

May 11, 2023

File No.: 582211-1

Sent Via Email

British Columbia Farm Industry Review Board
PO Box 9129 Stn Prov Govt
Victoria, BC V8W 9B5

Attention: Wanda Gorsuch, Manager of Issues and Planning

Dear Ms. Gorsuch:

Re: MPL British Columbia Distributors Inc. (“MPL BC”) Agency Prior Approval Process

We write regarding BCFIRB’s letters of April 24, and May 5, 2023, where it invited participation applications for the in-person oral hearing and then advised that ten additional participants were granted standing to make written and, in the case of Village Farms Canada LLP, oral submissions with respect to MPL BC’s agency application.

We are writing to object to ten new participants being granted the right to make written and oral submissions at this stage of the agency licence prior approval supervisory review.

The addition of ten new participants, all permitted to file up to ten pages of written submissions by May 12, 2023—a mere 5 business days before the scheduled hearing—runs contrary to the process set out in BCFIRB’s Final Terms of Reference dated March 8, 2023 (the “Terms of Reference”), and its instructions for written submissions dated March 27, 2023 (the “Written Submissions Instructions”) and creates a procedural unfairness.

Based on the process set out in the Terms of Reference and the Written Submissions Instructions, it was MPL BC’s legitimate expectation that:

1. written submissions and supporting documents of all eligible participants touch on only those matters specifically canvassed by BCFIRB on March 27, 2023;
2. written submissions of *all* eligible participants be filed by April 7, 2023 (more than 6 weeks before the scheduled hearing);
3. supporting documents of *all* eligible participants be filed by April 21, 2023 (more than 4 weeks before the scheduled hearing); and
4. that MPL BC be granted a final written right of reply on all written submissions and more than 5 weeks before the scheduled hearing.

All ten of the new participants were aware of this supervisory review process and the above timeline, and were also aware that other industry participants were providing written submissions per BCFIRB's Written Submissions Instructions in early April 2023. Indeed, they were copied on the Terms of Reference and the Written Submissions Instructions, and, with the exception of Village Farms Canada L.P., all of the new participants signed letters, dated April 3-6, 2023, supporting the written submissions of the Windset Group (dated March 27, 2023 and filed April 6, 2023, in accordance with the Written Submissions Instructions). While Village Farms Canada L.P. itself did not provide a letter of support, its related agency, VF Operations Canada, Inc., did. None of the new participants provided any explanation in their applications for participant status as to why they did not seek to participate at the same time as the other eligible participants or why the new information they purport to have was not provided to the Commission at the time MPL BC's application was initially considered.

These new submissions come long after MPL BC has put in its main and reply written submissions, as well as its book of documents. Based on BCFIRB's letter, dated May 9, 2023, setting out the order of presentations at the supervisory review oral hearing it appears that MPL BC has not been provided with additional time at the oral hearing to respond to these new submissions. Further, as each new participant has been granted leave to file up to ten pages of what it appears BCFIRB intends to be new information, MPL BC will be in the untenable position of receiving up to 100 pages of new information five business days before the start of the supervisory review hearing.

By initially declining to participate and instead choosing to support the Windset Group's submissions, and then, at this late stage, seeking standing to make their own submissions, the new participants are essentially being allowed to split the case among those opposing MPL BC's entrance into the British Columbia market. In this respect, it should be noted that the already submitted new participants' application letters are identical in substance, and it is readily apparent that these new participants have been working in concert with the Windset Group since at least March 2023.

Moreover, it is procedurally unfair for BCFIRB to allow the new participants to make additional submissions after MPL BC has already provided its reply submissions and book of documents. This is particularly the case as MPL BC has not also been granted a right of reply to those additional submissions.

In the circumstances, MPL BC objects to the new participants being granted standing and the right to provide submissions at this stage of the proceedings. Nevertheless and recognizing BCFIRB's comment that this supervisory review is not an adversarial review process of the Commission's decision, if BCFIRB intends to proceed with admitting the new participants' submissions, MPL BC seeks the right (notwithstanding BCFIRB's recent advice that closing statements may be directed to be in writing) to provide, following the oral hearing, a written response to the new participants' submissions should anything new arise from them or should they stray beyond the scope of the submissions previously provided by MPL BC. To be clear, we do not believe that a right of reply solves the procedurally unfair issue of including these new parties at this late stage in the process, but are nevertheless doing what we can to ensure our client can meaningfully participate in the process so as to not lose another growing season.

We look forward to hearing from you regarding the above.

Yours truly,

Dentons Canada LLP



Morgan L. Camley
Partner