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Latham Secures SEC Relief For Data Center Securitizations

By **Jessica Corso**

Law360 (July 30, 2026, 10:36 PM EDT) -- U.S. Securities and Exchange Commission staff have freed some types of data center financing from having to comply with Dodd-Frank Act rules on credit risk retention and conflicts of interest, agreeing with Latham & Watkins LLP attorneys' arguments that the financial instruments are not asset-backed securities.

In a few short paragraphs posted to the SEC's website on July 29, the agency's Division of Corporation Finance agreed with Latham & Watkins attorneys that data center securitizations do not meet the definition of asset-backed securities under a provision of the Securities Act of 1934 known as Exchange Act ABS. The attorneys sent a letter to the commission last week outlining their views and asking for the agency's concurrence.

Exchange Act ABS was added to the federal securities laws by the Dodd-Frank Act in an attempt to protect those holding asset-backed securities from the types of losses they saw following the 2008 financial crisis.

Latham said in a post on its website that the SEC's staff guidance reduces "unnecessary compliance costs and regulatory hurdles" for data center financing.

Among other things, those offering investments in data centers through the issuance of securities will not have to comply with Exchange Act ABS requirements on credit risk retention and conflicts of interest, according to Latham.

The credit retention risk rule requires those issuing asset-backed securities to maintain a 5% stake in the underlying asset or assets.

Though data center securitizations are typically structured so that sponsors hold a 30% stake, the SEC guidance now means that "market participants will be less constrained and can more efficiently structure the retention of risk by the sponsor," according to Latham.

The conflict of interest provision would have prohibited underwriter, placement agent, initial purchaser, or sponsors of a data center securitization from engaging in transactions that could conflict with investors' interests.

Latham said in its July 23 letter to the commission that many of the participants in the $50 billion data center securitization industry have thus far complied with the requirements placed on asset-backed securities "out of an abundance of caution."

But they argued that they shouldn't need to, as data centers are not "financial assets" as defined under Exchange Act ABS.

They are, instead, "tangible, physical assets that endure well beyond the tenor of the related securities," according to Latham's letter.

"Because the physical assets endure beyond the tenor of the related securities and have the potential to appreciate in value, the data center facilities held by the Issuer do not 'by their terms convert into cash within a finite time period' and therefore are not 'self-liquidating financial asset[s]," according to the letter.

In its single-page guidance, the SEC's Division of Corporation Finance staff did not go into detail about why it believes that data center securitizations are not asset-backed securities. It simply said it was adopting the position "[b]ased on the representations" in Latham's letter.

Latham's letter to the commission was signed by partners Kevin Fingeret, David Siegel and Matt Hays and counsel Rolaine Bancroft.

--Editing by Emily Kokoll.
