

December 8, 2005

VIA DELIVERY AND FAX: 416-593-8244

Ontario Securities Commission
20 Queen Street
Suite 1903
Toronto, Ontario
M5H 3S8

Dear Sirs:

**Re: Application under Sections 104 and 127
of the *Securities Act* (Ontario)**

We are counsel to Royster-Clark Ltd. (“RC Ltd.”) and Royster-Clark ULC (“RC ULC”). On November 8, 2005 Agrium Inc., through its wholly-owned subsidiary Agrium Acquisition Inc. (together with Agrium Inc., “Agrium”), filed an offering circular (the “Agrium Circular”) in respect of its offer to purchase all of the outstanding Income Deposit Securities (“IDSs”) of RC Ltd. and RC ULC (the “Offer”).

We submit that the Offer and the Agrium Circular do not comply with Ontario securities laws, and that such non-compliance has coercive and prejudicial effects on the holders of IDSs and is contrary to the public interest.

The Offer is for IDSs only and not for all of the common shares of RC Ltd. that comprise one of the two component classes of IDS securities. In failing to make an offer for all of the common shares of RC Ltd., Agrium’s offer breaches ss. 95.1 and 97(1) of the *Securities Act* (Ontario) (the “Act”). Also, the Agrium Circular is materially deficient in its disclosure, contrary to the requirements of Items 7, 8, 19 and 24 of Form 32 under the Act.

Although Agrium’s reason for structuring its Offer in this manner has not been explained in the Agrium Circular, we submit that the effect of this approach is to coerce IDS holders to accept a financially inadequate offer in order to avoid adverse consequences in the event that the Offer is completed in accordance with its terms. In particular, by structuring the Offer in this manner, holders of IDSs that do not accept the Offer: (A) may be subject to compulsory acquisition of their common shares of RC Ltd. forming part of the IDSs at a capital loss, while (B) being left holding relatively illiquid subordinated notes of RC ULC in relation to which many of the protective covenants contained in their governing indenture may have been removed. Moreover, by structuring its Offer in this manner, Agrium has effectively precluded

the development of an appropriate market price discovery process in relation to the subordinated notes that currently comprise part of the IDSs that would have underscored the financial inadequacy of the current Offer.

A. ILLEGAL TAKE-OVER BID

We submit that the Offer is an illegal take-over bid in that Agrium has failed to make an offer for all of the securities of the class that is subject to the bid, contrary to sections 95.1 and 97(1) of the Act.

Nature of an Income Deposit Security

RC Ltd. and RC ULC filed a final prospectus on July 13, 2005 (the “IPO Prospectus”) in respect of a public offering of 32,500,000 IDSs. An IDS is not a “security” in its own right, it is merely a receipt (like a coat check) which evidences ownership of underlying securities, being: (i) one common share in the capital of RC Ltd. (“Common Share”); and (ii) \$6.08 principal amount of 14% subordinated notes due July 15, 2020 of RC ULC (“Subordinated Notes”).

Holders of IDSs have the right at any time to “turn in” their IDSs and receive the underlying Common Shares and Subordinate Notes. The IDSs are currently listed and traded on the TSX. The Common Shares are separately listed on the TSX and will be posted for trading on the TSX when RC Ltd. provides the TSX with evidence that there exists a sufficient public distribution of Common Shares that are held separately from Subordinated Notes. The Subordinated Notes are not separately listed but may be traded on an “over-the-counter” basis.

Investors purchase IDSs primarily for the anticipated cash distributions to be generated by the combination of dividend payments on the Common Shares and interest payments on the Subordinated Notes. The Board of Directors of RC Ltd. has adopted a policy to distribute available cash to the maximum extent possible, subject to applicable law, by way of equal monthly dividends on the Common Shares, after satisfying debt service obligations and other expense obligations. Interest is paid on the RC ULC Subordinated Notes on a monthly basis.

In connection with the initial public offering of IDSs by RC Ltd. and RC ULC, RC ULC also issued, on a private placement basis, \$24.2 million principal amount of Subordinated Notes (the “Separate Subordinated Notes”) that do not comprise part of the IDSs. The Separate Subordinated Notes were issued to and continue to be held by sophisticated institutional investors.

The IPO Prospectus identifies, properly, two issuing companies - RC Ltd. and RC ULC - since both of those companies distributed securities to the public under that prospectus.

Agrium’s Failure to Offer for all RC Ltd. Common Shares

The Offer is by its terms an offer to purchase IDSs only. According to the Offer (in relevant part), “deposits to the Offer of any separate Common Shares which may be outstanding and held otherwise than in the form of IDSs, whether as a result of the separation of

the IDSs or otherwise, will not constitute a valid acceptance of the Offer by the holders thereof and such separate Common Shares will not be taken up.”

As such, the Agrium Offer is not a bid “made to *all* holders of securities of the class that is the subject of the bid” and thus does not comply with sections 95.1 and 97(1) of the Act.

Although Agrium’s reason for structuring the Offer in this manner has not been explained in the Offering Circular, we submit that Agrium has chosen this approach in an effort to obscure the separate values of the Common Shares and Subordinated Notes for the purposes of: (i) purchasing Subordinated Notes at a below market price and with inadequate pricing information; and (ii) setting the stage for a statutory squeeze out of the Common Shares at an undervalued amount.

If Agrium’s Offer had been structured in compliance with the Act, it would have taken the form of an offer for all Common Shares (which would be subject to the requirements of the Act) and a separate offer for the Subordinated Notes. Separate offers with the appropriate and required disclosure, even if they were cross-conditioned, would not only be legally correct, but would permit the development of a public price discovery process in relation to each of the Common Shares and the Subordinated Notes, thereby permitting public holders to effectively assess the adequacy, or inadequacy, of the Agrium Offer. In this latter respect, RC Ltd. and RC ULC’s financial advisors believe that a separate tender offer for Subordinated Notes would require a significant premium above that implicitly contained in the Offer (up to approximately 150% of the face amount of the Subordinated Notes) in order to induce holders to forego a 14% coupon with a seven year no-call feature. It is likely that Agrium will be required to pay this level of premium to the institutional holders of the Separate Subordinated Notes if a second stage offer for those notes is undertaken.

We submit that if the Offer was properly structured, the tender offer price that would be required to purchase the Subordinated Notes could be determined by market forces, possibly through over-the-counter market trading in the Subordinated Notes, and this would result in improved price discovery for those instruments and would better inform public investors as to the inadequacy of the Agrium Offer. For example, it is not unreasonable to expect that institutional investors who understand the level of premium that is usually paid to successfully buy an outstanding debt issue would bid up the market price of the Subordinated Notes and then proceed to a separate price negotiation with Agrium. If this were to occur, a public investor would be able to maximize the value of its investment by selling Subordinated Notes into the market and tendering Common Shares to the Agrium Offer. Alternatively, a public investor could tender Common Shares to the Agrium Offer and hold the Subordinated Notes in order to benefit from the higher priced offer that is expected to be made to holders of the Separate Subordinated Notes.

Whatever the outcome of any such price discovery process, we submit that the Offer, as structured, does not comply with the Act and harms investors by restricting a market-based price discovery process.

B. INADEQUATE DISCLOSURE

The Agrium Circular is deficient in its disclosure in a number of material respects: (i) it contains inadequate disclosure regarding the consideration under the Offer and the consequences of accepting the Offer; and (ii) it contains inadequate disclosure regarding the effect of the Offer on the Subordinated Notes.

Consideration under the Offer and Consequences of Acceptance

One of the consequences of the illegal structure of Agrium's Offer is that the Agrium Circular contains inadequate disclosure regarding the consideration under the Offer and the consequences to RC Ltd.'s and RC ULC's security holders of accepting the Offer.

Agrium purports to offer \$10.00 cash "for each IDS". Under the Act, Agrium is required to make a take-over bid for all of the Common Shares at a clearly indicated price. Instead, Agrium has made a bid for IDSs referring to an obscurely referenced "allocation" in respect of Common Shares and Subordinated Notes which is not indicated until page 6 of the Agrium Circular. Page 6 of the Agrium Circular contains the following disclosure:

"The purchase price of \$10.00 per IDS shall be allocated as to \$2.00 per Common Share forming part of the IDS and \$8.00 for each \$6.08 principal amount of Subordinated Notes forming part of the IDS. Acceptance of the Offer constitutes an agreement to this allocation by a holder of Royster-Clark Securities".

The RC Ltd. and RC ULC IPO Prospectus disclosed that on issuance of the securities for an aggregate price of \$10.00 (the same cash price Agrium has offered), the \$10.00 issuance price was allocated \$3.92 to the Common Shares and \$6.08 per \$6.08 principal amount of Subordinated Notes. By purchasing IDSs at the time of the IPO, investors were deemed to agree to that allocation (see p. 138 of the IPO Prospectus).

Agrium now purports to make a materially different allocation than the initial allocation made less than 4 months ago upon the closing of the IPO. The Agrium Circular does not include disclosure that the Offer includes this materially different allocation of consideration to the Common Shares and Subordinated Notes, nor any disclosure as to the reasons for or the consequences of this difference for RC Ltd. and RC ULC security holders.

A consequence of the revised allocation Agrium is proposing is that an IDS investor who purchased at the time of the IPO and tenders his Common Shares and Subordinated Notes to Agrium's Offer would realize: (i) a capital gain of \$1.92 in respect of each \$6.08 principal amount of Subordinated Note; and (ii) a capital loss of \$1.92 in respect of each Common Share. This tax consequence is not disclosed in the Circular.

Even more problematic is the impact of the structure of Agrium's Offer on RC Ltd. and RC ULC investors who do not tender, and the Circular's failure to disclose these consequences. Page 31 of the Offer states:

“If within 120 days of the date of the Offer, the Offer has been accepted by holders of not less than 90% of the Common Shares forming part of the IDSs, ... the Offeror currently intends to acquire, pursuant to the compulsory acquisition provisions of Part XV of the OBCA. ... the remaining Common Shares not tendered to the Offer ... on the same terms, **including the price allocated to the Common Shares**, on which the Offeror acquired Common Shares comprising part of the IDSs pursuant to the Offer.” [emphasis added]

The Subordinated Notes are not subject to compulsory acquisition.

The excerpt cited above is all the Agrium Circular discloses as to the consequences to an IDS holder who does not tender, assuming that Agrium can validly exercise the compulsory acquisition mechanism as disclosed in the Circular. In fact, what would happen to such an investor, who had purchased at the time of the IPO, barely four months ago, is this:

- (i) the Common Share component of the investor’s IDS would be “squeezed out” for \$2.00 consideration;
- (ii) the investor would realize a capital loss of \$1.92 per Common Share; and
- (iii) the investor would be left with “orphan” \$6.08 principal amount of Subordinated Notes per IDS, which are not traded on a public exchange.

We submit that the materially deficient disclosure contained in the Agrium Circular significantly impairs the ability of investors to understand and assess the implication of the Offer and does not satisfy the disclosure requirements of Items 7 (“Terms and Conditions of Bid”), 8 (“Payment for Deposited Securities”) and 19 (“Other Material Facts”) of Form 32 under the Act, and the certification requirement of Item 24 (i.e., as to whether the circular contains all material facts) of Form 32.

Effect of Agrium’s Offer on the Subordinated Notes

If the 90% minimum tender condition is met in Agrium’s Offer as structured, after Agrium takes up and pays and exercises its purported compulsory acquisition right¹, there would remain two categories of Subordinated Notes outstanding:

- (i) the \$24.2 million principal amount of Separate Subordinated Notes held by sophisticated institutional investors; and
- (ii) the Subordinated Notes which were (a) formerly part of IDSs which were not tendered to the Offer, and (b) held by former IDS holders who exercised the right to separate IDSs into their component parts ((a) and (b) together, the “Non-Tendered Notes”).

¹ For purposes of this point, we assume Agrium could exercise the OBCA compulsory acquisition right as described in the Agrium Circular, but see “Improper Use of Compulsory Acquisition”.

The Circular discloses that the indenture which governs the Subordinated Notes requires that, on a change of control of RC ULC, RC ULC is required to make an offer to purchase all Subordinated Notes at 101% of their principal amount. If the Agrium Offer's minimum tender condition is satisfied, RC ULC will be required to make the change of control offer for both the Separate Subordinated Notes and the Non-Tendered Notes.

It is possible that, following the completion of a successful Agrium Offer as currently structured, Agrium would seek to purchase some or all of the Separate Subordinated Notes and the Non-Tendered Notes, but for different prices than the allocation indicated in the Offer.

The Subordinated Notes, by their terms, are non-callable until 2012. Yielding 14%, and, post take-over bid, being supported by Agrium's credit, we understand that the bond market would require, at this point, a redemption premium of much greater than 101% of principal amount in order to agree to tender the Subordinated Notes for redemption. In fact, we understand the market would ordinarily require a price of up to approximately 150% of principal amount to surrender that anticipated yield stream given Agrium's credit risk profile.

We would also expect the sophisticated institutional investors who hold the Separate Subordinated Notes to bargain for such an increased premium. The public investors who would hold the Non-Tendered Notes may not hold them in sufficient numbers to warrant Agrium paying a similar premium.

While there is no securities law requirement to offer the same consideration for publicly issued debt securities (but see "Bid for Subordinated Notes Should be Subject to the Act"), Agrium's Circular is entirely silent on these material matters for RC Ltd. and RC ULC's public investors.

Also, if Agrium were to acquire over 50% of the Subordinated Notes, it could amend the indenture governing the Subordinated Notes to "strip" many of the protective covenants which were negotiated at the time of RC Ltd. and RC ULC's initial public offering in order to protect the public investors. Again, there is no disclosure in Agrium's Circular on this material matter.

We submit that Agrium's failure to disclose these material matters in the Agrium Circular is in breach of the requirements of Items 19 and 24 of Form 32.

C. OTHER PUBLIC INTEREST PROBLEMS

We submit that, in addition to the public interest considerations raised by the breaches of the Act discussed above, there are other matters raised by the Offer that, while not involving breaches of the Act, are contrary to the public interest: (i) the fact that the treatment of the Subordinated Notes under the Offer is outside the scope of the take-over bid provisions of the Act, and (ii) the improper use in connection with the Offer of the compulsory acquisition mechanism of the *Business Corporations Act* (Ontario) (the "OBCA").

Bid for Subordinated Notes Should be Subject to the Act

The take-over bid requirements of the Act only apply to an offer for “voting or equity securities” and, therefore, an offer for non-convertible debt (such as the Subordinated Notes) is not subject to the Act. However, we submit that due to the nature of IDSs and the form of the Agrium Offer, the offer for the Subordinated Notes should be subject to the Act. The Offer is currently structured as a combined offer for Common Shares with a Subordinated Note attached. Even if the Offer is revised to comply with the Act and becomes separate offers for each security, we would expect that the offers would be cross-conditioned. In these circumstances it is clear that Agrium is treating the constituent parts of the IDSs as if they are one security.

Accordingly, we submit that it would be in the public interest for the Commission to require Agrium’s Offer to be restated to include undertaking that the Offer for the Subordinated Notes will be carried out in accordance with the requirements of the Act as if those notes were voting or equity securities. This will ensure that adequate disclosure is provided to holders of the Subordinated Notes. In addition, this will protect public note holders from receiving a lower price for their notes than that which is expected to be paid to institutional investors on a subsequent bid for the Separate Subordinated Notes.

Improper Use of Compulsory Acquisition

We submit that Agrium’s Offer as structured would not permit it to utilize the compulsory acquisition mechanism of the OBCA to acquire RC Ltd. Common Shares. Agrium's Offer is for IDSs only, and not for the Common Shares it believes it could acquire through the compulsory acquisition mechanism. We submit that the compulsory acquisition mechanism of the OBCA can only be used where the "take-over bid" is made in respect of the securities that would be subject to compulsory acquisition. In addition, the Circular discloses that Agrium considers it can exercise a compulsory acquisition of all Common Shares if the Offer has been accepted by holders of “not less than 90% of the Common Shares forming part of the IDSs...” [emphasis added] (Agrium Circular, p. 31). We submit this is a misstatement of the applicable OBCA provisions; rather Agrium may only exercise the compulsory acquisition if it (A) first makes a “take over bid” for all of the Common Shares, and not only those Common Shares forming part of an IDS, and (B) acquires pursuant to that bid 90% of all the Common Shares, not just those Common Shares forming part of the IDSs.

The essence of the Compulsory Acquisition provisions of the OBCA is that a bidder who has successfully acquired 90% or more of a class of securities is entitled to squeeze-out the remainder at the same price. This presupposes that the bidder has offered a price for the securities in question and the adequacy of that price has been validated by the acceptance of at least 90% of the outstanding public float. This essential validation is missing from the Agrium Offer since it contains a single combined price for the Common Shares and the Subordinated Notes, and the mere “allocation” of an amount for the Common Shares cannot be taken as a separate offer, with shareholder acceptance of that price. By framing the Offer as a bid only for IDSs, and not separate bids for the Common Shares and Subordinated Notes, Agrium should not be able to rely on statutory squeeze-out provisions that are conditioned on the offer and acceptance of a separate bid for the Common Shares at a specifically identified price.

D. RELIEF REQUESTED

For the reasons described above, we submit that Agrium's current Offer is fundamentally flawed and cannot be simply amended; rather must be substantially reformulated such as to effectively constitute a new take-over bid. If Agrium wishes to make an offer for all of the Common Shares, we submit that it should do so by commencing a new take-over bid for the Common Shares that complies with the Act and through a new take-over bid circular that contains the required and sufficient disclosure. The new circular would be required to clearly state the price being offered for the Common Shares and the consequences for holders who do not tender to the new offer, both with respect to their Common Shares and Subordinated Notes. The full 35 day statutory period would be required in order for investors to understand the implications of the new bid, to permit an effective market price discovery process to occur and to allow the directors of RC Ltd. and RC ULC to effectively respond to what would be a fundamentally different offer. As a result, even if Agrium were to be permitted to vary the Offer and amend its existing circular, we submit that the statutory time periods applicable to the Offer should begin to run anew.

Accordingly, RC Ltd. and RC ULC request the following relief:

1. pursuant to clause 127(1)2 of the Act, an order in the public interest that Agrium's bid be cease traded by prohibiting Agrium from taking up and paying for securities of Royster-Clark pursuant to and in connection with the Offer until such time as the issues highlighted below are appropriately addressed;
2. pursuant to clause 104(1)(a) of the Act, an order restricting any further distribution of the Agrium Circular and any advertisement in connection with the Offer;
3. pursuant to clause 104(1)(c) of the Act, an order requiring that Agrium comply with the Act by commencing a new take-over bid for all of the Common Shares and preparing and distributing a new take-over bid circular which includes the disclosure required pursuant to the Act; and
4. in the alternative to the relief requested in paragraph (3) above, (i) pursuant to clause 104(1)(b) of the Act, an order requiring that Agrium amend, correct or vary the Agrium Circular and distribute such amended, corrected or varied documents to all persons to whom the Agrium Circular was sent; and (ii) pursuant to clause 104(2)(b) of the Act, the variation of all time periods set out in the Act and the respective regulation relating thereto such that such time periods shall run anew from the date that Agrium sends the revised documents described in paragraph (4)(i) above to all persons to whom the Agrium Circular was required to be sent.

We enclose a verification statement from a senior officer of each of RC Ltd. and RC ULC in respect of this application and our firm's cheque in the amount of the filing fee for the application. Also enclosed is a copy of the Agrium Circular, the RC Ltd. and RC ULC Directors' Circular and the July 13, 2005 IPO Prospectus of RC Ltd. and RC ULC.

Should you have any questions or require any additional information, please do not hesitate to contact Kevin Morris at 416.865.7633 or Jamie Scarlett at 416.865.8199.

Yours sincerely,

"Kevin Morris"

Kevin Morris

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