



BC FARM INDUSTRY  
REVIEW BOARD

May 1, 2025

File: 44200-35/MPL-REDSUN

**DELIVERED BY EMAIL**

Wes Shoemaker  
Chair  
BC Vegetable Marketing Commission

Morgan Camley  
Counsel  
Dentons Canada LLP

Craig A. B. Ferris K.C.  
Counsel  
Lawson Lundell LLP

J. Kenneth McEwan, K.C. and  
William E. Stransky, Counsel  
McEwan Partners

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

**RE: BC VEGETABLE MARKETING COMMISSION REVIEW OF JEM-D INTERNATIONAL  
DBA RED SUN FARMS AGENCY DESIGNATION**

On January 22, 2025, the BC Vegetable Marketing Commission (“Commission”) sent to the British Columbia Farm Industry Board (“BCFIRB”) its decision designating as agencies MPL British Columbia Distributors Inc. (“MPL”) and Jem-D International dba Red Sun Farms (“Red Sun”) (“Agency Designation Decision”). This letter pertains only to the process and submissions to address Red Sun’s agency designation.

The Agency Designation Decision approved Red Sun’s application for agency designation, contingent on approval by BCFIRB, and two conditions related to Red Sun’s failure to comply with earlier Commission requests to disclose the identities of the two growers in support of the Agency Application (“Grower A” and “Grower B”):

- (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); and
- (b) "Grower A" and "Grower B" being and remaining at arm's length from each other<sup>1</sup>

(referred to as the “Secured Production Conditions”)

The Decision provided no details about how the conditions would be lifted, or indeed who was responsible for determining whether the conditions were satisfied.

<sup>1</sup> January 22, 2025. BC Vegetable Marketing Commissions, Agency Designation Decision at para 99.

BCFIRB understood that the Agency Designation Decision with respect to Red Sun was complete and the Commission was requesting a section 8 review under the *Natural Products Marketing (BC) Act Regulations* (“NPMA Regulations”) with respect to the designation of Red Sun as an agency. Upon receipt of the Agency Designation Decision, BCFIRB assigned responsibility for this approval process to a supervisory panel (“Panel”) to conduct the review.

On March 20, 2025, the Panel issued a [letter](#) detailing the scope and process for stakeholder submissions on the two proposed agency designations. In this letter, the Panel identified a preliminary issue arising from the Commission’s conditional approval of Red Sun Agency Designation Decision. The approval, which was conditional on the disclosure of the identities of “Grower A” and “Grower B” to the Commission, did not provide “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”. The Panel invited submissions from industry stakeholders and the Commission on specific questions related to the Commission’s process for approving Red Sun agency designation to assist the Panel in deciding whether and how it should exercise its supervisory authority in this case.

The Commission, in its submission dated March 24, 2025, took the position that a BCFIRB review of the Commission’s designation of Red Sun as an agency was premature, as a final decision had not yet been issued. The Commission submitted that “BCFIRB’s “approval” jurisdiction is not engaged until a commodity board has decided, as the first-instance decision-maker, that a person should be designated as an agency”. It summarized:

14. Thus, it is the Commission’s respectful position that the BCFIRB’s section 8 review with respect to Red Sun is premature. Red Sun must first demonstrate to the Commission’s satisfaction that the conditions specified in paragraphs 99(a) and (b) of the Commission’s decision have been met before seeking the BCFIRB’s “approval.” Until such time as the Commission has indicated its satisfaction that these preconditions have been met, there is no unconditional, “first-instance” decision of the Commission to designate Red Sun as an agency that could be made the subject of a section 8 review.

The Commission also suggested that despite the fact that it had not made a final decision, the question whether the Commission has the authority to make the agency designation subject to the Secured Production Conditions and whether those conditions are consistent with sound marketing policy must be addressed as a preliminary question.

Red Sun, in its April 3, 2025, submission, adopted the Commission’s submission that BCFIRB’s review of Red Sun’s application should be held in abeyance until Red Sun fulfills the conditions specified at paragraph 99 (a) and (b) of the Agency Designation Decision.

In its response, Mucci International Marketing Inc. (“Mucci”) takes the position that review of the Red Sun conditions is not beyond the scope of BCFIRB’s supervisory powers and BCFIRB is not limited to “unconditional decisions” of the Commission. It says agency applicants have a legitimate basis to withhold the identity of supporting

producers and indicated its intention “at the appropriate time” to make submissions on the propriety of the Secured Production Conditions.

In response, Greenhouse Grown Foods Inc. (“GGFI”) and Windset Farms (Canada) Ltd. (“Windset”) take issue with the Commission’s decision to issue a conditional recommendation. They dispute that allowing Red Sun to provide evidence of grower support after the decision has been rendered addresses the procedural unfairness of depriving participants of that information in the first place. To redress these concerns, GGFI and Windset ask that the Panel proceed with a supervisory review rather than sending the matter back to the Commission.

In its response submissions, MPL took the position that it was not provided with an opportunity to comment on whether Red Sun had evidence-based grower support from at least two arm’s length growers given the identities of “Grower A” and “Grower B” were kept in confidence. MPL argued that the BCFIRB process should only proceed once the identity of “Grower A” and “Grower B” have been disclosed and suggested that BCFIRB could cure any procedural defects through that process.

In reply, the Commission makes three points. In response to Mucci’s suggestion that agency applicants have a legitimate basis to withhold the identity of supporting producers, the Commission says the sensitivity of producer identity is overstated as retributive action by an agency is unlikely and the Commission can take appropriate steps to address any such conduct. Second, the Commission disagrees with GGFI and Windset’s suggestion that providing evidence of grower support after the Commission decision does not alleviate procedural fairness concerns. The Commission’s view is that stakeholder submissions on a supporting producer’s *bona fides* become moot if that support is proven through the satisfaction of a precondition. Finally, the Commission reiterates its position that if Mucci intends to dispute the propriety of the Secured Production Conditions, it should do so as a preliminary issue in advance of any section 8 review by the BCFIRB as a successful challenge would require that the matter be remitted back to the Commission for redetermination.

### **BCFIRB Review**

The Panel agrees with Mucci’s submission that BCFIRB’s supervisory role is broad and certainly could extend to consideration of conditional decisions in appropriate circumstances. However, the Panel has determined that in all the circumstances the appropriate course in this particular case is to place the section 8 review of the designation of Red Sun as an agency into abeyance.

The Commission has made a conditional decision to address concerns related to the failure of Red Sun to disclose the identity of “Grower A” and “Grower B” in its agency designation process. As the Commission points out at paragraph 97 of the Agency Designation Decision, in the face of Red Sun’s lack of disclosure of the identities of “Grower A” and “Grower B”, it could have dismissed Red Sun’s agency application outright. Instead, the Commission made a conditional order requiring Red Sun to do more than demonstrate grower support as required by sections 8 and 9 of the

Commission's Agency Order of June 27, 2024, as amended, but rather required it to demonstrate it had secured the production of "Grower A" and "Grower B"<sup>2</sup>.

Upon reviewing the Agency Designation Decision, it was not clear to the Panel what process would be followed to determine whether the Secured Production Conditions were met. The Decision provided no details about how, when and to whom Red Sun should provide that evidence, or who was responsible for deciding that the conditions were satisfied.

The Commission has now clarified that Red Sun should provide that evidence to the Commission, and the Commission will determine whether the Secured Production Conditions have been satisfied. The Commission suggested that it could be satisfied if Red Sun provides statutory declarations of "Grower A" and "Grower B". Red Sun says it is finalizing terms with "Grower A" and "Grower B" with respect to their commitment to supply production and is hopeful that it will be able to share further information related to those producers with BCFIRB and the participants of this process in unredacted form.

In these circumstances, the best approach is for the Commission to complete its task by making that determination. If there are issues regarding the *bona fides* of "Grower A" and "Grower B" or their arm's length status, they should be properly addressed by the first instance decision maker in a transparent process before the decision is submitted to BCFIRB.

BCFIRB considers that industry stakeholders may have valuable information that would assist the Commission to assess the *bona fides* and arm's length status of "Grower A" and "Grower B". However, given that the Commission has not completed its process, the Panel makes no comment on the fairness of the Commission's process and whether the BCFIRB process is appropriate to cure any procedural defects. Those arguments may all be advanced before the Panel in the event the Commission makes a final decision designating Red Sun as an agency.

We do not agree with the Commission that it is necessary to determine on a preliminary basis whether the Commission is authorized to issue conditional approvals and whether doing so is consistent with sound marketing policy in these circumstances. In this regard, we note that all the parties were given an opportunity to respond to the Commission's submissions, and none of the parties who could make such an argument suggested they would be prejudiced by that question not being determined on a preliminary basis. The Panel is satisfied that those questions can be addressed in BCFIRB's review of any final decision designating Red Sun as an agency. Further, bifurcating the section 8 review will only lead to increased delay and potential inefficiencies.

In light of the foregoing, the Panel has decided to place its consideration of Red Sun's agency designation into abeyance pending a further decision by the Commission. This order is made without prejudice to any arguments participants may wish to raise in this

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<sup>2</sup> These provisions are now found in sections 8 and 9 of the Commission's General Order of January 2, 2025, as amended.

approval process, including arguments concerning the Commission's authority to make conditional designations.

Section 8 of the NPMA Regulations provides that every designation of an agency by a marketing board requires BCFIRB's approval in writing. The Panel anticipates the Commission will continue its review process and submit a final Agency Designation Decision for Red Sun to BCFIRB if the conditions are addressed to the Commission's satisfaction.

Regards,

A handwritten signature in black ink, appearing to read "Neil Turner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Neil Turner,  
Presiding Member & BCFIRB Vice-Chair  
BC Farm Industry Review Board

cc: BCFIRB website  
Justine Lafontaine, Senior Manager, BCFIRB  
Andre Solymosi, General Manager, BC Vegetable Marketing Commission  
([asolymosi@bcveg.com](mailto:asolymosi@bcveg.com))  
Robert Hrabinsky, Affleck Hrabinsky Burgoyne LLP ([RHrabinsky@ahb-law.com](mailto:RHrabinsky@ahb-law.com))  
Kate Phipps, Arvay Finlay LLP ([khipps@arvayfinlay.ca](mailto:khipps@arvayfinlay.ca))  
Laura Duke, ([lduke@lawsonlundell.com](mailto:lduke@lawsonlundell.com))  
Emma Irving, Dentons Canada LLP ([emma.irving@dentons.com](mailto:emma.irving@dentons.com))  
Melanie Power, Dentons Canada LLP ([melanie.power@dentons.com](mailto:melanie.power@dentons.com))  
Deena Lowings, Dentons Canada LLP ([deena.lowings@dentons.com](mailto:deena.lowings@dentons.com))  
Kevan Hanowski, McCarthy Tétrault LLP ([khanowski@mccarthy.ca](mailto:khanowski@mccarthy.ca))