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DELIVERED BY EMAIL

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Dear Chairs:

WORKSHOP ANNOUNCEMENT: PRINCIPLES/OUTCOMES BASED REGULATION (PBR) AND SAFETI (STRATEGIC, ACCOUNTABLE, FAIR, EFFECTIVE, TRANSPARENT, INCLUSIVE) – HOW ARE WE ALL DOING?

I am writing on behalf of the BC Farm Industry Review Board (BCFIRB) to formally invite your boards and staff to attend the February 24, 2016 PBR/SAFETI workshop in Abbotsford.

**British Columbia
Farm Industry Review Board**

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Some of you provided valuable contributions to the initial development of the PBR/SAFETI initiatives in 2011-12. As communicated then, the transition and outcomes from these initiatives were never expected to be quick or easy. Now we all have practical and valuable experiences (both good and bad) to draw upon in assessing this work in progress. BCFIRB thus sees the opportunity from the February 2016 workshop as dual-purpose – it is both an occasion to learn and a participatory forum for continuous improvement in the development of PBR/SAFETI. We all will examine and discuss what and how we are doing, the lessons we all have learned and where we all have opportunities for improvement.

This letter also provides some initial food for thought in advance of February 24. It outlines what PBR and SAFETI are – they are not the same thing – and why they can promote a more innovative and competitive regulated marketing sector.

Preparation for February 24 Workshop

BCFIRB welcomes your assistance with advanced preparations. Anyone interested in helping our working group can contact Katia Gauvin, BCFIRB Issues Management Analyst, who will be arranging a meeting/conference call for early January (katia.gauvin@gov.bc.ca / 250-356-7819). We also intend to provide further background and familiarization information in advance (e.g., an updated Accountability Framework) and engage a facilitator(s) so that all attendees are in a position to participate fully in an open and frank discussion on February 24. If you have information requirements or suggestions as to the facilitation process, please let Katia know.

Rationale for Principles-based Regulation

Experience has shown BCFIRB that prescriptive directions and rules on their own do not ensure effective self-regulation, decision-making, governance and supervision. Too many prescriptive rules – ‘red tape’ – can also divert attention from real priorities and strategic objectives for a board or a sector. This is why BCFIRB has worked with the boards to transition to principles-based regulation.

A May 31, 2011 letter from BCFIRB describes the accountability of BCFIRB and the commodity boards. Principles-based regulation, also known as “outcomes-based regulation” was seen as key to demonstrating that BCFIRB and the boards were practicing good governance in support of the public interest:

Clearly, the industries which we regulate are changing rapidly and we as the governing bodies must stay abreast of these changes, including Government policy that reflects societal expectations. Boards must be proactive risk managers and govern themselves in ways that acknowledge that our constituencies are not limited to the producers and processors of the respective sectors. Our stakeholders extend to all citizens of BC on whose behalf – in the public interest – we administer the legislative framework that provides for regulated marketing. That accountability framework was clearly confirmed as part of the May 19 meeting.

The October 7, 2010 letters of expectation from the Minister of Agriculture indicate concerns exist with the governance of the regulated marketing sector. While I do not agree that every concern that is expressed from time to time is legitimate, I reiterate my statements at the May 19 meeting – collectively and individually our boards must do a better job. It is not enough for us to say we are providing good governance – we must demonstrate in our actions, decisions and reporting that we are proactively and substantively meeting

expectations of good governance, natural justice and administrative fairness while taking into account government policy.

The BC Farm Industry Review Board (BCFIRB) is transitioning to “principles-based regulation” which will supplement a risk- and evidence-based approach to governance and the supervision of the boards. Past prescriptive direction by BCFIRB was in response to a failure of the system to demonstrate responsive governance. BCFIRB’s new approach will be to clearly articulate expected regulatory outcomes rather than issuing detailed rules prescribing how outcomes must be achieved. The ‘quid pro quo’ of BCFIRB progressively moving toward principles-based regulation is for the boards to demonstrate they are meeting the expected regulatory outcomes in a way that best suits their sector while still ensuring they are acting in the public interest.

What is Principles-based Regulation?

Principles-based regulation “means placing greater reliance on principles and outcomes-focused, high-level rules as a means to drive at the regulatory aims we want to achieve, and less reliance on prescriptive rules”¹. Adapting a couple of extracts from the April 2007 Financial Services Authority (UK) (FSA) report, PBR:

Also means a different approach to how [BCFIRB] deals with [commodity boards], whether in the context of day-to-day supervisory contact, the information we request or, when necessary, the way we use our enforcement powers.

It also means different expectations of [commodity boards] and how they engage with the regulatory issues they face. [BCFIRB’s] aim is to focus more clearly on the outcomes we as regulators want to achieve, leaving more of the judgement calls on how to achieve those outcomes to the [commodity boards].

BCFIRB and the commodity boards will still have detailed rules or directions and prescriptive processes in support of their orderly marketing and supervisory responsibilities; however, where such prescriptions exist, boards must demonstrate two things:

- a. that the rules and processes are a necessary, commensurate response to identified risks, challenges and opportunities (i.e., the greater the assessed risk, challenge or opportunity, the potentially greater need for prescription); and,
- b. that the rules and processes reflect the effective strategies boards have developed to promote orderly marketing for the benefit of their regulated agri-food sector and the public.

Strategic planning must not be a bureaucratic exercise. PBR means that the strategic identification and assessment of risks, challenges and opportunities form the basis upon which our rules and processes are developed, how we operate, and against which our performance is measured. Performance is measured by boards themselves, by BCFIRB in its supervisory or appellate roles and by other stakeholders, such as industry, government and the public.

¹ Financial Services Authority (UK) and its April 2007 publication – ‘Principles-based Regulation, Focusing on the outcomes that matter’. This document has served to inform much of BCFIRB’s approach to PBR.

Performance measurement should be ongoing and not limited to annual reporting. Good practice dictates that all boards regularly assess their performance against their identified strategies. Board performance is also measured on a case-by-case basis via “snap quizzes” such as appeals to BCFIRB. Two recent decisions of BCFIRB used PBR and SAFETI to assess the performance of the respondent boards concerned. In one case, [Agrifoods International Cooperative Ltd. v. BC Milk Marketing Board](#), October 30, 2015, the PBR/SAFETI analysis (paras 29-33) resulted in the respondent board being upheld. In the second, [Island Vegetable Cooperative Association v. BC Vegetable Marketing Commission, December 18, 2015](#), the respondent board did not meet the PBR and SAFETI tests (paras 109-111)².

Attached is an extract from the FSA report summarizing their 10-point approach to PBR, many of which relate easily to the work of our boards. In particular, BCFIRB notes two of their assertions. The first is that good governance and “principles-based regulation will achieve benefits...by fostering a more innovative and competitive” regulated sector. The second, and important to members and staff of all our boards, is the need to “invest in developing the capabilities of our people so that they have the experience, expertise, judgement and communication skills to make principles-based regulation work”.

What is SAFETI?

SAFETI is a tool developed to assist our boards in assessing whether their decision making is responding appropriately to identified strategic risks, challenges and opportunities and whether that decision making is accountable, fair, effective, transparent and inclusive.

By now, everyone is familiar with the six SAFETI principles, which were developed in consultation with the boards and where possible draw from existing expectations such as Government’s ‘Open Information and Open Data Policy’ and the ‘Ombudsperson Fairness Checklist’. This letter will not recap their specific meanings as they are outlined in the [September 13, 2011 Definitions and Guidance document](#) on BCFIRB’s website.

The term “sound marketing policy” is not defined in s. 9 of the *Natural Products Marketing (BC) Act*. BCFIRB views the use of SAFETI by the boards in making decisions, orders or determinations to be in accord with “sound marketing policy”. A demonstrated SAFETI process is an assurance that a board used good governance and decision-making and reached an outcome that is also in accord with “sound marketing policy”.

SAFETI is in addition to, and not a replacement for, any common law duty and is not to be applied blindly and mechanistically. Its use and outcome depends on the circumstances and the breadth and implications of the issue and decision making involved. The process can be short or long with an outcome being self-explanatory or needing to be supported by detailed reasons. One or more elements may be departed from or qualified where there is good reason to do so in the circumstances.

² In the first, BCFIRB met its objective for timely and effective decision making. In the second, BCFIRB did not. PBR/SAFETI can prevent disputes through better decision making and fewer appeals. Whether, and how, parties and BCFIRB can use these more effectively and appropriately in appeals to focus on critical issues and result in more timely processes is something we would like to discuss on February 24.

This all underscores the FSA statement highlighted earlier that people using PBR need to have the “experience, expertise, judgement and communication skills to make principles-based regulation work”.

Concluding Comments

Government and BCFIRB both have overarching expectations of the boards as the first instance regulators of their industries. As the Provincial supervisory board, BCFIRB remains of the view that a principles-based regulation approach, supported by the use of SAFETI, will support the commodity boards in demonstrating good governance. In doing so, the boards will acquire increased flexibility to deliver on those expectations while balancing the business needs of their sectors with the public interest. To again adapt the comments of the FSA, well governed boards that “engage positively and openly” with BCFIRB and with our objectives (effective self-regulation, PBR and effective, fair and independent resolution of disputes) “should expect to experience real benefits”.

BCFIRB remains 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.

We hope that this initial background has been of some use in setting the stage and look forward to the participation of your board members and staff at the February 24 workshop. It is our collective responsibility to ensure continuous improvement to the governance of this important part of BC’s agri-food economy.

Yours truly,



John Les
Chair

Attachment

cc: James Mack, Assistant Deputy Minister
Agriculture Science and Policy
Ministry of Agriculture

Marketing Boards and Commissions Executive Staff

BCFIRB website