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opinion

to **SINGULAR EXPRESS PROPRIETARY LIMITED**
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date 08 July 2016

A ITZIKOWITZ our ref
Compliance of the Bulletin your ref
Board with the FMA

RE: COMPLIANCE OF THE SINGULAR BULLETIN BOARD WITH THE FINANCIAL MARKETS ACT

1. INTRODUCTION

- 1.1. We were instructed by Singular Systems Proprietary Limited ("**Singular**") to consider whether its proposed bulletin board on which prospective buyers and sellers of securities will announce their intention to enter into negotiations for the purchase and sale of securities (the "**Bulletin Board**") will constitute an "exchange" as that term is defined in the *Financial Markets Act* 19 of 2012 ("**FMA**").
- 1.2. Our opinion is set out below.

2. DOCUMENTS REVIEWED

In providing this opinion, we examined the 'OTC Express High-Level Specification' document ("**OTC Specification Document**"), which sets out in detail the manner in which the Bulletin Board will operate once it is set up.

3. QUALIFICATIONS AND ASSUMPTIONS

- 3.1. This opinion is confined to considering whether the operation of the Bulletin Board as set out in the OTC Specification Document will constitute an "exchange" as that term is defined in the FMA at the date hereof.
- 3.2. In giving this opinion, we have assumed that the Bulletin Board, once set up, will operate in accordance with the OTC Specification Document.

4. APPLICATION OF THE FMA TO THE BULLETIN BOARD

- 4.1. An "exchange" is defined in the FMA to mean:

"a person who constitutes, maintains and provides an infrastructure-

- (a) for bringing together buyers and sellers of securities;
- (b) for matching bids and offers for securities of multiple buyers and sellers; and
- (c) whereby a matched bid and offer for securities constitutes a transaction;"

4.2. Subject to the qualifications and assumptions set out in paragraph 3 above, we are satisfied that the Bulletin Board will not constitute an "exchange" as that term is defined in the FMA as:

4.2.1. the information which will be displayed on the advertisements which will be posted on the Bulletin Board will not amount to an "offer" capable of acceptance as this concept is understood at common law as, among other things, no price information is displayed on the advertisements, and Singular checks each advertisement before it is displayed on the Bulletin Board to ensure that no price information is displayed; and

4.2.2. the users of the Bulletin Board are at liberty to initiate contact and commence negotiations with any counterparty party without any hint or suggestion from Singular. Even though the Bulletin Board facilitates the coming together of buyers and sellers of securities, such facilitation does not constitute a transaction either at common law¹ or as contemplated in the definition of an "exchange" in the FMA. To the extent that any matching may occur for purposes of constituting a transaction, this will occur at the negotiation phase, as the negotiation process is what enables the parties to match their own bids and offers, and thus 'constitute' the transaction for the purchase and sale of the securities. The parties also draw up their own contract to record the terms of the sale of the securities without any involvement from Singular.

Yours faithfully

Per Prof Angela Itzikowitz

EDWARD NATHAN SONNENBERGS INC

¹ See *Colonial Treasurer v Rand Water Board* 1907 TS 479.