



File: 44200-00 GOV

November 27, 2019

**DELIVERED BY EMAIL**

Debbie Etsell  
Chair  
BC Vegetable Marketing Commission

André Solymosi  
General Manager  
BC Vegetable Marketing Commission

Dear all,

**VEGETABLE SUPERVISORY REVIEW SCOPE DEVELOPMENT UPDATE AND NEXT STEPS**

Thank you for meeting with the supervisory review panel on November 14, 2019. This meeting was held in follow-up to the meeting with BC Vegetable Marketing Commission (Vegetable Commission) members held on October 28, 2019.<sup>1</sup>

Meeting objectives included:

- Getting a detailed status report on current Commission projects;
- Requesting current governance documents; and,
- Getting feedback on a proposal that the Commission strike a working group of its members.

Coming out of these two meetings, attached is the panel's current understanding of Commission projects, appeals and other related matters. After reviewing the attached list, please advise the panel of any corrections or omissions. The panel thanks the Commission for sending its current governance documents.

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<sup>1</sup> At the request of BCFIRB's chair, and to address matters they identified unrelated to this supervisory review, the panel held a meeting with one of the Commission's consultants.

### **Commission Working Group recommendation**

At the October 28, 2019 meeting with the Commission, all agreed to the difficulties of coordinating timely meetings. With members living in different parts of the province, differing seasonal demands based on crop types, and other business and personal commitments scheduling meetings is difficult. As an alternative, the panel recommended a working group. The working group would be tasked with a Commission mandate to engage with the panel and communicate results of any discussions back to the full Commission for input and consideration.

The panel recommended that the working group include the Chair, Vice-Chair and member representation from the storage and greenhouse sectors; with General Manager support. The panel looks forward to hearing from the Commission.

### **Current producer and agency licensing and related questions**

The supervisory review panel recognizes there are current producer and agency licensing and related questions that may need some form of answer for the 2020/21 crop year.

In a February 28, 2019 appeal decision<sup>2</sup>, BCFIRB directed the Commission to reconsider several orders, including those related to Prokam Enterprises Ltd. (Prokam) licensing and agency assignment.

As the Commission reconsideration process got under way in spring 2019, Prokam contacted the Commission, indicating that there may be an application for a new agency. Prokam asked that if the agency application was successful, that the Commission direct Prokam to that new agency. CFP Marketing Corporation (CFP) subsequently applied for an agency licence. The application was dismissed, and the decision appealed by CFP.<sup>3</sup> The appeal was deferred on September 10, 2019 pending the outcome of this supervisory review.

On September 20, 2019 Prokam applied to the remaining BCFIRB panel member of the Prokam and Thomas Fresh v BCVMC appeal for a producer shipper licence and delivery allocation calculation. The panel member concluded he was *functus officio* (had discharged his duty to the appellant when the decision was issued) and referred the request to the supervisory review panel.

In a November 13, 2019 letter to the supervisory panel, legal counsel for Prokam and CFP requested an immediate and meaningful opportunity to be heard in the supervisory review process.

Subsequently the Commission reconsideration decision was released on November 18, 2019. As per this decision, Prokam has the following options if it chooses to produce B.C. regulated vegetables for 2020/21:

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<sup>2</sup> 2019 February 28. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and Appeals from Compliance Orders of the British Columbia Vegetable Marketing Commission.](#)

<sup>3</sup> The Commission summarily dismissed CFP's agency application and placed a moratorium on agency and producer-shipper applications pending completion of strategic planning, agency accountability review and any consequential amendments to its General Orders.

- If Prokam chooses to grow regulated vegetables, it is directed to market through BCfresh under the terms of the three-year GMA [Grower Marketing Agreement] that was entered in February 15, 2018.
- If BCfresh releases Prokam from the GMA, Prokam can consult with other licensed storage crop agencies to represent the grower in consideration of the new interim order.

The panel expects the Commission will follow-up with BCfresh on its intentions regarding Prokams' GMA.

Prokam appealed this decision on November 21, 2019 and, amongst other relief asked for an interlocutory order for a producer-shipper licence pending determination of its' appeal and CFP's deferred appeal.

Regarding CFP's agency application, in the panel's view it is not sound marketing policy to restrict agency applications for an unknown and potentially extended time period. It will take this view into consideration as it develops the supervisory review scope and process. The panel will also take in to consideration three themes arising from a recent series of vegetable sector agency-related supervisory review decisions: new agency decisions must be made within the context of a vision and direction for the regulated vegetable sector; the vision needs to be integrated with a proactive approach that seeks to identify and resolve emerging industry issues and challenges; and, agencies need to be accountable for the legislated authorities they are delegated.

#### **Next Steps – Finalizing supervisory review scope**

Since November 14, the panel has turned its mind to an effective, fair and inclusive process for finalizing the scope for its supervisory. While this supervisory review was initiated on September 10, 2019 as the result of a BCFIRB appeal panel decision deferring a CFP appeal, this review is also taking place within the broader context of other interrelated activities and issues (see attached).

To finalize the scope for review, the panel will take the following steps:

1. Complete its review of the November 18 reconsideration decision to determine whether and how these matters may connect to this supervisory review;
2. Draft a terms of reference;
3. Provide the draft terms of reference document to the Commission and industry stakeholders for written comment; and,
4. Finalize the terms of reference and review process, taking all comments received into account and prioritizing any items of immediate concern to the industry.

In preparing finalizing the terms of reference, the panel will ensure that CFP has an opportunity to be heard.

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Stakeholders can visit BCFIRB's web site [here](#)<sup>4</sup> to view and subscribe to supervisory review updates, including access to this letter and other documents. The Commission is encouraged to advise its stakeholders of the supervisory review web page.

If you have questions regarding this review, please contact Wanda Gorsuch at [Wanda.Gorsuch@gov.bc.ca](mailto:Wanda.Gorsuch@gov.bc.ca) or 778-974-5790.

Regards,



Daphne Stancil,  
Panel Chair

Attachment: Summary of Commission projects, appeals and other related matters

cc: Bob Gill,  
CFP Marketing Corporation

Bob Dhillon,  
Prokam Enterprises Ltd.

Jason Tubman  
Thomas Fresh

Randy Andres  
Island Vegetable Cooperative Association

BCFIRB web site

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<sup>4</sup> <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/boards-commissions-tribunals/bc-farm-industry-review-board/regulated-marketing/supervisory-reviews/2019-vegetable-supervisory-review>

## Summary of Commission projects, appeals and other related matters

The following summarizes the panels' understanding of current Commission projects, appeals and other related matters.

### 1. Strategic Planning (2018 to present)

Strategic planning is consistent with good business practice and meets BCFIRB's stated supervisory expectations:

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.<sup>5</sup>

The Commission began preparation for its' strategic planning cycle in 2018, with survey work and meetings being undertaken from spring through summer of 2019. The Commission is set to review the status of the project and establish a work plan for completion.

### 2. Agency Accountability Review (2018 to present)

In its December 23, 2013 supervisory review decision<sup>6</sup>, BCFIRB stated that the Commission is expected to ensure accountability of all agencies. The Commission has taken steps towards doing so.<sup>7</sup> In 2018 the Commission started collecting information from agencies. The original deadline forecast for completing the accountability review was early 2019. Extensive written surveys and follow-up interviews are completed. A draft report is currently being compiled for Commission consideration. The Commission is yet to assess whether any changes may be needed to its agency policies and rules to achieve effective, strategic and accountable outcomes for industry.

### 3. CFP agency application (2019)

CFP appealed the Commission June 28, 2019 decision summarily dismissing CFP's agency application and placement of a moratorium on agency and producer-shipper applications until the Commission completes its strategic planning process, agency review process and implements any consequential amendments to its General Orders.

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<sup>5</sup> 2016 June 6. BCFIRB. [Delivery of Principles-Based Regulation – Expectations Going Forward](#).

<sup>6</sup> 2013 December 23. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and Follow-Up to the January 7, 2013 Supervisory Review Decision Concerning the British Columbia Vegetable Marketing Commission Central Vancouver Island Agency Designations](#).

<sup>7</sup> 2017 January 31. [In the Matter of the Natural Products Marketing \(BC\) Act and the Future of Regulated Vegetable Production on Vancouver Island – Agency Designation](#).

On September 10, 2019 a BCFIRB appeal panel deferred the appeal until this supervisory review process is completed.

#### **4. Prokam Producer-Shipper licence request (2019)**

On September 20, 2019 Prokam applied to the BCFIRB Vice Chair as the remaining panel member that rendered the February 28, 2019 Prokam and Thomas Fresh v. BCVMC decision for orders directing the Commission to:

- Issue Prokam a producer-shipper licence for the 2020/21 crop year, with leave for Prokam to apply for renewal for the 2021/22 crop year; and,
- That Prokams' 2020/21 Delivery Allocation calculation disregard the 2018/19 and 2019/20 crop years.

In an October 7, 2019 response, the panel member observed that Prokam was seeking relief from the appeal decision that is substantive in nature, as opposed to the correction of a slip or other error. As such, the panel member considered themselves *functus officio* (without authority) given the appeal was completed. The panel member stated they had recused themselves from this supervisory review and that they were forwarding the application to the supervisory panel for consideration.

#### **5. Commission Reconsideration of Orders (2019)**

On February 28, 2019 BCFIRB issued an appeal decision which directed the Commission to reconsider several of its orders, including those related to Prokam's licence class and the agency through which Prokam is to market.

The November 18, 2019 reconsideration decision was appealed to BCFIRB by Prokam on November 21, 2019.

#### **6. General Orders Update (to be started)**

The Commission plans to assess and update its's General Orders to ensure the Orders reflect the Commission's current policies and operational objectives.

#### **7. Governance and Commission structure (2004 to present)**

Fair process, decision-making, quorum, and conflict of interest challenges are themes repeated throughout appeals and supervisory reviews between 2004 and today. On several occasions there was some effort to initiate a process to consider Commission structure with BCFIRB support. However, an effective examination of the Commission structure, in consultation with the industry, remains outstanding.