BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND

MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL)
AGENCY DESIGNATION APPROVAL INTERIM DECISION

May 22, 2025

Introduction

1. Agencies are businesses licenced by the BC Vegetable Marketing Commission ("Commission") and approved under section 8 of the *Natural Products Marketing (BC) Act Regulations* (NPMA Regulations) by the BC Farm Industry Review Board (BCFIRB). The role of an agency is to market regulated vegetables on behalf of producers to the exclusion of other businesses and to harness the collective power of producers to gain market access. Rather than individual producers seeking out markets for their vegetables, agencies take on that job and, by "pooling" production from multiple producers, can sell to larger markets. Agencies are delegated certain legislative authorities by the Commission, to whom they are directly accountable.

2. On January 12, 2022, the Commission recommended that MPL British Columbia Distributors Inc. ("MPL") be granted an agency designation. BCFIRB's consideration of whether to approve MPL's designation was delayed allowing a related supervisory process involving MPL to conclude.[1]

3. On October 11, 2023, after completing a submission process and a three day 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 appoint a senior executive as Commission liaison within one month of the decision to report regularly to BCFIRB.[2]

4. The conditions also required the Commission to undertake a further review of MPL's performance under the probationary licence, in accordance with "section 3 of Part XIV of the General Order"[3], and prior to issuing MPL a licence for the term March 2, 2025 – March 1, 2026 which must be approved by BCFIRB.[4]

5. After the Probationary Licence Decision was issued, the Commission sought clarification from BCFIRB whether the review contemplated in BCFIRB's conditions required 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. The BCFIRB supervisory panel explained that:

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[1] See BCFIRB, 2021, Allegations of Bad Faith and Unlawful Activity Review ("Allegations Review") webpage.
[2] BCFIRB. October 11, 2023. MPL British Columbia Distributors Inc. (MPL BC) Agency Designation Approval Decision, at paras 80-81.
[3] The provisions for reviewing an existing agency were subsequently amended and were found in sections 8 and 9 of the Commission's Agency Order of June 27, 2024, as amended. As a result of a January 2, 2025 amendment, these sections are now found under Part II, Section 10 of the Commission's General Order, as amended and updated on January 2, 2025.
[4] *Supra* note 2, at paras 83-84.

> 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.[5]

6. MPL operated under the terms of its probationary licence for the 2024 growing season. It appointed a senior executive as liaison with the Commission and filed its quarterly reports as required.

7. In June 2024, the Commission struck a five-member panel to review MPL's agency designation as directed by BCFIRB, as well as the agency applications of Jem-D International dba Red Sun ("Red Sun") and Mucci International Marketing Inc. ("Mucci"). On June 27, 2024, the Commission issued amendments to the provisions in the General Order related to designation of new agencies and allowed Red Sun and Mucci to supplement their agency applications accordingly. The Mucci application was summarily dismissed on August 13, 2024, due to insufficient evidence of grower support.

8. On August 14, 2024, the Commission issued an Interim Decision clarifying the scope of the intended review as follows:

> In the panel's view, it is clear that the BCFIRB did not intend for the Commission to merely enquire into whether MPL has sufficiently discharged its obligations under the probationary terms imposed by the BCFIRB. Rather, the BCFIRB expressly directed that the Commission undertake an agency review. Consequently, the panel has concluded that the review should be conducted in accordance with section 23 of the Agency Order. Consistent with this, the panel may consider, among other things, any of the considerations listed in paragraphs 23(1)(a) through (j). Thus, MPL and interested stakeholders will be permitted to make submissions with respect to: (a) the extent to which MPL has discharged its obligations under the probationary terms imposed by the BCFIRB; (b) the considerations listed in paragraphs 23(1)(a) through (j); and (c) any other matters that may bear upon the exercise of the Commission's discretion.

9. Subsequently, and after completing the written submission process, on January 22, 2025, the Commission issued its decision recommending that MPL be granted an agency designation ("Agency Designation Decision").

10. On February 4, 2025, BCFIRB received a letter from MPL requesting that BCFIRB's approval process of MPL's Class I agency licence be expedited, or that the Commission be directed to extend MPL's probationary license until the completion of BCFIRB's approval process to ensure orderly marketing and

[5] BCFIRB. October 20, 2023. "Re: Corrigendum – MPL British Columbia Distributors Inc. (MPL BC) Agency Designation Prior Approval Decision", at p. 3.

prevent disruption for its producers. Without such an order, MPL's licence was due to expire March 1, 2025.

11. Greenhouse Grown Foods Inc. (GGFI) and Windset Farms (Canada) Ltd. (Windset) opposed MPL's request for an expedited supervisory process and filed an appeal of the Commission's January 22, 2025, decision designating MPL and Red Sun as agencies. They also requested a supervisory review of the recent amendments to the Commission's General Order in relation to designation of agencies. GGFI and Windset argued that because of their appeal and request for a supervisory review, BCFIRB should wait to confirm the removal of the agency probationary conditions imposed on MPL and not expedite approval as requested. MPL opposed this request.

12. On February 13, 2025, BCFIRB's Chair assigned responsibility for this approval process to a two-person panel ("Panel")[6].

13. On February 27, 2025, after providing an opportunity for submissions, the Panel extended MPL's designation as a designated agency under section 8 of the NPMA Regulations and directed that the probationary period remain in effect until the Panel issues its final decision in this approval process. The condition requiring MPL have a senior executive to act as the Commission liaison remains in place. The Panel's order was made without prejudice to any arguments participants may wish to raise in this approval process.

14. On March 20, 2025, the Panel issued a letter detailing the scope and process for stakeholder submissions regarding both the Commission's review process of MPL's agency designation and MPL's probationary licence conditions. Consistent with the previous panel's clarification, the role of this Panel is not to conduct a "re-do" of either the original BCFIRB supervisory panel's agency designation approval process or the Commission's agency review process. Rather, the Panel must determine whether it agrees 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 and that approving MPL as an agency is consistent with sound marketing policy and SAFETI principles.

15. Having considered the Commission's Agency Designation Decision, MPL's quarterly reports and the one stakeholder submission received from GGFI and Windset opposing MPL's application, the Panel has determined that the Commission gave stakeholders an appropriate opportunity to be heard in its approval process and that MPL met the conditions in paragraphs 80-81 of the Probationary Licence Decision. Nothing in the submission of GGFI and Windset has persuaded the Panel that additional process or submissions were required for the Panel to fully consider the issues of procedural fairness or whether MPL

6 For continuity, panel member Pawan Joshi, who served as the presiding member in the Probationary Licence Decision, is also serving on the current Panel.

satisfied the conditions of its license. As a result, the Panel finds it unnecessary to conduct an oral hearing or engage in any further process to address those issues. Our written reasons for our conclusion the process was fair and MPL met the conditions of its probationary licence are set out below.

16. However, additional process may be required to consider the substantive question whether approving MPL as an agency is consistent with sound marketing policy. In particular, GGFI and Windset raise in their submission the Commission's lack of analysis of MPL's marketing plan in light of the potential risks associated with recent US tariffs on Canadian products. That issue was not raised before the Commission. As a result, a question arises whether the impact of proposed tariffs on MPL's ability to fulfill its marketing plan is a relevant consideration that warrants consideration with respect to whether the designation of MPL as an agency is consistent with sound marketing policy.

Issues Before the Panel on Approval of Agency Designation

17. The Panel is considering the following questions in this supervisory process:

    1. Did the Commission conduct a SAFETI-based[7] process in its decision on MPL's agency review designation?

    2. Did MPL fully comply with the probationary terms set forth in BCFIRB's Probationary Licence Decision?

    3. Is the designation of MPL as an agency consistent with sound marketing policy?

Legal Authorities

18. Under section 8 of the NPMA Regulations, no designation of any agency shall be effective unless approved in writing by BCFIRB.

19. Under section 7.1(2) of the Natural Products Marketing (BC) Act, BCFIRB may exercise its powers under this section at any time, with or without a hearing, and in the manner, it considers appropriate to the circumstances.

Analysis

20. In its Probationary Licence Decision, BCFIRB concluded the Commission's agency designation process found in its General Order was consistent with SAFETI principles and sound marketing policy as it provided a reasonable mechanism for the Commission to assess new applicants. While it was open to the Commission to conduct an oral hearing, the failure to do so was not procedurally unfair if impacted stakeholders had a meaningful opportunity to be

[7] Strategic, Accountable, Fair, Effective, Transparent, Inclusive.

heard. Despite that conclusion and in response to concerns raised in appeals and in correspondence from the industry stakeholders, BCFIRB committed to a more thorough process than would otherwise have been held, which included opportunities for disclosure of documents, oral and written submissions, expert evidence, and cross-examination of witnesses.

21. The Probationary Licence Decision concluded that MPL satisfied many of the conditions in Part XIV of the General Order:

> Conditions (a), (b), (e), (g) and (j) have largely been addressed as MPL BC has demonstrated it is a leading marketer, with direct access to large retailers in markets throughout North America not served by existing agencies. It is trying to move from being a wholesaler to an agency through this process and its business model does not contemplate relying on wholesalers. It is a sophisticated entity that is engaged in marketing in many jurisdictions and has the capacity to operate as an agency subject to the concerns identified below.

22. While BCFIRB was generally in agreement that there was a sound marketing policy justification to approve MPL's agency designation, BCFIRB identified three principal areas of concern:

    1. the potential for market and production disruption stemming from MPL's business plan and unclear greenhouse acreage expansion strategy;

    2. limited demonstrated support from multiple, arm's-length commercial producers as required under condition (f); and

    3. uncertainty regarding MPL's willingness and capacity to meet the fiduciary and compliance obligations of a designated agency within the regulated marketing system.

23. The latter concern with MPL's willingness to meet fiduciary and compliance obligations followed from MPL's historical disputes with the Commission (which was addressed in the Allegations Review) and unresolved questions about its ability to build trust and operate collaboratively within the regulatory framework.

24. To address these concerns, BCFIRB granted MPL a conditional, 18-month probationary agency designation. As outlined in the Introduction, the probationary period was intended to allow MPL to demonstrate its ability to support orderly marketing and comply with regulatory expectations. The Commission's role was to review MPL's performance under section 3 of Part XIV of the General Order, not to revisit the full agency application process.

25. BCFIRB has received and reviewed the quarterly reports which confirm compliance with the General Order and identify the growers and their related acreages of production being shipped through MPL, any transfers of growers between agencies, and displacement of imports into BC. The Commission has

confirmed that MPL met its reporting obligations, cooperated with regulatory processes, and made demonstrable progress in growing its network of producers and displacing imports with BC-grown product.

26. The Commission's review of MPL's probationary licence began with the establishment of Terms of Reference to define the scope of the review, followed by written submissions from stakeholders, including MPL and other industry participants. The Commission did not limit stakeholders to the three areas of concerns raised by BCFIRB in the Probationary Licence Decision but rather allowed for comments on all the section 23(1)(a)-(j) requirements. The Commission's process allowed for document disclosure with appropriate confidentiality safeguards and opportunities for feedback. Throughout the process, the Commission maintained transparency by posting relevant documents and updates on its website, ensuring that all stakeholders were informed and had the opportunity to participate. The Agency Designation Decision, now recommending full approval, reflects both the completion of this review and the Commission's confidence in MPL's ongoing role in the regulated system.

27. In considering how to proceed in this approval process and given the comprehensive nature of the Agency Designation Decision, the Panel determined that it should first hear from those stakeholders who were critical of the decision and/or the process followed. Accordingly, the Panel's March 20, 2025, process letter sought submissions from any stakeholder who participated in the Commission's process, and who took issue with some aspects of the Agency Designation Decision as follows:

    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?

28. Of the nine agencies licensed to market greenhouse crops, only one filed a submission opposing the designation of MPL as an agency in this approval process, GGFI.

29. On April 4, 2025, the Panel received a submission from GGFI and its principal grower, Windset. GGFI and Windset identified three main areas of concern.

30. First, the Commission's failure to provide an oral hearing raised procedural fairness issues and BCFIRB ought to hold an oral hearing to remedy these concerns.

31. Second, MPL failed to comply with BCFIRB's probationary terms.

32. Third, there were substantive concerns with the Commission's reasoning in the Agency Designation Decision; it was unsound and inconsistent with section 23, Part XIV of the General Order and previous Commission decisions, insofar as the Commission relied on its conclusion the industry benefited from MPL acting as an agency rather than a wholesaler. In addition, the Commission failed to address the impact of the changed tariff environment on MPL's business plan.

33. The Panel has considered each of these concerns.

Procedural Fairness Concerns

34. GGFI and Windset argue that the Commission's decision to cancel the oral hearing in its review process lacked procedural justification and say that an oral hearing was necessary to test the credibility of MPL's submissions, particularly regarding shareholder information MPL initially withheld and not disclosed until pressured to do so.

35. The Agency Designation Decision responds to this argument. At paragraphs 44 and 45, the Commission clarifies that it had not proposed an oral evidentiary phase, as suggested by GGFI and Windset. Such an evidentiary phase would have been inconsistent with prior procedural directions and disruptive to a process already in its final written stage. The Commission says its process provided extensive participatory rights to the parties with an interest in its policy decision and oral submissions were not required to meet the duty of procedural fairness. Rather, the Commission explains that its original intent was to provide an opportunity for stakeholders to appear before the panel to make brief oral submissions and to answer questions for the convenience of the panel. After consulting with the parties and encountering scheduling difficulties, the Commission decided not to proceed with hearing oral submissions and, as it was no longer convenient, advised that it would pose any questions in writing. The panel proceeded to do just that.

36. GGFI and Windset did not demonstrate that the absence of an oral hearing during the Commission's process prevented them from submitting evidence or arguments or was otherwise prejudicial. GGFI and Windset tendered a 26-page written submission, supported by 182 pages of documents. The Commission followed the process outlined in its General Order which no longer requires an oral hearing. While the Commission originally intended to provide an opportunity for brief oral submissions to allow its panel to pose questions, scheduling challenges and the need for a timely decision in advance of the expiration of MPL's probationary licence resulted in the Commission proceeding on written submissions alone and posing questions in writing. This Panel agrees that the Commission's review process afforded GGFI and Windset an appropriate

opportunity to have their positions as a competitor agency heard within the Commission's process, and did not result in procedural unfairness.

37. GGFI and Windset ask that BCFIRB incorporate an oral hearing component into this approval process to address and potentially cure any procedural fairness issues. They point to BCFIRB's supervisory review of MPL's original agency designation decision which included an oral hearing component and say the same is appropriate for this supervisory review. They say the credibility of MPL continues to be at issue given MPL withheld information with respect to a change of its shareholders and only provided information when the issue was raised by Windset and GGFI.

38. The Panel is satisfied that the Commission's process provided ample opportunities for GGFI and Windset to be heard, given the limited nature of their interest in this policy decision of the Commission. Further, the Panel disagrees with GGFI and Windset that the circumstances of this approval process are analogous to those which existed in the original approval review. BCFIRB's decision that an oral hearing was required was primarily grounded in MPL's participation in BCFIRB's Allegations Review where MPL played an active role and its principal, Paul Mastronardi, testified before BCFIRB. BCFIRB's supervisory decision found no cogent evidence to substantiate the serious allegations of wrongdoing made by MPL and instead found the allegations were mostly based on speculation, rumour and innuendo. The supervisory process moved to a Phase II to determine what conclusions or inferences should be drawn and what Order should be made to restore orderly marketing and trust and confidence in the regulated vegetable industry.

39. Prior to Phase II concluding, MPL committed to taking steps to address the impact of its conduct on orderly marketing in the regulated vegetable industry and maintaining a transparent and accountable relationship with the Commission. BCFIRB accepted MPL's representations and discontinued Phase II in respect of MPL, leaving it to the supervisory panel presiding over the approval process to make its own determinations after hearing from relevant parties. That panel concluded that an oral hearing was necessary to allow the panel to draw its own conclusions on whether it could accept MPL's representations at face value that it was prepared to work within the regulated vegetable industry despite its earlier unsupported allegations levelled against the Commission. In stakeholder correspondence and the multiple appeals filed challenging the Commission's original January 2022 agency designation decision, Mr. Mastronardi's credibility was at issue and the supervisory panel needed to make its own assessment.

40. The Panel in this approval process is in a very different position in that it has the benefit of MPL's performance as an agency, albeit under a probationary licence, for approximately 18 months. In addition, there are MPL's quarterly reports and the Commission's considered reasons, all of which provide evidence of a track

record which can inform the decision of whether MPL is prepared to work within the regulated vegetable industry.

41. The failure or delay of MPL disclosing shareholders' interests was addressed by the Commission at paragraph 72 of the Agency Designation Decision. It found this conduct fell short of demonstrating MPL's inability or unwillingness to comply with the Commission's Order. The Panel agrees that MPL's failure or delay in disclosing shareholder interests does not create a credibility concern sufficient to require an oral hearing.

42. The Panel finds that GGFI and Windset have been provided with an appropriate opportunity to be heard in this approval process commensurate with the nature of their interest in this policy decision. They could have adduced additional affidavit evidence in this process but did not do so. In all these circumstances, and based on the material before the Panel, we find it unnecessary to hold an oral hearing.

Compliance with Probationary Terms

43. GGFI and Windset take the position that MPL has not complied with BCFIRB's probationary terms.

44. In its Probationary Licence Decision, BCFIRB identified three broad areas of concern. The first concern related to MPL's ability to deliver on its business plan—specifically, its goal of displacing imports and expanding marketing opportunities for BC greenhouse vegetable production. During the Commission's process, GGFI and Windset submitted that MPL has not displaced imported product nor opened new markets but rather had "stripped" growers from other agencies. MPL argued that it is still in the early stages of implementing its business plan and has begun marketing BC product directly, moving away from its role as a wholesaler and thereby increasing grower accountability.

45. The Commission found MPL had only made modest progress but determined that was reasonable for a new agency in its first year of designation. It had no evidence that MPL's actions undermined regulated marketing or disrupted existing market structures. In fact, MPL's direct marketing appeared to have resulted in improved returns for some growers. The Commission emphasized its continuous role monitoring and reviewing agency designations, and confirmed that continued monitoring would be appropriate, particularly regarding MPL's use of imported production.

46. Similarly, the materials before this Panel do not demonstrate that MPL has been disruptive. To the contrary, MPL has a demonstrated track record of servicing markets as an agency with regulated product that it previously filled as a wholesaler. This track record gave the Commission comfort that MPL is not disrupting orderly marketing or impairing the ability of other agencies to achieve their business goals. We agree.

47. The evidence before the Panel does not support the conclusion that MPL has "stripped" growers from other agencies. While growers have transferred to MPL, the undisputed evidence is those transfers occurred with consent of the former agency.

48. While MPL has not yet fully achieved its five-year goals of displacing imported production and expanding marketing opportunities, it has made incremental progress toward its objectives, even with the uncertainty associated with its probationary status. Additionally, MPL's quarterly reports to BCFIRB and the Commission indicate that it is making progress and is continuing to work toward its business plan. The Panel notes this ongoing effort and expects continued progress in the future.

49. BCFIRB's second concern was whether MPL had the required support from at least two licensed, arm's-length commercial producers. In the Commission's process, GGFI and Windset argued that Creekside, Fresh4U, and Fresh4Sunset are not independent of each other and should be treated as a single entity. They also questioned the independence of Darvonda and Millennium. In response, MPL submitted it had the support of multiple growers.

50. The Commission accepted GGFI and Windset's arguments and concluded that Creekside, Fresh4U, and Fresh4Sunset are not arm's-length and treated them as a single producer for designation purposes. It also discounted support from Millennium due to an absence of recent shipments through MPL. However, it concluded that Darvonda is an arm's-length producer and that, together with the other growers, MPL has met the minimum requirement of support from at least two arm's-length commercial producers.

51. The Panel has not received any new evidence from GGFI and Windset's submissions in this process to contradict the Commission's findings that MPL is meeting the minimum requirement of support from at least two arm's-length commercial producers.

52. BCFIRB's third concern related to MPL's willingness to comply with the Commission's General Order, enabling legislation, and regulations, and whether BCFIRB could have faith in MPL's commitment to follow these standards. In the Commission's process, GGFI and Windset questioned MPL's reliance on a letter of support from a former Commission compliance officer and suggested soliciting this letter demonstrated MPL's lack of understanding of appropriate conduct in a regulated market system and a continued failure to respect the roles of Commission staff and Commissioners. They also pointed to Mr. Mastronardi's lack of candour in the oral hearing in the original review in representing MPL as "family owned" despite changes in MPL's corporate ownership, coupled with the delays in disclosing its corporate structure in the Commission's current process, as further evidence of MPL's unwillingness to comply with the Commission's General Order.

53. In its Agency Designation Decision, the Commission agreed that reliance on a letter from former staff was inappropriate and gave it no weight. The Commission concluded MPL's conduct did not indicate an unwillingness or inability to comply with general order and despite the concerns raised, concluded MPL had demonstrated its commitment to compliance through its ongoing cooperation and adherence to regulatory requirements to date. Further, and on the issue of ownership, the Commission concluded ownership interests by "large institutional investment funds" is not a reasonable basis to recommend against continued agency status. The Commission's primary concern in identifying those with a direct or indirect financial interest in an agency is to assure itself that a corporate entity is not being used as mechanism to hide the identity of "bad actors" with a history of non-compliance or other detrimental conduct. The Commission found no evidence that the corporate identity of MPL is being used in that way.

54. The Panel observes that MPL has consistently complied with the quarterly reporting requirements and has designated a liaison, as required. The information before us does not support a finding of non-compliance with the General Order or relevant legislation or suggest that MPL lacks the capacity to meet the fiduciary and compliance obligations of a designated agency within the regulated marketing system.

55. Consequently, the Panel accepts the Commission's assessment that MPL has met the compliance obligations of a designated agency within the regulated marketing system.

Substantive Concerns

56. GGFI and Windset raised other substantive concerns with the Agency Designation Decision. They say that the Commission's reasoning for granting MPL full agency status is inconsistent with the General Order, to the extent it grounded that conclusion in its finding it is preferable for MPL to act as an agency rather than a wholesaler. It also says this conclusion is inconsistent with the Commission's earlier decision summarily dismissing the wholesaler Mucci's agency application. They also suggest the Commission failed to assess MPL's marketing plan in light of the potential risks associated with recent US tariffs on Canadian products.

57. On the wholesaler issue, the Panel disagrees that the decision to designate MPL as an agency was based solely on the benefit of MPL moving from acting as a wholesaler to an agency. At paragraph 61 of its Designation of Agency Decision, the Commission relies on the fact MPL is now serving markets it once served as a wholesaler to dismiss concerns that MPL was not able to follow through on its business plan. The Commission found that the shift in role provides comfort that MPL is not disrupting orderly marketing or impairing the ability of other agencies to achieve their own business goals, even if MPL has not fully fulfilled its business goals of expanding marketing opportunities. The fact that MPL was directly

servicing markets as an agency was a net benefit, as it generally preferrable for product to be marketed by an agency rather than by a wholesaler, even if MPL had not met all the goals in its business plan. Agencies have a higher level of accountability to the Commission, and direct marketing by an agency eliminates the impact that a wholesaler-intermediary may have on producer returns.

58. The Commission ultimately found that it was appropriate to designate MPL as an agency without conditions based on an analysis of all relevant considerations. At paragraph 77, the Commission considered the considerations listed in sections 21(3)(a) through (j) of the Commission's Agency Order. At paragraphs 78-81, it considered additional factors put in issue by participants concerning the ownership of MPL and producers' willingness to work with MPL. Its recommendation was based on all those factors and was not primarily or solely based on the benefit of MPL moving from being a wholesaler to an agency.

59. As a result, the Panel does not consider the Commission's treatment of MPL to be inconsistent with its decision to summarily dismiss wholesaler Mucci's application for agency licence. The Commission did not determine that the benefit of a wholesaler moving to an agency was sufficient on its own to justify agency designation.

60. The issue of the Commission's failure to consider the impact of US tariffs on Canadian products on MPL's business plan, is on a different footing. This issue was raised for the first time before this Panel and as such, we do not have the benefit of the views of the Commission or MPL on the relevance of tariffs on MPL's ability to fulfill its business plan, and ultimately the question whether the designation of MPL as an agency is consistent with sound marketing policy.

Decision

61. Having considered the Agency Designation Decision, the quarterly reports and the GGFI and Windset submission received in response to the March 20, 2025, process letter, the Panel finds that no additional process is required at this time in relation to procedural fairness and a SAFETI-based process, or MPL's fulfillment of the conditions of its probationary licence.

62. The Panel agrees with the Commission that MPL has met the probationary terms imposed by BCFIRB in the Probationary Licence Decision. The Panel also finds that the Commission's process was fair and consistent with SAFETI principles.

63. With respect to the substantive question whether the designation of MPL as an agency is consistent with sound marketing policy, the Panel finds that the Commission's decision to designate MPL as an agency was not based solely on the benefit of MPL moving from acting as a wholesaler to an agency but rather was based on its consideration of the factors found in sections 21(3)(a) through (j) of the Commission's Agency Order.

64. However, the Panel recognizes that the substantive concerns raised by GGFI and Windset related to tariffs may warrant further analysis in the analysis whether the designation of MPL as an agency is consistent with sound marketing policy. At this stage, the Panel is not making a determination on the relevance or implications of those concerns but is of the view that additional process may be required if such concerns are found to be material to the agency designation decision.

65. To assist it to determine what, if any, additional process may be required, the Panel invites MPL and the Commission to provide submissions addressing whether the tariff issue is a relevant factor in the agency designation context and, if so, whether further process is required to assess it adequately.

    1. Written submissions shall be no longer than 5 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; and

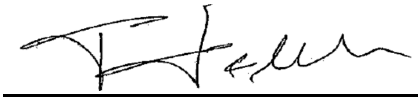
    2. Submissions should be provided to BCFIRB before May 30, 2025.

    3. Any response submission from GGFI and Windset's should be provided to BCFIRB before June 13, 2025.

Dated at Victoria, British Columbia, this 22nd day of May 2025.

Neil Turner

Panel Chair and Vice Chair



Pawan Joshi

Member