

November 22, 2013

VIA EMAIL

J. Collins, General Manager
British Columbia Farm Industry Review Board
PO Box 9129, Stn. Prov Govt
Victoria, British Columbia
V8W 9B5

Re: BC Vegetable Marketing Commission Written Submission Regarding the October 31, 2013 BC Vegetable Marketing Commission Decision and Central Vancouver Island Regulated Marketing

Dear Mr. Collins:

Having regard to the above captioned matter on November 15, 2013 the BC Vegetable Marketing Commission (VMC), and as did certain storage crop designated agencies, received BC Farm Industry Review Board (FIRB) correspondence informing about a call for written submissions.

Accompanying this transmittal letter is the VMC initial written submission. The transmittal letter and the initial written submission are being circulated to Island Vegetable Cooperative Association (IVCA); V. I. P. Produce Ltd. (VIP); Vancouver Island Farm Products Inc. (VIFP); and BC Fresh Vegetables Inc. (BC Fresh).

In its January 7, 2013 Supervisory Review decision FIRB set out a number of measures for the VMC to address. In the VMC's estimation and for all intents and purposes the October 31, 2013 VMC decision regarding the joint application of BC Fresh and VIFP to operate in an agency-sub-agency structure addresses the measures set out in paragraph 72 (c) of the referenced FIRB decision.

The work and effort that the growers affiliated with the VIFP designated agency (formerly affiliated with VIP) have extended for collectively reaching an informed business decision among willing partners sharing a common purpose is reflected in the BC Fresh & VIFP joint application for operating in an agency-sub-agency structure that was put before the VMC. What has been accomplished amongst the involved parties exemplifies self-reliance and self-determination for reaching an outcome to which they will be wholly committed.

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The envisioned agency-sub-agency operation:

- is an innovative approach for meeting personal farm business goals and all the while achieving regulated marketing objectives;
- will facilitate the continued meeting of the public interest for Vancouver Island grown regulated products and potentially non-regulated produce;
- while working collaboratively and cooperatively with another designated agency the interest of having the identify of Vancouver Island producers maintained is achieved;
- will allow central Vancouver Island regulated product producers to continue to enjoy market access and potentially enhanced market access by being able to fulfill the ever changing and more rigorous customer food safety and traceability requirements that are prevalent features of today's marketplace; and
- will allow central Vancouver Island regulated product producers to continue as cost competitive producers within a challenging cost of production environment and facilitate achieving farm business sustainability.

Yours truly,

A handwritten signature in black ink, appearing to read 'Tom Demma', with a large, sweeping flourish at the end.

Tom Demma,
General Manager

BC VEGETABLE MARKETING COMMISSION

Written Submission to the BC Farm Industry Review Board

The purpose of this document is to provide an initial BC Vegetable Marketing Commission response submission to the questions set out in the BC Farm Industry Review Board's November 15, 2013 correspondence.

Legal Appropriateness

In its letter dated November 15, 2013, the BCFIRB asked the Commission to include a "summary as to the legal appropriateness of a 'sub-agency' structure (i.e. does a 'sub-agency' structure fall within the *British Columbia Vegetable Scheme, Natural Products Marketing Act Regulations* and the *Natural Products Marketing (BC) Act*)."

The VMC is of the view that it is able to sub-delegate those powers delegated to it by way of the Act and regulations thereto and the Scheme. This opinion relies upon sub-section 4(2) of the British Columbia Vegetable Scheme (B.C. Reg 96/90) and paragraph 11(1)(p) of the Act. The VMC has been expressly granted the authority to sub-delegate powers :

BC Vegetable Scheme

4(2) Without restricting the generality of subsection (1), the commission is vested with the powers described in section 11 of the Act and with the following additional powers

Natural Products Marketing (BC) Act

11 (1) (p) to delegate its powers to the extent and in the manner the board considers necessary or advisable for the proper operation of the scheme under which the board is constituted, but a power in paragraph (f), (g) (h) or (i) must not be exercised by any person other than the federal board, a marketing board or a commission;

If there is confusion about what is meant by the term "agency-sub-agency" this may result from the term 'designated agency.' The term 'designated agency' is commonly used in the Act, Scheme and the VMC General Order to refer to and describe those firms that the VMC appoints (subject to FIRB approval) to market regulated products produced by the growers affiliated with a certain agency.

When the substance of the joint BC Fresh & VIFP proposal is examined it is clear that the term "sub-agency" was used to denote the idea that VIFP's proposed designation as an agency should be conditional on certain terms. These terms include, for example, that VIFP use some of BC Fresh's resources, and that BC Fresh assist VIFP in meeting its responsibilities set out in the General Order.

Though the term "sub-agency" has been used it is not with the intention to reflect the conditional nature of the proposed designation requiring FIRB's approval. Rather, the term is meant to denote that VIFP is to operate in a collaborative and cooperative way with BC Fresh so that attaining shared common interests and goals results. Further, BC Fresh is not sub-delegating VMC powers to VIFP.

Policy Appropriateness

The British Columbia Vegetable Scheme the VMC is of the view that approving the agency-sub-agency construction involving BC Fresh and VIFP is appropriate policy. The reasons set out in the VMC October 31, 2013 decision provides an indication of the policy appropriateness of a 'sub-agency' structure.

The information set out in the below displayed table is presented for the purpose of demonstrating that the agency-sub-agency structure is a positive interim measure for addressing central Vancouver Island regulated marketing matters that are the subject of a FIRB Supervisory Review.

Licensed Producers Vancouver Island

Commodity	Number of Licensees	Number of Licensees Not at More Than Arm's Length	Number of Licensees Affiliated with a Designated Agency	Number of Licensees Not Affiliated with a Designated Agency ¹
Storage Crops	13	2	8	3
Greenhouse Vegetables	9	0	4	5
Both Storage & Greenhouse Crops	1	0	1	0
TOTAL	23	2	13	8

Note: 1. Termed non-agency producer
2. Among the 23 licensees one producers both storage and greenhouse vegetable crops

The Vancouver Island regulated producer profile includes 23 producer-licensees involving the production for marketing of regulated products; namely, greenhouse and storage crop vegetables. Of this number of licensees five are greenhouse vegetable producers and three are storage crop producers that do not market through a designated agency (non-agency producers). There are VMC General Order provisions that provide for direct marketing rather than marketing through a designated agency.

Vancouver Island Greenhouse Vegetable Producers

All but one of the greenhouse vegetable producers marketing through a designated agency are presently affiliated with VIFP. Within the agency-sub-agency structure the status quo will be maintained for these producers and island grown greenhouse vegetables will continue to be marketed to Vancouver Island retailers and wholesalers.

Vancouver Island Storage Crop Producers

Taking into account less than arm's length considerations the below displayed information provides a profile of Vancouver Island storage crop producers and designated agencies:

- VIP markets potatoes for 1 family farm group comprised of 2 producer licensees;

- in addition to marketing greenhouse vegetables of four producers VIFP markets potatoes for two family farm businesses;
- IVCA markets a number of regulated storage crops on behalf of four family farm businesses comprised of five producer licensees, and it also markets regulated products of a family farm business located in the Lower Mainland/Fraser Valley that comprises two producer licensees that operate at less than arm's length;
- one Vancouver Island potato producer is affiliated with a designated agency not located on Vancouver Island.

Sound marketing policy connotes what is in the best interest for the sector and its stakeholders. To the fullest extent possible sound marketing policy is to result in outcomes enjoyed by the greatest number of producers. This is an objective not always easily attained and in the instance of and in the context of central Vancouver Island regulated marketing a balance of interests has to be considered.

On review of the producer profile summary set out above and on the assumption that the agency-sub-agency structure is realized slightly better than one-half of the Vancouver Island producer-licensee population marketing through a designated agency today will be involved in the agency-sub-agency structure. Further, the eight non-agency producers are unaffected.

The policy appropriateness of a 'sub-agency structure' can be measured against what will be achieved if the sought agency-sub-agency structure is realized compared to what is expected to occur if it were not realized. As well, impacts to other agencies must be considered.

With the approval of BC Fresh and VIFP operating jointly in an agency-sub-agency structure the interests of IVCA and VIP remain largely as they were prior to the VMC's August 29, 2013 hearing and its written decision with reasons issued October 31, 2013. Whether or not VIP should or should not continue to be a designated agency is addressed in the third part of this document. – VMC Recommendation Regarding the VIP Agency.

With the approval of BC Fresh and VIFP operating jointly in an agency-sub-agency structure what is expected to occur is:

- those agencies working collaboratively and cooperatively in an agreed terms agency-sub-agency structure diminishes what would otherwise be the norm of inter-agency competition between those agencies;
- the availability of combined regulated product volume and coordinated inventory management of it will lead to heightened customer service levels for customers on and off Vancouver Island with the key metric being fulfillment of customer requirements for BC regulated products for the greatest number of weeks in a year;
- the employment of forward looking planning tools that have the capacity to:
 - identify production and marketing growth opportunities or new ones leading to the potential for taking advantage of production synergies of two production areas; and

- extend the duration that customers can obtain BC regulated product and Vancouver Island grown regulated product through the coordinated management of farm land resources and on farm storages of two production areas
- the long running regulated marketing disputes involving central Vancouver Island producers may:
 - deescalate resulting in improved producer outcomes that are to be measured including intrinsic community values as well as net farm income outcomes; and
 - the agency-sub-agency structure could be looked to and modeled by other designated agencies.

Recommendation Regarding the V. I. P. Produce Ltd. Designated Agency

VMC Recommendation

Predicated on a FIRB decision to provide an agency designation to VIFP that is indeterminate as to its duration, which is the recommendation set out in the October 31, 2014 VMC decision, the VMC initial recommendation regarding VIP agency designation is set out below.

The VMC initially recommends to FIRB that the December 31, 2013 termination of VIP as a designated agency of the VMC, which is provided for by way of FIRB's January 7, 2013 Supervisory Review decision, be extended to June 30, 2014.

Administrative Process

During the January 1 – June 30, 2014 period the VMC will continue to monitor and assess VIP's performance and it intends to proceed as described below. The end date coincides with the conclusion of the 2013-2014 crop year.

The below described activities or actions are to occur during the January 1 through April 30, 2014 period.

- During the above described period the VMC will continue with monitoring and assessment of VIP performance pertaining to agency responsibilities set out in the General Order and more generally whether or not VIP remains in good standing with the VMC;
- Pursuant to Part II of the General Order conduct a review of VIP business records that includes 2013-2014 storage crop year information, and, if warranted, earlier crop years. The review will be conducted by an appointed VMC inspector and is to occur on a date(s) that are mutually acceptable to VIP and the VMC.
 - the review is to be conducted no sooner than February 14, 2014 and no later than April 11, 2014.
- In lieu of holding an agency review pursuant to sections 10 – 16 of Part XIV – *Procedures for Designation of Agencies* – of the General Order and because VIP is a construction of two licensed producers that are not at arm's length the VMC will hold a hearing for the purpose of reaching a decision whether or not VIP is or is not to continue to be a

designated agency. The hearing is to be held prior to April 30, 2014. The findings of the above described review of VIP's books and records in part will be relied upon by the VMC for reaching a decision on VIP's designated agency status.

- The hearing is to be held prior to April 30, 2014.
- The VMC will require all storage crop agencies to participate in the hearing as interested parties whether by attending the hearing in-person, including telephone conference, or by way of written submission. All designated agencies will be issued a notice of hearing and be invited to obtain standing in the hearing as Interveners with or without limitation.
 - no storage crop designated agency will be permitted to opt out of what is intended to be a thorough consultation regarding the matter of VIP continuing or not continuing to be a designated agency;
 - at minimum all licensed storage crop producers and all designated agencies will be informed of the aforementioned hearing and be invited to gain standing in the hearing as an Intervener with or without limitation;
- The VMC intends to reach a decision whether or not VIP is or is not to continue to be a designated agency by mid-May, 2014; and
- As required by section 8 of the Natural Products Marketing (BC) Act Regulations should the VMC decision be one that VIP ought not to continue to be a designated agency a recommendation to that effect will be referred to FIRB.