



Ontario  
Securities  
Commission  
3S8

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**IN THE MATTER OF  
K2 & ASSOCIATES INVESTMENT MANAGEMENT INC., SHAWN KIMEL and  
DANIEL GOSSELIN**

**STATEMENT OF ALLEGATIONS**

(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990 c S.5)

**A. ORDER SOUGHT**

1. Staff of the Enforcement Branch (“**Enforcement Staff**”) of the Ontario Securities Commission (the “**Commission**”) request that the Commission make an order pursuant to subsection 127(1) and (2) and section 127.1 of the *Securities Act*, RSO 1990 c S.5 (the “**Act**”) to approve the settlement agreement dated October 16, 2018 between Enforcement Staff and K2 & Associates Investment Management Inc. (“**K2**”), Shawn Kimel (“**Kimel**”) and Daniel Gosselin (“**Gosselin**”), (collectively, the “**Respondents**”).

**B. FACTS**

**a. Overview**

2. This matter concerns manipulative trading activity related to equity-listed options on the Montreal Exchange (the “**MX**”) performed by the Respondents.

3. It is critical to the integrity of Ontario’s capital markets, and investor confidence in those markets, that registrants - as market professionals - do not engage in manipulative trading activities that deceive counterparties and benefit themselves financially to the detriment of others in the marketplace. Spoofing, or quote manipulation, as practiced by the Respondents, resulted in artificial changes to bid-ask spreads in equity-listed options that the Respondents were seeking to purchase or sell on the MX. This then enabled the Respondents to buy or sell specific instruments at a better price than would otherwise have been available, but for the advanced non-*bona fide*, spoofing orders they made. By injecting false information into our markets, spoofers gain an unfair advantage over law-abiding market participants, impeding competition and undermining the integrity of Ontario's capital markets.

**b. The Respondents**

4. K2 is a Toronto based manager of two private funds, The K2 Principal Fund L.P. and the K2 Principal Trust (collectively, the “**Funds**”). K2 is registered with the Commission in the categories of Portfolio Manager, Investment Fund Manager and Exempt Market Dealer.

5. Kimel is K2’s founder, a director and a shareholder of K2. Kimel is registered with the Commission in the categories of portfolio advisor and exempt market dealing representative. During the period of October 2016 to December 2016 (the “**Material Time**”), Kimel was, in addition to being a director and a shareholder, K2’s president, ultimate designated person and chief compliance officer.

6. Gosselin is currently K2’s president. Gosselin is also registered with the Commission in the category of exempt market dealing representative. During the Material Time, Gosselin was a trader at K2 who assisted Kimel and other registered portfolio managers at K2 by executing investment decisions made by Kimel and the other registered portfolio managers.

**c. Background**

7. The Respondents engaged in trading on behalf of the Funds, which resulted in or contributed to a false or misleading impression, as to the supply of, or demand for derivatives listed on the MX and allowed K2 through Kimel and Gosselin to trade in derivatives on the MX at artificial prices.

8. The Respondents engaged in approximately 60 incidents of impugned trading during the Material Time (the “**Spoofing Events**”). The Spoofing Events involved the use of non *bona fide* direct electronic access (“**DEA**”) orders placed by K2 to increase or decrease the National Best Bid Offer (“**NBBO**”) in order for K2 to receive a benefit on desk trade orders it made with Canadian financial institutions (the “**Financial Institutions**”). Through their misconduct, the Respondents wrongly benefited by approximately \$250,000. The general pattern of the Spoofing Events observed by Staff is set out below.

- (a) Kimel would place a DEA order to buy or sell small quantities of certain options on the MX. The effect of this order was to increase or decrease the NBBO to the advantage of K2.

- (b) Soon after Kimel's order was placed (within minutes), Gosselin would initiate a chat session with one or more of the Financial Institutions. Gosselin would negotiate a larger desk trade on the opposite side of Kimel's previously made DEA order.
- (c) Very soon after a desk trade had been confirmed by a Financial Institution (often within seconds) the opposite DEA order previously entered would be cancelled.
- (d) In a variant situation observed by Staff, the chat was initiated with one or more of the Financial Institutions immediately prior to the DEA order being made. Similarly, once a desk trade had been confirmed by a Financial Institution the DEA order would be cancelled very soon after.

9. Kimel and Gosselin coordinated their conduct regarding the Spoofing Events. In certain circumstances, Gosselin would notify Kimel when the desk trade had been successfully negotiated so that Kimel could quickly cancel his DEA order.

10. Staff determined the potential aggregate benefit of approximately \$250,000 by calculating, for each Spoofing Event, the monetary difference between the price at which K2 actually paid for the exchange-listed equity derivative (or the price at which K2 actually sold the exchange-listed equity derivative) and the price that K2 would have paid (or would have been paid) based on the NBBO immediately prior to the Respondents engaging in the spoofing activity.

11. As an example of this calculation methodology, on December 1, 2016, the Respondents' trading resulted in the Respondents purchasing 2,500 put options of a certain security at a price of \$0.30 for an aggregate acquisition cost of \$75,000. Immediately prior to the Respondents initiating their trading regarding these put options, the market spread for these put options was \$0.10 / \$0.50. If the Respondents had purchased the 2,500 put options prior to engaging in trading, all things being equal, the purchase price would have been at least \$0.50, resulting in an aggregate acquisition cost of \$125,000. This saved the Respondents \$50,000 on this one transaction. The spoofing activity to achieve this calculated \$50,000 acquisition cost saving comprised Kimel placing two DEA orders to sell the put options. Kimel first placed an order to sell the put options at \$0.35 (which was never filled and cancelled after K2 successfully purchased 2,500 put options). Kimel immediately followed this by placing a second order to sell 10 put options at \$0.25. Kimel cancelled this second sell order shortly after placing it and the market spread became \$0.10 / \$0.30.

Within minutes, Gosselin negotiated a desk trade with a Financial Institution on the opposite side to buy 2,500 put options at the lower price of \$0.30.

**C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

12. By engaging in the conduct described above, the Respondents admit and acknowledge that they breached Ontario securities law by contravening subsection 126.1(1)(a) of the Act and that their actions were contrary to the public interest.

**DATED** this 16th day of October, 2018.