CLIENT ALERT | July 29, 2026

Latham Letter Delivers Regulatory Clarity for Data Center Securitizations

The guidance provides a clear foundation for sponsors, underwriters, and investors to structure and execute data center securitizations with greater certainty and efficiency.

Key Points:

- Latham & Watkins obtained guidance from SEC Staff confirming that data center securitizations fall outside the definition of Exchange Act ABS.
- Since the inaugural issuances in 2018, lack of certainty about whether data center securitizations would be classified as Exchange Act ABS led market participants to voluntarily comply with certain rules out of an abundance of caution.
- The guidance reduces the cost to execute data center financings and supports access to capital.

On July 29, 2026, Latham & Watkins obtained SEC Staff guidance confirming that data center securitizations fall outside the statutory definition of an "asset-backed security" under Section 3(a)(79) of the Securities Exchange Act of 1934, commonly referred to as "Exchange Act ABS."

The new guidance, which is set forth in this Latham letter, is a landmark development for the digital infrastructure finance market.

Since the inaugural issuance in 2018, Latham has advised on nearly all data center securitizations. During this period, lack of certainty about whether data center securitizations would be classified as Exchange Act ABS has led market participants to voluntarily comply with rules intended for Exchange Act ABS out of an abundance of caution. This voluntary compliance has increased the complexity and cost of the structuring and issuance process as the market continues to grow. The SEC Staff's guidance in response to the Latham letter now provides clarity, thereby reducing unnecessary compliance costs and regulatory hurdles. The guidance positions data center securitizations for continued growth and enhanced access to the capital markets.

Background: Data Center Securitizations

A data center is a specialized facility designed to house and support critical computing infrastructure, including buildings and data halls, electrical and backup power systems, cooling and environmental controls, network connectivity infrastructure, physical security systems, and related operational support facilities. Data center securitizations involve the issuance of securities by a special purpose entity (the Issuer) that owns one or more data center facilities together with all related components, assets, and contracts necessary for their operation. Proceeds are used for a variety of purposes, such as refinancing construction loans, financing capital expenditures on existing or new data centers, building additional facilities, funding new developments, and other general corporate purposes. The securities are direct obligations of the Issuer, and investors have recourse to the securitized assets.

Latham's Analysis and the SEC Staff's Guidance

Exchange Act ABS is defined as "a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset." Since 1992, the Securities and Exchange Commission (SEC) has consistently interpreted "self-liquidating" to mean assets that "by their terms convert into cash within a finite time period."

The analysis in the Latham letter demonstrates that data center securitizations do not satisfy the Exchange Act ABS definition because the securitized assets are not "self-liquidating financial assets." The SEC Staff concurred with this analysis.

Implications for the Market

Because the Latham letter clarifies that data center securitizations are not Exchange Act ABS, voluntary compliance with the following requirements is no longer necessary:

- **Credit Risk Retention.** The credit risk retention rules generally require a securitizer to retain a 5% economic interest in the credit risk of the securitized assets. Data center securitizations are typically structured with 30% or more retained risk by the sponsor. As a result of the guidance, market participants will be less constrained and can more efficiently structure the retention of risk by the sponsor.

- **Rule 192 (Conflict of Interest Prohibition).** Rule 192 under the Securities Act of 1933 prohibits a securitization participant from engaging in any transaction that would result in a material conflict of interest with an investor in a covered ABS, which includes an Exchange Act ABS. The guidance provides certainty that data center securitizations are not within the scope of Rule 192.

- **Other Disclosures.** Certain public disclosure requirements apply to Exchange Act ABS transactions, both registered and unregistered. Rule 15Ga-1 requires periodic disclosures about repurchase activity related to breaches of representations and warranties. Rule 15Ga-2 requires disclosure related to third-party due diligence reports at least five business days prior to the initial sale of the related securities. These disclosures are common and more informative for Exchange Act ABS transactions. The Latham letter provides certainty that the requirements do not apply to data center securitizations.

Conclusion

The guidance provides a clear foundation for sponsors, underwriters, and investors to structure and execute data center securitizations with greater certainty and efficiency. Market participants should evaluate how the guidance will impact deal structuring and disclosure, including for existing master trust structures.

As with any securities offering, the antifraud provisions of the federal securities laws and the applicable registration or exemption analysis continue to apply, and market participants should confirm the appropriate treatment of each transaction in consultation with counsel.

Additional information is available in the Latham letter or from any of the contacts below.

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