as to the City's market access in the prior fiscal year, during the remainder of the Four-Year Plan and after the expiration of the Four-Year Plan. This is a new provision and my understanding is that the EFCB has objected to that part of it which requires judgments to be made concerning the post-four year plan period.

d. The EFCB is required to certify as to market access for the City's seasonal financing needs for the then-current fiscal year; in so doing the EFCB can consider that the lesser of the amount of (i) any of City notes purchased by the banks, other than in a public offering, in the prior fiscal year or (ii) the proportion of the City's current seasonal financing needs met through any such purchases in the prior fiscal year will be purchased privately. This is a new provision.

e. Material adverse change. All agreements and legislation shall be in full force and effect without material modification and without any adverse decision having been rendered with respect to the powers of the EFCB or the provisions of the EFCB or the MAC Act, the validity or enforceability
of the bonds, the Resolutions, the Bond Purchase Agreement, the financing commitments of Pension Funds, the Adherence Agreement or the State Covenant. We have stated that these provisions are too broad and have suggested alternative language, which has been ignored. Treasury has indicated that it finds the provisions too broad as well. It should be noted that these provisions are supplemented by provisions listed under 8(f), (g), (h), (i) and (j).

f. Litigation. No litigation is to be pending or overtly threatened wherein an adverse decision (i) might materially impair the powers or the duties of the EFCB or (ii) adversely affect the payment provisions for the bonds or (iii) which questions the validity or enforceability of the bonds, the Resolutions, the Adherence Agreement, the MAC Act, the EFCB Act or the State Covenant unless counsel is willing to opine that such litigation is without merit. We have stated that litigation should be irrelevant if bond counsel is willing to issue their opinions as originally issued or is willing to opine that the plaintiffs will not prevail in a court of final jurisdiction. The financial institutions
have stated that a decision on this issue must await the outcome of the discussions concerning the scope of the bond counsel opinions being issued. Treasury has limited the litigation out to categories (i) and (ii) above.

g. Material adverse change with respect to MAC. There is a requirement that there shall not have been any adverse change in MAC's financial condition or affairs which materially adversely affects the prospects for repayment of the principal of or interest on the bonds when due. We have indicated that a broad statement such as the one proposed is unacceptable and have offered alternative language which would require that there be no default under the General Bond Resolutions, MAC not be bankrupt or insolvent, and MAC securities have an investment-grade rating. A compromise would utilize the broad language but include the specific categories as examples of what is intended.
h. **Material adverse change with respect to the City.** There are not to be deficits of more than 2% of gross revenues and seasonal borrowing needs are to be less than 8% of estimated gross revenues, with the EFCB being required to certify as to the budget deficit. While we and Treasury have proposed an alternative (that the City be in compliance with the Financial Plan), we have agreed that the stated proposal would be acceptable with an increase in the 8% limit on seasonal borrowing.

i. **Other defaults.** There are to be no defaults by MAC or the City or the State on any debt obligation, no default by the City under the Adherence Agreement, no default in payment of any debt obligations of a City or State moral obligation agency, no default under any agreement with parties to the Four-Year Plan, no bankruptcy, insolvency, moratorium or similar proceedings with respect to MAC or the City. With respect to moral obligation defaults, we have stated that the only relevant defaults are those on obligations having the benefit of the moral obligation or which are general obligations of the agency. We have not objected to the provision regarding default under any agreements with the Four-Year Financial Plan parties on the assumption that the reference is to any agreement involved in the Four-Year Financing Plan.
j. The City is required to be in substantial compliance with the provisions of the EFCB Act and the EFCB is required to certify as to various matters, including approval of a Four-Year Financial Plan, substantial compliance by the City with all outstanding EFCB orders. We have not taken a position with respect to these provisions.

k. Bonds are to be rated no less than Baa and BBB by Moody's and Standard & Poor's respectively. There has been a change from use of the term "investment-grade ratings" to use of specific letter designations.

l. An Official Statement is to be furnished to the purchasers at least two business days prior to the closing.

m. Closing documentation is to include, in addition to abovestated opinions, certifications, etc., such other opinions, certificates and documentation as is reasonably requested by the purchasers. Generally, we have taken a position against allowing purchasers unspecified rights not to close.

n. Opinions of counsel are required. We have been discussing with counsel for the purchasers the nature and content of such opinions.
9. Covenants and Agreements to be Included in the Bond Purchase Agreement:

a. MAC is required to include in its annual and quarterly reports all information materials to prospective investors. Paul, Weiss, Rifkind, Wharton & Garrison is to review this matter to determine what information can be included. In addition to currently required financial statements, statements are required for quarterly reports of sales and stock transfer tax receipts, annual reports of per capita aid receipts and annual reports showing projection of sales and stock transfer tax and per capita receipts for the coming year. We have indicated that we would be willing to issue reports to the extent the information is available and bond counsel will permit us to report same. It would seem impossible to agree to give projections since we would not be doing them.

b. If financing requirements are less than anticipated or public sales are more than anticipated, the commitments of the purchasers are expected to be
reduced proportionately. The Federal government has taken the position that if either of these events occurs it is their commitment which is to be reduced first. We have objected to both of those positions and stated that the commitments of the parties are absolute, subject to the caveat that they are annual and noncumulative.

c. MAC is not to issue any bonds during the commitment period having a maturity or average life less than that of the bonds. This is a new provision and we have not yet responded. However, it is clear that it would restruct our issuances generally and would create a problem in our issuance of mirror bonds.

10. Waiver and Consents by Bondholders:

a. Specified provisions of the Bond Purchase Agreement and the Adherence Agreement executed by the City may be waived or modified by purchasers owning or committed to purchase at the date of determination 75% in aggregate principal amount of the bonds owned by the purchasers or subject to purchase commitments. We have indicated that while the concept may be acceptable, the percentage is too
high and should decrease with sales. The financial institutions have added a provision that specified covenants in such agreements will terminate at such time as the purchasers own or committed to purchase less than 10% in aggregate principal amount of the bonds purchased or subject to purchase commitments.

11. **Representations and Warranties:**

   a. With respect to representations and warranties on the Act and on the validity of the State Covenant, we have indicated that we would give no more in a representation or warranty than bond counsel is willing to opine to.

   b. A waiver of sovereign immunity is requested to be made by MAC and the State. The State Attorney General has indicated that there must be some caveats to the waiver.

12. **Resale Restriction:** Thirtyday restriction. We should check to see what's been done in previous sales and what underwriters will require.

13. **Expenses of Transaction:** MAC is to pay fees and disbursements of special counsel for the purchasers. We have
indicated we would pay same subject to a cap of $250,000 on all legal expenses of the purchasers.

14. **Federal Enforcement:** All parties are to acknowledge that they are subject to the enforcement provisions of Section 105(f) of the Federal Guarantee Legislation.