

IN THE MATTER OF THE
SECURITIES ACT (NORTHWEST TERRITORIES)
R.S.N.W.T. 1988, c.S-5
(the "Act")

AND

IN THE MATTER OF NEWALTA CORPORATION,
NEWALTA ACQUISITION CORPORATION
AND NEWALTA INCOME FUND

ORDER

(Sections 27(2)(b) and 43.1 of the Act)

1. WHEREAS the securities regulatory authority (the "Decision Maker") in the Northwest Territories (the "Jurisdiction") has received an application from Newalta Corporation ("Newalta" or the "Corporation"), Newalta Acquisition Corporation ("AcquisitionCo") and Newalta Income Fund (the "Fund") for a decision under the Act that:

- 1.1 the requirements contained in the Act to file a prospectus and receive receipts therefor (the "Prospectus Requirement") shall not apply to the trades of securities ("Trades") to be made in connection with a proposed plan of arrangement under section 193 of the *Business Corporations Act* (Alberta) (the "ABCA") involving the Corporation, AcquisitionCo, the Fund and securityholders of the Corporation (the "Arrangement"); and
- 1.2 the Prospectus Requirement shall not apply to the first trade in securities acquired pursuant to the Arrangement.

2. AND WHEREAS Newalta, AcquisitionCo and the Fund have represented to the Decision Maker that:

- 2.1 Newalta was incorporated pursuant to the ABCA on July 15, 1980, and was continued under the ABCA on August 31, 1984. On June 4, 1991, two wholly-owned subsidiaries of Newalta amalgamated to form Newalta Environmental Services Corporation which then amalgamated with Newalta and continued under the name Newalta Corporation.
- 2.2 On January 1, 2002, Newalta amalgamated with three of its wholly-owned subsidiaries and continued under the name Newalta Corporation.
- 2.3 The head office and principal office of Newalta is located at 1200, 333 – 11th Avenue S.W., Calgary, Alberta T2R 1L9, and the registered office is located at 4500 Bankers Hall East, 855 – 2nd Street S.W., Calgary, Alberta T2P 4K7.

- 2.4 Newalta provides waste management and recycling services in western Canada through a network of 34 operating facilities. Newalta is engaged in the processing and recovery of resalable products from waste materials.
- 2.5 The authorized share capital of Newalta consists of an unlimited number of common shares (the "Common Shares"), an unlimited number of senior preferred shares, an unlimited number of junior preferred shares and 5,000,000 non-voting shares.
- 2.6 As at the date hereof, 43,634,169 Common Shares and no senior preferred shares, junior preferred shares or non-voting shares are issued and outstanding; 8% Convertible Subordinated Debentures (the "8% Debentures") in the aggregate principal amount of \$3,000,000 are outstanding, but will be redeemed prior to the Effective Date; and 9½% Convertible Debentures (the "9½% Debentures") in the aggregate principal amount of \$6,000,000 are outstanding, the holders of which have agreed to amend the terms of the 9½% Debentures such that they will be redeemable for trust units of the Fund (the "Trust Units") rather than Common Shares. Options to acquire 2,529,000 Common Shares (the "Options") are also outstanding as at the date hereof.
- 2.7 The Common Shares and the 8% Debentures are presently listed and posted for trading on the Toronto Stock Exchange (the "TSX"). The Corporation has applied to have the Common Shares delisted from the TSX and to have the Trust Units listed in substitution for the Common Shares as of the Effective Date. The Corporation has also applied to delist the 8% Debentures immediately upon the redemption thereof.
- 2.8 Newalta is a reporting issuer in each of British Columbia, Alberta, Manitoba, Ontario and Québec, where such status is available, and has been for more than 12 months.
- 2.9 Newalta has filed all the information that it has been required to file as a reporting issuer in British Columbia, Alberta, Manitoba, Ontario and Québec and is not in default of the Legislation in those jurisdictions.
- 2.10 AcquisitionCo was incorporated pursuant to the ABCA on January 15, 2003.
- 2.11 The head and principal office of AcquisitionCo is located at 1200, 333 – 11th Avenue S.W., Calgary, Alberta T2R 1L9, and the registered office is located at 4500 Bankers Hall East, 855 - 2nd Street S.W., Calgary, Alberta T2P 4K7.
- 2.12 AcquisitionCo was incorporated for the sole purpose of participating in the Arrangement, including creating and issuing the Notes (as defined below) required for implementing the Arrangement.
- 2.13 AcquisitionCo is authorized to issue an unlimited number of common shares and an unlimited number of preferred shares, issuable in series.

- 2.14 As at the date hereof, 100 Common Shares of AcquisitionCo were issued and outstanding, the sole holder of which is the Fund, and no preferred shares are issued and outstanding.
- 2.15 AcquisitionCo is not a reporting issuer in any of the Jurisdictions.
- 2.16 The Fund was established pursuant to a Deed of Trust dated January 16, 2003 between Alan P. Cadotte, R. Vance Milligan, Felix Pardo, Richard H. Pinder, Clayton H. Riddell, Ronald L. Sifton, and Barry D. Stewart (collectively, the "Trustees") and J. Craig Wilkie, as settlor, and is governed by the laws of the Province of Alberta. The Fund is, for Canadian tax purposes, an unincorporated open end mutual fund trust.
- 2.17 The Fund is restricted to:
- (a) investing, directly or indirectly, in any of the securities issued by AcquisitionCo, by Newalta and by AmalgamationCo and borrowing funds for that purpose;
 - (b) investing in any other securities of any person and making such investments as the Trustees may determine and borrowing funds for that purpose; provided that, such investments do not at the time of investment: (i) prevent the Trust Units of the Fund from qualifying as units of a "unit trust" and "mutual fund trust" within the meaning of the *Income Tax Act* (Canada); or (ii) result in the Trust Units being disqualified for investment by registered education savings plans, registered retirement income funds, registered retirement savings plans or deferred profit sharing plans;
 - (c) temporarily holding cash and short term investments in accordance with a policy from time to time determined by the Trustees and other securities for the purposes of making investments, paying the expenses and the liabilities of the Fund, paying amounts payable by the Fund in connection with the redemption of any Trust Units, or making distributions to holders of Trust Units ("Unitholders");
 - (d) issuing Trust Units or securities exchangeable for Trust Units for the purpose of obtaining funds to conduct any of the activities of the Fund, completing any acquisition of securities or any other assets for the benefit of the Fund, implementing compensation plans, if any, established by the Trustees for the benefit of the Fund, and making non-cash distributions to Unitholders including pursuant to distribution reinvestment plans or distribution reinvestment and Trust Unit purchase plans, if any, established by the Fund;
 - (e) issuing debt securities, provided recourse shall be limited to the assets of the Fund;
 - (f) repurchasing and redeeming Trust Units, including pursuant to any issuer bid made by the Fund;

- (g) performing all acts necessary, incidental, ancillary or related to any of the foregoing paragraphs (a) to (f); and
 - (h) undertaking such other activities, or taking such actions as shall be approved by the Trustees from time to time.
- 2.18 The Fund is authorized to issue an unlimited number of Trust Units, one of which is issued and outstanding as at the date hereof.
- 2.19 The Corporation, on behalf of the Fund, has applied to list the Trust Units to be issued pursuant to the Arrangement on the TSX.
- 2.20 The Fund is not a reporting issuer in any of the Jurisdictions.
- 2.21 The Arrangement will be effected by way of a plan of arrangement pursuant to section 193 of the ABCA which will require approval by: (i) not less than two-thirds of the votes cast by the holders of Common Shares ("Shareholders") and holders of Options ("Optionholders") (collectively, the "Securityholders") (present in person or represented by proxy), voting together as a class, at a meeting of Securityholders to be held on February 24, 2003 (the "Meeting"); and thereafter (ii) the Court of Queen's Bench of Alberta.
- 2.22 The Arrangement involves a number of steps, including the following, which will be deemed to occur sequentially:
- (a) each issued and outstanding Common Share (other than those Common Shares held by dissenting Securityholders and those held by registered Shareholders holding less than 200 Common Shares which have not elected to receive Trust Units) shall, without any further action on behalf of such Shareholders, be transferred to the Fund (free of any claims) in exchange for Trust Units on the basis of one Trust Unit for every two Common Shares held;
 - (b) the Common Shares acquired by the Fund shall be transferred to AcquisitionCo in exchange for:
 - (i) a number of unsecured, subordinated notes (the "Notes") equal to the product of:
 - (A) the Weighted Average Trading Price⁽¹⁾; multiplied by
 - (B) the number of outstanding Common Shares acquired by the Fund pursuant to subparagraph (a) above; divided by
 - (C) \$100; and

¹ The "Weighted Average Trading Price" shall be determined by dividing (a) the aggregate dollar trading value of all Common Shares sold on the TSX over the five (5) consecutive trading days ending on the third trading day next preceding the Effective Date of the Arrangement by (b) the total number of Common Shares sold on the TSX during such period.

- (ii) one (1) AcquisitionCo common share with a value of \$1.00;
- (c) each "out-of-the-money" Option outstanding and not exercised prior to the Effective Date (other than out-of-the-money Options held by a dissenting Securityholder) shall, without any further action on behalf of each Optionholder, be amended to remove any restrictions on transferability and be transferred to the Fund (free of any claims) and thereupon be cancelled in exchange for the payment by the Fund to each Optionholder of \$0.01 multiplied by the number of Common Shares to which the Optionholder's out-of-the-money Options relate; and
- (d) each "in-the-money" Option outstanding and not exercised prior to the Effective Date (other than in-the-money Options held by a dissenting Securityholder) shall, without any further action on behalf of each Optionholder, be amended to remove any restrictions on transferability and be transferred to the Fund (free of any claims) and thereupon be cancelled in exchange for:
 - (i) in the case of the in-the-money Options of each Optionholder which have vested on or prior to the Effective Date, a right (the "Exchange Right") entitling each such Optionholder the right to acquire, at a purchase price of \$0.01 per Trust Unit, exercisable at any time during the period of one month from the Effective Date, a number of Trust Units equal to the aggregate Exercise Price Differential⁽²⁾ of each of the Optionholder's vested in-the-money Options divided by the product of the Weighted Average Trading Price multiplied by two; and
 - (ii) in the case of the in-the-money Options of each Optionholder which have not vested on or prior to the Effective Date, an Exchange Right entitling each such Optionholder the right to acquire, at a purchase price of \$0.01 per Trust Unit, a number of Trust Units equal to the aggregate Exercise Price Differential of each of the Optionholder's unvested in-the-money Options divided by the product of the Weighted Average Trading Price multiplied by two. Such Exchange Rights shall be exercisable, in respect of each Trust Unit, at any time during the period from the date on which each in-the-money Option to which the Trust Unit relates would have vested had it not been cancelled pursuant to the Arrangement and ending on the date that the in-the-money Option would have expired had it not been cancelled pursuant to Arrangement.

2.23 Following these exchanges, the Fund will own all of the issued and outstanding common shares of AcquisitionCo and AcquisitionCo will own all of the issued and outstanding Common Shares of Newalta. There will be approximately

² The "Exercise Price Differential" means, in respect of an Option, the amount by which the Weighted Average Trading Price exceeds the exercise price of such Option, multiplied by the number of Common Shares to which such Option relates.

21,817,084 Trust Units issued and outstanding, upon completion of the Arrangement assuming that no Securityholders exercise their right of dissent.

- 2.24 As a further step in the Arrangement, AcquisitionCo and Newalta will amalgamate and continue under the name of Newalta Corporation ("AmalgamationCo"). All of the common shares of AmalgamationCo will then be owned by the Fund.
- 2.25 Upon completion of the Arrangement, the Fund will be the holder of the Notes of AmalgamationCo representing an aggregate indebtedness of AmalgamationCo of approximately \$175 million.
3. AND WHEREAS this Order evidences the decision of the Decision Maker (the "Order");
4. AND WHEREAS the Decision Maker is satisfied that the test contained in the Act that provides the Decision Maker with the jurisdiction to make the Order has been met;
5. THE ORDER of the Decision Maker under the Act is as follows:
- 5.1 The Prospectus Requirement shall not apply to the Trades provided that the first trade in securities acquired pursuant to the Arrangement shall be deemed to be a distribution or primary distribution to the public; and
- 5.2 The Prospectus Requirement shall not apply to the first trade in Trust Units acquired by Securityholders under the Arrangement or holders of Exchange Rights upon the exercise thereof, provided that the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 Resale of Securities ("MI 45-102"), with the issuer being the Fund, are satisfied and for the purposes of determining the period of time that the Fund has been a reporting issuer under section 2.6 of MI 45-102, the period of time that Newalta was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Arrangement may be included.

DATED at Yellowknife, Northwest Territories this 25th day of February, 2003.

"Tony Wong"

Tony Wong
Registrar, Securities & Corporate Registries
Northwest Territories