

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, as amended**

- and -

**IN THE MATTER OF
ROYSTER-CLARK LTD. AND ROYSTER-CLARK ULC**

- and -

**IN THE MATTER OF
AGRIUM INC. AND AGRIUM ACQUISITIONS INC.**

**AFFIDAVIT OF SCOTT A. KEYWORTH
(sworn December 15, 2005)**

I, Scott A. Keyworth, of the City of Toronto, in the Province of Ontario, investment banker, MAKE OATH AND SAY AS FOLLOWS:

1. I am a managing director of CIBC World Markets Inc. (“**CIBC**”), one of the financial advisors to Royster-Clark Ltd. (“**RC Ltd.**”) and Royster-Clark ULC (“**RC ULC**”) (collectively, “**Royster-Clark**”) in connection with the unsolicited bid (the “**Agrium Offer**”) by Agrium Inc. through Agrium Acquisitions Inc. (“**Agrium**”) for income deposit securities (the “**IDSs**”) issued by Royster-Clark, and potential alternative transactions. I therefore have knowledge of the matters to which I depose.

2. CIBC and Credit Suisse First Boston LLC (“**CSFB**”) were retained by Royster-Clark to act as its financial advisors (the “**Financial Advisors**”) in response to the Agrium Offer and potential alternatives. The mandate of the Financial Advisors includes, among other things, assisting a special committee of the RC Ltd. Board of Directors in (i) evaluating the adequacy of the Agrium Offer, and (ii) developing strategic alternatives to the Agrium Offer.

3. I am submitting this affidavit (i) in response to the application by Agrium to cease trade the limited duration shareholder rights plan (the “**Plan**”) instituted by RC Ltd. on December 7,

2005 in response to the Agrium Offer; and (ii) in support of an application by Royster-Clark for relief in respect of the Agrium Offer.

4. My affidavit is organized under the following headings:

- A. *Nature of an Income Deposit Security:* I explain the income deposit security structure and the key features of an income deposit security: it is simply a receipt confirming ownership of the constituent securities that are sold and initially traded on a ‘clipped’ basis; an IDS itself does not confer any right to vote, to participate in the equity of, or to receive distributions from the issuers.
- B. *Adequacy of Agrium Offer:* I note that CIBC has provided an opinion to the boards of directors of Royster-Clark that the consideration offered pursuant to the Agrium Offer is inadequate, from a financial point of view, to the holders of the IDSs and that this opinion has been corroborated by the price at which the IDSs have traded since the Agrium Offer was announced.
- C. *Unique Features of the Agrium Offer and Coercive Effect:* I describe how the relative amounts that Agrium has allocated to the constituent securities that comprise the IDSs (RC Ltd. common shares (the “**Common Shares**”) and RC ULC subordinated notes (the “**Notes**”)) will not be subject to the usual test of the market; and how an IDS holder who chooses not to tender IDSs to the Agrium Offer is faced with the prospect of (i) having his Common Shares expropriated at a price that has not been validated by the market, and (ii) being left with Notes that are less liquid than IDS and are subject to being stripped of material protective covenants.
- D. *Efforts to Develop Alternatives:* I describe the efforts of Royster-Clark and its Financial Advisors, to solicit and develop potential strategic alternatives to the Agrium Offer; the current status of that process; and the prospect for a superior proposal if Royster-Clark is allowed more time to pursue those alternatives.

A. Nature of an Income Deposit Security

5. The income deposit security structure evolved from the cross-border income trust structure during 2003. It was developed initially for the U.S. market and in significant part was intended to address certain accounting and U.S. tax challenges that had arisen with respect to cross-border income trusts. At the heart of the accounting and U.S. tax concerns was the requirement to ensure that the subordinated debt in the structure constitutes “debt” for U.S. tax purposes so that the interest payments on the subordinated debt would be tax deductible. One of the keys to achieving this in the income deposit security structure is to have the common shares and subordinated debt held directly as separate instruments by public investors with the IDS receipt used as a mechanism to facilitate trading.

6. Key elements which reflect the separate nature of the underlying common shares and subordinated debt in the income deposit security structure include:

- (a) income deposit security holders have the ability to separate and hold directly the common shares and subordinated debt any time shortly following the initial public offering;
- (b) income deposit security holders receive dividends on their common shares and interest on their subordinated notes, which distributions are taxed according to their character;
- (c) a significant principal amount of separate subordinated debt identical to the debt forming a component of the income deposit securities must be issued to persons who do not intend to also hold common shares;
- (d) the common shares are separately listed for trading on an exchange and the underwriters typically undertake to “make a market” in the subordinated debt; and
- (e) prospectuses for income deposit security offerings describe both components separately in great detail.

7. Accordingly, an income deposit security merely comprises two separate securities that are held together but separable at any time shortly following their IPO. An income deposit

security has no value or legal characteristics independent of its two constituent securities. Only the common shares have voting rights, not the income deposit securities. Only the common shares and debt carry a right to distributions (dividends and interest, respectively), not the income deposit securities. In the case of Royster-Clark, the fact that the IDSs are merely a receipt is reflected in the corporate chart that was included in the prospectus for the Royster-Clark initial public offering¹: the IDSs themselves do not appear in the chart, only the constituent securities.

8. Agrium has suggested, in the materials it has filed with the Commission on this application, that an income deposit security is a “stapled” security. This is incorrect. It is fundamental to the income deposit security structure that the component securities can be separated at any time without restriction shortly following the initial public offering.

B. Adequacy of the Agrium Offer

9. From the date that CIBC was engaged until November 22, 2005, the Financial Advisors reviewed extensive financial and other information concerning the Royster-Clark business and had numerous meetings with Royster-Clark management and the Special Committee with a view to forming opinions on the adequacy from a financial point of view of the Agrium Offer.

10. CIBC concluded, in an opinion dated November 22, 2005 addressed to the Special Committee and Board of Directors of Royster-Clark, that the consideration offered pursuant to the Agrium Offer was inadequate from a financial point of view, to holders of the IDSs. CSFB provided a similar opinion dated November 22, 2005 addressed to the Special Committee and the Boards of Directors of Royster-Clark.²

11. I do not propose to summarize in this affidavit CIBC’s financial analyses with respect to the inadequacy of the Agrium Offer as I do not understand that to be an issue for the Commission. However, I do observe that since the announcement of the Agrium Offer, almost

¹ The prospectus is attached to the Anderson Affidavit at Tab A. The chart is at p.10 of the prospectus.

² The inadequacy opinions are attached to the Royster-Clark Directors’ Circular, Anderson Affidavit, Tab H, pp. A-1 and B-1.

60% of the outstanding IDSs have traded at or above the \$10.00 offer price per IDS offered pursuant to the Agrium Offer, reflecting the judgment of investors that the price offered by Agrium is inadequate.

C. Unique Features of the Agrium Offer and Coercive Effect

12. Agrium is offering \$10.00 per IDS, with \$2.00 “allocated” to the Common Share component and \$8.00 “allocated” to the Note component. This allocation is significantly different from the allocation made in July 2005 upon the closing of the initial public offering for the IDS. In the IPO, the \$10.00 price per IDS was allocated \$3.92 to the Common Shares and \$6.08 per \$6.08 principal amount of Notes.

13. Based on my understanding of the Anderson Affidavit filed on behalf of Agrium, Agrium’s allocation was determined by starting with the overall price per IDS that Agrium was prepared to offer for Royster-Clark; the Note component was then valued based on a yield analysis (with which I disagree); and the difference, without any separate valuation analysis, was allocated to the Common Share component.

14. ***No market validation of the amounts allocated to the constituent securities.*** Agrium has made an offer to acquire the IDSs, but has not made an offer to acquire the Common Shares or the Notes. The effect of the Agrium Offer being structured as an offer for IDSs is that the relative values assigned by Agrium to the Common Shares and the Notes will not be subject to the usual test of the market. Holders of the IDSs who agree with the amount allocated to the Common Shares but not the amount allocated to the Notes, or *vice versa*, do not have the option of tendering only one of the component securities but not the other.

15. ***Remaining Common Shares may be expropriated at a value that has not been validated by the market.*** Under the Agrium Offer, an IDS holder does not have the option of simply declining to tender and continuing to hold his IDSs. Agrium, having structured its offer as an offer for the IDS, not the constituent securities, has indicated an intention to do a second stage squeeze-out in which the securities subject to the squeeze-out will not be the IDSs which were the subject of the Agrium Offer, but rather, the Common Shares. The price at which that squeeze-out will be done will be the amount that Agrium allocated to the Common Shares for the

purpose of the Agrium Offer, which amount was not based on any valuation analysis of the Common Shares and will not have received the market testing and validation on which the compulsory acquisition squeeze-out mechanic is premised.

16. This is an unprecedented (so far as I am aware) feature of what Agrium is proposing that results from its structuring of its offer as an offer for IDSs rather than for the component securities.

17. ***Remaining Notes may be illiquid and stripped of material protections.*** Not only is an IDS holder who chooses not to tender faced with the prospect of having his Common Shares expropriated at a price that has not been validated by the market, but he will then be left with his Notes in what I believe would be a disadvantageous position for the holder. The position would be disadvantageous in 2 key respects.

18. *First*, while investment bankers can debate the extent of the liquidity of the market that would remain for the Notes, there is no question that it will be less liquid than the IDS market. The Notes, unlike the IDSs, will only trade on the “over-the-counter” bond market which is primarily institutional and in which small retail holders are not protected in the way they are in respect of securities listed on the TSX (for example, over-the-counter trading is not subject to the transparency requirements or best price and timing rules governing TSX trading).

19. *Secondly*, as I understand the Note trust indenture, there are material protective covenants that could be removed unilaterally by Agrium as the majority holder of the Notes. Those covenants subject to removal based on majority approval (see section 9.02(a) of the indenture³) include:

- restrictions on incurring indebtedness and issuing preferred stock (section 4.02);
- restrictions on dividends and other payments affecting subsidiaries (section 4.04);
- restrictions on asset sales (section 4.05);
- restrictions on transactions with affiliates (section 4.06);

³ The Subordinated Notes Indenture is attached to the Anderson Affidavit at Tab B.

- restrictions on incurring liens (section 4.07);
- requirements in the event of change of control (section 4.08).

20. I have spoken with my colleagues in CIBC's debt capital markets division and I believe that the foregoing restrictions are key to the covenant pattern in any high yield notes; the potential for Agrium to remove those restrictions unilaterally would be a material factor negatively affecting the liquidity and value of the Notes.

21. *The effect of the Amendment.* By Notice of Extension and Variation dated December 13, 2005 (the "**Amendment**"), Agrium amended the Agrium Offer to indicate an intention to make a second stage offer for remaining Notes, following a squeeze-out of the remaining Common Shares, at the amount allocated under the Agrium Offer to each Note per IDS. However, the Amendment does not address the fundamental problem faced by an IDS holder who believes the Agrium Offer is inadequate: the alternative to accepting what Agrium is offering is to be expropriated as a Common Shareholder at a price that has not been market validated; and to be left with Notes that are less liquid and potentially less protected by restrictive covenants.

D. Efforts to Develop Alternatives

22. Immediately following being retained, the Financial Advisors began to develop a list of potential strategic buyers and financial buyers for Royster-Clark. We developed a 'teaser' memo targeting the potential buyers and began systematically contacting potential buyers on November 23, 2005.

23. By November 23, 2005, I was engaged in preliminary discussions, along with other representatives of the Financial Advisors, with a number of third parties who had expressed an interest in considering alternative transactions involving Royster-Clark.

24. In anticipation of possible alternative transactions, Royster-Clark prepared a form of confidentiality agreement which was available by November 23, 2005 to be signed by prospective buyers. Any prospective buyer who executed a confidentiality agreement would be granted access to Royster-Clark's confidential information. We also worked with Royster-Clark

to set-up a virtual data room that was launched on November 29, 2005 to facilitate the due diligence process.

25. The timing of our efforts was hampered by the U.S. Thanksgiving holiday which effectively cost us a week due to potential buyers being unavailable because of the holiday.

26. **Potential financial buyers.** Royster-Clark held the first of a series of management meetings and presentations with potential financial buyers on December 1, 2005, with additional meetings and presentations taking place on December 5 and 6, 2005.

27. Six potential financial buyers have executed confidentiality agreements with Royster-Clark and have been provided access to the data room.

28. **Potential strategic buyers.** The Financial Advisors have contacted 24 potential strategic buyers. Royster-Clark held a management meeting and presentation with a potential strategic buyer on December 3, 2005. That potential strategic buyer has executed a confidentiality agreement with Royster-Clark and has been provided access to the data room. An additional two strategic buyers have advised that they may be interested in participating in the process, but have not yet signed a confidentiality agreement.

29. The Financial Advisors and Royster-Clark are currently in active discussions with at least five potential buyers.

30. **The need for additional time.** Along with other representatives of the Financial Advisors, I attended a meeting of the Royster-Clark board of directors on December 7, 2005 at which the Rights Plan was adopted. CIBC advised that there were a number of potential buyers and that more time was needed to pursue possible alternative transactions that would maximize value.

31. I have been told by interested parties that the complexity of the Royster-Clark structure is a factor that leads them to need more time.

32. I believe that if Royster-Clark is able to continue its process to the end of January 2006 there is a real and substantial possibility that from among the five prospective buyers currently still in the process, a superior proposal to the Agrium Offer will emerge.

SWORN BEFORE ME)
at the City of Toronto,)
in the Province of Ontario,)
this 15th day of December, 2005.)

SCOTT A. KEYWORTH

A Commissioner, etc.

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Proceeding commenced at Toronto

**AFFIDAVIT OF SCOTT KEYWORTH
(sworn December 14, 2005)**

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