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February 10, 2023

BY EMAIL

British Columbia Farm Industry Review Board
1st Floor 2975 Jutland Road
Victoria, BC V8T 5J9

Attention: Kirsten Pedersen, Executive Director

Dear Ms. Pedersen:

RE: Terms of Reference of Supervisory Review for MPL British Columbia Distributors Inc. Agency Designation Prior Approval Process

We are counsel to Greenhouse Grown Foods Inc. (**GGFI**) and Windset Farms (Canada) Ltd. (**Windset**). On January 12, 2022, the BC Vegetable Marketing Commission (**Commission**) rendered a decision designating MPL British Columbia Distributors Inc. (**MPL**) as an agency (**Commission's Decision**), subject to the approval (the **Prior Approval Process**) of the British Columbia Farm Industry Review Board (**BCFIRB**). In February 2022, GGFI, Windset and others appealed the Commission's Decision (the **Appeals**). In March 2022, the BCFIRB deferred the appeals pending the conclusion of the Prior Approval Process. In July 2022, the Prior Approval Process was put on hold until the conclusion of the supervisory review into allegations of bad faith and unlawful conduct alleged by MPL in court filings.

In a letter dated February 7, 2023, the BCFIRB advised parties that the Prior Approval Process would now proceed. We write in response to the BCFIRB's solicitation of comments for the draft Terms of Reference dated June 28, 2022, for the Prior Approval Process, and further to our letter of July 5, 2022, wherein we set out our submission regarding the draft Terms of Reference for the Prior Approval Process. Since that time, the BCFIRB has decided not to consolidate the Prior Approval Process and the Appeals. This letter accordingly revises our submissions regarding the draft Terms of Reference.

The Process Set out in the draft Terms of Reference

The draft Terms of Reference lays out a five-piece process, where participants will be given an opportunity to make comments and submissions on "relevant matters". The five-steps are:

1. Comment period on draft Terms of Reference and finalization of Terms of Reference;
2. Written submissions in response to specific panel questions regarding the Commission's Decision, including the Commission's process and rationale;
3. In-person hearing (the **Supervisory Hearing**);

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4. BCFIRB decision-making and release of its decision; and
5. Conduct of outstanding appeals.

GGFI and Windset's Concerns with the draft process

GGFI and Windset's position is that the draft Terms of Reference for the Prior Approval Process require more detail in order to ensure a fair consideration of the Commission's Decision. As a result, we recommend the following revisions to the draft Terms of Reference.

Increase particularity in Terms of Reference

Greater detail in the Terms of Reference will provide the participants with a more complete description of the process and ensure the process is both fair and efficient.

For example, "Phase 3: Supervisory Hearing" ought to include the following detail:

- The rules of procedure that apply to the Supervisory Hearing;
- If the BCFIRB Rules of Practice and Procedure for Appeals under the *Natural Products Marketing (BC) Act* (the **Rules**) apply, are there any changes to the Rules to accommodate for the hearing being a Supervisory Hearing;
- An opportunity to make written submissions on any questions of fact, law or policy at issue in the Prior Approval Process;
- Disclosure of and an opportunity to respond to the written submission of other participants;
- Specifics of the procedure at the in-person hearing, including the rules of procedure for evidence, including the right for participants to:
 - Present evidence (including documentary evidence, direct oral evidence, and expert witness evidence);
 - Cross-examine lay and expert witnesses put forward by other participants;
 - Make oral submissions on any questions of fact law or policy at issue in the Prior Approval process; and
 - The disclosure of evidence to be relied upon by participants, both before the BCFIRB and the evidence relied upon by the Commission;
- The anticipated location of the hearing; and
- The process for making motions.

In the absence of this and other similar information, parties will have to prepare additional submissions on the BCFIRB's to-be-finalized process, causing a duplication of effort.

Accordingly, GGFI and Windset make the following recommendation:

Recommendation No. 1: *Revise "Phase 3: Supervisory Hearing" to specify the anticipated process for the Supervisory Hearing including but not limited to location, format, rules of evidence, rules of procedure and a detailed list of procedures to be followed.*

Timelines

The BCFIRB's letter of February 7, 2023 provides some additional dates that are helpful to parties in managing internal schedules to ensure they are harmonious with the BCFIRB's calendar for this

review process. We recommend further particularization of dates in the final Terms of Reference, as opposed to providing same following the finalization of the Terms of Reference, as currently proposed in the February 7, 2023, letter.

Accordingly, GGFI and Windset make the following recommendation:

Recommendation No. 2: *Revise the draft Terms of Reference to incorporate timelines and proposed dates for each phase of the BCFIRB's review. When exact dates cannot be determined, the time range anticipated for a phase to commence, and for the duration of such phase, should be provided. A draft timeline should be circulated for the parties' comment prior to it being finalized by the BCFIRB.*

Dates for In-Person Supervisor Hearing

With respect to dates for the in-person hearing, counsel for GGFI and Windset are available from April 24-28; May 8-9, May 11-12; and May 23-26.

We look forward to the confirmation on the procedure for the Prior Approval Process.

Yours very truly,

LAWSON LUNDELL LLP



Craig A.B. Ferris, K.C.*

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cc. Clients

*Law Corporation