

July 20, 2020

Sent Via E-Mail

British Columbia Farm Industry Review Board
780 Blanshard Street
Victoria, BC V8W 2H1

Attention: Wanda Gorsuch

Re: Timeline for Lifting Agency Application Moratorium

Thank you for the opportunity to meet by video conference on July 17, 2020.

We write in response to the letter dated July 14, 2020 behalf of the British Columbia Farm Industry Review Board (“**BCFIRB**”). We appreciate the BCFIRB’s agreement that the moratorium on agency applications cannot be left in place indefinitely.

The BCFIRB has committed to a target date of early fall 2020 for the release of its decision and direction to the British Columbia Vegetable Marketing Commission (the “**Commission**”) regarding the moratorium on agency application. However, it is unclear if the BCFIRB’s decision in the early fall will lift the moratorium and on what schedule.

Mastronardi Produce Ltd. (“**Mastronardi**”) still has significant concerns about the timing of when the moratorium will be lifted. Mastronardi is facing significant pressure from retailers and growers to obtain a licence to market greenhouse vegetables grown in British Columbia as soon as possible. Given these market pressures, Mastronardi will be submitting an agency application to the Commission within the coming weeks.

The BCFIRB should direct the Commission to process and consider Mastronardi’s agency application upon receipt of the application in accordance with the current General Orders. The BCFIRB has the supervisory jurisdiction to remedy the issues arising from the moratorium. If BCFIRB can lift the moratorium in early fall, then it can lift it now.

Growers must decide by September 15, 2020 through which agency they will market greenhouse vegetables for the upcoming production season. The BCFIRB’s target date of “early fall” will most likely mean that a decision regarding the moratorium is rendered after September 15, 2020. Without certainty by September 15, 2020, Mastronardi will lose out on the opportunity to market British Columbia grown vegetables for the next year. This would represent a substantial loss to Mastronardi and to British Columbia growers and consumers.

As is well known in the industry, the moratorium arose from the Commission's June 28, 2019 decision in relation to CFP Marketing Corporation's ("CFP") agency application.¹ The Commission summarily dismissed CFP's agency application and imposed a moratorium on all applications for agency and producer-shipper status. The Commission stated that it needed to impose a moratorium to "permit the Commission to complete its important work on the Strategic Plan Review and the Agency Review".²

In sum, the Commission put forward the following rationales for the need to complete the Strategic Review and the Agency Review prior to accepting agency and producer-shipper applications:

- The Commission needed time to review and redraft the General Orders, due to industry changes since the last General Orders were made in 2005.³
- After the Commission removed the requirement for storage crop producers to only sell to agencies within their respective districts, the management of storage crop delivery allocation at an industry level was not properly addressed in the General Orders.⁴
- The Commission was reviewing its ability to regulate minimum pricing of the storage crop sector under the *British Columbia Vegetable Order*, S.O.R./81-49.⁵
- The Commission was trying to address the sales of non-regulated products by stakeholders to gain a competitive advantage in the sales of regulated vegetables.⁶
- The Commission wanted to strengthen other components of the regulatory system so that there is less reliance on minimum pricing to maintain orderly marketing.⁷ This also included the Commission taking a more active role in monitoring and facilitating some level of transparency in an agency's business practices.

The concerns of the Commission primarily relate to storage crops, not greenhouse vegetables. Ongoing changes in the vegetable industry since 2005 do not provide a reasonable basis for freezing the regulatory system. If anything, adding Mastronardi as an agency would help British Columbia take advantage of evolving trends in the greenhouse vegetable markets. As for concerns about agency behaviour, they can easily be addressed on the merits of Mastronardi's forthcoming agency application. As an agency, Mastronardi will comply with all current and future orders of the Commission and the BCFIRB – as would be expected of all other agencies.

Further, in the CFP Decision, the Commission imposed the moratorium, in part, so it could "maintain an effective, rules-based system in the current and projected business environment". Imposing a moratorium

¹ Commission Decision: CFP Marketing Corporation Agency Application and Moratorium on Applications for Agency & Producer-Shipper Status (June 28, 2019) (the "CFP Decision").

² CFP Decision at p. 2.

³ CFP Decision at p. 11.

⁴ CFP Decision at p. 11.

⁵ CFP Decision at pp. 11 and 12.

⁶ CFP Decision at p. 12.

⁷ CFP Decision at p. 12.

on all future applicants – regardless of the merits – and maintaining the moratorium for over a year undermine this goal. The General Orders provide specific provisions for the processing of an agency application. To promote a “rules-based system”, the Commission should process agency applications within a reasonable period of time, based on independent decision-making and predictable criteria.

It is uncertain when the Agency Review and the Supervisory Review will complete. Although the BCFIRB may consider the agency accountability framework in September 2020, it is unclear how long it will take for the Commission to implement ancillary changes to the General Orders and lift the moratorium. Adding to this uncertainty, on July 10, 2020, the Commission announced that it is currently advertising an opening for a new facilitator to lead the Strategic Review. From the terms of reference for consultancy services, it appears that the Strategic Review process will take until at least January 2021 to complete.⁸ To maintain the moratorium until the Agency Review and Strategic Review are completed would harm British Columbia growers and consumers, and it would be unfair.

The Commission’s rationales for the moratorium do not justify excluding Mastronardi from submitting an agency application. The results of the Agency Review and Strategic Review will affect all current agencies. Existing agencies will be required to comply with the outcome of the supervisory review and any resulting changes to the General Orders. Similarly, if granted agency status, Mastronardi will comply with the General Orders and all other current and future orders of the Commission and BCFIRB.

Despite the above concerns, Mastronardi welcomes the opportunity to work with stakeholders to help grow the British Columbia vegetable industry.

Yours truly,

Dentons Canada LLP



Morgan Camley
Partner

MC/
cc. Robert Hrabinsky (via email)

⁸ Terms of Reference: Consultancy Services for the Development of a Strategic Plan for the BCVMC (July 10, 2020) <http://www.bcveg.com/uploads/1/2/3/2/123285464/bcvmc_strategic_plan_tor.pdf>.