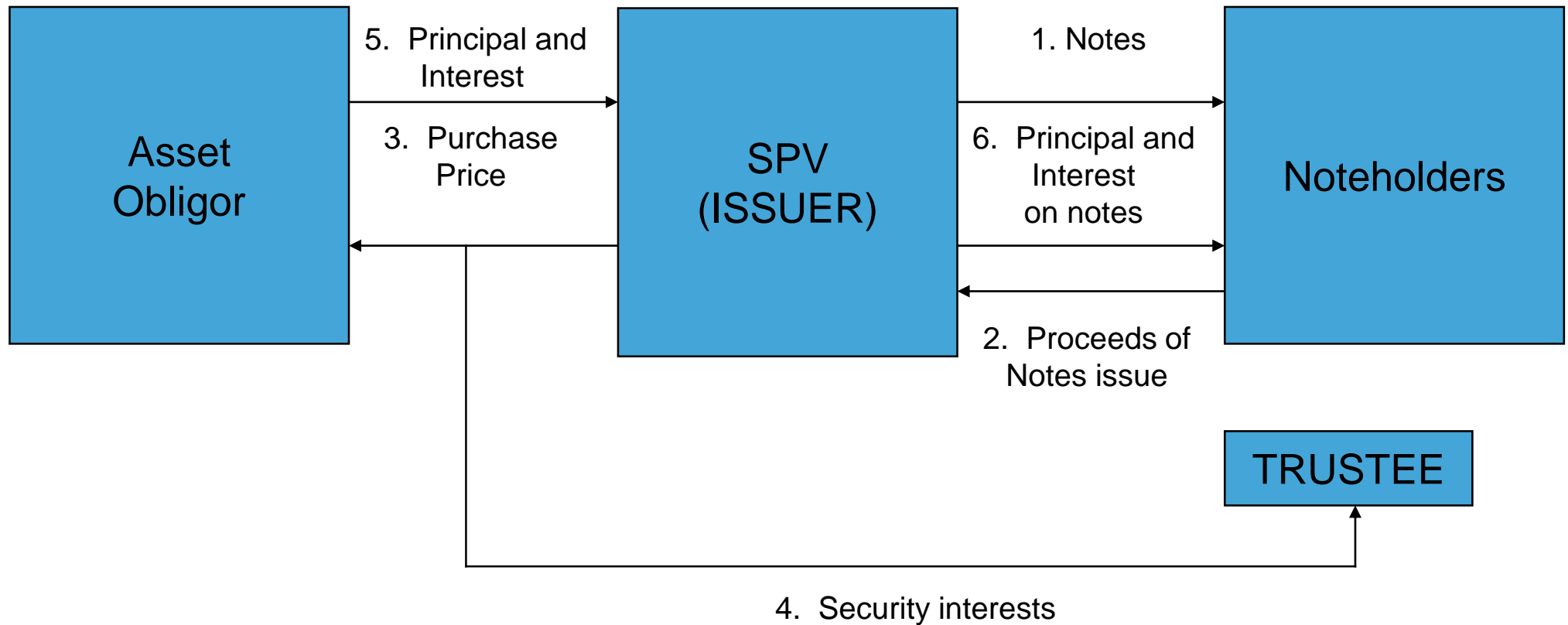


**C L I F F O R D**  
**C H A N C E**

**REPACKAGING PROGRAMMES AND SPVs**

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# TRADITIONAL SPV REPACKAGING ISSUE



# **BENEFITS OF SPV ESTABLISHMENT**

- Investor takes limited credit risk on SPV in a tax efficient manner
- Provides access to broader range of investors with EU issuer and potential EU listing
- A note programme provides versatile platform for broad range of future trades
- Can use SPV for more than just Repackagings
  - CLNs/LPNs
  - CDOs
  - Securitisations

# PRODUCT COMPARISON

|                                  | Structured MTN | Asset Swap Package | SPV Notes | Comments  |
|----------------------------------|----------------|--------------------|-----------|---|
| Bankruptcy remote?               | NO             | NO                 | YES       | <ul style="list-style-type: none"> <li>SPV collateral is held in a bankruptcy remote segregated compartment.</li> </ul>   |
| Relative value                   | LOW            | HIGH               | HIGH      | <ul style="list-style-type: none"> <li>Secondary bond spreads often exceed primary MTN funding levels.</li> </ul>   |
| Bid/Offer upon unwind or buyback | HIGH           | LOW                | LOW       | <ul style="list-style-type: none"> <li>Buyback levels for traditional MTN's can be impacted by prevailing issuance prospects or accounting considerations meaning wider bid/offer spreads.</li> </ul>   |
| Flexibility                      | LOW            | HIGH               | HIGH      | <ul style="list-style-type: none"> <li>SPV can hold <b>any bond</b> in secondary market. For MTN, the <b>universe of credits</b> is limited to the available MTN issuers.</li> <li>SPV can use a basket of bonds from different issuers as collateral for a single Note, offering <b>diversification in a single package</b>.</li> <li>SPV offers the flexibility for the returns of a note to be linked to <b>various asset classes</b> e.g. equity indices, and inflation.</li> <li>SPV is not subject to the restrictions and caps which frequently affect traditional MTN issuers, and the separation of the funding and derivative component of a transaction promotes better outcomes for investors.</li> </ul> |
| Administrative burden            | LOW            | HIGH               | LOW       | <ul style="list-style-type: none"> <li><b>Booking:</b> Asset Swaps require derivatives booking and margining infrastructure. SPV offers a package of bonds and derivatives in a transferrable security.</li> <li><b>Margining:</b> Secured notes issued by SPV do not require investors to post any additional margin if the mark to market of any derivative embedded decreases.</li> </ul>  |

# COMMON LEGAL ISSUES ON REPACKAGINGS

1. Establishment of an SPV
2. Withholding Tax Issues
3. Who are the parties to a repackaging issue?
4. Ring fencing each trade in multi issuance SPV
5. How does the security package work?
6. What documentation is needed
7. Settlement requirements
8. Redemption of the Notes
9. Arranger Liability
10. Deal Monitoring

## ESTABLISHMENT OF SPV

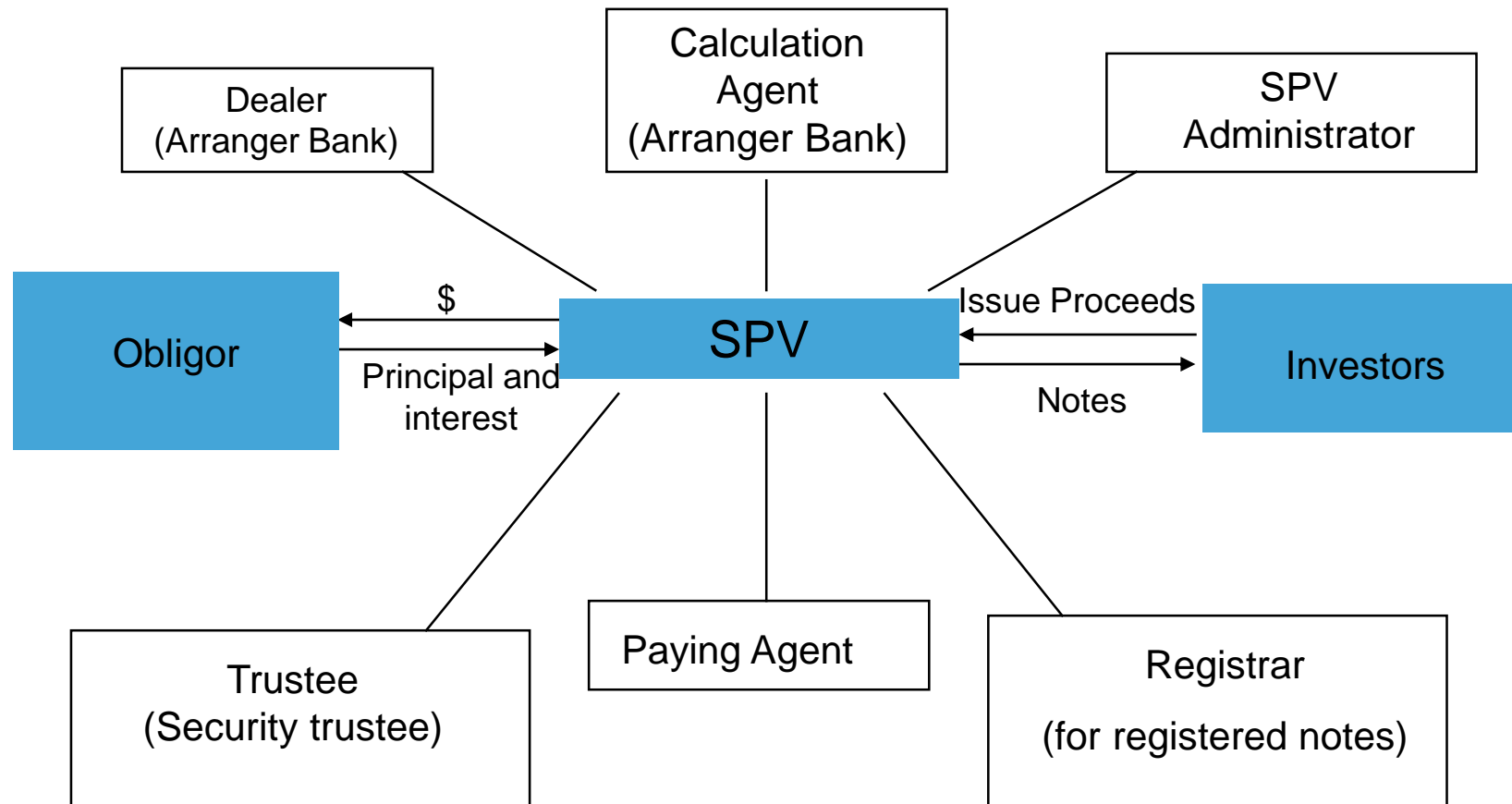
- Tax haven or European
- Regulatory constraints
- Tax neutrality
- Costs and timing



# WITHHOLDING TAX ISSUES

- Need to ensure structure can pay gross at each level of transaction
  - Payments of interest from obligors to SPV
  - Payments of interest from SPV to Noteholders
- SPV/double tax treaties

# WHO ARE THE PARTIES TO A REPACKAGING ISSUE?



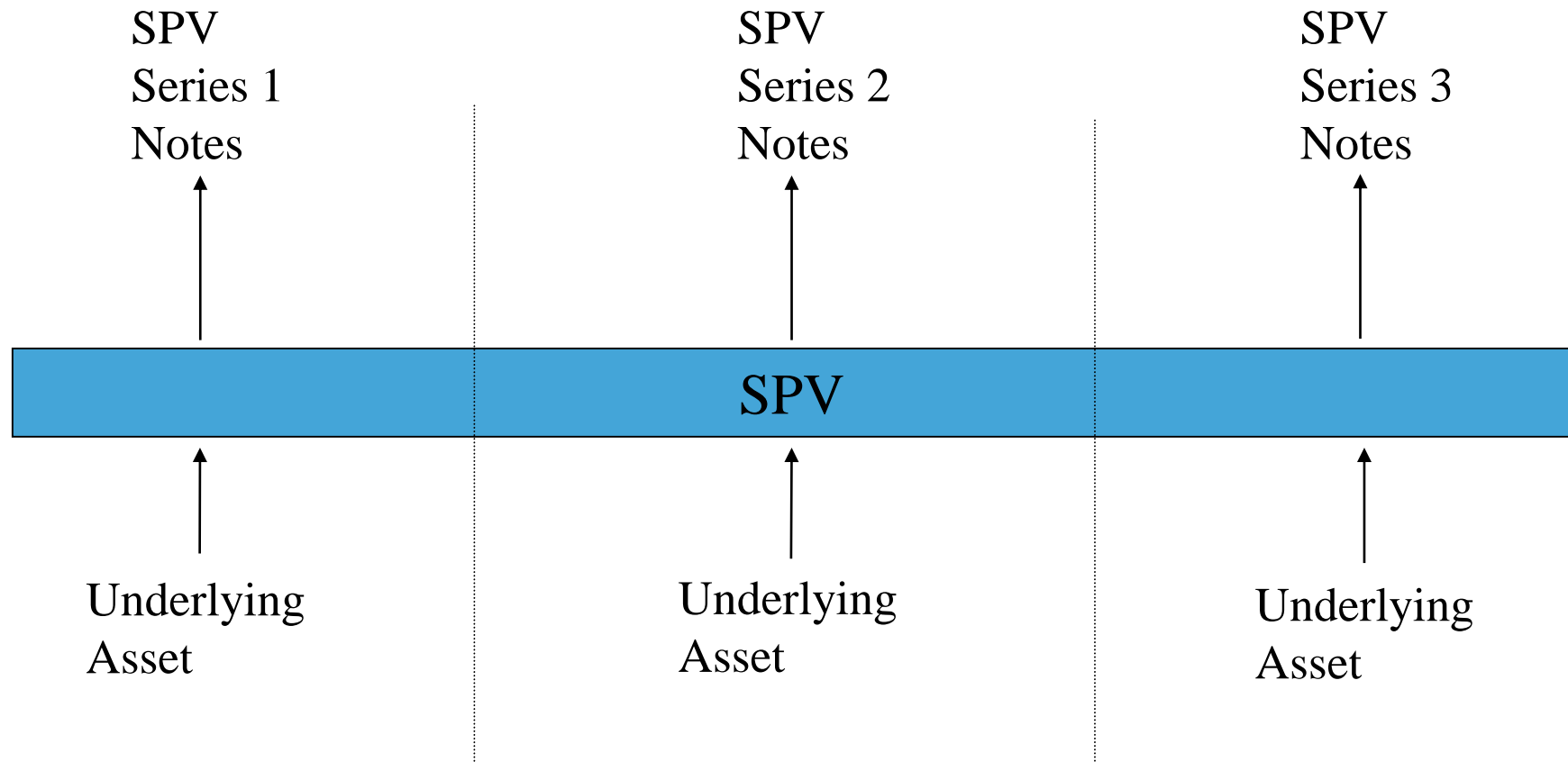


# **RING FENCING EACH TRADE IN MULTI ISSUANCE SPV**

- Limited Recourse
  - Claim of Noteholder confined to assets of that Series of Notes
  - Excess debt extinguished after realisation of assets of that Series of Notes
- Non-Petition Covenant
  - No rights to proceed against the Issuer
  - No petition, no winding-up
- Security plus Limited Recourse and Non-Petition Covenant together = “Ring Fencing” and “Firewalling”

## RING FENCING (2)

“Ring Fencing”/ “Firewalling”



## HOW DOES THE SECURITY PACKAGE WORK?

- SPV grants security to the Trustee over all of its assets
- Security created by way of English law assignments and charges over the SPV's rights under agreements, its accounts and its receipts.
  - The assignment deliberately rules out the SPV's rights to amounts paid under the loan, as these are covered solely by the charge so as to preserve the SPV's beneficial ownership of these amounts for double tax treaty purposes.
- Use of security Enforcement Agent (eg. Russia)

# DOCUMENTATION

## Programme Documents

- Programme Information Memorandum
- Principal Trust Deed - Trustee (as note and security trustee)
- Agency Agreement - Paying Agents, Registrar, Calculation Agent
- Custody Agreement – Custodian
- Programme Dealer Agreement – Dealer (being Arranger bank)
- Proposals Agreement
  - Permits Arranger bank to propose each trade to SPV at arm's length
  - Clarifies nature of relationship between the Arranger bank and the SPV
  - Gives taxable income to SPV

## Trade Documents

- Underlying obligor documents eg. Loan Agreement
- Pricing Supplement or Prospectus for listed notes
- Supplemental Trust Deed
- Global Notes
- SPV and English legal opinions
- Other trade specific documents including additional security documents

# SETTLEMENT REQUIREMENTS

- How does a typical trade settle
  - Arranger bank establishes a new issues account at Euroclear
  - Arranger bank as dealer intermediates the settlement with investors
  - Payment pass through to avoid underwriting risk
- Employment of a Settlement Agent
  - Arranger bank avoids having to underwrite note issuance
  - Know your customer requirements for Settlement Agent
  - Timing constraints

# REDEMPTION OF THE NOTES

- At Scheduled Maturity Date as planned and investor gets scheduled return
- Mandatory Redemption
  - Tax (on underlying loan or Notes)
  - Early repayment or acceleration of the underlying obligation
- Event of Default on SPV
  - Failure to pay
  - Breach of agreement
  - Unlikely in bankruptcy remote SPV

# ARRANGER LIABILITY

- Just because the SPV takes responsibility for the payment obligations does not mean that the Arranger bank is risk free.
- Minimising Arranger Liability:
  - Denominations
  - Distribution Agreements
  - Standard of Disclosure
  - Suitability of Investors
  - Control of secondary market
    - Investor rep letters in a chain
    - Private side letters
    - Making a secondary market
    - Registered notes to control transfer

# DEAL MONITORING

- Role of Arranger Bank after deal closes
  - Arranger Bank generally acts as Calculation Agent
  - Monitoring of transaction
    - Monitoring underlying obligor's compliance with covenants
    - Pre-default monitoring



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