[International Lawyer](https://scholar.smu.edu/til)

Volume 42 | Number 3 Article 6

2008

Will the Bubble Burst - Some Subprime Lessons for Mexico, Latin America's Leader in Asset Securitization

Richard C. Jordan

Recommended Citation

Richard C. Jordan, *Will the Bubble Burst - Some Subprime Lessons for Mexico, Latin America's Leader in Asset Securitization*, 42 INT'L L. 1181 (2008)
https://scholar.smu.edu/til/vol42/iss3/6

This Comment is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit http://digitalrepository.smu.edu.

Will the Bubble Burst? Some Subprime Lessons for Mexico, Latin America's Leader in Asset Securitization

RICHARD C. JORDAN*

I. Introduction

Structured finance innovation has changed the way ordinary people finance their homes. This shift is especially true in Latin America, where growing housing demands forced many countries to rethink their role in mortgage markets. In recent years, Mexico has emerged as Latin America's leader in asset securitization, and currently boasts the largest mortgage backed securities market in the region.

The importance of securitization is its ability to transform illiquid or risky mortgages into marketable securities. Rather than issue debt or equity to raise capital, lenders can bundle pools of individual mortgages into securities and sell them to investors who enjoy fixed-rate returns. All market participants benefit from this process because it makes markets more efficient and allows lenders to increase credit to borrowers. Complex financial structures like securitization are especially important for emerging economies because studies show that countries with underdeveloped and ineffective financial markets have higher rates of poverty.[1] The chief benefit of mortgage securitization to Latin America is that it provides a means through which lenders can grant greater access to credit for lower-income borrowers.

As the United States faces economic recession due to the fallout from the subprime mortgage market, Mexico seems resilient, due in small part to U.S. investors seeking refuge in the country's emerging mortgage market. Mexico remains the focus of this comment because its growing mortgage-backed securities market is beginning to attract U.S. capital and because its efforts are at the forefront of securitization developments in Latin America. The question this comment explores is whether the U.S. subprime mess can help Mexico avoid a housing market bubble burst.

* Rick Jordan received his J.D. from Southern Methodist University Dedman School of Law in May 2008. He is an associate in the corporate/securities section of Gardere Wynne Sewell, LLP.

1. Edward C. Skelton, *Laying the Foundation for a Mortgage Industry in Mexico*, 1 ECON. LETTER-INSIGHTS FROM THE FEDERAL RESERVE BANK OF DALLAS 10 (2006), *available at* http://www.dallasfed.org/research/eclett/2006/el0610.html [hereinafter Dallas Federal Reserve Mexico Article Two].

Accordingly, Part II of this comment provides an overview of securitization, its advantages and legal framework, as well as its development in the United States. Part III discusses the origin of the U.S. subprime crisis and its effect on the market. Part IV provides a brief overview of Mexico's 1994 Peso Crisis, its subsequent regulatory and legal reforms in light of increased housing demands, and ends with a look at Mexico's current secondary mortgage market. Part V provides some thoughts on what Mexico may learn from the U.S. subprime debacle.

II. Overview of Securitization

A. Definition of Securitization

Securitization, or structured financing, occurs when an entity (the Originator) converts certain non-marketable assets or cash flows into a larger marketable security for resale.[2] In the typical situation, individual assets with similar characteristics, like mortgages or auto loans, are aggregated and pooled such that investors can purchase the securities that back those assets.[3] By packaging the illiquid individual assets, the Originator creates a liquid asset that the Originator can sell and a buyer can resell on a secondary market.[4] The process generally improves the Originator's balance sheet by replacing risky assets with cash. Purchasers of these pooled securities are mostly institutions, such as hedge funds, insurance companies, pension funds, and mutual funds.[5]

B. The Securitization of Certain Assets

Originators can securitize almost any asset as long as it has a predictable cash flow.[6] An example of a predictable cash flow is a borrower's monthly mortgage payments. Residential mortgages, equipment leases, auto loans, trade receivables, credit card receivables, and student loans, are all assets capable of being securitized and subsequently traded on a secondary market.[7] Even a rock star can securitize his or her royalty payments.[8] Securitized mortgages are commonly referred to as mortgage-backed securities (MBS), although different forms of structured financing are prevalent.

C. The Advantages of Securitization

The underlying theory behind securitization is that companies can use certain assets to raise funds in capital markets at a lower cost than if the company, with the risks associated with the assets, had raised the funds through traditional methods, like equity or debt issu-

2. Black's Law Dictionary 1384 (8th ed. 2004); Michela Scatigna, *Securitisation in Latin America*, BIS. Q. Rev., September 2007, at 2, *available at* http://www.bis.org/publ/qtrpdf/r_qt0709h.pdf?noframes=1.

3. Securitization, Asset Backed and Mortgage Backed Securities 1-7 (Ronald S. Borod ed., Butterworth Legal Publishers 3d ed. 1991) [hereinafter Borod].

4. *Id.*

5. Claire A. Hill, *Securitization: A Low-Cost Sweetener for Lemons*, 74 Wash U. L.Q. 1061, 1067-68 (1996).

6. Erica W. Stump, *Securitizations in Latin America*, 8 U. Miami Bus. L. Rev. 195, 198 (2000).

7. *Id.*

8. Securities Industry and Financial Markets Association, Types of Assets that Back Securities (2008), http://www.investinginbonds.com/learnmore.asp?catid=11&subcatid=57&id=12.

ance.[9] The company benefits from lower capital formation costs while investors in the securitized assets benefit by holding investments with lower risk and higher yield.[10] Securitization also helps "complete" financial markets by creating liquid assets from illiquid assets, like turning individual mortgages into securities, and by improving the credit quality of the structured asset.[11] This latter point is important because a securitized asset essentially bridges the credit quality gap between borrowers and lenders—i.e., lenders are less interested in individual assets and more interested in pools of assets that they can bundle and sell.[12] Lenders therefore are encouraged to market similar products so that they can package them for securitization, and will lower interest rates to entice people to borrow.

D. Evolution of the Mortgage Backed Securities Market

Congress created three entities to address deficiencies in the U.S. housing market: Ginnie Mae, Freddie Mac, and Fannie Mae. Freddie Mac and Fannie Mae are government-sponsored enterprises (GSEs). All three entities, discussed in turn, "facilitate a secondary market for residential mortgage loans and . . . enhance liquidity in such loans."[13] They do this by enabling Originators to package and sell their mortgages and use the proceeds from those sales to make more loans.[14]

The first structured financing occurred in the early 1970s when the Government National Mortgage Association (Ginnie Mae) first guaranteed a pool of pass-through mortgage securities—the most common form of MBS today.[15] Originators create pass-through securities when they pool together assets in a trust and then sell those securities to investors through a government agency, a private conduit, or a private placement.[16] In the MBS pass-through transaction, the investor "purchases a fractional undivided interest in a pool of mortgage loans, and is entitled to share in the interest income and principal payments generated by the underlying mortgages."[17] The Originator typically continues to service the mortgages, and a servicer will collect payments and pass-through the principal and interest to the security holder, less any fees.[18]

Up until the late 1980s, Ginnie Mae and other governmental-backed mortgage securities dominated the secondary MBS market.[19] The largest player was Ginnie Mae, a wholly-owned federal government corporation within the Department of Housing and

---

9. Steven L. Schwarcz, Structured Finance: A Guide to the Principles of Asset Securitization 1-8 (Adam Ford ed., 3d ed. 2002).

10. *Id.*; Borod, *supra* note 3.

11. Scatigna, *supra* note 2, at 12.

12. *Id.*

13. SEC, Task Force on Mortgage-Backed Securities Disclosure, Staff Report: Enhancing Disclosure in the Mortgage-Backed Securities Markets 6 (2003), *available at http://www.sec.gov/news/studies/mortgagebacked.htm* [hereinafter SEC Staff Report].

14. *Id.*

15. *Id.* at 7; Schwarcz, *supra* note 9, at 1-8.

16. Borod, *supra* note 3 at 7-8; Schwartz, *supra* note 9, at 1-8.

17. Schwartz, *supra* note 9, at § 1:2.

18. Borod, *supra* note 3 at 7-8; Schwartz, *supra* note 9, at 1-8.

19. Edward Pittman, *Economic and Regulatory Developments Affected Mortgage Related Securities*, 64 Notre Dame L. Rev. 497, 500 (1989).

Urban Development (HUD).[20] HUD guarantees securities created by pools of mortgages that are less than one year old and issued by the Federal Housing Administration, the Farm Housing Administration, and the Veterans Administration.[21] Ginnie Mae MBS are fully modified pass-through securities, meaning that the security holder receives full and timely payment of principal and interest regardless of whether the borrower pays his or her mortgage payment.[22] Thus, it is said that Ginnie Mae MBS are "backed by the full faith and credit of the federal government."[23]

Freddie Mac is the second largest source of pass-throughs. Unlike Ginnie Mae pass-throughs, Freddie Mac pass-throughs are not a direct obligation of the federal government, but rather the obligation of a corporate instrumentality of the U.S.-owned Federal Home Loan Banks and member savings and loan associations.[24] The goal of Freddie Mac MBS was originally to create a secondary market for mortgages by purchasing mortgages from savings and loan associations.[25] Whereas Ginnie Mae guarantees a fully modified pass-through, Freddie Mac only guarantees the timely payment of interest and the eventual payment of principal.[26] This pass-through is called a modified, rather than fully modified, pass-through.[27] Although Freddie Mac MBS are not backed by the full faith and credit of the federal government, they have special authority to borrow from the U.S. Treasury and are considered just as safe as Ginnie Mae MBS.[28] Rating agencies do not rate Freddie Mac securities.[29]

Freddie Mac also issued the first collateralized mortgage obligation (CMO) in 1983.[30] A CMO is a type of mortgage-backed security that creates multiple classes of bonds that represent claims to specific cash flows from large pools of home mortgages.[31] Each class, called a tranche, is paid sequentially as principal payments are received from the underlying mortgages.[32] The first tranche may have a life of two to three years, the second tranche five to seven years, the third tranche ten to twelve years, and so on.[33] In addition to different maturity dates, tranches may have different principal balances, coupon rates,

20. BOROD, *supra* note 3, at 1-17.

21. Pittman, *supra* note 19, at 500.

22. BOROD, *supra* note 3, at 1-17.

23. SEC, *Mortgage-Backed Securities*, June 25, 2007, http://www.sec.gov/answers/mortgagesecurities.htm [hereinafter Mortgage-Backed Secuirites].

24. BOROD, *supra* note 3, at 1-17.

25. Freddie Mac, Our Mission, http://www.freddiemac.com/corporate/company_profile/our_mission/index.html (last visited Aug. 16, 2008).

26. James E. MURRAY, *The Developing National Mortgage Market: Some Reflections and Projections*, 7 Real Prop. Prob. & Tr. J. 441, 445-46 (1972); *see also* Freddie Mac, Our Role Within the Secondary Market, http://www.freddiemac.com/corporate/company_profile/our_role_secmkt/index.html (last visited Aug. 16, 2008).

27. BOROD, *supra* note 3, at § 1.04.

28. Mortgage-Backed Securities, *supra* note 23.

29. BOROD, *supra* note 3, at § 1.04; *see also* Freddie Mac, Freddie Mac's Mortgage Securities Frequently Asked Questions, http://www.freddiemac.com/mbs/html/cs_faq.html#6_6 (last visited September 24, 2008).

30. LELAND C. BREDSEL, SECURITIZATION'S ROLE IN HOUSING FINANCE, IN A PRIMER ON SECURITIZATION 17, 22 (Leon T. Kendall & Michael J. Fishman eds., 1996).

31. U.S. Securities and Exchange Commission, Collateralized Mortgage Obligations, June 25, 2007, http://www.sec.gov/answers/tcmos.htm [hereinafter Collateralized Mortgage Obligations].

32. *Id.*; *see* Julia P. Forrester, *Fannie Mae/Freddie Mac Uniform Mortgage Instruments: The Forgotten Benefit to Homeowners*, 72 MO. L. REV. 1077, 1081 (2007).

33. The Securities Industry and Financial Markets Association, Types of Bonds, http://www.investinginbonds.com/learnmore.asp?catid=5&subcatid=17&id=35 [hereinafter Types of Bonds].

and prepayment risks.[34] CMOs were welcomed by investors who wanted greater flexibility in their investments, as a typical MBS only matured after ten to twelve years.[35]

Another significant player in the pass-through market is Fannie Mae, also a GSE, which began securitizing mortgages and purchasing MBS from commercial and mortgage banks in the early 1980s.[36] Fannie Mae, like Ginnie Mae, uses a fully modified pass-through security, meaning that it guarantees the timely payment of both principal and interest for all securities it issues.[37] Like Freddie Mac, Fannie Mae is not supported by the full faith and credit of the federal government, but is still considered resolute against an economic downturn. Rating agencies do not rate Fannie Mae securities.[38]

Since the 1990s, private entities have slowly taken over a majority of the MBS market in the United States, due in part to the passage of the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA).[39] SMMEA relaxed the regulatory burdens that prevented private sector MBS from participating in the secondary market.[40] At the end of 2006, private entities shared 54 percent of the MBS market.[41] Whereas GSEs and Ginnie Mae traditionally cater to borrowers with good credit, private entities like banks, savings associations, and investment banking firms, generally issue and securitize riskier mortgages.[42] Also unlike GSEs, private sector MBS are not insured or guaranteed by the federal government or any quasi-governmental entity; rather, they rely on pool insurance and other private guarantees.[43] Throughout the 1990s and early 2000s, private issuers of MBS filled a gap by creating a secondary market for conventional mortgages and other loans that did not qualify for Fannie Mae or Freddie Mac programs. The most common type of privately issued security is the Real Estate Mortgage Investment Conduit (REMIC), which the Tax Reform Act of 1986 officially sanctioned.[44] Like a CMO, the REMIC is a multiple-class security vehicle that avoids the burden of double taxation.[45] The underlying assets of a REMIC security are either MBS or whole mortgage loans.[46] The main benefit of REMIC securities is that they allow issuers to create securities with short, intermediate, and long-term maturities, which attracts a broader group of investors.[47] Ginnie Mae and the GSEs have REMIC programs, each of which guarantees (to a different degree) the timely payment of both principle and interest of each class.[48]

---

34. Collateralized Mortgage Obligations, *supra* note 31.

35. Types of Bonds, *supra* note 33.

36. Andrew R. Berman, *"Once a Mortgage, Always a Mortgage"—The Use (and Misuse of) Mezzanine Loans and Preferred Equity Investments*, 11 STAN. J.L. BUS. & FIN. 76, 92 (2005); *see also*, Murray, *supra* note 26, at 437.

37. BOROD, *supra* note 3 at §1.04.

38. *Id.*

39. Faten Sabry & Thomas Schopflocher, *The Subprime Meltdown: A Primer*, 1633 PRACTICING. L. INST. 89, 91 (2007).

40. SEC Staff Report, *supra* note 13, at 8.

41. Sabry, *supra* note 39, at 95.

42. BOROD, *supra* note 3, at § 1.04; Sabry, *supra* note 39, at 95. Both Fannie Mae and Freddie Mac place caps on the amount of a loan that an individual may receive.

43. *Id.*

44. SEC Staff Report, *supra* note 13, at 13.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

E. Legal Structure of a Securitization Deal

In the most basic structuring of MBS, lenders package mortgage loans and sell them to a special purpose vehicle (SPV) who owns the mortgage loans.[49] The SPV is a bankruptcy-remote trust that is exempt from taxes and insulates investors from the liabilities of the Originator.[50] Acting as an underwriter, the SPV issues securities that are either backed by, or represent interests in, the mortgages.[51] Investors receive payments as the borrowers make payments on their loans.[52] When lenders pool residential home mortgages, a sufficiently large number are included so that "information on no one loan is important in analyzing the pool."[53] The Originator typically services the loan, but sometimes Originators hire a servicing firm to collect the mortgagor's payments and to pass these payments, less fees, to the SPV who in turn pays the investors.[54] As discussed above, the GSEs and Ginnie Mae guarantee the MBS, which in turn helps facilitate the secondary MBS market.[55] If mortgagors fail to make timely payments, the GSEs and Ginne Mae make the payments due on the MBS (either in whole or in part depending on whether it is modified or fully modified).[56]

This securitization process generally triggers the application of 1) the Investment Company Act of 1940; 2) The Securities Act of 1933; and 3) the Securities Exchange Act of 1934.

The 1940 Act requires that all investment companies register with the Securities and Exchange Commission (SEC) unless an exemption applies. Section 3(a)(1) defines an investment company as any issuer who "engage[s] primarily . . . in the business of investing, reinvesting, or trading in securities;" or one who "owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."[57] The 1940 Act broadly defines "investment security" to include any security "except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority -owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception" from the definition of investment company.[58]

The 1940 Act lists fourteen explicit exemptions from registration for entities, including one that explicitly exempts entities who deal in mortgages.[59] Section 3(c)(5)(C) exempts entities that are primarily engaged in "purchasing or otherwise acquiring mortgages and other liens on and interests in real estate."[60] In addition, Rule 3a-7 specifically excludes

49. Scatigna, *supra* note 2, at 2.

50. Sabry, *supra* note 39, at 6.

51. SEC Staff Report, *supra* note 13, at 7.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. Investment Company Act of 1940, 15 U.S.C. § 80a-1 at § 3 (a)(1), (3) (2006), *available at* http://wwwl.law.uc.edu/CCL/InvCoAct/sec3.html [hereinafter Investment Company Act].

58. 15 U.S.C. § 3(a)(2) (2007).

59. 15 U.S.C. § 3(c) (2007).

60. 15 U.S.C. § 3(c)(5)(C) (2007).

from the definition of investment company SPVs that meet the following four conditions: 1) the SPV must issue securities whose payment depends primarily on the cash flow from receivables; 2) the securities being issued must be non-redeemable debt securities or equity securities with debt-like characteristics that are rated at the time of their initial sale as investment grade or better by a nationally recognized rating agency; 3) the SPV must acquire or dispose of receivables only in accordance with the terms of the issuance agreements; and 4) if the SPV issues securities that are not exempt under section 3(a)(3) of the 1933 Act, the SPV must appoint an independent trustee for those securities.[61]

Since the receivables and payment streams present in a securitization deal fall within the definition of "investment security" under the 1940 Act, the SPV must rely on an exemption to avoid registration with the SEC.[62] The same is not true for GSE and Ginne Mae MBS, however, which are completely exempt from the 1940 Act.[63] Thus, it is only private-label MBSs that are potentially subject to the registration requirements of the 1940 Act and other federal securities laws. But Rule 3a-7 has effectively exempted most private-issue structured financings from the registration requirement.[64] Given the compliance costs and burden of registering with the SEC, lenders structure most SPVs to fall within Rule 3a-7.[65]

The next hurdle in the MBS transaction is to determine whether to register the securities or find a registration exemption under the Securities Act. As with all registration statements, extensive disclosure of the deal is required. As mentioned above, the chartering legislation of Fannie Mae, Freddie Mac, and Ginnie Mae generally exempt these securities from registration under the Securities Act and other securities laws.[66] Thus, only non-GSE MBS, i.e., private-label MBSs, are required to find an exemption or face registration. While most private-label MBS file a registration statement, those that do not use the transactional exemptions, which includes the section 4(2) and Rule 506 of Regulation D.[67] Section 4(2) exempts "transactions by an issuer not involving any public offering," and Rule 506 creates a safe harbor to this provision.[68] Since any security issued pursuant to the section 4(2) or Rule 506 exemption is a restricted security, resales are generally not permitted unless a registration statement is in effect. Most private-label issuers use the 144A limited safe harbor for certain resales to Qualified Institutional Buyers (QIBs). A QIB is an institutional investor that has at least $100 million in securities invested. In 2001, over 98 percent of private-label MBS were sold with a registration statement in effect while the remainder were sold in Rule 144A transactions.[69]

GSEs, Ginne Mae, and private-label issuers are all subject to the antifraud provisions of federal securities laws, which include section 17(a) of the Securities Act and section 10(b)

61. Issuers of Asset-Backed Securities, 17 C.F.R. § 270 (1992), Rule 3a-7. An exception to this condition is that non-rated securities may be sold to qualified institutional buyers and that non-rated fixed income securities may be sold to accredited investors

62. BOROD, *supra* note 3, at § 6.1.

63. SEC Staff Report, *supra* note 13, at 19.

64. BOROD, *supra* note 3, at § 6.1.

65. Hill, *supra* note 5, at 1067-68.

66. Danielle T. Berofsky, *Nuts & Bolts of Financial Products 2007: Understanding the Evolving World of Capital Market & Investment Management Products*, 1589 PRACTICING L. INST. 101, 193 (2007).

67. SEC Staff Report, *supra* note 13.

68. The Securities Act Rules 17 C.F.R. § 230 (2006).

69. SEC Staff Report, *supra* note 13.

(and Rule 10b-5 promulgated thereunder) of the Exchange Act.[70] Only the SEC uses section 17(a) while both the SEC and private litigants may use 10(b) and Rule 10b-5 to bring antifraud suits.[71] The provisions of 17(a) and 10(b) are similar and generally prohibit any person from making a false or misleading statement of material fact in the offer or sale of MBS.[72] A statement (or omission) is material if it would cause a reasonable investor to view it as altering the "total mix" of information made available to him or her.[73]

III. An Explanation of the U.S. Subprime Debacle

Subprime mortgage defaults and the resulting collapse of the secondary MBS market lie at the heart of the subprime mortgage meltdown. A subprime mortgage is a residential loan that does not conform to the criteria for "prime" mortgages, and therefore has a higher probability of default.[74] Whether someone is a subprime borrower depends on their credit score, their debt service-to-income ratio, and the mortgage loan-to-value (LTV) ratio.[75] Contrary to popular thought, the term "subprime" does not correspond to interest rates but instead goes to the nature of the borrower. Subprime borrowers generally seek loans that do not require down payments and loans that have low monthly payments.[76]

Subprime mortgage lending greatly expanded in the mid-1990s, mainly due to innovations that "reduced the costs for lenders of assessing and pricing risks."[77] Those innovations included technological advances that facilitated credit scoring which made it "easier for lenders to collect and disseminate information on the creditworthiness of prospective borrowers."[78] In 1995, only 5 percent of mortgages were subprime; and by 2005, the figure jumped to 20 percent.[79]

The increased rate of securitization during the 1980s and 1990s played a large role in the growth of the subprime market. Lenders traditionally held mortgages on their books until mortgagors repaid the loans; but regulatory changes in the 1980s allowed lenders to sell mortgages to financial intermediaries with greater ease. The financial intermediaries in turn pooled mortgages and sold the cash flows as structured securities.[80] Since securitization generally increases liquidity and reduces the cost of lending, the secondary MBS

70. The Securities Act of 1933, 15 U.S.C. § 77-a (2007); 17 C.F.R. § 240.10b5-1 (1951).

71. 15 U.S.C. § 77-a (2007); 17 C.F.R. §240.10b5-1 (1951).

72. 15 U.S.C. § 77-a (2007); 17 C.F.R. § 240.10b5-1 (1951).

73. Basic Inc. v. Levinson , 485 U.S. 224, 231-32 (1988).

74. John Kiff, & Paul Mills, *Lessons from Subprime Turbulence*, IMF SURVEY MAGAZINE, Aug. 23, 2007, *available at* http://www.imf.org/external/pubs/ft/survey/so/2007/RES0823A.HTM [hereinafter Kiff article].

75. *Id.*

76. Christine Daleiden, *Understanding Subprime Mortgages*, 12 HAW. BAR J. 6, 6 (2008).

77. Ben Bernanke, Chairman, Fed. Reserve, Remarks at the Federal Reserve Bank of Chicago's 43rd Annual Conference on Bank Structure and Competition (May 17, 2007), *available at* http://www.federalreserve.gov/newsevents/speech/bernanke20070517a.htm [hereinafter Bernanke's May 2007 Chicago Remarks].

78. *Id.*

79. Sabry, *supra* note 39, at 2.

80. Bernanke's May 2007 Chicago Remarks, *supra* note 77.

market grew over time.[81] The result was that lenders had more money to loan and became more comfortable loaning to subprime borrowers.[82]

Products also emerged during the past decade that made credit affordable to subprime borrowers, including interest only loans and adjustable rate mortgages (ARMs).[83] By 2005, this access to credit resulted in incredible home ownership rates, with almost 70 percent of American families owning their homes, including minority families who were homeowners for the first time.[84] Subprime loans accounted for as much as 14 percent of outstanding mortgage debt by 2006, and lenders packaged most of it into MBS, CDO, or REMIC that they sold on the secondary market.[85] Unwary entities, such as pension funds, hedge funds, insurers, and municipalities, heavily invested in these subprime structured securities and, until 2007, enjoyed their expected fixed returns.[86]

A major problem loomed, however, because subprime borrowers faced higher costs of borrowing and were more likely to default in tough times than prime borrowers.[87] So when housing prices fell precipitously across the country in 2006-2007 at the same time that rates on many subprime loans adjusted upward, many borrowers simply could not afford their mortgage payments and defaulted.[88] Not surprisingly, most defaults resulted from ARMs rather than fixed-rate subprime mortgages, with some mortgages almost doubling overnight.[89] By June 2007, 12 percent of all ARMs borrowers defaulted, a 50 percent increase from the previous low in 2005.[90]

In response to the subprime debacle, the U.S. Congress, inter alia, passed the Mortgage Forgiveness Debt Relief Act of 2007, which sought to prevent foreclosures by giving tax relief to subprime borrowers.[91] Whereas the tax code used to treat as income any amounts forgiven by lenders, the 2007 Debt Relief Act allows borrowers—in 2007, 2008, and 2009—to refinance their mortgages and exclude from income certain debt forgiveness offered by lenders.[92]

The U.S. House of Representatives passed more comprehensive legislation on November 15, 2007.[93] The Mortgage Reform and Anti-Predatory Lending Act of 2007 (2007 Act) amends the Truth in Lending Act and generally attempts to broadly reform consumer mortgage practices.[94] The bill is not yet law, however, because the U.S. Senate has yet to push through a companion bill. As of this comment's submission date, the U.S. Senate

81. *Id.*

82. Sabry, *supra* note 39, at 2.

83. David Anderson, *The Subprime Lending Crisis*, 71 TEX. B. J. 20, 20 (2008).

84. *Id.*; Bernanke's May 2007 Chicago Remarks, *supra* note 76.

85. Anderson, *supra* note 83, at 1.

86. *Id.*

87. Bernanke's May 2007 Chicago Remarks, *supra* note 77.

88. Ben Bernanke, Chairman, Fed. Reserve, Remarks to the 2007 International Monetary Conference (June 5, 2007), *available at* http://www.federalreserve.gov/newsevents/speech/bernanke20070605a.htm [hereinafter Bernanke's June 2007 Cape Town Remarks].

89. *Id.*

90. *Id.*

91. Mortgage Forgiveness Debt Relief Act of 2007, Pub. L. No. 110-142 (2007).

92. *Id.*

93. Mortgage Reform and Anti-Predatory Lending Act, H.R. 3915, 110th Congress (1st Sess. 2007) [hereinafter 2007 Act].

94. *Id.*

has not seriously considered a similar bill, mainly because of pressure from the mortgage industry to keep out certain provisions.

The House was mainly concerned with aggressive lending tactics that caused many low-income borrowers to take out loans they could not afford.[95] To curb such tactics, the 2007 Act imposes a duty of care on lenders and prohibits "steering," which is the practice of steering borrowers to high cost mortgage products, like ARMs.[96] The duty of care generally requires that lenders present customers with appropriate mortgage loans, i.e., they must look at whether the potential borrower has a reasonable ability to repay and whether the customer will receive a "net tangible benefit" if he or she refinances the loan.[97] Lenders face fines of up to three times their broker fee plus any costs if they violate their duty of care.[98] They also face potential civil actions, as the 2007 Act grants borrowers a cause of action against both Originators and participants in the secondary market for rescission of the loan and any costs.[99] The bill additionally requires the licensure of mortgage Originators, including brokers and bank loan offers.[100]

There is a great deal of uncertainty as to whether the 2007 Act will become law, particularly since the mortgage industry has pushed back on the bill and demanded drafting changes. The Bush Administration has neither endorsed the bill nor indicated whether the president will sign it into law. Lenders are especially weary of the standard of liability for "predatory lending" because the bill seems to impose liability on lenders for "any loan a borrower fails to pay off."[101] Perhaps the greatest concern about the bill is that bad lending practices already punish lenders by having them writing down their losses when investments go south. From a lender's perspective, an additional layer of liability will only raise interest rates for borrowers in order to hedge against potential lawsuits.[102]

IV. Rise of the Secondary MBS Market in Mexico

A. Introduction

Latin America has traditionally been unable to finance homes because a combination of "inflation, social instability, and currency weakness"[103] has resulted in high interest rates for borrowers.[104] In the mid to late 1990s, only one in five homes carried a mortgage,[105]

95. *Mortgage Reform Bill Advances in the House*, AM. BKRP. INST. J. Dec. 2007/Jan. 2008, *available at* http://findarticles.com/p/articles/mi_qa5370/is_200712/ai_n21300140?tag=content;col1.

96. 2007 Act, *supra* note 91, at § 103.

97. *Id.* at § 202.

98. *Id.*

99. *Id.* at § 204. The current version of the bill creates a safe harbor for assignees and securitizers who are able to cure the defect by making the loan conform to the required standard within ninety days. *See id.* at § 205.

100. *Id.* at § 104.

101. Yaron Brook, *Predatory Lending*, FORBES, Dec. 4, 2007, *available at* http://www.forbes.com/2007/12/03/predatory-business-act-oped-cx_yb_1204predatory.html.

102. *Id.*

103. Many banks refused to give mortgage loans in local currencies because of the risk of having to reimburse a loan in dollars if the local currency deflated. *See* Georgette C. Poindexter, *Ed Ruta Hacia El Desarrollo: The Emerging Secondary Mortgage Market in Latin America*, 34 GEO. WASH. INT'L L. REV. 257, at 259 (2002).

104. *Id.*

105. *Id.*

and the typical interest rate usually fluctuated between 15 and 20 percent, forcing most people to finance homes with cash or build them by hand.[106] While U.S. borrowers have enjoyed incredible access to credit, Latin American borrowers—and Mexicans until recently—generally could not afford the long-term debt needed to finance a home. Securitization offers great benefits to Latin America because it tends to "mitigate sovereign risk, improve the resilience of markets in periods of stress, and provide a source of funding for housing system[s]."[107]

The importance of this comment lies in the fact that during the last decade, Latin America—and Mexico in particular—has experienced increased housing demands that have caused the region to encourage securitization and the development of secondary markets.[108] Efficient MBS markets will not only change the financing landscape of Latin America, but will also attract more foreign capital as the United States sinks into recession. Because Mexico arguably leads these efforts, and boasts the largest residential MBS market in Latin America, it is the focus of this comment.[109] The remainder of this comment provides an overview of Mexico's housing demands, the regulatory environment necessitated by the 1994 Peso Crisis that halted lending in the 1990s, the emerging MBS market, and some concluding thoughts on whether Mexico's MBS market will stay strong in light of the U.S. subprime debacle.

B. Mexico's Housing Demand

Although Mexico has seen a real estate boom in the past six years, it cannot seem to build houses fast enough.[110] The strength of Mexico's housing demand is evidenced by the fact that in 2006, housing construction represented almost 3 percent of the country's gross domestic product, which is roughly the same as Mexico's manufacturing leader—the auto industry.[111] In addition, the construction sector was the most profitable sector in

106. *Id.* at 262.

107. Scatigna, *supra* note 2, at 5.

108. *See* Federal Reserve Bank of Atlanta, Financial Update (First Quarter 2004): *Creating a Secondary Mortgage Market in Mexico*, *available at* http://www.frbatlanta.org/invoke.cfm?objectid=e832daf8-0e12-537c-c41e9c3d915b2b19&method=display [hereinafter Atlanta Federal Reserve Mexico Article]; Poindexter, *supra* note 103, at 259; Otaviano Canuto, *Securitization of Latin America: Advantages of Latecomers*, Latin America EcoMonitor, Oct. 1, 2007, http://www.rgemonitor.com/latam-monitor/331/securitization_in_latin_america_advantages_of_latecomers [hereinafter Canuto]; Federal Reserve Bank of Dallas, *Beyond the Border: Mexico Emerges from 10-Year Credit Clump*, 3 Southwest Economy (2005), http://www.dallasfed.org/research/swe/2005/swe0503d.html (stating "Despite a slight rise in interest rates over the second half of the year, Mexico's securitization market almost quadrupled in 2004, making it the top such market in Latin America.") [hereinafter Dallas Federal Reserve Mexico Article] .

109. Dallas Federal Reserve Mexico Article, *supra* note 108. That Mexico is emerging as a market leader is evidenced in part by the over $300 million that the US's largest public pension fund, the California Public Employees Retirement System, has invested in Mexican structured finance deals since the recent US market slide. *See* Theresa Bradley, *Mexico Enjoys a Housing Boom*, Austin American Statesman, Feb. 17, 2008, *available at* http://banderasnews.com/0802/nz-mexboom.htm. As of 2007, Mexico was number one in asset securitization in Latin America, with over six and a half billion in US dollars securitized. *See* Caunto, *supra* note 108.

110. Bradley, *supra* note 109.

111. The Wharton School of the University of Pennsylvania, *The War between Banks and 'Sofoles' Propels Mexican Real Estate*, Feb. 8, 2006, http://www.wharton.universia.net/index.cfm?fa=viewfeature&language=english&id=1104 [hereinafter Wharton].

2005, with construction firms listed on the Mexican stock exchange enjoying a 44 percent increase over previous annual returns.[112]

Yet, despite the growth of construction companies, demand for housing remains high, with over six million households without adequate dwellings.[113] "President Felipe Calderon has set a national goal of a million new mortgages a year by 2010."[114] When Mexico privatized its banks in the early 1990s, there was rapid growth in ability of individuals to finance homes—but when the Peso Crisis of 1994 came about, interest rates skyrocketed, and a record number of individuals defaulted on their mortgage loans.[115] With such a negative experience during this period, it took years for Mexicans to put faith in private banks. Instead of relying on mortgages, Mexicans went back to their old ways, and either bought houses with cash or built them by hand.[116] The looming economic recession in the United States might cause Mexican immigrants to lose their jobs and return to Mexico, creating an even larger housing demand.[117] Harsh U.S. immigration laws are another factor that might swell the growing demand for housing in Mexico.[118]

C. Mexico's Regulatory Framework

Like in the United States where droves of people bought homes during the last decade, Mexico has rebounded from its 1990s economic woes and now boasts one of the strongest housing sectors in Latin America. As the United States sinks into recession because of the subprime debacle, Mexico's mortgage market not only seems resilient but has the potential to shape regulatory reforms throughout Latin America. An adequate discussion of Mexico's current mortgage situation must begin with a primer on the Mexican economic woes of the 1990s.

The well-documented 1994 Peso Crisis devastated Mexico's economy for close to a decade. Before 1994, the Mexican economy showed healthy growth with the emergence of market-oriented institutions and other reforms, such as the abolition of protectionist trade barriers and the restructuring of foreign debt.[119] Just before the crash, Mexico's inflation was down to single digits for the first time in over twenty years, and foreign investments were pouring into the economy.[120] The once-nationalized banking sector became privatized, and credit became widely available, resulting in the rapid growth of mortgage loans in the early 1990s.[121] The good times quickly ended with the 1994 Peso Crisis as borrowers defaulted in record numbers causing the near collapse of the banking

112. *Id.*
113. Bradley, *supra* note 109.
114. *Id.*
115. Int'l Monetary Fund, *Mexico: Selected Issues* 41 (Dec. 2007), *available at* http://www.imf.org/external/pubs/ft/scr/2007/cr07378.pdf [hereinafter IMF Mexico Article].
116. Bradley, *supra* note 109.
117. *Id.*
118. *Id.*
119. Francisco Gil-Diaz, *The Origins of Mexico's 1994 Financial Crisis*, 17 Cato J., Winter 1998, *available at* http://www.cato.org/pubs/journal/cj17n3-14.html; *see also* Joseph A. Whitt, *The Mexican Peso Crises*, Federal Reserve Bank of Atlanta, Economic Review, Winter 1996, *available at* http://www.frbatlanta.org/filelegacydocs/J_whi811.pdf.
120. Diaz, *supra* note 119.
121. *Id.*

sector.[122] Although commentators disagree on the precise cause of the 1994 Peso Crisis (e.g., some blame the North American Free Trade Agreement), one of the greatest economic crashes of modern times hit Mexico in 1994, leading to the severe devaluation of Mexico's currency, the peso, which lost half of its value in less than three months.[123]

On the housing sector side, the recession that emerged after the devaluation caused the real estate market to collapse as private capital quickly left the housing market.[124] Because lenders had indexed most mortgages to both inflation and minimum wage, the peso depreciated interest rates soared.[125] The economy's collapse caused unemployment to skyrocket, meaning that people could not afford their mortgage payments.[126] About 80 percent of borrowers defaulted on their mortgages while banks' portfolios lost nearly 50 percent of their value.[127] Banks abruptly halted their lending and effectively withdrew from the mortgage market. [128] Because of the need for housing (and perhaps because of the negative experience Mexicans had with private banks),[129] the Mexican government had to step up the role of governmental institutions.[130]

The rest of this section discusses how the Mexican Government used three different entities—SHF, INFONAVIT, and SOFOLES—to deal with the growing housing demand and the departure of private banks from lending to the lower-income sector. Also included is a discussion of Mexico's important legal developments, an explanation of how private banks returned to lending, and an overview of Mexico's emerging MBS market.

D. SHF

As discussed above, a MBS market cannot develop without government guarantees.[131] In the United States, Ginnie Mae and the GSEs guarantee timely payment (either through a fully modified or modified guarantee) of mortgages to investors in case the borrower is unable to make a payment. The most important MBS development in Mexico was the creation of Sociedad Hipotecaria Federal, S.N.C., (SHF), a national development bank, in 2001.[132] Although the Mexican government did not explicitly model SHF after the U.S.'s GSEs or Ginne Mae, its purpose is similar as it hopes to "promote the con-

122. IMF Mexico Article, *supra* note 115, at 41.

123. Dallas Federal Reserve Mexico Article, *supra* note 108.

124. Wharton, *supra* note 111; JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, *The State of Mexico's Housing* (2004), *available at* http://www.jchs.harvard.edu/publications/international/som2004.pdf [hereinafter June 2004 Harvard Study].

125. *Id.*

126. *Id.*; *see also* Bradley, *supra* note 109.

127. June 2004 Harvard Study, *supra* note 124.

128. Wharton, *supra* note 111; *see also* Natalie Pickering, *The Mexico Mortgage Boom, Bust and Bail Out: Determinants of Borrower Default and Loan Restructure After the 1995 Currency Crisis*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, April 2000, *available at* http://www.jchs.harvard.edu/publications/international/pickering_w00-3.pdf [hereinafter April 2000 Harvard Study].

129. *See* Wharton, *supra* note 111.

130. *Id.*; *see also* Natalie Pickering, *The SOFOLES: Niche Lending or New Leaders in the Mexican Mortgage Market*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, May 2000, *available at* http://www.jchs.harvard.edu/publications/international/pickering_w00-2.pdf [hereinafter May 2000 Harvard Study].

131. Scatigna, *supra* note 2, at 75.

132. SOCIEDAD HIPOTECARIA FEDERAL, S.N.C. , *About SHF, available in English at*, http://translate.google.com/translate?hl=en&sl=es&u=http://www.shf.gob.mx/sobre_shf.html&sa=&oi=translate&resnum=1&ct=re-

struction and purchase of housing" by aiding the development of an efficient secondary MBS market.[133] SHF is the only Mexican governmental entity whose explicit purpose is to promote a secondary MSE market.[134]

Like the U.S. GSEs, SHF puts the "'full faith and credit' of [the] federal government" behind mortgages, but unlike the U.S. GSEs, SHF has an expiration date—2013.[135] SHF does not lend directly to the public,[136] rather, it simply guarantees the timely payment of mortgages as follows: if a mortgage is six months late, SHF pays to the lender between 25 and 75 percent of the outstanding balance of the mortgage loan, plus interest, and any unpaid servicer and insurance fees.[137] It is important to note, however, that SHF will only guarantee mortgages that conform to specific criteria, which include certain debt-to-income and loan-to-value requirements, as well as reporting obligations.[138]

SHF accomplishes its goal by hedging the risk of dramatic interest rate increases and promoting the securitization of mortgage portfolios and mortgage origination by enhancing credit.[139] Like the U.S.'s GSEs, SHF has several different programs in which financial intermediaries may participate, and the result is that banks can offer mortgage loans with lower interest rates.[140] With time, SHF's guarantee will create a larger demand for MBS. As banks package and sell their mortgages, the extra cash in hand will allow them to issue more mortgages.

E. INFONAVIT

Along with SHF, the other major mortgage lender in Mexico is Instituto del Fondo Nacional de la Vivienda para los Trabajadores, or the National Workers' Housing Fund Institute (INFONAVIT),[141] a government agency created in 1972. INFONAVIT played a large role in the housing sector following the 1994 Peso Crisis by funding the construction of affordable housing for workers.[142] INFONAVIT has a double mandate of "providing individual pension funds for private sector employees in Mexico" and granting mortgages to those who qualify.[143] To support its pension fund, INFONAVIT instituted

---

sult&prev=/search%3Fq%3DSobre%2BSHF%26hl%3Den. Translated, SHF means the "Federal Mortgage Society."

133. *Id.*

134. Carlos Aiza Haddad, *The Securitization of Assets in Mexico*, 7 U.S.-MEX. L.J. 141, 143 (1999); Brigitte Posch & Philip Kibel, *Sociedad Hipotecaria Federal: Does the Mortgage Partial Guarantee Work?–The Proof is in the Pudding*, STRUCTURED FINANCE SPECIAL REPORT, MOODY'S INV. SERV. (July 26, 2002), *available at* http://www.natlaw.com/seminar/doc37.pdf [hereinafter Special Report].

135. WORLD BANK, *Housing Finance in Mexico: Evolution, Strategy and Challenges Ahead*, Powerpoint Presentation, March 2006 (on file with author) [World Bank Powerpoint].

136. *Id.*

137. Special Report, *supra* note 134.

138. *Id.* By creating the said criteria, SHF effectively has standardized the mortgage market.

139. *Id.*

140. Vicente Grau and Sergio Chagoya, *Securitization of Mortgage Loans in Mexico*, 1 U.S.-MEX. L. REV. 3, 4 (2007).

141. Melissa Hall, *Foreigners Funding the Future: Investment Opportunities in Mexico's Privatized Pension System*, 34 TEX. INT'L L.J. 151, 172(1999).

142. *Id.*; Dallas Federal Reserve Mexico Article Two, *supra* note 1.

143. AMBAC, *Mexico's Largest Mortgage Lender Completes First Guaranteed RMBS Transaction*, Oct. 3,2007, http://www.ambac.com/pdfs/Deals/Infonavit.pdf.

a mandatory 5 percent payroll deduction for all workers.[144] INFONAVIT makes payments on its MBSs from " automatic deductions from worker's wages," which helps keep the delinquency rate down.[145] As of 2006, INFONAVIT held loans totaling over forty billion, "the largest mortgage portfolio in Latin America."[146]

F. SOFOLES

In 1993 as part of NAFTA,[147] the Mexican Government authorized Sociedades Financieras de Objeto Limitado (SOFOLES), which are limited purpose financial companies equivalent to U.S. mortgage houses.[148] Also called non-bank banks, the SOFOLES obtain licenses from the Secretariat of Finance and Public Credit that allow them to lend to particular sectors, including the housing, consumer, small business, and auto finance markets.[149] On the housing side, the SOFOLES function mostly as mortgage companies that both originate and service mortgages to the low-income segment of the mortgage market.[150] As non-deposit entities, the SOFOLES fund their loans through commercial or development bank loans (including SHF),[151] private investors, or the Mexican stock markets.[152] In 2007, SHF funded almost 45 percent of SOFOLES' loans.[153]

Getting SOFOLES involved in mortgage lending was important to the Mexican Government, particularly after it became virtually impossible for the low-income sector to borrow during the mid-1990s.[154] By 1996, only 15 percent of households were eligible for private bank mortgages.[155] The reason that banks only lent to high incomes individuals has its roots in Mexico's nationalization of the banking system in 1982. When the Government took over the banks, they maintained a certain amount of "social interest loans," typically ranging from 3 to 6 percent of the bank's mortgage portfolio.[156] These so-called "social interest loans," funded in part by Fondo de Operacion y Financiamiento Bancario a la Vivienda (FOVI), a government trust within the central bank designed to promote

144. Dallas Federal Reserve Mexico Article Two, *supra* note 1.

145. *Id.*

146. *Id.*

147. ASOCIACION MEXICANA DE SOCIEDADES FINANCIERAS DE OBJETO LIMITADO, A.C., *available in English at* http://translate.google.com/translate?hl=en&sl=es&u=http://www.esmas.com/emprendedores/pymesint/proveedores/400855.html&sa=X&oi=translate&resnum=4&ct=result&prev=/search%3Fq%3DSociedades%2BFinancieras%2Bde%2BObjeto%2BLimitado%2B%26hl%3Den [hereinafter AMSFOL].

148. *See* Special Report, *supra* note 134; May 2000 Harvard Study, *supra* note 130. As of 2005, the Mexican Government had authorized forty-eight SOFOLES entities. AMSFOL, *supra* note 147.

149. INT'L MONETARY FUND, *Mexico: Financial System Stability Assessment Update* October, 13 2006, *available at* http://www.imf.org/external/pubs/ft/scr/2006/cr06350.pdf; Wharton, *supra* note 111.

150. May 2000 Harvard Study, *supra* note 130.

151. Including SHF discussed *infra*.

152. Ana Maria Rosas Pena, *New Aliadas of SMEs, available in English at* http://translate.google.com/translate?hl=en&sl=es&u=http://www.jornada.unam.mx/2005/02/14/004n1sec.html&sa=&oi=translate&resnum=9&ct=result&prev=/search%3Fq%3DSociedades%2BFinancieras%2Bde%2BObjeto%2BLimitado%2B%26hl%3Den.

153. FITCH RATINGS MEXICAN MORTGAGE COMPANIES 4, Mar. 6, 2008, *available at* http://www.fitchratings.com/corporate/login/setSessionVars.cfm?userIdParam=rikk03&SCRIPT_NAME=/corporate/reports/report_frame.cfm&QUERY_STRING=rpt_id=377542§or_flag=21&marketsector=1&detail=.

154. May 2000 Harvard Study, *supra* note 130, at 3.

155. *Id.* at 6.

156. *Id.* at 7.

lower-income housing, were not required after the liberalization of the banks in late 1980s.[157] Since private banks no longer had to participate in the FOVI "social interest loans" program, they did not, leaving nearly 100 percent of their mortgage portfolios (if they had such portfolios) to the upper-income brackets.[158] When the SOFOLES emerged in the mid-1990s, using FOVI funds, they filled gap that private banks created when they halted participation in FOVI's "social interest loan" program.

G. Legal Developments

As discussed above, the creation of a trust or SPV is a necessary component of a U.S. securitization deal, as the SPV acts as both an underwriter and insulator from bankruptcy. Mexicans also use bankruptcy-remote SPVs[159] that issue so-called *certificados bursátiles fiduciaries* and hold the pooled mortgage loans after securitization.[160]

Before 2005, the biggest impediment to securitization deals in Mexico was trust law. The old system prevented trusts from issuing debt, which meant that the dealmaker issued the assets through securities, with a governmental agency certifying that the pooled assets were equal to the MBS.[161] In December 2005, the Mexicans instituted a new Securities Market Law that authorized the *certificados bursátiles fiduciarios* (exchange-traded trust certificates) and permitted *the trust* to issue these securities for the first time.[162] The Securities Market Law made the requirements for the issue of *certificados bursátiles fiduciaries* more flexible[163] by eliminating the previous impediments to issuing debt securities.[164] Today, the use of such trusts "has become the means par excellence" for the securitization of mortgage loans.[165]

Another impediment to securitization was that Mexican law required the notarization and subsequent recording of mortgages with the Public Registry of Property.[166] This effectively prevented any assignment of mortgages (i.e, securitization) that did not utilize a notary and inform the borrower. To help develop its MBS market, Mexico passed a new law that allows the assignment of mortgages without notice to the debtors and without use of a notary public.[167]

Mexican states also modified their foreclosure laws to allow banks to initiate a foreclosure proceeding within two months of a borrower's default or discovery of a fraud.[168] The ability of lenders to foreclose mortgages in default is crucial to the success of a secondary market because it gives investors some certainty that certain loans will not completely

157. *Id.*
158. *Id.*
159. Under Mexican law, a financial intermediary must act as the trustee. *See* Alfonso Castro Diaz, *Facts are Meaningless*, INT'L FIN. L. REVIEW, 2007, *available at* http://www.iflr.com/?Page=17&ISS=23918&SID=696635 [hereinafter Int'l Law Review Article].
160. *Id.*
161. Stump, *supra* note 6, at 204; Scatigna, *supra* note 2, at 75.
162. Int'l Law Review Article, *supra* note 159.
163. Grau, *supra* note 140, at 4.
164. Int'l Law Review Article, *supra* note 159.
165. Grau, *supra* note 140, at 4.
166. Poindexter, *supra* note 103, at 270.
167. *Id.*
168. *Id.* at 271.

default. But a foreclosure must be quick, and the new law accomplishes this by putting a foreclosure proceeding atop a court's docket.[169]

H. Reemergence of the Private Banks in 2004

Private banks reemerged slowly after the 1994 Peso Crisis, and it was not until 2004 that these banks actively lent to the masses. The process of reintroducing private banks to borrowers was slow, but a new regulatory framework governing credit bureau operations helped—the new regulations improved the timeliness and accurateness of a potential borrower's creditworthiness. This improvement gave banks greater comfort in lending to lower-income individuals.[170]

Recent trends show that private banks and the SOFOLES are slowly catching up with the securitization rates of the government issued securities, and may surpass them soon.

169. *Id.*

170. Dallas Federal Reserve Mexico Article Two, *supra* note 1.