

BRASS EAGLE INC
Form SC TO-T/A
December 09, 2003

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)

BRASS EAGLE 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)

10553F106

(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
\$79,485,763.37	\$6,430.40

* 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) \$9.83, the market price of the common stock of Brass Eagle Inc. (Brass Eagle) based upon the average of the high and low sale prices of Brass Eagle common stock as quoted on the Nasdaq National Market System on October 31, 2003 and (b) 8,086,039, the maximum number of shares of Brass Eagle common stock and options to purchase shares of Brass Eagle 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 the transaction valuation.

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Check the box if any part of the fee is offset as provided by Rule 0-1 I(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: \$6,430.40
Form or Registration No.: S-4
Filing Party: K2 Inc.
Date Filed: November 4, 2003.

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:

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 Final Amendment) amends and/or supplements the Tender Offer Statement on Schedule TO, filed by K2 Inc., a Delaware corporation (K2) on November 4, 2003, (as amended by Amendment No. 1 on November 28, 2003, and this Final Amendment, the Schedule TO). The Schedule TO relates to the offer (the Offer) by K2 to exchange 0.6036 of a share, including the associated preferred share purchase rights, of common stock, par value \$1.00 per share, of K2 (the K2 Shares), for each outstanding share of common stock, \$0.01 par value (the Brass Eagle Shares) of Brass Eagle Inc., a Delaware corporation (Brass Eagle), 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 October 22, 2003, by and among K2, Cabe Acquisition Sub, Inc., a Delaware corporation and wholly-owned subsidiary of K2 (Acquisition Sub), and Brass Eagle, which contemplates the merger of Acquisition Sub with and into Brass Eagle (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 Brass Eagle in the Offer and the Merger (as amended on November 28, 2003, 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 Items 1 through 11 of this Schedule TO.

Item 11. Additional Information.

Item 11 is hereby amended and supplemented as follows:

At 12:00 midnight, New York City time, on Monday, December 8, 2003, the Offer expired. Based on information from the exchange agent for the offer, 7,167,751 Brass Eagle Shares were tendered pursuant to the Offer, constituting approximately 95.7% of the outstanding Brass Eagle Shares. On December 9, 2003, effective as of 12:06 a.m., New York City time, all Brass Eagle Shares validly tendered and not withdrawn prior to the expiration of the offer were accepted for exchange by K2.

On December 9, 2003, K2 issued the press release filed as Exhibit (a)(7) hereto. The information set forth in this press release is incorporated in its entirety herein by reference.

Item 12. Exhibits

- (a)(1) Prospectus relating to shares of K2 to be issued in the Offer and the Merger, dated November 4, 2003 (incorporated by reference to K2's Registration Statement on Form S-4 filed on November 4, 2003 (as amended on November 28, 2003, 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).

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- (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 Releases (incorporated by reference to Exhibit 99.6 and 99.7 to the S-4).
- (a)(7) Press Release (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by K2 on December 9, 2003).
- (b) None.

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- (d)(1) Agreement and Plan of Merger and Reorganization, dated as of October 22, 2003, by and among K2 Inc., Cabe Acquisition Sub, Inc. and Brass Eagle Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by K2 on October 23, 2003).
- (d)(2) Exchange Agreement, dated as of October 22, 2003, by and between K2 Inc., Brass Eagle Inc. and Charter Oak Partners (incorporated by reference to Exhibit 10.1 to the S-4).
- (d)(3) Form of Non-Competition Agreement to be entered into by and between K2 Inc., Brass Eagle Inc. and Charter Oak Partners (incorporated by reference to Exhibit 10.2 to the S-4).
- (d)(4) Success Bonus Agreement, dated as of November 26, 2003, by and among K2 Inc., Brass Eagle Inc., Cabe Acquisition Sub, Inc. and the individuals party thereto (incorporated by reference to Exhibit 10.3 to the S-4).
- (g) None.
- (h)(1) 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).

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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: December 9, 2003

EXHIBIT INDEX

Exhibit Number	Description
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