

Reply to: Ravi R. Hira, Q.C.  
Direct Line: 604 800 8022  
Direct Fax: 604 800 9022  
E-mail: rhira@hirarowan.com  
Our File No.: 7111-001

June 24, 2021

**VIA EMAIL: Wanda.Gorsuch@gov.bc.ca**

Wanda Gorsuch  
Manager, Issues and Planning  
B.C. Farm Industry Review Board  
780 Blanshard Street  
Victoria, BC V8W 2H1

**Attention: Wanda Gorsuch, Manager, Issues and Planning**

Dear Sirs/Mesdames:

**Re: Supervisory Review re Vegetable Marketing Commission Allegations of Bad Faith and Unlawful Activity**

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We write in response to BCFIRB's June 14, 2021 letter regarding participation and interim orders in the above noted matter (the "**Letter**").

The portion of BCFIRB's proposed order relating to Mr. Solymosi is outlined at paragraph 27(b) of the Letter, which states:

Andre Solymosi is prohibited from substantive participation in any deliberations or decision making with respect to any rights or interests of Prokam, CFP, MPL, or any of their principals or affiliated companies, including but not limited to the making of recommendations to any commissioners or Commission panels, until the conclusion of the Supervisory Review. However, Mr. Solymosi may continue to deal Prokam, CFP, MPL, and any of their principals or affiliated companies in an administrative capacity.

Clarification of paragraph 27(b) of the Letter is required. The reference to "any rights or interests of Prokam, CFP, MPL, or any of their principals or affiliated companies", without qualification, is too broad.

If the current language of paragraph 27(b) is not modified, almost any action taken by Mr. Solymosi could be said to engage the rights or interests of Prokam, CFP, MPL, Bajwa Farms, their principals or affiliated companies, as members of a broad class of existing or prospective industry stakeholders.

For example, Mr. Solymosi's duties as General Manager of the BC Vegetable Marketing Commission (the "BCVMC" or "Commission") include: facilitating the development of strategic plans overseen by the BCVMC Chair that ensure the long-term sustainability of the BC regulated vegetable industry; developing and implementing operational plans for the BCVMC staff that advance the Commission's strategic plan; identifying and proactively proposing new policies or General Order amendments for consideration by the Commission; communicating with the Chair and the Commissioners concerning events that may have a significant impact on the BCVMC and the industry; managing the operations of the BCVMC in the best interests of regulated vegetable producers; among other responsibilities. Copies of the BCVMC's Job Description for the General Manager have been enclosed with this correspondence for reference.

Additionally, the BCVMC 2020-21 Administrative Policy for storage crop vegetables (enclosed for reference) states that the General Manager will make administrative decisions to determine market access to the retail, wholesale, food service, or processing markets in certain circumstances. It is not outside the realm of possibility for Prokam, CFP, MPL, or Bajwa Farms to dispute the administrative nature of decisions made by Mr. Solymosi.

Furthermore, the BCVMC pricing policy for contract and weekly minimum prices for storage crops (enclosed for reference) states that pricing recommendations are established when the General Manager approves the recommendation. In the event that a recommendation on minimum price cannot be established by the Agencies, the General Manager will determine the price. Such activity by Mr. Solymosi would violate the BCFIRB order, as currently drafted, since it would fall within "substantive participation in any deliberations or decision making" with respect to any rights or interests of Prokam, CFP, MPL, Bajwa Farms, or any of their principals or affiliated companies.

The day-to-day work of Mr. Solymosi necessarily involves making administrative decisions with respect to the regulated vegetable industry that Prokam, CFP, MPL, Bajwa Farms, and their principals or affiliated companies are a part of. By virtue of this fact, the rights and interest of Prokam, CFP, MPL, Bajwa Farms, and their principals or affiliated companies will necessarily be affected. Consequently, the effective functioning of the BC regulated vegetable industry cannot be maintained if paragraph 27(b) is not clarified.

Mr. Solymosi respectfully submits that the language of paragraph 27(b) of the Letter should be revised to state the following:

Andre Solymosi is prohibited from substantive participation in any deliberations or decision making with respect to any rights or interests of Prokam, CFP, MPL, Bajwa Farms, or any of their principals or affiliated companies arising from applications or requests made, or to be made, by them, including but not limited to the making of recommendations to any commissioners or Commission panels, until the conclusion of the Supervisory Review. However, Mr. Solymosi may continue to deal with Prokam, CFP, MPL, Bajwa Farms, and any of their principals

or affiliated companies, in an administrative capacity, with respect to applications or requests made, or to be made, by them. [Additions underlined].

If the BCFIRB adopts the revisions outlined above regarding paragraph 27(b) of the Letter, the order will necessarily reduce Mr. Solymosi's role, at least with respect to the outstanding applications of Prokam, CFP, MPL, and Bajwa Farms to that of a secretarial function. In ordinary circumstances, a commodity board's senior executive (i.e. Mr. Solymosi) would take steps to ensure that the decision-maker (i.e. the Commission members or panel) is provided with all information that may be relevant to matter. However, it is not inconceivable that Prokam and MPL could seek to characterize the execution of this function as being in the nature of a "recommendation". With or without the prohibition proposed by the BCFIRB, Mr. Solymosi will naturally be apprehensive to take any actions or steps that might be used against him in civil proceedings that have been, or may be, brought by Prokam and MPL. This will impair the Commission's ability to make informed decisions.

Finally, if the current wording of paragraph 27(b) of the Letter is not modified, the result will effectively be that Mr. Solymosi is prohibited from participating in certain Commission processes and procedures, and Prokam and MPL will have been successful in fabricating grounds for disqualification or recusal through their own actions (i.e., by filing civil claims against the Commission and Commission members). A mere allegation should not result in effective or substantive recusal. Public policy and administration of justice concerns dictate that a participant or party to a proceeding or process should not succeed in a recusal motion for reasons that he or she manufactured. It is no surprise that courts and tribunals frown upon such conduct.<sup>1</sup> This cannot be a result that the BCFIRB intended.

Should you have any questions or require any further information, please do not hesitate to contact me.

Yours very truly,

**HIRA ROWAN LLP**

Per:



For:

**Ravi R. Hira, Q.C.**

RRH/akh

Encls.

cc: B.C. Farm Industry Review Board, via email: firb@gov.bc.ca

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<sup>1</sup> See *Re Forum National*, 2020 BCSECCOM 316, at para. 43; *Rosario v Thunder Bay Police Services Board*, 2015 HRTO 145, at para. 10; *R. v. J.L.A.*, 2009 ABCA 344, at para. 30; *Boardwalk Reit LLP v. Edmonton (City)*, 2008 ABCA 176, at para. 72; *Littler v. Howie*, 2013 NSSC 84 (CanLII), at para. 19

cc: Robert P. Hrabinsky, via email: rhrabinsky@ahb-law.com  
cc: Claire E. Hunter, QC, via email: chunter@litigationchambers.com  
cc: Morgan Camley, via email: morgan.camley@dentons.com  
cc: David Wotherspoon, via email: david.wotherspoon@dentons.com  
cc: Matthew Sveinson, via email: matthew.sveinson@dentons.com  
cc: J. Kenneth McEwan, QC, via email: kmcewan@mcewanpartners.com  
cc: William Stransky, via email: wstransky@mcewanpartners.com  
cc: Robert J. McDonell, via email: rmcdonell@farris.com  
cc: Dean Dalke, via email: dean.dalke@dlapiper.com

## JOB DESCRIPTION: General Manager

<b>Job title:</b> General Manager	<b>Position type:</b> Full-time
<b>Reports to:</b> Board of Directors of the Commission  <b>Direct reports:</b> Administrative Assistant Licensing and Compliance Officer Market Analyst and Operations Support Officer	<b>Term:</b> Permanent
<b>Revision date:</b> JUNE 2021	<b>Work location:</b> BCVMC head office

### About the BC Vegetable Marketing Commission

The BC Vegetable Marketing Commission (BCVMC) is vested with the power to promote, control and regulate in any respect the production, transportation, packing, storage and marketing of Regulated Product grown in British Columbia. The overall purpose of regulated marketing is to provide a framework for producer economic stability and to satisfy other related public interests. It is intended to benefit producers, the sector's value chain, and the public.

### POSITION OVERVIEW

The General Manager (GM) provides management and leadership to the operations of the BCVMC and is responsible to the Commission to manage its operations in the best interests of regulated vegetable producers.

The Commission delegates to the GM the authority and responsibility to implement approved strategies and to manage the Commission's affairs in accordance with Commission-approved policy, strategy and budgets.

The GM is responsible for recruiting, developing and maintaining a skilled, competent and progressive team to carry out the Commission's operations.

### Main job tasks and responsibilities

#### A) Governance

1. Assist the Commission in ensuring policies and decisions are in accordance with the regulatory framework provided by the Act, Scheme and General Order, including consulting with legal advisors, industry representatives, government or supervisory bodies as needed
2. Ensure regulations established by the Commission are translated into prudent, efficient policies and procedures for the operation of BCVMC

3. Identify and pro-actively propose new policies or General Order amendments for consideration by the Commission that enhance regulatory intent and adapt to changes in the market environment
4. Cooperate with the Commission to ensure program priorities are established and fulfilled in accordance with the BCVMC's mandate and vision
5. Leads the development of meeting agendas, coordinate meetings and to prepare minutes to all meetings of the Commission and its Committees
6. Liaise directly with the Chair to address ongoing matters of importance to the Commission
7. Maintain effective communication with the Chair and the Commissioners concerning events that may have a significant impact on the BCVMC and the industry
8. Contribute to confidence in the Commission's decision-making processes through procedural fairness, the provision of sufficient information, and maintaining confidentiality as appropriate
9. Provide periodic reports to the Commission and the BC Farm Industry Review Board (FIRB)

### **B) Strategy**

1. Facilitate the development of strategic plans overseen by the BCVMC Chair that ensure the long-term sustainability of the BC regulated vegetable industry
2. Develop and implement operational plans for the BCVMC staff that advance the Commission's strategic plan
3. Advise the Commission on strategic recommendations to ensure the most effective market access management structure to maintain orderly marketing

### **C) Legal and Compliance**

1. Systematically maintain written records of the administration of the General Order and of all Commission decision-making processes including documentation of correspondence
2. Participate in legal processes regarding the adjudication of Commission decisions, e.g. appeals to FIRB or other judicial review or civil action through the BC court system
3. Ensure all operations-related processes (see Section E) are sufficient for FOI purposes, including document preparation and retention practices

### **D) Human Resources**

1. Ensure the superior functioning of BCVMC through positive and constructive staff relations
2. Recruit and oversee qualified office staff to administer BCVMC's operations
3. Develop staff culture, opportunities for professional development and grow team competence
4. Engage contractors for services as needed
5. Ensure authority, responsibility and accountability systems are in place and followed

### **E) Operations**

1. Administer the General Order and Commission policies
2. Continually improve the operations of BCVMC to efficiently and cost-effectively execute the BCVMC's priorities and proactively advance the interests of the industry
3. Ensure operations-related documentation meets publication standards sufficient for FOI purposes
4. Continually improve regulation management to ensure the application of regulations is effective, clear, transparent and represent the intent
5. Enforce compliance with the General Order and Commission policies in a procedurally fair and equitable manner; escalate non-compliance to the Commission as appropriate
6. Oversee high-quality member communications including regular bulletins and newsletters

7. Develop, execute, evaluate and report on approved programs and activities
8. Participate in provincial, national and North American industry associations
9. Maintain continuous market contact, including leading market calls and reporting as required
10. Oversee statistical records, member information records and other information systems
11. Chair contractual negotiations between producer associations and processors and monitor compliance with the contracts
12. Facilitate mediation processes including acting as mediator for initial dispute resolution process between stakeholders

#### **F) Finance**

1. Ensure that the Commission's financial resources are cost-effectively used, and the outcomes of the activities are appropriately disseminated to stakeholders
2. Maintain accounting and control systems in accordance with generally accepted accounting principles as well as BCVMC and FIRB reporting requirements
3. Prepare and recommend for approval annual operating budgets for BCVMC activities
4. Prepare financials for the Commission and on specific trust accounts administered by the BCVMC.
5. Provide the Commission with periodic financial reports including budget variance analysis
6. Manage expenditures in compliance with the standing signing authority framework found in the BCVMC Director's Manual

#### **G) Stakeholder relationships**

1. Ensure that BCVMC develops productive, pro-active relationships with all key stakeholders
2. Develop rapport, maintain open lines of communication and build relationships with producers, agencies, wholesalers, FIRB, other government representatives and additional stakeholder groups

### **EDUCATION AND EXPERIENCE**

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A post-secondary degree in business administration, law, policy, agribusiness or management and a minimum of 5-10 years of related experience or an equivalent combination of education and experience are preferred.

### **DESIRED ATTRIBUTES AND KEY COMPETENCIES**

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#### *Desired attributes*

**Determined:** Shows resilience in the face of complexity or stress; resolute in achieving goals

**Strategic:** Evidences ability to broadly imagine interaction between key components of a system across time; able to craft adaptations suited to engineering overall outcomes

**Objective:** Exercises neutrality in judgement and decision-making, ensures procedural fairness

**Critical thinking:** Queries outcomes, inquisitively analyzes and synthesizes complex data for meaningful purposes

**Diplomatic:** Approachable, flexible and tactful approach with ability to work with diverse stakeholders and broker beneficial outcomes

**Conscientiousness:** Enacts the role convincingly, shows presence and commitment through initiative and attention to detail

**Learning:** An intentional self-developer who demonstrates a continuous improvement mindset

**Developer:** Leader orientation focused on recruiting and building a talented, qualified team

*Key competencies*

- Confident leading within a complex, multi-stakeholder, regulated environment
- Excellent written and verbal communication skills, including proven ability to generate, proof and edit complex legal and policy documents
- Effectively plans and organizes multiple concurrent projects with a strong attention to detail
- Manages relationships empathetically, practically, harmoniously and pro-actively
- Superior problem-solving skills to meet strict deadlines under pressure
- Advanced computer skills, including Excel, PowerPoint, Word and Outlook



## JOB PROFILE OF THE GENERAL MANAGER

The General Manager provides management and leadership to the operations of the BCVMC, and is responsible to the Board of Directors to manage the marketing board and deliver its programs in the best interests of greenhouse vegetable growers.

**Reports to:** Directly – Executive Committee – Chair & Vice Chair  
Indirectly - Board of Directors

**Direct Reports:** Executive Assistant  
Others as determined from time to time

**Responsibilities**


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**Governance** To cooperate with the Board of Directors to ensure program priorities are established and fulfilled in accordance with the BCVMC's mandate and vision.

To ensure policies established by the Board are translated into prudent, efficient regulations and procedures for the operation of BCVMC.

To assist with the development of meeting agendas, to coordinate meetings, and to prepare minutes to all meetings of the Board and its Committees.

To maintain effective communications with the Chair and the directors concerning events that may have a significant impact on BCVMC.

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**Strategy** To develop and implement Strategic and Functional plans for the development and long term sustainability of the B.C. vegetable industry.

To develop and recommend for approval strategic plans that add value to BCVMC's members.

To develop and execute initiatives which advance the strategic plan.

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**Management** To establish and develop an efficient operating organization for BCVMC's current and future success.

To develop the operations of BCVMC to efficiently and cost-effectively execute the BCVMC's responsibilities and plans.

To administer contracts and employment relationships in the best interests of BCVMC.

To establish systems of authority, responsibility and accountability for the operations.

To provide a monthly operations report to the Board.

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<b>Operations</b>	<p>To ensure a cost effective operations and enforcement of regulations.</p> <p>To enforce the regulations of BCVMC in a fair, equitable and transparent manner, and to recommend amendments to the regulations as may be required from time to time.</p> <p>To establish a high quality member communications service, including a monthly newsletter.</p> <p>To ensure that program funds are cost effectively used, and the results of program initiatives are appropriately disseminated to members.</p>
<b>Programs</b>	<p>To assist develop program priorities, to execute approved programs, and to measure and report program results.</p> <p>To work with the board and its committees to develop program priorities.</p> <p>To implement Board approved plans, initiatives and projects.</p> <p>To keep the Board and its Committees apprised of the status of projects, and any new information that may materially impact the projects and priorities.</p> <p>To provide quarterly reports on the measurable successes in each program area.</p>
<b>Finance</b>	<p>To ensure appropriate financial and accounting processes and controls are sustained.</p> <p>To prepare, and recommend for approval to the Board, operating budgets for BCVMC and its programs.</p> <p>To maintain accounting and control systems in accordance with generally accepted accounting principles, and BCVMC and FIRB reporting requirements.</p> <p>To provide the Board with monthly financial reports and quarterly budget variance analysis.</p>
<b>Relationships</b>	<p>To ensure that BCVMC develops productive, proactive relationships with all key stakeholders.</p> <p>To maintain open lines of communication and build relations with shippers, customer groups, government officials, and other farm groups.</p> <p>To ensure frequent and ongoing availability and contact with all members, including those outside the province.</p> <p>To be available to meet with other stakeholders on an ongoing basis.</p> <p>To develop rapport and open productive relations with all producer members of the BCVMC.</p>

**BCVMC**  
**2020-21 ADMINISTRATIVE POLICY**  
**Access to Market – Storage Crop Vegetables**  
**Management of PROVINCIAL Delivery Allocation**

The following procedure will be applied to determine market access to the retail / wholesale / food service / or processing markets when:

**A) A Producer has planted a regulated storage crop vegetable without Delivery Allocation and wants to ship product to the retail / wholesale / food service / or processing markets.**

**1. PRODUCER QUALIFICATION**

- 1.1. The Producer is represented by a storage crop Agency.
- 1.2. The designated Agency determines if the Producer is qualified for market access:
  - The Producer is licensed by the Commission to produce the regulated crop.
  - The Producer has a signed GMA with the Agency.
  - The Producer has a valid Food Safety Certificate and must add the crop in question at the next available opportunity. If an AUDIT is pending, further discussion with all Agencies is required to determine Producer qualification.

**2. ACKNOWLEDGE THE DELIVERY ALLOCATION OF AN AGENCY'S PRODUCERS**

- 2.1. The Agency confirms availability of the regulated vegetable amongst the Agency's group of Producers that have earned or been granted Delivery Allocation.
- 2.2. If there is product available from Agency Producers with Delivery Allocation, these Producers are given the opportunity to ship product or by-pass on the opportunity.
- 2.3. If a Producer with Delivery Allocation by-passes on the opportunity to ship product to the market, this needs to be documented by the Agency.
- 2.4. Once it is verified that none of the Agency's Producers with Delivery Allocation have product that meets the specifications to supply the pending sale, the Agency must then confirm with the Commission if there is industry Delivery Allocation to be acknowledged.

**3. ACKNOWLEDGE INDUSTRY DELIVERY ALLOCATION**

- 3.1. The Agency sends an e-mail to the General Manager and all storage crop Agencies and Producer-Shipper that manage delivery allocation for the specific regulated vegetable informing:
  - That it has a qualified Producer with no Delivery Allocation, and requests access to this product to supply an Agency customer.
  - Specific details on the product: total volume (tons) to be shipped (by-week), shipping period start and end dates, region / district to be serviced by the product,

**BCVMC**  
**2020-21 ADMINISTRATIVE POLICY**  
**Access to Market – Storage Crop Vegetables**  
**Management of PROVINCIAL Delivery Allocation**

target customer (retail / wholesale / food service / processing) and customer specification requirements.

- 3.2. All storage crop Agencies and Producer-Shippers that manage delivery allocation for the specific regulated vegetable are to make a submission stating if they support or oppose the request, and the reasons behind their position.
- 3.3. The BCVMC General Manager will follow up with each submission.
- 3.4. As required, a conference call is arranged with all storage crop Agency managers and Producer-Shipper of the specific regulated vegetable to discuss the request with the Commission General Manager.

The following procedure will be applied to determine market access to the retail / wholesale / food service / or processing markets when:

**B) There is a volume of product that is to be shipped in excess of an Agency's or Producer-Shipper's aggregate Delivery Allocation when other Producers in the Province have not yet filled their Delivery Allocation.**

**4. ACKNOWLEDGE INDUSTRY DELIVERY ALLOCATION**

**4.1. Each storage crop Agency and Producer-Shipper is expected to maintain operational reports that provide:**

- Reporting on actual shipments by each storage crop Producer that tracks and compares shipments to a Producer's Delivery Allocation for the period.
- A forecast on production for the period, and for the crop year for each regulated storage crop vegetable.
- A forecast on sales volume (tons).
- Reporting that tracks and compares an Agency's / Producer-Shipper's actual shipments, forecasted production, and forecasted sales to aggregate Delivery Allocation for each Delivery Allocation category and period.

**BCVMC**  
**2020-21 ADMINISTRATIVE POLICY**  
**Access to Market – Storage Crop Vegetables**  
**Management of PROVINCIAL Delivery Allocation**

**4.2. Each storage crop Agency is expected to give reasonable notice and report to all Agencies and the Commission:**

- Prior to shipment, when an Agency is aware that a Producer will commence production of a regulated storage crop vegetable.
- The date when shipments commence for each regulated storage crop vegetable.
- When Delivery Allocation commences within their Agency for each Delivery Allocation category and period.
- When they anticipate that shipments will fill Delivery Allocation, (i.e.) aggregate shipments = 100% of aggregate Delivery Allocation, for each Delivery Allocation category and period.

**4.3. Each storage crop Producer-Shipper is expected to give reasonable notice and report to the Commission:**

- Prior to shipment, when the Producer-Shipper is aware that they will commence production of a regulated storage crop vegetable.
- The date when shipments commence for each regulated storage crop vegetable.
- When they anticipate that shipments will fill Delivery Allocation, (i.e.) aggregate shipments = 100% of aggregate Delivery Allocation, for each Delivery Allocation category and period.

**ADMINISTRATIVE DECISION**

An administrative decision will be made by the Commission General Manager to determine market access to the retail / wholesale / food service / or processing markets when:

**A) A Producer has planted a regulated storage crop vegetable without Delivery Allocation and wants to ship product to the retail / wholesale / food service / or processing markets.**

**BCVMC**  
**2020-21 ADMINISTRATIVE POLICY**  
**Access to Market – Storage Crop Vegetables**  
**Management of PROVINCIAL Delivery Allocation**

**B) There is a volume of product that is to be shipped in excess of an Agency's or Producer-Shipper's aggregate Delivery Allocation when other Producers in the Province have not yet filled their Delivery Allocation.**

**5. ADMINISTRATIVE DECISION**

- 5.1. The primary information sources are the Agency and Producer-Shipper submissions. All decisions are to be reached by consensus with storage crop Agency managers of the regulated product.
- 5.2. A decision will be made on:
- The permissible volume (tons); and,
  - The terms under which this product can be shipped to the market.
- 5.3. Decisions by consensus will be validated with all Agency managers and filed by the Commission General Manager.
- 5.4. **If a decision cannot be reached by consensus and the General Manager believes that it is beyond his authority to issue an administrative decision, the matter will be brought forward to the Commission (Board) for review.**

**DECISION CONSIDERATIONS:**

- Unless authorized by the Commission, no Agency or Producer-Shipper is permitted to ship in excess of the aggregate Delivery Allocation held by its Producers (or by the Producer-Shipper) when other Producers in the Province have not yet filled their Delivery Allocation.
- Availability of product that meets the Agency and customer's specifications.
- The product is disruptive to orderly marketing and requires a pre-approved marketing plan and approved Delivery Allocation to be granted by the Commission (Board).

**BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION**  
**POLICY**

**Establishing Contract & Weekly Minimum Prices  
for Storage Crops<sup>1</sup>**

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Approved: [2019-01-23](#)

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<sup>1</sup> Natural Products Marketing (BC) Act, British Columbia Vegetable Scheme Par 4(1): The BC Vegetable Marketing Commission is vested with the power to promote, control and regulate in any respect the production, transportation, packing, storage and marketing of regulated product.

## **GOALS:**

- Integrated pricing across the organization;
- Maximize the market returns for Regulated Product;
- Agencies compete on product quality and customer service.

## **OBJECTIVES:**<sup>2</sup>

- Provide a coordinated approach to pricing in the marketplace;
- Maximize market penetration of BC regulated product;
- Establish base prices for all Agencies;
- Ensure Agencies are as competitive as necessary on pricing, and regularly monitor sales.

## **FUNDAMENTAL RULES:**<sup>2</sup>

- *PART XIX, Par.2* - ... Any Regulated Product sold by an Agency or Producer-Shipper to a buyer must be invoiced at a price not less than the prevailing provincial minimum price.
- *PART XIX, Par.3* - Agencies and Producer-Shippers may, with the prior knowledge and approval of the Commission, may be allowed to give advertising discounts or volume discounts for advertised specials, which are below the Commission minimum pricing.
- Prices for all Regulated Vegetables subject to Commission minimum pricing must be approved by the Commission before coming into force and takes effect, unless otherwise authorized in writing by the Commission.

## **GENERAL ORDER PART VII - AGENCY RESPONSIBILITIES**<sup>3</sup>

- *PART VII, Par.1* - Each Agency marketing crops subject to Commission minimum pricing shall notify the Commission and obtain approval from the Commission for the establishment of any price or change in price.
- *PART VII, Par.2* - Each Agency marketing crops subject to Commission minimum pricing shall file with the Commission a copy of any price list, local or export, and particulars of any sales other than at listed prices.
- *PART VII, Par.3* - No pricing for crops subject to Commission minimum pricing, below listed price can be made without the prior approval of the Commission.
- *PART VII, 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.

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<sup>2</sup> Pricing rules stated under General Order PART XIX Pricing Procedures and PART V Agencies.

<sup>3</sup> This represents a subset of the full set of responsibilities that are listed under General Order PART VII



## CODE OF CONDUCT:

- Minimum price is set by the General Manager according to **DECISION MAKING CRITERIA** that is to be used to set the minimum price.
- The Commission delegates its marketing authority to Agencies and therefore all Agencies are required to cooperate and make unbiased and informed pricing recommendations to the Commission that are made exclusively in consideration of industry interests and the market environment for BC grown regulated product.
- Prior approval of Contracts and all pricing protocols that require approval by the Commission are administrative decisions that are the responsibility of the General Manager.
- Agencies are prohibited from bidding on a contract if they do not have Delivery Allocation to supply the contracted volume. The responsibility is with the Agency to demonstrate to the General Manager that it has the Delivery Allocation to allocate to the contract.
- Agencies are only permitted to enter into contracts with those accounts that service MARKET DEMAND as specified in section (7.5), (i.e.) National Retailers and Food Service accounts. Contracts are not permitted with a Wholesaler, Wholesaler Re-packer, or Commission Sales Person. Any exception to this rule requires consent by all Storage Crop Agencies and is subject to final approval by the Commission.
- Agencies are mandated to follow the Agency Pricing Rules. The rules are stated in this document under the section titled **AGENCY PRICING RULES.**
- Regarding inquiries on an Agency's compliance to Agency Pricing Rules; Inquiries are to be made in writing to the General Manager. The General Manager will confirm in writing if protocol was followed and confirm the date of prior approval. A non-compliance to protocol will also be confirmed in writing and require further investigation.
- The General Manager will maintain confidentiality on pricing protocols that require prior approval and are in compliance of the General Order and pricing policy.

## DECISION MAKING CRITERIA:

- The primary information sources are the Agency recommendations. These recommendations are to be made to the Commission exclusively in consideration of the market environment for BC grown regulated product and industry interests.
- **Category Groups** of regulated vegetables are defined as follows:

a) Beets	f) Parsnips
b) Cabbage	g) Potatoes – Russet, Red, Yellow, White, New
c) Carrots	h) Potatoes – Kennebec, (Food Service)
d) Onions	i) Rutabagas
e) Organic Potatoes	j) White Turnips

- Minimum pricing on a regulated BC grown vegetable commences at the beginning of the season when regulated BC grown product becomes available for marketing.
- An Agency can participate in setting minimum price for a Category Group if it has Inventory. (Includes marketable Product in the field and in storage)
- A pricing recommendation for a Category Group is established as the minimum price when:
  - At least 70% of Delivery Allocation<sup>4</sup> of the total Category Group is represented by the Agencies participating in the process; and
  - A minimum of two Storage Crop Agencies representing in total  $\geq$  70% of delivery allocation have agreed to the price; and
  - The General Manager approves the recommendation.
- If a recommendation on minimum price cannot be established by the Agencies the General Manager will determine the price.
- The minimum price is set to represent the floor price at the Agency level. Agencies can price above the minimum price but not below. Permission to price below minimum price is subject to pre-approval by the General Manager and discussion with ALL Agencies.
- Minimum pricing on a regulated vegetable is delisted when there are no longer any Agencies or manifest sales programs competing in the market in a Category Group.

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<sup>4</sup> For this purpose we are using the sum of all delivery allocation periods representing a category group for the growing season to calculate the total Industry Delivery Allocation and the percentage represented by an Agency. The sum represents an average of the prior five year annual shipments by category group that is controlled by an Agency. This calculated percentage remains constant over the entire season.

## MIN PRICE REVIEW PROCESS

- Minimum price is reviewed weekly.
- Recommendations are submitted to the General Manager and shared with all Agencies that market a Category Group subject to a minimum price.
- Conference call sessions will be scheduled with Storage Crop Agencies as required.

## PROVINCIAL MINIMUM PRICE LIST

- The Commission Office will confirm pricing on Tuesday morning for the following week.
- A Provincial Minimum Price List will be issued to Agencies by noon on Tuesday.
- ALL active package types offered by an Agency for the current Crop Year are required to be listed on the Provincial Minimum Price List.

## AGENCY PRICING RULES:

### 1. Customer Categories

Customers are grouped into categories listed below:

- Category 1 – Single Retail Store / Independent BC Retail Chain (no central distribution)
- Category 2 – Wholesaler / Central Distribution BC Based Retailer
- Category 3 – National Retail Chain
- Category 4 - Wholesaler Re-packer
- Category 5 – Food Service
- Category 6 – National Food Service Company

### 2. Minimum (FOB) Price

**2.1. The minimum price is an FOB price set weekly by the Commission and is applicable to any product grown within the regulated BC area.**

- The term FOB shipping point (FOB) is a contraction of the term "Free on Board Shipping Point." The buyer takes delivery of goods being shipped to it by an Agency once the goods leave the Agency's shipping dock.
- The minimum price is set by the Commission as the floor price product can be offered by an Agency to a customer for pick-up at the Agency's shipping dock.
- An Agency's shipping dock is the location where the product is packaged for sale or stored for distribution.

- 2.2. For any vegetable listed on the minimum price report, if there is no price posted for a particular pack type an Agency intends to sell, the Agency is to submit a request to the Commission and all storage crop Agencies to set a price.
- 2.3. Agencies need to submit a request for a minimum price on a pack type to be added to the list. The request is to state the grade standard, pack size and recommended price.
- 2.4. All pack types sold by an Agency require a minimum price to be set by the Commission and listed on the minimum price report.

### 3. Rebates

- 3.1. Agencies are not permitted to offer rebates to customers.
- 3.2. Pricing offered to satisfy a customer initiated request for a rebate must be marked up by the rebate so price less rebate does not fall below the minimum price.

### 4. Delivered Minimum Price

- 4.1. The term delivered price is a quoted price that includes freight charges from the Agency's shipping dock to the point of delivery.
- 4.2. **The delivered minimum price is calculated by adding .75 cents / 50Lb (or 1.5 cents/lb) to the established FOB price.**

### 5. Manifest Sales

- Manifest sales are **only allowed to Category 1 Customers** – Single Retail Store / Independent BC Retail Chain (no central distribution) that are not on the prohibited customer list.

### 6. Advertising Discounts (Promotional Pricing)

#### 6.1. **Discounts:**

- A discount can be offered by an Agency to all customers or to a specific customer as permitted under the Customer Category Rules on Advertising Discounts & Declarations (6.4).
- An exception requires Commission pre-approval and discussion with ALL Agencies.

#### 6.2. **Declarations:**

- Ads are to be declared to the General Manger the week the ad is arranged.
- Upon request, proof of ad is to be submitted to the Commission (includes details on customer name, ad price, and date range over which the ad will run).

- Ad information is kept in confidence with the Commission office and only declared on the minimum price report if the Ad price falls below the minimum price over the period the Ad is to be run.
- Notification on an Ad declared after the Provincial Minimum Price List is issued needs to be sent by e-mail to all Agencies and the Commission General Manager. The reason for the short notice is to be included in the e-mail. Frequent late notification will be monitored and only tolerated if validated as the norm for a specific regional customer.

### 6.3. Ad Setting Behaviour:

- Not to occur regularly or in a sustained manner for any one regulated crop.
- Not to occur regularly or in a sustained manner for any one customer.
- Not be in effect for an unfixed period of time.
- Minimum pricing is not to be adjusted to bring an Agency Ad into compliance with the Agency Pricing Rules.

### 6.4. Customer Category Rules on Advertising Discounts & Declarations:

- ***Category 1 - Single Retail Store / Independent BC Retail Chain***
  - I. Ads are booked no more than 2 weeks in advance.
  - II. Ad pricing is based on the current minimum price at the time of booking.
  - III. Ads on SKUs are not to be discounted more than 2 cents/pound below the prevailing minimum price.
  - IV. For the period the Ad is in place, the Ad pricing will be published if it falls below the minimum price.
  - V. Ads are not required to be declared for Single Retail Stores.
  - VI. Ads with Independent BC Retail Chains must be declared at time of booking.
- ***Category 2 – Wholesaler / Central Distribution BC Based Retailer***
  - I. Ads are booked not more than 6 weeks in advance.
  - II. Ad pricing is based on the current minimum price at the time of booking.
  - III. Ads on SKUs are not to be discounted more than 2 cents/pound below the prevailing minimum price.
  - IV. For the period the Ad is in place, the Ad pricing will be published if it falls below the minimum price.
  - V. All ads must be declared at time of booking.
- ***Category 3 - National Retail Chain***
  - I. Ads may be booked not more than 2 months in advance.
  - II. Ad pricing is based on the historical three year average Agency price for the item over the Ad period or other projected pricing methods acceptable to the Commission.
  - III. Ad details including pricing and estimated volume commitment are to be submitted to the Commission for approval.

- IV. For the period the ad is in place, the price will be published if the ad price falls below the minimum price set for the period.
- V. All ads must be declared at time of booking.

- **Category 4 - Wholesaler Re-packer**
- **Category 5 - Food Service**
- **Category 6 - National Food Service Company**
  - I. Ads are not permitted.
  - II. Promotional programs are permitted ONLY if prior approved. All Agencies are made aware of the request and the prior approval process will require industry discussion and is subject to the Decision Making Criteria.

## **7. Volume Based Program & Contract Pricing**

### **7.1. Volume Based Program & Contract Setting Behaviour:**

- All Customer Specific Volume Based Programs or Contract Pricing requires approval by the Commission.
- Volume Based Programs and Contract setting permission varies by Customer Category. Refer to section on Customer Category Rules on Volume Based Programs & Contract Pricing (7.5).
- If multiple Agencies are bidding on the same contract a coordinated approach needs to be taken and facilitated through the Commission.

### **7.2. Minimum Contract Pricing**

- Minimum Contract Pricing is established for Bulk processing product and product supplied to Food Service accounts when multiple agencies supply the regulated product to the market. If there are no agencies competing in the market, contracts are approved by and filed with the Commission.

### **7.3. Contract Pricing**

- The General Manager needs to be informed of the Agency's intention to bid on a contract that is NEW to the Agency.
- **If more than one Agency is bidding on the contract**, all Agencies are to be made aware of each other's intentions.
- Agencies are prohibited from bidding on a contract if they do not have Delivery Allocation to supply the contracted volume. The responsibility is with the Agency to demonstrate to the General Manager that it has the Delivery Allocation to allocate to the contract.
- Contract Price setting is subject to the Decision Making Criteria.

### **7.4. Volume Based Programs**

- I. Assessment will focus on how the customer program helps achieve the goals and objectives of minimum pricing.
- II. All Agencies are made aware of the request.
- III. Volume based price setting is subject to the Decision Making Criteria.

## 7.5. Customer Category Rules on Volume Based Programs & Contract Pricing:

- **Category 1 - Single Retail Store / Independent BC Retail Chain**
- **Category 4 - Wholesaler Re-packer**
  - I. Customer Contracts are not permitted.
  - II. Volume based programs are not permitted.
- **Category 2 – Wholesaler / Central Distribution BC Based Retailer**
  - I. Customer Contracts are not permitted.
  - II. Volume based programs are not permitted unless prior approved.
- **Category 3 - National Retail Chain**
  - I. Negotiated Contracts, including pricing and volume commitment, are to be submitted to the Commission for review and are subject to prior approval.
  - II. Volume based programs are not permitted unless prior approved.
- **Category 5 - Food Service**
- **Category 6 - National Food Service Company**
  - I. Negotiated Contracts, including pricing and volume commitment, are to be submitted to the Commission for review and are subject to prior approval.
  - II. Volume based programs are not permitted.

## 8. Inter-Agency Sales

8.1. Agencies are permitted to sell to each other at a price agreed between Agencies.