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## **BC Farm Industry Review Board**

May 31, 2024

File: 44200-60\AREV

### **DELIVERED BY EMAIL**

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Dear All:

### **RE: RESPONSE TO THE VEGETABLE MARKETING COMMISSION (COMMISSION) REQUEST FOR CLARIFICATION**

By letter dated May 10, 2024, the Commission sought clarification of two issues arising from the Phase II Decision dated March 15, 2024, as follows:

1. There are a number of references in the Phase II Decision about the need to restore “trust and confidence” as well as “orderly marketing”, which appears to be the rationale for the orders made by the Panel in the decision (see, e.g., paras. 78, 79, 86, 87, 89, 94 and 99). The Commission seeks clarification as to whether the BCFIRB is of the view that there is, or was, a lack of trust and confidence in the Commission, including a lack of trust and confidence in the Commission’s ability to regulate Prokam or the industry more generally.
2. At paragraph 5 of the Phase II Decision, the Panel concludes that “there is no legal authority in the statutory scheme to impose a charge against Prokam in respect of the legal costs incurred by the Commission and other participants in this Supervisory Review.” The Commission seeks clarification as to what, if any, limits there are on the Commission’s statutory authority to impose levies or charges against designated persons in order to pay the Commission’s expenses (including legal fees) as a result of the Phase II Decision.

With respect to the first request for clarification, I can confirm that the references to restoring “trust and confidence” and “orderly marketing” were focused on the impact of the unsubstantiated allegations advanced by Prokam, and ensuring that Prokam will

participate in the industry and cooperate with the Commission in good faith (see e.g., paragraph 79 of the Phase II Decision). As set out in paragraph 7 of the Phase II Decision, I concluded in the Phase I Decision that there was no cogent evidence to substantiate the very serious allegations made against the Commission by the complainant participants. Accordingly, I can confirm that BCFIRB does not have (nor has it ever had) a lack of trust or confidence in the ability of the Commission to regulate the industry or Prokam in particular. BCFIRB's concern has always been to avoid any continuation of the history of destabilizing allegations that were at the centre of this supervisory review.

On the second request for clarification, as I stated at paragraph 117 of the Phase II Decision, I accept that the Commission's powers, including its authority to impose a levy or charge under ss. 11(1), are to be interpreted broadly, particularly in light of those levies being a principal source of the Commission's funding. The Phase II Decision is limited to the unique circumstances of this Misfeasance Supervisory Review, where the Commission's proposed charge could be characterized as being akin to an award of costs. The Decision should not be interpreted to otherwise limit the authority of the Commission to recover expenses, including legal fees associated with supervisory reviews, by way of a charge or levy imposed generally or against designated persons. That broad authority is confirmed in the jurisprudence cited at paragraph 105 of the Phase II Decision.

Going forward, the Phase II Decision should be read together with this clarification, as well as the Phase I Decision.

Regards,



Peter Donkers  
Chair

cc: Mark Underhill, K.C.  
Kate Phipps  
Nazeer Mitha, K.C.  
BCFIRB web site