



April 21, 2017

File: 44200-60 MMB

DELIVERED BY EMAIL

Ben Janzen
Chair
BC Milk Marketing Board
200-32160 South Fraser Way
Abbotsford, BC V2T 1W5

Dear Mr. Janzen:

Determination of Compliance of the British Columbia Milk Board (Milk Board) with the January 26, 2015 Direction of the British Columbia Farm Industry Review Board (BCFIRB)

Thank you for your correspondence dated January 26, 2017 responding to BCFIRB's January 10, 2017 direction.

The panel required this last piece of information you provided to conclude its supervisory review. The supervisory review was set up to determine whether the Milk Board complied with BCFIRB's January 26, 2015 direction¹ approving changes to the Milk Board's Consolidated Order (CO) related to quota transfer assessments. BCFIRB approved these changes on the condition that the new provisions not be applied to business transactions retroactively. The panel required documentation to properly assess whether there were regulatory concerns that should have been identified by the Milk Board particularly in regard to a specific quota holder. The panel examined the documents provided to determine if the quota holder's principal shareholder, either before or after January 26, 2015, retroactively transferred an interest in quota that was not exempt from transfer assessment.

The supervisory panel is now writing to confirm the verbal advice provided to the Milk Board Chief Executive Officer on February 8, 2017. Based on the Milk Board's latest submission, the panel has the documentation it needs to conclude the review into the compliance matter noted above and to make recommendations.

¹ 2015 January 26. BCFIRB. [Supervisory Review Decision – BC Milk Marketing Board Request to Extend Quota Transfer Exemption List.](#)

The Milk Board provided recent correspondence from counsel for the quota holder and principal shareholder in responding to the request of the supervisory panel. The correspondence advised of the effective dates of admission of four new partners. Those dates are as follows:

1. Partner Corporation (Corp.) 1 – December 16, 2015
2. Partner Corp. 2 – December 16, 2015
3. Partner Corp. 3 – December 16, 2015
4. Partner Corp. 4 – February 4, 2016

The effective dates for admission of partners as demonstrated by its counsel are subsequent to the dates the new transfer assessment rules came into force (June 1, 2015) and the additional requirement that the Milk Board established of providing its approval (October 23, 2015). The panel concludes that the Milk Board met the condition of approval for changes to its CO that BCFIRB established in its January 26, 2015 direction, that there be no retroactive application of the new quota assessment rules.

Having arrived at this conclusion, the panel offers the following observations and recommendations based on its review of the Milk Board's practices and processes in this matter, and based on the panel's experience in the supervisory review itself.

First, with respect to the supervisory review, the panel would contrast the administrative challenges and difficulties that arose following the various BCFIRB requests for documents in this matter, with the very helpful face to face information exchange of November 9, 2016. Earlier direct communication of this type would likely have shortened the time and focused any requests for documentation needed to conclude this review. This emphasizes the utility of the Milk Board making direct and prompt contact with BCFIRB if there is any ambiguity in BCFIRB's objectives and requirements.

Second, with respect to the Milk Board's internal regulatory approval process arising from the August 11, 2015 letter from the quota holder's counsel seeking the admission of new partners, we note that the Milk Board's October 23, 2015 response letter granted that approval. The Milk Board did not require any further documentation in advance of that approval and requested that the quota holder provide listed documents afterward. The requested information did not include an updated copy of the register of partners. In the panel's view, it was not only necessary to ensure that all relevant documents were requested, but to make any approval *conditional* on the receipt of the provision of information that demonstrated the expected outcome conclusively and was satisfactory to the Milk Board. This would ensure that the Milk Board was in a position to critically review the disclosed information to ensure that there was no basis to withhold approval.

Third, the panel notes that the particular quota holder in question here has an unusual and complex business organization, compared to other holders of continuous daily quota in British Columbia. There have been issues about how the existing transfer assessment provisions in the CO apply to this particular business organization and when a change within the corporate structure amounts to a "transfer".

Addressing this issue has two dimensions:

- A. One is ensuring that the Milk Board has a comprehensive and accurate understanding of the particular business organization, and the implications of particular transactions within the organization in respect of the quota interest. The Milk Board must be

completely familiar with the type of business organization the quota holder is, its constating instruments, amending documents and registration documents.

- B. The other dimension involves ensuring that the CO is fully updated and responsive to the corporate realities of industry quota holders. As a general principle, commodity boards must ensure that their orders are drafted in a fashion that prevents quota holders from avoiding transfer assessments simply by engaging in particular types of business organizations. For this reason and the one discussed below, the panel believes this would be an opportune time for the Milk Board to review the business organization of all its quota holders in advance of any future rule changes to its CO and determine the nature of the business organization of all its quota holders. On the basis of this review the Milk Board should determine the type of instruments it needs in order to accomplish its regulatory objectives and to make future demands of quota holders. Establishing a “bench mark” at this time would assist the Milk Board with future rule changes.

Fourth, as the Milk Board is aware, the five provincial marketing boards and commission managing supply managed commodities are currently reviewing their quota management rules². As part of that review, the Milk Board should consider amending its CO to ensure its policy objectives are met, given the range of types of business organizations currently in use by the industry. Pending any rule changes regarding quota management, the panel recommends that the practices currently adopted by the Milk Board regarding the business records and reporting required of quota holder organizations remain. However, a wording review of these provisions to ensure the result that the Milk Board expects should be undertaken, and if necessary, clarifications should be made to the requirements, based on the nature of the business organizations of its quota holders.

Fifth, the Milk Board noted on November 9, 2016 that it has recently reinstated a practice of requiring that its quota holders provide, each year, the most recent copies of securities registers. The panel agrees that this is an important step in understanding the business organization of its quota holders, and as noted above should be broadened to ensure that the request applies to all business organizations. Obtaining this documentation annually does not eliminate the need for quota holders to give prior notice of change to the Milk Board. Receiving information that changes have occurred, when changes often require direction of quota to the exchange for transfer and quota transfer assessments, is too late. The panel notes that understanding the actual structure of all businesses is critical to ensure any annual requests are specific to each business type. To this end, the Milk Board should provide annual reminders to its quota holders of their obligations to provide the Milk Board notice of planned changes to their business organizations and business records.

Based on the conclusion of this panel, that the Milk Board complied with BCFIRB’s January 26, 2015 direction, the panel makes no order.

The panel recommends that the Milk Board:

² 2016 November 22. BCFIRB. [Quota Assessment Tools Evaluation](#).

1. Implement a review of the business organization of all its quota holders to establish the scope of the nature of these businesses at this time and to provide context to any future changes to the CO and enforcement of its current and future rules related to quota transfers;
2. Ensure that provisions in the CO remain that require quota holders to advise the Milk Board of their business organization and any planned changes;
3. Ensure the issuance of annual reminders to quota holders of the requirements to notify the Milk Board in advance of any changes in business organization, accompanied with documentation to support the notice, and when made, the change;
4. Ensure that staff are knowledgeable of and have the appropriate skills and external advice necessary to identify issues and assess business organization information received from quota holders;
5. Ensure ongoing communication between the board members and staff regarding the business organization of quota holders;
6. Undertake a review of the provisions (existing and new) of the CO to ensure that the policy objectives for compliance outcomes regarding records and reporting of business organizations can be achieved.

Should you have any questions regarding this letter or the attached supervisory report do not hesitate to contact Daphne Stancil or Kirsten Pederson.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Daphne Stancil
Presiding Member



Chris Wendell
Member

Al Sakalauskas
Member

Attachment: Supervisory Report

cc: Robert Delage, Interim General Manager, BC MMB
Zahra Abdalla-Shamji, Director of Policy, BC MMB
Kirsten Pedersen, Executive Director, BCFIRB
BCFIRB Website