



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: K2 & Associates Investment Management Inc (Re), 2018 ONSEC 52

Date: 2018-10-19

File No. 2018-60

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

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: October 19, 2018

Decision: October 19, 2018

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel
AnneMarie Ryan Commissioner
Lawrence P. Haber Commissioner

Appearances: Raphael T. Eghan For Staff of the Commission

Caitlin Sainsbury For K2 & Associates Investment
James Douglas Management Inc., Shawn Kimel and
Daniel Gosselin

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on reasons delivered orally in the hearing, and as edited and approved by the Panel, to provide a public record.

- [1] This hearing concerns a settlement agreement (the **Settlement Agreement**) between Staff of the Ontario Securities Commission and K2 & Associates Investment Management Inc., Shawn Kimel and Daniel Gosselin (the **Respondents**). After considering the submissions of the parties, and for the following reasons, we agree that the requested order is in the public interest.
- [2] The Settlement Agreement includes a summary of facts with which the Respondents agree. A detailed description of the facts is provided in the Settlement Agreement, which is publicly available, so we will be brief in describing the background of the conduct at issue.
- [3] K2 is a Toronto based manager of two private funds. K2 is registered with the Commission in the categories of Portfolio Manager, Investment Fund Manager and Exempt Market Dealer.
- [4] Mr. 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 also K2's president, ultimate designated person and chief compliance officer. Mr. Gosselin is currently K2's president. Gosselin is also registered with the Commission in the category of exempt market dealing representative.
- [5] During the Material Time, the Respondents engaged in trading on behalf of the two funds that resulted in, or contributed to a false or misleading impression, as to the supply of, or demand for, listed equity options traded on the Montreal Exchange (**MX**) and allowed K2 through Kimel and Gosselin to trade in such options on the MX at artificial prices.
- [6] The Respondents engaged in approximately 60 incidents of improper trading during the Material Time, known as "spoofing". The spoofing involved the use of non *bona fide* direct electronic access orders placed by K2 to increase or decrease the National Best Bid or Offer in order for K2 to trade with Canadian financial institutions on an advantageous basis after the prices had moved and concurrently cancelling the initial orders.
- [7] The Respondents coordinated their spoofing conduct and through their misconduct wrongly profited by approximately \$250,000.
- [8] The Respondents admit and acknowledge that they have breached Ontario securities law by contravening subsection 126.1(1)(a) of the Act and engaged in conduct contrary to the public interest.
- [9] As part of the Settlement Agreement, the Respondents agree to the following sanctions and costs:
 - a. K2 shall pay an administrative penalty in the amount of \$400,000;

- b. Kimel shall pay an administrative penalty in the amount of \$550,000;
- c. Gosselin shall pay an administrative penalty in the amount of \$20,000;
- d. 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 this Order;
- e. 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;
- f. 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;
- g. 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;
- h. any exemptions contained in Ontario securities law shall not apply to Kimel for a period of 9 months from the date of the Order;
- i. any exemptions contained in Ontario securities law shall not apply to Gosselin for a period of 6 months from the date of the Order;
- j. 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;
- k. K2 shall pay costs in the amount of \$30,000; and
- l. 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.

[10] The role of the Panel in considering a settlement agreement is to determine whether the sanctions proposed fall within a range of reasonable outcomes and should be approved as being in the public interest. It is important to note that a negotiated settlement will not generally yield the same sanctions that might follow a fully contested hearing. A settlement is based on the facts agreed to by the parties, which may or may not be the facts that the Panel would find after a contested hearing.

[11] In determining that the approval of the Settlement Agreement is in the public interest, we acknowledge that the Respondents cooperated with Staff in its investigation and that changes in the roles of the individual Respondents were made and additional training required of them as part of an internal disciplinary process.

[12] The conduct of the Respondents resulted in manipulation of market prices so that they profited from the establishment of artificial market prices. This type of

conduct by registrants is serious because it undermines the integrity of our capital markets and reduces confidence in our markets.

- [13] We find that it is in the public interest to approve this Settlement Agreement. We trust that the public nature of this settlement, including the admitted facts, together with the sanctions that have been agreed to, will ensure compliance by the Respondents in the future, as well as deterring others.
- [14] We find that the settlement is reasonable and its approval is in the public interest. An order will be issued following the hearing in substantially the form proposed by the parties.

Approved by the Panel on this 19th day of October, 2018.

"D. Grant Vingoe"

D. Grant Vingoe

"AnneMarie Ryan"

AnneMarie Ryan

"Lawrence P. Haber"

Lawrence P. Haber