



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES  
COMMISSION K2 & ASSOCIATES INVESTMENT MANAGEMENT INC., SHAWN  
KIMEL and DANIEL GOSSELIN**

**PART I - INTRODUCTION**

1. This matter concerns manipulative trading activity related to equity-listed options on the Montreal Exchange (the “MX”) performed by K2 & Associates Investment Management Inc. (“K2”), through Shawn Kimel (“Kimel”) and Daniel Gosselin (“Gosselin”), (collectively, the “Respondents”).

2. 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.

3. The parties shall jointly file a request that the Ontario Securities Commission (the “Commission”) issue a Notice of Hearing (the “Notice of Hearing”) to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the “Act”), it is in the public interest for the Commission to make certain orders against the Respondents in respect of the conduct described herein.

## **PART II - JOINT SETTLEMENT RECOMMENDATION**

4. Staff of the Commission (“Staff”) recommend settlement of the proceeding (the “Proceeding”) against the Respondents commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. Staff and the Respondents consent to the making of an order (the “Order”) in the form attached as Schedule “A” to this Settlement Agreement based on the facts set out herein.

5. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondents agree with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

## **PART III - AGREED FACTS**

### **A. THE RESPONDENTS**

6. 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.

7. 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 (“UDP”) and chief compliance officer (“CCO”).

8. 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.

### **B. BACKGROUND**

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

#### **PART IV – BREACHES OF THE ACT AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

14. 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.

#### **PART V – RESPONDENTS' POSITION**

15. The Respondents intend to request that the panel at the Settlement Hearing (as defined below) consider the following mitigating circumstances:

- (a) **No prior record.** The Respondents have no prior record of securities regulatory misconduct.

- (b) **Cooperation with Staff.** The Respondents cooperated with Staff at all times during the course of Staff's investigation.
- (c) **No Retail Investor Harm.** The counterparties to the trading described above were sophisticated institutional derivative traders.
- (d) **Remediation Steps Taken by K2.** After learning of the conduct described above, K2 took the following corrective measures:
  - (i) **Offer to Compensate Counterparty.** K2 offered to compensate a counterparty to the trading described, which offer was declined.
  - (ii) **New CCO and UDP Appointed.** In March 2017, K2 appointed a new individual to be the CCO of the firm. The same individual was appointed UDP in October 2017.
  - (iii) **Internal Sanctions Imposed.** After the appointment of the new CCO and UDP, Kimel and Gosselin were both subject to internal sanctions. Kimel was subject to a three month ban on options trading, and Gosselin was subject to a three month trading ban on all securities. Kimel and Gosselin were also required to complete the CSI Trader Training Course program.

## **PART VI - TERMS OF SETTLEMENT**

- 16. The Respondents agree to the terms of settlement set forth below.
- 17. The Respondents consent to the Order, pursuant to which it is ordered that:
  - (a) this Settlement Agreement be approved;
  - (b) K2 shall pay an administrative penalty in the amount of \$400,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

- (c) Kimel shall pay an administrative penalty in the amount of \$550,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;
- (d) Gosselin shall pay an administrative penalty in the amount of \$20,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;
- (e) Kimel is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 10 years from the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- (f) Gosselin is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 5 years from the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- (g) Kimel is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 9 months, from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 18 months, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;
- (h) Gosselin is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 6 months, from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 12 months, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;
- (i) any exemptions contained in Ontario securities law shall not apply to Kimel for a period of 9 months from the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;

- (j) any exemptions contained in Ontario securities law shall not apply Gosselin for a period of 6 months from the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;
- (k) K2 shall submit to a review of its trading practices and procedures, which shall be performed by a third party acceptable to staff, and which shall be completed within 6 months from the date of the Order; pursuant to paragraph 4 of subsection 127(1) of the Act;
- (l) K2 shall pay costs in the amount of \$30,000, pursuant to section 127.1 of the Act; and
- (m) notwithstanding any other provision contained in the Order, Kimel and Gosselin are permitted to redeem units of The K2 Principal Fund LP in which they have sole legal and beneficial ownership.

18. The Respondents agree that the amounts set out in sub-paragraphs 15(b), 15(c), 15(d) and 15(l) shall be paid by the Respondents by separate certified cheques, bank drafts or wire transfer, at the hearing before the Commission to approve this Settlement Agreement, if this Settlement Agreement is approved.

## **PART VII - FURTHER PROCEEDINGS**

19. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondents under Ontario securities law based on the conduct described in Part III of this Settlement Agreement, unless the Respondents fail to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against the Respondents that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

20. The Respondents acknowledge that, if the Commission approves this Settlement Agreement and the Respondents fail to comply with any term in it, the Commission is entitled to bring any proceedings necessary.

### **PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT**

21. The parties will seek approval of this Settlement Agreement at a public hearing (the “Settlement Hearing”) before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission’s *Rules of Procedure*, adopted October 31, 2017.

22. K2, through a representative, and Gosselin will attend the Settlement Hearing in person. Kimel will attend the Settlement Hearing by phone.

23. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

24. If the Commission approves this Settlement Agreement:

- (a) the Respondents irrevocably waive all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

25. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission’s jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

### **PART IX - DISCLOSURE OF SETTLEMENT AGREEMENT**

26. If the Commission does not make the Order:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the Settlement Hearing will be without prejudice to Staff and the Respondents; and

- (b) Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

27. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

**PART X - EXECUTION OF SETTLEMENT AGREEMENT**

28. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

29. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

**DATED** at Toronto, Ontario this 16<sup>th</sup> day of October, 2018.

*“Kelly Davies”*

*“Shawn Kimel”*

\_\_\_\_\_  
Witness (print name): Kelly Davies

\_\_\_\_\_  
Shawn Kimel

**DATED** at Toronto, Ontario this 16<sup>th</sup> day of October, 2018.

*“Brittany Gallagher”*

*“Daniel Gosselin”*

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Witness (print name): Brittany Gallagher

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Daniel Gosselin





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## SCHEDULE "A"

File No.

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

*(Names of panelists comprising the panel)*

*(Day and date order made)*

### ORDER

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

**WHEREAS** on \_\_\_\_, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the approval of a settlement agreement dated \_\_\_\_, 2018 (the **Settlement Agreement**) between K2 & Associates Investment Management Inc., Shawn Kimel, Daniel Gosselin (the **Respondents**) and Staff of the Commission (**Staff**);

**ON READING** the Statement of Allegations dated [**date**], the Settlement Agreement and on hearing the submissions of the representatives of Staff and the Respondents;

### IT IS ORDERED THAT:

- (a) this Settlement Agreement be approved;
- (b) K2 shall pay an administrative penalty in the amount of \$400,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;
- (c) Kimel shall pay an administrative penalty in the amount of \$550,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;
- (d) Gosselin shall pay an administrative penalty in the amount of \$20,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;
- (e) Kimel is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 10 years from the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

- (f) Gosselin is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 5 years from the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- (g) Kimel is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 9 months, from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 18 months, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;
- (h) Gosselin is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 6 months, from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 12 months, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;
- (i) any exemptions contained in Ontario securities law shall not apply to Kimel for a period of 9 months from the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;
- (j) any exemptions contained in Ontario securities law shall not apply Gosselin for a period of 6 months from the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;
- (k) K2 shall submit to a review of its trading practices and procedures, which shall be performed by a third party acceptable to staff, and which shall be completed within 6 months from the date of the Order; pursuant to paragraph 4 of subsection 127(1) of the Act;
- (l) K2 shall pay costs in the amount of \$30,000, pursuant to section 127.1 of the Act; and
- (m) notwithstanding any other provision contained in the Order, Kimel and Gosselin are permitted to redeem units of The K2 Principal Fund LP in which they have sole legal and beneficial ownership.

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[Commissioner]

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[Commissioner]

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[Commissioner]