Decision of the Alberta Securities Commission Panel in *Re Application brought by DIRTT Environmental Solutions*

(delivered orally on March 4, 2022 at 3:00 pm MT, written reasons to follow)

Introduction, Summary of Application, Parties and Evidence

DIRTT sought various orders under s. 179 and 198 which we will refer to as the Act concerning certain actions of 22 and 726.

22NW Group

Principal and directing mind, Aron English

Two research analysts, Ryan Broderick and Cory Mitchell

These respondents are referred to as the "22NW Group"

726 Group

726 LLC and BC LLC, referred to as "726"

Chief Investment Officer and President of 726, Shaun Noll

Noll and 726 are referred to as the "726 Group"

Summary of Application and Submissions

22NW and 726 have asked us to rebuke or admonish the Board for what it contended was bad faith in brining an application without any evidence and for an improper purpose. No formal cross-application was filed by the Respondents. DIRTT alleged the following regarding acquisitions and dispositions of common shares of DIRTT:

1. Failed to comply with take-over bid provisions of NI 62-104 in circumstances where exemptions could not be available ("Take-Over Bid Allegation")

2. Failed to comply with the EWR and AMR regimes under 62-104 and 62-103 ("Early Warning Allegations")

3. 726 failed to comply with insider trading disclosure requirements ("Insider Reporting Allegation")

4. 22NW made multiple dispositions as a control person without complying with prospectus requirements or relying on an exemption in NI 41-102 ("Prospectus Allegation")

As a result of the alleged conduct, DIRTT sought the following orders:

1. Under ss. 179(1)(c) and (d) of the Securities Act (the "Act") enforcing compliance with the TOB requirements and preventing respondents from obtaining any economic benefit, including restraining voting to 19.99% (the "Take-Over Bid Order")
2. Pursuant to s. 198(1)(b) of the Act, an order to cease trading in DIRTT shares until public disclosure in accordance with NI 62-103 and 62-104 (the "Cease Trade Order")
3. The Reprimand Order
4. Pursuant to s. 198(1)(c) that exemptions not be available for 2 years (the "Exemption Order")
5. Pursuant to s. 198(1)(e)(1) a director and officer ban (the "D&O Order")

Together, these are referred to as the Public Interest Orders.

6. Such further other relief

We received affidavit evidence from 4 individuals. In addition, we received transcripts of cross-examinations and written and oral submissions.

Decision and Reasons

Having reviewed and considered this evidence, we have arrived at a decision. As soon as practicable we will deliver formal written decision with reasons and analysis. Recognizing its time-sensitive nature, we will communicate conclusions orally.

Stated briefly, DIRTT has not established any grounds for the Take-Over Bid Order under s. 179 of the Act or for the Panel to exercise public interest jurisdiction under s. 198 of the Act. Each of the Take-Over Bid, Prospectus and insider reporting obligations depend on a finding of joint acting between 22 and 726 Groups.

The onus was on DIRTT to provide clear and cogent evidence of the joint actor relationship. Instead, the evidence offered was ambiguous, speculative and would require us to draw inferences not supportable.

It is not open to the Panel to draw inferences in the absence of evidence or an air of reality given the rational and reasonable explanations of English and Noll. The evidence as a whole is far more consistent with 22 and 726 Groups of each having acted independently in their own respective commercial interest, not as joint actors for obtaining an agreed upon common objective as alleged. Accordingly the Take-Over Bid, Prospectus, and Insider Reporting allegations are dismissed.

The following EWR allegations were made by DIRTT:

1. 726 ownership on November 27 exceeded 10% and 726 did not file AMR
   - AMR had to be filed to comply with Sction 4.5B of 62-103 instead the filing was made 29 days late and incorrectly identified December 1 as the triggering date.

2. Combined ownership of English and 22NW and either Broderick and Mitchell exceeded 10% on December 31 and until January 2021 sales: 22NW did not file AMRs by prescribed deadlines

3. Combined ownership of 22 and AE exceeded 10% as of June 30, 2021 – evidence was that threshold was exceeded on June 18 and 22NW did not file AMR

- Similarly, for the June purchase, the AMR was filed 29 days late

4. 22 did not disclose in September 22, 2021 AMR, that AE sought to change the composition of the Board in August

726 and 22 did not comply with filing requirements under 62-103. Proof of securities laws contraventions from the December and January sales would require us to find Ryan Broderick and Cory Mitchell were joint actors with 22NW. We do not make that finding. There was no evidence that either Broderick or Mitchell were at any time acting outside of their duties and responsibilities as employee analysts of 22NW. Nothing they did in their capacity as DIRTT shareholders remotely suggested that they were joint actors. Therefore, there was no contravention for December purchase or January 2021 sales.

Item 5D Form 62-103 and F2 64-103 require disclosure of intention to change. There is some ambiguity as to when the interest in joining board manifested in a plan or future intention which would result in a change of DIRTT board requiring filing under 62-103. Parties proposed various dates between June and October 2021.

The filing was made no later than October 8, 2021. We need not decide this issue since no order under s. 198 is appropriate even if we accept that the filing is late. For the AMR late or inaccurate filings, we agree with Staff that these are ordinary course compliance issues that would typically be resolved through communications with Compliance Staff and the Filer. There was no apparent prejudice to DIRTT shareholders from any of the impugned AMR filings. We agree with Staff that these breaches should be treated similarly as the later disclosure issue in *Oil Sands*.

DIRTT shareholders appeared to have all relevant information concerning 22NW and 726 shareholdings and Mr. English's intentions for several months in advance of the scheduled April 2022 meeting. The inaccurate filings are not properly the subject of enforcement orders under s. 198 of the Act.

Lastly, we express our dismay that this Application was brought at all. There was a paucity of circumstantial evidence that fell well short of establishing on a balance of probabilities that the respondents were acting jointly or in concert. In our view, this was an ill-conceived application and an imprudent use of DIRTT's resources. As mentioned, we will issue our written reasons in due course. We are concluded this afternoon, thank you.