

NOTICE OF PROCEEDINGS

June 24, 2024

Review of Probationary Agency Designation and Agency Applications

The British Columbia Vegetable Marketing Commission (the “Commission”) hereby gives notice of its intention to conduct a review of the Probationary Agency Designation granted to MPL British Columbia Distributors Inc. (“MPL”) by the British Columbia Farm Industry Review Board (the “BCFIRB”) on October 11, 2023, and to review the new agency applications submitted by Mucci International Marketing Inc. (“Mucci”) on May 31, 2024, and Jem-D International dba Red Sun Farms (“Red Sun”) on May 31,2024.

This Notice lays out the background to the review, addresses its intended scope and focus, and sets out the next steps.

BACKGROUND..... 2

 General..... 2

 MPL’s Probationary Agency Designation.....11

 Red Sun’s Previous Agency Application.....14

 Red Sun’s Current Agency Application14

 Mucci’s Current Agency Application14

PROCESS AND NEXT STEPS.....15

APPENDIX.....16

BACKGROUND

General

“Designated agencies” are a critical component of the regulatory system for vegetables in British Columbia. Agencies are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product.

In particular, agencies are businesses that are licensed by the Commission to market regulated vegetables. In this way, the collective power of producers is harnessed to gain market access. Agency designation is a privilege that gives the licence holder the ability to market regulated product to the exclusion of others. The licence is non-transferable and is not approved in perpetuity. In addition, the Commission may review existing agencies to assess if an agency status should be maintained, suspended, made subject to terms or conditions, or revoked.

Under the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c. 330, (the “NPMA”), the Commission can delegate authority to designated agencies to support the purposes of regulated marketing. Among other things, the Commission is empowered to: (a) regulate the time and place at which and to designate the agency through which a regulated product must be marketed; (b) determine the charges that may be made by a designated agency for its services; (c) set the prices, maximum prices, minimum prices or both maximum and minimum prices at which a regulated product or a grade or class of it may be bought or sold in British Columbia or that must be paid for a regulated product by a designated agency and to set different prices for different parts of British Columbia; and (d) authorize a designated agency to conduct pools for the distribution of all proceeds received from the sale of a regulated product and to require that designated agency to distribute the proceeds of sale, after deducting all necessary and proper disbursements, expenses and charges, so that each person receives a share of the total proceeds in relation to the amount, variety, size, grade and class of a regulated product delivered by the person and to make those payments until the total net proceeds are distributed.

The decision on whether to designate a new agency for the marketing of regulated vegetables is determined in the first instance by the Commission, subject to the approval of the BCFIRB [See: *Natural Products Marketing (BC) Act Regulations*, (B.C. Reg. 328/75), s. 8]. Each application for agency designation is assessed by the Commission on its merits against the considerations set out in the General Order. The Commission may exercise discretion to grant an agency designation if it is satisfied that the applicant meets the underlying objectives and principles of the designation, and subject to policy judgements relating to the appropriate number of agencies in a particular industry in particular circumstances.

The designation of a new agency is not a routine matter akin to the issuance of a producer licence. Unlike some other regulated commodities, the vegetable industry is not supply managed. Centralized, coordinated marketing through agencies is the primary mechanism

by which the Commission maintains orderly marketing, promotes the development of the industry, and ensures that producer returns are maximized. Consequently, the decision to grant or refuse agency status is a matter of fundamental marketing policy.

In its January 31, 2017 Supervisory Decision, the BCFIRB said:

7. The specific rules governing agencies differ depending on the needs of the particular regulated industry. What is common across all regulated industries, however, is the agencies are licensed entities whose purpose is to market regulated product on behalf of registered producers. Agencies are licensees whose regulatory role is to harness the collective power of producers to enhance market access for regulated products. They minimize burdens on each producer regarding finding outlets for sales of their delivery allocation (a mechanism for producers to share market access). Agencies also store, ship, and label product for producers. For consumers, they help ensure a steady supply of BC product by contributing to orderly marketing. In all this, one of their key roles is to grow the industry by looking for new markets. As was noted in the March 31, 2016 Workshop Report that was part of the current process, at p. 4: “Agencies competing for the same buyer with the same product do little, if anything, for Producers or Buyers”. Agencies thus play both a key front line role, and a larger strategic role, in assisting the Commission to regulate, manage and grow the industry in an orderly fashion: see generally January 7, 2013 Supervisory Decision, paras. 34 - 38; see also the Commission’s September 21, 2015 Stakeholder Engagement Discussion Paper, pp. 4 - 6. (emphasis added)

Significantly, the BCFIRB’s comments concerning the role of agencies and the undesirability of agencies “competing for the same buyer” reflect an awareness of the natural tension that arises from having multiple agencies. On the one hand, multiple agencies may provide some resiliency and choice for producers. On the other hand, if these agencies are left to their own devices, they might erode producer returns by competing against each other on price in the same market space.

In *Global Greenhouse Produce Inc. et. al. v. BCMB et. al.*, 2003 BCSC 1508, Drost, J. quoted from the Commission’s recommendations to the BCFIRB, as follows:

31. BCHH is currently the sole designated marketing agency for regulated greenhouse vegetables in Districts I & II. Hot House and its tomato producers have been going through a difficult financial period of late, largely as a result of the significant preliminary duty imposed upon it by the U.S. Department of Commerce....It was clear from the evidence presented to the Panel that at least some growers remain largely dissatisfied with the manner in which BCHH has been operating as a marketing agent, and that these growers wish to have an alternative....Simply put, they do not want to do business with

BCHH any longer and they seek the opportunity to market their product more effectively. They may or may not succeed in this regard, but they want to try.

.....

33. The Panel has also considered the impact of a second agency designation on the industry as a whole at this time. Concerns were expressed to the Panel that the existence of a second seller of B.C. product would result in price erosion in the market place. The Panel recognizes that Globals (sic) proposed marketing plan will result in additional access to markets and enhanced sales opportunities. The Global application attempts to deal with these issues by committing to market the product outside BCHH's traditional markets of western Canada and the I-5 Corridor. BCHH expressed doubt that any such commitment would be effective.

.....

35. In the result, the Panel has concluded that, in light of the circumstances in which the hothouse industry is currently operating it is an appropriate time to provide producers with an alternative to marketing product through BCHH.... (emphasis added)

At the time of the Global Greenhouse case, the Commission acted to address the detrimental impact of inter-agency competition in the greenhouse sector by imposing strict territorial limitations. The necessity for regulatory mechanisms to protect against price erosion from inter-agency competition is reflected in the BCFIRB's January 31, 2017 Supervisory Decision, as follows:

72. The Commission's reasons noted that these criteria were being applied in a broader context that considered the appropriate marketing options for growers (while it is beneficial to have multiple agencies, too many agencies can lead to market confusion and undermine orderly marketing), the local supply for a proposed agency, an agency's ability to manage its delivery allocation and plan for positive growth as opposed to merely competing in existing markets and the Commission's reliance on the timely market intelligence provided by agencies to the Commission when the Commission establishes minimum price.

.....

85. Despite the criticisms that some, including the agencies, have leveled over the years about the regulatory system, all of them support ongoing regulation as being in the best interests of the industry – as supporting the fundamental goals of regulated marketing, which ensures the equitable and orderly marketing of natural products, which helps mitigate the extreme and

sometimes destructive swings in production and price that can take place absent regulation. These extreme swings can be detrimental to producers and the value chain, including consumers. BCFIRB decided, in our June 15, 2016 supervisory decision letter that “regulation of the Vancouver Island vegetable industry continues to represent sound marketing policy”.

In summary, the designation of a new agency should only follow where the Commission is satisfied that the presence of an additional agency will not result in price erosion, lead to market confusion or otherwise undermine orderly marketing. Furthermore, the Commission must be satisfied that the presence of an additional agency will enhance orderly marketing, promote the development of the industry, and ensure that producer returns are maximized. There is a high threshold that must be satisfied before an application for agency status will be granted.

These considerations are expressed in more detail in sections 218 to 227 of the Commission’s General Order of May 29, 2024. The relevant provisions are as follows:

Application for Agency Status

218. A Person may apply in writing to the Commission for an order designating that Person as an Agency through which a regulated product may be marketed in accordance with the Commission’s General Order as amended from time to time.
219. Unless otherwise specified by the Commission in writing, applications for Agency status must be submitted to the Commission on or prior to June 1, for consideration by the Commission between June 1 and September 15 of that calendar year.
220. Applications for Agency status must include a detailed business plan addressing:
 - a) the structure of the proposed Agency, including:
 - (i) the identities of the principals of the proposed Agency;
 - (ii) the identities of all shareholders and other Persons with a direct or indirect financial interest in the proposed Agency; and
 - (iii) particulars of the management and staff of the proposed Agency, including their marketing experience and skill level.
 - b) commencement and operational capacity, including:

- (i) the date that the applicant proposes to commence operations;
 - (ii) particulars of the facilities from which the proposed Agency will operate;
 - (iii) particulars of any other facilities that may be owned or operated by the proposed Agency including grading, packing, warehouse, and storage facilities; and
 - (iv) particulars of the applicant's capacity to market regulated product, the methods by which this is to be achieved, and the applicant's short and long-term objectives in relation thereto.
- c) access to regulated product, including:
- (i) particulars of how the applicant intends to secure arrangements with Producers who will ship regulated product to the proposed Agency, and the dates on which such arrangements are expected to be secured;
 - (ii) a copy of the applicant's proposed PMA in a form that complies with the minimum standards established by the Commission;
 - (iii) copies of letters of commitment obtained from at least two (2) prospective Producers, who are at arms-length from each other, who wish to market regulated product through the proposed Agency; and
 - (iv) the amount of existing storage crop delivery allocation (tons) and/or greenhouse production allocation (M2) that is proposed to be transferred to the proposed Agency.
- d) marketing strategy and framework, including:
- (i) particulars of the applicant's target market, including the type of regulated product intended to be marketed, the total amount of regulated product to be marketed by the applicant, and the total amount of regulated product to be received from each Producer who will market through the proposed Agency;
 - (ii) the applicant's assessment of market supply and demand, including an assessment of market supply and

demand in areas where the proposed Agency intends to market regulated product;

- (iii) particulars of the applicant's intended market placement of delivery and production allocation by target market category as defined by the Commission;
- (iv) particulars of the applicant's intended application of delivery and production allocation towards the domestic (BC) market and towards the export (external to BC) markets;
- (v) particulars of the applicant's intended volumes of sales packed for end use and in bulk for further processing and/or repacking;
- (vi) the names and contact information of proposed customers of the proposed Agency;
- (vii) copies of all letters of commitment obtained from proposed customers of the proposed Agency; and
- (viii) particulars of any commercial agreements with third parties that may assist with transportation, grading, packaging, storage, or marketing on behalf of the proposed Agency.

e) operational procedures, including:

- (i) particulars of quality assurance procedures relating to:
 - a. Biosecurity Program, including an acceptable trace-back and recall system;
 - b. grade compliance;
 - c. handling and distribution;
 - d. record keeping; and
 - e. any label or product identification system.
- (ii) particulars of the manner in which shared market access will be managed among the proposed Agency's Producers, including the method by which proceeds from sales would be distributed; and

- (iii) particulars of the manner in which shipments of regulated storage crops will be monitored in relation to delivery allocation, and the proposed Agency's production plan.
- f) financial viability and risk management, including:
 - (i) an asset statement;
 - (ii) a breakdown of all disbursements, expenses, and charges to be deducted from sales proceeds on payment to Producers;
 - (iii) forecasts of anticipated earnings, cash flow and sales;
 - (iv) copies of all letters of reference obtained from financial institutions supporting the proposed Agency;
 - (v) a copy of a valid business licence;
 - (vi) a copy of a performance bond, letter or credit, or particulars of a contingency plan addressing how Producers will be paid for regulated product in the event that the Agency encounters financial difficulties; and
 - (vii) proof of product, third party, and director liability insurance.
- g) advancement of Producer and industry interests, including:
 - (i) particulars of how the proposed Agency would prioritize the marketing of regulated product;
 - (ii) particulars of how the proposed Agency would encourage collaboration in Agency decision-making with their Producers regarding the production, transportation, packaging, storage, and marketing of Regulated Crops; and
 - (iii) details on how the proposed Agency would comply with all applicable minimum pricing Order in relation to sales occurring both within and outside the Province.

221. Applications for Agency status must also:

- a) demonstrate to the satisfaction of the Commission that the applicant's primary business objective is the marketing of regulated product in a manner that benefits the Commission and the British Columbia industry as a whole;
- b) demonstrate to the satisfaction of the Commission that the applicant has knowledge and understanding of the regulatory requirements and limitations imposed on Agencies under the Commission's General Order;
- c) demonstrate to the satisfaction of the Commission that the applicant has knowledge and understanding of the market access system established under the Commission's General Order for all applicable regulated products;
- d) demonstrate to the satisfaction of the Commission that the applicant has sufficient knowledge and ability to service markets in British Columbia and Canada;
- e) demonstrate to the satisfaction of the Commission that the applicant has the capacity to directly market regulated product without excessive reliance on wholesalers, or third-party grading, packing, warehouse, and storage facilities, or that the applicant will otherwise have arrangements with third parties that:
 - (i) would retain the proposed Agency's control throughout the marketing channel and permit the proposed Agency to be responsive to the changing needs and desires of the end-user;
 - (ii) would not expose the industry to unnecessary food safety risk;
 - (iii) would not be disruptive to orderly marketing;
- f) demonstrate to the satisfaction of the Commission that the applicant has taken all reasonable steps to meet with, and seek the cooperation of, existing Agencies, and provide particulars of the result of such initiatives; and
- g) provide a rationale in support of the application with specific reference to the following:
 - (i) existing and anticipated requirements of the market that could be serviced by the proposed Agency;

- (ii) how the proposed Agency would benefit producers shipping through that Agency;
- (iii) how the proposed Agency would benefit the industry as a whole; and
- (iv) the impact that the proposed Agency would have on existing Agencies.

Review of Applications by the Commission

- 222. Applications for Agency status will be reviewed by a five-member panel of the Commission selected by the Chair.
- 223. The panel may, in its sole discretion, request that an applicant clarify any part of the application submitted or rectify any perceived omission or deficiency in the application.
- 224. The applicant will be provided with an opportunity to present its application to the panel.
- 225. Following the applicant's presentation, the panel may summarily dismiss the application if it is satisfied that it would not be in the interests of the industry to grant Agency status.
- 226. Whereas the panel has decided that the application should not be summarily dismissed, the panel will engage in further consultation with industry stakeholders concerning the application. The applicant will be given an opportunity to prepare a redacted version of the application for review by industry stakeholders, provided that only information that is confidential, proprietary or constitutes a trade secret may be so redacted from the application reviewed by the panel.
- 227. Following consultation with industry stakeholders, the panel will decide whether to grant Agency status to the applicant. The panel will grant Agency status only where it is satisfied that:
 - a) there is a market requirement for the proposed Agency, and the designation of that Agency would benefit the industry as a whole having regard to the interests of all producers, including those marketing through other Agencies;
 - b) it would not be in the interests of the industry for the proposed regulated product to be marketed by an existing Agency;

- c) the presence of the proposed Agency will not be disruptive to orderly marketing and will not result in increased competition among Agencies on price, which may have a detrimental effect on producer returns;
- d) the proposed Agency has demonstrated an understanding of the regulatory system and has adequately expressed its intention to follow Commission Orders and the enabling legislation and regulations;
- e) there is evidence-based demand for the specific product(s), grouped by end use customer, that are to be marketed by the proposed Agency, which demand is not already satisfied by existing Agencies;
- f) there is evidence-based support from at least two (2) licensed Commercial Producers, who are at arms-length from each other, and who intend to market regulated product through the proposed Agency;
- g) the primary responsibility for marketing regulated product will rest with the proposed Agency, rather than wholesalers who may market regulated product on behalf of the proposed Agency;
- h) the proposed Agency will comply with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the Province;
- i) the proposed Agency will not have a detrimental effect on the delivery allocation and production allocation of existing producers not represented by the proposed Agency; and
- j) the proposed Agency has the knowledge, capacity, and ability to operate effectively as an Agency.

MPL's Probationary Agency Designation

By a decision dated January 12, 2022, the Commission decided that MPL should be designated as an agency, subject to the approval of the BCFIRB. A copy of that decision is attached as **Appendix A**.

By a decision dated October 11, 2023 (see also Corrigendum dated October 20, 2023), the BCFIRB approved the designation of MPL as a designated agency for a probationary period, commencing immediately and continuing through until the licensing period ending March 1,

2025. The BCFIRB's decision dated October 11, 2023, and its Corrigendum dated October 20, 2023, are attached respectively as **Appendix B** and **Appendix C**.

The probationary licence was made subject to certain terms and conditions, as follows:

80. As a condition of the probationary licence, MPL BC is required to appoint a senior executive as Vegetable Commission liaison within one month of the decision.
81. As a further condition of the probationary licence, MPL BC is required to report to BCFIRB with the first report due December 31, 2023, and quarterly¹ in the 2024 Crop Year, copied to the Vegetable Commission, on the following matters:
 - a. identity of all growers for whom it is marketing regulated product and report the production acreage of regulated product marketed for each grower;
 - b. Identify any production referenced above that has displaced imported production and expanded markets for BC growers;
 - c. Identify any production referenced above which has displaced production and markets for BC agencies;
 - d. confirm compliance with the Vegetable Commission's General Orders and policies relating to production allocation and pricing and identify any allegations or findings of non-compliance.
82. Failure to report to BCFIRB on the schedule set out above could result in the cancellation of MPL BC's probationary licence.
83. This is in addition to, and does not supplant, the Vegetable Commission conducting a review of MPL BC's agency designation status in accordance with section 3 of Part XIV of the General Orders and prior to issuing MPL BC a licence for the term March 2, 2025 – March 1, 2026.
84. A decision of the Vegetable Commission to approve MPL BC as a designated agency for the term March 2, 2025 – March 1, 2026, must be approved in writing by BCFIRB.

¹ With subsequent reports due March 31, 2024, June 30, 2024, September 30, 2024, December 31, 2024.

Copies of the reports submitted by MPL to date in response to the BCFIRB's directions are collectively attached as **Appendix D**.

With respect to the further review to be conducted by the Commission as directed by the BCFIRB, the BCFIRB said this:

The Vegetable Commission also queried whether paragraph 84 is referring to the Vegetable Commission's usual renewal process, or a "re-do" of the Vegetable Commission's January 12, 2022, decision. Paragraph 84 was not intended to ask the Commission to "redo" its decision. Rather, it is intended to require the Vegetable Commission, at some point prior to the end of the MPL BC's probationary licence term on March 1, 2025, to exercise its authority under section 3 of Part XIV, as it determines appropriate to the circumstances, and consider whether to remove the probationary conditions and recommend approval to BCFIRB of MPL BC as a designated agency.

Implicit in this direction is that the Vegetable Commission needs to be satisfied that the concerns outlined in paragraph 75 of the Agency Designation Decision have been adequately addressed by MPL BC. (emphasis added).

The matters that were set out in section 3 of Part XIV of the Commission's General Order at the time of the BCFIRB's direction are now set out in sections 128 and 129 of the General Order of May 29, 2024, which provide as follows:

Review of Existing Agencies

128. The Commission may from time to time review existing Agencies and assess whether Agency status should be maintained, suspended, made subject to terms and conditions, or revoked.
129. After providing an existing Agency with an opportunity to be heard, the Commission may suspend, impose terms or conditions with respect to, or revoke, the existing Agency's Agency status where it is not satisfied with respect to any of the following:
 - a) there is a market requirement for the Agency, and the Agency benefits the industry as a whole having regard to the interests of all Producers, including those marketing through other Agencies;
 - b) it is in the interests of the industry for Regulated Product to be marketed by the Agency;
 - c) the presence of the Agency is not disruptive to orderly marketing and does not result in increased competition among Agencies

on price, which may have a detrimental effect on Producer returns;

- d) the Agency has demonstrated an understanding of the regulatory system and has adequately expressed its intention to follow Commission Orders and the enabling legislation and regulations;
- e) there is evidence-based demand for the specific product(s), grouped by end use customer, that are marketed by the Agency, which demand is not satisfied by other existing Agencies;
- f) there is evidence-based support from Producers who market Regulated Product through the Agency;
- g) the primary responsibility for marketing Regulated Product rests with the Agency, rather than Wholesalers who may market regulated product on behalf of the Agency;
- h) the Agency complies with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the Province;
- i) the Agency does not have a detrimental effect on the delivery allocation and production allocation of existing producers not represented by the Agency; and
- j) the Agency has the knowledge, capacity, and ability to operate effectively as an Agency.

Red Sun's Previous Agency Application

On September 9, 2022, Red Sun submitted an application for an agency designation. On November 6, 2023, the Commission summarily dismissed Red Sun's application. A copy of the Commission's decision dated November 6, 2023, is attached as **Appendix E**.

Red Sun's Current Agency Application

On May 31, 2024, Red Sun submitted a new application for agency designation.

Mucci's Current Agency Application

On May 31, 2024, Mucci submitted an application for agency designation.

PROCESS AND NEXT STEPS

The Commission anticipates that its review will proceed as follows:

1. A five-member panel of Commission members will be selected to review MPL's probationary agency designation, as well as the applications for agency designations made by Red Sun and Mucci. MPL, Red Sun and Mucci will be provided with an opportunity to comment on the composition of the panel.
2. Once established, the panel will commence with preliminary consideration of the applications for agency designations submitted by Red Sun and Mucci. If either or both of those applications are not summarily dismissed by the panel in accordance with section 225 of the General Order of May 29, 2024, the panel will thereupon engage in concurrent consultation with industry stakeholders concerning:
 - (a) the application of Red Sun (provided that it has not been summarily dismissed);
 - (b) the application of Mucci (provided that it has not been summarily dismissed); and
 - (b) the probationary agency designation issued to MPL.

To that end, any materials submitted by Red Sun, Mucci and/or MPL will be circulated to industry stakeholders subject to any redactions as may be necessary to protect information that is confidential, proprietary or that constitutes a trade secret.

3. Following consultation with industry stakeholders, the panel will decide the following issues concurrently:
 - (a) whether to grant agency status to Red Sun, subject to the approval of the BCFIRB;
 - (b) whether to grant agency status to Mucci, subject to the approval of the BCFIRB; and
 - (c) whether to remove the conditions imposed by the BCFIRB against MPL's probationary licence, and whether to grant agency status to MPL for the period following March 1, 2025, subject to the further approval of the BCFIRB.

APPENDICES

APPENDIX A: Commission Decision on MPL BC Agency Application (2022.01.12)

APPENDIX B: BCFIRB Decision on MPL BC Agency Application (2023.10.11)

APPENDIX C: BCFIRB Decision Corrigendum on MPL BC Agency Application (2023.10.20)

APPENDIX D: MPL BC Reports (2023.12.31 and 2024.03.31)

APPENDIX E: Commission Decision on RSF Agency Application (2023.11.06)



BC VEGETABLE MARKETING COMMISSION

Decision Re:

**IN THE MATTER OF AN APPLICATION MADE BY
MPL BRITISH COLUMBIA DISTRIBUTORS INC. (“MPL BC”)
FOR AN ORDER DESIGNATING IT AS AN AGENCY**

BEFORE: The British Columbia Vegetable Marketing Commission
Debbie Etsell, Chair
Hugh Reynolds, Secretary
Armand Vander Meulen, Member
Kevin Husband, Member

DATE: December 21, 2021

Introduction

1. “Designated agencies” are a critical component of the regulatory system for vegetables in British Columbia. They are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product. The appropriate agency structure for the marketing of regulated vegetables contributes to orderly marketing by ensuring market growth opportunities for producers, and a steady supply of BC product for consumers.
2. Under the Natural Products Marketing (BC) Act (NPMA), the Commission can delegate authority to designated agencies to support the purposes of regulated marketing. Among other things, the Commission is empowered to: (a) regulate the time and place at which and to designate the agency through which a regulated product must be marketed; (b) determine the charges that may be made by a designated agency for its services; (c) set the prices, maximum prices, minimum prices or both maximum and minimum prices at which a regulated product or a grade or class of it may be bought or sold in British Columbia or that must be paid for a regulated product by a designated agency and to set different prices for different parts of British Columbia; and (d) authorize a designated agency to conduct pools for the distribution of all proceeds received from the sale of a regulated product and to require that designated agency to distribute the proceeds of sale, after deducting all necessary and proper disbursements, expenses and charges, so that each person receives a

share of the total proceeds in relation to the amount, variety, size, grade and class of a regulated product delivered by the person and to make those payments until the total net proceeds are distributed. Every designation of an agency must be approved in writing by the BC Farm Industry Review Board (BCFIRB).

3. As a result of the agency review process that commenced in 2018, it became apparent to the Commission that its current orders regarding the designation of new agencies, and the review of existing agencies, were deficient. In the Commission's view, the orders then in effect did not clearly articulate the Commission's policy objective of promoting the interests of the industry as a whole through coordinated marketing that will maximize the returns of all producers. Furthermore, it was the Commission's view that the orders then in existence contained too many ambiguities. Consequently, On March 15, 2021, the Commission passed Amending Order 54, which implemented comprehensive changes to the Commission's orders regarding the designation of new agencies, and the review of existing agencies.
4. On May 27, 2021 the Commission received an amended application for a NEW Class 1 designated agency licence (pursuant to Amending Order 54) from MPL BC for the marketing of regulated greenhouse vegetables.
5. On August 20, 2021, September 15, 2021 and September 24, 2021, the BCFIRB made certain orders and directions concerning the composition of the panel that is to address MPL BC's application. In accordance with those orders and directions, a panel of the Commission was struck to review the application. The panel members consist of Debbie Etsell (Chair), Hugh Reynolds (Secretary), Armand Vander Meulen (Member) and Kevin Husband (Member).
6. On September 27, 2021, the panel met to address administrative matters concerning the application process. Commission staff was directed to send out a notice to all stakeholders after the timeline was established.
7. On September 30, 2021, the panel reviewed MPL BC's application and deliberated on the review process. A decision was made to receive oral submissions from MPL BC, which was communicated to MPL BC by letter dated October 1, 2021.
8. On October 8, 2021, MPL BC presented its application to the panel. Following that presentation, the panel decided to engage in further consultation with industry stakeholders through a written submission process. MPL BC was asked to send a redacted version of its application for distribution to stakeholders.
9. On October 13, 2021, the panel circulated MPL BC's redacted application to industry stakeholders. These stakeholders were invited to deliver written submissions by October 25, 2021. Stakeholders were also informed that any written submissions would be provided to MPL BC so that it would have an opportunity to reply to those written submissions by October 29, 2021.

10. On October 22, 2021, the deadline for written submissions from industry stakeholders was extended to November 3, 2021.

11. The panel received written submissions from industry stakeholders as follows:

Calais / Gravis Farms Ltd.
Wayne Soo / Aljane Farms
Ravi Cheema / Creekside Hothouses Ltd.
Tanya Rheaume / Merom Farms
Randy Andres / IVCA - Island Vegetable Co-operative Association
Loren Taves / Farmer - Taves Family Farm
Bill Brar / CVG Vegetable Products Ltd.
Gurinder Cheema / Fresh4U Farms Ltd.
Jos Moerman / SunnySide Produce Ltd.
Ray VanMarrewyk / Westcoast vegetables Ltd.
Robert J. McDonnell / Farris, Vaughan, Wills & Murphy LLP
Michael Minerva / Village Farms
Steven Newell / Greenhouse Grown Foods Inc.
Steven Newell / Windset Farms

12. On November 5, 2021, the written submissions from industry stakeholders were provided to MPL BC, which was directed to provide any reply by November 15, 2021.

13. On November 12, 2021, the panel extended the deadline for MPL BC's reply to November 16, 2021.

14. On November 15, 2021, MPL BC submitted its reply to the written submissions received from industry stakeholders.

15. The panel met to deliberate on November 18 and 22, 2021, and December 21, 2021.

Analysis

16. The designation of a new agency is not a routine matter akin to the issuance of a producer licence. Unlike some other regulated commodities, the vegetable industry is not supply managed. Centralized, coordinated marketing through agencies is the primary mechanism by which the Commission maintains orderly marketing, promotes the development of the industry, and ensures that producer returns are maximized. Consequently, the decision to grant or refuse agency status is a matter of fundamental marketing policy.

17. In its January 31, 2017 Supervisory Decision, the BCFIRB said:

7. The specific rules governing agencies differ depending on the needs of the particular regulated industry. What is common across all regulated industries, however, is the agencies are licensed entities whose purpose is to market

regulated product on behalf of registered producers. **Agencies are licensees whose regulatory role is to harness the collective power of producers to enhance market access for regulated products. They minimize burdens on each producer regarding finding outlets for sales of their delivery allocation (a mechanism for producers to share market access). Agencies also store, ship, and label product for producers. For consumers, they help ensure a steady supply of BC product by contributing to orderly marketing. In all this, one of their key roles is to grow the industry by looking for new markets. As was noted in the March 31, 2016 Workshop Report that was part of the current process, at p. 4: “Agencies competing for the same buyer with the same product do little, if anything, for Producers or Buyers”. Agencies thus play both a key front line role, and a larger strategic role, in assisting the Commission to regulate, manage and grow the industry in an orderly fashion:** see generally January 7, 2013 Supervisory Decision, paras. 34 - 38; see also the Commission’s September 21, 2015 Stakeholder Engagement Discussion Paper, pp. 4 - 6. (emphasis added)

18. Significantly, the BCFIRB’s comments concerning the role of agencies and the undesirability of agencies “competing for the same buyer” reflect an awareness of the natural tension that arises from having multiple agencies. On the one hand, multiple agencies may provide some resiliency and choice for producers. On the other hand, if these agencies are left to their own devices, they might erode producer returns by competing against each other on price in the same market space. In the greenhouse sector, this tension was the subject of certain decisions and directions made by the BCFIRB in the *Global Greenhouse* matter.

19. In *Global Greenhouse Produce Inc. et. al. v. BCMB et. al.*, 2003 BCSC 1508, Drost, J. quoted from the Commission’s recommendations to the BCFIRB, as follows:

31. BCHH is currently the sole designated marketing agency for regulated greenhouse vegetables in Districts I & II. Hot House and its tomato producers have been going through a difficult financial period of late, largely as a result of the significant preliminary duty imposed upon it by the U.S. Department of Commerce....It was clear from the evidence presented to the Panel that at least some growers remain largely dissatisfied with the manner in which BCHH has been operating as a marketing agent, and that these growers wish to have an alternative....Simply put, they do not want to do business with BCHH any longer and they seek the opportunity to market their product more effectively. They may or may not succeed in this regard, but they want to try.

.....

33. The Panel has also considered the impact of a second agency designation on the industry as a whole at this time. Concerns were expressed to the Panel that the existence of a second seller of B.C. product would result in price erosion in the market place. The Panel recognizes that Globals (sic) proposed marketing plan will result in additional access to markets and enhanced sales opportunities. The

Global application attempts to deal with these issues by committing to market the product outside BCHH’s traditional markets of western Canada and the I-5 Corridor. BCHH expressed doubt that any such commitment would be effective.

.....

35. In the result, the Panel has concluded that, in light of the circumstances in which the hothouse industry is currently operating it is an appropriate time to provide producers with an alternative to marketing product through BCHH... (emphasis added)

20. At the time of the *Global Greenhouse* case, the Commission acted to address the detrimental impact of inter-agency competition in the greenhouse sector by imposing strict territorial limitations. The necessity for regulatory mechanisms to protect against price erosion from inter-agency competition is reflected in the BCFIRB’s January 31, 2017 Supervisory Decision, as follows:

72. The Commission’s reasons noted that these criteria were being applied in a broader context that considered the appropriate marketing options for growers (while it is beneficial to have multiple agencies, too many agencies can lead to market confusion and undermine orderly marketing), the local supply for a proposed agency, an agency’s ability to manage its delivery allocation and plan for positive growth as opposed to merely competing in existing markets and the Commission’s reliance on the timely market intelligence provided by agencies to the Commission when the Commission establishes minimum price.

.....

85. Despite the criticisms that some, including the agencies, have leveled over the years about the regulatory system, all of them support ongoing regulation as being in the best interests of the industry – as supporting the fundamental goals of regulated marketing, which ensures the equitable and orderly marketing of natural products, which helps mitigate the extreme and sometimes destructive swings in production and price that can take place absent regulation. These extreme swings can be detrimental to producers and the value chain, including consumers. BCFIRB decided, in our June 15, 2016 supervisory decision letter that “regulation of the Vancouver Island vegetable industry continues to represent sound marketing policy”.

21. In summary, the designation of a new agency should only follow where the panel is satisfied that the presence of an additional agency will not result in price erosion, lead to market confusion or otherwise undermine orderly marketing. Furthermore, the panel must be satisfied that the presence of an additional agency will enhance orderly marketing, promote the development of the industry, and ensure that producer returns are maximized. There is a high threshold that must be satisfied before an application for agency status will be granted.

22. These considerations are expressed in more detail in Part XIV of the Commission's General Order. The relevant provisions are as follows:

1. (4) Applications for designated Agency status must also:
 - (a) demonstrate to the satisfaction of the Commission that the applicant's primary business objective is the marketing of regulated product in a manner that benefits the Commission and the British Columbia industry as a whole;
 - (b) demonstrate to the satisfaction of the Commission that the applicant has knowledge and understanding of the regulatory requirements and limitations imposed on Agencies under the Commission's General Orders;
 - (c) demonstrate to the satisfaction of the Commission that the applicant has knowledge and understanding of the market access system established under the Commission's General Orders for all applicable regulated products;
 - (d) demonstrate to the satisfaction of the Commission that the applicant has sufficient knowledge and ability to service markets in British Columbia and Canada;
 - (e) demonstrate to the satisfaction of the Commission that the applicant has the capacity to directly market regulated product without excessive reliance on wholesalers, or third-party grading, packing, warehouse and storage facilities, or that the applicant will otherwise make arrangements with such third parties in a manner that:
 - (i) would retain the proposed Agency's control throughout the marketing channel and permit the proposed Agency to be responsive to the changing needs and desires of the end-user;
 - (ii) would not expose the industry to unnecessary food safety risk;
 - (iii) would not be disruptive to orderly marketing;
 - (f) demonstrate to the satisfaction of the Commission that the applicant has taken all reasonable steps to meet with, and seek the cooperation of, existing Agencies, and provide particulars of the result of such initiatives.

- (g) provide a rationale in support of the application with specific reference to the following:
 - (i) existing and anticipated requirements of the market that could be serviced by the proposed Agency;
 - (ii) how the proposed Agency would benefit producers shipping through that Agency;
 - (iii) how the proposed Agency would benefit the industry as a whole; and
 - (iv) the impact that the proposed Agency would have on existing designated Agencies.

.....

- 2. (5) Where the panel has decided that the application should not be summarily dismissed, the panel will engage in further consultation with industry stakeholders concerning the application. The applicant will be given an opportunity to prepare a redacted version of the application for review by industry stakeholders, provided that only information that is confidential, proprietary or constitutes a trade secret may be so redacted from the application reviewed by the panel.
- (6) Following consultation with industry stakeholders, the panel will decide whether to grant designated Agency status to the applicant. The panel will grant designated agency status only where it is satisfied that:
 - (a) there is a market requirement for the proposed Agency, and the designation of that Agency would benefit the industry as a whole having regard to the interests of all producers, including those marketing through other Agencies;
 - (b) it would not be in the interests of the industry for the proposed regulated product to be marketed by an existing Agency;
 - (c) the presence of the proposed Agency will not be disruptive to orderly marketing and will not result in increased competition among Agencies on price, which may have a detrimental effect on producer returns;

- (d) the proposed Agency has demonstrated an understanding of the regulatory system and has adequately expressed its intention to follow Commission Orders and the enabling legislation and regulations;
- (e) there is evidence-based demand for the specific product(s), grouped by end use customer, that are to be marketed by the proposed Agency, which demand is not already satisfied by existing Agencies;
- (f) there is evidence-based support from multiple licensed Commercial Producers, who are at arms-length from each other, and who intend to market regulated product through the proposed Agency;
- (g) the primary responsibility for marketing regulated product will rest with the proposed Agency, rather than wholesalers who may market regulated product on behalf of the proposed Agency;
- (h) the proposed Agency will comply with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the Province;
- (i) the proposed Agency will not have a detrimental effect on the delivery allocation and production allocation of existing producers not represented by the proposed Agency; and
- (j) the proposed Agency has the knowledge, capacity and ability to operate effectively as an Agency.

23. The panel has carefully considered MPL BC's application, together with the submissions of industry stakeholders, even though it may not refer to every point raised in the application or those submissions.

24. The panel is satisfied that MPL BC is a well-established, leading marketer, with direct access to significant customers. It has exclusive arrangements with some of the largest retailers and has penetrated markets throughout North America. The panel notes that existing agencies regularly sell product to Mastronardi, precisely because it has direct access to these markets.

25. MPL BC has essentially operated within BC as a licensed wholesaler acquiring product from existing agencies, and the panel is satisfied that it has conducted itself in that capacity in accordance with applicable regulatory requirements. If granted agency status, MPL BC has

also expressed its willingness to appoint a person as a liaison to the Commission to facilitate its continued compliance with the regulatory system.

26. Stakeholder opposition to MPL BC's application was generally expressed on the basis that the grower community is currently being well served from within the status quo. Another theme that arises from the submissions made by stakeholders opposed to the application is that the grant of agency status to MPL BC will have a detrimental impact on existing BC agencies.
27. The panel accepts that a grant of agency status to MPL BC could create significant disruption to some existing agencies. However, the Commission's primary obligation is to producers; not to the agencies themselves. As noted, the agency system exists to enhance orderly marketing, promote the development of the industry, and ensure that producer returns are maximized. Agencies are the tools through which these regulatory objectives are pursued, rather than an end to themselves.
28. On balance, the panel is satisfied that MPL BC's application satisfies the requirements set out in Part XIV of the General Order. There are market penetration opportunities available through this applicant that are not present with existing agencies. Furthermore, the panel believes that the industry will benefit when product can be marketed through an agency that has better and more direct access to key customers throughout North America. While it is possible for existing agencies to sell to Mastronardi, which can then market product to these key customers, this approach is likely to introduce unnecessary costs and inefficiencies that do not benefit producers.
29. Producers are likely to be better served when their product is marketed by an agency that has better and more direct access to key retailers throughout North America. In this regard, the panel does not think that preservation of the status quo is itself a valid objective. If the interests of producers can be better served through a new agency, with better and more direct access to key customers throughout North America, then the high threshold established under Part XIV of the General Order can be met, despite the disruption to existing agencies. In short, while it is generally undesirable to permit a proliferation of agencies that might simply compete against each other resulting in price erosion, the Commission must be alive to the possibility that a new agency can have better and more direct access to key markets than existing agencies.

Decision

30. After due consideration, the panel has decided that MPL BC should be designated as an agency, subject to the approval of the BCFIRB. It is the panel's considered view that this decision reflects a principles-based approach to supervision and regulation. This principled approach has been defined by the BCFIRB as six principles collectively referred to as the "SAFETI" principles:

Strategic: The decision reflects the panel’s identification of key opportunities as well as systemic challenges. While the panel recognizes that a decision to grant agency status to MPL BC is likely to cause disruption to existing agencies, it is also cognizant that its main obligation is to producers, rather than to the agencies themselves. The panel believes that producers will be better served when they have the opportunity to market through an agency that has better and more direct access to key customers throughout North America.

Accountable: The panel has maintaining legitimacy and integrity by discharging its responsibilities according to the detailed criteria for new agency applications published in Part XIV of the General Order.

Fair: The panel has ensured procedural fairness by providing industry stakeholders with a fulsome opportunity to express their positions with respect to MPL BC’s application.

Effective: The high threshold for the grant of an agency designation, as well as the process by which such applications are to be made, are both clearly defined in Part XIV of the General Order. The Commission’s expectations are therefore clearly defined for both the applicant and for industry stakeholders.

Transparent: The panel has taken all appropriate measures to ensure that processes, practices, procedures, and reporting on how the mandate is exercised are open, accessible and fully informed. Though some aspects of the application have been redacted to protect confidential or proprietary information, stakeholders have been provided with a fulsome opportunity to express their positions

Inclusive: The panel has taken all appropriate steps to ensure that appropriate interests are considered.

Any person aggrieved or dissatisfied with this decision may appeal this decision to the BCFIRB within 30 days from the date of this decision.

DATED AT SURREY, BRITISH COLUMBIA, THIS 12th DAY OF JANUARY 2022

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION



Debbie Etsell, Chair

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND

MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL BC)
AGENCY DESIGNATION APPROVAL

October 11, 2023

Introduction

1. Agencies are businesses licenced by the BC Vegetable Marketing Commission (Vegetable Commission) and approved under section 8 of the *Natural Products Marketing (BC) Act Regulations* (NPMA Regulations) by the BC Farm Industry Review Board (BCFIRB). The role of an agency is to market regulated vegetables on behalf of producers to the exclusion of other businesses and to harness the collective power of producers to gain market access. Rather than individual producers seeking out markets for their vegetables, agencies take on that job and, by “pooling” production from multiple producers, can sell to larger markets. Agencies are delegated certain legislative authorities by the Vegetable Commission, to whom they are directly accountable.
2. Agencies also play a larger, front-line strategic role in assisting the Vegetable Commission to regulate, manage and grow the regulated vegetable sector in an orderly fashion. Agency designation is a privilege. It is non-transferable and is not approved in perpetuity.
3. On January 12, 2022, the Vegetable Commission made its decision recommending that MPL British Columbia Distributors Inc. (MPL BC) be designated an agency to market regulated greenhouse vegetables in British Columbia. It now falls to BCFIRB to consider whether to approve MPL BC as a designated agency.
4. As stated by the Vegetable Commission at paragraph 16 of its January 12, 2022, decision:

The designation of a new agency is not a routine matter akin to the issuance of a producer licence. Unlike some other regulated commodities, the vegetable industry is not supply managed. Centralized, coordinated marketing through agencies is the primary mechanism by which the Commission maintains orderly marketing, promotes the development of the industry, and ensures that producer returns are maximized. Consequently, the decision to grant or refuse agency status is a matter of fundamental marketing policy.

Procedural History of Review

5. After receiving the Vegetable Commission’s decision on January 12, 2022¹, BCFIRB notified the Vegetable Commission and MPL BC on January 24, 2022, that BCFIRB would be appointing a supervisory panel. MPL BC expressed in several letters the importance of a timely decision. BCFIRB acknowledged MPL BC’s concerns and reminded MPL BC of BCFIRB’s sound marketing policy

¹ MPL BC originally filed its application for an agency licence on September 18, 2020. That application was put in abeyance due to a vegetable industry moratorium on new agency and producer-shipper applications while the Vegetable Commission undertook Strategic Planning and Agency Reviews. The Vegetable Commission ultimately amended the agency application process (Amending Order 54) and MPL BC filed its amended application on May 27, 2021.

responsibilities and that BCFIRB would also need to consider the impact of the ongoing Allegations of Bad Faith and Unlawful Activity Review² (Allegations Review) in which MPL BC was a complainant participant.

6. Between January 18, 2022, and February 11, 2022, BCFIRB received twelve notices of appeal alleging the Vegetable Commission's approval of MPL BC's agency designation was procedurally unfair as it did not provide an opportunity for oral submissions and was based on an incomplete and procedurally flawed record. On March 21, 2022, the presiding member of the BCFIRB appeal panel deferred consideration of these appeals pursuant to section 8(8) of the *Natural Products Marketing (BC) Act (NPMA)* until completion of this supervisory process.
7. On March 31, 2022, following BCFIRB's deferral of appeals, two of the appellants - Greenhouse Grown Foods Inc. and Windset Farm (Canada) Ltd. (GGFI/Windset) - requested that BCFIRB's approval process provide for specific steps and opportunities to be heard, including an oral hearing. On April 26, 2022, BCFIRB acknowledged that it can exercise discretion to establish an "effective, fulsome and procedurally fair procedure for the Prior Approval Process" under both *NPMA* s. 7.1(2) and under Supervisory Rule 5.
8. In June 2022, BCFIRB distributed draft Terms of Reference to the Vegetable Commission, MPL BC and vegetable industry stakeholders including GGFI/Windset to clarify the issues to be decided, determine eligible participants and the form that participation would take. Input on the Terms of Reference was to be received by July 6, 2022.
9. On July 15, 2022, BCFIRB notified the Vegetable Commission, MPL BC and all vegetable sector stakeholders that it would be delaying finalizing the Terms of Reference as a result of the release of the Allegations Review decision on July 14, 2022, and the need to consider its implications on the prior approval process.
10. On July 22, 2022, BCFIRB notified the Vegetable Commission, MPL BC and all vegetable sector stakeholders that the approval process was being suspended due to outstanding issues and questions still to be addressed in the Allegations Review.

² BCFIRB's Allegations Review conducted under s. 7.1 of the *Natural Products Marketing (BC) Act* involved investigation into allegations of bad faith and unlawful activity arising out of civil claims filed by two entities, one of which was MPL BC, which pled misfeasance of public office by certain members and the general manager of the Vegetable Commission.

British Columbia Farm Industry Review Board
MPL BC Agency Designation Approval
October 11, 2023

11. The Allegations Review proceeded to a second phase. On January 25, 2023, BCFIRB issued its written reasons concluding phase II of the Allegations Review for MPL BC. Chair Donkers made the following ruling at page 5:

...Given BCFIRB's broad supervisory mandate, it was incumbent on me to try to restore effective governance by first assessing the merits of the Commission's allegations regarding the improper basis for the claims, and then determining what direction or assistance could be provided to the Commission in terms of how it should regulate and otherwise deal with Prokam and MPL.

Now, however, MPL has taken steps which I agree will significantly address the impact of its conduct on orderly marketing, the Commission, its members and staff. These steps, taken voluntarily, will go a long way in restoring trust, and in my view eliminate the need for me to pursue Phase II for MPL. With the civil claim being brought to an end, the cloud of the allegations hanging over the Commission has been lifted. The significant cost and disruption to the Commission have been acknowledged and addressed through a significant payment of the Commission's legal costs in the Supervisory Review. Just as importantly, MPL has expressly acknowledged the role it must play in ensuring orderly marketing in the BC regulated vegetable industry, including maintaining a transparent and accountable relationship with the Commission, coupled with heightened reporting requirements, should its agency licence be approved.

Accordingly, it is my view that steps have been taken which will lead to the restoration of the trust and confidence which lie at the heart of effective governance and orderly marketing in the industry. I note in that regard that the Commission is supportive of Hearing Counsel's recommendation that Phase II be discontinued for MPL. In all of the circumstances, therefore, I am prepared to make an order that Phase II of the Supervisory Review be concluded for MPL. This order does not impact Phase II for Prokam.

Lastly, I wish to make clear that this ruling only addresses MPL's status in Phase II of the Supervisory Review. Prior to the hearing in Phase I of the Supervisory Review, the Commission recommended that MPL's agency license be approved by BCFIRB. It will be for the supervisory panel presiding over the prior approval process for MPL's agency license to make its own determinations in that process after hearing from all of the relevant parties.

12. Shortly thereafter, on February 7, 2023, BCFIRB lifted the suspension on the approval process, advised that it would be finalizing the prior approval Terms of Reference and provided a final opportunity for input. BCFIRB also requested availability for an in-person hearing to be held before the end of May 2023.
13. BCFIRB finalized the Terms of Reference on March 8, 2023. The process included four phases:
 - a) Phase I: Finalizing the Terms of Reference;

British Columbia Farm Industry Review Board
MPL BC Agency Designation Approval
October 11, 2023

- b) Phase II: Written submissions, document disclosure and expert witness applications;
 - c) Phase III: Supervisory oral hearing and any further process as determined necessary by BCFIRB; and
 - d) Phase IV: BCFIRB decision.
14. In response to applications for non-disclosure, BCFIRB reviewed the unredacted documents. In decisions dated April 6 and 11, 2023, BCFIRB found most of the redactions were appropriate and necessary to protect confidential or privileged information in the public interest and made only minor modifications to disclose redactions found unnecessary.
 15. On March 27, 2023, BCFIRB invited written responses from all eligible participants to specific questions regarding the Vegetable Commission process, rationale and recommendation and on the ramifications of the voluntary reporting requirement agreed to by MPL BC as part of the Allegations Review.
 16. BCFIRB received responses from GGFI/Windset, supported by Aljane Farms, CVG Veg Products Ltd., Global Greenhouse Produce Inc., Humble Farmer Ltd., Merom Farms Ltd., Mt Lehman Vegetable Farms Ltd./Mt Lehman Vegetable Farms Inc., Peppertree Farms Ltd., from the Vegetable Commission, from MPL BC and received final replies from the Vegetable Commission and MPL BC. Subsequently, BCFIRB also received several process concerns from the Vegetable Commission and GGFI/Windset.
 17. The Vegetable Commission raised concerns that BCFIRB, through its questions, was asking the Vegetable Commission to supplement its original reasons for recommending MPL BC's agency designation.
 18. In its April 21, 2023 response, BCFIRB stated:

As the Terms of Reference plainly state, while the Commission will need to demonstrate it followed a SAFETI-based process and reached a sound marketing policy-based recommendation, BCFIRB has to reach its own conclusions based on its supervisory process, meaning it is not bound by the Commission's decision or the record before it. Accordingly, BCFIRB does not agree with the concerns raised in your letter regarding "deliberative privilege", "bootstrapping", or "s/he who hears must decide" arise in this supervisory process. The questions posed are all directed at the Commission's responsibility to demonstrate to BCFIRB that a SAFETI-based process was followed and that it reached a sound marketing policy-based position.

BCFIRB's intent is to bring transparency to the prior approval supervisory process so that all participants have a good understanding of the Commission process and recommendation, and to ensure that any concerns with that process and recommendation were articulated in advance of the oral hearing to allow participants and BCFIRB time to prepare.

British Columbia Farm Industry Review Board
MPL BC Agency Designation Approval
October 11, 2023

Ultimately it is for the Commission to determine how it will fulfill its responsibilities outlined in the Terms of Reference, including how it will answer any specific questions posed.

However, to be clear, the Commission should be prepared to explain its process for evaluating new agency applications in the oral hearing. If the Commission is of the view that expressing a position on whether its January 12, 2022, decision identified “any deficiencies in MPL’s application” is appropriately addressed in argument, then that is where the Commission should address it.

19. Following BCFIRB’s response, on April 23, 2023, the Vegetable Commission requested clarity on whether the supervisory process was intended to be *de novo* and its intention to rely on the reasoning of the panel (as a collective) with respect to the substantive merit of its decision and not the idiosyncratic perspective of any individual panel member (or other person). GGFI/Windset objected to the Vegetable Commission’s letter as an improper submission.
20. On April 27, 2023, BCFIRB responded:

It is not necessary to determine the merits of Mr. Ferris’ objection, as these matters were in my view fully addressed in the BC Farm Industry Review Board’s (BCFIRB) letter of April 21, 2023. Specifically, I refer to the confirmation that BCFIRB is required to reach its own conclusions under the Terms of Reference, and as such it will not be bound by the Commission’s decision or the record before it. In addition, BCFIRB clarified that at the oral supervisory hearing, where BCFIRB will hear evidence, the Commission should be prepared to demonstrate that it followed a SAFETI-based process, reached a sound marketing policy-based recommendation, and to explain its process for evaluating new agency applications. It is therefore properly understood as a de novo process that will cure any procedural defects before the Commission.

The April 21, 2023 letter also confirmed that it is for the Commission to determine how it will fulfill its responsibilities under the Terms of Reference. In doing so, BCFIRB does not expect the Commission to put forward the “idiosyncratic perspective” of any specific individual, but rather the institutional perspective of the Commission. If it is of the view that Chair Etsell can assist in that regard, then she can be called as a witness. As the supervisory hearing is set for May 23, 24 and 26, 2023 her earliest attendance is preferable so that other participants can respond to the Commission’s evidence in their presentations. [emphasis added]

21. BCFIRB conducted an in-person supervisory hearing on May 23, 24 and 26, 2023, where the Vegetable Commission, MPL BC, and GGFI/Windset had full participatory rights, called witnesses and questioned participants adverse in interest. Village Farms Canada L.P. participated by oral submission received by videoconference at the hearing. Nine other participants provided written submissions. Hearing participants made written closing arguments.
22. On August 22, 2023, and as per the Terms of Reference, BCFIRB invited all eligible participants to make a supplemental written submission on the

implications, if any, of Chair Donkers' January ruling in the Allegations Review on BCFIRB's approval of MPL BC's agency designation, including the implications of the voluntary reporting requirement agreed to by MPL BC in that process. Those supplementary submissions have been reviewed.

23. In brief, in its September 4, 2023, supplemental submission, Creekside Hothouse Ltd. (Creekside) is supportive of MPL BC and, based on its firsthand experience, believes it has taken the necessary steps to be a constructive member of the BC-regulated vegetable sector, playing an integral role in the continuance of orderly marketing and advancing the BC greenhouse sector nationally. In its September 6, 2023, supplemental submission, the Vegetable Commission reiterated its April 6, 2023, response to BCFIRB's questions to the effect that while there was still consultation underway to develop additional reporting requirements, it did not see the need for any "special" reporting requirements for MPL BC. MPL BC submits that Chair Donker's ruling implies that the actions taken by MPL BC in resolving its civil claim should be taken as a commitment to the regulated greenhouse sector in BC and the specifics of the 18-month reporting requirement are still to be determined.
24. GGFI/Windset submit that MPL BC's commitments were part of a deal made to withdraw its civil claim to advance its agency application; the commitments do not represent a true statement of regret with respect to MPL BC's actions in commencing the bad faith claim. The evidence before BCFIRB is that Mr. Mastronardi still believes he was wrongly treated by the regulated vegetable industry. BCFIRB should have little faith MPL BC intends to follow the enabling legislation and regulations as required by Part XIV of the Vegetable Commission's Consolidated General Orders (General Orders) or that Mr. Mastronardi has changed his view. In its reply submission, MPL BC took issue with this latter aspect as improper, irrelevant and beyond the scope of what the supplemental submissions were intended to address. GGFI/Windset also reiterated their arguments that MPL BC has failed to meet the requirements for agency designation and as such, should not receive its Class 1 licence.
25. Apart from Chair Donkers' ruling, it is important to observe that because of the Allegations Review, BCFIRB's approval process was delayed and followed a lengthier process than usual, including an in-person supervisory hearing. BCFIRB's prior approval function has historically been based on written submissions, following very closely on the Vegetable Commission's recommendation. The unfortunate reality is that in this case, more than a year and a half has passed since the Vegetable Commission recommended that MPL BC receive an agency designation. The implication of this delay and the associated uncertainty is discussed below.

Issues

26. BCFIRB considered the following questions in this supervisory process:
- a) Did the BC Vegetable Marketing Commission conduct a SAFETI-based³ process?
 - b) Is the BC Vegetable Commission's decision to designate MPL BC as an agency in the public interest and consistent with sound marketing policy?

Legal Authorities

27. Under section 8 of the NPMA Regulations, no designation of any agency shall be effective unless approved in writing by BCFIRB.
28. Under section 7.1(2) of the NPMA, BCFIRB may exercise its powers under this section at any time, with or without a hearing, and in the manner, it considers appropriate to the circumstances.

Analysis

a) Did the BC Vegetable Marketing Commission conduct a SAFETI-based process?

29. BCFIRB acknowledges the importance of a SAFETI-based process in decision-making. The Vegetable Commission's agency designation application requirements are set out in Part XIV of its General Orders. Applicants are required to submit a detailed package of information meeting the established criteria for agency designation (section 2(6)(a)-(j)). Applications are reviewed by a five-member panel of Vegetable Commission members. Applicants present their application to the panel and, if satisfied that the application should not be summarily dismissed, the panel engages in further consultation with industry stakeholders based on a redacted version of the application. Following the consultation, the panel decides whether to recommend designated agency status based on the established criteria.
30. BCFIRB concludes that the chronology set out in the Vegetable Commission's January 12, 2022 decision is consistent with the process established in its General Orders:
8. On October 8, 2021, MPL BC presented its application to the panel. Following that presentation, the panel decided to engage in further consultation with industry stakeholders through a written submission process. MPL BC was asked to send a redacted version of its application for distribution to stakeholders.

³ Strategic, Accountable, Fair, Effective, Transparent, Inclusive.

British Columbia Farm Industry Review Board
MPL BC Agency Designation Approval
October 11, 2023

9. On October 13, 2021, the panel circulated MPL BC's redacted application to industry stakeholders. These stakeholders were invited to deliver written submissions by October 25, 2021. Stakeholders were also informed that any written submissions would be provided to MPL BC so that it would have an opportunity to reply to those written submissions by October 29, 2021.
10. On October 22, 2021, the deadline for written submissions from industry stakeholders was extended to November 3, 2021.
11. The panel received written submissions from industry stakeholders as follows: Calais / Gravis Farms Ltd. Wayne Soo / Aljane Farms Ravi Cheema / Creekside Hothouses Ltd. Tanya Rheume / Merom Farms Randy Andres / IVCA - Island Vegetable Co-operative Association Loren Taves / Farmer - Taves Family Farm Bill Brar / CVG Vegetable Products Ltd. Gurinder Cheema / Fresh4U Farms Ltd. Jos Moerman / SunnySide Produce Ltd. Ray VanMarrewyk / Westcoast vegetables Ltd. Robert J. McDonell / Farris, Vaughan, Wills & Murphy LLP Michael Minerva / Village Farms Steven Newell / Greenhouse Grown Foods Inc. Steven Newell / Windset Farms
12. On November 5, 2021, the written submissions from industry stakeholders were provided to MPL BC, which was directed to provide any reply by November 15, 2021.⁴
13. On November 12, 2021, the panel extended the deadline for MPL BC's reply to November 16, 2021. 14. On November 15, 2021, MPL BC submitted its reply to the written submissions received from industry stakeholders.
15. The panel met to deliberate on November 18 and 22, 2021, and December 21, 2021.
31. Although the Vegetable Commission followed the process set out in its General Orders, procedural fairness concerns were raised in the 12 appeals before BCFIRB and again by GGFI/Windset in a March 31, 2022, letter directed to this supervisory panel. Of particular concern was that the Vegetable Commission's process did not provide an opportunity to make oral submissions nor participate in an oral hearing and that 21 days was insufficient time to make written submissions.
32. Further, in its May 26, 2023 closing submissions to BCFIRB, GGFI/Windset maintained that the Vegetable Commission's timelines did not allow for sufficient participation and further, the Vegetable Commission failed to collect sufficient information.
33. In response to the procedural fairness concerns raised against the Vegetable Commission's process, BCFIRB concludes that the process established in the

⁴ January 12, 2022. BC Vegetable Marketing Commission, "Decision Re: In the Matter of an Application made by MPL British Columbia Distributors Inc. ("MPL BC") for an Order designating it as an Agency", paras. 8-15.

General Orders is consistent with SAFETI principles and sound marketing policy as it provides a reasonable mechanism for the Vegetable Commission to assess a new applicant. While it is open to the Vegetable Commission to conduct an oral hearing, the failure to do so is not procedurally unfair if impacted stakeholders have a meaningful opportunity to be heard. While BCFIRB appreciates timelines were tight, the 21-day response time was not unreasonable in the circumstances. Persons opposed to the designation of MPL BC did make submissions and there was no evidence of any significant prejudice caused by the tight timeline. It could be argued that the tight timelines meant expert evidence could not be obtained, however, no participant tendered expert evidence in BCFIRB's more lengthy process.

34. Even if the Vegetable Commission's process was procedurally unfair, either for failure to conduct an oral hearing, the tight timelines provided, or the failure to collect all necessary information, any such unfairness has been cured by BCFIRB's *de novo* process. Further, BCFIRB responded to the concerns raised in the appeals and in correspondence from the industry stakeholders by committing to a more fulsome process than would otherwise have been held which included additional opportunities for disclosure of documents, oral submissions, written submissions, expert evidence, and cross-examination of witnesses.
 35. As a result of the fulsome process, BCFIRB can make a decision on MPL BC's agency application, and it is unnecessary to remit the application back to the Vegetable Commission for further consideration.
- b) Is the BC Vegetable Commission's decision to designate MPL BC as an agency in the public interest and consistent with sound marketing policy?**
36. As mentioned at the outset, agencies are businesses licenced by the Vegetable Commission to market regulated vegetables and harness the collective power of producers to gain market access. Agencies play a strategic role in assisting the Vegetable Commission to regulate, manage and grow the regulated vegetable sector in an orderly fashion. The decision whether to designate a new agency is a matter of fundamental marketing policy determined in the first instance by the Vegetable Commission and reviewed by BCFIRB.
 37. Currently, there are eight designated agencies licenced to market regulated greenhouse crops in BC. Marketing volumes and operations vary; some agencies primarily service regional markets (such as Vancouver Island) with local production while other larger operations have both domestic and export markets supplied by BC and international production (such as the US and Mexico). The last major greenhouse agency approved was in 2007.
 38. MPL BC's parent company, Mastronardi Produce Ltd. (Mastronardi), is a licenced wholesaler with the Vegetable Commission and has been marketing greenhouse vegetables for BC agencies since 2021. Mastronardi is an Ontario-based business

with a long history in the North American greenhouse industry. In its application at page 9, it states:

...Mastronardi family still operates the largest protected agriculture fresh produce company on the continent, and together with its expanding third party Producer base, grow and sell world-class tomatoes, peppers, cucumbers, lettuce and berries within the domestic Canadian markets and export markets throughout the United States and beyond.

And at page 12:

MPL BC will be able to leverage the entire Mastronardi Produce family affiliates to execute the entire plan from securing the best varieties along with extraordinary distribution capabilities throughout the United States, Canada and abroad.

39. Agency applications are naturally contentious given there are a limited number of licences granted to market BC-regulated greenhouse vegetables. There are several additional factors contributing to the strong positions advanced by participants in this supervisory review. The current major greenhouse agencies have been working together for well over a decade without the prospect of having to develop a cooperative relationship with a newcomer. Further, MPL BC is part of a well-resourced and well-recognized marketing entity in North America, and those opposed raise concerns about its litigious actions to date in BC, including its civil action commenced against the Vegetable Commission and elsewhere.
40. In its decision, the Vegetable Commission summarized the conditions and the threshold an applicant must meet to be granted an agency designation:

In summary, the designation of a new agency should only follow where the panel is satisfied that the presence of an additional agency will not result in price erosion, lead to market confusion or otherwise undermine orderly marketing. Furthermore, the panel must be satisfied that the presence of an additional agency will enhance orderly marketing, promote the development of the industry, and ensure that producer returns are maximized. There is a high threshold that must be satisfied before an application for agency status will be granted.⁵

41. This high threshold is reflected in the ten conditions found in Part XIV of the General Orders which state as follows:

(6) Following consultation with industry stakeholders, the panel will decide whether to grant designated Agency status to the applicant. The panel will grant designated agency status only where it is satisfied that:

⁵ January 12, 2022. BC Vegetable Marketing Commission, "Decision Re: In the Matter of an Application made by MPL British Columbia Distributors Inc. ("MPL BC") for an Order designating it as an Agency", para 21.

British Columbia Farm Industry Review Board
MPL BC Agency Designation Approval
October 11, 2023

- (a) there is a market requirement for the proposed Agency, and the designation of that Agency would benefit the industry as a whole having regard to the interests of all producers, including those marketing through other Agencies;
 - (b) it would not be in the interests of the industry for the proposed regulated product to be marketed by an existing Agency;
 - (c) the presence of the proposed Agency will not be disruptive to orderly marketing and will not result in increased competition among Agencies on price, which may have a detrimental effect on producer returns;
 - (d) the proposed Agency has demonstrated an understanding of the regulatory system and has adequately expressed its intention to follow Commission Orders and the enabling legislation and regulations;
 - (e) there is evidence-based demand for the specific product(s), grouped by end use customer, that are to be marketed by the proposed Agency, which demand is not already satisfied by existing Agencies;
 - (f) there is evidence-based support from multiple licensed Commercial Producers, who are at arms-length from each other, and who intend to market regulated product through the proposed Agency;
 - (g) the primary responsibility for marketing regulated product will rest with the proposed Agency, rather than wholesalers who may market regulated product on behalf of the proposed Agency;
 - (h) the proposed Agency will comply with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the Province;
 - (i) the proposed Agency will not have a detrimental effect on the delivery allocation and production allocation of existing producers not represented by the proposed Agency; and
 - (j) the proposed Agency has the knowledge, capacity and ability to operate effectively as an Agency.
42. GGFI/Windset advocated for a strict interpretation of section 2(6) of Part XIV of the General Orders, pointing out that its opening words stipulate the "panel will grant designated agency status only where it is satisfied that" all of the factors set out under that subsection are met by an applicant. They argue it would be "inconsistent to read the paragraph as disjunctive, meaning that only one of the ten conditions must be satisfied". To give the provision its proper meaning, GGFI/Windset submitted that "all the factors from (a) to (j) must be met, and there must be sufficient evidence tendered by the applicant proving each condition". GGFI/Windset is critical of the evidence tendered by MPL BC in this process and maintains it falls short of what is necessary to support its application.

43. In brief, GGFI/Windset says:

- (a) There is no market requirement or gap for MPL BC to fill and the evidence is that BC has a healthy, stable and growing greenhouse vegetable industry. Instead of benefitting the industry, adding MPL BC as an agency risks harm.
- (b) There was no evidence that existing BC agencies are unable to market on behalf of producers. Contrary to MPL BC, existing agencies have focused on regional markets to ensure the best net grower returns. They are doing a good job and the industry is “healthy”.
- (c) The evidence is that MPL BC will not be cooperative as it has routinely sued industry participants in BC and elsewhere. The addition of MPL BC may result in further fracturing of agency representation of producers, increased competition between agencies for retail customers and the lowering of the net grower returns.
- (d) MPL BC’s and its parent company’s past litigious practices in BC and elsewhere raise serious concerns as to whether it will follow the General Orders. Its past actions in filing a civil claim and its conduct in the Allegation Review are clear evidence that it has no understanding of the regulatory system in BC nor is compliant.
- (e) MPL BC’s application and Mr. Mastronardi’s testimony both spoke to a special demand for Sunset branded products but there was no evidentiary foundation that this was the case. There is no evidence that there is a market demand not already satisfied by the existing BC products marketed by existing BC agencies.
- (f) The only documentary evidence of multiple commercial producer support are letters from Fresh4 U Farms and Creekside which must be regarded as a single entity as its owners are not at arm’s length from each other, and Millennium Produce is for sale. The letters of support were not updated, and the only current evidence was from Mr. Mastronardi to the effect that they had support from producers who “did not want to rock any of the industry” which should be viewed as suspect.
- (g) This condition does not appear to be an issue as MPL BC has been operating as a wholesaler and now wants an agency licence.
- (h) Related to (d) above, there is no credible evidence that MPL BC intends to comply with the Vegetable Commission’s orders. Further, there is evidence MPL BC will not be candid and forthright with the regulator as despite statements that Mastronardi was “family-owned

but professionally run,” it no longer owns most of the shares but instead, Temasek Holdings, a Singaporean sovereign-wealth fund, has the majority stake. This shareholding transfer was scrutinized by the Competition Bureau of Canada and not disclosed in the application.

- (i) The evidence was that MPL BC intends to strip growers from existing agencies, with proprietary varieties, customer networks and fixed price contracts which will throw existing BC agencies' marketing plans out of balance and negatively impact returns to producers remaining with those agencies. Unlike the Ontario system that Mr. Mastronardi is used to, in BC, the “quota” for tomatoes, peppers, and cucumbers is specific to the producer to ensure orderly marketing. Growers cannot switch back and forth between agencies whenever they like but instead require the Vegetable Commission’s approval.
 - (j) The evidence does not demonstrate MPL BC’s willingness to cooperate with existing agencies. While it may be a capable marketer, it has not demonstrated an understanding of the role and the responsibilities of agencies to work cooperatively in the regulated environment.
44. GGFI/Windset say a large cross-section of growers, representing half the greenhouse production in BC and half the agencies for that production, oppose this agency application. They argue that this should give BCFIRB significant pause, particularly when industry participants must be able to collaborate and work together.
45. MPL BC maintains that it meets all ten conditions in Part XIV as follows:
- (a) The market penetration opportunities available through MPL BC into the US market with an established brand and an in-demand suite of products are not present with existing BC agencies. This was recognized by the Vegetable Commission as one of the reasons it supported MPL BC’s agency application.
 - (b) MPL BC would fill a market need that is not currently being filled by existing agencies through the export market and import replacement. It is uniquely positioned to provide BC producers with meaningful access to national retailers in the US market to grow the export market. It contrasts with the trend of a declining share of BC imports in the US market, under the current agencies. MPL BC will provide US market access to BC producers that current agencies are not able to provide. Existing BC agencies have not demonstrated how they could service the emerging markets, producer growth and access to proprietary varieties proposed by MPL BC.

- (c) MPL BC intends to target the US market underserved by the existing BC agencies and provide export opportunities to BC producers with minimal disruption. While MPL BC and GGFI/Windset both buy produce from each other, the fact that MPL BC buys a larger amount from GGFI/Windset is evidence of surplus product available that MPL BC can market without disrupting the market. This buying and selling of produce with other agencies is evidence of MPL BC's track record of co-operating and working with other agencies as is its support of GGFI/Windset's agency application in BC. As to the suggestion that MPL BC is litigious, they point to GGFI/Windset's acknowledgement that legal disputes are part of doing business for large companies.
- (d) MPL BC has expressed its commitment to following the Vegetable Commission orders and the applicable legislation and regulations. Mr. Mastronardi testified that MPL BC understands the responsibilities of agencies. Further, since 2021, MPL BC has operated under a wholesale licence with no compliance issues.
- (e) MPL BC points to evidence of the demand for MPL BC's proprietary products, significant US growth opportunities, stagnation in the BC export market and unparalleled access to top retailers. Further, this demand is currently not served by BC's existing agencies.
- (f) MPL BC has support from Creekside, Fresh4U Farms and Millennium Produce and support from the existing agency Country Fresh. The majority of producers opposing MPL BC's application have an agency relationship with GGFI/Windset. No growers in relationships with the other five agencies opposed the application. Agency applications are not a popularity contest and the opposition to MPL BC's agency application is really being led by GGFI/Windset, the current big player in BC controlling half of BC's greenhouse production.
- (g) There is nothing in MPL BC's application to suggest any need or reliance on wholesalers to market its product.
- (h) MPL BC's conduct as a wholesaler and its commitment to following the rules including its voluntary resolution of the civil claim and undertakings to resolve Phase II of the Allegations Review demonstrates a concerted intention on MPL BC's part to be a good industry member.
- (i) MPL BC intends to focus on producer expansion by displacing existing imported products while promoting and expanding the capacity of its growers. As such, there will be no detrimental impact on existing delivery and production allocation. The growers supporting its agency

application have the production MPL BC anticipates needing if it were granted an agency licence.

- (j) MPL BC has significant experience, resources, and knowledge base in its senior leadership team. It has the necessary knowledge, capacity, and ability to effectively run an agency right from the start.

46. To summarize, MPL BC says the evidence supports that designating it as an agency will not cause undue disruption to orderly marketing; is in the public interest and is consistent with sound marketing policy. The evidence supports a growing demand and a waning capacity in the Western US that could be met by BC production if it had the capacity, infrastructure, and wherewithal to service that market growth. They argue that MPL BC's agency designation will benefit the regulated vegetable industry in BC by offering new North American-wide opportunities to BC growers that are not currently available to them.
47. The Vegetable Commission did not respond to GGFI/Windset's statutory interpretation argument. Instead, its position is that, as the first instance regulator, it has the authority to assess each application on its merits against the ten conditions in Part XIV and exercise discretion to grant an agency designation if it is satisfied that the applicant meets the underlying objectives and principles of the designation.
48. While the Vegetable Commission did not engage in the condition-by-condition analysis called for by GGFI/Windset, their rationale for recommending MPL BC be designated an agency is reviewed in paragraphs 23-29 of their decision. The Vegetable Commission found MPL BC's status as a well-established, leading marketer with direct access to key customers throughout North America persuasive. It observed that existing agencies sell product to Mastronardi as a wholesaler precisely because it has direct access to these markets. MPL BC has complied with applicable regulatory requirements for wholesalers and has committed to having a liaison to work with the Vegetable Commission and facilitate continued compliance with the regulatory system. While acknowledging the criticisms that growers are well served within the status quo and the potential for an agency licence to cause significant disruption to existing agencies, the Vegetable Commission notes that its primary obligation is to producers. On balance, the Vegetable Commission concluded MPL BC's application satisfies the conditions in Part XIV of the General Order, stating at paragraph 29:

If the interests of producers can be better served through a new agency, with better and more direct access to key customers throughout North America, then the high threshold established under Part XIV of the General Order can be met, despite the disruption to existing agencies. In short, while it is generally undesirable to permit a proliferation of agencies that might simply compete against each other resulting in price erosion, the Commission must be alive to the possibility that a new agency can have better and more direct access to key markets than existing agencies.

49. As reflected in BCFIRB's Terms of Reference "...it is the Commission's responsibility as the first instance regulator to demonstrate that it reached ...a sound marketing policy-based recommendation". However, in this supervisory process, BCFIRB must reach its own conclusion as to whether the approval of MPL BC's agency designation is in the public interest and consistent with sound marketing policy.
50. BCFIRB disagrees with GGFI/Windset that this is an exercise in statutory interpretation requiring an assessment of the evidence in support of each of the ten conditions and, in the absence of evidence supporting all ten conditions, an application must fail.
51. BCFIRB supports the approach taken by the Vegetable Commission. Part XIV states the panel will grant designated agency status only where that application satisfies a list of ten conditions. Consideration of an agency application is a balancing exercise, and the panel determines the weight it places on any particular condition. The conditions do not need to be equally weighed. Further, while it may be possible to adduce evidence on some of the conditions (such as producer support), other conditions are forward-looking or prospective in nature and require the panel to make an educated guess, based on the materials reviewed and the consultation conducted, whether the applicant has the requisite sophistication, capacity and intention to effectively carry out its business plan and to operate cooperatively within the regulatory structure (including with other agencies) and in accordance with the General Orders. To some degree, this is an exercise in crystal ball gazing where the panel must look at a fairly limited track record and limited actual evidence and, from that, extrapolate and decide whether or not a particular applicant will successfully fulfill a strategic role and assist the Vegetable Commission with regulating, managing and growing the regulated vegetable sector in an orderly fashion. This is at its core a judgment call made on assumptions and is subject to risk and uncertainties.
52. Based on the materials and evidence tendered in this supervisory process, BCFIRB is satisfied that the MPL BC application satisfies many of the conditions in Part XIV. Conditions (a), (b), (e), (g) and (j) have largely been addressed as MPL BC has demonstrated it is a leading marketer, with direct access to large retailers in markets throughout North America not served by existing agencies. It is trying to move from being a wholesaler to an agency through this process and its business model does not contemplate relying on wholesalers. It is a sophisticated entity that is engaged in marketing in many jurisdictions and has the capacity to operate as an agency subject to the concerns identified below.
53. With respect to condition (c), the Vegetable Commission accepted that the addition of a new agency may be disruptive to other agencies, but determined its primary obligation is to producers who would likely be better served when their product is marketed directly to an agency with access to key North American markets. BCFIRB accepts that the addition of a new agency into the marketplace will

increase competition between agencies, but that disruption alone would not be justification to refuse the application. The real question for BCFIRB is whether granting MPL agency status will improve market access and price for producers across expanding markets or whether it will erode producer returns if agencies compete for the same markets. In its decision, the Vegetable Commission was aware of the possibility that MPL BC's forecasts and projections may prove unrealistic but decided that issuing MPL BC's agency licence was strategic and consistent with sound marketing policy as producers would be better served.

54. While BCFIRB is generally in agreement with the Vegetable Commission that there is a sound marketing policy justification to approve MPL BC's agency designation, BCFIRB has three broad areas of concern regarding MPL BC's:
- a) business plan to displace imported production and expand markets via increasing BC greenhouse acreage (related to condition (a));
 - b) support from multiple arms-length commercial producers (condition (f)); and,
 - c) compliance with the General Orders (condition (d))
55. BCFIRB considers each of these concerns below.

Production and Markets

56. MPL BC explained its plans to expand production and market opportunities for BC producers by displacing imports with BC products and creating greater access to domestic and US markets⁶. Given that Mastronardi has been a licenced wholesaler with the Vegetable Commission since 2021 and given its familiarity with the marketplace, BCFIRB accepts that MPL BC may be able to expand market access for producers if granted an agency designation, despite the contrary views of GGFI/Windset.
57. There does, however, remain the question of where production for these expanded market opportunities will come from. MPL BC provided an ambitious plan for expanding greenhouse acreage in BC to supply these markets as opposed to relying on the movement of producers from existing agencies. It is unclear how MPL BC's acreage growth targets can be achieved given the challenges associated with accessing land not already engaged in greenhouse production. As a result, BCFIRB sees a potential for MPL BC's agency designation to result in significant disruption among existing agencies.

⁶ May 26, 2023. Closing Submissions of MPL British Columbia Distributors Inc, p.6.

58. In its decision, the Vegetable Commission accepted that designating MPL BC as an agency could create significant disruption to existing agencies, but felt this risk was outweighed by the anticipated benefits for producers.

Producer Support

59. The purpose of agencies is to harness the collective power of multiple producers to gain market access. Reflecting this purpose, condition (f) requires applicants to demonstrate support from multiple, licensed, arms-length commercial producers that intend to market regulated products through the proposed agency. The Vegetable Commission did not expressly comment on MPL BC's support from commercial producers in its decision. In this process, GGFI/Windset disputes that MPL BC has met condition (f).
60. MPL BC provided letters of support to the Vegetable Commission from Fresh4U Farms, Creekside and Millennium Produce indicating their intention to sell products through MPL BC if it were granted an agency licence.
61. A January 31, 2017, BCFIRB supervisory decision confirmed that "...the very nature of an agency in the regulated marketing system is that it exists to market real production on the behalf of multiple producers – to represent the interest in the marketplace of a group of growers"⁷. [emphasis added]
62. The evidence in the supervisory hearing confirms that the owners of Fresh4U Farms and Creekside are husband and wife. As such, BCFIRB does not consider that these two producers are at arms-length from one another and has treated this as support from one commercial producer for the purposes of this decision. As for Millenium Produce, the evidence was that the company is currently for sale and its future involvement in the regulated greenhouse vegetable sector is unclear.
63. As MPL BC has only demonstrated support from what is essentially one commercial producer, BCFIRB is not satisfied that, if granted an agency licence, MPL BC would be fulfilling the intent of agencies to harness the collective marketing power of multiple commercial producers from the outset.
64. However, we acknowledge that a considerable amount of time has passed between the Vegetable Commission's decision in January 2022 and BCFIRB's oral hearing in May 2023. One participant suggested that MPL BC could have submitted new and updated letters of support to the Vegetable Commission or BCFIRB. Further, the Vegetable Commission could have requested that MPL BC update its application. However, these circumstances are somewhat unique in that MPL BC has been under a cloud of suspicion since the commencement of the Allegations Review. It is understandable why supportive growers may have chosen to stay silent about their intentions until such time as the cloud lifted and there was

⁷ British Columbia Farm Industry Review Board, In the Matter of the Natural Products Marketing (BC) Act and the Future of Regulated Marketing, Agency Designation, January 31, 2017, paras. 91-92.

more certainty around MPL BC's prospects. In these circumstances, BCFIRB concludes that MPL BC's failure to voluntarily update its application should not prejudice their agency application, however, the uncertainty raises concern for BCFIRB as addressed in the following section.

65. While BCFIRB could have directed MPL BC to provide updated letters of support before receiving designated agency status, this would have extended what has already been a long delay and a lengthy process. BCFIRB is satisfied that other mechanisms exist to address any uncertainty.

Compliance

66. The Vegetable Commission decision draws no conclusions on MPL BC's ability to operate in compliance with the General Orders beyond noting that MPL BC has been a compliant licensed wholesaler and it has expressed willingness to appoint a liaison to the Vegetable Commission to facilitate continued compliance.
67. However, MPL BC's history with BC's regulated market system goes well beyond compliant operation as a licensed wholesaler. Further, unlike wholesalers, agencies have a central role to play in orderly marketing and must be accountable for the legislated authorities delegated to them.
68. On August 21, 2023, BCFIRB invited eligible participants to make a supplemental written submission on the implications, if any, of Chair Donkers' ruling on the designation of MPL BC as an agency, including the implications of the voluntary reporting requirement agreed to by MPL BC in that process. In its September 6, 2023, supplemental submission, the Vegetable Commission did not see the need for any "special" reporting requirements while acknowledging that more consultation may produce further reporting requirements for all agencies.
69. MPL BC reiterated its commitment to voluntary quarterly reporting to BCFIRB for an 18-month period and to working with BCFIRB to establish reporting criteria that provide comfort that licensing and regulatory requirements are being complied with. Such reporting should align with existing and future reporting requirements (and avoid duplicity of reporting), be imposed for licensing and regulatory compliance purposes and be confidential. Additional quarterly reporting requirements could identify the growers for whom it is marketing regulated product, the production acreage of regulated product marketed for each grower and confirm compliance with the Vegetable Commission's General Orders and policies relating to delivery allocation and pricing.
70. Creekside believes the 18-month heightened reporting requirement is long but acknowledges MPL BC's excellent reporting and accounting processes. It provides clear, detailed communications and team members are readily available.

71. GGFI/Windset maintain that from an objective view of the evidence, Mr. Mastronardi and MPL BC continue to lack trust in both the Vegetable Commission and its staff which cannot be supported in the regulated vegetable industry in BC. BCFIRB should have little faith that MPL BC intends to follow the Vegetable Commission's General Orders, the enabling legislation, or the regulations. It would be inappropriate and contrary to the terms of the General Orders for BCFIRB to impose terms and conditions on MPL BC as a means of enabling it to meet the requirements of Part XIV as an applicant; either it meets the required factors at the time of its application, or it does not. In the case of MPL BC, it does not.

Conditional Approval

72. BCFIRB has identified concerns which could justify a rejection of MPL BC's agency designation. These include the potential for MPL BC's business plan to disrupt markets and production, its limited commercial producer support and its ability to comply with licensing and regulatory requirements.
73. BCFIRB has also reviewed Mr. Mastronardi's letter of January 18, 2023, and heard direct evidence from him during this supervisory review. Notwithstanding the resolution of the Allegations Review for MPL BC, we have a continued concern about MPL BC carrying out the fiduciary obligations of an agency in light of the very serious allegations that were made in its civil claim which Chair Donkers concluded were based largely on rumour, speculation, and innuendo. That concern was not fully addressed by Mr. Mastronardi in his evidence before us.
74. However, BCFIRB agrees with the Vegetable Commission that there is the potential for MPL BC to be a significant benefit to the BC greenhouse industry by creating a direct connection between producer and agency and expanding available markets for premium products throughout North America. Further, concerns related to future performance – e.g., how MPL BC will grow, whether it will strip producers from other agencies, and its willingness to comply with the regulatory requirements cannot be demonstrated by evidence. Such considerations turn on MPL BC's future intentions and future conduct.
75. BCFIRB has concluded that any uncertainty or concerns around how MPL BC will carry out its responsibilities as an agency, or otherwise conduct itself in the BC market, are best addressed by issuing a conditional or probational Class 1 agency licence which requires MPL BC to demonstrate progress on its growth projections as set out in its business plan with actual evidence of displacement of existing imported product and its promotion of and expanding capacity for its growers through expanded markets for BC greenhouse product. MPL BC would also need to show evidence of its continued cooperation with other agencies and the Vegetable Commission and compliance with the General Orders through quarterly reporting. It is only if MPL BC completes its probationary period successfully,

including to the satisfaction of the Vegetable Commission, that BCFIRB will approve its Class 1 agency designation.

76. Accordingly, BCFIRB is prepared to grant MPL BC a probationary agency designation with the conditions set out below.
77. In its January 18, 2023, letter to Chair Donkers, MPL BC committed to quarterly reporting to BCFIRB for an 18-month period should BCFIRB approve its agency designation. No reporting criteria or framework was put forward in that letter, and the Vegetable Commission has provided no further guidance, stating only that MPL BC should be subject to the same reporting requirements that apply to all agencies.
78. Given the nature of BCFIRB's outstanding concerns and that the Vegetable Commission's agency accountability framework remains incomplete⁸, MPL BC must satisfy BCFIRB - through regular reporting for an 18-month period, or until BCFIRB orders otherwise - of its ongoing commitment to orderly marketing within the regulated greenhouse industry on the terms set out below.

Decision

79. BCFIRB approves the designation of MPL BC as a designated agency as per the Natural Products Marketing (BC) Act Regulations section 8 for a probationary period, that being the 2024-2025 growing season.
80. As a condition of the probationary licence, MPL BC is required to appoint a senior executive as Vegetable Commission liaison within one month of the decision.
81. As a further condition of the probationary licence, MPL BC is required to report to BCFIRB quarterly⁹, copied to the Vegetable Commission, on the following matters:
 - a. identity of all growers for whom it is marketing regulated product and report the production acreage of regulated product marketed for each grower;
 - b. Identify any production referenced above that has displaced imported production and expanded markets for BC growers;
 - c. Identify any production referenced above which has displaced production and markets for BC agencies;

⁸ BCFIRB direction issued from its December 22, 2020, decision "In the matter of the Natural Products Marketing (BC) Act and the 2019-20 Vegetable Review".

⁹ The first report to BCFIRB is due December 31, 2023, with subsequent reports due March 31, 2024, June 30, 2024, September 30, 2024, December 31, 2024, and March 31, 2025.

British Columbia Farm Industry Review Board
MPL BC Agency Designation Approval
October 11, 2023

- d. confirm compliance with the Vegetable Commission's General Orders and policies relating to delivery allocation and pricing and identify any allegations or findings of non-compliance.
82. Failure to report to BCFIRB on the schedule set out above could result in the cancellation of MPL BC's probationary licence.
83. This is in addition to, and does not supplant, the Vegetable Commission conducting a review of MPL BC's agency license in accordance with section 3 of Part XIV of the General Orders and in advance of the 2024-25 growing season.
84. A decision of the Vegetable Commission to approve MPL BC as a designated agency for the 2024-25 growing season must be approved in writing by BCFIRB.

Dated at Victoria, British Columbia, this 11th day of October, 2023.



Pawan Joshi
Presiding Member



Al Sakalauskas
Vice-Chair



Wendy Holm
Member



BC Farm Industry Review Board

October 20, 2023

File: 44200-35\MPL

DELIVERED BY EMAIL

Morgan Camley
Counsel
Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC, Canada V6C 3R8

Robert Hrabinsky
Counsel
Affleck Hrabinsky Burgoyne LLP
1000-570 Granville Street
Vancouver, BC, Canada V6C 3P1

Craig A. B. Ferris K.C.
Counsel
Lawson Lundell LLP
Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC, Canada V6C 3L2

Dear Ms. Camley, Mr. Hrabinsky and Mr. Ferris:

CORRIGENDUM - MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL BC) AGENCY DESIGNATION PRIOR APPROVAL DECISION

The British Columbia Farm Industry Review Board (BCFIRB) released its decision approving MPL BC's designation as an agency for a probationary period on October 11, 2023 (the Agency Designation Decision). Subsequently, BCFIRB has received letters from MPL BC, Windset Farms (Canada) Ltd. and Greenhouse Grown Foods Inc. (Windset/GGFI), and the British Columbia Vegetable Marketing Commission (Vegetable Commission) seeking clarification. At issue is the proper interpretation of the following three paragraphs in the Agency Designation Decision:

79. BCFIRB approves the designation of MPL BC as a designated agency as per the Natural Products Marketing (BC) Act Regulations section 8 for a probationary period, that being the 2024-2025 growing season.

83. This is in addition to, and does not supplant, the Vegetable Commission conducting a review of MPL BC's agency license in accordance with section 3 of Part XIV of the General Orders and in advance of the 2024-25 growing season.

84. A decision of the Vegetable Commission to approve MPL BC as a designated agency for the 2024-25 growing season must be approved in writing by BCFIRB

Web:

Email: firb@gov.bc.ca

Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

Phone:

Info: 250 356-8945

Fax: 250 356-6531

Mail:

PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5

Office:

2975 Jutland Rd
Victoria, BC V8T 5J9

In brief, MPL BC acknowledges that BCFIRB approved MPL BC as a designated agency for “a probationary period, that being the 2024-2025 growing season” and seeks confirmation of the effective date and applicable period of its probationary agency designation.

Windset/GGFI takes the position the clarification is unnecessary, pointing to paragraph 83 of the Agency Designation Decision, and says that BCFIRB remitted the issue of MPL BC’s agency licence back to the Vegetable Commission “for review and consideration, and determination as to whether the requirements for Agency designation status are met and whether there are any additional terms and conditions required” with any such decision being subject to BCFIRB prior approval. In reply, MPL BC suggests there may be a typographical error in paragraph 79 and that BCFIRB intended to approve the designation of MPL BC as an agency “for a probationary period, that being the 2023-2025 growing season” (rather than “the 2024-2025 growing season”).

For its part, the Vegetable Commission says that BCFIRB’s approval of MPL BC as an agency for “the 2024-2025 growing season” (paragraph 79) seems to be nullified by paragraphs 83 and 84, which suggest that the Vegetable Commission must decide (again) whether MPL BC should be designated as an agency, subject to the approval of the BCFIRB. Further, the Vegetable Commission is not clear what steps would be required to perfect the Vegetable Commission’s January 12, 2022 decision and whether the intention is for a section 3 review to be completed before the end of this calendar year. It says that would be a substantial undertaking, essentially amounting to a “re-do” of the previous decision which is not feasible in such a short time frame. The Vegetable Commission asks:

1. Was the reference to “the 2024-2025 growing season” in paragraph 79 intended to be a reference to the 2023-2024 growing season?
2. Is the reference to “[a] decision of the Vegetable Commission to approve MPL BC as a designated agency for the 2024-25 growing season” in paragraph 84 intended to refer to the Commission’s usual renewal process, or alternatively, is the BCFIRB directing that the Commission essentially “re-do” the substantial work that preceded the Commission’s January 12, 2022 decision, in the context of a section 3 review, prior to the end of the calendar year?

BCFIRB acknowledges that its use of the term “the 2024-2025 growing season” in the Agency Designation Decision was imprecise, as there is a distinction between the crop year, which is a calendar year, and the term of an agency licence which runs from March to March. To clarify the original intent, BCFIRB is issuing the corrigendum attached as Appendix “A”.

The Vegetable Commission also queried whether paragraph 84 is referring to the Vegetable Commission’s usual renewal process, or a “re-do” of the Vegetable Commission’s January 12, 2022, decision. Paragraph 84 was not intended to ask the

Camley
Hrabinsky
Ferris
October 20, 2023
Page 3

Commission to “redo” its decision. Rather, it is intended to require the Vegetable Commission, at some point prior to the end of the MPL BC’s probationary licence term on March 1, 2025, to exercise its authority under section 3 of Part XIV, as it determines appropriate to the circumstances, and consider whether to remove the probationary conditions and recommend approval to BCFIRB of MPL BC as a designated agency.

Implicit in this direction is that the Vegetable Commission needs to be satisfied that the concerns outlined in paragraph 75 of the Agency Designation Decision have been adequately addressed by MPL BC.

Regards,

A handwritten signature in black ink, appearing to read "P. Joshi". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Pawan Joshi
Panel Chair

Attachment: Appendix A Corrigendum to Agency Designation Decision

cc: Derek Sturko, Chair, BC Vegetable Marketing Commission
BCFIRB web site

APPENDIX A – CORRIGENDUM TO AGENCY DESIGNATION DECISION

Decision

79. BCFIRB approves the designation of MPL BC as a designated agency as per the Natural Products Marketing (BC) Act Regulations section 8 for a probationary period, commencing immediately and continuing through until the licensing period ending March 1, 2025.
80. As a condition of the probationary licence, MPL BC is required to appoint a senior executive as Vegetable Commission liaison within one month of the decision.
81. As a further condition of the probationary licence, MPL BC is required to report to BCFIRB with the first report due December 31, 2023, and quarterly⁹ in the 2024 Crop Year, copied to the Vegetable Commission, on the following matters:
- a. identity of all growers for whom it is marketing regulated product and report the production acreage of regulated product marketed for each grower;
 - b. Identify any production referenced above that has displaced imported production and expanded markets for BC growers;
 - c. Identify any production referenced above which has displaced production and markets for BC agencies;
 - d. confirm compliance with the Vegetable Commission's General Orders and policies relating to production allocation and pricing and identify any allegations or findings of non-compliance.
82. Failure to report to BCFIRB on the schedule set out above could result in the cancellation of MPL BC's probationary licence.
83. This is in addition to, and does not supplant, the Vegetable Commission conducting a review of MPL BC's agency designation status in accordance with section 3 of Part XIV of the General Orders and prior to issuing MPL BC a licence for the term March 2, 2025 – March 1, 2026.
84. A decision of the Vegetable Commission to approve MPL BC as a designated agency for the term March 2, 2025 – March 1, 2026, must be approved in writing by BCFIRB.

⁹ With subsequent reports due March 31, 2024, June 30, 2024, September 30, 2024, December 31, 2024.

MPL British Columbia Distributors Inc.
5355 152nd Street Unit 103, Surrey, BC V3X 5A5

To: BC Farm Industry Review Board
From: MPL British Columbia Distributors Inc.
Re: December 31, 2023 Agency Report
Cc: BC Vegetable Marketing Commission
Date: December 27, 2023

MPL British Columbia Distributors Inc. (MPL BC) submits its December 31, 2023 Quarterly Report in accordance with the British Columbia Farm Industry Review Board (BCFIRB) Decision In the Matter of the Natural Products Marketing (BC) Act and MPL BC Agency Designation Approval dated October 11, 2023 and BCFIRB Corrigendum clarification dated October 20, 2023 (collectively, Decision):

A. IDENTIFICATION OF ALL GROWERS FOR WHOM MPL BC IS MARKETING REGULATED PRODUCT INCLUDING INFORMATION ON THE PRODUCTION ACREAGE OF REGULATED PRODUCT MARKETED FOR EACH GROWER.

Submission:

GROWER (PRODUCER)	FACILITY LOCATION	REGULATED PRODUCT	REGULATED SQUARE METERS
		LE Cucumbers	
		Bell Pepper	
		Tomatoes	
		TOV Tomatoes	
		Beefsteak Tomatoes	

B. IDENTIFICATION OF ANY PRODUCTION REFERENCED ABOVE THAT HAS DISPLACED IMPORTED PRODUCTION AND EXPANDED MARKETS FOR BC GROWERS.

Submission:

The MPL BC Agency license authorization and respective Producer Agency Transfers of Production Allocations for sales of Regulated Product are effective January 1, 2024. Accordingly, while there are no current sales of Regulated Product by MPL BC, it is expected that based on the Mastronardi network of national contracts for customers in British Columbia throughout Canada and the United States, that the production of MPL BC Producers will displace imported product that the Mastronardi network would otherwise fulfill with foreign sources, as well as open national customer markets both domestic and foreign.

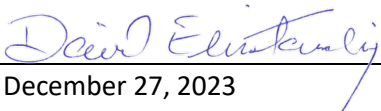
C. IDENTIFICATION OF ANY PRODUCTION REFERENCED ABOVE WHICH HAS DISPLACED PRODUCTION AND MARKETS FOR BC AGENCIES.

The MPL BC Agency license authorization and respective Producer Agency Transfers of Production Allocations for sales of Regulated Product are effective January 1, 2024. Accordingly, while there are no current sales of Regulated Product by MPL BC that has displaced production and markets for BC Agencies, we note that the production identified above represents an Agency transfer from Country Fresh Produce Inc. (CFP) to MPL BC, which occurred with the mutual consent of all parties. MPL BC does not expect that the Producer allocations above will displace any markets for CFP.

D. CONFIRMATION OF COMPLIANCE WITH THE VEGETABLE COMMISSION'S GENERAL ORDERS AND POLICIES RELATING TO PRODUCTION ALLOCATION AND PRICING AND IDENTIFY ANY ALLEGATIONS OR FINDINGS OF NON-COMPLIANCE.

MPL BC is not aware of any allegations or findings of non-compliance with the BC Vegetable marketing Commission's General Orders and Policies, and confirms compliance with the Vegetable Marketing Commission's General Orders and Policies relating to production allocation and pricing. The information provided in this report is correct and MPL BC agrees to comply with the BC Vegetable Marketing Commission General Orders and Policies relating to production allocation and pricing.

Name of authorized representative: David Einsteadig
Secretary
MPL British Columbia Distributors Inc.

Signature: 
Date: December 27, 2023

MPL British Columbia Distributors Inc.
5355 152nd Street Unit 103, Surrey, BC V3X 5A5

To: BC Farm Industry Review Board
From: MPL British Columbia Distributors Inc.
Re: March 31, 2024, Agency Report
Cc: BC Vegetable Marketing Commission
Date: March 29, 2024

MPL British Columbia Distributors Inc. (MPL BC) submits its March 31, 2024¹, Quarterly Report in accordance with the British Columbia Farm Industry Review Board (BCFIRB) Decision In the Matter of the Natural Products Marketing (BC) Act and MPL BC Agency Designation Approval dated October 11, 2023 and BCFIRB Corrigendum clarification dated October 20, 2023 (collectively, Decision):

A. IDENTIFICATION OF ALL GROWERS FOR WHOM MPL BC IS MARKETING REGULATED PRODUCT INCLUDING INFORMATION ON THE PRODUCTION ACREAGE OF REGULATED PRODUCT MARKETED FOR EACH GROWER.

Submission:

GROWER (PRODUCER)	FACILITY LOCATION	REGULATED PRODUCT	REGULATED SQUARE METERS
[REDACTED]	[REDACTED]	LE Cucumbers	[REDACTED]
		Bell Pepper	
		Tomatoes	
		TOV Tomatoes	
		Beefsteak Tomatoes	

B. IDENTIFICATION OF ANY PRODUCTION REFERENCED ABOVE THAT HAS DISPLACED IMPORTED PRODUCTION AND EXPANDED MARKETS FOR BC GROWERS.

Submission:

The MPL BC Agency license authorization and respective Producer Agency Transfers of Production Allocations for sales of Regulated Product are effective January 1, 2024. Accordingly, for the quarter ended March 31, 2024, MPL BC had sales volume of approximately [REDACTED] of Regulated Product.² It is noted that sales for Q1 of 2024 [REDACTED]

[REDACTED] Based on the Mastronardi network of national contracts for customers in British Columbia throughout Canada and the United States, this production by the MPL BC Producers will displace

¹ The Decision requires reporting by the stated deadline of March 31, 2024. Given the Good Friday holiday and weekend this report is being filed on March 29, 2024.

² The reported volume of sales is estimated based on product received in inventory and sales scheduled to the end of Q1 2024.

This report contains confidential information of MPL BC and/or third parties. A redacted version can be provided to BCFIRB and BCVMC for publication if required.

imported product that the Mastronardi network would otherwise fulfill with foreign sources, as well as open national customer markets both domestic and foreign.

C. IDENTIFICATION OF ANY PRODUCTION REFERENCED ABOVE WHICH HAS DISPLACED PRODUCTION AND MARKETS FOR BC AGENCIES.

The MPL BC Agency license authorization and respective Producer Agency Transfers of Production Allocations for sales of Regulated Product were effective January 1, 2024. Accordingly, the current sales of Regulated Product by MPL BC reported in paragraph B displaced production for markets previously allocated to other BC Agencies.³ We note that the production identified above represents an Agency transfer from Country Fresh Produce Inc. (CFP) to MPL BC, which occurred with the mutual consent of all parties. MPL BC does not expect that the Producer allocations above will displace any markets for CFP.

D. CONFIRMATION OF COMPLIANCE WITH THE VEGETABLE COMMISSION'S GENERAL ORDERS AND POLICIES RELATING TO PRODUCTION ALLOCATION AND PRICING AND IDENTIFY ANY ALLEGATIONS OR FINDINGS OF NON-COMPLIANCE.

MPL BC is not aware of any allegations or findings of non-compliance with the BC Vegetable marketing Commission's General Orders and Policies and confirms compliance with the Vegetable Marketing Commission's General Orders and Policies relating to production allocation and pricing. The information provided in this report is correct and MPL BC agrees to comply with the BC Vegetable Marketing Commission General Orders and Policies relating to production allocation and pricing.

Name of authorized representative: David Einsteadig
Secretary
MPL British Columbia Distributors Inc.

Signature: David Einsteadig
Date: March 29, 2024



This report contains confidential information of MPL BC and/or third parties. A redacted version can be provided to BCFIRB and BCVMC for publication if required.



BC VEGETABLE MARKETING COMMISSION

DECISION RE:

IN THE MATTER OF AN APPLICATION MADE BY
RED SUN FARMS ("RSF")
FOR AN ORDER DESIGNATING IT AS AN AGENCY

BEFORE: The British Columbia Vegetable Marketing Commission
Derek Sturko, Chair
Craig Evans, Member
Natalie Veles, Member
Hugh Reynolds, Member
Michael Minerva, Member

DATE: November 6, 2023

Introduction

1. "Designated agencies" are a critical component of the regulatory system for vegetables in British Columbia. Agencies play a strategic role and assist the BCVMC to regulate, manage and grow the regulated vegetable sector in an orderly fashion. They are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product.
2. Agencies are businesses licensed by the BC Vegetable Marketing Commission (Commission) to market regulated vegetables and harness the collective power of producers to gain market access. The Agency designation is a privilege that gives the licence holder the ability to market regulated product to the exclusion of others. The licence is non-transferable and is not approved in perpetuity. It expires annually and the regulated entity must apply for its Agency licence to be renewed. The Commission reviews existing Agencies to assess if an Agency status should be maintained, suspended, made subject to terms or conditions, or revoked.
3. Under the Natural Products Marketing (BC) Act (NPMA), the Commission can delegate authority to designated agencies to support the purposes of regulated marketing. Among other things, the Commission is empowered to: (a) regulate the time and place at which and to designate the agency through which a regulated product must be marketed; (b) determine the charges that may be made by a designated agency for its services; (c) set the prices, maximum prices, minimum prices or both maximum and minimum prices at which a

regulated product or a grade or class of it may be bought or sold in British Columbia or that must be paid for a regulated product by a designated agency and to set different prices for different parts of British Columbia; and (d) authorize a designated agency to conduct pools for the distribution of all proceeds received from the sale of a regulated product and to require that designated agency to distribute the proceeds of sale, after deducting all necessary and proper disbursements, expenses and charges, so that each person receives a share of the total proceeds in relation to the amount, variety, size, grade and class of a regulated product delivered by the person and to make those payments until the total net proceeds are distributed. Under section 8 of the NPMA, no designation of any agency is effective unless approved in writing by the BC Farm Industry Review Board (BCFIRB).

4. The decision on whether to designate a new agency for the marketing of regulated vegetables is a matter of fundamental marketing policy determined in the first instance by the Commission and subject to the approval of the BCFIRB. Each application for Agency designation is assessed by the Commission on its merits against the considerations in PART XIV of the General Order. The Commission may exercise discretion to grant an Agency designation if it is satisfied that the applicant meets the underlying objectives and principles of the designation, and subject to policy judgements relating to the appropriate number of agencies in a particular industry in particular circumstances. Providing agency options for the marketing of regulated vegetables contributes to orderly marketing by ensuring market growth opportunities for producers, and a steady supply of BC product for consumers. Though it is beneficial to have multiple agencies, too many agencies can lead to excessive competition for the same buyer and erode producer returns by agencies competing against each other on price in the same traditional markets. Having too few agencies may not provide for access to new markets or further growth through new product improvements that increase overall consumer demand. Access to local supply for a proposed Agency, the impact this application will have on centralized coordinated marketing, and an Agency's ability to plan for positive growth as opposed to merely competing in existing markets are all criteria that need to be applied in a broader context when making a decision to grant another Agency designation. In the end it is the Commission's responsibility to ensure that producer returns are maximized through Agency options that are available to producers.
5. On September 9,2022 Red Sun Farms (RSF) submitted its application for Agency designation with the Commission office. By letter issued September 30,2022 the Commission informed RSF that in consideration of Part XIV section 1. (2), and specifically the June 1st deadline for applications, the Commission will review its application for the 2024 Crop Year. RSF was further informed that the application will remain confidential and secured in the BCVMC office and that a five-member panel of the Commission will be appointed to review its application once the June 1,2023 deadline for applications has passed.

6. On March 27,2023 the Commission wrote to RSF as follows:

“... You are also aware that in 2021 the Commission recommended to BCFIRB that MPL British Columbia Distributors Inc. (MPL) be designated as an agency to market regulated greenhouse vegetables. However, BCFIRB has not yet completed its prior approval process of this agency designation. On March 8th, 2023 BCFIRB finalized the terms of reference it will follow to consider the BCVMC’s recommendation. A hearing is now set to take place on May 23rd, 24th, and 26th with a decision on MPL’s agency designation to follow.

We bring this pending BCFIRB decision on MPL’s agency designation to your attention because the Commission will take this decision into consideration prior to issuing a recommendation to BCFIRB on Red Sun Farms’ agency application. It is our intention to complete the review of Red Sun Farms’ agency application and issue a decision on or before September 15th. However, the timing is dependent on when BCFIRB issues its decision on MPL’s agency designation.

Unless you instruct otherwise, the agency application submitted by Red Sun Farms in 2022 will remain confidential and secured in the BCVMC office and will be the application that is to be reviewed. You may also submit an amended application to replace the application that is currently on file. If you plan to do so we ask that you inform the Commission General Manager in writing as soon as possible of your intentions. An amended agency application must be submitted to the Commission office by June 1st, 2023....”

7. On August 18,2023 the Commission wrote again to RSF:

“On March 27, 2023, the Commission informed you that Red Sun Farms’ agency application will not be reviewed until after June 1, 2023, in accordance with section 2 under General Order Part XIV Procedures For Designation Of Agencies. You were further advised that our intention to issue a decision by September 15, 2023 was dependent on the timing of BCFIRB’s decision on the Commission’s recommendation to grant Mastronardi Produce Ltd. (MPL) an agency licence. As of the date of this letter, a decision has yet to be issued and the absence of a response from BCFIRB is now impacting the timing of the consideration of Red Sun’s application. Once the BCFIRB decision is issued, the Commission will be in a better position to provide you with additional details on how the timing will be impacted.

In the same letter we informed you that the agency application submitted by Red Sun Farms in 2022 is to remain confidential and secured in the BCVMC office. You were also invited to submit an amended application by June 1, 2023, to replace this application. No amended application was received and therefore the original application submitted in 2022 will be the application that is reviewed.

Once the BCFRIB decision is issued, the Commission will proceed with the consideration of Red Sun Farms' agency application. Information on the review process is to be issued at that time."

8. RSF replied to the Commission on August 21, 2023 and urged the Commission to move forward immediately with the review of its application, without regard to the status or ultimate outcome of the MPL application. Among other things, it informed that if its Agency designation is approved, an anticipated decision past September 15th will hinder its ability to sign grower GMAs before the October 31, 2023 deadline.
9. On August 30, 2023 the Commission wrote back to RSF expressing that it will begin to process its application and that considerations on an agency licence being granted to MPL will be addressed in the review process. The letter also states that once a five-member panel is struck the Commission will make its best effort to process the application as quickly as possible and to have a decision issued in advance of the October 31 producer transfer deadline.
10. On September 13, 2023 the Commission informed RSF of the panel members and that the panel is in the process of reviewing its application.
11. On review of RSF's application, the panel noted perceived omissions or deficiencies in the submitted application. A letter was issued to RSF on September 25, 2023 that encouraged RSF to rectify these perceived omissions or deficiencies or clarify any part of the application by written submission prior to presenting its application to the panel. The letter informed RSF that the perceived omissions or deficiencies observed in reference to the General Order, are as follows:
 - A. **PART XIV 1.(3)(b), detail on commencement and operational capacity, including:**
 1. The proposed Agency's long-term objectives.
 - B. **PART XIV 1.(3)(c), evidence that demonstrates support for the proposed Agency, and specifically:**

1. The particulars on how the applicant intends to secure arrangements with producers who will ship regulated products to the proposed Agency.
 2. Copies of letters of commitment obtained from arms-length Producers who wish to market regulated product through the proposed Agency.
 3. The amount of existing greenhouse production allocation (m2) that is to be transferred to the proposed Agency.
- C. PART XIV 1.(3)(d), detail on marketing strategy and framework, including:**
1. The particulars of the proposed Agency's target market, and the total amount of regulated product to be received from each Producer who will market through the proposed Agency.
 2. An assessment of market supply and demand, including an assessment of market supply and demand in areas where the proposed Agency intends to market regulated product.
 3. The particulars of the proposed Agency's intended product placement by market category. Please complete the attached form titled 'BCVMC Market Category Template'.
 4. The names and contact information of proposed customers of the proposed Agency.
 5. Letters of commitment from proposed customers of the proposed Agency.
- D. PART XIV 1.(3)(g), The particulars on how this proposed Agency advances Producer and industry interests, including:**
1. How it would prioritize the marketing of regulated products.
 2. How it would encourage collaboration in Agency decision-making with their Producers regarding the production, transportation, packaging, storage, and marketing of regulated vegetables.
- E. PART XIV 1.(4)(g), A rationale in support of the application, with specific reference to the following:**
1. Existing and anticipated market requirements that could be serviced by the proposed Agency.
 2. How producers would benefit from shipping through this proposed Agency.
 3. How the proposed Agency benefits the industry as a whole.
 4. The impact that the proposed Agency would have on existing designated Agencies.
12. On September 29, 2023 RSF submitted a letter and supplemental attachments in response to the panel's September 25, 2023 letter.
13. On October 13, 2023 RSF presented their agency application to the panel.

14. Subsequent to the presentation, RSF circulated a letter to the panel on October 16, 2023 that provided additional commentary regarding specific questions that were asked.

Analysis

15. The Agency designation is a privilege that gives the license holder the ability to market product to the exclusion of others. Agencies are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product. An agency plays a strategic role to assist the Commission to regulate, manage and grow the regulated vegetable sector in an orderly fashion.
16. There is a high threshold to be achieved before an application for agency status will be granted. The designation of a new agency should only follow where the panel is satisfied that the presence of an additional agency will not result in price erosion, lead to market confusion, or otherwise undermine orderly marketing. The panel must be assured that the presence of the agency will enhance orderly marketing, promote the development of industry, and ensure that producer returns are maximized. These considerations are expressed in more detail in PART XIV of the General Order.
17. On review of the application the Panel is to confirm that the applicant has sufficiently demonstrated that it has addressed all considerations. The application is then assessed on its merits against the considerations in PART XIV of the General Order, and on the evidence gathered by engaging industry in consultation to validate the need for another the agency.
18. The panel has thoroughly reviewed RSF's application and its submission subsequent the delivery of its presentation. There is no doubt that RSF is a well-established, leading marketer, with direct access to significant customers throughout North America and has arrangements to deliver programmed business to national retailers. RSF also has direct access to a significant amount of production throughout North America through established acreage and grower partners, and is investing in infrastructure to better service its customer base and market needs. RSF has long established relationships with existing agencies that regularly buy and sell product to RSF to cover shortfalls in supply. RSF is licensed as a wholesaler of regulated vegetables in BC which enables it to acquire product within BC from existing agencies. However, RSF further notes that although they have been working with a wholesaler license, this form of licence is not suitable for bidding and building contracted programmed business with customers. By acquiring designated agency status RSF desires to gain direct access to BC production and provide BC producers with an opportunity to participate in supplying programmed business that is currently being filled by RSF with production from other regions. RSF seeks to represent BC producers through partnerships that map BC production to stable retail direct programs.

19. For the reasons that follow, the Commission has decided to summarily dismiss RSF's application. First, the Commission is not satisfied that RSF has provided sufficient evidence of support from arm's-length producers. Second, it is the Commission's view that there are already a sufficient number of agencies, and that the designation of yet another agency would undermine the objective of centralized, coordinated marketing. Each of these grounds will be addressed in turn.

Lack of Evidence of Producer Support

20. On balance, the panel is satisfied that RSF has provided reasonable evidence that meets the requirements set out in PART XIV of the General Order, with one exception. The applicant has failed to demonstrate that it has producer support and commitment. Applications for designated agency status must include a detailed business plan addressing how the applicant will secure access to regulated product, including Part XIV paragraph 1.(3)(c)(iii):

“(iii) copies of all letters of commitment obtained from arms-length Producers who wish to market regulated product through the proposed Agency; ...”

21. RSF has not provided any letters of commitment that satisfy Part XIV paragraph 1.(3)(c)(iii) of the General Order. RSF states that its “goal in BC is to partner and represent growers ...” and that it has had several conversations with BC producers since communicating its intent to industry stakeholders to apply for a designated agency licence. RSF's position on this requirement is that it places the producer in a difficult situation to commit to a prospective agency so far in advance while the producer is supplying product under a grower marketing agreement that is in place with an existing designated agency. RSF contends that the obligation creates mistrust and concerns amongst producers and that the Commission should consider granting an agency applicant with a conditional agency licence, subject to the expectation that producers will commit to producing for the agency applicant over the ensuing crop year. A failure on the part of the agency applicant to attract prospective producers prior to the October 31 agency transfer deadline would provide grounds for retracting the conditional agency status that has been granted to the applicant.

22. The panel appreciates RSF's perspective on this requirement. However, producer support is an essential prerequisite. The General Order sets out the rules on how the Commission manages the industry to ensure orderly marketing. Part XIV paragraph 1.(3)(c)(iii) is a requirement stated in the Commission's General Order. Letters of commitment from producers provide evidence of producer support for the prospective agency. Producer support is a key pillar of an application in demonstrating through evidence that there is a strong need for another agency to represent BC regulated vegetable producers.

The Application in Context

23. This application for designated agency status was submitted to the Commission on September 9, 2022. Part XIV paragraph 1. (2) of the General Order states as follows:
- (2) Unless otherwise specified by the Commission in writing, applications for designated Agency status must be submitted to the Commission on or prior to June 1, for consideration by the Commission between June 1 and September 15 of that calendar year.
24. RSF was notified by the Commission of its intention to review its application over the period as directed in the General Order. At the time it was anticipated that a decision by BCFIRB to grant designated agency status to MPL British Columbia Distributors Inc. (“MPL BC”) would be forthcoming. However, this was not to be the case. Though MPL BC had been approved for agency designation by the Commission on December 21, 2021, as per section 8 of the NPMA, no designation of any agency is effective unless approved in writing by the BCFIRB. A decision by BCFIRB would not be forthcoming as was anticipated. BCFIRB’s decision on MPL BC was in fact issued on October 11, 2023, twenty-two (22) months after a panel of the Commission issued the decision that MPL BC should be designated as an agency, subject to the approval of BCFIRB.
25. On March 22, 2023, the Commission notified RSF of this concern and wrote to RSF as follows:
- “... We bring this pending BCFIRB decision on MPL’s agency designation to your attention because the Commission will take this decision into consideration prior to issuing a recommendation to BCFIRB on Red Sun Farms’ agency application. It is our intention to complete the review of Red Sun Farms’ agency application and issue a decision on or before September 15th. However, the timing is dependent on when BCFIRB issues its decision on MPL’s agency designation. ...”
26. In subsequent correspondence with the Commission, RSF requested that the review of its application for agency designation should commence immediately and directed the Commission’s attention to the fact that there is nothing in the General Order that prohibits the Commission from reviewing an application while another application is pending or outstanding. In August 2023 the Commission struck a panel and proceeded with the process.
27. Though the Commission had every intention to comply with the period over which an application is to be considered, it does not agree that an application can be considered in isolation, and without regard to the broader context. On the contrary, MPL’s pending designated agency licence is a significant factor that needs to be noted. If there are too many agencies operating within the Province, the objective of centralized, coordinated marketing

is undermined. Indeed, the presence of too many agencies can lead to undesirable fragmentation that can actually erode producer returns. Thus, the presence of MPL BC as a designated agency needs to be taken into consideration when assessing the merits of the RSF application against the considerations in PART XIV of the General Order.

28. In this regard, it is notable that the Commission made the following comment in its decision to grant designated agency status to MPL, subject to the approval of the BCFIRB:

“...it is generally undesirable to permit a proliferation of agencies that might simply compete against each other resulting in price erosion...”

29. As noted, “designated Agencies” are a critical component of the regulatory system for vegetables in British Columbia. They are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product. The appropriate number of designated agencies and the potential for marketing “fragmentation” to erode producer returns is an important consideration that needs to be addressed at the industry level. At any given time, the ideal marketing structure needs to provide for reasonable stability and should help producers make sound business decisions that work for them, while promoting industry competitiveness, adaptability, and growth. The panel is cognizant that new agencies should not be admitted unless there is evidence showing how the introduction of a new agency benefits the industry as a whole despite further decentralization of marketing.

30. Therefore, the BCFIRB decision to grant or deny the MPL BC designated agency licence is an important consideration that bears on the Commission’s assessment of this agency application. The delay in the review of the application is not unreasonable.

Summary

31. After due consideration the panel has decided to summarily dismiss RSF’s application pursuant to subsection 2(4) of PART XIV of the Commission’s General Order. The panel is satisfied that it would not be in the interest of the industry to grant designated Agency status to RSF at this time due to the application’s non-compliance to Part XIV paragraph 1.(3)(c)(iii) and the Commission’s view that there are already a sufficient number of agencies, and that the designation of yet another agency would undermine the objective of centralized, coordinated marketing.

32. The Commission does not agree that an application can be considered in isolation, and without regard to the broader context. The appropriate number of designated agencies and the potential for marketing “fragmentation” to erode producer returns is an important consideration that needs to be addressed at the industry level. New agencies should not be

admitted unless there is evidence showing how the introduction of a new agency benefits the industry as a whole despite further decentralization of marketing.

33. The panel acknowledges RSF’s collaborative approach to working with BC agencies and producers and invites RSF to apply again in the future with an agency application that demonstrates producer support.

34. It is the panel’s considered view that this decision reflects a principled-based approach to supervision and regulation. This principled approach has been defined by the BCFIRB as six principles collectively referred to as the “S.A.F.E.T.I.” principles.

35. The S.A.F.E.T.I. analysis of this decision:

STRATEGIC	<ul style="list-style-type: none"> The decision reflects the identification of key opportunities as well as systemic challenges. Because centralized marketing is the primary mechanism by which producer returns are maximized, the panel is cognizant that new agencies should not be considered unless there is evidence of producer support for the new agency applicant despite further decentralization of marketing. In this instance the application was submitted without demonstrated producer support.
ACCOUNTABLE	<ul style="list-style-type: none"> The panel has maintained legitimacy and integrity by discharging its responsibilities according to the detailed criteria for new agency applications published in Part XIV of the General Order. Builds accountability in the system by bringing attention to Producer support as a key pillar of an application in demonstrating through evidence that there is a strong need for another agency.
FAIR	<ul style="list-style-type: none"> The panel has ensured procedural fairness by providing the applicant with a fulsome opportunity to express their opinions and comply with all considerations expressed in detail in PART XIV of the General Order.
EFFECTIVE	<ul style="list-style-type: none"> The high threshold for the grant of an agency designation, as well as the process by which such applications are to be made, are both clearly defined in Part XIV of the General Order. The Commission’s expectations are therefore clearly defined for the applicant.
TRANSPARENT	<ul style="list-style-type: none"> The panel has taken all appropriate measures to ensure that process, practices, procedures, and reporting on how the mandate is exercised are open, accessible and fully informed.
INCLUSIVE	<ul style="list-style-type: none"> The panel has taken all appropriate steps to ensure that appropriate interests are considered.



Derek Sturko, Chair