

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Issuer of notes exempt, subject to certain conditions, from continuous disclosure requirements of National Instrument 51-102 *Continuous Disclosure Obligations* and certification requirements of Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* – notes issued as part of offering of income deposit securities consisting of notes of issuer and common shares of issuer's then existing indirect parent – Conditions to relief intended to ensure that continuous disclosure of issuer's indirect parent will contain the information relevant to holders of notes and will be accessible to such holders.

Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

Citation: Agrium Inc. and Royster-Clark ULC, 2006 ABASC 1551

Date: 20060802

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova
Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon Territory
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of Agrium Inc. (Agrium)

and

Royster-Clark ULC (RC ULC) (collectively, the Filers)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application (the Application) from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that RC ULC:
 - 1.1. be granted an exemption from the Continuous Disclosure Requirements in each of the Jurisdictions, except in the Northwest Territories; and

- 1.2. be granted an exemption from the Certification Requirements in MI 52-109 pursuant to section 4.5 of MI 52-109.
2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
 - 2.1. the Alberta Securities Commission is the principal regulator for this application; and
 - 2.2. this MRRS Decision Document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 - *Definitions* have the same meaning in this decision unless they are defined in this decision.
 - 3.1. **Acquisition** means the acquisition by Agrium of (i) all of the outstanding common shares of RC Ltd. on February 9, 2006 and March 6, 2006, and (ii) an aggregate of \$221,340,001 principal amount of Notes on February 9, 2006, April 4, 2006, April 7, 2006, and June 30, 2006;
 - 3.2. **Agrium Guarantee** means the full and unconditional guarantee dated as of June 22, 2006 by Agrium of RC ULC's payment obligations in respect of the Notes;
 - 3.3. **Annual Certificates** means the annual certificates required to be filed pursuant to Part 2 of MI 52-109;
 - 3.4. **Annual Filings** means an annual information form, annual financial statements and annual MD&A, collectively;
 - 3.5. **Certification Requirements** means the requirements contained in MI 52-109 to file Annual Certificates with the Decision Makers under section 2.1 of MI 52-109 and to file Interim Certificates with the Decision Makers under section 3.1 of MI 52-109;
 - 3.6. **Continuous Disclosure Requirements** means, except in the Northwest Territories, the requirements contained in the Legislation, including NI 51-102 to (i) issue press releases and file reports regarding material changes; (ii) file audited annual financial statements including MD&A thereon; (iii) file unaudited interim financial statements including MD&A thereon; (iv) file a notice regarding a change in year-end and the related information under section 4.8 of NI 51-102; (v) file a notice regarding a change in corporate structure under section 4.9 of NI 51-102; (vi) file the materials relating to a change of auditor under section 4.11 of NI 51-102; (vii) file an annual information form under section 6.1 of NI 51-102; (viii) to file information circulars and proxy related materials; (ix) where applicable, file a business acquisition report including any financial statement disclosure, under section 8.2 of NI 51-102; (x) file a copy of any contract that an issuer or any of its subsidiaries is a party to, other than a contract entered into the

ordinary course of business, that is material to the issuer and was entered into within the last financial year, or before the last financial year but is still in effect, under section 12.2 of NI 51-102; in each case with the Decision Makers;

- 3.7. **IDSs** means the previously outstanding income deposit securities of RC Ltd. and RC ULC, each income deposit security consisting of one common share of RC Ltd. and \$ 6.08 principal amount of Notes of RC ULC;
- 3.8. **Interim Certificates** means the interim certificates required to be filed pursuant to Part 3 of MI 52-109;
- 3.9. **Interim Filings** means interim financial statements and interim MD&A, collectively;
- 3.10. **MD&A** means management's discussion and analysis;
- 3.11. **MI 52-109** means Multilateral Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings*;
- 3.12. **NI 51 -102** means National Instrument 51-102 - *Continuous Disclosure Obligations*;
- 3.13. **Noteholders** means holders of the Notes;
- 3.14. **Notes** means the principal amount of non-convertible 14.0% subordinated notes of RC ULC due July 22, 2020, of which \$564,931 principal amount are currently outstanding;
- 3.15. **Prior Decision Document** means the MRRS decision document issued on August 29, 2005 to RC Ltd. and RC ULC in respect of the certain Continuous Disclosure Requirements and Certification Requirements of RC ULC;
- 3.16. **RC Guarantees** means the unconditional and irrevocable guarantees by the RC Entities of RC ULC's payment obligations in respect of the Notes;
- 3.17. **RC Entities** means, collectively, Royster-Clark Holdings, Inc., Royster-Clark, Inc., Royster-Clark Nitrogen, Inc., Royster-Clark Resources LLC, Royster-Clark Realty LLC, Royster-Clark Agribusiness, Inc. and Royster-Clark Agribusiness Realty LLC;
- 3.18. **RC Ltd.** means Royster-Clark Ltd., a corporation previously organized pursuant to the *Business Corporations Act* (Ontario) and which, following the Acquisition, has been amalgamated into another wholly-owned subsidiary of Agrium and subsequently dissolved;
- 3.19. **RC Ltd. Decision** means the decisions of the Decision Makers (other than the securities regulatory authority in Prince Edward Island, Northwest Territories,

Nunavut and Yukon Territory, where such decision was not required) dated March 30, 2006 (other than in British Columbia, which is dated March 13, 2006) that RC Ltd. cease to be a reporting issuer in such Jurisdictions; and

3.20. **SEDAR** means the System for Electronic Document Analysis and Retrieval.

Representations

4. This decision is based on the following facts represented by the Filers:
 - 4.1. Agrium is a corporation organized pursuant to the *Canada Business Corporations Act* with its head and registered office located at 13131 Lake Fraser Drive S.E., Calgary, Alberta, T2J 7E8. Agrium is a reporting issuer or the equivalent in each of the provinces of Canada. Agrium's common shares are listed and posted for trading on both the Toronto Stock Exchange and the New York Stock Exchange.
 - 4.2. RC ULC is an unlimited liability company under the *Companies Act* (Nova Scotia) with its head office at 13131 Lake Fraser Drive S.E., Calgary, Alberta, T2J 7E6 and its registered office at 1601 Lower Water Street, Summit Place, 6th Floor, Halifax, Nova Scotia, B3J 3P6. RC ULC's original primary business was to access Canadian and United States capital markets to raise funds in connection with the initial public offering of the IDSs completed on July 22, 2005 and a concurrent private placement of Notes. Following the initial public offering of IDSs and concurrent private placement, an aggregate of \$221,904,932 principal amount of Notes was outstanding. No further external offerings of securities by RC ULC have been completed or are contemplated. RC ULC is a reporting issuer in each of the provinces and territories of Canada, where such status exists, but has no securities listed or posted for trading on a stock exchange.
 - 4.3. On February 9, 2006, Agrium acquired 98.67% of the IDSs (comprised of 32,070,190 common shares of RC Ltd. and \$195,090,299.80 principal amount of Notes) and on March 6, 2006 acquired the remaining outstanding common shares of RC Ltd. pursuant to the compulsory acquisition procedures of the *Business Corporations Act* (Ontario). Pursuant to an offer dated March 7, 2006, Agrium acquired an additional \$20,058,079.63 principal amount of Notes on April 4 and April 7, 2006. Pursuant to an offer dated June 23, 2006, Agrium acquired an additional \$6,191,621.70 principal amount of Notes on June 30, 2006.
 - 4.4. The only securities that RC ULC currently has outstanding are common shares held by Royster-Clark Holdings, Inc., a Delaware corporation that is an indirect wholly-owned subsidiary of Agrium, and \$564,931 principal amount of Notes. The RC Entities have unconditionally and irrevocably guaranteed RC ULC's payment obligations under the Notes pursuant to the RC Guarantees. The RC Guarantees that remain in place are on the same terms and conditions as those in place before the Acquisition.

- 4.5. Agrium, as the parent company to RC ULC, has supplemented the RC Guarantees by providing the Agrium Guarantee. The Agrium Guarantee is a full and unconditional guarantee of the payments to be made by RC ULC under the Notes. As a consequence, Noteholders can additionally look to Agrium to pay amounts due and owing under the Notes under which RC ULC is obligated. The RC Entities continue to be obligated under the RC Guarantees, but Agrium is the relevant source of credit support for the Notes. The Agrium Guarantee is substantially similar to the RC Guarantees and the terms of the Notes and related obligations have not changed, other than through the extension of the Agrium Guarantee. In addition, the Agrium Guarantee includes a covenant of Agrium to furnish to the trustee of the Notes and Noteholders Agrium's audited annual financial statements including MD&A thereon and Agrium's unaudited interim financial statements including MD&A thereon in the manner and at the time required by applicable law.
- 4.6. In connection with the initial public offering of the IDSs, RC ULC applied for and received exemptive relief from certain continuous disclosure obligations. The Prior Decision Document relieved RC ULC from the requirements of the Legislation to prepare and file with the Decision Makers and to deliver to Noteholders certain public disclosure documents regarding RC ULC provided that, among other things, certain continuous disclosure materials filed by RC Ltd. would be filed with the Decision Makers, and certain of such documents would be provided to Noteholders.
- 4.7. RC Ltd. was previously subject to the reporting obligations of the Legislation on account of it being a reporting issuer in each of the provinces and territories of Canada where such status exists, but since completion of the Acquisition and the RC Ltd. Decision, such obligations are no longer in existence under the Legislation.
- 4.8. As RC Ltd. is exempt from reporting under the Legislation, RC ULC is no longer able to file with the Decision Makers and provide Noteholders with RC Ltd. disclosure documents filed with the Decision Makers as contemplated in the Prior Decision Document.
- 4.9. RC ULC is not otherwise exempt from any other timely and continuous disclosure filing requirements of the Legislation.
- 4.10. RC ULC has no operations that are independent of Agrium or its subsidiaries, it offers no products or services, it owns no properties and it has no employees. Except in respect of the year ended December 31, 2005 and the three months ended March 31, 2006, where RC ULC was required to make certain filings following the nullification of the Prior Decision Document, RC ULC has not historically prepared separate financial statements. Rather, the financial results of RC ULC have been, since the date of incorporation of RC ULC, included in the consolidated financial results of RC Ltd. Following the Acquisition, RC ULC

became an indirect wholly-owned subsidiary of Agrium. The financial results of RC ULC have been, since the date of the Acquisition, included in the consolidated financial results of Agrium.

- 4.11. The Continuous Disclosure Exemption (as defined below) would exempt RC ULC from making its own Annual Filings and Interim Filings provided that Agrium makes its Annual Filings and Interim Filings on RC ULC's SEDAR profile, and therefore, it would not be meaningful or relevant for RC ULC to have to file its own Annual Certificates or Interim Certificates. Furthermore, given that Agrium has fully guaranteed all obligations of RC ULC with respect to the Notes, the Continuous Disclosure Exemption would exempt RC ULC from issuing press releases and filing material change reports, business acquisition reports, notices in respect of changes in year-end, corporate structure and auditor and certain material contracts.
- 4.12. Noteholders are ultimately concerned about the affairs and financial performance of Agrium, as opposed to that of RC ULC itself. Therefore, it is appropriate that Agrium's Annual Certificates and Interim Certificates be available to Noteholders on the same basis as Agrium's Annual Filings and Interim Filings in lieu of RC ULC's Annual Certificates and Interim Certificates. Furthermore, as Agrium, on a consolidated basis, is the relevant entity with respect to the Notes, Noteholders would not benefit from the requirement to have RC ULC file notices regarding changes in corporate structure, BARs and material contracts provided that Agrium complied with these requirements as required under the Legislation.

Decision

5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.
6. The decision of the Decision Makers under the Legislation is that RC ULC be exempted from the Continuous Disclosure Requirements (the Continuous Disclosure Exemption) for so long as:
 - 6.1. Agrium remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of RC ULC;
 - 6.2. Agrium remains a reporting issuer or the equivalent thereof under the Legislation in those Jurisdictions in which it is a reporting issuer on the date hereof;
 - 6.3. Agrium remains an electronic filer under National Instrument 13-101 - *System for Electronic Data Analysis and Retrieval* (SEDAR);
 - 6.4. Agrium continues to comply with all timely and continuous disclosure filing requirements of the Legislation;

- 6.5. RC ULC continues to have no operations other than minimal operations that are independent of Agrium;
 - 6.6. RC ULC complies with the material change reporting requirement in respect of material changes in the affairs of RC ULC that are not also material changes in the affairs of Agrium;
 - 6.7. RC ULC does not issue additional securities other than to Agrium or to an affiliate of Agrium;
 - 6.8. Agrium continues to provide a full and unconditional guarantee of the payments to be made by RC ULC, as stipulated in the terms of the Notes or in an agreement governing the rights of holders of the Notes, that results in the holder of the Notes being entitled to receive payments from Agrium following any failure by RC ULC to make a payment;
 - 6.9. the Filers file, in electronic format under RC ULC's SEDAR profile, copies of any and all documents filed by Agrium under NI 51-102 at the same time as such documents are required under the Legislation to be filed by Agrium on its SEDAR profile;
 - 6.10. Agrium sends to all holders of Notes all disclosure material that would be required to be furnished by Agrium to holders of non-convertible debt securities issued by Agrium under the Legislation at the time and in the manner that such material would be required to be furnished to such holders of debt securities issued by Agrium; and
 - 6.11. RC ULC pays all fees that would otherwise be payable by RC ULC in connection with the Continuous Disclosure Requirements, or in connection with RC ULC's participation as a reporting issuer in any Jurisdiction, except where RC ULC has been granted an exemption from a requirement to pay such fees.
7. The further decision of the Decision Makers under the Legislation is that RC ULC be exempted from the Certification Requirements (the Certification Exemption) for so long as:
- 7.1. RC ULC qualifies for the relief contemplated by, and Agrium and RC ULC are in compliance with, the requirements and conditions set out in the Continuous Disclosure Exemption;
 - 7.2. RC ULC is not required to, and does not, file its own Annual Filings and Interim Filings; and

- 7.3. the Filers file with the Decision Makers, in electronic format under RC ULC's SEDAR profile, copies of Agrium's Annual Certificates and Interim Certificates at the same time as such documents are required under the Legislation to be filed by Agrium on its SEDAR profile.

“original signed by”

Agnes Lau

Associate Director, Corporate Finance

Alberta Securities Commission