

Latham Atty Talks SEC's Bid To Revive Public RMBS

By **Charlie Innis**

Law360 (November 12, 2025, 2:50 PM EST) -- There hasn't been a public offering of residential mortgage-backed securities since financial crisis-era reforms dissuaded the market from issuing them, but that may change under the current administration, said a veteran of the U.S. Securities and Exchange Commission who recently joined Latham & Watkins LLP.

After the global financial crisis in 2007 and 2008, a medley of regulations was enacted to help prevent risky mortgage lending, opaque bundling of asset-backed securities, and other conditions that led to the meltdown. These changes include the Dodd-Frank Act, enacted in 2010, and revisions in 2014 to the SEC's Regulation AB, known as Regulation AB II.



Rolaine Bancroft

Certain aspects of Regulation AB II, which bolstered disclosures for asset-backed securities, have actually repelled investors from touching the public RMBS market for over a decade, while the private RMBS market has flourished, noted Rolaine Bancroft, a special counsel at Latham who joined the firm in July after two decades at the SEC serving various roles.

But some requirements within the current regulatory framework for public RMBS could be altered to draw investors back, and the SEC has shown an interest in making changes in a bid to revive the market, she said.

SEC Commissioner Mark Uyeda said in a September statement that the lack of public RMBS offerings over the last decade shows the commission's current approach to regulating them isn't working, and the agency has released a callout for feedback on whether and how it should amend disclosure rules to expand issuer and investor access to the public RMBS market.

Law360 Real Estate Authority spoke with Bancroft about why the SEC's request for feedback matters and what could change about current rules to bring public RMBS back while keeping investors protected.

The interview has been edited for length and clarity.

Before we get into the questions, can you tell me about your practice and your previous work at the SEC?

I came over to Latham in July of this year. I left the SEC after 20 years. My final spot there was the chief of the office of structured finance, but I was one of the founding members. We were officially formed in 2011 in reaction to the financial crisis. My work with securitization goes back to 2004. So, the crisis happened, and then everyone had to mobilize, and then because of all the reforms and all the work that needed to be done on the regulatory side, a separate office was created to gather us all together from different parts of the commission. I was involved in all of the rulemakings that related to securitization in some way, shape or form, so I know the space really well. It's been most of my career, as well as credit ratings.

There was so much that came out of Dodd-Frank, but my major lead was the 2014 adoption of Regulation AB II, which was the commission's response to the offerings and the reporting of asset-backed securities. It was first released in 2010. There was a notice and public comment period. And then, we eventually got to a set of adopted rules in 2014, and that's the foundation of this look-back.

What is this solicitation for feedback from the SEC about?

There were two big things that were adopted in 2014. One was asset-level disclosure. What that means is, when an investor purchases an asset-backed security — in this case, it's very much focused on residential mortgages — when the investor purchases it, they would get a loan tape, or on EDGAR it would be publicly filed, but colloquially, it's called a loan tape. You get a loan tape of all the loans that are in the pool, so then that way, the investor can run all their models, create all their assumptions of how they think the market is going to go, what the probability of payment is of all those underlying mortgages, because each one of them has a different credit profile.

The issue that occurred in the crisis was that loan tapes were given out, they just weren't standardized. Issuers were kind of giving whatever they wanted. So the 2014 rule required certain things to be disclosed, and then also required it to be standardized so it could be comparable.

The issue with that in 2014 was that there's one key piece of information that all the investors want and all the market wants in their analysis — that because of the laws in our country to keep our information private, became that was a bit risky to put out there — which was the five-digit ZIP code, or the location of the property. What the commission did was to basically tell people to omit it because of those privacy reasons. The ZIP code is not a personal piece of information, but something that you can take with all other pieces of information — and now the technology is much better than it was in 2014 — and you could go and try to reverse engineer and figure out who somebody is.

Investors really want [the ZIP code], because it really does help them assess credit worthiness. Where is the property? And they're entitled to it under the privacy laws. But the issue became: Can it be filed publicly on EDGAR, like all information is publicly filed on EDGAR? So it became the reason we think — we, meaning, when I was at the SEC — why the public securitization market for RMBS didn't come back, because the investors didn't want to invest millions of dollars into something that they didn't have the information on.

And why would the SEC have interest in bringing RMBS back?

This administration, and I would think most people at the SEC, really do believe in the public markets. It protects investors.

There are public markets and there are private markets. Private markets are usually for those that are

big investors, institutional buyers. That is largely the asset-backed securities market, the securitization market. But they can only invest in so much of it, right? They need to be diversified. Your mutual fund has to be diversified, or your pension fund has to be diversified. Insurance companies are another one that invests in them. Insurance regulators may make them more diversified. They're not putting all their eggs in one basket. All of this is happening in the private market. The plus, if it's in public markets, is there's more transparency, there's more protection, because the securities laws are — let's just say, there's more integrity in the data that's provided because there's more liability on it, which is better for the investors and better for the market.

As a general mission, it's to have efficient markets and to increase transparency and to provide investors protection.

There could be more capital that is raised in this market. It could come with more protections under the securities laws, so that's better for investors, and if there's a larger market, then that all trickles down to the consumer. It trickles down into less of an interest rate on an individual's mortgage, because there's more sources to fund that mortgage from investors.

This administration is very much focused on increasing access to the public market. I think that's why they're seeking feedback, like, how do we do this? How do we get issuers and investors interested in larger sources of capital, and then also while protecting investors, because once you go public, they'll have more protection.

What could change about the SECs rules to draw investors back in RMBS, and how much of an appetite for that is there?

A lot of the questions relate to, "How can we revise or amend the current regulations to make it more efficient?"

As I mentioned before, this is all happening in the private market, so there are questions in there about whether the rules should conform to the practices of the private markets, which includes getting that one piece of information, the ZIP code, to help with the analysis.

The questions also go into — if the investors get this piece of information, then how can it be protected so that you don't run into consumer privacy law issues? There are specific questions about, should the commission just provide that confidentially and not require that to be filed publicly on EDGAR?

I think that's where it's going to go, because it generally doesn't need to be filed on EDGAR, since all of the investors are large, institutional, and they have access to it, and they're entitled to it, so it just needs to go to them.

The other thing I think they're going to do is about harmonizing definitions. This is a very technical thing, but the definitions in the rules are just so technical that there's so many hoops you have to jump through in order to just decide whether you're even able to register publicly. That will go a long way, and a lot of folks are interested in that.

To pivot to your question about what's the interest: There's an organization that's called the Structured Finance Association. Their membership includes the entire market, all the different market participants in the securitization market. They have launched a task force to respond to the SEC, so there is definitely interest. Their interest in working on finding the solution goes back to, I think, 2019, so they've been

working on it this whole time.

An outsider hearing about the public RMBS market coming back might just associate it with the great financial crisis. How could the SEC amend the rules and balance bringing it back while not bringing back what caused all the issues in the first place?

That's a good question. Dodd-Frank had a lot of mandates to make sure what happened in 2007, 2008, doesn't happen again. There's a bunch of different rules. Some of that was already adopted, starting in 2011 all the way through 2014, with Regulation AB II and risk retention. And then right before I left, I had led the rulemaking for conflicts of interest. There are a lot of rules that get to the heart of what happened in the crisis.

One of the biggest things that happened in the crisis, at least from a securities law point of view, was a lack of transparency with the underlying pools. People couldn't see that there were some of these things going on, where there was fraud and liar loans, where the only requirement was that you said you made \$100,000. But there's rules about diligence now, and all these rules are across agencies. The SEC has disclosure rules about diligence. That's already effective and those have been in place, and you have to file those diligence reports. There are rules that are out of the Consumer Financial Protection Bureau, ability to repay rules, which require verification of income and assets and things like that.

It's always good for a regulator to look back and say, hey, our rules were intended to, in this case, provide investors with standardized data about their underlying pools, and to be able to have those investor protections on that data, so that way, if it's wrong, then investors can enforce their rights under the securities laws. But because this is all happening in the private markets, they have less rights. I actually do think by coming into the public market, it actually gives investors more rights than they have now.

With all the other rules that are there as a package, it would be hard for the crisis to come back. Especially the ones that were adopted in 2013, because that was really the source of the big losses — the fact that they knew they were making these asset-backed securities that had bad loans in them, and they were lying about what was in them. But they knew that, and then they went and engaged in transactions where they shorted them, meaning that they bet against them. Now that's prohibited. Now you can't even do it, and there's penalties if you do that.

It sounds like there are enough guardrails in place so that there could be some amendments to the current framework in a way that wouldn't really create the sort of opening for what previously happened to happen again?

Yes, it couldn't get as frothy.

What are your expectations for what comes next? After this has come out, there's going to be a feedback period. What is the SEC's current disposition toward this, and where do you see this going in this administration?

From being inside the building, it is really challenging, and you really need to get the attention of the administration to get something like this out. It takes a lot of resources and a lot of effort. The fact that this is even out means that they're committed to move forward. It wouldn't go out if there wasn't a commitment to dedicate the resources to it.

I expect all the major players to be submitting comment letters. Then what happens next is the staff at the SEC will read every single comment letter, as they're required to by statute, and come up with a recommendation that takes into account the ideas that were contributed and make a recommendation to the commission on a rule proposal. My guess is it will be sometime in 2026. It's just the way politics works. If you say you're going to do something, and you actually want to complete it, it has to be done the year before the election year.

--Editing by Haylee Pearl.