BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL BC) AGENCY PRIOR APPROVAL PROCESS

REPLY SUBMISSIONS OF MPL BRITISH COLUMBIA DISTRIBUTORS INC.

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1. In a letter dated March 27, 2023, BCFIRB invited eligible participants to provide written submissions in response to its questions regarding the BC Vegetable Marketing Commission's (the "**Commission**") January 12, 2022 decision recommending MPL British Columbia Distributors Inc. ("**MPL BC**") be granted agency designation. Windset Farms (Canada) Ltd. ("**Windset**") and Greenhouse Grown Foods Inc. ("**GGFI**") jointly responded to those questions on April 6, 2023.

2. Windset and GGFI's response focuses on two main issues: alleged procedural unfairness in the proceedings before the Commission and the sufficiency of the Commission's reasons for designating MPL as an agency.

3. Windset and GGFI's arguments on these two issues are without merit. First, the alleged procedural fairness issues (if they exist at all) are mere irregularities. They do not operate to vitiate the Commission's decision. Even if they were to amount to true procedural unfairness—which MPL specifically submits is not the case—they are all cured through BCFIRB's supervisory review. Next, GGFI and Windset's contention that the Commission's reasons are insufficient holds the Commission to a standard well beyond what is expected of administrative decision-makers and first instance regulators. The Commission's decision, considered alongside the record and in light of the circumstances of the matter, is reasoned, internally coherent, and justified. In any event, the alleged insufficiencies (if any) may also readily be cured through BCFIRB's supervisory review.

4. MPL's reply submissions will touch on the following:

    a. The Agency Licence Process and the Commission's Role

b. Industry Participants were given Sufficient Opportunity to Participate

c. The Panel’s Reasons were more than Sufficient

d. The Commission Considered the Submissions of Industry Participants

e. The Issuance of an Agency Licence does not Require Majority Producer Support

f. BCFIRB can Cure any Defects in the Commission’s Process

The Agency Licence Process and the Commission’s Role

5. Throughout its submissions, GGFI and Windset claim they were due but denied robust procedural fairness rights in the Commission’s proceedings. They allege, most notably, the following:

   a. being excluded from “different phases” of the Commission’s proceedings (paragraph 2);

   b. the Commission should have held a hearing, in which industry stakeholders should have had full participatory rights, to decide on the redactions made to MPL’s agency application prior to it being transmitted to industry stakeholders for consultation (pursuant to Part XIV of the Commission’s General Order (defined below)) (paragraph 10); and

   c. the Commission should have held a hearing, in which industry stakeholders should have had full participatory rights, to decide on the merits of MPL’s agency licence application (paragraphs 8-9).

6. All of these allegations are unfounded in light of the Commission’s role and the process for the designation of agencies, as well as the sufficiency of participatory rights that were afforded to industry stakeholders in the Commission’s proceedings. The sufficiency of industry stakeholders’ participation in the proceedings will be addressed later in this reply.

7. The Commission's role and the process for the designation of agencies is clearly defined and prescribed. Contrary to what GGFI and Windset argue, there is no requirement that the Commission hold a hearing on the merits of agency designation applications, nor an obligation to grant industry stakeholders full participatory rights. This reflects the concern that those objecting to the designation of a new agency may make submissions that are self-interested whereas the overall focus of the Commission's process is squarely on the interest of the industry as a whole. The Commission assesses agency designation applications against set requirements, with a view to the best interests of the industry and sound marketing policy, taking feedback received from industry stakeholder consultation into consideration as part of that consideration.

8. The Commission is the first instance regulator for the regulation of vegetables grown in British Columbia. It is a producer board, in that a majority of the board are producers elected to the board by other producers.

> *British Columbia Vegetable Scheme,* BC Reg 96/80, s. 3(2) [*Regulation*].

9. The Commission is vested with the power to promote, regulate and control in all respects the production, transportation, packing, storage and marketing of regulated product, defined as vegetables (including potatoes and strawberries intended expressly for manufacturing purposes) grown in British Columbia.

> *Regulation*, supra, ss. 1 and 4(1).

10. The Commission is further vested with the power to, among other things, regulate the time and place at which and to designate the agency through which vegetables must be marketed. The Commission's agency designations must be approved by BCFIRB, before becoming effective.

> *Regulation*, supra, ss. 4(2) and 8. *Natural Products Marketing (BC) Act*, RSBC 1996, c 330, s. 11(a)

11. The Commission has promulgated a consolidated general order ("General Order"). Part XIV of the General Order, titled "Procedures for Designation of Agencies" sets

out the requirements applicants must meet for agency designation, as well as the Commission's process for assessing agency designation applications.

12. Notably, section 2 of Part XIV of the General Order, reproduced below, sets out in detail the process the Commission undertakes to review agency applications:

> **Review of Applications by the Commission**
>
> 2. (1) Applications for designated Agency status will be reviewed by a five member panel of the Commission selected by the Chair.
>
> (2) The panel may, in its sole discretion, request that an applicant clarify any part of the application submitted, or rectify any perceived omission or deficiency in the application.
>
> (3) The applicant will be provided with an opportunity to present its application to the panel.
>
> (4) Following the applicant's presentation, the panel may summarily dismiss the application if it is satisfied that it would not be in the interests of the industry to grant designated Agency status.
>
> (5) Where the panel has decided that the application should not be summarily dismissed, the panel will engage in further consultation with industry stakeholders concerning the application. The applicant will be given an opportunity to prepare a redacted version of the application for review by industry stakeholders, provided that only information that is confidential, proprietary or constitutes a trade secret may be so redacted from the application reviewed by the panel.
>
> (6) Following consultation with industry stakeholders, the panel will decide whether to grant designated Agency status to the applicant. …

13. Pursuant to this provision, there is no requirement that a hearing be held, much less that the industry as a whole be provided full participatory rights. None of the

language in Part XIV of the General Order hints at an adversarial process. Indeed the process initially involves solely the applicant and the Commission, following which stakeholder engagement is expressly *consultative*.

Industry Participants were given Sufficient Opportunity to Participate

14. Contrary to what GGFI and Windset assert, industry stakeholders were consulted and provided ample opportunity to participate in the Commission's proceedings. As set out above, the agency designation application process does not contemplate a hearing or full participatory rights for industry stakeholders. Instead, the General Order contemplates consultation on the written application (redacted for confidentiality) with an opportunity to make written submissions. Industry stakeholders were afforded exactly this opportunity.

15. As mentioned, GGFI and Windset allege, most notably, the following:

    a. being excluded from "different phases" of the Commission's proceedings (paragraph 2);

    b. the Commission should have held a hearing, in which industry stakeholders should have had full participatory rights, to decide on the redactions made to MPL's agency application prior to it being transmitted to industry stakeholders for consultation (pursuant to Part XIV of the General Order) (paragraph 10); and

    c. the Commission should have held a hearing, in which industry stakeholders should have had full participatory rights, to decide on the merits of MPL's agency licence application (paragraphs 8-9).

16. Other than not being invited to MPL's October 8, 2021 presentation of its application, GGFI and Windset have not pointed to which "phases" of the Commission's proceedings they were excluded from. Regarding MPL's presentation of its application, industry stakeholders were rightfully not invited to participate: this presentation is an initial step in the proceeding and is meant to

assist the Commission in its preliminary determination that the application should not be summarily dismissed. Having satisfied itself that the application should not be summarily dismissed, the Commission then moved to engaging in industry stakeholder consultation. Further, applicants' confidential information is openly presented and discussed as part of this presentation. It therefore would be inappropriate to invite industry stakeholders to this presentation (see next paragraph for further details).

17. Regarding the Commission's circulation of a redacted version of MPL's application to industry stakeholders, it is unreasonable for GGFI and Windset to expect otherwise. Among the industry stakeholders are key competitors of MPL as a proposed agency. It has commercial interests to protect. The licence application process is designed so as not to compromise those interests. In any event, this issue is now moot given BCFIRB's ruling on the non-disclosure orders granted in the proceedings before it.

18. Regarding the lack of a hearing on the merits of MPL's agency license application, again, MPL brings BCFIRB's attention to the process set out in Part XIV of the General Order. There is no requirement in the General Order that a hearing be held, much less that full participatory rights be granted to industry stakeholders.

19. GGFI and Windset also complain that documents submitted at MPL's October 8, 2021 presentation were not provided to industry stakeholders. This does not amount to procedural unfairness. It is at best a mere irregularity and in MPL's submission unnecessary. Other than the letter of support from Millenium (dated October 7, 2021), the documents submitted at the presentation were summaries of information already contained in MPL's application. They did not supplement the application. The non-confidential information they contained was therefore provided to industry stakeholders as part of the consultation. The Commission's oversight in including the Millenium letter to industry stakeholders is a mere procedural irregularity: the letter is but one of many and accordingly could not have

had more than a marginal impact on the decision to recommend MPL's agency designation.

20. GGFI and Windset further complain that MPL's reply to industry stakeholder feedback was not provided to industry stakeholders. Because the process set out in Part XIV does not contemplate that industry stakeholders would have any right of sur-reply to MPL's reply, this is nothing more than a procedural irregularity incapable of causing prejudice to any interest which those stakeholders may assert. Nothing in Part XIV requires the Commission to afford a specific level of consultation to industry stakeholders, or obligate the Commission to seek input on an applicant's response to industry feedback.

21. In any event, the issue is now moot in both instances (the documents provided at the presentation and the reply) given industry stakeholders now have access to those documents in the proceedings before BCFIRB and have been given an opportunity to make submissions on MPL's agency application with the benefit of those documents.

The Panel's Reasons were more than Sufficient

22. Throughout GGFI and Windset's submissions, GGFI and Windset complain that the Commission's reasons were insufficient. When the Commission's reasons are read as a whole in the context of the evidence and proceedings, and not dissected in the manner suggested by GGFI and Windset, it is evident that the reasons were sufficient to allow the parties and a reviewing body to understand the reasons for the Commission's decision.

23. At the outset, it is important to remember that, pursuant to the Terms of Reference, the scope and focus of this supervisory review are on the following questions:

    a. Did the BC Vegetable Marketing Commission conduct a SAFETI-based process?

b. Is the BC Vegetable Commission's decision to designate MPL BC as an agency in the public interest and consistent with sound marketing policy?

24. With respect to the second question, BCFIRB has acknowledged that it "needs to reach its own conclusion as to whether the approval of MPL BC's agency license is beneficial to the regulated vegetable industry in BC".

25. The need for and extent of reasons for administrative bodies varies with the context in which their decisions are made. In many cases, a short brief explanation for why a decision was made will likely suffice.

> *McLean v. British Columbia (Securities Commission),* 2011 BCCA 455, aff'd 2013 SCC 67 at paras. 26 and 31; *Wang v. Canada (Citizenship and Immigration*), 2023 FC 62 at para. 40; and *Adams v. Aamjiwnaang First Nation,* 2021 ONSC 6831 at para. 59 (Div Ct).

26. Reasons are also to be read functionally and contextually. They must be read as a whole and in the context of the live issues at the hearing, informed by the positions of the parties. As a result, it is critical that reasons by reviewed in the context of the record. Even if the reasons do not explain the "what" and the "why", there will be no reviewable error where those answers are clear from the record.

> *Mountainstar Gold Inc. v. British Columbia Securities Commission*, 2022 BCCA 406 at paras. 127-128; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 91-98 and 136-138; and *N.L.N.U. v Newfoundland & Labrador (Treasury Board),* 2011 SCC 62 at paras. 12-15 and 18 [*Nurses' Union*].

27. Further, when administrative decision makers have a duty to provide reasons for their decisions, those reasons do not need to be perfect or comprehensive. They are not required to include all the arguments, statutory provisions, jurisprudence or other details the reviewing body or judge would have preferred. Further, an administrative decision maker is not required to make an explicit finding on each constituent element leading to its final conclusion.

> *Nurses' Union* at para. 12.

28. Reviewing bodies should also not parse or dissect the reasoning. Again, the reviewing body should review the reasons as a whole, and in the context of the evidence that was before the administrative body and the nature of its task.

> *Nurses' Union* at para. 12; *Wan v. The National Dental Examining Board of Canada*, 2019 BCSC 32 at para. 132; and *Kenyon v. British Columbia (Superintendent of Motor Vehicles),* 2015 BCCA 485 at paras. 53-55.

29. Reasons will be sufficient if they fulfill the purpose required of them – namely to provide a brief explanation for why the decision was made.

> *McLean* at paras. 30-31.

30. GGFI and Windset make several complaints that the Commission's reasons were insufficient. However, in doing so, they fail to read the Commission's reasons as a whole in the context of the evidence before the Commission and instead parse out sections of the reasons to be read in isolation. It is also apparent that the standard of reasons to which GGFI and Windset would hold the Commission goes beyond that required of administrative bodies or even courts in some instances.

31. At paragraphs 34 and 57-59 of their submissions, GGFI and Windset argue that the Commission failed to set out the evidence before it, how it weighed the evidence and particular submissions made by industry stakeholders. However, as set out above, administrative bodies are not required to give anything more than a brief explanation for their decision – let alone list every piece of evidence or submission made before them. Reasons also need to be read in light of the record, history and context of the proceedings in which they were produced.

32. When the reasons are read as a whole in the context of the evidence before the Commission, it is apparent that the Commission reviewed the evidence and submissions provided to it by MPL BC and industry participants, and that it carefully considered those submissions and evidence. Moreover, it is clear that the Commission followed a SAFETI-based process in coming to its decision.

33. With respect to GGFI and Windset's complaint that the Commission did not set out in its reasons all of the evidence it reviewed, this complaint ignores paragraphs 4, 7, 8, 11, 14 and 23 of the Commission's reasons in which the Commission sets out the different materials it reviewed. The Commission is not required in its reasons to set out in what manner it relied on every piece of information contained in the materials before the Commission. Again, that level of detail in reasons is not even required of courts.

34. Similarly, with respect to GGFI and Windset's complaint that the Commission did not sufficiently consider industry participants' submissions, it is clear from paragraphs 11, 23 and 26 of the Commission's reasons that the Commission was aware of and carefully reviewed the industry participants' submissions. GGFI and Windset may not have liked how the Commission considered their submissions or evidence, but that is not a reason for finding the Commission's reasons to be insufficient.

35. Further, it should be noted that GGFI and Windset's concern that the Commission did not sufficiently set out the evidence before it and how it weighed that evidence appears to be premised on a misapprehension of the process before the Commission. At paragraph 34 of their submissions, GGFI and Windset submit that:

> The Decision does not set out any evidence and, accordingly, <u>does not weigh the evidence of the applicant MPL BC against the evidence proffered by industry stakeholders</u>.

[emphasis added]

36. This is misconceived because an agency application is not a contest between the applicant and other industry participants, and accordingly the Commission is not required to provide detailed reasons weighing the evidence of MPL BC *against* the evidence of industry participants.

37. At paragraphs 44-55 of GGFI and Windset's submissions, they complain that the Commission provided insufficient reasons for the application of the SAFETI principles. GGFI and Windset take issue with the Commission's summary, at paragraph 30 of its reasons, of its application of the SAFETI principles. However, in doing so, GGFI and Windset again try to impose on the Commission a higher threshold of reasons than is appropriate, and fail to read the Commission's reasons as a whole and in the context of the proceedings before the Commission. GGFI and Windset would have BCFIRB read paragraph 30 in isolation and without the required context of the balance of the reasons and the proceedings before the Commission. When the Commission's reasons are read as a whole and with consideration for the process before the Commission, it is readily apparent that the Commission applied a SAFETI-based process in coming to its decision.

38. In addition, at paragraphs 36-42 of GGFI and Windset's submissions, GGFI and Windset complain that the Commission did not adequately assess whether MPL BC's application met the criteria set out in Part XIV, section 2(6) of the General Order. Again, this is really a complaint that the Commission provided insufficient reasons for its analysis of the Part XIV, section 2(6) criteria—a complaint not borne out on the facts. As BCFIRB will reach its own conclusion as to whether the approval of MPL BC's agency license is in the public interest and consistent with sound marketing policy, the alleged inadequacy of the Commission's reasons regarding the criteria set out in Part XIV, section 2(6) is of diminished importance and could not justify the relief sought by Windset and GGFI. But, in any event, the Commission's reasons were more than adequate.

39. In making their argument that the Commission's reasons were insufficient, GGFI and Windset attempt to pull out one paragraph (paragraph 29) from the Commission's reasons and seek to have BCFIRB review that paragraph in isolation. Throughout paragraphs 36-42 of GGFI and Windset's submissions, they refer to paragraph 29 of the Commission's reasons and assert based on this paragraph, that it appears that the Commission "ultimately made its decision [on the Part XIV, section 2(6) criteria] based on only one actual consideration…"

However, GGFI and Windset's submissions ignore the rest of the Commission's reasons and in particular, they ignore paragraphs 21-28 of the reasons.

40. It is evident from paragraph 22 of the Commission's reasons that the Commission was acutely aware of the Part XIV, section 2(6) criteria, as the Commission expressly lists out those criteria. The Commission then provides reasons for why it found that MPL BC's application met the Part XIV, section 2(6) criteria.

41. By way of an example only, requirements 2(6)(c) and (h) – the proposed agency has demonstrated an understanding of the regulatory system and has adequately expressed an intention to follow Commission orders and enabling legislation and regulations - are directly addressed in paragraph 25 of the Commission's decision in which it states:

> MPL BC has essentially operated within BC as a licensed wholesaler acquiring product from existing agencies, and the panel is satisfied that it has conducted itself in that capacity in accordance with applicable regulatory requirements. If granted agency status, MPL BC has also expressed its willingness to appoint a person as a liaison to the Commission to facilitate its continued compliance with the regulatory system.

42. The Commission's reasons need to be read as a whole in the context of the evidence before the Commission. GGFI and Windset's submissions attempt to artificially restrict the Commission's reasons to a few chosen sentences from paragraph 29 of the reasons. Further, GGFI and Windset's argument would amount to a requirement that the Commission approach its reasons like a check list, which is not the purpose of administrative decision makers' reasons.

43. In addition, in their submissions, GGFI and Windset appear to conflate "disruption to existing agencies" with disruption "to orderly marketing". Existing agencies are not synonymous with orderly marketing and there can be disruption to existing agencies without orderly marketing in general being disrupted.

44. As noted, reasons do not need to be comprehensive. They can be a short brief explanation for why a decision was made. The Commission's reasons regarding the application of the Part XIV, section 2(6) criteria and the SAFETI principles are more than sufficient to fulfill their purpose. Moreover, the basis for the Commission's decision is readily apparent from a review of the record before it and BCFIRB.

The Commission Carefully Considered the Submissions of Industry Participants

45. Throughout GGFI and Windset's submissions, they also complain that the Commission did not consider certain arguments or information submitted by industry participants. However, when the Commission's reasons are read as a whole, it is evident that what GGFI and Windset are really complaining about is that the Commission did not agree with their submissions or accept them over the submissions made in MPL BC's agency application.

46. The Commission made it clear in its reasons that it reviewed and considered the industry participants' submissions. In particular, at paragraph 23, the Commission confirmed that it had carefully reviewed the industry participants' submissions and provides a summary of some of the themes from those submissions at paragraph 26. The Commission may not have set out every argument and piece of information provided by industry participants, but they were not required to do so. Requiring administrative decision makers to set out every argument or submission put forward by parties would put them in an unrealistic and untenable position which does not promote efficient or more effective justice between parties.

47. Further, at paragraphs 60 and 67 of their submissions, GGFI and Windset complain that the Commission did not have before it (and therefore could not consider) certain information, including expert evidence on the effect of adding a new agency to BC. However, it was open to the industry participants, including GGFI and Windset, to put that information before the Commission or in the case of information already in the possession of the Commission, request that the Commission consider that information. They chose not to do so and have not

provided any explanation for why they made that choice, nor attempted to cure this oversight in this hearing before BCFIRB.

48. It is not now open to GGFI and Windset to complain that the Commission did not have before it certain information which they themselves chose not to provide to the Commission nor presently to BCFIRB.

<u>The Issuance of an Agency Licence does not Require Majority Producer Support</u>

49. At paragraph 5 of the GGFI and Windset's submissions, GGFI and Windset state that their submissions are supported by 14 producers, representing 56.8% of regulated greenhouse producers, "as determined by area in production". GGFI and Windset appear to be suggesting that there is strong opposition to MPL BC's application among current producers and that this should be given significant weight by BCFIRB on this supervisory review.

50. As part of its SAFETI-based analysis the Commission considers the interests of producers, but agency applications are not popularity contests, and an applicant is not required to obtain majority support. It may very well be that some producers are not in favour of a new agency, while at the same time the issuance of a new agency licence will best serve the interests of producers in general. The fact that some producers are happy with their current agency does not mean that others will not benefit from and do not want the advantages of a new agency if they had an opportunity to develop a new business relationship.

51. Further, and in any event, it should be noted that when the letters of support attached to GGFI and Windset's submissions are reviewed critically, it is evident that the level of producer support for GGFI and Windset's submissions is not as widespread as GGFI and Windset's submissions suggest. In particular:

    a. According to Appendix A to the Commission's submissions, there are currently 43 commercial producers in British Columbia. The result being that GGFI and Windset only have the support of one third of British Columbia producers, as opposed to a majority; and

b. 8 of the 14 producers (over half) who signed letters of support for GGFI and Windset's submissions are producers who currently have an agency relationship with GGFI.

52. It is also not surprising that some current agencies would oppose MPL BC's agency application. MPL BC is their direct competitor. It is more noteworthy that six of the current ten agencies have not opposed MPL BC's application and one, Country Fresh Produce, even provided a letter of support for MPL BC's application.[1]

53. In any event, whether or not an applicant has majority support of either current producers or agencies is not the focus of the Commission's review nor BCFIRB's supervisory review (which relates to whether the granting of an agency licence is in the public interest and consistent with sound marketing policy), and does not displace the SAFETI-based assessment performed by the Commission in considering MPL BC's agency application.

<u>BCFIRB can Approve MPL BC's Agency Application notwithstanding any Defects in the Commission's Process or Reasons</u>

54. While it is MPL BC's position that the process employed by the Commission was procedurally fair, that the Commission properly considered MPL BC's application and that the Commission provided sufficient reasons, in the alternative, if there was a defect in the Commission's process, reasoning or reasons, it is still open to BCFIRB to consider and approve MPL BC's application. There is no need to remit the matter back to the Commission for reconsideration—for the sake of industry stability and efficiency now is the time to resolve the matter. The process established by BCFIRB gives all parties every opportunity to address and correct any alleged deficiencies with the Commission process.

55. Pursuant to section 8 of the *Natural Products Marketing (BC) Act Regulations*, BC Reg 328/75, BCFIRB is required to approve the designation of all agencies. The

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[1] MPL BC's Agency Application at Schedule 5.12.2.

Terms of Reference for this supervisory review recognize that part of BCFIRB's role is to "address any procedural defects in the Commission's process if necessary" and that "BCFIRB needs to reach its own conclusion as to whether the approval of MPL BC's agency licence is beneficial to the regulated vegetable industry in BC." As a result, BCFIRB can approve MPL BC's agency licence application based on its own analysis and assessment even if BCFIRB finds that there was a defect in the Commission's process or analysis.

56. The court has recognized that in appropriate circumstances resort to a reviewing body or higher tribunal can have the effect of curing defects in an underlying decision, including a breach of natural justice or a procedural unfairness.

> *Taiga Works Wilderness Equipment Ltd. v. British Columbia (Director of Employment Standards),* 2010 BCCA 97 at paras. 11 and 37-39; *Veillette v. International Association of Machinists and Aerospace Workers,* 2011 FCA 32 at paras. 16-17; *Nasser v. Canada (Public Safety and Emergency Preparedness),* 2021 FC 378 at para. 81; and *Veillette v. International Association of Machinists and Aerospace Workers,* 2011 FCA 32 at paras. 15-17.

57. All of the 'defects' identified by GGFI and Windset in their submissions are, if they exist at all, curable through the current supervisory review (and in some cases already have been cured). As the Commission noted, in paragraphs 40-41 of its reply submissions, GGFI and Windset have now had an opportunity to make submissions regarding the redactions made to MPL BC's application and have been provided with copies of the additional materials provided by MPL BC to the Commission. It is open to GGFI and Windset on this supervisory review to make submissions regarding the additional materials.

58. Further, in GGFI and Windset's submissions, they have raised a number of procedural fairness arguments and complain that the Commission did not provide sufficient reasons explaining their decision, but they have not put forward any substantive arguments for why MPL BC's agency application is not in the public interest or is not consistent with sound marketing policy. At paragraph 60 of GGFI and Windset's submissions they have set out seven types of information that they

say were not before the Commission but should have been, but they have neither tendered the information in the present process nor explained what arguments the information would have supported.

59. It is telling that GGFI and Windset are not asking BCFIRB to simply refuse MPL BC's application for an agency licence. Rather, GGFI and Windset are requesting that BCFIRB remit the determination of MPL BC's agency licence application back to the Commission. If GGFI and Windset had any meritorious arguments for why granting MPL BC's agency application would not be beneficial to the regulated vegetable industry in BC, they should have (and presumably would have) raised them in this supervisory review. Their failure to do so leads to the inevitable conclusion that GGFI and Windset's real intention is simply to delay MPL BC's agency application.

60. In the circumstances, even if BCFIRB finds that there was a defect in the Commission's consideration of MPL BC's agency application, it should find that it made no impact on the Commission's decision or, in the alternative, that the defect is cured through this supervisory review process such that BCFIRB can and should approve MPL BC's agency licence application.

Conclusion

61. When the Commission's Decision is read as a whole, in the context of the evidence and submissions before the Commission, it is readily apparent that the Commission carefully considered the evidence and arguments before it (including the arguments put forward by industry participants) and provided sufficient reasons for its decision to recommend the approval of MPL BC's agency licence. It is also clear that the Commission provided industry participants with more than a fair opportunity to participate in the proceedings, in a manner consistent with the General Order. At their core, GGFI and Windset's submissions really equate to a complaint that the Commission did not agree with their submissions and decided to recommend approval of MPL BC's licence application. The Commission correctly considered MPL BC's application applying a SAFETI-based assessment

that took into account all of the applicable policy and sound marketing principles. In the result, the Commission's principled assessment of MPL BC's application was supported by the evidence before the Commission, and it would be appropriate for BCFIRB to approve MPL BC's designation.

All of which is respectfully submitted this 18th day of April, 2023.

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