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## BC Farm Industry Review Board

March 20, 2025

File: 44200-35/MPL-REDSUN

### DELIVERED BY EMAIL

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BC Vegetable Marketing Commission

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Dear W. Shoemaker, M. Camley, C. A. B. Ferris, J. K. McEwan & W. E. Stransky:

### RE: BC VEGETABLE MARKETING COMMISSION REVIEW OF MPL BRITISH COLUMBIA DISTRIBUTORS INC. PROBATIONARY AGENCY DESIGNATION AND JEM-D INTERNATIONAL DBA RED SUN FARMS AGENCY DESIGNATION - PROCESS

I write further to our February 27, 2025 [interim decision](#) extending MPL British Columbia Distributors Inc.'s ("MPL") probationary agency licence pending completion of this approval process, and the March 17, 2025 decision of the British Columbia Farm Industry Review Board ("BCFIRB") appeal panel deferring consideration of the appeal filed by Mucci International Marketing Inc. ("Mucci") regarding the designation of Jem-D International dba Red Sun Farms ("Red Sun") as an agency until after this supervisory process is completed.

This Panel is now commencing its approval process in relation to the BC Vegetable Marketing Commission's ("Commission") January 22, 2025 decision recommending agency designation to MPL and Red Sun (the "Agency Designation Decision").

### Next Steps

Designation of agencies is not a routine matter. Agencies are businesses granted the right to market BC regulated product and are delegated certain legislated authorities. It is incumbent on BCFIRB to ensure a Commission decision to designate an agency accords with sound marketing policy. Under s. 8 of the *Natural Products Marketing (BC) Act Regulations* ("NPMA Regulations"), BCFIRB is required to approve agency designation.

The Panel has reviewed the Commission's Agency Designation Decision and is considering whether to approve the agency designations for both MPL and Red Sun.

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Given the Commission had different bases for its decision to approve the respective applications of each proposed agency, the Panel's process for each agency may diverge depending on the issues that arise.

## Scope and Focus

### *MPL's agency designation approval*

On January 12, 2022, after holding a written hearing, the Commission recommended that MPL be granted an agency designation. On October 11, 2023, after completing a submission process and an oral hearing, a BCFIRB supervisory panel approved MPL receiving a probationary agency designation for the licensing period ending March 1, 2025 (the "Probationary Licence Decision"). MPL's probationary licence was contingent on conditions including a requirement for MPL to report regularly to BCFIRB:

80. As a condition of the probationary licence, MPL BC is required to appoint a senior executive as Vegetable Commission liaison within one month of the decision.
81. As a further condition of the probationary licence, MPL BC is required to report to BCFIRB with the first report due December 31, 2023, and quarterly in the 2024 Crop Year, copied to the Vegetable Commission, on the following matters:
  - a. identity of all growers for whom it is marketing regulated product and report the production acreage of regulated product marketed for each grower;
  - b. Identify any production referenced above that has displaced imported production and expanded markets for BC growers;
  - c. Identify any production referenced above which has displaced production and markets for BC agencies;
  - d. confirm compliance with the Vegetable Commission's General Orders and policies relating to production allocation and pricing and identify any allegations or findings of non-compliance.

The conditions also required the Commission to undertake a further review of the agency designation as outlined below:

83. This is in addition to, and does not supplant, the Vegetable Commission conducting a review of MPL BC's agency designation status in accordance with section 3 of Part XIV of the General Orders and prior to issuing MPL BC a licence for the term March 2, 2025 – March 1, 2026.
84. A decision of the Vegetable Commission to approve MPL BC as a designated agency for the term March 2, 2025 – March 1, 2026, must be approved in writing by BCFIRB.<sup>1</sup>

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<sup>1</sup> BCFIRB. October 11, 2023. [MPL British Columbia Distributors Inc. \(MPL BC\) Agency Designation Approval Decision](#), paras 83-84.

After the Probationary Licence Decision was issued, the Commission sought clarification from BCFIRB whether the further review contemplated in BCFIRB's conditions would require the Commission to undertake its usual renewal process, or a "re-do" of the substantial work the Commission undertook prior to recommending that MPL be granted an agency licence in its January 12, 2022 decision. The BCFIRB supervisory panel explained that:

Paragraph 84 was not intended to ask the Commission to "redo" its decision. Rather, it is intended to require the Vegetable Commission, at some point prior to the end of the MPL BC's probationary licence term on March 1, 2025, to exercise its authority under section 3 of Part XIV, as it determines appropriate to the circumstances, and consider whether to remove the probationary conditions and recommend approval to BCFIRB of MPL BC as a designated agency.<sup>2</sup>

Consistent with that direction, the role of this Panel is similarly not to conduct a "re-do" of the original BCFIRB supervisory panel's agency designation approval process or the Commission's agency review process. Rather, our role is to determine whether we agree with the Commission's Agency Designation Decision that MPL met the conditions established by BCFIRB in paragraph 80 and 81 of its Probationary Licence Decision, set out above.

In addition, the Panel must also be satisfied that approving MPL as an agency is consistent with sound marketing policy and SAFETI<sup>3</sup>. Understanding this role, the Panel will proceed in stages. As a first step, BCFIRB will consider the extent to which there were any deficiencies in either MPL's compliance with the conditions of its probationary licence or the Commission's process for deciding whether to remove the conditions on MPL's probationary licence. After that, BCFIRB will consider whether any additional steps are necessary. The first step in this process is set out below (see Process).

#### *Red Sun agency designation approval*

The Commission's Agency Designation Decision also made the recommendation to BCFIRB that Red Sun be granted an agency licence. Notably, the Commission's Agency Designation Decision related to Red Sun is conditional in nature as set out below:

95. With respect to the narrow issue of producer support, it is useful to identify why feedback from industry participants regarding the identity of supporting producers could be useful to the Commission. First, it is possible that industry participants may have information touching upon the arms-length status of the supporting producers. Second, industry participants might have information touching upon the *bona fides* of the producers' support. Because the identity of the supporting producers was not made available by Red Sun to industry participants, the Commission cannot benefit from information that industry participants might otherwise have about arms-length status, and *bona fides*. However, any lack of feedback on these matters could be addressed by imposing conditions on any agency designation that might be conferred by the Commission on Red Sun. In

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<sup>2</sup> BCFIRB. October 20, 2023. "[Re: Corrigendum – MPL British Columbia Distributors Inc. \(MPL BC\) Agency Designation Prior Approval Decision](#)", p. 3.

<sup>3</sup> Strategic, Accountable, Fair, Effective, Transparent, and Inclusive.

particular, the Commission could decide that Red Sun should be granted agency status, subject to it securing production from "Grower A" and "Grower B", and subject further to these producers being at arm's length from each other. If Red Sun is unable or unwilling to satisfy these conditions, the Commission's decision that Red Sun should be granted agency status could be rescinded without further order. Thus, having regard to the options available to the Commission, the Commission is satisfied that the procedural fairness implications, if any, arising from Red Sun's failure or refusal to comply with the Commission's directions concerning its redaction of the identity of supporting producers, do not constitute a sufficient basis in themselves to reject Red Sun's application.

The Commission then made the following recommendations:

99. Having regard to: (a) the considerations listed in paragraphs 9(4)(a) through (i) of the Commission's Agency Order; (b) the capacity of existing agencies or other prospective agencies to market regulated product (including MPL); and (c) other matters raised by the participants herein; the Commission has decided that Red Sun should be designated as an agency, subject to:
  - (a) Red Sun securing production from "Grower A" and "Grower B" (as identified in its application as the producers who have committed to supply Red Sun);
  - (b) "Grower A" and "Grower B" being and remaining at arm's length from each other; and
  - (c) the approval of the BCFIRB.
100. If Red Sun is unable or unwilling to satisfy these conditions, the Commission's decision that Red Sun should be granted agency status will be rescinded without further order.

The Agency Designation Decision is thus conditional in nature, in that it requires Red Sun to secure the production from Grower "A" and "B" and those two growers must be and remain at arm's length. This condition was imposed in response to "Red Sun's failure or refusal to comply with the Commission's directions concerning its redaction of the identity of supporting producers".

BCFIRB needs to reach its own conclusion as to whether the approval of Red Sun's agency licence is consistent with sound marketing policy. In the usual course, the Panel would need to consider the following questions:

1. Did the Commission conduct a SAFETI-based process in relation to the Red Sun application?
2. Is the Commission's decision to designate Red Sun as an agency consistent with sound marketing policy?

However, in the Panel's view, there appears to be a *prima facie* procedural fairness issue in that the Commission has accepted the support of Grower "A" and "B" and recommended the approval of Red Sun as an agency without providing an opportunity for stakeholders to comment on either the *bona fides* of these growers in relation to Red

Sun or their arm's length status from one another. Further, the Commission's order contemplates that if "Red Sun is unable or unwilling to satisfy these conditions, the Commission's decision that Red Sun should be granted agency status will be rescinded without further order".

While the Panel understands that its supervisory process can cure procedural fairness defects which arise before the first instance regulator, the question remains whether that is the appropriate course here. As a result, the Panel intends to consider, as a preliminary issue, whether and how it should exercise its supervisory authority in this case. After that, the Panel will consider what additional process is necessary. The first step in this process is set out below.

## **Process**

### MPL

The first stage of the approval process will be to canvass those stakeholders who participated in the Commission's process, and who take issue with some aspects of Agency Designation Decision, on the following questions:

1. What, if any, concerns should the Panel be aware of regarding the process followed by the Commission in its decision on MPL's agency review designation.
2. What, if any, concerns should the Panel be aware of with the Commission's substantive decision in approving MPL's agency designation?
3. Has MPL fully complied with the probationary terms set forth in the BCFIRB's Probationary Licence Decision, or are there any deficiencies in its fulfillment of these obligations?

Written submissions shall be no longer than 10 pages in length and will be in 12-point Arial font with 1.5 line spacing, excluding any supporting affidavits or appendices. If additional pages are required, leave from the Panel may be sought.

All submissions on MPL's questions are to be emailed to Justine Lafontaine, Senior Manager, at [Justine.Lafontaine@gov.bc.ca](mailto:Justine.Lafontaine@gov.bc.ca) and at [firb@gov.bc.ca](mailto:firb@gov.bc.ca) no later than **4pm PST on April 4, 2025**.

Once the Panel has reviewed stakeholder submissions in relation to the MPL Agency Designation Decision, we will determine how to structure the second stage of the approval process to hear from MPL and the Commission.

### Red Sun

The first stage in the approval process will be to consider what effect the preliminary issue raised above should have on BCFIRB's process. The Panel seeks submissions from stakeholders who participated in the Commission's process, with respect to the following questions:

1. Please explain how the Commission's process provided stakeholders with an opportunity to be heard with respect to Red Sun's application, including the extent to which stakeholders were able to be heard with respect to whether Red Sun had evidence-based grower support?
2. If there is a procedural fairness concern, should BCFIRB cure any procedural defect by providing an opportunity to be heard in the supervisory process, or is the issue more properly dealt with by the Commission as first instance regulator?

The Panel will hear from the Commission first so it can clarify what process it followed. After that other stakeholders will be provided with an opportunity to respond, beginning with Red Sun. The submissions will proceed pursuant to the following schedule:

- a) Commission's submission is due no later than **4pm PST on March 27, 2025**.
- b) Red Sun's submission is due no later than **4pm PST on April 3, 2025**.
- c) Any other stakeholder wishing to take a position may provide a submission no later than **4pm PST on April 10, 2025**
- d) The Commission's reply is due no later than **4pm PST on April 17, 2025**

Written submissions shall be no longer than 10 pages in length and will be in 12-point Arial font with 1.5 line spacing, excluding any supporting affidavits or appendices. If additional pages are required, leave from the Panel may be sought.

All submissions are to be emailed to Justine Lafontaine, Senior Manager, at [Justine.Lafontaine@gov.bc.ca](mailto:Justine.Lafontaine@gov.bc.ca) and at [firb@gov.bc.ca](mailto:firb@gov.bc.ca).

After hearing from the parties, the Panel will determine what process it will follow in BCFIRB's supervisory process.

Regards,



Neil Turner,  
Presiding Member & BCFIRB Vice-Chair

cc: BCFIRB website  
Andre Solymosi, General Manager, BC Vegetable Marketing Commission ([asolymosi@bcveg.com](mailto:asolymosi@bcveg.com))  
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