



BC Farm Industry Review Board

March 8, 2023

File: 44200-35\MPL

DELIVERED BY EMAIL

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Derek Sturko
Chair
BC Vegetable Marketing Commission
207 – 15252 32nd Ave
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Dear Ms. Camley and Mr. Sturko:

MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL BC) AGENCY PRIOR APPROVAL PROCESS – FINAL TERMS OF REFERENCE

Please find attached the final Terms of Reference for the prior approval process the BC Farm Industry Review Board (BCFIRB) will follow to consider the BC Vegetable Marketing Commission (Commission) recommendation that MPL BC be designated an agency.

Written input on draft Terms of Reference was solicited from the eligible participants listed in the Terms of Reference on June 28, 2022 and again on February 7, 2023 when BCFIRB lifted the prior approval process suspension¹.

Input was received from the Commission, MPL BC and Greenhouse Grown Foods Inc./Windset Farms (Canada) Ltd (Greenhouse Grown).

Input Summary

The Commission found the draft Terms of Reference acceptable. MPL BC agreed with the scope and focus, emphasized the process should not be a *de novo* hearing of MPL BC's agency application, and requested that if any of the eligible participants be permitted to participate, that the participation should be limited to new information that was not previously before the Commission. In its 2023 input, MPL BC recommended the Terms of Reference be amended to reflect consideration of BCFIRB's

¹ The prior approval process was suspended on July 22, 2022 pending the outcome of the Allegations of Bad Faith and Unlawful Supervisory Activity Supervisory Review.

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January 25, 2023 decision² and highlighted the importance of addressing potential procedural fairness issues, such as those raised in appeals currently before BCFIRB.

In its 2022 submission, Greenhouse Grown sought to have the prior approval process consolidated with its appeals “to ensure that industry stakeholders are provided full and satisfactory participation rights on the full range of issues arising from the Commission’s Decision in a manner that minimizes duplication and regulatory burden”. It made various recommendations and sought specificity on how this could be achieved through rules, procedures and timelines. More recently, and given its understanding that BCFIRB was not consolidating the appeals and the supervisory process, Greenhouse Grown revised its input, requesting further details on BCFIRB’s supervisory process and timelines.

Final Terms of Reference

The final Terms of Reference includes a general timeline, and, as communicated on February 15, 2023, sets the in-person supervisory hearing for May 23, May 24 and 26, 2023.

Regarding BCFIRB’s January 25, 2023 decision, the Terms of Reference confirms that BCFIRB will take into consideration Chair Peter Donkers ruling and will seek written submissions from eligible participants on the implications of the ruling.

The Terms of Reference confirms that the starting point for this prior approval process is the Commission’s process and decision:

BCFIRB’s prior approval role is to consider the above questions, address any procedural defects in the Commission’s process if necessary, and to assess whether the Commission’s rationale and recommendation accord with sound marketing policy. 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, the panel 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.

BCFIRB’s supervisory process allows for eligible participants to identify any procedural defects with the Commission’s process and decision, and explore how any such defect can and should be remedied by BCFIRB’s process. BCFIRB’s in-person supervisory hearing is an opportunity to address earlier process concerns raised by some participants that the Commission did not hold an oral hearing before issuing its decision on MPL BC’s agency designation. In addition to addressing process concerns, the prior

² 2023 January 25. BCFIRB. Ruling Regarding MPL British Columbia Distributors Inc. and Allegations of Bad Faith and Unlawful Activity Review Phase II.

approval process is an opportunity for participants to provide their supported rationale for why BCFIRB should (or should not) grant MPL BC an agency designation as a matter of sound marketing policy.

Measures are in place for managing document disclosure, confidential information requests, and evidence from expert witnesses to ensure that the supervisory hearing proceeds as scheduled. To that end, it may be necessary to hold a pre-hearing conference to work through any procedural issues that may arise. BCFIRB's intent is to ensure a procedurally fair supervisory process proportionate to the matter under consideration. BCFIRB's goal remains to collect all the information it needs to make a sound marketing policy determination in the public interest. This goal informs BCFIRB's process and supervisory hearing management.

Regards,



Pawan Joshi
Panel Chair

cc: Robert Hrabinsky, Legal Counsel, BC Vegetable Marketing Commission
Craig Ferris, K.C., Legal Counsel, Greenhouse Grown/Windset
Agency Applicants and Storage crop Agency Managers
Greenhouse Agency Managers
Storage crop/Greenhouse Managers
Storage crop Producers
Greenhouse Producers
Processing Producers
Wholesalers
Processors
BCFIRB web site