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MEMORANDUM

Date: May 20, 2018
To: Fellows of the American College of Investment Counsel ("**ACIC**")
From: Transaction Process Management Committee
Re: Model Form Make-Whole Amount and Swap Breakage Indemnity

The Transaction Process Management Committee ("**TPMC**") has prepared the attached drafts of (i) Model Form Make-Whole Amount and Swap Breakage Indemnity (draft date May 20, 2018) ("**Updated Model Form Swap Breakage Indemnity**") and (ii) Model Form Swap Indemnity Letter (draft date May 20, 2018) ("**Swap Indemnity Letter**"), and is distributing the drafts to the ACIC Fellows for review and comment. The Updated Model Form Swap Breakage Indemnity provides for the calculation of Make-Whole Amount and Swap Breakage Amounts with respect to Swapped Notes. The Swap Indemnity Letter provides for indemnification of any swap breakage amounts under swap arrangements that Investors entered into as of "circle" of a private placement transaction and covers the period of time between circle and the funding of the Swapped Notes. Once funding occurs, the swap breakage provisions under the Note Purchase Agreement (based on the Updated Model Form Swap Breakage Indemnity) would then govern.

As you may be aware, the existing Model Form Make-Whole Amount and Swap Breakage Indemnity (draft date April 25, 2007) ("**Existing Model Form Swap Breakage Indemnity**") also provides for the calculation of Make-Whole Amount and Swap Breakage Amounts with respect to Swapped Notes and has been used in the US private placement market for the last 10 plus years. It is proposed that the draft of Updated Model Form Swap Breakage Indemnity once finalized will replace the Existing Model Form Swap Breakage Indemnity.

The principal goal of the changes is to simplify, streamline and reflect actual practice of the calculation of the "**Swap Breakage Amount**" which, under the Updated Model Form Swap Breakage Indemnity, is defined as the amount that is received (in which case the Swap Breakage Amount shall be referred to as the "**Swap Breakage Gain**") or paid (in which case the Swap Breakage Amount shall be referred to as the "**Swap Breakage Loss**") by a holder of a Swapped Note in connection with a termination or amendment of its Swap Agreement resulting from a Swap Unwind Event[1]. This is described in further detail below.

Set forth below in this Memo is (a) certain background with respect to including the swap indemnity provisions (both in terms of Swap Breakage Amount and Make-Whole Amount) for Swapped Notes in the Updated Model Form Swap Breakage Indemnity and its purpose in connection with documenting private placement transactions under the Model Form Note Purchase Agreement and (b) a summary of the material updates and changes to the Updated Model Form Swap Breakage Indemnity.

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[1] Under the Updated Model Form Swap Breakage Indemnity, a "**Swap Unwind Event**" is defined as any Swapped Note being prepaid or purchased pursuant to Section 8 of the Note Purchase Agreement or becoming immediately due and payable pursuant to Section 12.1 of the Note Purchase Agreement.

<u>Background on Swapped Notes</u>:

The institutional private debt placement market in the United States is primarily comprised of United States institutional investors who purchase U.S. dollar denominated, fixed income notes. However, an increasing amount of the notes issued in the United States institutional investor private placement market are foreign currency denominated ("foreign" meaning non-U.S. dollar). Thus, we have a scenario where U.S. dollar balance sheet investors in need of U.S. dollar investments (the "**Noteholders**") intend to hold a foreign denominated note. A typical means by which a Noteholder may address this foreign currency exposure is for the Noteholder to enter into a "cash flow hedge" (the "**Swap Agreement**") between it and a "swap counterparty" whereby the Noteholder agrees to swap the foreign currency payments expected to be received by the Noteholder (those that are originally paid by the issuer of the Notes) with the swap counterparty in exchange for U.S. dollar amounts. The cash flow hedge is intended to place the Noteholder in a position equivalent (both in cash flow timing and amounts) to that of an original purchase of U.S. dollar notes.

The Swap Agreement will have two sets of payments, one due from the Noteholder to the swap counterparty, and a second set of payments payable in the other direction from the swap counterparty to the Noteholder. The payments due by the Noteholder under the Swap Agreement are identical to the amounts owed to the Noteholder under the Note issued by the issuer (the "**Issuer**"). The amounts received by the Noteholder under the Swap Agreement will be the U.S. dollar equivalent of the foreign currency Note, both in terms of principal (called the "notional amount") and interest, determined based on market rates when the Swap Agreement is executed.

If the Notes remain outstanding until scheduled maturity, the provisions of the Model Form Swap Breakage Indemnity will not be employed. However, upon an early payment of the Notes, the Noteholder will need to terminate or amend its Swap Agreement, resulting in the Noteholder and the swap counterparty exchanging a swap breakage payment. The purpose of the Model Form Swap Breakage Indemnity is to keep the Noteholder in the U.S. dollar equivalent investment position upon such early payment of the Notes, taking into account breakage associated with the Swap Agreement.

Outside of the swap indemnity provisions, the Model Form Swap Breakage Indemnity provides a convenient means for determining traditional Make-Whole and Modified Make-Whole amounts by listing the economic equivalent of a U.S. dollar note as of the closing date (determined by reference to the U.S. dollar amounts to be received by the Noteholder under the Swap Agreement, both in terms of principal and interest). These reference amounts are used to calculate traditional Make-Whole and Modified Make-Whole payment amounts (employing the Model Form Note Purchase Agreement definitions thereof as against those payments to be received under the Swap Agreement).

<u>Changes to Updated Model Form Swap Breakage Indemnity</u>:

As background for your review of the draft of the Updated Model Form Swap Breakage Indemnity, note that we started with the Existing Model Form Swap Breakage Indemnity as a basis and incorporated the following material updates and changes[2]:

1. In Section 8.[X](a) and (b), we have updated the definitions of "Make-Whole Amount" and "Modified Make-Whole Amount" to conform to the updates to the counterpart definitions included in the recently updated Model Form Note Purchase Agreements (in 2015 for the Model X Forms and 2016 for the domestic Model Forms), primarily relating to: (i) the definitions of "Reinvestment Yield" and "Remaining Average Life" in respect of Non-Swapped Notes and (ii) the definitions of "Swapped Reinvestment Yield" and "Swapped Note Remaining Average Life" in respect of Swapped Notes. Otherwise, please note that definitions of "Make-Whole Amount" and "Modified Make-Whole Amount" work generally the same between the Existing Model Form Swap Breakage Indemnity and the Updated Model Form Swap Breakage Indemnity.

2. In Section 8.[X] (b), with respect to the definition of "Swapped Note", we clarified that if there is any Note that is a Swapped Note outstanding as of the date on which the Issuer has provided notice of prepayment or offer of prepayment or purchase of such Note pursuant to Section 8 or such Note has become due and payable pursuant to Section 12.1, then such Note shall be deemed to be a Swapped Note until payment in full of all amounts thereunder[3]. This goes to benefit both the Noteholders and Issuer. The Noteholders benefit since they may terminate their Swap Agreements in connection with a prepayment or enforcement but of course will still need to be indemnified for any Swap Breakage amounts in connection therewith and so will need their Note to be a Swapped Note for purposes of the swap provisions under the Note Purchase Agreement. The Issuer benefits so that if a Noteholder terminates a Swap Agreement and the Noteholder is "in the money" with respect to the cash flow swap under the Swap Agreement, then the Note will continue to be a Swapped Note for purposes of the swap provisions under the Note Purchase Agreement and the Issuer will benefit from any Swap Breakage Gain.

3. In Section 8.[Y](a), in addition to providing for Swap Breakage Amount in connection with a *prepayment* of a Swapped Note under Section 8 of the Note Purchase, we also provided for Swap Breakage Amount in connection with any *purchase* of a Swapped

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[2] Note that there are other changes also included in the Updated Model Form Swap Breakage Indemnity that primarily relate to clean-up, clarifications or are otherwise self-explanatory.

[3] Under the Existing Model Form Swap Breakage Indemnity, the definition of "Swapped Note" simply provides that "a Swapped Note shall no longer be deemed a Swapped Note for so long as the related Swap Agreement ceases to be in force in respect thereof."

Note under the "open market" tender offer purchase provision of the Note Purchase Agreement.

4. In Section 8.[Y](a), in connection with a Swap Unwind Event consisting of a prepayment or purchase of a Swapped Note under Section 8 of the Note Purchase Agreement we provided for payment of Swap Breakage Amount *following* the payment in full of all other amounts owing on the Swapped Notes (*i.e.,* principal, accrued interest and Make-Whole Amount or Modified Make-Whole Amount). In this regard, after such payments have been made on the Swapped Note then the Noteholder must notify the Issuer of any Swap Breakage Amount within a reasonable period of time thereafter and in reasonable detail (a "**Swap Breakage Amount Notice**") and either, as applicable (i) the Issuer must pay to the Noteholder any Swap Breakage Loss (*e.g.,* the Noteholder is "out of the money" under the cash flow swap under the Swap Agreement) within 5 business days following such notice or (ii) the Noteholder must pay to the Issuer any Swap Breakage Gain (*e.g.,* the Noteholder is "in the money" under the cash flow swap under the Swap Agreement) within 5 business days following such notice.

   This is a departure from the Existing Model Form Swap Breakage Indemnity where (i) any Swap Breakage Loss is paid from the Issuer to the Noteholder *concurrently* with the prepayment or purchase of the Swapped Note and (ii) any Swap Breakage Gain is *deducted from* the principal, interest and Make-Whole Amount or Modified Make-Whole Amount to be paid in connection with any prepayment or purchase of a swapped Note. The two primary reasons for this change are that: (1) where under the Existing Model Form Swap Breakage Indemnity the determination of any Swap Breakage Amount was to be based off of a hypothetical termination or amendment of a Swap Agreement and calculation of Swap Breakage Amount in connection therewith, under the Updated Model Form Swap Breakage Indemnity any Swap Breakage Amount is based on an actual termination or amendment of a Swap Agreement resulting from any such prepayment or purchase of Swapped Notes (see Paragraph 7 below for an explanation of this change in the Updated Model Form Swap Breakage Indemnity) and (2) some Noteholders will prefer not to terminate or amend their Swap Agreement until they are certain of receiving the prepayment in full (otherwise Noteholders could risk being unhedged on their Swapped Note if the prepayment or purchase does not occur).

5. In Section 8.[Y](a), in connection with a Swap Unwind Event consisting of an acceleration of a Swapped Note under Section 12.1 of the Note Purchase Agreement we provided for (i) the Issuer to pay to the Noteholder any Swap Breakage Loss within 5 business days following receipt by the Issuer of a Swap Breakage Amount Notice and (ii) the Noteholder to pay to the Issuer any Swap Breakage Gain within 5 business days *following* the payment in full of all other amounts owing on the Swapped Notes (*i.e.,* principal, accrued interest and Make-Whole Amount or Modified Make-Whole Amount).

In the case of reimbursement of any Swap Breakage Gain from the Noteholder to the Issuer, this is a departure from the Existing Model Form Swap Breakage Indemnity in two respects. The Updated Model Form Swap Breakage Indemnity makes clear that any such Swap Breakage Gain is only paid to the Issuer *following* payment in full of principal, accrued interest and Make-Whole Amount or Modified Make-Whole Amount on the Swapped Note, whereas the Existing Model Form Swap Breakage Indemnity provided for Swap Breakage Gain to be *deducted from* the Make-Whole Amount or Modified Make-Whole Amount upon repayment of a Swapped Note pursuant to Section 12.1 of the Note Purchase Agreement. The first change is intended to clarify that before any Swap Breakage Gain is paid to the Issuer all other amounts due on the Swapped Notes have been paid in full. While this was also the intention in the Existing Model Form Swap Breakage Indemnity, the language in the Existing Model Form Swap Breakage Indemnity was leaving open for question whether Swap Breakage Gain could be netted against Make-Whole Amount or Modified Make-Whole Amount prior to full repayment of a Swapped Note. There have been instances over the last several years where Issuers have requested that Swap Breakage Gain be netted against Make-Whole Amount, principal and interest upon the Swapped Note becoming immediately due and payable pursuant to Section 12.1 (as opposed to at the time of full repayment of the Swapped Note). In addressing this issue, Investors have made clear that it is their view that any Swap Breakage Gain should only be provided to the Issuer after payment in full of principal, interest and Make-Whole Amount are received in full. Otherwise, in a bankruptcy scenario where a claim will likely only be paid in part, the immediate netting of swap gain against principal, interest and Make-Whole Amount will result in a further reduction of the realized recovery where the swap gain could buffer some of that loss. Further, in an enforcement/acceleration that is outside of bankruptcy it would be fair to the Issuer since they owe the full amount of principal, interest and Make-Whole Amount and the Issuer would in fact receive the swap gain once it paid in full those amounts.

The second change in the Updated Model Form Swap Breakage Indemnity provides for reimbursement to the Issuer of the full amount of any Swap Breakage Gain (after payment in full of all other amounts owing on the Swapped Notes) whereas the Existing Model Form Swap Breakage Indemnity provided for deduction of Swap Breakage Gain only against Make-Whole Amount or Modified Make-Whole Amount. This is in line with more of market practice today and is a more balanced approach (after giving effect to the full repayment of a Swapped Note, as provided above). But, Noteholders should be no worse off in terms of their net Dollar amount retained had it been a US Dollar denominated investment.

6. Section 8.[Y](b) of the Updated Model Form Swap Breakage Indemnity embodies the principal goal of the TPMC to simplify, streamline and reflect actual practice of the calculation of swap indemnity amounts resulting from an amendment or termination of a Swap Agreement in connection with a Swap Unwind Event. In this regard, the Updated Model Form Swap Breakage Indemnity seeks to update the current methodology employed to calculate swap indemnity amounts, referred

to by the Existing Model Form Swap Breakage Indemnity in a formula determined as either the "Net Loss" or the "Net Gain" and plus/minus any "Swap Breakage Amount".[4] Specifically, the Updated Model Form Swap Breakage Indemnity removes the "Net Loss" and "Net Gain" calculation and simply refers to a new defined term, "Swap Breakage Amount", which is to be paid to or received from the swap counterparty under the Swap Agreement with a Noteholder. In this regard, the Noteholder and the swap counterparty would agree to include as part of the early termination or amendment of the Swap Agreement, in addition to the swap unwind costs, an exchange of final principal and accrued interest payments (called an "*accelerated exchange of notional*"). This one number is the amount to be economically transferred to or from the Issuer without needing to apply more of a formula base (as was the case with "Net Loss" and "Net Gain" under the Existing Model Form Swap Breakage Indemnity).

As stated above, the Noteholder will need to ask the swap counterparty for a Swap Breakage Amount calculation that includes an "accelerated exchange and payment of principal amounts and associated accrued and unpaid interest". This means that when the Swapped Note is prepaid early, and the Swap Agreement is amended or terminated, the Noteholder will contract with the swap counterparty for the right to deliver to the swap counterparty the Swapped Note Called Principal (with accrued interest), and in return the Noteholder will receive the Swapped Note Called Notional Amount (with accrued interest). Please note, however, that in the case of a Swap Unwind Event resulting from a Swapped Note becoming or being declared to be immediately due and payable pursuant to Section 12.1 of the Note Purchase Agreement (as opposed to a prepayment under Section 8 of the Note Purchase Agreement), the parenthetical at the end of Section 8.[Y](b)(i) of the Updated Model Form Swap Breakage Indemnity provides for a hypothetical "accelerated exchange and payment of principal amounts and associated accrued and unpaid interest" (the pertinent language in Section 8.[Y](b)(i) being (with *emphasis* added) "… *as if* such remaining associated principal payments and associated accrued and unpaid interest *had been* accelerated and made at the time of the settlement of such

[4] Under the Existing Model Form Swap Breakage Indemnity terminology, the "Net Loss" or "Net Gain" is defined as the difference between: (1) Swapped Note Called Notional Amount (with accrued interest) and (2) Swapped Note Called Principal (with accrued interest), *plus/minus* Swap Breakage Amount.

In determining the "Net Loss" or "Net Gain", the traditional swap formula compares the difference between: (1) the USD equivalent of principal and accrued interest (which is reflected in the USD side of the cash flow hedge in the Swap Agreement) (the Swapped Note Called Notional Amount) and (2) all amounts of principal and accrued interest due under the Swapped Note (the Swapped Note Called Principal), plus/minus Swap Breakage Amount. *Note that for purposes of prong (2) of the calculation, all amounts under the Swapped Note are converted into USD at the then current exchange rate (which under the Existing Model Form Swap Breakage Indemnity methodology reference is made to the then applicable screen on Bloomberg Financial Markets).* Swap Breakage Amount is generally determined as the swap unwind costs, *e.g.*, the market price to forgo any future payments or obligations under the Swap Agreement.

termination."). So while the Swap Agreement is still *actually* terminated in connection with an acceleration of the Swapped Notes, the "accelerated exchange and payment of principal amounts and associated accrued and unpaid interest" is done on a hypothetical basis in order to determine that part of the Swap Breakage Amount formula (which presumably would be done by seeking a market quote of the same from the swap counterparty when determining the swap unwind costs in connection with terminating the Swap Agreement). The reason for this hypothetical determination is because in an actual accelerated exchange, the Noteholder would have to pay over to the swap counterparty the Swapped Note Called Principal in exchange for the Swapped Note Called Notional Amount. Because there is no certainty when and how much of the Swapped Note Called Principal will be paid by the Issuer in an enforcement (*e.g.,* such as in the case of a bankruptcy), the Noteholder does not want to be in a position to have to come out-of-pocket with respect to the Swapped Note Called Principal (by borrowing such amount or otherwise) at that time of termination of the Swap Agreement. Rather, the Noteholder will just pay the swap unwind costs in connection with the termination of the Swap Agreement and determine the claim, on a hypothetical basis, of the amount that is the difference between the then applicable currency spot rate and the currency swap rate agreed under the Swap Agreement. Together, these would make up the Swap Breakage Amount.

Accordingly, the Swap Breakage Amount encompasses two components: (i) the swap unwind costs *plus* (ii) an amount that is the difference between the then applicable currency spot rate and the currency swap rate agreed under the Swap Agreement (*i.e*., it is the difference between what the Noteholder actually receives and what it contracted to receive under the Swap Agreement). The Noteholder will either pay to or receive the Swap Breakage Amount from the swap counterparty. This Swap Breakage Amount will be paid to or received from the Issuer. Thus, the Noteholder is neutral as to the Swap Breakage Amount.

One the one hand, the Existing Model Form Swap Breakage Indemnity calls for an exchange between the Noteholder and the Issuer of either the Net Loss or the Net Gain, which is determined by determining a swap breakage amount and applying a formula designed to take into account of the economic value of an exchange of principal amounts and accrued interest (to put the Noteholder in the same position as if the transaction were a USD issuance on day one). On the other hand, the Updated Model Form Swap Breakage Indemnity calls for an exchange between the Noteholder and the Issuer of a "Swap Breakage Amount" that includes both the swap unwind costs and the economic value of an exchange of principal amounts and accrued interest. The two methodologies should result in the same answer because they are algebraically equivalent.

Please see attached **Exhibit A** for sample swap breakage calculations, both under the Existing Model Form Swap Breakage Indemnity and the Updated Model Form Swap Breakage Indemnity.

Advantages to the Updated Model Form Swap Breakage Indemnity approach:

- Fewer rate quotes are needed as the economic value of an exchange of a foreign note principal payment with the USD equivalent is included into the swap breakage price to be paid to (or received from) the swap counterparty
- Noteholder and the Issuer remove FX variance between time of calculation of payments and time of execution of agreements and delivery of payments
- Easier closing mechanics are anticipated (again, because the swap counterparty both terminates the swap and provides the exchange of principal amounts)
- The combination of simpler execution (fewer prices to reference) and fewer calculations to perform means an easier process during a stressful prepayment scenario

7. Finally, in Section 8.[Y](b), in a break from the Existing Model Form Swap Breakage Indemnity (although in line with actual practice), we have now provided for an actual amendment or termination of a Swap Agreement of a Noteholder with respect to determining its Swap Breakage Amount in connection with a Swap Unwind Event. This is a departure from the Existing Model Form Swap Breakage Indemnity where Net Loss and Net Gain could be determined on a *hypothetical* termination of a Swap Agreement.[5] This hypothetical termination permitted under the Existing Model Form Swap Breakage Indemnity led to certain concerns being raised in the market as to how Noteholders would calculate Net Loss and Net Gain (specifically the "Swap Breakage Amount" component since this is market determined, *i.e.*, "marking to market"), and therefore leading to complex negotiations of certain assumptions and stipulations to be agreed to in determining such amount, which assumptions and stipulations may not be consistent with how Noteholders are in reality terminating their Swap Agreements and therefore leading to potential gaps in the swap indemnity. Under the Updated Model Form Swap Breakage Indemnity the Swap Breakage Amount is determined as a result of an actual amendment or termination of a Swap Agreement and is to be determined by the Noteholder in good faith and in a commercially reasonable manner in accordance with customary practices for calculating such amounts under the ISDA 1992 Multi-Currency Cross Border Master Agreement or ISDA 2002 Master Agreement, as applicable.

[5] As described in footnote 4 above, the traditional swap formula under the Existing Model Form Swap Breakage Indemnity consists of: (1) determining the "Net Loss" or "Net Gain" as the difference between: (a) Swapped Note Called Notional Amount (with accrued interest) and (b) Swapped Note Called Principal (with accrued interest) (to be converted in USD at current spot rates), *plus/minus* Swap Breakage Amount; and (2) seeking market quotes with respect to determining the Swap Breakage Amount (which is the market price to forgo any future payments or obligations under the Swap Agreement).

Note that under Section 8.[Y](a) of the Updated Model Form Swap Breakage Indemnity, a Noteholder holding a Swapped Note is required to report to the Issuer in writing its Swap Breakage Amount within a reasonable period of time following a Swap Unwind Event. This will require the Noteholder to amend or terminate its Swap Agreement during such time period to give effect to any such Swap Unwind Event. Please note that the TPMC did discuss the provision requiring Noteholders being required to terminate their Swap Agreements in connection with a Swap Unwind Event, and this was confirmed with TPMC representatives of the insurance institutions and their derivatives teams to confirm this is acceptable from an institutional policy standpoint. The responses back were that it was acceptable. Generally speaking, both under NY insurance law and consistent with hedge accounting treatment an insurance institution would need to terminate a swap if there is no longer a transaction backing it (i.e., there cannot be a "naked" swap).

We ask that you please provide any comments you may have to a member of the Transaction Process Management Committee by **July 20, 2018**. Note that the drafts of the Updated Model Form Swap Breakage Indemnity and the Swap Indemnity Letter are also being shared with other constituents in the USPP market, such as the PPIA and investment bankers and advisors. We are also soliciting their comments on the forms. We also request that you share this comment draft with any and all colleagues in your respective institutions and law firms, and solicit their comments and suggestions. Thank you for your participation.

Charles J. Kolin
Greenberg Traurig, LLP
Co-Chair of the TPMC

Attachment
cc:

Matthew E. Gabrys *Co-Chair* - The Northwestern Mutual Life Insurance Company
Brian A. Bates - Morrison & Foerster (UK) LLP
Matthew J. DelRosso - New York Life Investment Management LLC
Daniel J. Favero - Mayer Brown LLP
Eduardo J. Fernandez - Willkie Farr & Gallagher LLP
Armando M. Gamboa - Prudential Financial, Inc.
Anthony Goodman – Barings LLC
Timothy F. Hodgdon - TIAA-CREF
Edward Holmes – Berger Legal LLC / Holmes Legal PLLC
Christopher E. Lawrence - Morgan Lewis & Bockius LLP
Nicolette Lopez - MetLife
R. Brendan Olin - Unum Group

David E. Pemstein - John Hancock Life Insurance Company
Michael Shepherd – Genworth Financial
Mark A. Sternberg - Schiff Hardin LLP
Clayton T. Hufft - AIG Investments
Anthony D. Yager – Chapman and Cutler LLP

<u>**Exhibit A**</u>

Sample Swap Breakage Calculations

[See attached.]

Swap Breakage Sample Calculations

Working Example – Swapped Note Terms on Note Issuance Date:

Note Issuance Date:	June 15, 2010
Note Maturity:	June 15, 2020
EUR Principal Amount:	EUR 28,000,000
EUR Interest Rate:	5.20% (June 15 and December 15)
Exchange Rate on June 15, 2010:	1.15 EUR = 1.00 USD
USD Equivalent on June 15, 2010:	USD 24,348,000
USD Fixed Rate (on the Swap Confirmation):	4.90%

Swap Breakage Sample Calculations

Working Example – Swapped Note Terms on Prepayment Date:

Assume an early prepayment on March 15, 2018.	
Exchange Rate on March 15, 2018:	0.95 EUR = 1.00 USD
Swap Breakage (or swap unwind costs, via market quotation):	(USD 4,111,111)
Swapped Note Called Notional Amount:	USD 24,348,000
Accrued Int. on Swapped Note Called Notional Amt.	
= 24,348,000 x 4.90% applied for three months	USD 298,263
Swapped Note Called Notional Amount (+ accrued interest):	USD 24,646,263
Swapped Note Called Principal:	EUR 28,000,000
Accrued Int. on Swapped Note Called Principal	
= 28,000,000 x 5.20% applied for three months	EUR 364,000
Swapped Note Called Principal (+ accrued interest):	EUR 28,364,000
converted into USD at current spot rate	
EUR 28,364,000 divided by (0.95)	USD 29,856,842
Swap Breakage Amount (paid by Noteholder in this case):	USD (4,111,111)

Swap Breakage Sample Calculations - Existing Model Form Swap Breakage Indemnity

Application of Swap Indemnity under Existing Model Form Swap Breakage Indemnity Formula:

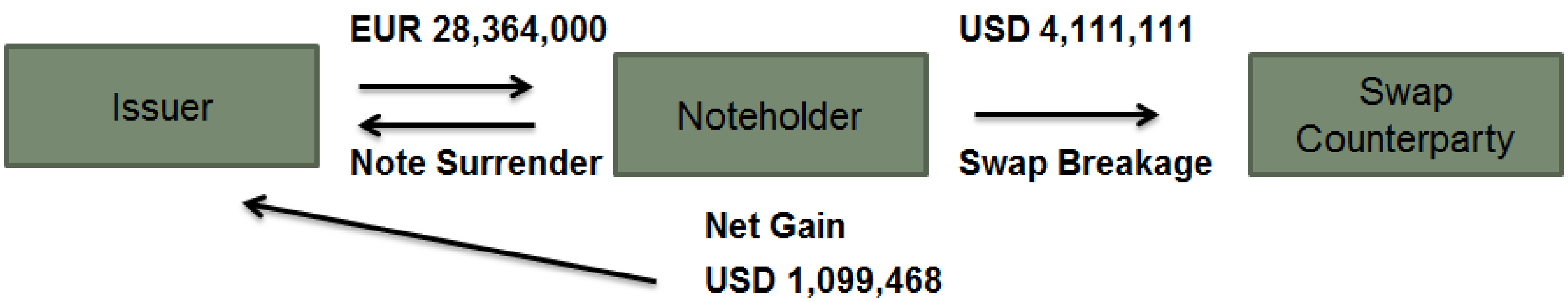
"Net Gain" is the difference between:

(a) USD **29,856,842** minus USD **4,111,111**; and

(b) USD **24,646,263**

Which is equal to: USD **1,099,468**

Swap Breakage Sample Calculations - Existing Model Form Swap Breakage Indemnity



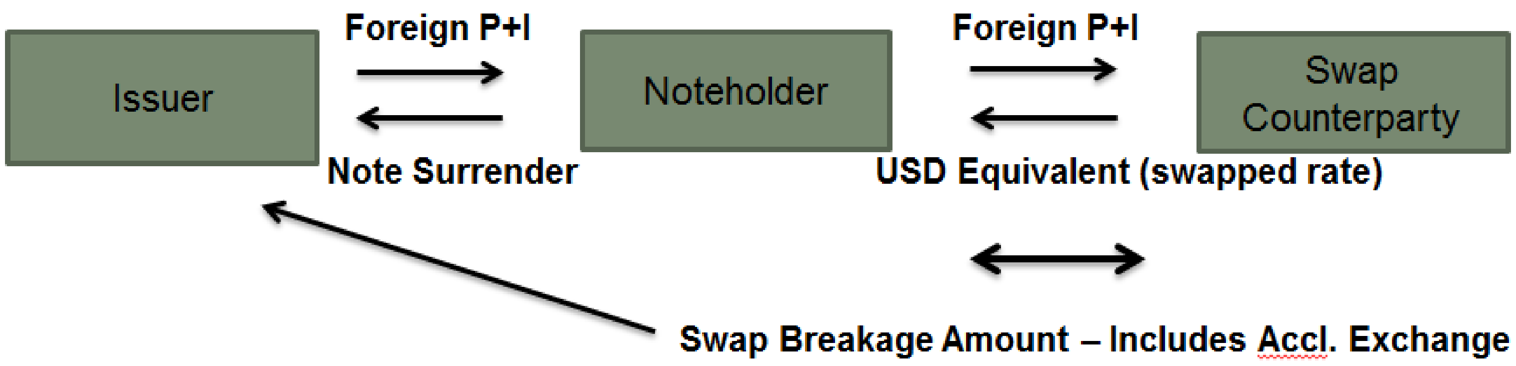
Swapped Note Called Principal (+ accrued interest):	EUR **28,364,000**
converted into USD at current spot rate	
EUR 28,364,000 divided by (0.95)	USD **29,856,842**
Less: Swap Breakage Amount (paid by Noteholder in this case):	USD **(4,111,111)**
Less: net gain (paid to Issuer by Noteholder in this case)	USD **(1,099,468)**
Equals:	USD **24,646,263 ****

** This is equal to the Swapped Note Called Notional Amount (+ accrued interest) Noteholder would have received under its Swap Agreement at maturity.

Swap Breakage Sample Calculations – Updated Model Form Swap Breakage Indemnity (to Achieve the Same Economics)

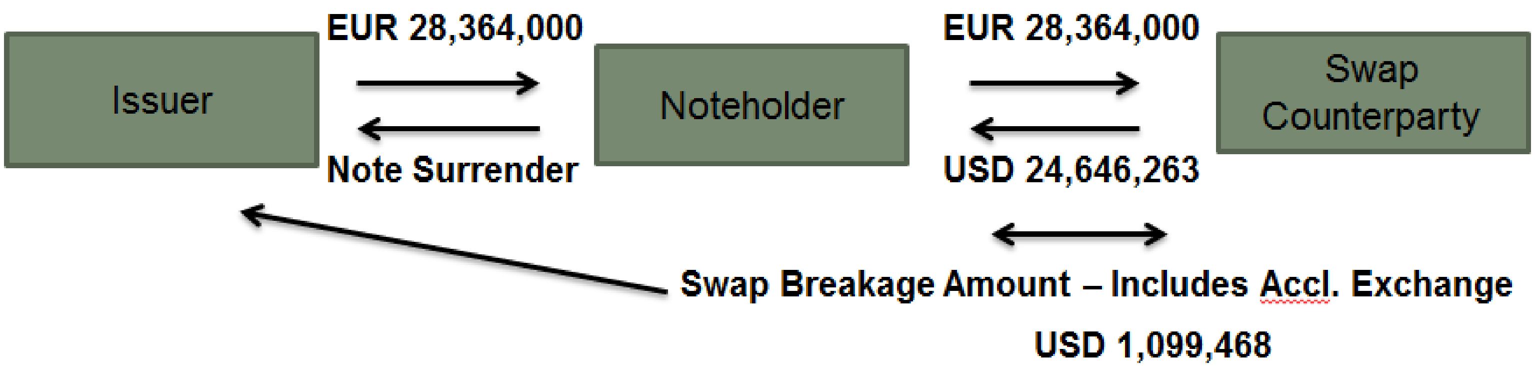
The Noteholder will request from the swap counterparty a Swap Breakage Amount quote that includes "**an accelerated exchange and payment of principal amounts and associated accrued and unpaid interest.**"

Cash Flows Upon Early Prepayment:



The Swap Breakage Amount (positive or negative) is returned to or paid by the Issuer; it is algebraically equivalent to the calculation of Net Loss or Net Gain under the traditional method.

Swap Breakage Sample Calculations – Updated Model Form Swap Breakage Indemnity (to Achieve the Same Economics)



Swapped Note Called Principal (+ accrued interest):	EUR **28,364,000**
converted into USD at current spot rate	
EUR 28,364,000 divided by (0.95)	USD **29,856,842**
Less: Swap Breakage Amount (paid by Noteholder in this case):	USD **(4,111,111)**
Less: net gain (paid to Issuer by Noteholder in this case)	USD **(1,099,468)**
Equals:	USD **24,646,263 ****

** This is equal to the Swapped Note Called Notional Amount (+ accrued interest) Noteholder would have received under its Swap Agreement at maturity.