June 7th, 2021

VIA Email: rule-comments@sec.gov

Ms. Jill M. Peterson, Assistant Secretary
U.S. Securities & Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re:File No. SR-FINRA-2021-008
Proposed Rule Change Relating to Security-Based Swaps

Dear Ms. Peterson,

Provable Markets LLC ("PML" or the "Firm") appreciates the opportunity to comment on the proposed rule change submitted by the Financial Industry Regulatory Authority, Inc. ("FINRA") set out in File No. SR-FINRA-2021-008, to implement a governance structure for the trading of Security Based Swaps ("SBS") by FINRA-regulated broker-dealers.

As a proper introduction, PML has filed a New Member Application ("NMA") with FINRA to become a broker-dealer operating an alternative trading system ("ATS") to bring greater transparency, liquidity, and access to the securities lending market, and to corresponding synthetic markets that offer derivative access to financing-related transactions. More specifically as it pertains to this comment letter, the Firm is intent on furthering the goals of Title VII of the Dodd-Frank Act of 2010 ("Title VII"). In PML's pending Form NMA, the Firm is making an application for its proposed ATS to provide a marketplace for Equity Total Return Swaps. Generally speaking, these SBSs will fall under the FINRA definition of uncleared "Basic SBS", but the ATS platform also has the potential to cover swaps that could be deemed "Complex"[1].

PML offers the following comments to the FINRA Staff (the "Staff") from two perspectives. The first is in the direct interest of the Firm itself. As a future operator of an ATS platform, PML does not intend to engage in principal trading of SBS; however, once its Form NMA is approved by FINRA, and it is cleared by the U.S. Securities and Exchange Commission's (the "SEC") to operate its ATS, PML will be a direct SBS market participant. Second, our comments are also offered from the vantage of PML as a potential marketplace for Security Based Swaps Dealers ("SBSDs"), Major Security Based Swap

[1]SR-FINRA-2021-008 at pgs. 67-68
https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2021-008.pdf.

Participants ("MSBSPs"), and all other market participants, including FINRA broker-dealers, who might seek to engage in SBS activities.[2]

As noted above, and in more detail in PML's Form NMA, the Firm is seeking to provide a more accessible, efficient, and fair system to source liquidity and provide transparency for Securities Lending and related financing markets, including the evolving swaps market. We believe the current market can benefit from improved market structure that new technology and expanded access for SBS participants of all types can provide. However, that can only be achieved in the context of a harmonious (i.e., cross-regime) regulatory structure that provides for consistent, even-handed treatment across regulated entities, and that imposes regulatory obligations that are carefully calibrated to address the specific risks that these products and market participants pose. We applaud FINRA for the rigorous and thoughtful proposal set forth in the proposed rule change. We believe the proposal has, in fact, sought to be consistent with the objectives outlined above. In formulating the proposal, FINRA has also sought to craft measures that are consistent with the goals set out in Title VII, and seeks to accomplish this while simultaneously taking into consideration the complexities of the SBS market and its many components.

The Firm appreciates previous comments on the FINRA proposed rule change, in particular the detailed comments provided by SIFMA, as well as the notable outreach by FINRA to market participants when drafting the proposed changes. As such, PML is strongly supportive of the vast majority of the substantive proposals - including, but not limited to - the exemption of SBS activities from the Series 6000, 7000, and 11000 Rules under proposed Rule 0180(b).

PML would like to respectfully submit comments with regards to potential confusion around some of the other Rule proposals. Generally speaking, PML's view is that varying regulatory requirements by FINRA, the SEC, and the Commodity Futures Trading Commission ("CFTC") can benefit from further alignment and continuity where possible. FINRA broker-dealers who engage in SBS activities on an integrated basis are the entities primarily affected by the FINRA proposed rule change. Those firms, by and large, will be relatively smaller participants in the swaps markets, in comparison to SBSDs and MSBSPs, and smaller even than FINRA broker-dealers that establish separate broker-dealer affiliates for their SBS activities. We support comments made by SIFMA previously in response to FINRA Regulatory Notice 20-36 that market participants can greatly benefit from standardized rules and/or the ability to "opt-in" to the rules and regulations adopted by the SEC that are applicable to the larger, more firmly established SBS market participants (e.g., SBSDs). In the end, such an approach will reduce barriers to entry into this market, provide broader and fairer public access to the market, and thus increased transparency, improved pricing, and liquidity in the long run.

PML feels there is potential for the proposed rules to impose costs on FINRA broker-dealers, both borne and yet to be borne, that may have the unintended effect of discouraging, or even preventing, the broker-dealers from entering the SBS market. This will continue to force participants to operate in a market with minimal choice and transparency. Indeed, if investors who maintain traditional investment accounts with FINRA broker-dealers are forced to enter into new relationships with SBSDs in order to engage in trading strategies involving swaps, it will likely cause those investors to forego use of swaps

[2] While PML has followed the progress of the SEC's rulemaking on SBS, the firm did not participate directly in the comment process for FINRA Regulatory Notice 20-36, as it preceded our application to register as a broker-dealer / ATS. However, PML intends to have an active voice in forthcoming industry discussions related to SBS regulation.

entirely, a result that can hardly be the intended outcome. We understand that FINRA is keenly aware of these cost considerations and their potential impact on participation in the SBS market. To wit, in the rule filing FINRA notes on numerous occasions that, based on discussions, the impact to "current" participants of the rules would be minimal based on previously set in place policies, procedures, and required technologies. However, the Staff goes on to note in its cost analysis that the proposed rules may result "in some direct costs to member firms that choose to engage in SBS activities in various capacities" [3] While it is natural for any new participant to have costs associated with entering into a new product, we believe the proposal may increase costs and barriers solely for new participants and, more specifically, FINRA registered broker-dealers that participate in SBS through their current broker-dealer, or in a new broker-dealer affiliate that operates on a standalone basis. These acknowledged increased "direct costs" on new market participants who are already facing an uphill battle against larger and more established existing swaps dealers are a burden on competition. As discussed below, some of these burdens can be mitigated, especially if FINRA broker-dealers are subject to, or can opt in to, the same rules that the SEC has adopted for SBSDs..

Under the new SBS rules, those to be registered as SBSDs and MSBSPs upon the "Registration Compliance Date"[4], have likely been in the market for years. Their infrastructure for trading in SBS has been a cost spread over time stretching over a decade in which they have gradually been able to build out technology, operations, legal, compliance, and risk management resources to develop comprehensive platforms for their SBS activities. We applaud the SEC for working to mirror, when at all possible, their framework with existing regulations as defined by the CFTC for swaps.

As a result of these efforts towards harmonization, over the past few years, as participants have worked to comply with CFTC regulatory implementations for Swap Execution Facilities ("SEF")[5], the market has seen an influx of low cost, relatively easy to implement, vendor solutions to achieve compliance, manage margin and collateral, and trade more effectively. Our primary concern is that, by not taking this into account for new entrants, and specific to uncleared swaps, relying on the limited existing players who transact bi-laterally, some of the proposed changes will ultimately hinder the entrance of new participants into the market. The potential for a broader true all-to-all alternative to the existing, relatively closed market structure will thus be hampered.

We believe that, with changes to the CFTC's SEF framework, along with forthcoming SEC SBSEF Rules, there will be more willingness from new entrants, such as large buy-side participants, to enter the market. This has the potential to foster greater liquidity and better pricing. We support a regulatory framework that offers flexibility, but also a level playing field for new or traditionally smaller participants to engage in swaps, with the comfort that the risk management associated with these transactions has improved dramatically with steps taken by FINRA, the SEC, the CFTC, the banking regulators, and other regulators to reduce the systemic risks associated with this market prior to Title VII.

Additionally, with industry groups working together to provide robust standards for transacting, such as SIMM, the need for new or different regulations outside the scope of existing CFTC- and SEC-issued

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[3] See, SR-FINRA-2021-008 at pg. 89 https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2021-008.pdf.
[4] See, SR-FINRA-2021-008 at pg. 6 https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2021-008.pdf.
[5]See 17 CFR Part 37
https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-12242a.pdf

rules is less compelling, and may in fact impede the expansion of SBS markets. As such, we believe a more beneficial approach would be adoption by FINRA of a set of rules that mirror or harmonize SEC (and where applicable, CFTC) Rules, rather than adopting a different set of rules that are "similar" or "comparable." We are concerned that such comparable or similar approaches may in fact impose real cost differentials and result in material competitive burdens. Moreover, even if the proposed FINRA Rules, in their current form, are "comparable" or "similar" to parallel SEC rules that have been adopted for SBSDs and MSBSPs, as currently written and interpreted, there is no assurance that they will remain so, as the SEC rules are written or interpreted, or as No-Action Letters or interpretive guidance is provided by the SEC on those rules. At a general level, we believe FINRA should give consideration to incorporating by reference into the parallel FINRA Rule the applicable SEC Rules (e.g., as FINRA has done with its regulatory treatment of "finders" in FINRA Rule 2040(s))[6]. As noted earlier, we also strongly agree with the previous response presented by SIFMA that FINRA-regulated broker-dealers be offered the choice to "opt-in" to the relevant SEC SBS Rules as an alternative to following the provisions of the proposed FINRA Rule counterpart.

In addition to the foregoing, PML would like to specifically comment on the following items in SR-FINRA-2021-008 :

I. Treatment of various personnel in SBS Entities - Proposed Rule 0180(g)

Under proposed FINRA Rule 0180(g), FINRA is offering general exemptions to FINRA rules 1210, 1220, and 1240 for those individuals, "whose functions are related solely and exclusively to SBS undertaken in such person's capacity as an associated person of an SBS Entity"[7], citing the goal of reducing unnecessary burdens, a small sample of relevant persons, and a lack of targeted registration, licensing, and CE for SBS. A later footnote states that persons who may be statutorily disqualified[8] as not permissible for this exemption. In both cases, PML questions whether there are likely to be many, or perhaps even any persons associated with a FINRA broker-dealer who are likely to trade SBS exclusively without also engaging in transactions in the underlying equity securities. To the extent there are, we still question the appropriateness of excluding such persons from the requirements to be familiar with the regulatory scheme for the underlying securities. PML believes the overall requirements for such persons to comply with the aforementioned rules are reasonable and not overly burdensome.

It is our belief that, with the right balance of regulatory framework, standardization, and technological innovation, the likelihood of such persons to enter the SBS market has the potential to increase. Additionally, while current test and CE materials may not target SBS specifically, they do require that an associated person have familiarity with the characteristics of the underlying equity securities and their regulatory framework. We believe having such an understanding is important and should be applicable to anyone engaging in SBS activity.

To illustrate, consider the example of PML's proposed ATS. PML's ATS offers the ability to engage in securities lending, SBS, and delta neutral options trading strategies that provide similar economic outcomes. It would be anomalous for some participants in one of these essentially substitutable products

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[6] https://www.sec.gov/rules/sro/finra/2014/34-73954.pdf
[7] SR-FINRA-2021-008 pg. 34 https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2021-008.pdf
[8] SR-FINRA-2021-008 pg. 36 fn. 57 https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2021-008.pdf

(SBS) to fall outside of registration and qualification requirements to which all participants in the other product classes are subject, avoiding regulations (such as FINRA Rule 2111- as we go on in more detail below) to which registrants trading the other products are generally subject. While we note there is reference to SEC overreaching coverage via SEC Rule 18-a3, we see potential for confusion for both exempt persons and "dual-hatted" personnel. For instance, we could envision scenarios in which rules such as FINRA Rule 4530 may come into play. Under the current proposal, if complaints were made against an SBS-only associated person of a broker-dealer, it would be unclear how the rule would be applied, and if the objectives of the rule would be accomplished. We are certain it is not FINRA's intent for the activities of SBS-only personnel to "fall between the cracks," but we are concerned that could be the result of the current proposal. In our view, the burdens imposed on such SBS-only personnel are justified, and the benefits from applying the rules to SBS-only personnel more than offset the potential regulatory confusion or regulatory gaps of this well-intentioned proposal.

We noted FINRA Rule 2111 as a potential area of confusion above. We believe the proposed rule change adds more complexity to the concept of suitability. Specifically, some SBS participants (primarily SBSDs) would fall under the new SEC SBS ules. Those rules modified traditional concepts of suitability to:

> "rephrase the suitability obligation…to make it consistent with the CFTC's parallel suitability requirement in Commodity Exchange Act Rule 23.434(a)(1), which explicitly requires [SBSDs] to understand the risk-reward tradeoff of their recommendations." In doing so, the SEC noted that the SEC's "proposed formulation and the CFTC's formulation would have achieved the same purpose."[9]

Staff goes on to note that, "FINRA acknowledges that the SEC's suitability rule differs in some respects from FINRA's suitability requirements under FINRA Rule 2111."[10] While the goals and objectives of the rules are similar, they are not identical. As such, SBSD's are afforded different treatment as it relates to recommendations of transactions and strategies involving SBS. While this may potentially be minor, it creates another disparity for a non SBSD Entity participating in SBS to manage competing regulations, thus potentially imposing greater burdens on compliance for both non registered and "dual-hatted" personnel.

In summary, while PML supports the registration of any and all persons who are functioning in the SBS market, we believe that either the same substantive regulations should be adopted for all SBS market participants/or an "opt-in" option be provided for SBS Entities to allow for harmonization of FINRA, SEC and CFTC related rules for SBS activities to ensure all participants operate under identical standards.

II. Standards for account statements and portfolio reconciliation- Proposed Rule 0180(f)

The Firm believes there is additional potential for confusion and disparate treatment as it pertains to FINRA Rules 2231 and 4512 relative to SEC Rule 15Fi-3. FINRA notes that there are differences between the rules, and provides exemptions for certain participants. Once again, PML respects FINRA's goal of attempting to reduce burdens for participants on what the current market may "require". However, PML believes with increased activity, this can once again be a burden to some SBS entities, while providing relief to others.

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[9] SR-FINRA-2021-008 pg. 29 fn. 50 https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2021-008.pdf
[10] *Id.*

As noted, "FINRA acknowledges that the SEC's SBS portfolio reconciliation rule differs in some respects from the customer account statement requirements under FINRA Rule 2231"[11]. PML believes the differences are stark. PML strongly supports Portfolio Reconciliation as a vital component to reducing systemic risk and other issues associated with the full lifecycle of SBS. However, as a practical matter, we view the burden of providing account statements based on a pre-defined methodology does serve an important purpose for risk control as well, and is not far out of scope for SBS Entities solely offering swaps. Moreover, the likelihood of an existing SBS Entity that solely holds SBS and related collateral (or to be registered SBSD's) *and* is an affiliate of larger organizations with sufficient infrastructure to comply with Rule 2231 is high in the Firm's opinion.

PML would be supportive of similarly eliminating this exemption given the presumed relatively low cost for an entity exempt under FINRA Rule 0180(f), while adding additional layers of risk management to the market structure.

III. Margin and Collateral

In regards to new proposed Rule 4240, PML once again has concerns regarding the disparate treatment for non-bank SBSD's, more specifically focusing on uncleared SBS. While PML is a strong proponent of regulatory measures that specifically address potential risks within the SBS market, we once again encourage, when at all possible, a system that affords all members the same treatment under the appropriate framework[12].

FINRA Rule 4240 and SEC Rule 18a-3 impose different margin and collateral requirements, depending on whether an entity is designated as an SBSD or a FINRA broker-dealer. We are again concerned that the difference in regulations could hinder the ability of FINRA broker-dealers to compete with SBSDs or other SBS market participants on a level playing field. For example, we can foresee situations where, all else being equal, even substantially capitalized non-bank SBS entities, would potentially choose a higher cost option of facing an SBSD rather than a similarly capitalized FINRA broker-dealer in order to avoid the need for the daily collection of IM and VM . Generally speaking, this could lead to reduced participation, thus having impacts on cost and liquidity overall.

Additionally, as it pertains to proposed Rule 4240(b)(2)(C), PML seeks further clarification in the interest of competition for non-basic SBS, and more specifically uncleared TRS structures. While the Staff notes that there is reason and belief that, "this SBS activity by members that do not plan to register as SBSDs is relatively limited"[13]; the Firm believes the term "limited" is both open to interpretation and may overlook the fact that the SBS market is dynamic, and that market developments (such as PML's proposed ATS platform) may make commonplace transactions that today are considered limited. It is both aligned with

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[11] SR-FINRA-2021-008 pg. 32 https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2021-008.pdf

[12] PML wants to emphasize the overall support and efforts thus far to create harmonization between SEC and CFTC related rules already in place. That said, the Firm does make note that for the overall SBS market, some confusion may arise as it pertains to Uncleared Margin Rules ("UMR") as adopted in 2016 by the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO"), which are currently in phase 4 of 6 for implementation, and will require potentially added compliance costs by participants going forward. See: "Margin Requirements for Non-Centrally Cleared Derivatives" https://www.bis.org/bcbs/publ/d317.pdf

[13] SR-FINRA-2021-008 pg. 68 https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2021-008.pdf

the goals of PML, and more broadly, the goals of Title VII, for a more liquid and transparent market, to see an increase in what is currently limited member activity as a possible outcome in the years to come. In the event that this activity were to become more frequent, the Firm believes that more clarity is needed to create a defined framework and timeline for approvals of such trades by non-SBSD's. Arguably, a key blocker to moving this activity from limited to frequent (and as we support - with the eventual transacting on an SBSEF whether cleared or uncleared) is potential ambiguity around timing and the open-ended nature of some required entries for approval (e.g., "explain all risks of that type of SBS"[14]). As such, we believe that SBSDs are placed at a significant advantage under this framework, and would be able to adapt to, create, and more efficiently manage, new and existing "non-basic" structures that could potentially be accessible via an SBSEF and central clearing facility in the future. While we support ensuring that risk mitigation remains at the fore, we would also support a more clearly defined process for non-SBSDs to evaluate new products within existing or potentially expanded lines of business.

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PML appreciates the opportunity to comment on SR-FINRA-2021-008, and both the SEC and FINRA's time to take into consideration our views. As noted in fn. 2, we look forward to being a more active participant in the ongoing efforts to create a more robust, and thoughtful regulatory structure to foster growth in the SBS markets. If you have any questions, please feel free to contact the undersigned .

Respectfully,

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[14] SR-FINRA-2021-008 pg. 67 https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2021-008.pdf