



BC VEGETABLE MARKETING COMMISSION

DECISION RE:

IN THE MATTER OF THE REVIEW OF
GLOBAL GREENHOUSE PRODUCE INC. (GLOBAL)'S
AGENCY LICENCE

BEFORE: The British Columbia Vegetable Marketing Commission
Debbie Etsell, Chair
Craig Evans, Member
Natalie Veles, Member
Kevin Husband, Member

DATE: January 10, 2023

Introduction

1. “Designated agencies” are a critical component of the regulatory system for vegetables in British Columbia. They are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product. The appropriate agency structure for the marketing of regulated vegetables contributes to orderly marketing by ensuring market growth opportunities for producers, and a steady supply of BC product for consumers.
2. Under the Natural Products Marketing (BC) Act (NPMA), the Commission can delegate authority to designated agencies to support the purposes of regulated marketing. Among other things, the Commission is empowered to: (a) regulate the time and place at which and to designate the agency through which a regulated product must be marketed; (b) determine the charges that may be made by a designated agency for its services; (c) set the prices, maximum prices, minimum prices or both maximum and minimum prices at which a regulated product or a grade or class of it may be bought or sold in British Columbia or that must be paid for a regulated product by a designated agency and to set different prices for different parts of British Columbia; and (d) authorize a designated agency to conduct pools for the distribution of all proceeds received from the sale of a regulated product and to require that designated agency to distribute the proceeds of sale, after deducting all necessary and proper disbursements, expenses and charges, so that each person receives a share of the total proceeds in relation to the amount, variety, size, grade and class of a

regulated product delivered by the person and to make those payments until the total net proceeds are distributed. Every designation of an agency must be approved in writing by the BC Farm Industry Review Board (BCFIRB).

3. As a result of the agency review process that commenced in 2018, it became apparent to the Commission that its current orders regarding the designation of new agencies, and the review of existing agencies, were deficient. In the Commission's view, the orders then in effect did not clearly articulate the Commission's policy objective of promoting the interests of the industry as a whole through coordinated marketing that will maximize the returns of all producers. Furthermore, it was the Commission's view that the orders then in existence contained too many ambiguities. Consequently, On March 15, 2021, the Commission passed Amending Order 54, which implemented comprehensive changes to the Commission's orders regarding the designation of new agencies, and the review of existing agencies.
4. On March 8, 2022 in response to an inquiry, the Commission informed both Mr. Voth and legal counsel representing Merom Holdings Ltd. (though unknown at the time) by email as follows:

An application for prior approval of "any sale of all or a portion of an Agency by way of sale of assets or shares, or a change in the Agency's business plan" is akin to an application for an Agency licence. The Agency licence is property of the Commission. The licence expires annually and has no monetary value recognized by the Commission. In the absence of Commission approval, the licence will terminate on any change to the assets, shares, or change in the business plan that taken together form the entity to which designated Agency status was granted. It is the responsibility of the proposed purchaser to attain the Commission's prior approval.

The proposed purchaser must provide full detailed particulars of the proposed purchase of assets or shares. Furthermore, because a change in ownership may result in a change in the Agency's business plan, the application needs to be accompanied by a detailed business plan meeting all the requirements outlined in Part XIV of the General Orders under subsection 1, Application for Designated Agency Status. Upon receipt of that information, prior approval by the BCFIRB may also be required if Commission approval is granted.

5. On July 18th the Commission received a letter from Natanya E. Garcia of Synergy Business Lawyers LLP. The letter informed the Commission of the intent to restructure Merom Holdings and proposed a new organizational structure of the companies that own the shares of the companies that own Global Greenhouse Produce Inc., a licenced agency of the Commission. The letter further informed that there is no sale of all or any portion of the assets or shares of the agency, and no change to the agency's business plan on file with the Commission.

6. On July 27th further correspondence by way of letter to Merom Holdings Ltd. reiterated the information provide on March 8th and further advised that it will be incumbent on your client to provide whatever materials it thinks would be appropriate to communicate a detailed business plan meeting all the requirements outlines in Part XIV of the General Order that are applicable to an application for designated agency status.
7. On August 3rd the Commission received a submission in response to the July 27th request.
8. On August 4th a panel was struck by the Commission to address the inquiry.
9. On August 8th the panel met to review the materials before them and address administrative matters concerning the composition of the panel.
10. On August 8th Global Produce Inc., Merom Farms Ltd., and Krahnlic Ventures Inc. were informed by letter as follows:

An application for prior approval of "any sale of all or a portion of an agency by way of sale of assets or shares, or a change in the Agency's business plan" is akin to an application for an agency licence. The agency licence is property of the Commission. The licence expires annually and has no monetary value recognized by the Commission. In the absence of Commission approval, the licence will terminate on any change to the assets, shares, or change in the business plan that taken together form the entity to which designated agency status was granted. It is the responsibility of the proposed purchaser to attain the Commission's prior approval.

Because a change in ownership may result in a change in the agency's business plan, the application needs to be accompanied by a detailed business plan meeting all the requirements outlined in Part XIV of the General Orders under subsection 1, Application for Designated Agency Status. The Commission Panel is to conduct a proper review to make a prudent decision on the agency licence.

On August 5th Chair Debbie Etsell received a letter of concern regarding the composition of the panel members that have been designated to address these matters. A copy of this letter is attached. The Commission is now seeking submissions from Global and each shareholder on if you have any concerns with any of these panel appointments.

We respectfully request your submissions in writing by 5PM today. If you need additional time to make your submission, please let me know as soon as possible.

11. On August 19th the panel provided the following answers by letter to Global Produce Inc., Merom Farms Ltd., and Krahnic Ventures Inc.:

The panel members have reviewed the submissions on panel composition and have determined to proceed with the current panel.

The panel confirms that approval is not required for restructuring of an operating company that holds the producer licence, or parent company which wholly owns the operating company, and that the subsisting producer licence will continue to be valid upon implementation of the new shareholder structure.

The panel has not identified any outstanding qualifications and therefore approves the reallocation of greenhouse production allocation to Merom Farms Ltd. under the new shareholder structure of Merom Holdings.

The panel will defer the consideration of the Agency designation licensed to Global Greenhouse until the panel can meet and deliberate.

The panel informs Merom Farms Ltd. (Merom) that assurances cannot be given with regards to the Agency designation licensed to Global Greenhouse. The ability of a licensed stakeholder to carry on business in a regulated industry is constantly subject to the regulatory regime and decisions that may be made by the regulator. The panel will ensure procedural fairness in the decision-making process and include an opportunity for Merom and Global Greenhouse to be heard prior to deciding on the Agency designation.

12. On September 13th the panel met to review all correspondence, and the most current business plan submission. Merom Farms and both the Voth and Sandhu families were invited to present the business plan to the panel and answer panel questions.

13. On September 16th the panel chair wrote to Global Produce Inc., Merom Farms Ltd., and Krahnic Ventures Inc. as follows:

On August 19th you were informed by letter that the panel would defer the consideration of the Agency designation licensed to Global Produce Ltd. (Global) until the panel could meet and deliberate.

On September 9th Merom Holdings Ltd. was informed that a meeting of the panel would take place on Tuesday September 13th. Subsequently, representatives of Merom Holdings Ltd and the Sandhu family were invited to attend the meeting and present to the panel.

The question before the panel is to grant or deny prior approval on the sale of all or a portion of an Agency by way of a sale of assets or shares, or a change in the Agency's business plan. As you know, absent such prior approval, the Agency designation in question would terminate.

...

The panel has reviewed the information contained in the July 27th submission, and it has considered the presentation made by representatives attending the September 13th meeting. The panel has determined that the information provided to date cannot provide a sufficient basis for the panel to prior approve the transaction. In particular, the panel is not satisfied that the information contained in the submission and the presentation by representatives attending the September 13th panel meeting articulated a detailed business plan for Global. In short, while it has been said that the proposed transaction will not change the business plan, the panel is left wondering what Global's business plan actually is. A detailed business plan must provide information meeting all the requirements outlined in Part XIV of the General Orders under subsection 1, Application for Designated Agency Status.

Global Produce Inc. is (or should be) well aware of Amending Order No. 54 that came into effect March 15th, 2021. This Order amended PART XIV Designated Agencies and the section 1 requirements that are to be met on application for designated Agency status.

The panel has decided to provide one further opportunity for Global to provide a detailed business plan. If nothing further is received by September 30th, 2022, then the panel has decided that prior approval will not be granted, without further order. In that event, if the parties chose to follow through with the transaction to restructure Merom Holdings by a company jointly owned by the Sandhu Family and the Voth Family, the Global Produce Inc. Agency designation will terminate. Termination of the licence would be effective at the end of the 2022 Crop Year, once the 2022 crop is fully sold and the Agency's contractual obligations for this year's crop are completed. In addition to the termination of the Agency licence, and in accordance with Part VII section 16 of the General Order, all grower marketing agreements (GMA)s become null and void and will terminate. At this time there are no valid GMAs with Global on record with the Commission. On the other hand, if a detailed business plan is provided on or prior to September 30th, 2022, the panel will meet again to deliberate on the issues, including any issues that might arise as a result of the general review of the Global Produce Inc. Agency and its business plan, that has been triggered by the application for prior approval.

14. On September 22nd a submission in response to the September 16th request titled 'Global Greenhouse Produce Inc. - Transaction Summary and Business Plan' was received.

15. On September 29th the panel met to discuss and deliberate on the issues.
16. On September 30th the panel chair wrote to Global Produce Inc., Merom Farms Ltd., and Krahnlic Ventures Inc. as follows:

RE: Share Transfer, Global Greenhouse Produce Inc. Agency Licence

...

On September 16th the BCVMC Chair informed you by letter that the panel has decided to provide Global Greenhouse Produce Inc. (Global) a further opportunity to provide a detailed business plan to support your prior approval request. You were notified that if no further information was received by September 30th, 2022, then it would be the panel's decision that prior approval not be granted, without further order. On the other hand, if a detailed business plan is provided on, or prior to, September 30th, 2022, the panel will meet again to deliberate on the issues, including any issues that might arise as a result of the general review of the Global Agency and its business plan, that has been triggered by your prior approval application.

Additional materials were received on September 22nd on your behalf from Nevin Fishman of Branch MacMaster LLP. Furthermore, in response to our inquiry on September 23rd, it is our understanding that Merom Holdings and its counsel Branch MacMaster are authorized to speak on behalf of Global and that "NewCo" means the BC Incorporated company formed to purchase the shares of Merom Holdings.

Application for Prior Approval of the Share Transfer

The panel has now met to discuss and deliberate on the issues. On review of all the materials that have been provided, the panel is satisfied that there are no concerns arising from this share transfer. Therefore, the share transfer is approved.

However, notwithstanding the panel's approval of the share transfer, the panel's review of the business plan has given rise to concerns about the agency licence that has been issued to Global. Through this process it has come to light that Global is egregiously derelict in fulfilling its agency duties.

Global Greenhouse Produce Inc. (Global) Agency Licence

The business plan provided to the Panel indicates that Global has entirely abdicated its responsibilities as an agency to Greenhouse Delight Foods Inc. The agency business plan categorically dismisses the authority and responsibility that have been granted to Global. This is not acceptable. It does not reflect the expectation on how

an agency designated by the Commission is to perform in fulfilling its obligations to the industry.

All regulated product is required to be marketed through the Commission or a designated Agency. Designated Agencies are delegated the function of centralized marketing. On review of the business and marketing plan materials presented to the panel, it is the panel's view that Global is not directly engaged in any marketing at all. Furthermore, the panel questions whether Global is contributing to the centralized marketing of regulated greenhouse vegetables. In disrespect of the regulatory authority the licence holders of the agency have also permitted producers assigned to the agency to operate independently of each other under the guise of an agency.

The panel therefore proposes to cancel Global's agency licence on the basis that it has entirely abdicated its responsibilities as an agency to Greenhouse Delight Foods Inc., unless Global can show cause as to why its licence should not be cancelled.

17. On December 14th a show cause hearing was held. Participants included representatives of Global Greenhouse Produce Inc. (Global), Meron Farms Ltd., and Kranhic Ventures Inc. (SunSelect). The discussion revolved around the following questions asked of Participants:

Do you agree that Global Greenhouse Produce Inc. is not directly engaged in any marketing at all? Provide an explanation on your position.

Do you agree that licence holders of the agency should not permit producers assigned to the agency to operate independently of each other? Provide an explanation on your position.

Do you agree that Global Greenhouse Produce Inc. has abdicated its responsibilities as an agency? Provide an explanation on your position.

Do you believe that Global Greenhouse Produce Inc. is contributing to the centralized marketing of regulated greenhouse vegetables? Provide an explanation on your position.

18. At the show cause hearing, counsel for Global made a number of arguments including those summarized below:

18.1. Global is engaged in marketing both directly and through its contractor / agent Greenhouse Delight Foods Inc.

18.2. Global does not agree that centralized marketing is a valid requirement or policy objective.

18.3. An agency designation can only be cancelled by the Commission where the agency has violated a provision of the Act, the Regulation, or the Commission's General Order, and only where the agency has been given notice of breach and an opportunity to come into compliance. In other words, Global asserts that it has a substantive right to its agency licence (i.e., not merely procedural rights) that may be asserted against the Commission, and that agency licenses cannot be cancelled where there is no "violation" of a provision, even if the Commission is of the view that agency status does not serve, or no longer serves, the Commission's policy objectives.

19. Finally, Global appeared to assert that it is incumbent on the Commission to develop, or to assist with the development of, a business plan for the agency that would promote the Commission's policy objectives (though it denied that centralized marketing is a valid requirement or policy objective).

20. On December 19th and 20th the panel met to deliberate. Subsequent these meetings a decision was issued on December 20th with comprehensive written reasons to follow in due course.

Analysis

21. The designation of an agency is not a routine matter akin to the issuance of a producer licence. Unlike some other regulated commodities, the vegetable industry is not supply managed. Centralized, coordinated marketing through agencies is the primary mechanism by which the Commission maintains orderly marketing, promotes the development of the industry, and ensures that producer returns are maximized. They play a critical role in the regulated vegetable marketing system, one that they could not perform without the authority derived from the NPMA. Consequently, agencies are subject to Commission and BCFIRB oversight for the aspects of their business that deal with production, transportation, packing, storage, and marketing of regulated crops. The decision to grant or refuse agency status is a matter of fundamental marketing policy.

22. In its January 31, 2017 Supervisory Decision, the BCFIRB said:

7. The specific rules governing agencies differ depending on the needs of the particular regulated industry. What is common across all regulated industries, however, is the agencies are licensed entities whose purpose is to market regulated product on behalf of registered producers. Agencies are licensees whose regulatory role is to harness the collective power of producers to enhance market access for regulated products. They minimize burdens on each producer regarding finding outlets for sales of their delivery

allocation (a mechanism for producers to share market access). Agencies also store, ship, and label product for producers. For consumers, they help ensure a steady supply of BC product by contributing to orderly marketing. In all this, one of their key roles is to grow the industry by looking for new markets. As was noted in the March 31, 2016 Workshop Report that was part of the current process, at p. 4: “Agencies competing for the same buyer with the same product do little, if anything, for Producers or Buyers”. Agencies thus play both a key front line role, and a larger strategic role, in assisting the Commission to regulate, manage and grow the industry in an orderly fashion: see generally January 7, 2013 Supervisory Decision, paras. 34 - 38; see also the Commission’s September 21, 2015 Stakeholder Engagement Discussion Paper, pp. 4 - 6. (emphasis added)

23. Significantly, the BCFIRB’s comments concerning the role of agencies and the undesirability of agencies “competing for the same buyer” reflect an awareness of the natural tension that arises from having multiple agencies. On the one hand, multiple agencies may provide some resiliency and choice for producers. On the other hand, if these agencies are left to their own devices, they might erode producer returns by competing against each other on price in the same market space.

24. And more recently, the BCFIRB made this statement in response to Petitions for a JR review¹:

15. ... agencies are themselves subject to BCFIRB’s supervisory authority. Section 4 of the *Regulations* states: “The Provincial board shall have a general supervision over the operations of all marketing boards, commissions or their designated agencies constituted or authorized under the Act.”

16. Currently, there are ten designated vegetable agencies operating in the province.

17. Agencies are regulated actors operating in a regulated market. Their designation gives them the ability to market regulated product to the exclusion of others. As such, they are subject to the rules and policy judgments of regulators, including policy judgments relating to the appropriate structure of a particular industry in particular circumstances. The BCFIRB has issued Guidelines for Approving the Appointment of Designation Agencies for the Marketing of Regulated Products by Marketing Boards and Commissions which states:

The conferring of an agency designation is a privilege under the Natural Products Marketing (BC) Act. It is not transferable and is not approved in

¹ BCFIRB’s Response to Petition in the MPL JR and Prokam JR, filed November 24, 2022.

perpetuity. The designation of an agency may be reviewed by a marketing board or commission from time to time and upon any material changes in the conditions giving rise to the initial approval.

25. In summary, all regulated product is required to be marketed through the Commission or by a designated agency (agent) of the Commission. Agencies have certain privileges that are not part of a private business environment. They are delegated certain legislated authorities and, with some limited exceptions, only agencies can market regulated product. Marketing specific crop types to specific markets enables several agencies to operate successfully even though they may compete directly with one another. The regulatory environment also permits cooperation amongst agencies in the interest of what is best for their businesses.
26. Market-based rational supports that producers are best represented to maximize returns when the designated agent is the marketer of the regulated product and not reliant on wholesalers to act on this delegated authority on behalf of the agent. It is fundamental marketing policy that the balance of duties and responsibilities that are acted on to achieve centralized, coordinated marketing reside with the licence holder, the agent entrusted with the authority and accountable to the Commission. This authority cannot be sub-delegated unless permitted by the Commission.
27. The designation of an agency should only follow where the panel is satisfied that the presence of an agency will not result in price erosion, lead to market confusion or otherwise undermine orderly marketing. Furthermore, an agency licence exists so long as it exists to further the policy objectives of the Commission. The panel must be satisfied that the presence of an agency will enhance orderly marketing, promote the development of the industry, and ensure that producer returns are maximized. There is a high threshold that must be satisfied before agency status will be granted.
28. These considerations are expressed in more detail in Part XIV of the Commission's General Order. The relevant provisions are as follows:
 1. (3) Applications for designated Agency status must include a detailed business plan addressing:
 - (a) the structure of the proposed Agency, including:
 - (i) the identities of the principals of the proposed Agency;
 - (ii) the identities of all shareholders and other Persons with a direct or indirect financial interest in the proposed Agency;
 - and

- (iii) particulars of the management and staff of the proposed Agency, including their marketing experience and skill level.
- (b) commencement and operational capacity, including:
 - (i) the date that the applicant proposes to commence operations;
 - (ii) particulars of the facilities from which the proposed Agency will operate;
 - (iii) particulars of any other facilities that may be owned or operated by the proposed Agency including grading, packing, warehouse and storage facilities; and
 - (iv) particulars of the applicant's capacity to market regulated product, the methods by which this is to be achieved, and the applicant's short and long-term objectives in relation thereto;
- (c) access to regulated product, including:
 - (i) particulars of how the applicant intends to secure arrangements with Producers who will ship regulated product to the proposed Agency, and the dates on which such arrangements are expected to be secured;
 - (ii) a copy of the applicant's proposed GMA in a form that complies with the minimum standards established by the Commission;
 - (iii) copies of all letters of commitment obtained from arms-length Producers who wish to market regulated product through the proposed Agency; and
 - (iv) the amount of existing storage crop delivery allocation (tons) and/or greenhouse production allocation (m²) that is proposed to be transferred to the proposed Agency;
- (d) marketing strategy and framework, including:
 - (i) particulars of the applicant's target market, including the type of regulated product intended to be marketed, the total amount of regulated product to be marketed by the applicant, and the total amount of regulated product to be

- received from each Producer who will market through the proposed Agency;
- (ii) the applicant's assessment of market supply and demand, including an assessment of market supply and demand in areas where the proposed Agency intends to market regulated product;
 - (iii) particulars of the applicant's intended market placement of delivery and production allocation by target market category as defined by the Commission;
 - (iv) particulars of the applicant's intended application of delivery and production allocation towards the domestic (BC) market and towards the export (external to BC) markets; and
 - (v) particulars of the applicant's intended volumes of sales packed for end use and in bulk for further processing and/or repacking;
 - (vi) the names and contact information of proposed customers of the proposed Agency; and
 - (vii) copies of all letters of commitment obtained from proposed customers of the proposed Agency;
 - (viii) particulars of any commercial agreements with third parties that may assist with transportation, grading, packaging, storage or marketing on behalf of the proposed Agency;
- (e) operational procedures, including:
- (i) particulars of quality assurance procedures relating to:
 - A. food safety, including an acceptable trace-back and recall system;
 - B. grade compliance;
 - C. handling and distribution;
 - D. record keeping; and
 - E. any label or product identification system;
 - (ii) particulars of the manner in which shared market access will be managed among the proposed Agency's Producers,

including the method by which proceeds from sales would be distributed.

(iii) particulars of the manner in which shipments of regulated storage crops will be monitored in relation to delivery allocation, and the proposed Agency's production plan;

(f) financial viability and risk management, including:

(i) an asset statement;

(ii) a breakdown of all disbursements, expenses and charges to be deducted from sales proceeds on payment to Producers;

(iii) forecasts of anticipated earnings, cash flow and sales;

(iv) copies of all letters of reference obtained from financial institutions supporting the proposed Agency;

(v) a copy of a valid business licence;

(vi) a copy of a performance bond, letter or credit, or particulars of a contingency plan addressing how Producers will be paid for regulated product in the event that the Agency encounters financial difficulties;

(vii) proof of product, third party, and director liability insurance;

(g) advancement of Producer and industry interests, including:

(i) particulars of how the proposed Agency would prioritize the marketing of regulated product;

(ii) particulars of how the proposed Agency would encourage collaboration in Agency decision-making with their Producers regarding the production, transportation, packaging, storage, and marketing of regulated vegetables; and

(iii) details on how the proposed Agency would comply with all applicable minimum pricing orders in relation to sales occurring both within and outside the Province.

(4) Applications for designated Agency status must also:

(a) demonstrate to the satisfaction of the Commission that the applicant's primary business objective is the marketing of regulated

product in a manner that benefits the Commission and the British Columbia industry as a whole;

- (b) demonstrate to the satisfaction of the Commission that the applicant has knowledge and understanding of the regulatory requirements and limitations imposed on Agencies under the Commission's General Orders;
- (c) demonstrate to the satisfaction of the Commission that the applicant has knowledge and understanding of the market access system established under the Commission's General Orders for all applicable regulated products;
- (d) demonstrate to the satisfaction of the Commission that the applicant has sufficient knowledge and ability to service markets in British Columbia and Canada;
- (e) demonstrate to the satisfaction of the Commission that the applicant has the capacity to directly market regulated product without excessive reliance on wholesalers, or third-party grading, packing, warehouse and storage facilities, or that the applicant will otherwise make arrangements with such third parties in a manner that:
 - (i) would retain the proposed Agency's control throughout the marketing channel and permit the proposed Agency to be responsive to the changing needs and desires of the end-user;
 - (ii) would not expose the industry to unnecessary food safety risk;
 - (iii) would not be disruptive to orderly marketing;
- (f) demonstrate to the satisfaction of the Commission that the applicant has taken all reasonable steps to meet with, and seek the cooperation of, existing Agencies, and provide particulars of the result of such initiatives.
- (g) provide a rationale in support of the application with specific reference to the following:
 - (i) existing and anticipated requirements of the market that could be serviced by the proposed Agency;
 - (ii) how the proposed Agency would benefit producers shipping through that Agency;

- (iii) how the proposed Agency would benefit the industry as a whole; and
- (iv) the impact that the proposed Agency would have on existing designated Agencies.

...

Review of Existing Agencies

3. (1) The Commission may from time to time review existing Agencies and assess whether designated Agency status should be maintained, suspended, made subject to terms and conditions, or revoked.
- (2) After providing an existing designated Agency with an opportunity to be heard, the Commission may suspend, impose terms or conditions with respect to, or revoke, the existing Agency's designated Agency status where it is not satisfied with respect to any of the following:
 - (a) there is a market requirement for the Agency, and the Agency benefits the industry as a whole having regard to the interests of all producers, including those marketing through other Agencies;
 - (b) it is in the interests of the industry for regulated product to be marketed by the Agency;
 - (c) the presence of the Agency is not disruptive to orderly marketing and does not result in increased competition among Agencies on price, which may have a detrimental effect on producer returns;
 - (d) the Agency has demonstrated an understanding of the regulatory system and has adequately expressed its intention to follow Commission Orders and the enabling legislation and regulations;
 - (e) there is evidence-based demand for the specific product(s), grouped by end use customer, that are marketed by the Agency, which demand is not satisfied by other existing Agencies;
 - (f) there is evidence-based support from multiple licensed Commercial Producers, who are at arms-length from each other, and who intend to market regulated product through the proposed Agency;
 - (g) the primary responsibility for marketing regulated product rests with the Agency, rather than wholesalers who may market regulated product on behalf of the Agency;

- (h) the Agency complies with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the Province;
- (i) the Agency does not have a detrimental effect on the delivery allocation and production allocation of existing producers not represented by the Agency; and
- (j) the Agency has the knowledge, capacity and ability to operate effectively as an Agency;

29. The panel has reviewed all submissions from Global Produce Inc. (Global), Merom Farms Ltd., and Krahnich Ventures Inc., and proceedings of the show cause hearing.

30. At the outset, the panel notes that Global had admitted at the show-cause hearing that it did not seek and obtain the Commission's approval to operate in whole or in part through the sub-agency, Greenhouse Delight Foods Inc., as required under the General Order.

31. Further, the panel does not agree with Global's submission that centralized marketing is not a valid requirement or policy objective. On the contrary, the very fact that such a submission was made is deeply troubling. Centralized, coordinated marketing through designated agencies, with a view to maximizing producer returns, is the very basis upon which the entire regulatory system rests. That a designated agency of the Commission would profess not to know this is itself cause to doubt whether agency status should be maintained.

32. Finally, the panel rejects Global's submission that agency status may only be cancelled where there is some violation of the Act, the Regulation or the General Order. Agency status is conferred, withheld or canceled as a means of furthering the Commission's policy objectives. No "violation" is necessary to cancel an agency licence where the agency no longer furthers the Commission's policy objectives having regard to the considerations specified in Part XIV of the General Order. In any event, a right to procedural fairness must not be conflated with a right to a licence. It has been widely recognized that industry participants do not have a commercial "right" to participate in a regulated industry which may be asserted against the regulators themselves. See: *Sanders v. British Columbia (Milk Board)*, [1991] B.C.J. No. 236 (C.A.).

33. At this time the panel does not have sufficient information to determine that the designated agency status should be maintained. However, given the twenty-year history of Global as a licensed agency of the Commission, the panel is prepared to give Global one final opportunity to demonstrate to the satisfaction of the Commission that preservation of its designated agency status is warranted having regard to all of the considerations specified in Part XIV of

the Commission's General Order, including section 1(4) and the polycentric considerations set out in section 3 (Review of Existing Agencies) thereof. In that regard, it is not the panel's role or responsibility to develop, or to assist with the development of, a business plan for the agency that would promote the Commission's policy objectives. That burden resides with the agency alone. For the reasons that follow, effective immediately, the panel is imposing conditions on Global's agency licence.

Lack of Evidence, Clarity, Particulars

34. On review of the detailed business plan and all submissions made to the panel, it is unclear on what signed agreements, if any, are currently in place between the Global agency and Global producers, competing agencies, Greenhouse Delight Foods Inc., and wholesalers. The panel still does not understand what function the Global agency serves that is consistent with the policy objectives of the Commission. Interpretation of provisions 3.9 and 3.10 in the 2007 shareholder agreement suggests that the agency serves no other purpose than permitting the two shareholders of the agency to act independently of each other and permit each shareholder to market their own product as they wish, and product from any other producer that joins the agency and chooses to be represented by that shareholder. An agency is a single licence that is delegated the function of centralized co-ordinated marketing. There can only be one selling desk that represents all producers who market through that agency.
35. Grower marketing agreements (GMA)s are a requirement under the General Orders.

Part I INTRODUCTION, par. 5:

Interpretation

"Grower Marketing Agreement" or "Producer Marketing Agreement" or "Sales and Marketing Agreement" means an agreement between a Producer and an Agency which sets out the terms and conditions upon which the Regulated Product shall be provided by the Producer and sold by the Agency.

Part V AGENCIES:

10. An agreement between an Agency and a Producer, which addresses terms and conditions upon which the Regulated Product shall be provided by the Producer and sold by the Agency (e.g., a Grower Marketing Agreement), shall be reduced to writing and is to be consistent with Commission policy.

Part VII AGENCY RESPONSIBILITIES

9. Each Agency shall file with the Commission all signed Grower Marketing Agreements with all Producers of Regulated Product shipped through that Agency by June 1st of each year.

36. The Commission has no valid and subsisting GMAs on file for any of Global's producers. Global management is aware of this requirement but remains non-compliant.
37. Regarding the duties that Greenhouse Delight Foods Inc. has been sub-delegated, it is unclear what the extent of these duties are since no document has been submitted that outlines the terms and conditions of this relationship. Furthermore, the current and proposed organizational structure diagrams don't included Greenhouse Delight Foods Inc. as part of the structure even though "the Agency engages Greenhouse Delight to execute and support all sales and marketing business operation services of the Agency...." (ref. Global Greenhouse – Detailed Business Plan). On reading the business plan, Greenhouse Delight Foods Inc. appears to perform all or most of the duties of the agency for the shareholder Merom Farms. It is acting as a sub-agent of the designated agency that has not been appointed or designated by the Commission. Furthermore, when answering section1 (3)(d)(viii) of Part XIV of the General Order, Global did not mention anything about Greenhouse Delight Foods Inc. This is a significant oversight that should have been presented upfront to the Panel.
38. Global has also not provided any particulars in its application for agency status that address Part XIV Section 1 (4) of the General Order.

Reliance on Wholesalers, Other Agencies

39. As noted in paragraph 26, it is fundamental marketing policy that the balance of duties and responsibilities that are acted on to achieve centralized, coordinated marketing reside with the licence holder, the agent entrusted with the authority and accountable to the Commission.
40. Paragraph 1(4)(e) of Part XIV of the Commission's General order provides as follows:

Applications for designated Agency status must also:

- (e) demonstrate to the satisfaction of the Commission that the applicant has the capacity to directly market regulated product without excessive reliance on wholesalers, or third-party grading, packing, warehouse and storage facilities, or that the applicant will otherwise make arrangements with such third parties in a manner that:
 - (i) would retain the proposed Agency's control throughout the marketing channel and permit the proposed Agency to be responsive to the changing needs and desires of the end-user;
 - (ii) would not expose the industry to unnecessary food safety risk;

- (iii) would not be disruptive to orderly marketing;

All written and verbal submissions through the course of this agency review infer that Global, through the sub-agency Greenhouse Delight Foods Inc., relies extensively on wholesalers to market the regulated product on behalf of the agency. From a policy perspective, the maximization of producer returns is enhanced by the minimization of reliance on wholesalers. The Commission expects that the agency should be primarily responsible for marketing regulated product “without excessive reliance on wholesalers”. Whenever an agency relies on wholesalers to market regulated product, not only additional costs and inefficiencies are introduced, but the potential for conflict due to wholesaler goals and priorities and the propensity to withhold transparency in market information to maintain its power in its relationship with its supplier (agency) can lead to market confusion or otherwise undermine orderly marketing. Wholesalers are not subject to the same kind of stringent oversight and responsibility to the regulated industry that is applicable to agencies. When a wholesaler performs the functions that are expected to be performed by an agency, this regulatory oversight and duty is compromised.

The expressed reliance on sales to other agencies is also of concern. If the bulk of sales are made to wholesalers and agencies, the panel questions what function the Global agency serves other than relying on the efforts of competing agencies and wholesalers to drive sales and grow the market. Furthermore, multiple agencies competing with multiple wholesalers with the same product promotes market confusion and excessive competition amongst buyers and sellers, ultimately leading to lower prices for all producers and the disorderly marketing of regulated vegetables.

41. If Global desires to continue to be licensed as an agency, it will have to provide evidence that the balance of duties and responsibilities that are acted on to achieve centralized, coordinated marketing reside with the licence holder, the agent entrusted with the authority and accountable to the Commission.

Marketing Strategy and Framework

42. It is somewhat concerning when an agency answers General Order Part XIV Section 1(3)(d)(iii) with the statement “Greenhouse Peppers represent 100% of the Agency’s target market.” (ref. Global Greenhouse – Detailed Business Plan). It is the panel’s understanding that greenhouse peppers represents 100% of the agency’s product. A target market is identified as the most likely buyers of a company’s product or service. Segmentation, targeting, and positioning are activities that form a targeting strategy. None of the information provided under section 1(3)(d) ‘marketing strategy and framework’ provides evidence that Global understands its target market, or has a plan to achieve its short-term and long-term objectives that were provide under section 1(3)(b)(iv) when answering what are the

particulars of the applicant's capacity to market regulated product. The answers are generally lacking substance on detail that a marketer should know and be able to convey in a concise manner. Global states that "over the longer-term we would like to expand our direct-to-relationships, with the goal of solidifying one national contract with a large retailer in 2023". Global had 20 years to build marketing capacity and a product mix and service offering that would satisfy the needs of a large national retail buyer. The panel questions what has changed that would now put Global in a position that it can successfully acquire a large national retailer account in 2023?

43. Furthermore, an answer to part XIV section 1(3)(d)(ii) of the General Order was conveniently absent from the submission.

(ii) the applicant's assessment of market supply and demand, including an assessment of market supply and demand in areas where the proposed Agency intends to market regulated product

44. Global's marketing plan is vague and lacks substance. In fact, it is unclear that either Global or its sub-agent Greenhouse Delight Foods Inc. do any marketing at all. There is no real detail provided about its understanding of its target market and how it intends to grow its business. There is nothing in the application that would support the notion that it is now better positioned to service retailers, and in relation to acquiring the business of an identified national retail chain, is better positioned than existing agencies to do so. What is known is that Global is capable of selling quality greenhouse bell peppers to a customer base consisting primarily of wholesalers and other BC agencies. This is problematic for the reasons discussed above (par. 39-41, Reliance on Wholesalers, Other Agencies). There must be an evidence-based marketing plan demonstrating that the continuation of this agency would benefit the industry as a whole. Global needs to communicate how its dependence on selling product to wholesalers and agencies benefit all producers, the industry, consumers and the public. Based on the submissions to date, this evidence is lacking.

Orderly Marketing and Policy Objectives of the Commission

45. Agencies are a matter of fundamental marketing policy. An agency licence exists so long as it exists to further the policy objective of the Commission. On completion of the show cause hearing there is insufficient evidence provided that demonstrates support and ability for Global to operate as an agency in compliance of the policy objective of centralized coordinated orderly marketing. In fact, the panel has been led to understand that Global does not recognize centralized orderly marketing. Global's position is that 'centralized marketing' is not a concept that exists in the legislative framework and that a lack of 'centralized marketing' is not a proper reason for the Commission to cancel an agency licence.

46. Global also expressed that (a) as a licensed agency, Global has the "right" to market regulated product that cannot be cancelled by the Commission unless global has breached some

provision of the Act, the Regulations or the Commission's orders: and (b) as a matter of procedural fairness, Global must be provided with particulars of the specific provisions alleged to have been breached.

47. The Commission has expressed concerns that Global has abdicated its responsibilities as an agency and not fulfilled its duties to satisfy the function of centralized marketing. The Commission may cancel an agency designation for failure to comply with a policy or if, in the opinion of the Commission, the actions of a license holder are detrimental to the best interests of the industry. The onus is on Global to provide an application for agency status that demonstrates commitment to centralized marketing and addresses the provisions under Part XIV Section 1 (4) of the General Orders.

Decision

48. What follows is the panel's decision following the show cause hearing that was held on December 14, 2022.
49. Effective immediately, the Commission is imposing the subsequent condition on Global's agency licence:
50. On or before **February 28, 2023**, Global is to submit a supplementary business plan,
- a) Addressing in detail each of the factors and considerations set out in Sections 1 (4) (a), (b), (c), (d), (e), (f), and (g) of PART XIV of the Consolidated General Orders.
 - b) Providing particulars on the marketing strategy and framework of Section 1 (3) (d) of Part XIV of the Consolidated General Orders regarding the specific group of customers (target market) at which the business focusses its marketing efforts and resources. Identify what proportion (percentage and volume) is sold to retail, wholesale, food service, and what proportion of sales is sold in bulk.
 - c) That includes all signed agreements, including current grower marketing agreements (GMA).
51. With respect to this supplementary business plan, the Commission asks that Global provide further commentary regarding the following:
- 51.1. The position expressed by it at the show cause hearing regarding centralized, coordinated, orderly marketing, and the role that agencies play with respect to that objective (if any).

51.2. The provisions 3.9 & 3.10 in the shareholder agreement dated August 16, 2007 identified and discussed at the show cause hearing and what steps, if any, that Global proposes to take in relation to those provisions. These provisions are provided below:

Agreement dated August 16,2007
SUNSELECT PRODUCE (HOLDINGS) INC
MEROM FARMS LTD.
GLOBAL GREENHOUSE PRODUCE INC.

3.9 The Shareholders acknowledge and agree that the Company shall not be responsible for marketing and sale of vegetable product produced by or sold by each of the Shareholders but that each Shareholder shall be wholly responsible for the marketing and sale of vegetable produced by them and all financial matters associated therewith, provided, however, such marketing and sales shall be in compliance with the General Orders and shall utilize the Company as the Agency for the purposes of such sales and marketing as the formal Agency of records for purposes of the General Orders and the Commission.

3.10 The Shareholders shall cause each of the entities that own greenhouses which utilizes the Company as their agency to provide to the Company, in a timely manner, all of this information required by the Company to meet its reporting obligations to the Commission under the General Orders.

51.3. Specifics on Global's dealings with an unapproved sub-agency, Greenhouse Delight Foods Inc.

52. Global should give careful consideration in its submissions that an agency licence exists so long as it exists to further the policy objectives of the Commission. Agencies are subject to the rules and policy judgements of the regulator. Once the submissions are received, the Commission will make a final determination on the Global agency licence.

53. The agency licence expires annually. The current licence expires on March 31, 2023. Global must submit an agency application to renew its licence as part of the annual administrative process managed by the Commission office. The agency application for renewal is independent of this review process.

54. Given that the Commission released its decision on December 20, 2022, prior to the issuance of these reasons, it is the Commission's position that the limitation period for filing an appeal to the BCFIRB should not commence until these written reasons are provided.



Debbie Etsell, Chair