

Western Canadian Wheat Growers Association

Reforming the Canadian Wheat Board

“The Path Forward”

March, 2006

Introduction

For many years, the Western Canadian Wheat Growers Association has been seeking a change in government policy whereby individual farmers in western Canada would be free to market their wheat and barley directly to any buyer, including the Canadian Wheat Board.

In the recent election campaign, the Conservative Party made a commitment to introduce marketing choice for farmers in western Canada. Such a policy would ensure western farmers enjoy the same rights and freedoms now enjoyed by farmers in Ontario and elsewhere in Canada. The purpose of this position paper is to provide guidance to the federal government as to how it should proceed to implement marketing choice and to recommend structural reforms to the CWB.

This position paper will be divided into four sections: the first section will discuss the benefits, timing and implications of implementing marketing choice. The second section addresses the question of the federal government’s legislative authority to implement marketing choice. The third section deals with the structural changes to the CWB that we believe are necessary for it to become an effective marketing choice for farmers. The fourth section deals with the ideological arguments in favour of marketing choice.

1.0 Implementation of Marketing Choice

1.1 The benefits of marketing choice

For many reasons, the Wheat Growers believe that offering western Canadian farmers marketing choice is in the best interests of prairie farmers and the western economy as a whole. This section deals with a number of these reasons:

1.11 Improvement in farmgate returns

The Wheat Growers are convinced that implementing marketing choice will lead to higher net farmgate returns. We recognize there have been a number of studies arguing both sides of this issue. We acknowledge too that the CWB has the ability to price discriminate in various markets, and as a result can capture premiums from certain markets. However, price discrimination can cut both ways. The CWB may also be selling into

certain markets at a discount (either knowingly or unknowingly) or it could be selling into “too many” low-priced markets which, when prices are backed off to the farmgate, provide returns that are lower than would be achieved under a more open market. This could certainly have been the case in the past three years, when the CWB was forced to sell a greater proportion of wheat into lower-return offshore markets because it was shut out of the U.S. (non-durum) wheat market.

Also, even if premiums are achieved, can it be said with certainty that this money finds its way back into the hands of farmers? When farmers are denied marketing choice, they are in effect held captive to the western Canadian grain handling and transportation system. As a result grain companies, unions or other players along the supply chain could be capturing any single-desk benefits that might otherwise accrue to farmers.

What is interesting about most (if not all) of the economic studies purporting to show benefits from the CWB single desk is that they avoid making comparisons of farmgate market returns in Canada to farmgate market returns earned under the open market in the United States. On the other hand, publicly available studies that focus on farmgate returns invariably conclude that average farmgate market returns (i.e. excluding farm subsidies) for wheat and barley in the U.S. are higher than average farmgate market returns obtained by the CWB, even after allowing for the closer distance to market. The experience of our own members confirms this to be the case. However, we do not ask our readers to take our word for it, but rather to make the farmgate price comparisons themselves.

Bear in mind too that the United States sells more wheat into world markets than does Canada. Grain sellers in the U.S. and the CWB face the same world market. Why is it then that the U.S. marketing system is able to provide its farmers with higher farmgate returns, when it does not have the “advantage” of single-desk selling? In our view, proponents of the CWB monopoly have never satisfactorily answered that question.

It’s also important to note that farmgate prices only tell half the story. The CWB marketing system also imposes tremendous costs on farmers. Stories abound about how piles of wheat and barley have lost significant value in downgrading losses because of the CWB’s delivery restrictions. Of course the Wheat Growers recognize that not all grain can be delivered into the system at once and so some rationing mechanism is necessary. We believe the pricing system (i.e. Adam Smith’s “invisible hand”) is the best rationing system, because it recognizes that the cost of storage varies among individual farmers, and each may have a different incentive to either store or deliver grain. The CWB marketing system does not take these differences into account, and as a result farmers who have high storage costs (e.g. those who risk seeing their grain downgrade in piles),

are denied an opportunity to minimize or manage this risk. Consequently, overall returns to the farming sector are less than what might otherwise be achieved.

Similarly, each farmer has differing cashflow, pricing and risk management needs. While the CWB has taken steps in recent years to address these differing needs, the CWB marketing system still does not provide the degree of flexibility in pricing, payment and risk management options that could be obtained under marketing choice.

1.12 Empowerment of farmers

To date in the current crop year, the CWB has decided to accept only 50% of #1 and #2 durum offered for delivery by western farmers. It would seem that the CWB, in its collective wisdom, has determined that this is the optimal level of durum to accept.

On what basis does it make this decision? The CWB has argued that to accept more would lower the overall pool return to farmers, because it would be required to lower its selling price in order to induce customers to buy Canadian durum over other suppliers. The Wheat Growers agree with this contention, however what we question is the arbitrary nature in which the CWB makes this determination. Is 50% exactly how much durum farmers would decide to store until the next year, if they were allowed to market it on their own? Typical carryover rates in open market crops suggest this level is substantially higher than the quantity farmers would choose to carryover if they had the opportunity to decide for themselves.

What is at issue here is not whether the CWB is making a good choice as to the “optimal” level of durum sales and contract acceptance (although that issue is certainly debatable as well). What is at issue is that the decision is taken out of the hands of individual farmers and placed in the hands of bureaucrats who, despite their best intentions, cannot possibly meet the needs of all farmers. For some farmers, 50% acceptance might be acceptable. But for many other farmers, particularly those facing the prospect of losing their farms, 50% might be unacceptable – the Wheat Growers are aware of several farmers who have been forced to sell milling quality durum into a feed market this year just to pay the bills.

The current CWB marketing system assumes one size fits all, and that the CWB knows, better than individual farmers themselves, the price and delivery opportunities that are best suited to their individual needs. The Wheat Growers reject this premise. Providing marketing choice would empower individual farmers to make the decisions that they believe are in their own best interest, rather than leaving such decisions in the distant hands of the CWB.

1.13 Greater investment in value-added processing

The Wheat Growers are convinced we would see a significant increase in wheat and barley processing in western Canada if processing plants were free to acquire grain directly from farmers. Farmers would benefit as well from the increased competition for our grain and the opportunity to lower freight costs.

The Wheat Growers look to the oat market as an excellent example of the degree of value-added activity that can emerge under a more open marketplace. Since 1989, when oats was removed from the jurisdiction of the CWB, we have seen tremendous growth in oat processing, and the ability of farmers to capture profitable pricing opportunities through forwarding contracting and other pricing tools. These developments have improved the profitability of oat production and have contributed to the increase in oat acreage in western Canada.

The hog industry in western Canada is another example of an industry where there has been significant investment in processing once the monopolies over domestic sales were removed from the provincial hog marketing boards.

We believe there is great potential for a significant increase in milling wheat in western Canada under marketing choice. What is not known is how many investments in Western Canada have been lost due to the stifling presence of the CWB monopoly – companies rarely announce that they have decided **not** to invest in a plant in western Canada and so it is unlikely the true losses to the prairie economy will ever be known.

1.14 Fewer constraints on variety development

In our view, the presence of the CWB monopoly and its reliance on KVD as a quality assurance mechanism has acted as a serious constraint on wheat variety development in western Canada. It means that western Canadian farmers are limited in their ability to access new varieties with improved yield, disease resistance, harvestability or end use qualities. It has limited the level of private investment in research and development in wheat, particularly in varieties geared for the ethanol industry, the livestock industry, or human health purposes.

1.15 Reduce the threat of U.S. trade action

The Wheat Growers recognize the actions of the CWB in the past has led to a deep animosity towards the CWB among many U.S. farmers and politicians, particularly in the northern tier states.

As the CWB itself has noted, it has been the subject of 14 trade actions by the U.S. over the past 17 years. In the latest case, tariffs were first introduced on wheat in March, 2003 and were not lifted until February, 2006. In each of these trade actions, the CWB has ultimately withstood the challenge, but often at tremendous cost to prairie farmers. For example in a press release dated August 9, 2005, the CWB acknowledges the latest trade action cost western Canadian farmers more than \$15 million in legal fees, and that the ongoing loss of the American market lowered returns to prairie farmers by about \$50 million per year.

The unfortunate reality is that the CWB's status as a government-backed state trading enterprise makes it a convenient target for trade action. As long as the monopoly remains, U.S. farmers are likely to accuse the CWB of undercutting their markets and, regardless of the legitimacy of their arguments, successfully agitate for ongoing trade challenges.

We note however that this U.S. animosity does not extend toward Canadian exports of oats, canola, flax or any other crop that is openly and freely traded in Canada. Also, U.S. sensitivities on wheat and barley appear to be restricted to the CWB. We note that Ontario wheat exports to the U.S. have increased dramatically over the past two years. We believe this growth in Ontario exports of wheat to the U.S. stems in part from the introduction of marketing choice in that marketplace.

1.16 Falling number grading

One of the "hidden" benefits of implementing marketing choice is that it would reduce the regulation that seems to stifle innovation. Too often, because of the monopoly, the industry decides collectively how to move forward (or not) on certain regulatory issues. This can often lead to delays in the introduction of new technologies.

The recent debate over the falling number issue is a good case in point. Last fall the Wheat Growers participated in an industry meeting to discuss whether and how falling number grading technology might be introduced to replace the visual sprout count basis now used to assess quality on sprout-damage grain. Falling number tests are already widely used in Europe and the United States to determine the quality of grain being delivered by farmers.

For the record, the Wheat Growers have publicly supported the CWB proposal to introduce falling number grading on a voluntary basis. However, what we find troubling is that the industry is reluctant to move forward on this issue until some general consensus is reached that the overall system benefits exceed the costs. While on the surface that seems like an eminently reasonable approach, we can't help but think that under

marketing choice, there would be no need to hold costly industry meetings in an effort to resolve the issue to everyone's (or at least the majority's) satisfaction. In a marketing choice environment, any company that believed the benefits (e.g. an increase in market share) of introducing this technology outweighed its costs would invest in the new technology. There would be no need to wait for the recommendations of an industry committee – instead, the marketplace would decide if, when, and to what extent, this technology is adopted. Time, energy and resources that are now spent on countless committee meetings could instead be put to much more productive purposes.

1.17 Grain transportation problems

In much the same way as the presence of the CWB monopoly stifles innovation, it also affects “best use” deployment of assets in the transportation sector. Under the CWB monopoly, the industry is burdened with complicated car allocation formulas and industry feuds over the appropriate level of CWB tendering for grain at port. Currently, the CWB and an industry committee has magically decided that 20% of CWB grain shipments is the optimal amount that should be shipped under tender, and that general car allocation should be based on each company's historical market share over the previous 18 weeks. We are sure players in other industries would laugh if they knew this was the basis on which market share is determined in the Canadian grain industry. Only in the former Soviet Union would a system such as this be embraced with such bureaucratic zeal.

The Wheat Growers believe implementing marketing choice would ensure market forces and competition would be the key drivers in determining how best to deploy scarce transportation resources. In a market choice environment, the CWB would be free to tender grain at port, or otherwise contract with shippers and railways to get its grain to market, in whatever manner it decides. There would no longer be a need for an industry committee to ensure every shipper receives its “fair share” of car allocation.

The Wheat Growers also note that implementing marketing choice would help to address railway market power. Marketing choice would give farmers an “escape valve”, by giving farmers the ability to directly access processing plants and grain companies located in the United States. Having this avenue open would act as a safeguard against high freight charges or poor service levels from Canadian railways. Having said this, the Wheat Growers are confident in the ability of the Canadian industry to compete. We note the United States is the destination for almost all of our oat exports, and that the lion's share of this business is not shipped direct

by farmers but rather is handled by Canadian-based elevators and railways companies.

1.18 Reduce animosity within the industry

In our view, moving to marketing choice would also greatly reduce the animosity that plagues our industry, not only among the CWB and various companies, but among farmers themselves. In recent years, the CWB has tended to vilify grain companies (particularly those that operate on a global scale) and railways rather than treat them as vital industry partners. Consequently, the CWB has tended to adopt an autocratic culture, where it wields a big club against any industry player who may fall out of line.

While we realize this demonizing approach gains the CWB a certain measure of political support in some farming circles, we believe it is ultimately destructive for our industry. It tends to foster suspicion, rather than foster business relationships built on trust, mutual respect and a common interest in serving the customer. In our view, the mere act of implementing marketing choice would create a more positive business atmosphere, because it changes the situation from one where you are obligated to deal with the CWB, to one where you choose to deal with the CWB. It is an important distinction. We are convinced marketing choice would go some distance toward restoring a more collegial “can-do” attitude throughout the industry.

1.2 Timing of implementation of marketing choice

The Wheat Growers recommend the Conservative government move to introduce marketing choice as soon as possible and certainly no later than August 1, 2006.

The Wheat Growers note the Winnipeg Commodity Exchange has already announced that it will have price discovery and risk management vehicles available to the industry as soon as marketing choice is announced. Our discussions with grain companies confirm that most are, or soon will be, prepared to operate in a market choice environment.

It is our view that virtually every grain company that currently handles CWB grain will continue to act as an agent of the CWB in handling any grain that farmers wish to contract to the CWB. Most companies can ill-afford to forgo the handling revenue.

The Wheat Growers realize that WTO negotiations are currently underway, and there is still some value in using the CWB monopoly as a bargaining chip. However, other nations will be well aware of the Canadian government’s position on the monopoly, so we are limited in our ability to wring concessions. The scandal surrounding AWB Ltd. also suggests that Australian support for state-backed export monopolies is significantly diminished, despite any posturing the Australians may be taking in trade talks. We note,

for example, the Australian government has in effect, already ended AWB's single desk, by allowing three companies to export wheat to Iraq outside of the AWB.

The Wheat Growers recognize the opportunity to obtain major concessions for the CWB single desk has no doubt passed, given the federal government's failure to put the CWB single desk on the negotiating table during the Hong Kong Ministerial. While we encourage the Canadian government to continue its efforts to obtain concessions in exchange for the monopoly, we note that any possible gains here pale in comparison to the benefits that would accrue to farmers from implementing marketing choice. As such, we do not believe the WTO negotiations represent a sufficiently valid reason to delay implementation of marketing choice.

The Wheat Growers note that marketing choice can be implemented independent of any decisions surrounding long-term structural changes to the CWB. We recommend a two-stage approach. The first is to implement marketing choice by August 1, 2006. The second stage is to determine how to restructure the CWB to address the loss of the government guarantees and to ensure it remains an effective marketing choice for farmers. We believe this second stage process should start now, with a view to introducing legislative changes in 2007.

1.3 Implications of marketing choice.

1.31 CWB contracting system

For marketing choice to function effectively, the CWB will need to introduce and enforce a good contracting system. We fully agree that there can be no "jumping in and out of the pool". The Wheat Growers propose that each year, the CWB sets a date by which each farmer must decide the amount and quality of grain he or she wishes to contract to the pool account. It would be up to the CWB to establish the date, and each year this date could vary depending on the lateness of the harvest. In our view, imposing a deadline for contracting grain to the pool is an essential element of marketing choice because the CWB needs to know exactly how much grain it has in the cupboard to sell during the balance of the year.

We should point out however that establishing a date on which farmers must contract to the CWB pool accounts does not preclude the CWB from contracting grain from farmers on either a spot or forward contract basis at any time during the year.

The Wheat Growers realize the CWB may need to tighten its existing contract enforcement measures so as to assure satisfactory contract compliance. As is the case for any other business engaged in buying grain from farmers, we leave it to the discretion of the CWB's directors and management to determine what policies it needs to adopt to strengthen contract compliance.

1.32 Price transparency and the threat of U.S. trade action

As indicated earlier, the CWB has been a sore point with U.S. farmers and politicians for many years. Consequently, we believe that when marketing choice is implemented, this trade relationship will require special attention. While we expect marketing choice to be implemented by August 1, 2006, we recognize that it will likely be several years before the CWB is required to give up the government guarantee of its borrowings. As such, U.S. farmers will continue to be suspicious of any grain sales made by the CWB into the U.S. market. They will continue to be concerned that the CWB may be undercutting prices.

For this reason, the Wheat Growers recommend the CWB be required to disclose its selling prices on sales made into the U.S. market, within a certain time period (say, two weeks) so as to ensure price transparency and allay any concerns that the CWB may be undercutting prices. However, the Wheat Growers would propose that this price disclosure would end as soon as the government guarantees are removed and the CWB is operating on a truly commercial basis.

1.33 Bricks and mortar argument

The CWB has argued that it cannot compete effectively under a marketing choice environment because it has no physical grain handling and transportation assets. In our view, there is no need for bricks and mortar to be a successful grain marketer. There are numerous examples throughout the world.

We note the Ontario Wheat Producers' Marketing Board operates successfully, despite not having grain handling facilities of its own. It remains a viable marketing choice for many Ontario farmers. The strong growth in wheat acreage (including record winter wheat acres this past fall) suggests the marketing choice model is working well in that province.

The Wheat Growers recognize the CWB may have to move to a system of greater contract specifications, so as to ensure it is getting the quality of grain that it needs to meet the requirements of its customers. We are satisfied there will be a number of companies vying to meet these specifications in an effort to become the CWB's supplier of choice.

We also recognize the CWB will need to sharpen its pencil to remain the preferred choice of farmers. But with the right attitude and the right people, we are convinced the Board can remain a valuable marketing option for many farmers in western Canada.

2.0 Legislative authority to implement marketing choice

The Wheat Growers maintain the federal government can implement marketing choice without having to resort to legislation. Others have argued the federal government cannot implement marketing choice without passing legislative amendments to the Canadian Wheat Board Act and further, that no such amendments can be passed until a vote is held among producers. This section will examine the legislative and regulatory issues surrounding these arguments.

The reader is cautioned that the Wheat Growers have not obtained a legal opinion on any arguments put forward in this paper. We accept it will be up to the federal government to determine whether it has the legislative authority to implement marketing choice, and that ultimately this authority may be subject to interpretation by the courts.

The Wheat Growers believe that establishing the federal government's legal authority is important, because if the government can implement marketing choice without legislative amendments, then we believe it should move quickly to do so. The benefits of implementing marketing choice are simply too large to ignore.

2.1 CWB control over interprovincial and export trade

We begin our discussion by first examining the legislative authority under which the CWB exercises control over the export and interprovincial movement of wheat. This is set out in sections 45 and 46 of the *Canadian Wheat Board Act*. The relevant sections read as follows:

Part IV Regulation of Interprovincial and Export Trade in Wheat

Section 45. Except as permitted under the regulations, no person other than the Corporation shall

- (a) export from Canada wheat or wheat products owned by a person other than the Corporation;
- (b) transport or cause to be transported from one province to another province, wheat or wheat products owned by a person other than the Corporation;
- (c) sell or agree to sell wheat or wheat products situated in one province for delivery in another province or outside Canada; or
- (d) buy or agree to buy wheat or wheat products situated in one province for delivery in another province or outside Canada.

The clauses in section 45 convey significant regulatory powers to the CWB, although one of the key points to note in this section is that it begins by saying “Except as permitted under the regulations”. It is therefore important to determine what exceptions to these rather extensive powers are provided for under the regulations. The regulations are set out in section 46 and the relevant clauses of this section read as follows:

46. The Governor in Council may make regulations . . .

(c) to provide for the granting of licences for the export from Canada, or for the sale or purchase for delivery outside Canada, of wheat or wheat products, which export, sale or purchase is otherwise prohibited under this Part;

(d) to prescribe the terms and conditions on which licences described in paragraph (c) may be granted, including a requirement for the recovery from the applicant by the Corporation or any other person specified by the regulation, of a sum that, in the opinion of the Corporation, represents the pecuniary benefit enuring to the applicant pursuant to the granting of a license, arising solely by reason of the prohibition of exports of wheat and wheat products without a licence and then existing differences between prices of wheat and wheat products inside and outside Canada.

(e) to provide for the granting of licences for the transportation from one province to another province, or the sale or purchase for delivery anywhere in Canada, of wheat or wheat products, which transportation, sale or purchase is otherwise prohibited under this Part, and to prescribe the terms and conditions on which those licenses may be granted or the terms or conditions of the permission granted in those licences;

There are several important points to make regarding section 45 and 46:

- 1) These sections apply to all of Canada. That is, the “prohibited activities” set out in section 45 apply to persons in Ontario and other parts of Canada just as they do to persons who operate in the designated area¹.
- 2) The federal cabinet (by an order or regulation issued by the Governor in Council) may make regulations to provide for the granting of export licences. As Justice Rothstein noted in his ruling on the Continental Barley Market, the authority to make regulations for the granting of export licences does not provide the federal government with the power to dispense with export licences.
- 3) The federal cabinet (again through the Governor in Council) has the authority to “prescribe the terms and conditions” on which export (and interprovincial)

¹ The “designated area” is defined under the Act as “that area comprised by the Provinces of Manitoba, Saskatchewan and Alberta and that part of the Province of British Columbia known as the Peace River District, and any other areas that the Corporation may designate under subsection (3)”.

licences may be granted. In our view, this is a key provision. It means the federal government can decide, if it so chooses, to prescribe the terms and conditions on which export licences may be issued from any part of Canada, including the designated area. Thus, we argue, if the federal cabinet wishes to instruct the CWB to provide export licences to prairie farmers at no cost (and without requiring farmers to offer their grain to the CWB), it is fully within its right to do so.

- 4) Section 46 (d) makes reference to the recovery from the export licence applicant of a sum that represents the “pecuniary benefit” that arises from granting the licence. At one time the CWB (and others) argued that this section allowed the CWB to charge what is commonly known as the “buyback” on export licences granted to prairie farmers. We won’t go into all the arguments as to why such an argument is invalid, except to say that this section originally appeared in the CWB Act in 1947 as a means of allowing the federal government to impose taxes on anyone who imported or exported wheat to take advantage of differences between the then-regulated price of wheat in Canada, and the price of wheat in foreign markets. It does not refer to the buyback.²

In our view, the above provisions give the federal government the authority to instruct the CWB to provide export and interprovincial licences for wheat and barley to prairie farmers, or anyone else, at no cost. This is not as revolutionary as some suggest. The CWB already provides export permits at no cost to persons wishing to (i) export pedigreed wheat or barley seed, (ii) export manufactured feed, or (iii) export ancient wheat and barley varieties from anywhere in Canada. The CWB also provides export permits at no cost to exporters of wheat and barley outside the designated area. For example, in Ontario, if a farmer, grain company, or the Ontario Wheat Producers Marketing Board wishes to export wheat from Canada, all they have to do is to apply and receive an export permit from the CWB. There are no fees involved. Western Canadian farmers are not seeking special treatment. We simply wish to have the same privileges that Ontario farmers now enjoy.

Before leaving this discussion, we wish to provide comment on regulation 14 (a), which is authorized pursuant to section 46 (d). Regulation 14 (a) reads as follows:

14. The Corporation may grant a licence for the export, or for the sale or purchase for delivery outside Canada, of wheat, wheat products, barley or barley products if

(a) the export, sale or purchase of the grain or products for which the licence is sought does not adversely affect the marketing by the Corporation, in interprovincial or export trade, of grain grown in Canada;

² For an exhaustive treatment on the arguments as to why 46 (d) does not refer to the buyback, please refer to research undertaken by Carol and John Husband found at <http://carol.farmersforjustice.com/in-depth.htm>

It could be argued that that this regulation gives the CWB the ability to deny export licences to farmers in the designated area (or to anyone in Canada for that matter) if it deems the granting of that licence would adversely affect its grain marketing. Whether the granting of any licence adversely affects its ability to market grain is a debatable point, but it is also a moot point. As discussed earlier, the Governor in Council has the authority to prescribe the terms and condition under which export licences are granted. As such, it has the authority, by regulation, to amend or repeal regulation 14, so as to ensure it cannot be used by the CWB to deny prairie farmers export licences at no cost.

2.2 CWB control over the domestic market

The CWB's ability to control the domestic marketing of grain **produced in the designated area** resides in Part II (sections 23 to 30) of the Act. In particular, Section 28 gives significant powers to the CWB, although it should be noted that these powers are subject to directions contained in any order issued by the Governor in Council. In our view, it is primarily section 28 (g) that gives the CWB the ability to prevent mills anywhere in Canada from acquiring grain produced in the designated area directly from producers.

Section 28 (g) reads as follows:

28. The Corporation may, notwithstanding anything in the *Canada Grain Act*, but subject to directions, if any, contained in any order of the Governor in Council, by order . . .

(g) notwithstanding anything in this Part, prohibit the delivery into or receipt by an elevator of any kind of grain, or any grade or quality thereof, either generally or otherwise;

It should be noted that under the CWB Act, an "elevator" is defined as follows:

"elevator" means a grain elevator, warehouse or mill that has been declared by Parliament to be a work for the general advantage of Canada.

As provided for under section 92 of the Canadian Constitution, the declaration of an elevator to be a work for the general advantage of Canada ensures the regulation of that elevator falls under federal rather than provincial jurisdiction. Section 76 of the CWB Act provides for this declaration. It reads, in part:

76. For greater certainty, but not so as to restrict the generality of any declaration in the *Canada Grain Act* that any elevator is a work for the general advantage of Canada, it is hereby declared that all flour mills, feed mills, feed warehouses, and seed cleaning mills, whether heretofore constructed or hereafter to be constructed, are and each of them is hereby declared to be works or a work for the general advantage of Canada and, without limiting the generality of the foregoing, every mill or warehouse

mentioned or described in the schedule is a work for the general advantage of Canada.

The above declaration does not explicitly refer to malt houses or distilleries, however the definition of elevator under the *Canada Grain Act* includes premises “constructed for the purpose of handling and storing grain as part of the operation of a flour mill, feed mill, seed cleaning plant, malt house, distillery, grain oil extraction plant or other grain processing plant”. So it would appear that the ability of the CWB to prohibit deliveries into elevators under section 28 (g) extends to malt houses and distilleries, even though they are not explicitly mentioned in section 76.

While Section 28 (g) allows the CWB to specifically prohibit processing facilities from acquiring grain directly from producers, section 28 (h) and (h.1) provide for important exemptions. These sections read as follows:

28. The Corporation may, notwithstanding anything in the *Canada Grain Act*, but subject to directions, if any, contained in any order of the Governor in Council, by order . . .

(h) exclude any kind of grain, or any grade or quality thereof, from the provisions of this Part, in whole or in part either generally or for any specified period or otherwise;

(h.1) exempt any elevator from the provisions of this Part, in whole or in part, either generally or for a specified period or otherwise;

It’s worth noting that under the *Canadian Wheat Board Act*, the definition of “grain” includes wheat, oats, barley, rye, flaxseed, rapeseed and canola. Obviously, the CWB does not currently prohibit processing facilities from directly acquiring oats, rye, flaxseed, rapeseed or canola from producers or any other party. It has this authority, but as a matter of policy, it does not exercise this authority. And for good reason. If the CWB attempted to do so, the federal cabinet, through the Governor in Council would undoubtedly issue an order immediately directing the CWB to allow processing facilities to acquire these grains directly from producers or any other party.

These provisions are significant, because it means the CWB has the authority to prohibit grain processing facilities situated anywhere in Canada from acquiring grain that is produced in the designated area, from anyone other than itself. Importantly, however, this authority is “subject to directions, if any, contained in any order of the Governor in Council”. Thus, if the Government of Canada wishes to allow processing facilities to buy wheat and barley directly from farmers or any other person (as is the case now for oats, rye, flaxseed, rapeseed and canola), we argue that it would be fully within its authority to instruct the CWB, by order, to permit it.

Before leaving our discussion on Part II, it is worth noting that under section 30, the Governor in Council may, by regulation, apply Part II to grain produced in any area in

Canada outside the designated area. Thus if the federal government wished to prohibit Ontario farmers from selling their grain directly to processing facilities (as is the case for wheat and barley farmers on the Prairies), it could do so instantly by simply passing an Order in Council. There would be no need for the government to seek Parliamentary approval to amend the legislation.

2.3 Far-reaching powers of the federal cabinet

For those who may doubt the authority of the federal government to instruct the CWB on the above matters, we refer to Part I of the Act which delineates the structure, governance, objective and powers of the CWB. Section 18 of this Part gives broad powers to the federal cabinet (through the Governor in Council) to direct the affairs of the CWB. Section 18 reads as follows:

18. (1) The Governor in Council may, by order, direct the Corporation with respect to the manner in which any of its operations, powers and duties under this Act shall be conducted, exercised or performed.

(1.1) The directors shall cause the directions to be implemented and, in so far as they act in accordance with section 3.12, they are not accountable for any consequences arising from the implementation of the directions.

(1.2) Compliance by the Corporation with directions is deemed to be in the best interests of the Corporation.

(2) Except as directed by the Governor in Council, the Corporation shall not buy grain other than wheat.

Having this provision in place is important, because, under section 3.12, the directors are required to act with a view to the best interests of the Corporation. Section 18 gives the federal government the ability to direct the CWB to act in what it may view as the best interests of farmers (or more broadly, the public good), and absolves the CWB directors of any accountability for carrying out such directions.

2.4 Extension of the CWB marketing and regulatory authority to barley

In many sections of the Act, reference is often made to wheat, but no reference is made to barley or other grains. Part V of the Act, allows the federal government to extend various provisions of the Act to barley and oats under section 47 (1). This section currently reads as follows:

47. (1) The Governor in Council may, by regulation, extend the application of Part III or of Part IV or of both Parts III and IV to oats or to barley or to both oats and barley.

Part III of the CWB Act refers to the interprovincial and export marketing of wheat by the CWB for wheat **produced in the designated area**. Thus, extending Part III to barley simply means the CWB has the authority to market barley produced in the designated area in the same manner as it markets wheat.

Part IV, as discussed in section 2.1 above gives the CWB the ability to regulate interprovincial and export trade of wheat, subject to regulations prescribed by the Governor in Council. So extending Part IV to barley gives the CWB the authority to regulate the interprovincial and export trade of barley in the same manner as wheat.

The Governor in Council has indeed extended the application of Parts III and IV to barley by regulation. Regulation 9 reads as follows:

9. Parts III and IV of the Act are hereby extended to barley.

It's worth noting that prior to 1989, Regulation 9 also extended Parts III and IV to oats. However, in 1989, the Progressive Conservative government revoked the application of Parts III and IV to oats by regulation (i.e. without referring the matter to Parliament) and as a result, oats was removed from the marketing mandate of the CWB.

As we will argue in this paper, the federal government currently has the authority, if it so chooses, to remove barley from the CWB in the same manner. That is, the federal government could, by regulation, revoke the application of Parts III and IV to barley. The Wheat Growers are not proposing this, as we support marketing choice, under which farmers would continue to have the option of marketing barley through the CWB.

2.5 Is a producer vote required?

Several commentators, farm groups and even the CWB itself have argued that implementing marketing choice for either wheat or barley cannot occur without having a vote among producers. Often they point to section 47.1 as the basis of their argument. Section 47.1 reads as follows:

47.1 The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless

- (a) the Minister has consulted with the board about the exclusion or extension; and
- (b) the producers of grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister.

It's important to note that section 47.1 was introduced into the CWB Act in 1998 as part of a number of other changes to the Act. In our view, one cannot understand the meaning of section 47.1 without first examining the section 47 (1) **that was intended to replace the existing 47 (1) [as was described in the previous section above] but has not yet been proclaimed into force.**

The **unproclaimed** Section 47 (1) and (5) of the Act reads as follows:

47. (1) The Governor in Council may, by regulation, on the recommendation of the Minister, extend the application of Part III or of Part IV or of both Parts III and IV to barley.

47. (5) The Minister shall not make a recommendation referred to in subsection (1) unless

(a) the Minister has consulted with the board about the extension; and

(b) the producers of barley have voted in favour of the extension, the voting process having been determined by the Minister.

Note that the wording of the unproclaimed section 47 (1) is identical to the wording of the existing section 47 (1), except for the removal of the reference to oats, and the inclusion of the clause “on the recommendation of the Minister”.

When one examines the unproclaimed section 47, then section 47.1 begins to make some sense. Some readers might recall that the 1998 amendments to the CWB Act were initiated following the release of the Western Grain Marketing Report. That report contemplated the introduction of marketing choice for feed barley and non-registered wheat varieties from the jurisdiction of the CWB. So what 47.1 is intended to permit is for the government to remove **any kind, type, class or grade** of wheat or barley, from Part IV of the Act, or to extend Parts III and/or Parts IV to other grains (i.e. oats, rye, flaxseed, rapeseed or canola).

It is important to note that 47.1 does not refer to the removal of any kind, type, class or grade of wheat or barley from Part III of the Act (i.e. the CWB's marketing provisions). Thus, this section was designed to allow for the removal of feed barley or unlicensed wheat varieties from the CWB's export “monopoly” provisions, but contemplated the CWB's continued ability to market these crops. However, the complete removal of barley from Part III (i.e. the CWB's marketing provisions) or Part IV (i.e. the CWB's regulatory authority over interprovincial and export trade) was provided for under the unproclaimed section 47. Because the “new” section 47 has not been proclaimed, the authority to remove barley from Part III and or Part IV rests with the existing section 47.³

³ The authority to remove barley from Part III and IV must reside somewhere. That is, the ability to revoke regulation 9 (which extends Parts III and IV to barley) must be authorized under some section of the Act. As Justice Rothstein points out, that authority resides in the existing section 47.

The existing 47 makes no provision for a producer vote, thus the authority to revoke regulation 9 can be made simply by Order in Council, without any requirement to consult with the CWB or hold a producer vote.

Why did the government not proclaim section 47 (1) through (5)? We offer two possible explanations.

- 1) The unproclaimed 47 contemplates the extension of Parts III and IV to barley, but such extension cannot be made unless the conditions in 47 (5) are met. However, if this section was proclaimed, the conditions in 47 (5) would not have been met and thus, the government would be leaving itself vulnerable to a legal challenge as to whether the CWB was authorized to market and regulate the export and interprovincial trade of barley. In effect, the proclamation of the new 47 might have inadvertently removed barley from the CWB's jurisdiction.
- 2) A second possible explanation is that the clauses authorize the extension of Part III and IV to barley [subject to the conditions in subsection (5)], but do not adequately deal with the possible repeal of Parts III and IV to barley. As Justice Rothstein notes in his ruling on the Continental Barley Market, the Governor in Council has the authority to repeal the extension of Parts III and IV to barley under the existing clause 47 simply by revoking the regulation that provided the extension. Indeed, this is how oats was removed from the Board. But if the new section 47 was proclaimed, on what basis would the Governor in Council be able to revoke the extension of Parts III and IV to barley? Would the conditions in subsection 47 (5) that apply to the extension also apply to the revocation of that extension? Given the ambiguities, one can understand why the Liberal government chose not to proclaim this section.

It's worth noting that both the unproclaimed 47 and 47.1 were hastily introduced (in the Senate) as amendments to the CWB Act in 1998. It would appear that this has resulted in poorly drafted legislation. Even this notion that "the Minister shall not cause to be introduced in Parliament a bill" appears to be rather nonsensical. Parliament is free to introduce any legislation it so chooses to amend Acts of Parliament.

In any event, we believe section 47.1 is irrelevant as to whether the federal government has the authority to implement marketing choice. As we've discussed above, the authority to implement marketing choice lies in the ability of the federal government to (a) prescribe the terms and conditions on which export licences are issued and (b) direct the CWB to allow farmers to market their wheat and barley directly to any processor.

In the case of barley, we would argue that the federal government's authority goes even further. Under existing section 47 (1) it has the ability to remove barley completely from the CWB's marketing authority (Part III) and/or the CWB's regulatory authority over interprovincial and export trade (Part IV), if it so chooses, simply by revoking regulation 9 that authorizes the extension.

Before leaving this discussion, we wish to make two other comments about section 47.1. Firstly, the section suggests that a producer vote must be held before excluding “any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada” from the provisions of Part IV.” The Wheat Growers are not seeking the exclusion of wheat or barley (or any kind, type, class or grade of wheat or barley) from Part IV. We can accept the requirement to obtain an export or interprovincial licence (providing that they are issued at no cost and without a buyback) so that we too can freely trade wheat and barley.

Secondly, let’s suppose (for argument’s sake) that 47.1 does require a producer vote to be held in order to implement marketing choice in the designated area. If that were the case, then why would the same requirement not also apply to farmers in Ontario, the Maritimes or B.C. farmers? Recall that Part IV applies to all of Canada. It makes no reference to “the designated area”. Marketing choice is in effect in these other provinces and yet there was no vote held in those provinces seeking an exemption from Part IV. Why then would a vote be required to implement marketing choice in the designated area? No, for this and for all the other reasons we cite earlier, we respectfully suggest that those who argue that a vote must be held to implement marketing choice pursuant to section 47.1 are in reality, barking up the wrong tree.

As noted above, the Wheat Growers can accept a requirement to obtain an export licence (as contemplated under Part IV). We are not seeking to have that requirement overturned. However, what we do seek is to be issued export licences on the same terms and conditions (i.e. at no cost) as those that are prescribed for Ontario farmers. We are convinced it is within the federal government’s regulatory powers to ensure that becomes the case.

2.6 Continental Barley Market

Some commentators have also suggested that the court ruling overturning the continental barley market in 1993 is evidence that the federal government cannot implement marketing choice by regulation. Quite the contrary. If anything, the judgment by Justice Marshall Rothstein strengthens our case.

In 1993, the federal Conservative government attempted to introduce a continental barley market in which farmers would be exempt from the requirement to have an export license on the export of barley to the U.S. and that they would be free to trade interprovincially without a licence.

The court confirmed that the Governor in Council had the authority to remove barley completely from Parts III and IV by regulation, but it did not have the power to authorize the export of barley to the United States without a license. In his decision, Rothstein notes:

“I earlier indicated that it was my view that section 47 of the *Canadian Wheat Board Act* and subsection 31 (4) of the *Interpretations Act*, confer

on the Governor in Council the power to revoke the extension of Parts III and IV of the *Canadian Wheat Board Act* to barley. I was somewhat troubled by the proposition that the Act allowed the Governor in Council to completely deregulate barley but not deregulate it in part as has been contemplated here.”

The Rothstein decision confirms that no person is permitted to export wheat and barley without an export licence. The Wheat Growers have no quarrel with that requirement. We are prepared to accept the requirement to obtain an export licence, providing the terms of obtaining that licence are identical to the terms now available to farmers or any other business in Ontario. That is, the licence should be issued at no cost, and without any requirement for farmers to deliver our grain to the CWB and buy it back.

2.7 Summary of this Section

As stated at the outset of this Section, the Wheat Growers have not obtained a legal opinion on the above matters. We therefore do not profess to claim absolute certainty in the correctness of all of the above arguments. However, one of the purposes for raising these issues is so others (including governments), who have access to greater resources, can retain counsel to examine these arguments more carefully. At the very least, we believe the above discussion has been useful in dispelling some commonly held myths, and in supporting our argument that the federal government can implement marketing choice without resorting to legislation.

3.0 Structural changes to the CWB

3.1 The need for change

As noted earlier, the Wheat Growers believe there is no need to delay the implementation of marketing choice. Marketing choice can and should be implemented by August 1, 2006, however consideration of changes to the role and structure of the CWB can be considered over a longer timeframe.

In our view, the key driver for implementing structural reform is the need to address the removal of the government guarantee of borrowings and the initial payment. We realize the date these guarantees will be removed has yet to be negotiated at the WTO, and so the necessary timing and pace of structural reform is not yet known.

The loss of the government guarantee on borrowings is not an insignificant issue, given that the CWB currently has over \$5 billion outstanding in accounts receivable (most of which is long-term) and currently finances the purchase of \$3 to \$5 billion of grain throughout the crop year. The CWB will need a substantial equity base to deal with the loss of the guarantees on borrowings and the initial payment, although the size of that capital base will depend on how the old outstanding receivables are dealt with. So in this paper we will address that issue first, before turning our attention to our proposals on how the CWB should be restructured and how a capital base should be formed.

3.2 Treatment of receivables and liabilities under the Credit Grain Sales Program

As noted above, the CWB currently has over \$5 billion in old outstanding accounts receivable sitting on its books under what is known as the Credit Grain Sales Program. As explained under Note 3 to the CWB's financial statements, the accounts receivable arise from credit sales to 12 debtor countries. The Note goes on to explain that through a forum known as the Paris Club, the Government of Canada and other countries have periodically agreed to extend the repayment terms beyond the original maturity dates or to reduce the principal owed by a debtor country. The amounts owing from 11 of the 12 debtor countries (the one exception being Iraq) have been rescheduled such that principal and interest payments are to be made over schedules ranging from five to 25 years.

It should be noted that these receivables are currently financed entirely by a credit facility on the CWB's books that is fully guaranteed (principal and interest) by the Government of Canada. The difference in the interest rate collected on the receivables and the interest rate charged on borrowings to finance these receivables is largely what gives rise to the \$50 to \$60 million in net interest earnings, which the CWB records as income on its books each year. In some years, these interest earnings are sufficiently high enough to cover all of the CWB's administrative expenses.

While these receivables are recorded on the CWB's books, in effect they represent sovereign debt owed to the Government of Canada, since the CWB (i.e. farmers) bears absolutely no risk of non-payment. In our view, these receivables and the associated credit facility should be moved off the balance sheet of the CWB and onto the books of the Government of Canada, or into a government-owned corporation expressly set up to administer the receivables and associated liabilities. However, as discussed in section 3.3 below, we believe the annual net interest earnings arising from these receivables could and should be used as a source of capital formation for the CWB.

It should be noted that it is not feasible, nor is it justifiable, for the CWB to raise capital sufficient to finance these receivables, once the government guarantee on CWB is extinguished. In our view, there is no basis for holding the CWB (i.e. farmers) liable for any non-payment on these sovereign debts. Most of these receivables were incurred long ago, under international trade rules that allowed governments to underwrite credit grain sales. It is therefore vital, as part of the WTO negotiations, for the Canadian government to ensure the guarantee on these borrowings is grandfathered, and the elimination of the government guarantee of borrowings only applies to the financing of CWB normal business operations. As noted above, we believe moving these receivables and the associated credit facility off of the CWB's books would provide the "cleanest" approach to the problem.

3.2 Transforming the CWB into a privately-owned company

In our view, the best way to address the loss of the financial backing of the federal government and to avoid future trade challenges is to transform the CWB into a truly privately-owned and controlled company. When we say "privately-owned" we mean

that the CWB should become a shareholder-owned company. We recommend that initially, those shares should be owned by farmers, although the degree to which non-farmers could eventually own shares in the company should be determined by the shareholders themselves.

The Wheat Growers are flexible in our views on the business ownership model. That is, the capital structure could be based on a traditional co-operative, a new-generation co-operative or a regular shareholding company. Our preference would be that it eventually evolve into a regular shareholding company, as we believe this would give it the best ability to raise capital (from farmers and non-farmers alike), and allow it to become a strong competitive force in the marketplace.

Initially however, we recommend that shares be granted to farmers only. How the Wheat Growers believe this allocation takes place will be discussed in the next section.

Before considering this question, it should be noted the CWB currently has what could be considered an “equity” base consisting of the contingency fund (which stood at \$18.5 million as at July 31, 2004), plus the equity in its capital assets. The net book value of its capital assets as at July 31, 2004 was \$51.4 million consisting of computer systems development (\$29.1 million), hopper cars (\$15.2 million), computer equipment (\$4.5 million), furniture and equipment (\$1.2 million), land, building and improvements (\$1.0 million) and automobiles (\$0.4 million). It should be noted that the market value of the land and buildings is substantially greater than its book value, given the location of the CWB’s offices in downtown Winnipeg. On the other hand, the market value of its computer systems development is likely substantially less than its book value. In any event, there does not appear to be any liabilities outstanding against these assets, so these in effect are owned by the CWB free and clear.

As an aside, it’s worth noting that, under section 6 (1) (d) of the CWB Act, the CWB has the power “to acquire, hold and dispose of real and personal property, but the Corporation shall not acquire or dispose of any real property without the approval of the Governor in Council.”

The Wheat Growers have considered whether the value of the existing equity base should be allocated to farmers in some fashion. The allocation could go to those currently farming or to those who have delivered grain to the CWB in the past. There is precedent (e.g UGG in 1993) in the Canadian industry for allocating equity to past patrons of the business.

While the concept has some merit, the Wheat Growers believe such an allocation is not warranted, given the relatively small equity base and the administrative difficulty in dealing with an allocation (e.g. the treatment of estates). Besides, those who have delivered grain to the CWB in the past would never see this equity under the current CWB structure. That is, in its current form, any distribution of the contingency fund or other forms of equity would go to those who deliver grain to the CWB in the future, so it

is not like those who have delivered grain to the CWB in the past are losing something that they would otherwise be entitled to.

3.3 Creation of a capital base

We believe the formation of a capital base for the CWB could be created, in part, through the allocation of the net interest earnings arising from the \$5 billion in receivables now recorded on the books of the CWB.

As discussed above, the Wheat Growers believe these receivables and the associated credit facility should be removed from the books of the CWB and placed in a government-owned corporation. As is the case now, this corporation would generate net income of approximately \$50 million per year from net interest earnings, representing the difference between what is charged as interest on the receivables and what is paid by the corporation on the borrowings necessary to finance those receivables.

The Wheat Growers propose that the net income of this government-owned corporation be allocated to those farmers in western Canada, in proportion to the amount of wheat and barley each farmer produces as declared under the CAIS program or by any other verifiable means.

Once each farmer's annual entitlement is determined, the farmer could choose to have the money paid out to him directly, or if he so elects, to have his entitlement invested in shares in the CWB. We believe a large number of farmers would elect to invest in the CWB because (i) it would be tax-sheltered until the shares are encashed and (ii) the share value would likely be greater than its book value (i.e. the principal amount invested) because the share value would also reflect the equity in the contingency fund and other assets now on the CWB's books.

The Wheat Growers recommend the interest earnings should be paid out to farmers through CAIS or its successor programs until such time as the receivables from the debtor countries are either collected or written off.

We realize others have suggested the Canadian government gift money to the CWB as compensation for the loss of the guarantees. The Wheat Growers are strongly opposed to such a proposal on the grounds that (a) any amount of money gifted to the CWB would no doubt be trade actionable, (b) it would take away from money that might otherwise be directly available to prairie farmers and (c) it would give the CWB an unwarranted advantage over companies that have been required to raise capital on their own through private sources.

By providing the interest earnings to all growers of wheat and barley, the decision as to how to invest that money – whether into shares of the CWB, their farming operation, or off-farm investments (such as ethanol plants, processing facilities or other grain companies) – would rest in the hands of farmers. Under no circumstances should farmers be obliged to invest their share of interest earnings into CWB shares.

3.4 Additional capital formation

In addition to the share capital that is obtained through those farmers who elect to invest their interest earning proceeds into the CWB, the Wheat Growers believe the CWB should be free to raise capital through the issuance of equity or debt instruments.

Of course the level of capital required will depend on the size of the CWB's handle. For example, whether the CWB handles 5 mmt, 10 mmt or 15 mmt will determine the operating line of credit the CWB will require, which in turn will require a certain capital base. Bear in mind however that the continuance of the federal government guarantees in the near term buys the CWB some time. That is, if the guarantees are removed by 2013 (i.e. the same year by which the European Union has agreed to eliminate export subsidies), the CWB will have a number of years in which to accumulate a capital base from those farmers who elect to invest their share of interest earnings, or by issuing additional shares.

It's also worth noting that by the nature of its pooling operations, the CWB does not require the same level of capital base that a business that operates on a margin basis might. That is, because most of the CWB's sales are placed in a pool account, and farmers are simply paid revenues less expenses, there is not the same risk of loss that other businesses face. In making this statement, we are assuming the CWB will not incur any significant pool account deficits (and admittedly that may be a bold assumption), however until the CWB has established a significant capital base, prudence would dictate that it will have to be rather conservative in the setting of initial payments. For this reason, we believe the Government of Canada should continue to underwrite the initial payments, until such time as the equity base is sufficient to cover any losses, subject of course to the negotiated timeline for the elimination of these guarantees at the WTO.

3.5 Governance structure

The Wheat Growers believe the governance structure of the CWB should be changed, so that eventually all directors are elected by shareholders. Ideally, shareholders should vote for directors based on their shareholdings, although as a transition measure, the Wheat Growers can accept election of farmer directors by district as is the case now, providing the ballots are weighted according to deliveries to the CWB. We say that ballots should be weighted according to "deliveries to the CWB" (and not based on production) on the assumption that farmers are provided marketing choice. It is our belief that, once marketing choice is provided, the election of directors to the CWB should be undertaken only by those who are customers (in the short-term) or shareholders (in the longer term) of the CWB.

The Wheat Growers envision a scenario whereby farmer directors are elected to the CWB by weighted ballot until such time as the government guarantee of borrowings is removed. However, once the government guarantee is removed, then we believe that

election of directors should revert to shareholders, since it would be their financial interest that is directly at stake.

For example, if the government guarantee of borrowings is eliminated in 2013 then until that time, we can accept that farmer directors are elected on the basis of deliveries to the CWB (again, assuming we are operating in a market choice environment). However, by 2013 the CWB should have accumulated a significant equity base, and at that time it would be appropriate to have directors elected by shareholders with votes based on their shareholdings.

3.6 Non-farmer directors

The Wheat Growers support the inclusion of non-farmer directors on the board of the CWB as we believe such directors can bring a valued skill set that may not be present among the elected farmer directors.

It is our view that these outside directors should be chosen by the farmer directors, rather than appointed by government. We are confident in the ability of farmer directors and CWB management to identify the skill gaps around the board table and seek out qualified directors who may address these needs. Eventually we believe these outside directors should be elected by the shareholders (the majority of whom would undoubtedly be farmers), rather than selected solely by farmer directors, and that this too should occur at the same time as the government guarantee of CWB borrowings is removed.

3.7 CWB acquisition of assets

The Wheat Growers believe the CWB should be permitted to acquire grain handling and processing assets if all the following conditions are met:

- (i) farmers have complete marketing choice,
- (ii) the government guarantee of borrowings is extinguished,
- (iii) the CWB is truly a privately-owned and controlled company,
- (iv) the formation of its capital base (aside from its current “equity”) is through voluntary investments, either by farmers or other private sector sources.

The Wheat Growers set out these conditions because we believe the CWB should not be given preferential treatment over others in the industry who have raised capital from the private sector under normal commercial methods. However, once all of the above conditions are met, then we believe the CWB should be permitted, and indeed encouraged, to invest in any assets that the Board of Directors believes are in the best interests of its shareholders.

3.8 Marketing of other grain

In principle, the Wheat Growers are not opposed to the marketing of grains other than wheat and barley by the Canadian Wheat Board on a voluntary basis. We accept that a number of farmers wish to avail themselves of the services of the CWB for the marketing of other grains and to take advantage of price pooling or other risk management vehicles that the CWB may offer.

While we could in principle support the inclusion of other crops under the CWB's marketing mandate, we believe it would be sheer folly to allow the CWB to market any other grain, until such time as all ties to government are completely extinguished. We note for example that the CWB has been the target of 14 different U.S. trade actions over the past 17 years. Trade disputes for other grains, whether it be canola, flax, oats, rye or pulse crops has been virtually non-existent over the same time frame. Even if the crop was marketed on a voluntary basis and without any government guarantees, the mere involvement of the CWB and the suspicion of cross-subsidization from other pool accounts would invite other countries to initiate trade actions. As we have seen in the case of wheat, the costs, in terms of lost revenue and legal fees, can be tremendous.

4.0 Ideological Arguments in favour of Marketing Choice

4.1 Individualism versus collectivism

In the debate surrounding marketing choice, it is often said that "farmers should decide" whether they wish to market their grain collectively or not. We agree, although in our case, we believe it should be up to each individual farmer to decide (i.e. vote with their trucks) as to whether they wish to market their grain on a collective basis or on their own. In our view, this is an issue of personal and economic freedom. It is therefore not appropriate for the matter to be decided on the basis of majority rule.

Today's successful farmer can have strengths in a number of different areas including production, marketing, financial, human resource, customer relations, planning or other skills. Some farmers are good at production, while others are good at marketing. Why should farmers who are good producers be allowed to fully utilize their skills to best advantage, whereas those who are good at marketing are denied the ability to use their skills to best advantage? We believe each farmer should be allowed to capitalize on their respective individual strengths, whatever those may be.

The Wheat Growers respect those farmers who wish to market their grain collectively. What we seek in exchange is reciprocal respect for those farmers who wish to market their own grain on their own.

Most farmers would never dream of telling their neighbour how to produce their crop – why then do some farmers think it is perfectly acceptable to tell their neighbour how to market their crop? We don't collectively decide what kind of tractor to drive, what crops

to grow, or what type of production system we should all use. Why should marketing decisions be any different?

One of the principal differences between marketing choice and compulsory marketing is that marketing choice does not require state intervention to enforce. That is, under marketing choice, each farmer would be free to decide, voluntarily, whether to market his grain individually or on a collective basis. However, those who wish to compel all farmers to market their grain collectively require the state (i.e. non-farmers) to intervene and enforce the compulsory marketing scheme. So in effect, those who support compulsory marketing are **not** asking for farmers to decide. Instead, they are asking other Canadians to intervene so as to permit one group of farmers to impose its will on another group of farmers. The Wheat Growers believe each farmer should instead decide what is in his own individual interest and not look to others to determine what is best for him or his neighbours.

4.2 Freedom of association

One of the fundamental freedoms guaranteed under the *Canadian Charter of Rights and Freedoms* is “freedom of association”. In our view, compelling farmers to deliver their milling quality and malting quality grain to the CWB violates this fundamental freedom. In our view, freedom of association should include the freedom to disassociate.

The *Charter* guarantees the rights and freedoms of Canadian citizens “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” We ask Canadians whether denying individual farmers the right to market their own grain is “demonstrably justified”? What national imperative is being served by forcing some farmers to deliver their grain to the state? Would most Canadians agree that it is “demonstrably justified” to deny marketing freedom to Canadian farmers on the basis of where they live?

Other freedoms that are guaranteed in our *Charter* (e.g. freedom of expression, freedom of religion) are upheld in Canada even when the number of people holding such views may be a small minority. In the case of wheat and barley marketing, we would be surprised if compulsory collective marketing is supported by a majority of farmers, however even if it is, that does nothing to change our view. Even if there was only one farmer who wished to market grain on their own, we do not believe that freedom should be denied.

Summary

The Wheat Growers have put forward the case for the implementation of marketing choice. We are convinced marketing choice will result in a number of benefits including increased farmer returns, farmer empowerment, greater value-added processing, reduced constraints on variety development, reduced trade friction with the U.S., the more rapid adoption of innovation, the easing of transportation problems and improved industry relations.

We recommend marketing choice be implemented no later than August 1, 2006. We are confident the industry is, or will be ready by that date. We accept the CWB may need to tighten its contract specifications and enforcement measures so as to assure satisfactory contract compliance, and no “jumping in and out of the pool”. Also, to ensure price transparency and to pre-empt any U.S. trade reaction, we recommend the CWB be required to disclose its selling prices on sales made into the U.S. market, until such time as the government guarantee of its borrowings is removed.

The Wheat Growers maintain that marketing choice can be implemented without resorting to legislative amendments. We leave it to others to judge the merits of our arguments.

The Wheat Growers have also put forward a number of CWB restructuring proposals that we believe will help it to become an effective marketing choice for farmers. We look forward to discussing these proposals with other industry players, in an effort to ensure the path forward on CWB reform leads to increased farm profitability and greater prosperity throughout the industry.

Our position paper concludes by making the case for implementation of marketing choice without resorting to a vote among producers. In our view, each individual farmer should be free to choose whether they wish to market their grain collectively or on their own, regardless of the majority view.