



PROPOSED GROCERY CODE OF CONDUCT

MAY 2, 2023 WEBINAR TO PRESENT THE PROPOSED GROCERY CODE OF CONDUCT

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PURPOSE AND OBJECTIVES

- PURPOSE OF THE WEBINAR: To present the proposed Grocery Industry Code of Conduct (Code)
- OBJECTIVES:
 - To develop a general awareness and understanding of the proposed Code
 - To develop a general understanding of the consultation process and how industry stakeholders can participate in that process
 - To explain the steps that will be taken to finalize the Code

INTRODUCTION

- September 2021 the Steering Committee is formed and begins work
- Once the outline of the code was prepared, the Steering Committee invited a group of industry representatives to dig into the details
- Lots of dedication by all the stakeholders along the supply chain, from growers through processors and distributors, to retailers - all working collaboratively and constructively

STEERING COMMITTEE COMPOSITION

Manufacturer



Multistakeholder



Retailer



Agricultural



STEERING COMMITTEE MEMBERS – ASSOCIATION CEOs

- Denise Allen- Food Producers of Canada
- Diane J. Brisebois- Retail Council of Canada –*Co-Chair*
- Mathieu Frigon- Dairy Processors Association of Canada
- Michael Graydon- Food Health & Consumer Products –*Co-Chair*
- Rebecca Lee- Fruit and Vegetable Growers of Canada
- Ron Lemaire- Canadian Produce Marketing Association
- Stéphanie Levasseur – Union des producteurs agricoles du Québec
- Sylvie Cloutier - Conseil de la transformation alimentaire du Québec
- Scott Ross - Canadian Federation of Agriculture
- Gary Sands- Canadian Federation of Independent Grocers

2022

- Consulted several model Codes – Australia, UK, Payments Code (Canada)
- The former UK code adjudicator was retained to provide input.
- A large cross-industry working group brought on-the-ground experience and provided insights – considering the unique nature of the industry in Canada, the distinctive legislative framework, and elements advanced such as reciprocity.
- A subset of the cross-industry working group worked out the trade rule provisions.
- Steering Committee consulted widely with its own member Boards and/or working groups.
- In tandem with the above, the Steering Committee began its work on the development of a dispute resolution mechanism, an adjudication process, mediation and arbitration models, enforcement mechanisms, and organizational structure

THE STEERING COMMITTEE HAS ESTABLISHED THE FOLLOWING PROPOSED FRAMEWORK:

- ✓ Single - National Code of Conduct
- ✓ Inclusive and reciprocal (supplier / retailer / primary processor)
- ✓ “Mandatory” participation
- ✓ Effective adjudication / dispute process
- ✓ Principle Based Code

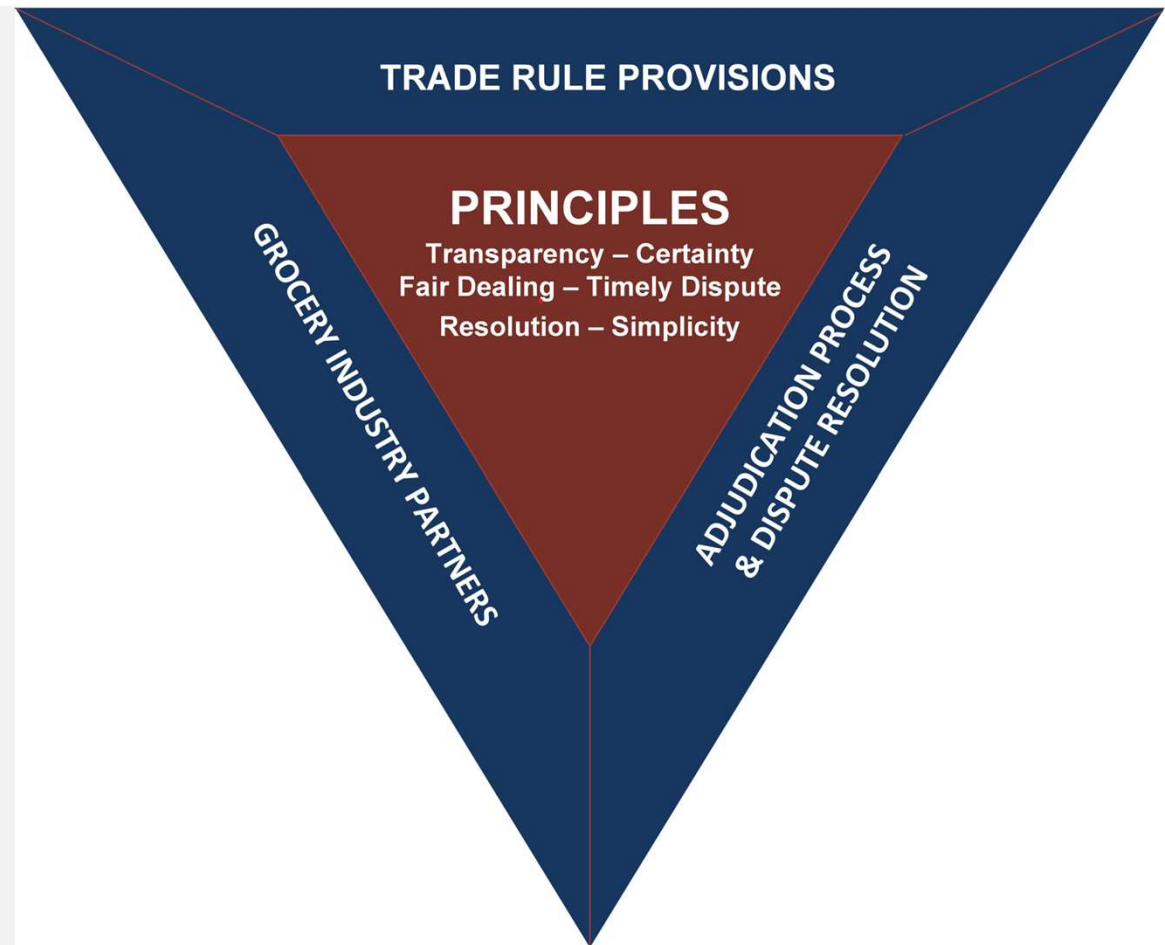


CODE OF CONDUCT – INDUSTRY SUB-WORKING GROUP

- Doug Nathanson – Chief Development Officer, Sobeys Inc.
- Errol Cerit – SVP, FHCP
- Giancarlo Trimarchi – President, Vince's Market
- Luc Prevost – EVP Sales & Marketing, Vegpro International Inc.
- Mark Taylor- President/ CEO, Lactalis Canada
- Patrice Léger Bourgoïn – General Manager, APMQ
- Serge Boulanger – SVP Procurement, Metro Inc.
- Ted Lawson – Chief Commercial Officer, Nortera Foods
(formerly Bonduelle)
- James Crosby – *Crosby Mollases Company*

THE CODE IS MORE THAN A SINGULAR DOCUMENT

ELEMENTS
OF THE
CODE OF
CONDUCT



PROPOSED CODE PROVISIONS – HOW WE GOT TO WHERE WE LANDED

Framework for Code Provision Design:

- Code creation team comprised of 10 associations
- Negotiated outcome; retailers and suppliers
- Non-prescriptive code provisions
- Pass the SME test
- Not designed to: prohibit policies, guarantee stock/shelf, level scale / buying power, prevent tough negotiations

Captured key issues in Canada, while leveraging code solutions globally

GENERAL OVERVIEW OF PROPOSED CODE PROVISIONS



PROPOSED CODE PROVISIONS – WHERE WE LANDED

1. Fair and Ethical Dealing & No Punitive/Vexatious Acts

- Negotiate in Good faith, fair & ethical dealing
- Negotiate and conclude agreements through MUTUAL consent
- Parties to the Code may not alter contracts unilaterally
- Don't be punitive or vexatious. No reprisals.

PROPOSED CODE PROVISIONS – WHERE WE LANDED

2. Commercial Agreements

- Strong recommendation to create agreements, have them in writing, and cover all terms and conditions
- Cannot avoid or refuse entering into a commercial agreement
- Agreement can include contracts, invoices, purchase orders, bills of lading, emails and other forms of mutually agreed material
- Cannot design an agreement to explicitly work around or willfully disregard the provisions of the Code, and no party may waive any of its rights or obligations under the Code.
- Examples of critical program elements are provided

PROPOSED CODE PROVISIONS – WHERE WE LANDED

3. Payments

- Payments – Timing
- Payments for Programs as Defined in an Agreement
 - Stocking, listing, positioning, promotions, marketing costs, unsellables and shrinkage
- Ad-Hoc Payments for Non-compliance with the Terms of an Agreement
- Payments as a Result of Audits
- Payment for Price Matching
- Payments for Consumer Complaints

PROPOSED CODE PROVISIONS – WHERE WE LANDED

4. Other Items

- Changes to Supply Chain Procedures
- Tying of Third-Party Goods or Services
- Good Faith Forecasting, Ordering and Allocation of Supply
- Guidelines Relating to Cost Changes
- Duties in Relation to De-listing / Supplying
- Protection of Confidential Information and Respecting Intellectual Property
- Exceptional Circumstances and Force Majeure

PROPOSED CODE PROVISIONS – WHERE WE LANDED

5. Duty to Participate and Inform Staff

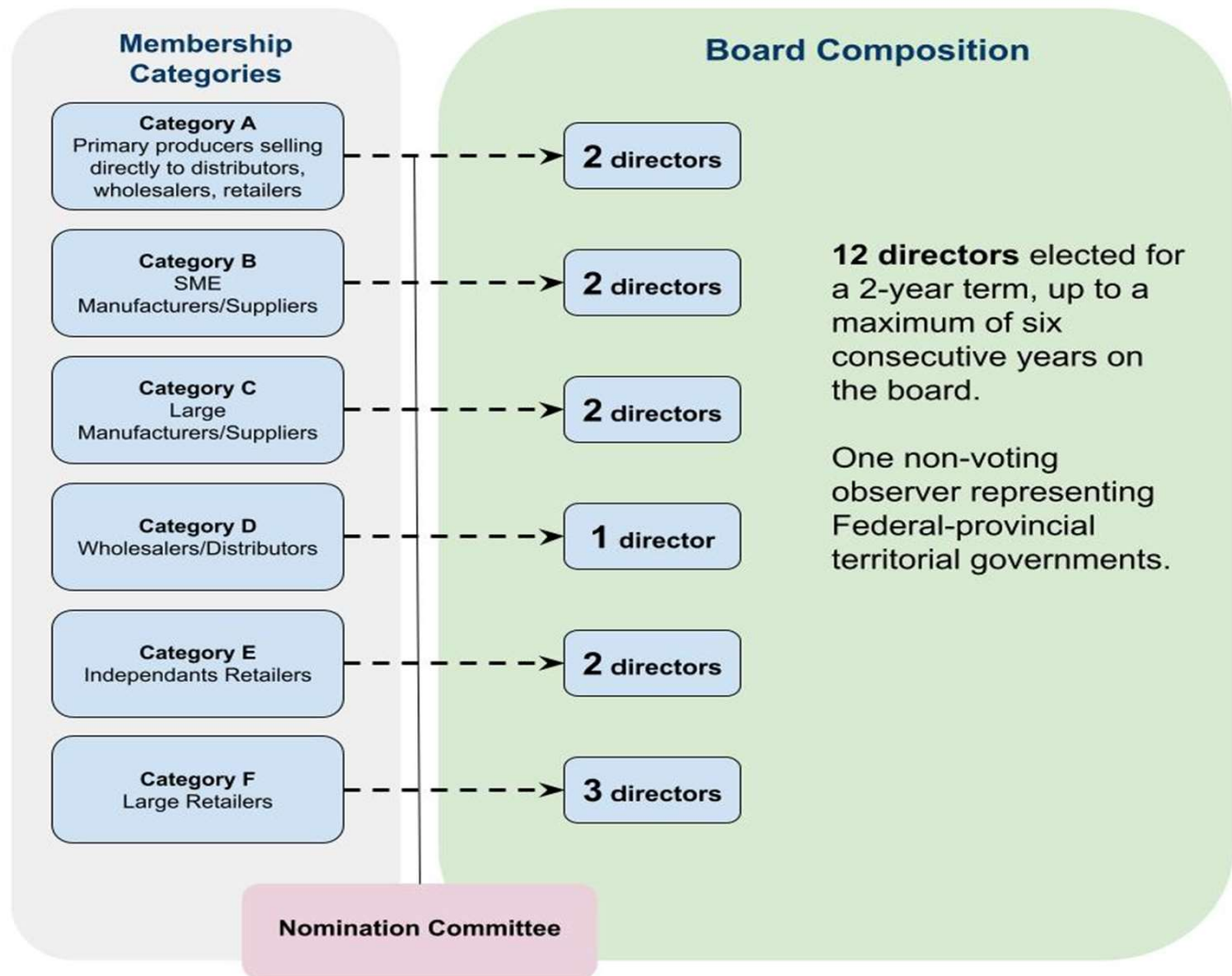
6. Dispute Resolution

PROPOSED GOVERNANCE AND CODE ADJUDICATION



Grocery Code Adjudicator Office (GCAO)

- A membership-based organization incorporated under the Canada not for Profit Act



GCAO OPERATING PRINCIPLES

- 1. Objectivity:** Objectivity and procedural fairness will guide the GCAO in all its actions. The GCAO will start from the assumption that no one wants or intends to work in contravention of the Code and possibly face sanctions and/or end up in arbitration.
- 2. Efficiency:** The Code exists to support business and to increase the efficiency and effectiveness of the grocery sector. The industry is fast moving, so speed in achieving Code compliance and issue resolution is essential.
- 3. Pro-active:** Pro-actively identifying issues and clarifying their status under the Code for the benefit of the entire industry will be key in limiting the number of formal disputes between members.
- 4. Light touch:** Retailers and suppliers are readily capable of solving issues themselves if the Code is clear and they understand it. By highlighting and encouraging good practices while shining a light on and discouraging poor practices, the adjudicator will drive positive behaviour change.

GOVERNANCE AND GROCERY CODE ADJUDICATION

Board Composition

- The proposed GCAO board will include a total of 12 directors, elected by members and one non-voting FPT Government representative.
- All 12 directors will be elected for a two-year term and eligible for up to six consecutive years on the board.
- Proposal to have the current Steering Committee take on Board duties on an interim basis until the GCAO is operational

PROPOSED ROLE OF THE GCAO

We are proposing the GCAO will have **five main roles**:

1. Training & education of members.
2. Reporting & accountability to members.
3. Review of issues and ensuring compliance through various tools (including members' discipline via corrective measures).
4. Managing the dispute resolution process between two members.
5. Maintaining a Code that is responsive and relevant to current industry trends.

A FEW KEY PROVISIONS



A FEW KEY PROVISIONS

1. Fair and Ethical Dealing & No Punitive/Vexatious Acts

1.3. Parties to the Code may not alter contracts unilaterally.

2. Commercial Agreements

2.6. No party shall design an agreement to explicitly work around or willfully disregard the provisions of the Code, and no party may waive any of its rights or obligations under the Code.

A FEW KEY PROVISIONS

3. Payments

Payments for Programs as Defined in an Agreement

- 3.4. Charges for programs such as stocking, listing, positioning, promotions, marketing costs, unsellables and shrinkage shall be made in accordance with the agreed upon payment terms and:
- a. Provide reasonable substantiation in sufficient detail and in an effective format...
 - b. Allow the other party the ability to dispute the charge...
 - c. ...right to go through an internal escalation dispute resolution process...

A FEW KEY PROVISIONS

3. Payments

Ad-Hoc Payments for Non-compliance with the Terms of an Agreement – 3.5

- a. Provide the other party with Reasonable Notice prior to taking steps to execute the non-compliance charge.
- b. Provide reasonable substantiation in sufficient detail...
- c. Allow the other party the ability to dispute the charge within the applicable period...
- d. Where a Supplier challenges a proposed charge, the Retailer shall not deduct the disputed sum from the Supplier's trading account or otherwise from money owed...
- e. Provide the other party with the right to go through an internal escalation dispute resolution process and provide a contact for such process

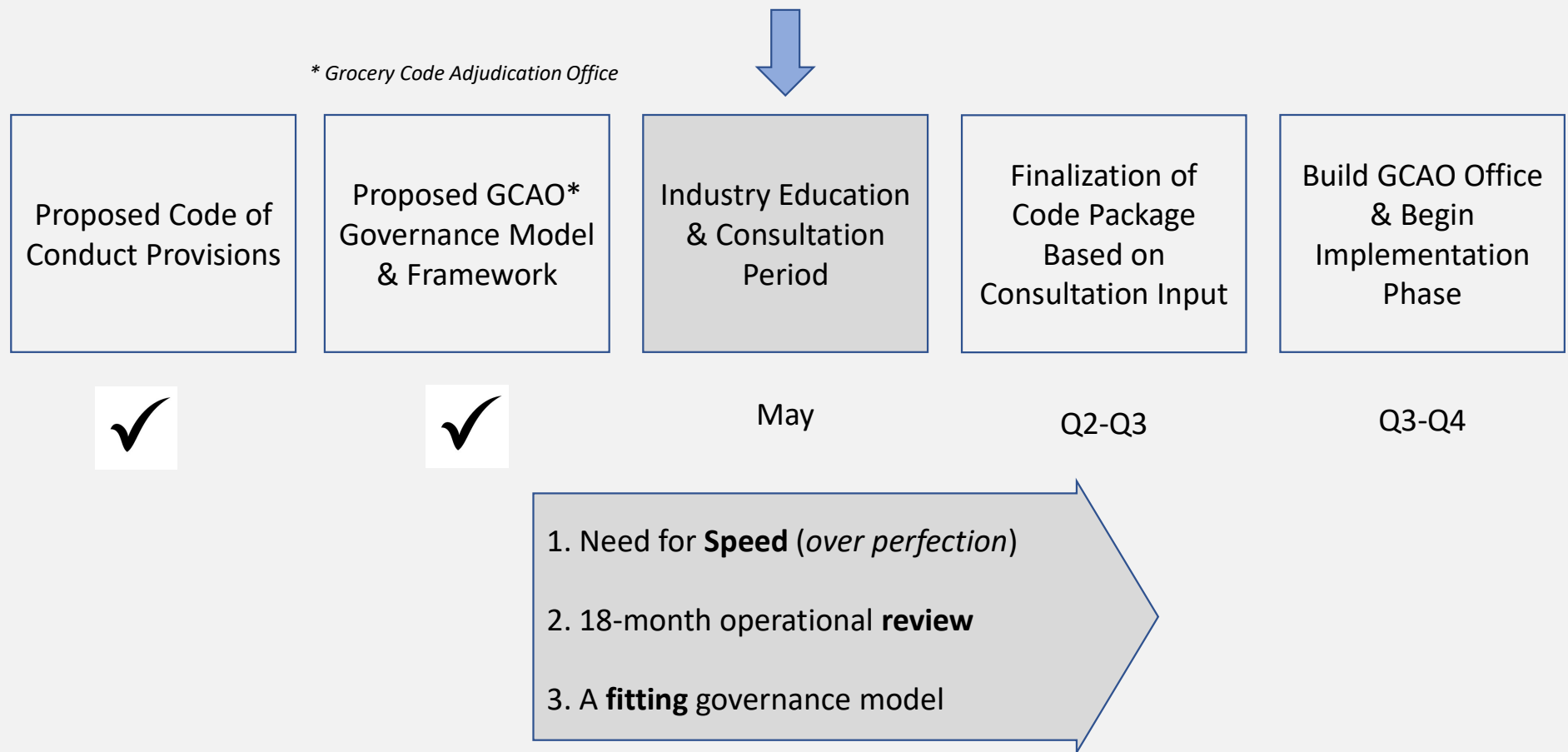
A FEW KEY PROVISIONS

4. Other Items

Good Faith Forecasting, Ordering and Allocation of Supply

- 4.3. A Retailer shall prepare forecasts in good faith, taking into consideration lead time for the Supplier, and with due care in consultation with the Supplier...
- 4.4. A Supplier is under no obligation to accept an order...
- 4.5. Where a Retailer orders materially less than planned forecasts, resulting in financial implication for the Supplier, then Retailer must reasonably work with the Supplier on mitigation.
- 4.6. Where total demand for a product exceeds available supply, suppliers will take into consideration all existing and requested orders from all retailers.

WHERE WE ARE NOW AND NEXT STEPS



HOW TO PARTICIPATE

It is important for the Steering Committee to understand those areas of the Code

- Where you require more information or clarity,
- That are of greatest value to you, and
- If there is anything substantive we have missed.

HOW TO PARTICIPATE

In responding to the questions, please provide as much specificity as possible

1. Please identify those elements of the Code where you need more information or clarification.
2. Please identify those elements of the Code that are most important or of greatest value to you.
3. **It is the intention to conduct a full review of the Code 18 months from its implementation.** Is there anything substantive and fundamental in nature that we should consider prior to implementation, recognizing that the Code will be subject to review 18 months from implementation? If so, please specify below.

HOW TO PARTICIPATE

Go to <https://canadacode.org> to

- Access the Consultation Document and provide input directly to the site
- Access a list of FAQs

You can also ask questions or provide submissions through the Contact tab on the consultation site

The site is designed to anonymize the input received which will be collated and summarized by an independent third party



THANK YOU!