



June 5, 2013

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DELIVERED BY E-MAIL

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Dear Colleagues:

INSURANCE PRODUCT FOR AVIAN INFLUENZA

I write further to previous correspondence and discussion on the subject. As I advised in my May 24, 2013 letter, the BC Farm Industry Review Board (BCFIRB) members meet on June 11-12, 2013 to further review this matter. Following that meeting BCFIRB will be issuing certain supervisory directions. The purpose of today's letter is to provide, on behalf of BCFIRB, an initial outline of what the poultry boards can expect as first instance regulators.

Poultry Insurance in Principle

My March 3, 2011 letter advised that: "I believe I can safely state that BCFIRB has no objection in principle to the industry establishing a poultry insurance program in some form as producer risk management does support the agri-food sector generally". The issue still outstanding is the proper legal and marketing policy authority of regulators where such a program is proposed to be mandatory under the *Natural Products Marketing (BC) Act (NPMA)*.

**British Columbia
Farm Industry Review Board**

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The Regulatory Issues

As identified in my March 3, 2011 letter and confirmed in my letter of May 24, 2013:

BCFIRB appreciates the significance to the industry of the proposed program. However, and as discussed at the April 19, 2013 meeting between BCFIRB and poultry board representatives, the proposal raises significant legal questions regarding jurisdiction under the *Natural Products Marketing (BC) Act*. Questions of similar significance arise with respect to “sound marketing policy”. These are important questions for the four poultry boards as first instance regulators and for BCFIRB as the provincial supervisory agency. [emphasis added]

Regardless of the significance of an issue to industry, and prior to enacting any orders, all regulatory agencies must have sufficient confidence that they are acting within their legislated authority and in accordance with sound marketing policy. Those two questions seem unanswered at this point.

As you all know, BCFIRB and the boards have spent considerable time in developing an accountability framework that incorporates a risk management, principles/outcomes based approach to regulation using the SAFETI (strategic, accountable, fair, effective, transparent, inclusive) principles. It is expected that the answers to these questions will include appropriate consideration of this principled, accountable approach.

BCFIRB Supervisory Role

Under s. 7.1 of the *NPMA*, BCFIRB may exercise its supervisory powers “at any time...and in the manner it considers appropriate to the circumstances”. The courts have confirmed that BCFIRB has “the power...to give policy directions...to ensure that (commodity boards and commissions) take the action that (BCFIRB), as their supervisor, considers necessary and in the public interest”.¹

In some other jurisdictions, Saskatchewan being an example, it is a legislative requirement for commodity boards to have their orders prior approved by the supervisory board before implementation. Here, with some exceptions, it is at the discretion of BCFIRB. I also note that in Manitoba, where existing legislation does allow for fees, levies and penalties to prevent or control diseases, an order of the Manitoba Egg Farmers concerning mandatory insurance is currently under appeal.

After considerable deliberation, during which the SAFETI principles were applied, BCFIRB has determined that waiting to decide this issue in some future appeal is not the best option. BCFIRB will – as it did in addressing the implementation of biosecurity measures – intervene in its supervisory capacity. Given the importance, systemic scope, novelty and implications of this issue, it is assessed that decisions concerning legal authority and sound marketing policy should follow an appropriate supervisory decision-making process. If the proposal were to proceed without prior supervisory review, and then be challenged and set aside on appeal, the result and ensuing remedy would be highly disruptive, costly and detrimental to all concerned given the complexity of creating and implementing

¹ Global Greenhouse et al vs. BC Marketing Board et al, 2003 BCSC 1508.

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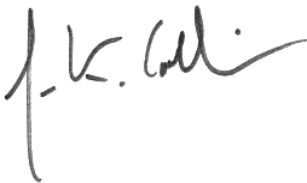
the proposed insurance scheme in the first place. Given the current Manitoba dispute and the results of the first poll of BC producers regarding the proposal, the possibility of such an appeal cannot be dismissed lightly.

The increasing involvement of boards in biosecurity, food safety and, potentially, poultry insurance initiatives raises larger policy questions about the role, authority and governance of boards. While these are issues of general consequence that will be the subject of ongoing discussion going forward, they will also provide an important backdrop in this review.

BCFIRB will be issuing process directions regarding its supervisory review following its June 11-12, 2013 board meeting. BCFIRB intends to ensure that this review is conducted in a timely fashion by requiring the boards to submit a comprehensive description and justification of the proposal in response to some specific questions from BCFIRB. After those submissions are received from the boards, industry stakeholders will be given an opportunity to respond before BCFIRB makes its supervisory findings. Depending on the outcome of the supervisory review, those outcomes may include enabling the boards and the commission to proceed with implementation and/or making public recommendations to government to address legal concerns arising from the review with respect to jurisdiction under the *NPMA*.

If you have any questions pending further direction from BCFIRB, please let me know.

Yours truly,

A handwritten signature in black ink, appearing to read "J. K. Collins". The signature is fluid and cursive, with a long vertical stroke extending downwards from the end.

Jim Collins
Executive Director

cc: David Coney, Senior Manager
Agriculture & Aquaculture Policy
Ministry of Agriculture