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**DELIVERED BY EMAIL**

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Dear Chairs:

**DELIVERY OF PRINCIPLES-BASED REGULATION – EXPECTATIONS GOING FORWARD**

It is an expectation of Government that the regulated marketing system operate in the interests of all British Columbians. The regulated sector contributes over half of B.C.'s farm gate cash receipts, and

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supports ancillary industries and a significant processing and marketing value chain. It therefore plays a key role in meeting the Ministry of Agriculture's Vision "to be an innovative, adaptive and globally competitive agrifood and seafood sector valued by all British Columbians" and its related goal "to increase B.C. agrifood and seafood sector revenues to \$15 billion per year by 2020".<sup>1</sup>

Boards and commissions (commodity boards) created and operating under the authority of the *Natural Products Marketing (BC) Act (NPMA)* must be responsive to the needs of B.C. producers, processors, consumers and other participants in the agrifood system. As the Provincial supervisory board, the BC Farm Industry Review Board (BCFIRB) expects commodity boards will fulfill their responsibilities as first instance regulators through strategic and accountable governance using a principles-based approach to regulation.

This letter outlines BCFIRB's requirements of commodity boards going forward to demonstrate that the B.C. regulatory system is:

- operating in accordance with governing legislation, regulations, policies and agreements;
- governed with integrity and fairness; and,
- acting in the public interest.

## Background

Under s. 7.1 of the *NPMA*, BCFIRB has general supervisory authority over the commodity boards. This includes ensuring commodity board decisions and actions reflect *sound marketing policy* (s. 9(2)(a)).

BCFIRB has determined that a principles-based approach to regulation<sup>2</sup> best positions the B.C. regulated system to deliver on outcomes that matter. Principles-based regulation moves away from prescriptive regulation to a strategic and accountable approach to meeting statutory responsibilities in a rapidly changing environment. This is a significant shift, including of governance cultures, but one which reflects the direction of other agencies responsible for important and complex economic sectors. Examples include the BC Securities Commission and other financial and business regulatory agencies elsewhere.

BCFIRB has worked in coordination with the commodity boards over several years to develop and implement this principles-based approach to regulation:

*Phase I Development (2011)*: Introduced and started building principles-based regulation in the sector, including joint development of the accountability framework and guiding principles (SAFETI<sup>3</sup>).

*Phase II Implementation (2013)*: Initial implementation by BCFIRB and the commodity boards, including goal-based public reporting<sup>4</sup>.

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<sup>1</sup> 2015. B.C. Ministry of Agriculture. [The B.C. Agrifood and Seafood Strategic Growth Plan](#).

<sup>2</sup> [BCFIRB Governance](#)

<sup>3</sup> Strategic Accountable Fair Effective Transparent Inclusive

<sup>4</sup> [BCFIRB Service Plan Report](#)

We are now moving into *Phase III Delivery* as established at the February 24, 2016 Principles-Based Regulation Workshop. The following sets out BCFIRB's associated determination and directions.

## **BCFIRB Determination and Directives**

BCFIRB has determined that:

Commodity board use of a principles-based regulation, supported by a demonstrated use of the SAFETI principles, in decision-making and regulatory operations is in the public interest and is in accordance with sound marketing policy under the *NPMA*.

### *Directive 1: Outcomes that matter*

Using principles-based regulation and the SAFETI principles, all commodity boards will consistently focus on delivering outcomes that matter for producers, the value chain and the public by:

- engaging in regular strategic planning that identifies opportunities, challenges and risks; and,
- ensuring rules (regulations) and ongoing decision-making are responsive to that strategic planning as well as on-going overall strategic objectives.

### *Directive 2: Reporting*

Commodity boards will report to BCFIRB and all stakeholders on how their operations and decision-making are meeting their strategic objectives and related performance measures.

Commodity boards are required to clearly demonstrate that their operations and decision-making are consistent with the BCFIRB's strategic goals<sup>5</sup>:

- Goal 1: A regulated marketing system with effective self-governance.
- Goal 2: A principles-based, outcomes-oriented approach to regulation.
- Goal 3: Effective, fair and independent resolution of inquiries and disputes.

### *Directive 3: Continuous improvement*

While acknowledging that use of principles-based regulation and SAFETI will remain an on-going learning process and is a change in long-established governance culture for all, BCFIRB requires commodity boards to continue to:

- monitor what challenges they are having or foresee having in consistently applying principles-based regulation and SAFETI;
- put in place and implement strategies to address these challenges; and,
- integrate the resulting achievements and lessons learned into reporting.

## **What This Means**

Commodity boards are required to consistently show they are meeting their responsibilities as first instance regulators using principles-based regulation and SAFETI. Recent BCFIRB appeal and supervisory decisions (e.g. [Island Vegetable Cooperative Association v. BC Vegetable Marketing Commission, December 18, 2015](#); [Mountain View Acres v. BC Chicken Marketing Board, March 1,](#)

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<sup>5</sup> [BCFIRB Service Plan](#)

[2016; BC Egg Marketing Board Egg Quota Allocation Approval, March 9, 2016](#); and [Skye Hi Farms Inc. et al v. BC Broiler Hatching Egg Commission, March 29, 2016](#)), clearly reflect BCFIRB's expectations.

BCFIRB supervisory oversight and decisions under the *NPMA* will continue to employ this standard of scrutiny going forward.

As highlighted at the February 24, 2016 Workshop, some examples of principles-based regulation and SAFETI in action include:

- All policy and operational information is available to the public except where privacy legislation applies. Where there is a legitimate privacy concern, ways of information sharing are developed that respects that concern.
  - e.g. BC Egg Marketing Board [Transparency Plan](#)
- Decision-making consultation processes clearly demonstrate use of SAFETI through procedural fairness and inclusion of appropriate interests. This includes asking the appropriate questions of affected stakeholders throughout the process.
  - e.g. BC Vegetable Marketing Commission [Vancouver Island Regulatory Review](#)
- Decision rationale clearly shows how a board took the SAFETI principles into account.
  - e.g. BC Chicken Marketing Board Schedule 15 – [A-129 Mainstream pricing request for exceptional circumstances](#)

Examples of the types of performance measures required of the commodity boards can be found in BCFIRB's [Service Plan](#).

BCFIRB and the commodity boards are still subject to their obligations at common law, as per the [Island Vegetable Cooperative Association v. BC Vegetable Marketing Commission, December 18, 2015](#):

31. ...The common law obligation is just that – a common law duty. The common law does not and could not have the effect of precluding the application of a consultation requirement, as found by BCFIRB, as a matter of sound governance and sound marketing policy by commodity boards. In short, we find that a commodity board's procedural duties require it to have regard to both the common law and BCFIRB's SAFETI principles.

As also noted in this decision, although "SAFETI principles are not intended to be applied blindly and mechanistically" and "may be departed from or qualified where there is good reason", their use assists in determining whether regulatory actions and decisions are procedurally fair and in accord with sound marketing policy"; with the latter being a requirement under s. 9(2)(a) of the *NPMA*. As the Provincial supervisory board, BCFIRB has concluded that the additional use of SAFETI principles supports and demonstrates informed decision making and effective self-governance in the B.C. regulated marketing sector.

Commodity boards will benefit from using, and demonstrating they are using, principles-based regulation and SAFETI with BCFIRB positioned to provide higher-level supervisory oversight. As set out in BCFIRB's December 30, 2015 letter,

...[BCFIRB] is prepared to place more focus on supervising through a risk and evidence-based level of oversight. In return the commodity boards must demonstrate that they are capable of earning and retaining that regulatory dividend. That was the “quid pro quo” in BCFIRB’s May 31, 2011 letter and remains so today.

Well governed boards that engage positively and openly with stakeholders and BCFIRB and with our supervisory objectives (effective self-regulation, PBR and effective, fair and independent resolution of disputes) “should expect to experience real benefits”. Sound, reasoned and defensible decisions support a sustainable regulated sector and are less likely to be challenged by industry or public stakeholders in appeals or other forums.

### **Next Steps**

BCFIRB heard at the February Workshop that it is important that the concepts of principles-based regulation and SAFETI be shared with other provincial and national stakeholders (e.g. processors, associations, national agencies). BCFIRB will continue to work with the commodity boards and other stakeholders in sharing and discussing this approach to regulation.

Similarly, and in accordance with the determination and directives outlined in this decision, BCFIRB will continue to work with the commodity boards in ensuring that principles-based regulation and the SAFETI principles are reflected in the operations, decisions and reporting of the agencies governing the B.C. regulated sector.

If you have any questions, please do not hesitate to contact BCFIRB.

Yours truly,



John Les  
Chair

cc: Honourable Norm Letnick  
Minister of Agriculture

Ministry of Agriculture Executive Staff

Marketing Boards and Commissions Executive Staff

BCFIRB website