

**IN THE MATTER OF THE  
NATURAL PRODUCTS MARKETING (BC) ACT**

**AND IN THE MATTER OF  
A PRIOR APPROVAL APPLICATION  
CONCERNING A RECOMMENDATION MADE BY THE BRITISH COLUMBIA  
VEGETABLE MARKETING COMMISSION ON JANUARY 12, 2022  
THAT MPL BRITISH COLUMBIA DISTRIBUTORS INC.  
BE GRANTED AN AGENCY DESIGNATION**

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**RESPONSE OF THE COMMISSION  
TO BCFIRB QUESTIONS**

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## **PART I - INTRODUCTION**

1. The BCFIRB's Final Terms of Reference dated March 8, 2023 state, in part, as follows:

### **Written Submissions**

Eligible participants in the prior approval process will be given an opportunity to provide written submissions, supported by any documents, in response to BCFIRB's specific questions on the Commission process, rationale and recommendation. A separate letter will be sent to all eligible participants setting out the questions, any page limits, and submission deadlines for all participants.

MPL BC and the Commission will have written final right of reply.

BCFIRB will take into consideration the January 25, 2023 ruling of Chair Peter Donkers made in the Allegations of Bad Faith and Unlawful Activity supervisory review, and will seek written submissions on that ruling, including implications of the voluntary reporting requirement agreed to by MPL BC (Appendix A).

2. On March 27, 2023, the BCFIRB sent a letter to all eligible participants setting out the BCFIRB's questions, as contemplated in the Final Terms of Reference.
3. This submission constitutes the Commission's responses to those questions.

## **PART II - COMMISSION RESPONSES TO BCFIRB QUESTIONS**

### **Questions for All Eligible Participants**

#### **Question 1**

1. *Did the Commission conduct a SAFETI-based process in reaching its recommendation on MPL BC's agency designation?*
  - a. *If not, identify any defects in the Commission's process and,*
  - b. *Identify what steps this panel could take to remedy any process defects?*

#### **Response to Question 1**

The process employed by the Commission in reaching its recommendations on MPL BC's agency designation is described in paragraphs 4 through 15 of its written decision dated January 12, 2022.

The Commission's "SAFETI" analysis is set out at paragraph 30 of its written decision dated January 12, 2022.

#### **Question 2**

2. *Is there any information that was put before the Commission that the Commission did not consider in making its decision?*
  - a. *If yes, what information was not considered, and why should it be considered in this supervisory process?*

#### **Response to Question 2**

All of the information that was considered by the Commission in making its decision is contained in the Commission's *Book of Documents Relied on by the Commission in Coming to its January 12, 2022 Decision*.

Question 3

3. *Is there any relevant information that the Commission did not have before it in reaching its recommendation on MPL's agency designation?*
  - a. *If yes, what information was not considered and,*
  - b. *Why was this information not provided to the Commission in the first instance?*

Response to Question 3

All of the information that was considered by the Commission in making its decision is contained in the Commission's *Book of Documents Relied on by the Commission in Coming to its January 12, 2022 Decision*.

The Commission did not consider "the January 25, 2023 ruling of Chair Peter Donkers made in the Allegations of Bad Faith and Unlawful Activity supervisory review." This ruling was made long after the Commission had made its January 12, 2022 decision.

Question 4

4. *Are there any public interest or sound marketing policy arguments that the Commission did not consider in making its decision?*
  - a. *If yes, what arguments were not considered and why should they be?*

Response to Question 4

The Commission considered the public interest and sound marketing policy arguments that are referenced in its decision dated January 12, 2022, or otherwise referenced in the submissions and materials received from MPL and other participating stakeholders (all of which are contained in the Commission's *Book of Documents Relied on by the Commission in Coming to its January 12, 2022 Decision*).

## Questions for the Commission

### Question 1

1. *Please provide an overview of the regulated BC greenhouse sector, including:*
  - a. *Percentage of BC greenhouse market served by BC agencies*
  - b. *How much volume of regulated greenhouse product sold in BC is imported by BC agencies*
  - c. *Other market areas served by BC agencies (interprovincial and export)*
  - d. *Greenhouse agencies*
  - e. *Area and percentage of Production Allocation by crop*
  - f. *Number and identity of producers shipping to each agency*

### Response to Question 1

- a. The annual percentage of the BC greenhouse market served by BC agencies with BC production is estimated to be over 70%. This estimate is based on information collected from agencies and from imports reported by the CBSA on greenhouse tomatoes, bell peppers, and long english cucumbers that enter Canada through BC ports of entry. This estimate does not account for inter-provincial trade of product that may enter BC with a final destination that is out of province. Nor does this estimate account for product that may be sourced from other greenhouse production regions in Canada to supply BC customers.
- b. The volume of regulated greenhouse product sold in BC that is imported by BC agencies is not available given the market dynamics outlined above.
- c. Other market areas that are serviced by BC agencies are as follows:

<b>Primary Markets</b>	<b>Secondary Markets</b>
Western Canada	Northeast USA

Primary Markets	Secondary Markets
Western USA Central USA Southwest USA	Southeast USA Asia (JA,CH,TW,KR)

d. Agencies licensed by the Commission and authorized to market regulated greenhouse vegetables:

- Country Fresh Produce Inc.
- Global Greenhouse Produce Inc.
- Greenhouse Grown Foods Inc.
- Island Vegetable Co-operative Association
- Okanagan Grown Produce Ltd.
- Vancouver Island Farm Products Inc.
- Village Farms Operations Canada Inc.

e. The area and percentage of Production Allocation by crop for the 2021 production year is as follows:

Volume of Product by Production Allocation Category (Units = M2)	2021	% of Total PA
TOTAL TOMATOES	733,526	23%
TOTAL PEPPERS	1,705,497	55%
L.E. CUCUMBERS	331,308	11%
TOTAL SPECIALTY	356,946	11%
<b>TOTAL</b>	<b>3,127,277</b>	100%
	773	Acres

f. The number and identity of producers shipping to each agency is attached to this document as **Appendix A**.

Question 2

2. *What information did the Commission rely on to determine that MPL BCs' market presence as an agency will result in an incremental growth in grower collective returns versus loss of market share of established agencies?*



Response to Question 2

All of the information that was considered by the Commission in making its decision is contained in the Commission's *Book of Documents Relied on by the Commission in Coming to its January 12, 2022 Decision*.

Question 3

3. *Did the Commission identify any deficiencies in MPL's application based on Part XIV - Procedures For Designation of Agencies of the Commission's General Orders? if so, what were the deficiencies?*

Response to Question 3

The Commission respectfully submits that no part of its January 12, 2022 decision identifies "any deficiencies in MPL's application".

Question 4

4. *What information did the Commission rely on to support market penetration opportunities for BC producers should MPL BC be designated as an agency?*

Response to Question 4

All of the information that was considered by the Commission in making its decision is contained in the Commission's *Book of Documents Relied on by the Commission in Coming to its January 12, 2022 Decision*.

Question 5

5. *Given the BC agencies' existing quote sheet pricing system for regulated greenhouse products, what implications – if any - does the Commission feel MPL BC's proposed fixed price contracts will have on BC producers and the industry?*

## Response to Question 5

BC greenhouse agencies market regulated greenhouse vegetables opportunistically on the spot market for immediate delivery, or through short-term or long-term programs with established customers. Customer programs typically include a quoted price, volume commitments for BC product, and requirements that imported product be sourced when BC supply is not available.

Larger agencies are better positioned to service customers with a year-round supply programs using fixed price contracts. The exact terms of these programs and contracts are not known to the Commission since minimum pricing regulation has not been implemented for the greenhouse industry and contracts are not filed with the Commission.

Fixed price contracts do offer benefits to BC producers and industry stakeholders including, but not limited to:

- Volume certainty can attract a higher price for the producer. It also provides the buyer with certainty on the future price for the commodity over the crop year, subject to the terms of the agreement.
- Fixed-price contracts need to be effectively managed and thereby support accountability. The producer and agency need to monitor contractual obligations with customers to ensure contract compliance.
- Provides the producer access to credit used to finance the operations. Contracts guaranteed by a customer are used as collateral to secure loans.

However, contracts are dependent on a customer's purchasing policy and are not guaranteed into perpetuity. Multiple agencies competing for the same customer can also have a negative impact on producer prices.

## **MPL BC Reporting Requirements**

### Questions 1, 2 and 3

1. *How should MPL BC be reporting on the [rules-based agency compliance reporting template described in the BCFIRB's December 22, 2020 Supervisory Decision] in order to be accountable for compliance and good behavior to the Commission and BCFIRB?*

2. *What, if any other, reporting criteria should MPL BC comply with?*
  - a. *What is a suitable timeline for reporting?*
3. *How will the Commission integrate MPL BC's reporting requirements with its agency accountability framework?*

### Response to Questions 1, 2 and 3

In its December 22, 2020 Supervisory Decision, the BCFIRB said:

184. After considering Commission and industry input, and the above analysis and conclusions, the panel answered the review questions as follows:

*What should an agency accountability framework include?*

Framework content should be based on agencies demonstrating compliance with Commission-required agency functions, including related information provision, as per the General Orders. Agency functions include, but are not limited to:

- i. Planning for and meeting market demands;
- ii. Identifying, developing and expanding markets;
- iii. Managing shared producer market access;
- iv. Ensuring fair returns for producers;
- v. Contributing to new producer entry;
- vi. Contributing to orderly marketing.

*How should an agency accountability framework be used?*

A framework should be used to ensure and annually demonstrate that agencies understand and are meeting their regulatory-based obligations to producers, the Commission and BCFIRB. The framework should meet the following objectives:

- i. provide transparency on agency responsibilities and compliance;

- ii. provide scheduled reporting to the Commission, producers and public as appropriate;
- iii. provide the Commission with current information on the state of the provincial sector, market, production, sales and price;
- iv. set a basis for annual agency licence renewals; and
- v. set a basis for graduated compliance and enforcement actions.

Reporting requirements already set out in the Commission's General Order include agency obligations presented in **Appendix B** that fall under the following categories:

- Business Licence & Agency Facilities Meet Health Standards
- Product Acquisition & Marketing
- Grower Marketing Agreements (GMA)
- Inter-Agency Deals
- Grading & Packaging
- Transport Orders
- Production Allocation Protocol
- Sales Contracts
- Product Trace-back and Recall System
- Pooling Protocol
- Commission & Agency Service Fees
- Payments to Producers
- Manifest Sales Reporting
- Sales, Reporting
- Business Plan or Marketing Plan
- Financial Statement Review

The Commission has not yet finalized its agency accountability framework as directed by the BCFIRB in its December 22, 2020 Supervisory Decision. Progress was impeded by the pandemic, staff turnover, and the BCFIRB's *Review of Allegations of Bad Faith and Unlawful Activities*, which has consumed considerable Commission resources. Nevertheless, the Commission does anticipate further industry consultations concerning the development of additional reporting requirements that will be applicable to all agencies. At this juncture, the Commission anticipates that these additional reporting requirements will focus on:

<b>ACCOUNTABILITY CATEGORIES</b>
<b>Governance:</b> Governance standards for sound management and financial administration that support business objectives and strategies.
<b>General Management:</b> Ensure management structures, policies, systems and processes support the marketing of regulated vegetables.
<b>Planning, Reporting, and Disclosure Requirements:</b> Provide meaningful information to the agency's producer group and the Commission for planning, decision-making and reporting purposes. Supports transparency and accountability to Producers of regulated vegetables.
<b>Marketing Management:</b> Provide the agency's producer group and the Commission with a clear and transparent sales and marketing strategy and plan to promote regulated vegetables and maximize producer returns.
<b>Management of Regulated Vegetable Production &amp; Sales:</b> Ensure procurement and sales processes and procedures are clearly defined, documented, and in compliance with applicable regulations, directives, policy, frameworks, and standards set by the Commission.
<b>Financial Systems and Risk Management:</b> Ensure that financial systems are developed and implemented to mitigate risk and to reduce uncertainty in the business.

However, the Commission does not think that there is any need to impose any "special" regulatory reporting requirements against MPL, notwithstanding MPL's offer to commit to "quarterly reporting to BCFIRB for an 18-month period", and notwithstanding the findings made by Chair

Donkers in his July 14, 2022 decision concerning Phase I of the “Bad Faith” Supervisory Review.

In that supervisory decision, Chair Donker’s concluded that there was no cogent evidence presented to substantiate the very serious allegations of wrongdoing that were advanced by MPL, and that in most cases the allegations were based on no more than speculation, rumour and innuendo. He also identified serious concerns arising out of the lack of an evidentiary foundation for the allegations of wrongdoing advanced by MPL, and the impact that the allegations had on the Commission and orderly marketing in the Province.

Consequently, Chair Donkers made orders amending the terms of reference for the Supervisory Review, provided an opportunity for MPL to submit additional evidence, and invited Hearing Counsel and all participants to provide written submissions on the following two issues:

- i. what conclusions or inferences should be drawn from the findings in the Phase I Decision, together with any additional evidence filed by ... MPL, with respect to ... MPL's motivations for advancing allegations of bad faith and unlawful conduct against the Commissioners and Mr. Solymosi, and
- ii. in light of any findings that might be made concerning ... MPL's motivations, what, if any, orders or directions does the panel have the authority to make in furtherance of restoring orderly marketing and trust and confidence in the BC regulated vegetable industry.

Before Phase II commenced in earnest, MPL decided to:

- (a) bring an end to the civil action (and paying the defendants’ costs);
- (b) recognize that there have been costs and disruption and pay a significant portion of the Commission’s legal costs arising out of the Supervisory Review;
- (c) switch its focus back to advancing the marketing of greenhouse vegetables;
- (d) commit to becoming a constructive member of the B.C. regulated vegetable sector;
- (e) commit to comply with the three key components of orderly marketing; and
- (f) commit to quarterly reporting to BCFIRB for an 18-month period.

Based on this, and having regard to the recommendation of Hearing Counsel, Chair Donkers decided on January 25, 2023 to discontinue the “Phase II” proceedings against MPL.

Against this background, it is the Commission’s respectful submission that the steps already taken by MPL are sufficient to address the concerns that arose as a result of MPL advancing very serious, and unfounded, allegations of wrongdoing.

Further, it is the Commission’s respectful submission that MPL’s conduct in advancing these unfounded allegations is not properly regarded as a kind of *regulatory non-compliance* that might justify the imposition of special reporting requirements. Had MPL not taken the steps that it did, there may well have been other regulatory approaches that would constitute a suitable regulatory response. However, it is the Commission’s respectful view that special reporting requirements are better suited to circumstances where there has been a demonstrated history of *regulatory non-compliance*. “Bad behaviour” that gives rise to costs and hardships, but is not otherwise a form of regulatory non-compliance, is better addressed in other ways.

ALL OF WHICH IS RESPECTFULLY SUBMITTED  
THIS 6<sup>th</sup> DAY OF APRIL, 2023



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Counsel for the British Columbia Vegetable Marketing Commission

## Commercial Producers

### **BC Hothouse Foods (7)**

Bakerview Greenhouses Inc.
Darvonda Nurseries Ltd.
Delta View Farms Ltd.
Glenwood Valley Farms Ltd.
Katatheon Farms Inc.
Robinson Farms Inc.
Sumas Ridge Greenhouses Inc.

### **Country Fresh Produce (5)**

Creekside Hothouse Ltd.
Houweling Nurseries Ltd
Millennium Pacific Greenhouses
Mt. Lehman Greenhouses
Mt. Lehman Vegetable Farms Inc.

### **Village Farms Operations Canada (4)**

0717260 BC Ltd. (dba Cheam View)
Evergrow Greenhouse Ltd.
MB Greenhouse Ltd.
Village Farms Canada L.P.

### **Greenhouse Grown Foods Inc. (13)**

16th Avenue Farms Ltd.
Aljane Farms Ltd.
Canada Champion Farms Ltd.
CVG Veg Products Ltd.
Fraser Valley Farm Market Inc.
Peppertree Farms Ltd.
Sandhu Greenhouses
Sunnyside Produce Ltd.
Uppal Farms & Greenhouses Ltd.
Westcoast Greenhouses Holdings Ltd.
Westcoast Produce Partnership
Westcoast Vegetables Ltd
Windset Farms (Canada) Ltd.

### **Global Greenhouse Produce (3)**

Calais Farms Ltd.
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Gravis Farms Inc.
Merom Farms Ltd.

**Vancouver Island Farm Products Inc. (9)**

Atwal Farms (A Partnership)
Eco Green Farms
Fiesta Greenhouses Ltd.
Fraser Hothouse Growers Ltd.
Fresh Green Farms Corp.
Hilltop Greenhouses Ltd.
Odyssey Ventures Ltd.
Rage's Farms Ltd
Riverside Hothouse Ltd.

**Okanagan Grown Produce Ltd. (2)**

Aujla Bros Greenhouses Ltd.
T. J. Greenhouses & Orchards Ltd.



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APPENDIX B

GENERAL ORDER

REQUIREMENTS SPECIFIC TO AN AGENCY

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**BC VEGETABLE MARKETING COMMISSION**

## **1. Business Licence & Agency Facilities Meet Health Standards**

### **PART V AGENCIES**

Par. 2: An Agency shall maintain an office located within the Regulated Area.

Par.15: All Agency facilities must meet minimum health standards of the regional district, municipality, area or city in which the facilities are located.

Par.16: An Agency must have a valid business license and legally able to use any brand name it may adopt.

## **2. Product Acquisition & Marketing**

### **PART V AGENCIES**

Par.1: Designated Agencies and the Regulated Crops each are authorized to handle are listed on Schedule I to the General Order.

Par.6: No Agency shall receive or market any Regulated Product from a Person in respect of which there has occurred any violation of, or non-compliance with, any Orders or directions of the Commission unless specifically ordered by the Commission to do so.

Par.7: No Agency shall receive or market any Regulated Product from a Producer who does not have a current Producer Licence unless the net value of the Producer’s shipments to date in the current year, including the shipment in question, does not exceed one thousand dollars (\$1,000).

Par.8: No Agency shall receive any Regulated Product from a Producer that was not grown by that Producer unless expressly authorized by the Commission.

#### Products of Unmarketable Quality

Par.17: An Agency or a Processor shall be entitled to refuse to accept or market any Regulated Product delivered to it, which in the opinion of the Agency or Processor, is not of marketable quality.

Par.18: Any person who is aggrieved by the refusal of an Agency or Processor to accept or market Regulated Product may file a complaint with the Commission for a remedy and the decision of the Commission shall bind both the Agency or Processor and the aggrieved Person, subject to appeal provisions of the Act.

Par.19: Any Person who is aggrieved by the manner in which Regulated Product is handled by an Agency or Processor may file a complaint with the Commission for a remedy and the decision of the Commission shall be binding on both the Agency or Processor and the aggrieved Person, subject to the appeal provisions of the Act.



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**PART XV MARKETING OF “NEW” OR ADDITIONAL REGULATED PRODUCT BY EXISTING AGENCIES AND PRODUCER-SHIPPERS**

Par.1: No new or additional Regulated Product shall be marketed by existing Agencies or Producer-Shippers without Commission approval.

**PART VII AGENCY RESPONSIBILITIES**

Par.14: An Agency shall accept for marketing, and shall market the regulated product from any licensed producer directed to that Agency by the Commission. If the Commission directs a producer to an Agency, that producer’s regulated product shall be marketed, and he shall receive returns, in the same manner as other persons delivering regulated product to that Agency.

**3. Grower Marketing Agreements (GMA)**

*Definition: "Grower Marketing Agreement" or "Producer Marketing Agreement" or "Sales and Marketing Agreement" means an agreement between a Producer and an Agency which sets out the terms and conditions upon which the Regulated Product shall be provided by the Producer and sold by the Agency.*

**PART V AGENCIES**

Par.10: An agreement between an Agency and a Producer, which addresses terms and conditions upon which the regulated product shall be provided by the producer and sold by the Agency (e.g. GMA), shall be reduced to writing and is to be consistent with Commission Policy.

Commission policy provides direction on the required provisions to be included in the GMA. Other terms and conditions are to be mutually agreed to by the parties.

**PART VII AGENCY RESPONSIBILITIES**

Par.9: Each Agency shall file with the Commission all signed Grower Marketing Agreements with all producers of Regulated Product shipped through that Agency by June 1<sup>st</sup> of each year.

**4. Inter-Agency Deals**

**PART V AGENCIES**

Par.11: All agencies shall cooperate with each other in the Marketing of Regulated Product and enter into inter-Agency agreements when directed by the Commission. This may mean that Agencies with an excess of Regulated Product will be required to sell Regulated Product to Agencies in need of Regulated Product. On-going communication between Agencies is encouraged by the Commission in this regard.

**PART VII AGENCY RESPONSIBILITIES**

Par.13: Each Agency shall provide the Commission with any other information relevant to Agency or inter-



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Agency transactions as may be required by the Commission from time to time.

## 5. Grading & Packaging

### **PART VIII GRADING AND PACKING**

Par.1: A wholesaler, Agency or Producer-Shipper may sell only Regulated Product which meets at least a Canada No. 1 Grade, Canada No. 2 Grade, BC No. 1 or BC No. 2 Grade, or such other grade as the Commission may from time to time approve.

Par.2: All Regulated Product shall be packed in Containers which comply with all regulations set out in the Canada Agricultural Products Act, RSC 1985, c. 20 (4th Supp.) or the Agricultural Produce Grading Act, R.S.B.C. 1996, c.11.

Par.3: An Agency must receive approval from the Commission prior to marketing regulated product in non-standard containers. If approval is granted, product in non-standard containers may only be marketed in British Columbia.

## 6. Transport Orders

"**Transport Order**" means a permit, either verbal or written, issued in the name of the Commission by a duly authorized employee or nominee of the Commission authorizing the movement or transporting of Regulated Product from a Producer's farm to an Agency, a Processor, or a warehouse each of whom must be designated by the Commission and specifying the day or days between which the Regulated Product covered by the Transport Order may be moved.

### **PART V AGENCIES**

Par.3: Agencies may, with the approval of the Commission, issue Transport Orders for specific Regulated Product. If authorized by the Commission, Transport Orders may contemplate that Regulated Product will be received, washed, graded and marketed and the proceeds pooled.

### **PART VII AGENCY RESPONSIBILITIES**

Par.11: Each Agency shall file with the Commission names of staff to be authorized to issue Transport Orders by April 1st of each year; any changes, which may occur subsequently, must also be filed.

### **PART XXI - MISCELLANEOUS**

Par.2: The Commission may issue a Certificate of Authority, which authorizes a Person to perform specific tasks on behalf of the Commission under the direction of the Commission within a specified time frame.



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## **7. Production Allocation Protocol**

### **PART VII AGENCY RESPONSIBILITIES**

Par.4: Each Agency shall supply to the Commission as requested or required, details in respect to the application of Delivery or Production Allocations and Producer’s individual shipments. These details are required to be supplied to the Commission within 60 days of the close of a pool period or in the case of storage crops within 60 days of the close of a Delivery Allocation period.

## **8. Sales Contracts**

### **PART VII AGENCY RESPONSIBILITIES**

Par.6: Before finalizing a contract each Agency shall provide to the Commission for its prior approval as to form any proposed contracts with Processors or other firms approved by the Commission located in BC that are to receive regulated products regardless of end use.

## **9. Product Trace-back and Recall System**

### **PART VII AGENCY RESPONSIBILITIES**

Par.10: Each Agency shall have a trace-back and recall system which adequately identifies and traces Regulated Product from the time it is specifically shipped by a particular Producer until it is received and purchased by a Wholesaler or Retailer.

## **10. Pooling Protocol**

### **PART V AGENCIES**

Par.12: Each Agency is authorized to and may conduct a pool or pools as directed by the Commission, for the distribution of all proceeds received from the sale of the Regulated Product. Each Agency shall distribute the proceeds of sale of each pool, after deducting necessary and proper disbursements, expenses and charges as permitted or required by the Commission.

### **PART VII AGENCY RESPONSIBILITIES**

Par.5: Each Agency shall provide pool settlement statistics showing quantities, price ranges and final pool prices to the Commission on request.



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## 11. Commission & Agency Service Fees

### **PART V AGENCIES**

Par.4: Each Agency shall deduct the appropriate Commission service fees from the Producer's net proceeds as prescribed by these General Orders or as directed by the Commission for the Regulated Product which the Agency is authorized to market, and for each month's sales Agencies shall hold such funds in trust and shall remit the funds to the Commission not later than the 20th day of the following month.

(Refer to **Schedule IV – BCVMC Levies and Charges**)

Par.9: Every Agency shall be entitled to charge each Producer the service fees from time to time approved by the Commission for packing, cooling, grading, storing, washing, handling, transporting and Marketing the Regulated Product.

### **PART VII AGENCY RESPONSIBILITIES**

Par.12: Each Agency shall file with the Commission, for approval each year, a proposed list of fees or charges for Agency services provided to Producers for Marketing. Any fee or charge that has not been submitted to the Commission for its approval is a nullity. Where the Commission has exercised its discretion to decline to approve a fee or charge, such fee or charge becomes a nullity.

## 12. Payments to Producers

### **PART V AGENCIES**

Par.13: All Agencies shall distribute the proceeds of sales not more than 20 days following the month during which the sales were made. If an Agency is unable, or does not wish to pay the proceeds within the specified time frame, it may apply to the Commission for a variance, stating the reasons for the request, the duration of the variance and the payment schedule requested. The Commission may approve, amend, or deny the request as it sees fit.

## 13. Manifest Sales Reporting

### **PART XX DIRECT MANIFEST SALES**

Par.1: The purpose of this Manifest Sales system is to allow Producers to supply local product directly to smaller outlets who are not customers of any Agency or any other Person specified by the Commission; this system is not intended to create a Producer-against-Producer or Producer-against-Agency conflict.

Par.2: An Agency shall obtain Commission approval before instituting a Manifest Sales program having the purpose to facilitate such sales only to occur within the Regulated Area.

Par. 3: Prior to shipping any Regulated Product to any consumer, a Producer must obtain the approval of the Agency through which the Commission has directed it shall market its Regulated Product. The Producer shall not interfere with Agency-direct sales.



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Par. 4: At the request of the Commission, an Agency shall provide an Agency customer list that clearly defines which customers are not eligible for Manifest Sales purchases. The list may be updated at any time by the Agency, filed with the Commission, and re-distributed to the Agency's Producers. When authorizing Manifest Sales, the Agency must ascertain that the sales are to customers that are not customers of the Agency.

Par. 5: Manifest Sales shall not be made to Brokers, Wholesalers, Processors, Producers, Producer-Shippers, Commission Salespersons or to any other Persons prohibited by the Commission, as may be stipulated by the Commission.

PRODUCER RESPONSIBILITIES:

Par.6: All sales under this part shall be recorded on an Agency manifest or invoice with a Transport Order number approved by the sales manager of that Agency.

Par.7: All invoices shall comprise of at least 3 copies:

- a. Customer copy
- b. Agency copy
- c. Producer copy

Par.8: All manifest sale invoices shall be complete with:

- a. Customer's name and address, Producer's name and Licence Number;
- b. all details of produce sale including grade, price and total pounds of each type of Regulated Product delivered;
- c. Agency name and address; and
- d. manifest sale or transport number.

Par.15: A Producer must have a confirmed sale prior to delivery and must have his manifest sale invoices completed with all the required information set out in section 8 of this part.

Par.11: All sales by the Manifest system shall be reported to the Agency's sales desk:

- a. with a copy of the invoices in detail; and
- b. an Agency fee approved by the Commission; and
- c. on a daily basis, unless otherwise approved by the Commission.

Par.10: A Producer is directly responsible for:

- a. the grade of Regulated Product, any detention or seizure of Regulated Product and any costs related to the sale that may occur;
- b. the collection of all amounts owing from their own manifest sales; and
- c. packaging materials; Regulated Product shall not be sold in Agency packaging materials without the prior approval of the Agency.

Par.9: All Regulated Product sold under this Part:

- a. unless otherwise directed by the Commission, shall have a 15 percent minimum mark-up above the minimum price set by the Commission, taking into consideration wholesale spread, cost of delivery and services provided. Agencies shall publish a sales price list to be sent to Producers weekly;
- b. shall meet Canada No. 2 Standard Grade or better;
- c. shall comply with like Regulated Product sold by Agencies (i.e., clean Containers and washed product where applicable); and





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d. shall be identified with a tag or label that identifies the Producer making the sale.

Par.13: All sales transactions completed under this Part may only be made within the Province.

AGENCY RESPONSIBILITIES:

Par.12: The Agency shall be responsible for collecting all fees approved by the Commission and any other assessment that may occur from time to time (e.g., promotion, research, or anti-dumping levies).

Par.14: Reported sales, for Storage Crops only, will qualify to build Delivery Allocation provided sales invoices are documented properly and processed through an Agency, regardless of whether the Producer is actually able to collect monies from that sale.

Par.16: If an Agency suspects one of its Producers is not acting in compliance with this Part, the Agency shall provide the Producer’s name and the customer name and location to the Commission for investigation.

**14.Sales, Reporting**

The Commission requires all Agencies and Producer-Shippers to report sales volume and value data. Production allocated to service customer categories that are defined by the Commission is also collected on an annual basis for BC and export markets.

**15.Business Plan or Marketing Plan**

**PART VII AGENCY RESPONSIBILITIES**

Par. 8: Each Agency shall file a business plan or Marketing plan with the Commission upon request.

**16.Financial Statement Review**

**PART VII AGENCY RESPONSIBILITIES**

Par.7: Each Agency shall file with the Commission a copy of their year-end financial statements. A financial audit shall be undertaken if requested by the Commission.

Par.15: Any sale of all or a portion of an Agency by way of sale of assets or shares, or a change in the Agency’s business plan, must receive prior approval from the Commission. Without prior approval, the Agency designation in question will terminate.

Par. 16: Grower marketing agreements (GMA)s become null and void with any sale of all or a portion of an Agency by way of a sale of assets or shares that does not receive prior approval from the Commission. Without prior approval, the GMAs will terminate.