



BC Farm Industry Review Board

April 21, 2023

File: 44200-35\MPL

DELIVERED BY EMAIL

Robert Hrabinsky
Counsel
Affleck Hrabinsky Burgoyne LLP
1000-570 Granville Street
Vancouver, BC, Canada V6C 3P1

Dear Mr. Hrabinsky,

MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL BC) AGENCY PRIOR APPROVAL PROCESS – BCFIRB QUESTIONS

Thank you for your March 29, 2023, letter explaining how the BC Vegetable Marketing Commission (Commission) intended to respond to BC Farm Industry Review Board's (BCFIRB) March 27, 2023, request for submissions on certain questions. The stated purpose of your letter was to alert BCFIRB and participants to the Commission's intentions so that any further submissions can be made, or BCFIRB may issue further directions.

Subsequent to your letter, the Commission responded to BCFIRB's questions on April 6, 2023, and submitted its final reply on April 14, 2023.

I discussed your March 29, 2023, letter with BCFIRB as there are outstanding matters for clarification. I have been advised to respond as follows.

The starting point is the March 8, 2023, Final Terms of Reference:

It is the Commission's responsibility as the first instance regulator to demonstrate that it conducted a SAFETI-based process and reached a sound marketing policy-based recommendation. It is not BCFIRB's intent to replicate or repeat the full agency designation application process. However, BCFIRB 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.

In your March 29, 2023, letter, you interpreted this language to suggest that BCFIRB will not be engaging in a *de novo* prior approval supervisory process. As the Terms of Reference plainly state, while the Commission will need to demonstrate it followed a SAFETI-based process and reached a sound marketing policy-based recommendation,

BCFIRB has to reach its own conclusions based on its supervisory process, meaning it is not bound by the Commission's decision or the record before it. Accordingly, BCFIRB does not agree with the concerns raised in your letter regarding "deliberative privilege", "bootstrapping", or "s/he who hears must decide" arise in this supervisory process. The questions posed are all directed at the Commission's responsibility to demonstrate to BCFIRB that a SAFETI-based¹ process was followed and that it reached a sound marketing policy-based position.

BCFIRB's intent is to bring transparency to the prior approval supervisory process so that all participants have a good understanding of the Commission process and recommendation, and to ensure that any concerns with that process and recommendation were articulated in advance of the oral hearing to allow participants and BCFIRB time to prepare.

Ultimately it is for the Commission to determine how it will fulfill its responsibilities outlined in the Terms of Reference, including how it will answer any specific questions posed.

However, to be clear, the Commission should be prepared to explain its process for evaluating new agency applications in the oral hearing. If the Commission is of the view that expressing a position on whether its January 12, 2022, decision identified "any deficiencies in MPL's application" is appropriately addressed in argument, then that is where the Commission should address it.

Regards,



Wanda Gorsuch
Manager, Issues and Planning

cc: Craig Ferris, K.C., Legal Counsel, Greenhouse Grown/Windset
Morgan Camley, Legal Counsel, MPL BC
BCFIRB web site

¹ Strategic, Accountable, Fair, Effective, Transparent, Inclusive