

FOTOBALL USA INC
Form SC TO-T/A
January 12, 2004

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

SCHEDULE TO
TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1) OF THE SECURITIES
EXCHANGE ACT OF 1934

(AMENDMENT NO. 2)

FOTOBALL USA, INC.

(Name of Subject Company (Issuer))

K2 INC.

(Name of Filing Person (Offeror))

COMMON STOCK, \$0.01 PAR VALUE PER SHARE

(Title of Class of Securities)

350384103

(CUSIP Number of Class of Securities)

MONTE H. BAIER

K2 INC.

GENERAL COUNSEL

2051 PALOMAR AIRPORT ROAD

CARLSBAD, CALIFORNIA 92009

(760) 494-1000

(Name, address, and telephone number of person

authorized to receive notices and communications on behalf of filing persons)

WITH A COPY TO:

BRADFORD P. WEIRICK

GIBSON, DUNN & CRUTCHER LLP

333 SOUTH GRAND AVENUE

LOS ANGELES, CALIFORNIA 90071-3197

(213) 229-7000

CALCULATION OF FILING FEE

| Transaction Valuation* | Amount of Filing Fee |
|-------------------------------|-----------------------------|
| \$16,082,738 | \$1,302.00 |

* Estimated solely for purposes of calculating the filing fee in accordance with Rules 0-11(d) and 0-11(a)(4) under the Securities Exchange Act of 1934, based on the product of (a) \$3.73, the market price of the common stock of Fotoball USA, Inc. (Fotoball USA) based upon the average of the high and low sale prices of Fotoball USA common stock as quoted on the Nasdaq National Market System on December 8, 2003 and (b) 4,311,726, the maximum number of shares of Fotoball USA common stock and options to purchase shares of Fotoball USA common stock estimated to be acquired by K2 Inc. or cancelled pursuant to the exchange offer and subsequent merger. The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, equals \$80.90 per million of transactional value.

x Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

Amount Previously Paid: \$1,302.00
Form or Registration No.: S-4
Filing Party: K2 Inc.
Date Filed: December 10, 2003.

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- .. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer. Check the appropriate boxes to designate any transactions to which this statement relates:
- x third party tender offer subject to Rule 14d-1
 - .. issuer tender offer subject to Rule 13e-4
 - .. going-private transaction subject to Rule 13e-3
 - .. amendment to Schedule 13D under Rule 13d-2

Check the following box if the filing is a final amendment reporting the results of the tender offer.

..

This Amendment No. 2 (this Amendment No. 2) amends and/or supplements the Tender Offer Statement on Schedule TO, filed by K2 Inc., a Delaware corporation (K2), on December 10, 2003 (as amended by Amendment No. 1 on January 5, 2004 and this Amendment No. 2, the Schedule TO). The Schedule TO relates to the offer (the Offer) by K2 to exchange 0.2757 of a share of common stock, \$1.00 par value per share, of K2, including the associated preferred share purchase rights (the K2 Shares), for each outstanding share of common stock, \$0.01 par value per share, including the associated preferred share purchase rights, of Fotoball USA, Inc., a Delaware corporation (Fotoball USA) upon the terms and subject to the conditions set forth in the Prospectus (as defined below).

The Offer is made pursuant to an Agreement and Plan of Merger and Reorganization, dated as of November 25, 2003, by and among K2, Boca Acquisition Sub, Inc., a Delaware corporation and wholly-owned subsidiary of K2 (Acquisition Sub) and Fotoball USA, which contemplates the merger of Acquisition Sub with and into Fotoball USA (the Merger) following the consummation of the Offer. K2 has filed a registration statement with the Securities and Exchange Commission (the SEC) on Form S-4 relating to the K2 Shares to be issued to stockholders of Fotoball USA in the Offer and the Merger (the Registration Statement). The terms and conditions of the Offer and the Merger are set forth in the prospectus which is part of the Registration Statement (the Prospectus) and the related Letter of Transmittal (the Letter of Transmittal), which are Exhibits (a)(1) and (a)(2) hereto, respectively.

All of the information set forth in the Prospectus and the related Letter of Transmittal, and any prospectus supplement or other amendment thereto hereafter filed with the SEC by K2, is hereby incorporated by reference in response to all the items of this Schedule TO.

Item 11.

Additional Information.

Item 11 is hereby amended and supplemented as follows:

On January 12, 2004, K2 issued a press release announcing that it has commenced a subsequent offer period to extend the Offer. The expiration date of the subsequent offer period is 5:00 PM, New York City time, on Friday, January 16, 2004. K2 announced that as of 12:00 midnight, New York City time, on Friday, January 9, 2004, the initial expiration date of the Offer, approximately 3,093,486 shares of Fotoball USA common stock had been tendered in the Offer, which represents approximately 84% of the outstanding shares of Fotoball USA common stock. On January 10, 2004, effective as of 12:01 AM, New York City time, all shares of Fotoball USA common stock validly tendered and not withdrawn prior to the initial expiration of the Offer were accepted for exchange by K2. K2 is extending the Offer in order to allow Fotoball USA stockholders to tender enough of the outstanding shares of Fotoball USA common stock so that the Merger may be completed without a vote of Fotoball USA stockholders under applicable law and allow such stockholders to receive the Offer consideration now without having to wait until the consummation of the Merger. A copy of the press release is attached hereto as Exhibit (a)(11) and is incorporated herein by reference.

Item 12.

Exhibits

- (a)(1) Prospectus relating to shares of K2 to be issued in the Offer and the Merger, dated December 10, 2003 (incorporated by reference to K2's Registration Statement on Form S-4 filed on December 10, 2003, as amended (the "S-4")).
- (a)(2) Form of Letter of Transmittal (incorporated by reference to exhibit 99.2 to the S-4).
- (a)(3) Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees (incorporated by reference to Exhibit 99.3 to the S-4).
- (a)(4) Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees (incorporated by reference to Exhibit 99.4 to the S-4).
- (a)(5) Form of Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9 (incorporated by reference to Exhibit 99.5 to the S-4).
- (a)(6) Press Release, dated as of November 26, 2003 (incorporated by reference to Exhibit 99.6 to the S-4).
- (a)(7) Summary Advertisement as published in the Investors Business Daily on December 10, 2003 (incorporated by reference to Exhibit 99.7 to the S-4).
- (a)(8) Press Release, dated as of December 10, 2003 (incorporated by reference to Exhibit 99.8 to the S-4).
- (a)(9) K2's Current Report on Form 8-K, filed on December 19, 2003 (incorporated by reference).
- (a)(10) Press Release, dated as of January 5, 2004 (incorporated by reference to Exhibit 99.10 to the S-4).
- (a)(11) Press Release, dated as of January 12, 2004 (incorporated by reference to Exhibit 99.11 to the Current Report on Form 8-K filed by K2 on January 12, 2004).
- (b) None.
- (d)(1) Agreement and Plan of Merger and Reorganization, dated as of November 25, 2003, by and among K2 Inc., Boca Acquisition Sub, Inc. and Fotoball USA Inc. (incorporated by reference to Exhibit 2.1 to the S-4).
- (d)(2) Exchange Agreement, dated as of November 25, 2003, by and between K2 Inc., Fotoball USA Inc. and Michael Favish (incorporated by reference to Exhibit 10.1 to the S-4).
- (d)(3) Exchange Agreement, dated as of November 25, 2003, by and between K2 Inc., Fotoball USA Inc. and Scott P. Dickey (incorporated by reference to Exhibit 10.2 to the S-4).
- (g) None.
- (h)(1)

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Opinion of Gibson, Dunn & Crutcher LLP (incorporated by reference to Exhibit 5.1 to the S-4).

(h)(2)

Opinion of Gibson, Dunn & Crutcher LLP as to tax matters (incorporated by reference to Exhibit 8.1 to the S-4).

Signature

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

By: /s/ RICHARD J. HECKMANN

Richard J. Heckmann

Chief Executive Officer, Director and

Chairman of the Board

Dated: January 12, 2004

EXHIBIT INDEX

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