



December 16, 2015

File: 44200-00 Transparency

**DELIVERED BY EMAIL**

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Dear Colleagues:

**MARKETINGS BOARDS AND COMMISSIONS TRANSPARENCY – RESPONSIBILITY FOR DISCLOSURE TO SUPERVISORY BOARD**

The issue of transparency in the B.C. regulated marketing system is a work in progress. It is part of an ongoing dialogue about the principles/outcomes-based regulation (PBR) and the SAFETI (Strategic,

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Accountable, Fair, Effective, Transparent, Inclusive) initiatives that the BC Farm Industry Review Board (BCFIRB) and the marketing boards and commissions (commodity boards) have undertaken.

As discussed at the executive staff meeting on October 19, the February 24, 2016 PBR/SAFETI workshop is an important opportunity to work together in support of good governance in the regulated marketing sector. We will be sending you an invitation to participate in planning for the February 24 workshop shortly.

The purpose of today's letter, in response to some issues arising, is to reiterate some specific disclosure ("transparency") responsibilities that the boards have to BCFIRB under the *Natural Products Marketing (BC) Act* (NPMA) and its Regulations. I thought it might be useful to recap these existing statutory requirements to confirm a common understanding.

### **General Supervision**

Section 7.1(3)(d) of the NPMA provides the general supervisory authority for BCFIRB to "make an order requiring a person to produce records or things in their custody or possession". This includes commodity boards and other industry stakeholders.

While this power authorizes BCFIRB to order a person to produce documents, it is important for commodity boards to remember that they are subject to a standing legal obligation to provide to BCFIRB "all minutes, orders, reports, rules and regulations...forthwith, as they are made or amended". This duty is set out in section 3(a) of the NPMA Regulations:

copies of all minutes, orders, reports, rules and regulations of every marketing board or commission shall be forwarded forthwith, as they are made or amended, to the Provincial board (BCFIRB). [emphasis added]

The intent here is to provide BCFIRB, as the supervisory board, with the information necessary to its oversight role. As you know, BCFIRB has directed the commodity boards to be more transparent (to all stakeholders) in their operations and decision-making. This does not, however, relieve commodity boards of their duty to comply with the ongoing regulatory obligation set out in s. 3(a) of the Regulations. Nor does it remove the responsibility of BCFIRB to ensure it keeps properly informed.

Please ensure that your commodity board undertakes the appropriate steps to ensure ongoing compliance with the obligation in s. 3(a) of the Regulations. For our part, BCFIRB staff will continue to monitor incoming material, and be in contact with the commodity boards as required in order to ensure that this obligation is met.

### **Appeals**

Section 8(5) of the NPMA states that:

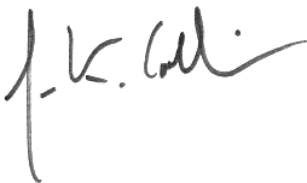
The marketing board or commission from which an appeal is made must promptly provide the Provincial board (BCFIRB) with every bylaw, order, rule and other document touching on the matter under appeal. [emphasis added]

This is expanded upon in Rules 9, 10 and 11 of BCFIRB's [Rules of Practice and Procedure for Appeals](#). Several essential elements include:

- 1) A commodity board has 21 days following confirmation of a valid appeal to provide all information touching on the matter under appeal – in a non-redacted form – to BCFIRB.
- 2) The only exception to 1) would involve information that is properly protected by privilege at law. Where a commodity board proposes to withhold such information from BCFIRB, its disclosure package must clearly outline what legal privilege it is relying on for a particular document or class of documents.
- 3) BCFIRB will, during the course of an appeal and as part of early case management, require the commodity board to disclose the information described in s. 8(5) of the NPMA to other parties to the appeal unless BCFIRB receives an application from the commodity board under s. 42 of the *Administrative Tribunals Act* (ATA) for an order that some or all of the records disclosed to BCFIRB not be shared with one or more parties to the appeal. Section 42 of the ATA, which applies to NPMA appeals by virtue of s. 8.1(1) of the NPMA, provides as follows:
  - 42 The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any interveners, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.
- 4) Applications by a commodity board and/or a party for the disclosure of other documents from another party can also be made. Following this case management, a commodity board and/or a party will identify the documents – including those disclosed at 3) – they will rely on at the hearing of the appeal.

Thanks for your assistance regarding the above and if you have any questions, please let me know.

Yours truly,



Jim Collins  
Executive Director

cc: BCFIRB website