



11 July 2014

Mr. Paul Halucha
Director-General, Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor, East Tower
Ottawa, Ontario K1A 0H5
By email: insolvency-insolvabilite@ic.gc.ca

Dear Mr. Halucha,

EarthFresh Farms would like to thank Industry Canada for the opportunity to comment on the consultations for the statutory review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act.

EarthFresh is one of Canada's largest fresh potato distributors. As a company working in the dynamic fresh produce industry, we believe that the results of the Minister for Industry's report will have important effects for us as a company and for ensuring the financial health of our industry overall.

EarthFresh, and others in our industry, operate in a volatile financial environment. Low profit margins are the norm for producers, normally between 3 and 5 percent of sales, and we rely on a few buyers to purchase the majority of our product, making their solvency a key factor in our own survival.

Furthermore, the perishable nature of our product contributes to our vulnerability. Fresh produce has a shelf life measured in hours and unpaid shipments cannot be repossessed and resold. While we take due diligence seriously and reduce our risks wherever possible, it is not possible to eliminate them entirely. Compared to other industries, fruit and vegetable companies are hit particularly hard when a buyer declares bankruptcy because repossession of our product is impossible. A single bankruptcy can devastate us and many of the businesses connected to us.

In the U.S., produce shippers are protected by a statutory deemed trust established through the Perishable Agricultural Commodities Act (PACA). The PACA trust helps suppliers of perishable products ensure prompt payment by buyers by making suppliers' interests in a debtor's assets derived directly from the sale of produce superior to those of other creditors, including secured creditors ("super priority"). Those assets available to trust creditors would be limited specifically to produce accounts receivable, and any cash and inventory from the sale of the produce.

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Our company believes that the most effective way to provide protection to produce sellers is through the creation of a statutory deemed trust to ensure that bankruptcy assets are secure and accessible. Our experience with PACA and with bankruptcies in our sector in Canada has convinced us of this.

We urge the Government of Canada to amend the Bankruptcy and Insolvency Act in order to establish a deemed trust mechanism in order to provide transparency and security to the buyers and sellers of fresh produce. It is the only option that guarantees access to all suppliers, and does not require government funding or administration. We also understand that the Canadian Horticultural Council, the Fruit and Vegetable Dispute Resolution Corporation and the Canadian Produce Marketing Association are preparing a larger submission on behalf of the industry and we support the principles of that submission.

Thank you for your consideration.

Sincerely,

Tom Hughes
President
EarthFresh

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