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## **Moody's Sees Detroit COPs Repudiation as Isolated.**

CHICAGO — Detroit's attempt to invalidate \$1.4 billion of pension certificates as part of its bankruptcy is a "radical" move that is unlikely to be copied by other issuers even if successful, according to Moody's Investors Service.

"The attempted repudiation of municipal debt is an extremely rare and unusual act," Moody's said in a comment released Friday titled "Desperate Times Call for Desperate Measures: Detroit's Attempted COPs Repudiation an Extreme Act."

"Ultimately, the city's repudiation attempt is unlikely to impact the broader municipal market because it is so rare. Should the city prevail, the case is still likely to have limited implications for COPs holders elsewhere," analysts wrote.

Detroit filed the lawsuit challenging the certificates of participation on Jan. 31, arguing that the debt structure, which relied on service corporations, is illegal because it was set up solely to allow the city to avoid state debt limits.

The lawsuit is part of the city's ongoing effort to settle with its swap counterparties, who hedge \$800 million of the COPs.

If the city wins in court, it could be positive for other creditors because it would mean more money to go around, Moody's notes.

But it's also possible that the city could be made to return the proceeds of the \$1.4 billion sale, which were used to fund its two pension systems. That would severely weaken the pension funds' assets and could roil the bankruptcy case.

The last time a government tried to repudiate debt on such a scale was in 1983, when the Washington Public Power Supply System successfully argued that its take-or-pay contracts were illegal and invalidated \$2.25 billion of revenue bonds.

"We do not expect debt repudiation to become a frequently used tactic for local governments given the very strong credit fundamentals of the vast majority of COPs issuers," Moody's said. There are very few other Michigan issuers who have used similar debt instruments, and many states recognize lease-back obligations as valid, according to Moody's.

In related news, Bankruptcy Judge Steven Rhodes, who is overseeing Detroit's Chapter 9 case, set a hearing date of Feb. 19 for a key dispute that goes to the heart of the city's effort to treat its unlimited-tax general obligation bonds as unsecured.

National Public Finance Guarantee Corp. and Assured Guaranty Municipal Corp. sued Detroit in November over the city's treatment of the ULTGOs as unsecured. Ambac Assurance has filed its own suit, which includes the limited-tax GO bonds.

The insurers are arguing that the ULTGOs are secured because they are paid for with a special

property tax levy imposed specifically for those bonds and as such are special revenues. State law requires that those tax revenues raised under the levy not be diverted for any other purpose than debt-service on the bonds, in or outside of bankruptcy, according to the insurers.

Detroit is current using the tax money raised under the levy for general operations.

“The ‘pledge’ of special ad valorem taxes is not, and is not intended to be, a mere ‘promise,’” the insurers argued in a recent filing that counters the city’s claim that a pledge is distinct from a statutory lien.

The city claims that the pledge is similar to the “pledge of allegiance,” and therefore not a promise or a lien, the insurers say in a footnote.

“In fact, it is a pledge of specific and identifiable property,” the insurers claim. “The appropriate analogy is not ‘I pledge allegiance to the flag,’ as defendants argue, but rather, ‘I pledge this flag for repayment of my debt.’”

The issue is a key one for the municipal market, which traditionally has treated ULTGOs as among the safest debt available, secondary to treasuries, noted Richard Ciccarone, president and chief executive officer of research firm Merritt Research Services LLC.

Critics point to the apparent lack of a statutory lien, but from a “common sense perspective, it has all the markings of a special revenue designation,” Ciccarone said. “Going to intent and common sense, you have to ask, what else are you going to use that money for?” he said. “It doesn’t make sense and it’s harmful to the entire municipal credit structure if you let the GO go that easily.”

by Caitlin Devitt

FEB 14, 2014 10:00am ET

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