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December 12, 2005

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VIA DELIVERY AND FACSIMILE

Ontario Securities Commission
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Reference: 47369/98

Attention: **John Stevenson**
Secretary of the Commission

Dear Sirs / Mesdames:

RE: Offer by Agrium Acquisitions Inc. (“Offeror”), a wholly owned subsidiary of Agrium Inc., to purchase all of the outstanding income deposit (“IDSs”) (the “Offer”) issued by Royster-Clark Ltd. and Royster-Clark ULC (collectively “Royster-Clark”)

Application for a cease trade order under section 127 of the *Securities Act* (Ontario)

We are counsel to Offeror and Agrium Inc. (collectively, “Agrium”).

Agrium hereby applies for an order pursuant to subsection 127(1) of the *Securities Act* (Ontario) in connection with the Offer and Royster-Clark’s shareholder rights plan made as of December 7, 2005 (the “Rights Plan”).

In this application, Agrium seeks the following relief:

- a) A permanent order pursuant to paragraph 127(1) 2 of the *Securities Act* (Ontario) (the “Act”) that trading cease in respect of any securities issued, or to be issued, under or in connection with the Rights Plan, including without limitation, in respect of the rights issued under the Rights Plan (the “Rights”) and any common shares of Royster-Clark to be issued upon the exercise of the Rights;
- b) A permanent order removing prospectus exemptions in respect of the distribution of Rights on the occurrence of the Separation Time (as defined in the Rights Plan) and in respect of the exercise of the Rights; and

- c) Such further and other relief as the Commission deems appropriate.

All dollar amounts herein are in Canadian dollars unless otherwise indicated.

OVERVIEW OF AGRIMUM'S POSITION

1. Since as early 2002, representatives of Agrium and Royster-Clark Group¹ and its shareholders have had discussions with respect to the possibility of combining Royster-Clark Group's fertilizer distribution business with that of Agrium.
2. In January 2005, Agrium offered to acquire all of the outstanding interests of the Royster-Clark Group for a price (including assumed indebtedness) that resulted in an aggregate enterprise valuation for Royster-Clark Group of approximately U.S. \$395 million. Citicorp Venture Capital and other shareholders of Royster-Clark Group at that time rejected this Offer as well as a similar offer made by Agrium in March 2005.
3. In June and July, 2005, subject to completing due diligence and obtaining the approval of its board of directors, Agrium offered to purchase all of the outstanding interests in Royster-Clark Group for an aggregate enterprise value of approximately U.S. \$470 million. Royster-Clark Group declined Agrium's invitation to continue discussions regarding an acquisition, and on July 14, 2005, Royster-Clark filed a final prospectus relating to an initial public offering ("IPO") of 32,500,000 IDSs at a price of \$10.00 per IDS. Royster-Clark allocated the \$10.00 price per IDS as to \$3.92 for the Common Share and \$6.08 for the principal amount of the Subordinated Notes comprising each IDS. The Royster-Clark IPO was completed on July 22, 2005.
4. On November 8, 2005, Agrium announced its offer to purchase the Royster-Clark IDSs for \$10.00 for each IDS. On that date, it mailed its take-over bid circular in respect to the Offer (the "Agrium Circular") to registered holders of IDSs. The Offer expires at 4:00 p.m. (Calgary time) December 15, 2005 (the "Expiry Date"), 37 days after the bid was made.
5. On November 22, 2005, Royster-Clark's Board of Directors issued a directors' circular (the "Royster-Clark Circular") recommending that IDS holders reject the Offer.
6. By press release dated December 8, 2005, 30 days after the Offer had been announced, and only 7 days from the Expiry Date, Royster-Clark's Board of Directors announced it had implemented the Rights Plan. The Rights Plan, which is effective immediately, is effective for 60 days from its effective date of December 7, 2005. The effect of the Rights

¹ Royster-Clark Group is comprised of Royster-Clark Holdings, Inc. and its consolidated subsidiaries. Today, IDS holders hold 100% of the common shares of Royster-Clark Ltd., which in turn owns an approximate 91.1% economic interest in Royster-Clark Holdings, Inc. Royster-Clark Holdings, Inc., through its subsidiaries, holds Royster-Clark's operating assets.

Plan, if it is not varied or cease traded, is that the Offer would have to be held open for 89 days from the date of the bid

7. The adoption of the Rights Plan in the face of Agrium's overtures since 2002 and in light of the Offer constitutes an improper defensive tactic thereby warranting the cease trade order requested here because:

- The adoption of the Rights Plan is a tactical manoeuvre intended to frustrate Agrium's bid, which would have to be kept open for 89 days.
 - The Rights Plan was adopted without shareholder approval and with the knowledge that shareholder approval of the Rights Plan could not be obtained before the expiration of the Offer.
 - The Offer is not coercive or unfair.
 - Approximately 34 days have elapsed since the announcement of the Offer and no alternative bid or transaction has emerged, despite the efforts of the Royster-Clark Board, its Special Committee and their financial advisors.
 - There is no reasonable prospect that the Rights Plan, if permitted to continue, will result in an alternative bid or transaction that would be more attractive to Royster-Clark's IDS holders. This is particularly so in light of the process presumably undertaken by Citicorp Venture Capital earlier this year in its efforts to sell the majority of its interest in Royster-Clark.
 - The Offer expires December 15, 2005 and no decision has been made at this time by Agrium to extend the Offer in the face of the Rights Plan.
8. The Rights Plan is a tactical plan. Given the fact it was adopted by Royster-Clark's Board after the announcement of the Offer, at a minimum, Royster-Clark has to establish that the Rights Plan was necessary because of the coercive nature of the takeover bid or due to some other substantial unfairness or impropriety.² Agrium's position is that there is no basis here to found any such finding.
9. Agrium's position is that continuation of the Rights Plan is contrary to the public interest.

² Re CW Shareholdings Inc. and WIC Western International Communications (1998), 21 O.S.C.B. 2899 (O.S.C./A.S.C./B.C.S.C.)

SUMMARY OF MATERIAL FACTS

The Parties

10. The Offeror is a corporation organized under the *Business Corporations Act* (Ontario) and is a wholly owned subsidiary of Agrium, a corporation organized under the *Canada Business Corporations Act*.

11. Agrium is a publicly-traded company based in Calgary, Alberta and is engaged in the business of producing and distributing agricultural nutrients and industrial products and services. The head and registered office of Agrium is located in Calgary.

12. Royster-Clark, through direct and indirect U.S. subsidiaries, is a retail distributor of each of agricultural fertilizer, seed and crop protection products, and provides agronomic services, such as product application and technical consulting services, to farmers in the United States. It also distributes crop production inputs, principally fertilizer, on a wholesale level.

13. Royster-Clark Ltd. is a corporation organized under the OBCA with its registered office located in Toronto, Ontario. Royster-Clark Ltd.'s common shares are listed on the TSX but are not currently posted for trading as the common shares currently only form part of the IDSs and do not trade separately.

14. Royster-Clark ULC, an unlimited liability company formed under the laws of Nova Scotia, is the issuer of 14.0% subordinated notes due July 22, 2020 (the "Subordinated Notes").

15. The IDSs issued by Royster-Clark consist of one common share of Royster-Clark Ltd. and \$6.08 principal amount of Subordinated Notes and are listed and posted for trading on the TSX under the trading symbol "ROY.UN".

16. Royster-Clark Ltd. indirectly owns 91.12% economic interest in Royster-Clark ULC through Royster-Clark Holdings, Inc., a Delaware company, in which Royster-Clark Ltd. directly owns a 91.12% economic interest. Royster-Clark Holdings, Inc. owns all of the outstanding common shares of Royster-Clark ULC.

17. To the knowledge of Agrium, all of Royster-Clark Ltd.'s 32,500,000 issued and outstanding common shares form part of and are represented by the IDSs sold pursuant to the IPO of Royster-Clark, which was completed on July 22, 2005.

Background to the Offer

18. Since 2002, representatives of Agrium and representatives of Royster-Clark Group and its prior shareholders have had discussions with respect to the possibility of combining Royster-Clark Group's fertilizer distribution business with that of Agrium.

19. In January 2005, Agrium offered to acquire all of the outstanding interest in Royster-Clark Group for a purchase price (including assumed indebtedness) that resulted in an aggregate enterprise valuation for Royster-Clark Group of approximately U.S. \$395 million, subject to adjustments. This Offer was not accepted by Royster-Clark Group's then existing shareholders.

20. In March 2005, Agrium offered to acquire all of the outstanding interests in Royster-Clark Group for a purchase price, including assumed indebtedness that resulted in an enterprise value of Royster-Clark of approximately U.S. \$395 million, subject to adjustments. The then existing shareholders of Royster-Clark Group did not accept this Offer.

21. On June 15, 2005 Royster-Clark filed a preliminary prospectus in all of the provinces and territories in Canada relating to an initial public offering of the IDSs. In June and July 2005, subject to approval by the Agrium Board of Directors and subject to completing the necessary due diligence, Agrium offered to purchase all of the outstanding interest in Royster-Clark Group for an aggregate enterprise value, including working capital, for approximately U.S. \$470 million. Royster-Clark declined Agrium's invitation to continue discussions regarding an acquisition and on July 14, 2005, Royster-Clark filed a final prospectus relating to the offering of 32,500,000 IDSs at a price of \$10.00 per IDS. This public offering was completed on July 22, 2005.

The Offer

22. On November 8, 2005, Agrium publicly announced its intention to offer to purchase all of the outstanding IDSs at a price of \$10.00 cash for each IDS, subject to the terms and conditions set forth in the Offer.

23. The Offer price represents a 27.4% premium to the closing price of the IDSs on the TSX on November 7, 2005, the last trading day prior to the announcement of the Offer, and a 32.1% premium to the \$7.57 weighted average trading price of the IDSs on the TSX for the 20 trading days prior to the announcement of the Offer. The Agrium Circular was mailed to registered IDS holders on November 8, 2005.

24. The Offer is open for acceptance until 4:00 p.m. (Calgary time) on December 15, 2005 (the "Expiry Time").

Royster-Clark's Response to the Offer

25. On November 22, 2005, the Royster-Clark Board of Directors approved the Royster-Clark Circular and issued a press release announcing that the Royster-Clark Board recommended that IDS holders reject the Offer.

26. By press release dated December 8, 2005, Royster-Clark announced that Royster-Clark and its financial advisors were engaged in discussions with a number of parties who had expressed an interest in considering alternative transactions involving Royster-Clark. In the press release, it was announced that the Board of Directors of Royster-Clark Ltd. had implemented a shareholders rights plan, which was effective immediately, and which would remain in effect for a period of 60 days from the date of implementation. The press release also stated that Royster-Clark had asked the Ontario Securities Commission to review the Offer on the basis that it did not comply with securities laws and was materially deficient in its disclosure.

The Rights Plan

27. Prior to December 8, 2005, Royster-Clark has never adopted a Rights Plan. It is clear that the Rights Plan was triggered by and directed at the Offer and was put in place without shareholder approval.

The Prospects for an Alternative Bid or Transaction

28. As of the date of this letter, 34 days have elapsed since Agrium first announced the Offer.

29. The Royster-Clark Board, the Special Committee and their financial advisors have yet to publicly identify any alternative bids or transactions. As discussed in further detail below, there are few potential viable offerors for Royster-Clark. Accordingly, the elapsed time since the date of the Offer has been more than ample to permit Royster-Clark to canvass the market to determine whether there is an interest on the part of any third party to make a competing bid. Given the length of time that has passed since the announcement of the Offer, and the limited number of potentially interested parties, there is no reasonable prospect for a competing bid to emerge in the event that the Rights Plan were permitted to continue.

AGRIUM'S SUBMISSIONS

30. Having regard to the fact that the Rights Plan is a tactical response to the Offer and was adopted by the Royster-Clark Board of Directors without shareholder approval, and

given the period of time that has elapsed since the date of the Offer to identify and consider potential alternatives to the Offer, Agrium submits that the introduction and continued operation of the Rights Plan constitutes an improper defensive tactic contrary to public interest.

National Policy 62-202

31. The paramount consideration of the take-over bid provisions in Canadian securities legislation is the protection of the *bona fide* interests of the securityholders of the target company.

32. In adopting National Policy 62-202, the Canadian securities regulators recognized that, while defensive tactics may sometimes be legitimately used by a target corporation as a means of maximizing shareholder value, it is inappropriate for the target corporation to adopt defensive tactics “that are likely to deny or limit severely the ability of shareholders to respond to a take-over bid or to a competing bid”.

33. The implementation of a shareholder rights plan is a common defensive tactic employed by the management of a target corporation (although such rights plan are normally adopted well before any unsolicited offer is made), as the effect of a rights plan is to prevent any take-over bid from succeeding without the board’s approval. As is described in greater detail below, and consistent with the objectives of National Policy 62-202, the Commission has repeatedly held that a shareholder rights plan will be set aside as an improper defensive tactic where the rights plan is being used to prevent shareholders of a target corporation from exercising their fundamental right to determine whether to accept or reject an offer to acquire their shares.

Shareholder Rights Plan

34. Since its decision in *Re Canadian Jorex*,³ the Commission has consistently held that all rights plans must, at some time, be set aside in order that shareholders may determine whether or not to tender their shares to an outstanding offer. Therefore, the fundamental issue in this application is not *whether* the rights plan will be set aside but *when* it will be set aside. The paramount consideration in this decision is the best interests of shareholders generally.

35. In *Re Royal Host Real Estate Investment Trust*⁴, the Commission identified the following factors that may be relevant in determining whether the time has come for a Rights Plan be set aside:

³ (1992), 15 O.S.C.B. 257

⁴ *Re Royal Host Real Estate Investment Trust* (1999), 22 O.S.C.B. 7819 at 7828

- a) whether shareholder approval of the rights plan was obtained;
- b) when the plan was adopted;
- c) the size and complexity of the target company;
- d) the other defensive tactics, if any, implemented by the target company;
- e) the number of potential, viable offerors;
- f) the steps taken by the target company to find an alternative bid or transaction that would be better for shareholders;
- g) the likelihood that, if given further time, the target company will be able to find a better bid or transaction;
- h) the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company;
- i) the length of time since the bid was announced and made; and
- j) the likelihood that the bid will not be extended if the rights plan is not terminated.

36. Each of these factors is relevant to the determination whether the rights plan will facilitate an unrestricted auction for the corporation or, alternatively, will deprive shareholders of their fundamental right to tender their shares to the only offer open to them. As is described in greater detail below, this Rights Plan falls into the latter category.

Application to the Facts

37. The specific factors that the Commission should consider in determining whether or not to cease trade the Right Plan are as follows:

- **The Rights Plan Is Tactical In Nature In That It Is Designed To Thwart Agrium's Bid**

Some 30 days after the announcement of the Offer and with only 7 days remaining before the Offer expired, Royster-Clark's board announced it had put the Rights Plan in place to provide it with an additional 60 days (from December 7, 2005) to fully assess potential alternative transactions. In other words, Royster-Clark is seeking to stall the Agrium bid for 89 days from the date of the bid. Where a target company implements a rights plan in the face of a take-over bid,

without having obtained shareholder approval, this Commission has imposed a heavy burden on the target to justify its actions. In *CW Shareholdings, supra*, for example, where a rights plan had been adopted after a take-over bid for the company had been announced, this Commission held “. . . it is, at the very least necessary for the target company to demonstrate that it was necessary to do so because of the coercive nature of the take-over bid or some other very substantial unfairness or impropriety”. Subsequently, in *Re Cara Operations*,⁵ this Commission held that “. . . tactical rights plans [where no shareholder approval has been obtained] generally will not be found to be in the best interest of the shareholders”. As discussed further below, there is no basis for the assertion that the Offer is coercive or unfair to IDS holders.

- **The Bid Is Not Coercive or Unfair**

The Offer is neither coercive nor is it unfair. The Offer is not a partial bid but is an offer for 100% of the IDSs, and in turn for 100% of the common shares. Detailed submissions with respect to this point is contained in my letter of today’s date responding to the Application by Torys LLP under sections 104 and 127 of the Act. Further support for the fact that the bid is neither coercive nor unfair are also set forth in Mr. Anderson’s December 12, 2005 affidavit that has been filed with this Application.

- **There Are A Limited Number of Viable Offerors**

As noted in Mr. Anderson’s affidavit, there are likely few interested third parties that would want to make an offer for Royster-Clark. Given this fact, Royster-Clark should have been able to quickly assess the interest of any other viable offeror. It is submitted that the 37 days between the announcement of Agrium’s Offer and the Expiry Date of the Offer has been more than sufficient for this purpose.

- **At The Expiry Date, 37 days will have passed since Agrium first announced its intention to make the Offer. There is no reasonable prospect that the Rights Plan, if permitted to continue, would result in an alternative bid or transaction more attractive to IDS holders.**

Agrium announced its bid on November 8, 2005. According to the Royster-Clark Circular, Royster-Clark’s Board and its Special Committee have met on numerous occasions since that date to consider alternatives to maximize value to IDS holders. In this regard, the Royster-Clark Board has engaged CIBC World Markets Inc. and Credit Suisse First Boston LLC to act as financial advisors in

⁵ *Re Cara Operations Ltd* (2002), 25 O.S.C.B. 7997 (O.S.C.) at par. 63

connection with the Offer and strategic alternatives thereto. If no alternative transaction has emerged by the Expiry Date, Royster-Clark will have had 37 days from the announcement of the Offer to canvass the very small group of potential viable offerors who were undoubtedly canvassed in the summer of 2005. If no alternative transaction has been announced by the Expiry Date, it is very unlikely that such a transaction will be announced following that date.

- **Agrium Has Made No Decision To Extend Offer**

Agrium does not intend to take up and pay for the IDSs tendered to the Offer unless the Rights Plan is ceased traded or waived. Agrium has made no decision at this time to extend the Offer. Accordingly, it is submitted that fairness to IDS holders dictates that they be given the opportunity to tender to the Offer, or at the very least to disclose to them before the Expiry Date the date at which the Rights Plan will cease. Failing to cease trade the Rights Plan frustrates the Offer, the only bid available to IDS holders. Such an outcome would thwart the objectives underlying National Policy 62-202 which provides that one of the fundamental objectives of take-over bid legislation is to ensure that security holders of a target corporation have the opportunity to exercise their right to decide whether to accept or reject an outstanding offer to acquire their securities.

38. Having regard to the foregoing, Agrium submits that the circumstances of this case provide a compelling case for the Commission to exercise its public interest jurisdiction to cease trade the Rights Plan.

Conclusion

Royster-Clark only announced that it had put the Rights Plan in place on December 8, 2005. The Offer expires at 4:00 p.m. (Calgary time) on December 15, 2005. Given the urgency of this matter, Agrium requests that the Commission hold a hearing to consider and determine this application by no later than Wednesday, December 14, 2005 so that Royster-Clark and IDS holders will have sufficient time to consider the Commission's decision. Enclosed is a cheque in respect of the applicable filing fee.

BLAKE, CASSELS & GRAYDON LLP

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Should you have any questions or require further information, please do not hesitate to contact Jeff Galway (416) 863 – 3859 or Pat Finnerty (403) 260 – 9608, Chad Schneider (403) 260 – 9660, or me.

Yours very truly,

“Neil Finkelstein”

JWGA:ljp
Encl.

Neil Finkelstein

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