

WENDY M. YOVIERNE, SHAREHOLDER  
Direct Dial: 202.326.5027  
Direct Fax: 202.336.5227  
E-Mail Address: [wyoviene@bakerdonelson.com](mailto:wyoviene@bakerdonelson.com)

**REDACTED SUBJECT TO PROTECTIVE ORDER DATED JULY 15, 2020**

September 9, 2020

Robert N. Barley, Chairman  
c/o Douglas Eberly, Esquire  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street  
Harrisburg, PA 17110

RE: PAMD's Post-Hearing Brief re August 5, 2020 OPP Hearing

Dear Chairman Barley and Member Van Blarcom:

The request by the Pennsylvania Association of Milk Dealers (PAMD or the Dealers) is simple and straightforward, and required by commonsense, Generally Accepted Accounting Principles, and the Pennsylvania Milk Marketing Board's (PMMB or the Board) own precedent.

At least since 2001,<sup>1</sup> the Over Price Premium that is calculated and included in PMMB wholesale minimum prices has been based on a representative cross section. In 2004, the Board stated:

The Board finds that it is desirable to provide for recapture of over-price premiums paid by Dealers in as timely a manner as possible. The Board also finds it equally important to include accurate calculations of the over-price premium in resale prices.

OGO A-925, FOF 12 (Mar. 25, 2004). Moreover, in 2001 and 2004, the Board recognized that the cross section can and should change in response to changed market circumstances in order to ensure representativeness of the resultant calculations. In discussing the cross section in 2001, the Board's approval was based on a conclusion that "the cross-section of dealers to be appropriate to be used since these dealers are representative of the over-order premiums being paid and have been

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<sup>1</sup> Over-Price Premium Official General Orders that are available on the PMMB website date back to 2001.

used in the past by the Board staff in the calculation of the over-price premium.” OGO A-913, FOF 4 (Jul. 1, 2001). See also OGO A-925, FOF 13.

Additionally, contrary to Staff testimony at the hearing, the Board has also been willing to make decisions about which premiums and the concomitant pounds from particular cross-section dealers can be counted in order to properly reflect what is actually going on in the market. For example, back in 2001, the Board agreed with Board Staff that premiums paid on out-of-state milk should not be counted because the *unique* regulatory treatment of out-of-state milk (sounds familiar) would skew what was actually going on in the market. To be clear, Staff was not, at the time, being results-oriented but rather ensuring that the OPP calculation reflected accurately what was actually an over price premium and since that could not be done in the case of out-of-state milk, such milk was and has been excluded from the calculation.

Of course, that is precisely the point of PAMD’s proposal before the Board. Consistent with what the Board did and continues to do today with respect to out-of-state milk, PAMD is asking the Board to acknowledge that a zero premium on member milk being sold to a cooperative owned plant is *not* reflective of the marketplace because the zero is due to the *unique* regulatory treatment of such milk. In addition, Mr. Mong testified that GAAP requires the result as well – he explained “Generally accepted accounting principles, abbreviated GAAP, require the elimination of related party transactions.” Public Hearing Transcript, p. 101 (Aug. 5, 2020) (hereafter, Tr. \_\_). Note, he did not say it requires the elimination of one half of the transaction. GAAP as well as sound mathematics require that both sides of the equation must be taken into account. Tr. 97. If the Board cannot know and verify the over price premiums being paid by a cooperative owned plant on member purchases, it is not proper to include the pounds but not the dollars.

Keeping milk volumes in the OPP cross section that go from having an over price premium to contribute to the cross-section average to then having no over price premium simply by virtue of government fiat cannot possibly maintain an over price premium that is representative of what plants are paying in the area for Pennsylvania milk. Any disinterested observer would agree.

Additionally, PAMD’s proposal is not simply academic. Mr. Mong reminded the Board that when it comes to sales at wholesale, the minimum wholesale prices, including all available discounts, tend to serve as the maximum wholesale prices. Tr. 19-20. As a result, it is very important that the Board now discontinue a practice that causes an understatement of cross section costs. Tr. 19-20. Now that we have a current example, the Board is able to focus on the current situation, as opposed to backward-looking and static analysis to have an initial understanding of how the current method will skew the OPP. **[BEGIN CONFIDENTIAL ATTORNEY EYES ONLY MATERIAL]**

**[END CONFIDENTIAL ATTORNEY EYES ONLY MATERIAL]** Confidential In-Camera Hearing Transcript, p. 30 (Aug 5 2020) (hereafter, Confidential Tr. \_\_). It is accurate that the PAMD proposal would alleviate these real life reductions in the OPP, but as Mr. Mong

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explained, PAMD would have made this recommendation regardless of which direction the correction would take the OPPs because the PAMD proposal is necessary to ensure that the OPP is representative and not the source of an artificial number. Confidential Tr. 30

Finally, it is worth mentioning that Board Staff's representation that the PAMD proposal will generate over recovery is not supported by the Staff's analysis. At the hearing, Board Staff conceded that the over recovery calculation that was offered did not attempt to quantify the premiums paid on volumes of milk that were included in their analysis. Tr. 80. As a result, Mr. Mong concluded that the Staff's over recovery analysis was overstated and therefore incorrect. Tr. 107.

In conclusion, PAMD urges the Board to recognize that the new ownership of four major fluid milk plants in Pennsylvania requires the exclusion of member pounds purchased by cooperative owned plants from the OPP cross section calculation. Failing to exclude the milk volumes and premiums assigned a value of zero by government fiat, will result in an artificially diluted OPP that is not representative of the marketplace.

Thank you for the Board's attention to this important issue.

Respectfully submitted,

/s/ Wendy M. Yoviene

Wendy M. Yoviene

cc: Interested Parties