

CITIZENS FINANCIAL SERVICES INC  
Form DEF 14A  
March 12, 2009

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities  
Exchange Act of 1934 (Amendment No. [ ])

- Filed by Registrant  
 Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement  
 Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)2)  
 Definitive Proxy Statement  
 Definitive Additional Materials  
 Soliciting Material Pursuant to Section 240.14a-12

Citizens Financial Services, Inc.  
(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.  
 Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
- 1) Title of each class of securities to which transaction applies:
  - 2) Aggregate number of securities to which transaction applies:
  - 3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
  - 4) Proposed maximum aggregate value of transaction:
  - 5) Total fee paid:
- Fee paid previously with preliminary materials.  
 Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
- 1) Amount Previously Paid:
  - 2) Form, Schedule or Registration Statement No.:
  - 3) Filing Party:
  - 4) Date Filed:

CITIZENS FINANCIAL SERVICES, INC.  
15 South Main Street  
Mansfield, Pennsylvania 16933-1590

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS  
TO BE HELD ON APRIL 21, 2009

NOTICE IS HEREBY GIVEN that the Annual Meeting of Shareholders of Citizens Financial Services, Inc. (the "Company") will be held at 12:00 noon, local time, on Tuesday, April 21, 2009 at the Tioga County Fairgrounds Main Building, 2258 Charleston Road, Wellsboro, Pennsylvania 16901, for the following purposes:

1. To elect four Class 3 directors to serve for three-year terms and until their successors are duly elected and qualified;
2. To ratify the appointment of S.R. Snodgrass, A.C., Certified Public Accountants, as the independent registered public accounting firm for the Company for the fiscal year ending December 31, 2009; and
3. To transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

NOTE: The Board of Directors is not aware of any other business to come before the meeting.

Record holders of Company common stock at the close of business on March 2, 2009 are entitled to receive notice of the Annual Meeting and to vote at the meeting and any adjournment or postponement of the meeting. The Annual Meeting may be adjourned to permit the Company to solicit proxies in the event that there are insufficient votes for a quorum or to approve any of the proposals at the time of the meeting. A list of shareholders entitled to vote at the Annual Meeting will be available at Citizens Financial Services, Inc., 15 South Main Street, Mansfield, Pennsylvania 16933-1590, for a period of ten days prior to the Annual Meeting and will also be available at the Annual Meeting itself.

BY ORDER OF THE BOARD OF DIRECTORS,

/s/ Randall E. Black  
Randall E. Black  
Chief Executive Officer and President

March 12, 2009  
Mansfield, Pennsylvania

IMPORTANT: The prompt return of proxies will save the Company the expense of further requests for proxies in order to ensure a quorum. Shareholders of record may vote their proxies by mail, by Internet, or in person. Voting instructions are printed on your proxy card or vote authorization. A printed proxy card for the Annual Meeting and a self-addressed envelope will be mailed to all shareholders of record on March 23, 2009. No postage is required if mailed in the United States.

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PROXY STATEMENT  
OF  
CITIZENS FINANCIAL SERVICES, INC.

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This Proxy Statement is furnished in connection with the solicitation of proxies by the Board of Directors of Citizens Financial Services, Inc., (the “Company”), a Pennsylvania corporation headquartered at 15 South Main Street, Mansfield, Pennsylvania 16933-1590, to be used at the Annual Meeting of Shareholders. The Annual Meeting will be held at the Tioga County Fairgrounds Main Building, 2258 Charleston Road, Wellsboro, Pennsylvania 16901 on Tuesday, April 21, 2009 at 12:00 noon, local time. This Proxy Statement and the enclosed proxy card are being first made available on March 12, 2009 to shareholders of record as of March 2, 2009.

GENERAL INFORMATION ABOUT VOTING

Who Can Vote at the Meeting

You are entitled to vote your shares of Company common stock only if the records of the Company show that you held your shares as of the close of business on March 2, 2009. As of the close of business on March 2, 2009, a total of 2,837,776 shares of common stock were outstanding. Each share of common stock has one vote.

Attending the Meeting

If your shares are registered directly in your name, you are the holder of record of these shares and we are sending these proxy materials directly to you. As the holder of record, you have the right to give your proxy directly to us by mail or by voting via the Internet or to vote in person at the meeting.

If you are the beneficial owner of Company common stock held by a broker, bank or other nominee (i.e., in “street name”), you will need proof of your ownership of such stock to be admitted to the meeting. A recent brokerage statement or letter from a bank or broker are examples of proof of ownership. If you want to vote your shares of Company common stock held in street name in person at the meeting, you must obtain a written proxy in your name from the broker, bank or other nominee who is the record holder of your shares.

Quorum and Vote Required

Quorum. The Annual Meeting will be held only if there is a quorum. A quorum exists if a majority of the outstanding shares of common stock entitled to vote is represented at the meeting.

Votes Required for Proposals. In voting for the election of directors, you may vote in favor of all nominees, withhold votes as to all nominees or withhold votes as to specific nominees. There is no cumulative voting for the election of directors. Directors must be elected by a plurality of the votes cast at the Annual Meeting. The term “plurality” means that the four nominees for Class 3 director receiving the largest number of votes cast will be elected as Class 3 directors.

In voting for the ratification of the appointment of S.R. Snodgrass, A.C., Certified Public Accountants (“S.R. Snodgrass, A.C.”), as our independent registered public accounting firm, you may vote in favor of the proposal, against the proposal or abstain from voting. This proposal will be decided by the affirmative vote of a majority of the votes

cast at the Annual Meeting by all shareholders entitled to vote, assuming a quorum is present.

**Routine and Non-Routine Proposals.** The rules of the New York Stock Exchange determine whether proposals presented at shareholder meetings are routine or non-routine. If a proposal is routine, a broker, bank or other entity holding shares for an owner in street name may vote for the proposal without receiving voting instructions from the owner. If a proposal is non-routine, the broker, bank or other entity may vote on the proposal only if the owner has provided voting instructions. A broker non-vote occurs when a broker, bank or other entity holding shares for an owner in street name is unable to vote on a particular proposal and has not received voting instructions from the owner. The election of directors and the ratification of S.R. Snodgrass, A.C. as our independent registered public accounting firm for 2009 are currently considered routine matters.

**How We Count Votes.** If you return valid proxy instructions, vote via the Internet or attend the meeting in person, your shares will be counted for purposes of determining whether there is a quorum, even if you abstain from voting. Broker non-votes, if any, also will be counted for purposes of determining the existence of a quorum.

In the election of directors, votes that are withheld will have no effect on the outcome of the election. In counting votes on the proposal to ratify the selection of the independent registered public accountants, abstentions will have no effect on the proposal.

#### Voting By Proxy

The Board of Directors is making available this Proxy Statement for the purpose of requesting that you allow your shares of Company common stock to be represented at the Annual Meeting by the persons named in the proxy card. All shares of common stock represented at the Annual Meeting by properly executed and dated proxy cards will be voted according to the instructions indicated on the proxy card or as indicated when you vote via the Internet. If you sign, date and return a proxy card without giving voting instructions, your shares will be voted as recommended by the Company's Board of Directors.

#### THE BOARD OF DIRECTORS RECOMMENDS A VOTE:

- “FOR” THE ELECTION OF FOUR CLASS 3 DIRECTORS TO SERVE FOR THREE-YEAR TERMS OR UNTIL THEIR SUCCESSORS ARE DULY ELECTED AND QUALIFIED;
- “FOR” RATIFICATION OF S.R. SNODGRASS, A.C. AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM.

If any matter not described in this Proxy Statement is properly presented at the Annual Meeting, the persons named on the proxy card will use their own best judgment to determine how to vote your shares. The Company does not know of any other matters to be presented at the Annual Meeting.

You may revoke your proxy at any time before the vote is taken at the meeting. To revoke your proxy you must either advise the Secretary of the Company in writing before your common stock has been voted at the Annual Meeting, deliver a signed later dated proxy, vote on a later date via the Internet, or attend the meeting and vote your shares in person. Please note all votes cast via the Internet must be cast prior to 3:00 a.m., local time, April 21, 2009. Attendance at the Annual Meeting will not in itself constitute revocation of your proxy.

If your common stock is held in “street name,” you will receive instructions from your broker, bank or other nominee that you must follow in order to have your shares voted. Your broker, bank or other nominee may allow you to deliver your voting instructions via telephone or the Internet. Please see the instruction form provided by your broker, bank or other nominee that accompanies this Proxy Statement.

IF YOU HAVE ANY QUESTIONS ABOUT VOTING, PLEASE CONTACT OUR JUDGE OF ELECTION,  
MATTHEW M. LUNDGREN, AT 800-326-9486.

## CORPORATE GOVERNANCE

## Director Independence

The Company's Board of Directors currently consists of ten members, all of whom are independent under the listing standards of the Nasdaq Stock Market, as well as the director independence standards adopted by the Board of Directors, except for Mr. Black, who is Chief Executive Officer and President of the Company and First Citizens National Bank (the "Bank"). In determining the independence of its directors, the Board considered transactions, relationships and arrangements between the Company and its directors that are not required to be disclosed in this Proxy Statement under the heading "Transactions with Related Persons," including loans or lines of credit that the Bank has directly or indirectly made to Directors Coolidge, Tama, van der Hiel, Dalton, Graham, Kosa, Landy, Chappell, Black and DePaola. The director independence standards adopted by the Board of Directors are included in the Company's Corporate Governance Guidelines, which are available in the Corporate Governance section of our website ([www.firstcitizensbank.com](http://www.firstcitizensbank.com)).

## Code of Ethics

The Company and its wholly-owned subsidiary, the Bank, have adopted a Code of Ethics that is designed to ensure that the Company's and Bank's directors, executive officers and employees meet the highest standards of ethical conduct. The Code of Ethics requires that the Company's and Bank's directors, executive officers and employees avoid conflicts of interest, comply with all laws and other legal requirements, conduct business in an honest and ethical manner and otherwise act with integrity and in the Company's and Bank's best interest. Under the terms of the Code of Ethics, directors, executive officers and employees are required to report any conduct that they believe in good faith to be an actual or apparent violation of the Code.

## Committees of the Board of Directors

The following table identifies the members of our Audit and Examination, Compensation/Human Resource and Governance and Nominating Committees as of March 2, 2009. All members of each committee are independent in accordance with the listing standards of the Nasdaq Stock Market, Inc., except for Mr. Black, the Company's Chief Executive Officer and President, who serves on the Governance and Nominating Committee. Based on the number of independent directors currently serving on the Governance and Nominating Committee, the Company believes that the functions of this committee are sufficiently performed by the current members. The Board's Audit and Examination, Compensation/Human Resource and Governance and Nominating Committees each operate under a written charter that is approved by the Board of Directors. Each committee reviews and reassesses the adequacy of its charter at least annually. The charters of all three committees are available in the Corporate Governance section of our website ([www.firstcitizensbank.com](http://www.firstcitizensbank.com)).

Director	Compensation/Governance		
	Audit and Examination Committee	Human Resource Committee	and Nominating Committee
Randall E. Black			X
Robert W. Chappell		X	
R. Lowell Coolidge			X

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Mark L. Dalton		X	X*
Rinaldo A. DePaola		X	X
Roger C. Graham, Jr.	X		
E. Gene Kosa	X*		
R. Joseph Landy		X*	
Carol J. Tama	X		X
Number of Meetings in 2008	5	5	3

\* Denotes Chairperson

Audit and Examination Committee. The Audit and Examination Committee oversees the Company's accounting and financial reporting processes. It meets periodically with the independent registered public accounting firm, management and the internal auditors to review accounting, auditing, internal control structure and financial reporting matters. The Audit and Examination Committee does not have an "audit committee financial expert." The Board of Directors believes that the cost to retain a financial expert at this time is prohibitive. However, the Board of Directors believes that each Audit and Examination Committee member has sufficient knowledge in financial and auditing matters to serve on the committee. The committee has the authority to engage legal counsel or other experts or consultants as it deems appropriate to carry out its responsibilities. The report of the Audit and Examination Committee required by the rules of the Securities and Exchange Committee is included in this proxy statement. See "Report of the Audit and Examination Committee."

Compensation/Human Resource Committee. The Compensation/Human Resource Committee is responsible for all matters regarding the Company's and Bank's employee compensation and benefit programs. As a basis for determining compensation, the Committee examines information from a peer group of banks relative to performance and compensation. The peer group for overall bank performance analysis consists primarily of community banks and thrifts in Pennsylvania and New York with total assets between \$500 million and \$1.5 billion. The peer group for analysis of compensation paid to other bank holding company and banking institution executives is obtained primarily from L. R. Webber Associates, Inc. (such data is compiled on both a regional and asset size basis), and the same peer group, as stated above, is utilized for financial performance comparison. The Chief Executive Officer and President also provides input to the Board of Directors regarding the performance of the executive officers who directly report to him.

Governance and Nominating Committee. The Governance and Nominating Committee takes a leadership role in shaping governance policies and practices, including recommending to the Board of Directors the corporate governance policies and guidelines that should be adopted by the Company and monitoring compliance with these policies and guidelines. In addition, the Governance and Nominating Committee is responsible for identifying individuals qualified to become Board members, considering the candidates recommended by shareholders for Board membership, and recommending to the Board the director nominees for election at the next Annual Meeting of Shareholders. It manages the Board's annual review of its performance and recommends director candidates for each committee for appointment by the Board. The procedures of the Governance and Nominating Committee required to be disclosed by the rules of the Securities and Exchange Committee are set forth below.

#### Governance and Nominating Committee Procedures

Minimum Qualifications. The Governance and Nominating Committee has adopted a set of criteria that it considers when it selects individuals to be nominated for election to the Board of Directors. A candidate must meet the eligibility requirements set forth in the Company's Articles of Incorporation and Bylaws (including an age restriction), and must meet any qualification requirements set forth in any Board or committee governing documents. In particular, to encourage directors to demonstrate confidence and support of the Company, the Board of Directors has adopted a stock ownership requirement whereby each outside director, within 12 months of appointment, own Company common stock having a value equal to the lesser of three times the annual cash retainer or 1,000 shares.

The Governance and Nominating Committee will consider the following criteria in selecting nominees for initial election or appointment to the Board: financial, regulatory and business experience; familiarity with and participation in the local community; integrity, honesty and reputation; dedication to the Company and its shareholders; independence; and any other factors the Governance and Nominating Committee deems relevant, including age, diversity, geographies, size of the Board of Directors and regulatory disclosure obligations.



In addition, prior to nominating an existing director for re-election to the Board of Directors, the Governance and Nominating Committee will consider and review an existing director's Board and committee attendance and performance; length of Board service; experience; skills and contributions that the existing director brings to the Board; and independence.

Process for Identifying and Evaluating Nominees. The process the Governance and Nominating Committee follows when it identifies and evaluates individuals to be nominated for election to the Board of Directors is as follows:

Identification. For purposes of identifying nominees for the Board of Directors, the Governance and Nominating Committee relies on personal contacts of the committee and other members of the Board of Directors as well as its knowledge of members of the Bank's local communities. The Governance and Nominating Committee will also consider director candidates recommended by shareholders in accordance with the policy and procedures set forth above. The Governance and Nominating Committee has not previously used an independent search firm in identifying nominees.

Evaluation. In evaluating potential nominees, the Governance and Nominating Committee determines whether the candidate is eligible and qualified for service on the Board of Directors by evaluating the candidate under the selection criteria set forth above. In addition, the Governance and Nominating Committee will conduct a check of the individual's background and interview the candidate.

Consideration of Recommendations by Shareholders. It is the policy of the Governance and Nominating Committee of the Board of Directors of the Company to consider director candidates recommended by shareholders who appear to be qualified to serve on the Company's Board of Directors. The Governance and Nominating Committee may choose not to consider an unsolicited recommendation if no vacancy exists on the Board of Directors and the Governance and Nominating Committee does not perceive a need to increase the size of the Board of Directors. In order to avoid the unnecessary use of the Governance and Nominating Committee's resources, the Governance and Nominating Committee will consider only those director candidates recommended in accordance with the procedures set forth below.

Procedures to be Followed by Shareholders. To submit a recommendation of a director candidate to the Governance and Nominating Committee, a shareholder should submit the following information in writing, addressed to the Secretary of the Company at the main office of the Company:

1. The name and address of the person recommended as a director candidate;
2. All information relating to such person that is required to be disclosed in solicitations of proxies for election of directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended;
3. The written consent of the person being recommended as a director candidate to be named in the Proxy Statement as a nominee and to serve as a director if elected;
4. As to the person making the recommendation, the name and address, as they appear on the Company's books, of such person, and number of shares of common stock of the Company owned by such person; provided, however, that if the person is not a registered holder of the Company's common stock, the person should submit his or her name and address along with a current written statement from the record holder of the shares that reflects the recommending person's beneficial ownership of the Company's common stock; and

- A statement disclosing whether the person making the recommendation is acting with or on behalf of any
5. other person and, if applicable, the identity of such person.



In order for a director candidate to be considered for nomination at the Company's Annual Meeting of Shareholders, the recommendation must be received by the Governance and Nominating Committee at least 120 calendar days prior to the date the Company's Proxy Statement was released to shareholders in connection with the previous year's Annual Meeting, advanced by one year.

#### Meetings of the Board of Directors

The Board of Directors oversees all of the Company's business, property and affairs. The Chairman of the Board and the executive officers keep the members of the Board informed of the Company's business through discussions at Board meetings and by providing them reports and other materials. During 2008, the Company's Board of Directors held twelve regular meetings. Each of the directors attended at least 75% of aggregate of the total number of meetings of the Board and the total number of meetings held by all committees of the Board on which he or she served.

#### Meetings of the Advisory Board

Advisory boards are composed of well respected people from the community, the office manager and a non-voting member of the Board of Directors. The Board member serves as a communication link to share, with the advisory board, the appropriate information occurring at Board of Directors' meetings, as well as communicating to the Board of Directors advisory board issues and suggestions. Advisory boards meet monthly. A fee of \$185 is paid for attendance at the monthly advisory board meeting.

#### Attendance at the Annual Meeting

The Company expects its directors to attend annual meetings of shareholders. All directors attended the 2008 Annual Meeting of Shareholders.

### STOCK OWNERSHIP

The following table sets forth, as of March 2, 2009, the name and address of each person who owns of record or who is known by the Board of Directors to be the beneficial owner of more than 5% of the Company's outstanding common stock, the number of shares beneficially owned by such person and the percentage of the Company's outstanding common stock so owned. A person or entity may be considered to beneficially own any shares of common stock over which the person or entity has, directly or indirectly, sole or shared voting or investing power.

Name and Address	Number of Shares Beneficially Owned	Percent of Outstanding Common Stock Beneficially Owned
R. Lowell Coolidge Post Office Box 41 Wellsboro, Pennsylvania 16901	172,808(1)	6.1%

(1) Includes 34,821 shares held by Mr. Coolidge's spouse.

The following table sets forth the information concerning the number of shares of Company common stock beneficially owned, as of March 2, 2009, by each present director, nominee for director, named executive officer in the compensation table set forth elsewhere herein and by all directors and executive officers as a group. A person may

be considered to beneficially own any shares of common stock over which he or she has, directly or indirectly, sole or shared voting or investment power. Unless otherwise indicated, none of the shares listed are pledged as security, and each of the named individuals has sole voting power and sole investment power with respect to the number of shares shown.

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Name of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Class
Randall E. Black	7,191(1)	*
Robert W. Chappell	3,181(2)	*
R. Lowell Coolidge	172,808(3)	6.1%
Mark L. Dalton	1,295	*
Rinaldo A. DePaola	2,225(4)	*
Roger C. Graham, Jr.	24,411	*
Mickey L. Jones	1,844(5)	*
E. Gene Kosa	1,451(6)	*
R. Joseph Landy	9,817(7)	*
		p">principal of, and interest on any indebtedness or obligations of others of the kinds described above assumed or guaranteed in any manner by K2; and
Terry B. Osborne	3,246(8)	

deferrals, renewals, extensions and refunding of any indebtedness or obligations described above, unless the instrument creating or evidencing the indebtedness expressly provides that it is not senior in right of payment to the debentures.

If any payment with respect to senior indebtedness is rescinded or must otherwise be returned upon the insolvency, bankruptcy or reorganization of K2, the related reinstated indebtedness arising from such rescission or return shall also be treated as senior indebtedness as of the date of such rescission or return.

K2 s senior indebtedness does not include:

indebtedness of K2 evidenced by any other debenture issued pursuant to the purchase agreement under which these debentures were issued;

any obligation of K2 to any of its subsidiaries;

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any liability for federal, state, local or other taxes owed by K2;

any accounts payable or other liability to trade creditors arising in the ordinary course of business, including guarantees of such liabilities;

any indebtedness or obligation of K2, including any accrued and unpaid interest, that by its terms is subordinate or junior in right of payment to any other indebtedness or obligation of K2 and the holders of the senior indebtedness; or

any obligation with respect to any shares, interest, rights to purchase, warrants, options, participations or other equivalents of, or interests in, the equity, whether common or preferred, of K2 or any of its subsidiaries.

K2 shall not make any payment of principal or interest on the debentures, nor shall K2 convert or redeem the debentures unless:

K2 has paid all amounts then due on senior indebtedness; and

at the time of any payment, conversion or redemption, there is no default on senior indebtedness that has not been cured or waived and which resulted in the senior indebtedness being declared due and payable.

If holders of any senior indebtedness notify K2 pursuant to a payment blockage notice that a default has occurred permitting the holders to accelerate the maturity of the related senior indebtedness, K2 may not make any payment on the debentures or convert or redeem the debentures for the period, referred to as a payment blockage period, commencing on the date K2 receives the notice and ending on the earlier of:

the date on which the event of default under the related senior indebtedness is cured or waived; or

180 days from the date K2 receives the payment blockage notice.

The holders shall not take any enforcement action with respect to the debentures unless the holders have given the holders of the senior indebtedness at least 15 days prior written notice of the proposed action. While any default on senior indebtedness or a payment blockage notice is in effect, the holders of the debentures are prohibited from:

delivering notice of a mandatory redemption, as discussed below, unless the related senior indebtedness has been accelerated;

reducing any claim to judgment or instituting any suit to enforce or collect any amount payable with respect to the debentures;

commencing or joining with any other creditor of K2 in commencing any bankruptcy, reorganization, receivership or insolvency proceeding against K2; or

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otherwise asking, demanding, suing for, taking or receiving, all or any part of any money owing by K2 to the holders of the debentures on account of any amounts payable under the debentures.

K2 may resume regular payments on the debentures, including past scheduled interest payments the holders would have received but for the default on the senior indebtedness, after the end of such payment blockage period, unless the holders of the related senior indebtedness have accelerated the maturity of the related senior indebtedness. Irrespective of the number of defaults in connection with any senior indebtedness, not more than one payment blockage notice may be given in any consecutive 360-day period.

Upon any payment or distribution of K2's assets in connection with any bankruptcy, insolvency, reorganization, assignment for the benefit of creditors or other similar proceeding instituted by or against K2, K2 must pay all senior indebtedness in full before the holders of the debentures are entitled to any payments. If a holder of the debentures has received a payment or distribution on account of the debentures in such a situation,

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the holder shall pay such amount directly to the holders of the senior indebtedness. For the purposes of the debentures, upon conversion, the issuance and delivery of securities junior to the senior indebtedness and any cash paid in lieu of fractional shares will not be considered a payment or distribution on account of the debentures.

In the event of any of the above listed proceedings and if requested by the holder of any senior indebtedness, the holders of the debentures shall take all reasonable actions necessary to prove the full amount of their claims. The holders of the debentures appoint each holder of the senior indebtedness described above as their attorney in fact to execute, verify and deliver or file any such proof of claim required. The holders of the debentures cannot waive any claim in any bankruptcy or similar dissolution proceeding without the written consent of the other holders of the debentures.

## **Additional Covenants**

So long as any payment obligation is outstanding under the debentures, unless K2 obtains the prior written consent of the holders of a majority of the outstanding principal amount, K2 shall not:

pay or declare any dividend or distribution;

lend or advance money or give credit to any person or entity not affiliated with K2, unless such loan, advance, or credit existed as of February 14, 2003 or is made in the ordinary course of business;

become liable on the obligation of a person or entity not affiliated with K2, unless such action involves the endorsement of negotiable instruments for deposit or collection, existed as of February 14, 2003 or is made in the ordinary course of business; and

create, incur, assume or suffer any indebtedness for borrowed money, except for indebtedness:

in existence or contractually required as of February 14, 2003, including any changes that do not cause the principal to exceed 120% of the principal amount previously outstanding;

to trade creditors incurred in the ordinary course of business;

the proceeds of which shall be used to repay the debentures at maturity or upon optional or mandatory redemption, as discussed in this prospectus;

represented by mortgage refinancings or purchase money obligations incurred for the purpose of financing the purchase price or cost of construction or improvement of property, plant or equipment used in K2's business, so long as the aggregate principal amount does not exceed 15% of K2's consolidated net worth, as calculated in the debentures; and

the aggregate principal amount of which does not exceed 15% of K2's consolidated net worth, as calculated in the debentures, after giving effect to the incurrence of such indebtedness.

Unless permitted by K2's then existing senior credit facility, K2 is also prohibited from repurchasing or otherwise acquiring any of its capital stock while a payment obligation is outstanding under the debentures.

**Appointment Right**

As long as the original purchasers hold more than \$12,500,000 in aggregate principal amount of the debentures, they shall have the right to appoint one member of the K2 board of directors, which appointee shall be subject to the approval of K2's board of directors. This appointment right is not assignable.

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**Mandatory Redemption**

***Mandatory Redemption Event***

At the option of the holders of at least half the outstanding principal amount of the debentures and after delivery of written notice of any of the following events, K2 shall redeem the outstanding debentures for the redemption price as calculated below:

K2 fails to make any principal payment when due or fails to cure any late payments of interest or fees within 30 days;

any change in control, including a merger, a business combination involving K2 in which the holders of K2's voting power will not maintain the ability to elect at least a majority of the board of directors of the surviving entity;

the sale of all or substantially all of K2's assets, or a purchase, tender or exchange offer accepted by greater than half of K2's voting power, unless such voting power retains the ability to elect a majority of the board of directors of the surviving entity;

K2 breaches certain covenants set forth in the securities purchase agreement or the related registration rights agreement and the breach is not cured within 30 days of receipt of the notice;

K2 fails to have the registration statement of which this prospectus forms a part declared effective within 270 days of closing and the problem is not cured within 30 days of receipt of the notice; or

K2 is in default on indebtedness for borrowed money in an aggregate principal amount of at least \$5,000,000, any related grace period has expired, and as a result, such indebtedness is due and payable before its stated maturity.

Upon the occurrence of either of the following two events, the debentures shall become immediately redeemable and K2 shall purchase the outstanding debentures at the redemption price as calculated below:

K2 makes an assignment for the benefit of creditors or applies for or consents to the appointment of a receiver or trustee; or

bankruptcy, insolvency or similar reorganization or liquidation proceedings under any bankruptcy law or any law for the relief of debtors is instituted by or against K2.

***Mandatory Redemption Price***

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Upon the occurrence of any mandatory redemption event described above, K2 shall repurchase the then outstanding debentures for an amount equal to the greater of:

105% of all outstanding principal, accrued and unpaid interest and all other amounts owed to such holders under the debentures or the related agreements; and

the number of shares of K2 common stock issuable upon conversion of the amount being redeemed, *multiplied* by the highest closing price of K2 common stock between the date the mandatory redemption event took place and the day prior to the date of payment of the mandatory redemption price.

Such amount, including all related collection costs and legal fees shall immediately become due and payable without demand, presentment or notice by the holders. If K2 does not pay the amount within five days of receiving the notice that such amount is due, the holders may require K2 to issue a number of shares of K2 common stock determined by *dividing* the amount due and owing by a conversion price of \$11.92, subject to the adjustments described above.

### **Optional Redemption**

At any time on or after February 14, 2006 K2 may redeem the entire principal amount then outstanding, upon not less than 15 nor more than 45 days' notice. However, if the registration statement of which this

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prospectus forms a part has not been effective for 30 days, K2 may not redeem the debentures at its option. The redemption price, expressed as a percentage of the principal amount being redeemed, is determined by the date the debentures are redeemed:

<b>Date of Redemption</b>		<b>Redemption Price</b>
February 14, 2006	February 13, 2007	105.0%
February 14, 2007	February 13, 2008	103.5%
February 14, 2008	February 13, 2009	102.5%
February 14, 2009	February 13, 2010	100.0%
February 14, 2010	March 3, 2010	100.0%

K2 or a successor entity, upon not less than 15 nor more than 45 days notice, shall also have the right to redeem the debentures after a change in control at a price equal to 105% of the principal amount being redeemed provided the registration statement of which this prospectus forms a part has been effective for thirty days prior to the proposed redemption date.

**Modification and Waiver**

The debentures may be amended only by a writing signed by K2 and the holders of a majority of the then outstanding principal. However, K2 and the holders cannot amend, supplement, alter or modify the debentures without the prior written consent of certain holders of certain senior indebtedness if such amendment, supplement, alteration or modification would:

- change the payment due dates for principal or interest;
- change or add any event requiring mandatory redemption;
- change the redemption or prepayment provisions of the debentures;
- alter the subordination provisions of the debentures;
- shorten the maturity date of the debentures; or
- alter the repayment terms of the debenture.

**Reports**

Whether or not required by the rules and regulations of the SEC, so long as the purchasers hold debentures of at least \$12,500,000 in principal amount, K2 will furnish the holders of the debentures with copies all filings with the SEC on Forms 10-Q, 10-K and 8-K.

**Replacement of Notes**

K2 will replace debentures that are lost, stolen, destroyed or mutilated upon receipt of evidence of such loss, destruction or damage. In the case of a lost, stolen or destroyed note, before a replacement debenture will be issued, indemnity satisfactory to K2 is required at the expense of the holder.

**Governing Law**

The debentures are governed by and construed in accordance with the laws of the State of New York.

Table of Contents**DESCRIPTION OF WARRANTS**

K2 issued warrants to purchase up to 524,329 shares of K2 common stock at an exercise price of \$13.91 per share, subject to certain adjustments discussed below. No fractional shares of K2 common stock will be issued pursuant to the warrants. The warrants, which may be exercised in whole or in part, expire on February 14, 2008.

**Exercise Price**

The exercise price shall be \$13.91 per share subject to certain adjustments set forth below; however, no adjustment will be made to the exercise price if the resulting adjustment would be less than 1% of the exercise price in effect immediately prior to the adjustment. K2 must provide notice detailing any adjustment, the related calculation and the number of shares of K2 stock acquirable upon complete exercise of the warrants. The registration statement of which this prospectus forms a part does not cover any additional shares of K2 common stock as may become issuable by reason of any change in the exercise price of the warrants, as set forth below.

***Subsequent Issuances of Securities***

If at any time after February 14, 2003 K2 issues or sells, or pursuant to the warrants is deemed to have issued or sold any shares of K2 common stock for consideration per share less than the exercise price in effect with respect to the warrants immediately after such later issuance, the adjusted exercise price shall equal:

		<u>Consideration received in later issuance</u>
Prior exercise price X	( K2 common stock outstanding before later issuance	+ Prior exercise price )
K2 common stock outstanding after later issuance		

For the purposes of the calculation set forth above, the consideration received for any subsequent issuance equals the amount K2 received for the securities prior to any deductions for expenses. If the consideration is not in monetary form, the K2 board of directors shall make a good faith determination of the fair value of the non-cash consideration. If the non-cash consideration is in the form of securities, the fair value is the market price of the securities on the day K2 received such securities.

If there is a change in the amount of consideration payable to K2 upon exercise or conversion of the subsequently issued securities, including a change in the rate at which the subsequently issued securities are convertible or exchangeable for K2 common stock, the exercise price for the warrants shall be recalculated as if the additional consideration was payable at the time of the issuance of the subsequently issued securities.

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If K2 issues, sells or grants any warrants, rights or options to purchase shares of K2 common stock or other securities convertible into K2 common stock and the price per share of common stock paid upon exercise of such subsequently issued securities is less than the exercise price for the warrants in effect on the date of the subsequent issuance, then for the purposes of the calculation set forth above, the maximum number of shares of K2 common stock issuable upon the exercise of the subsequently issued securities will be deemed issued and outstanding as of the date of the subsequent issuance. If any of these subsequently issued securities that affected the number of issued and outstanding shares used for the purposes of the calculation set forth above expire or terminate without being exercised, the adjusted exercise price for the warrants will be recalculated to reflect the fact the expired or terminated securities are no longer deemed to be issued and outstanding for the purposes of the calculation.

### *Subdivision or Combination of K2 Common Stock*

If K2 subdivides its common stock by means of stock split, dividend, recapitalization, reorganization, reclassification or otherwise thereby increasing the number of shares acquirable pursuant to exercise of the warrants, the exercise price in effect immediately prior to the subdivision will be reduced proportionately. If K2 combines the K2 common stock by means of reverse stock split, recapitalization, reorganization, reclassification or otherwise thereby decreasing the number of shares acquirable upon exercise of the warrants, the exercise price in effect immediately prior to the combination shall be increased proportionately.

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### ***Consolidation, Merger or Sale***

If K2 consolidates with or merges into any other corporation or sells all or substantially all of its assets other than in connection with a plan of complete liquidation, K2 will ensure that, in lieu of shares of K2 common stock, the holders of the warrants will have the right to acquire an equivalent dollar amount of such shares of stock, securities or assets received in exchange for K2 common stock pursuant to the transaction.

### ***Events Not Affecting the Exercise Price***

The following have no effect on the exercise price of the warrants:

the exercise of any warrants, options or convertible securities issued and outstanding as of February 14, 2003;

the grant or exercise of any stock or options granted or exercised under any stock option plan, restricted stock plan or employee benefit plan;

the exercise of the warrants described in this registration statement;

the issuance or conversion of the debentures;

a sale pursuant to a firm-commitment underwritten public offering of K2 common stock, not including continuous offerings pursuant to Rule 415 of the Securities Act of 1933;

any sales of K2 common stock not exceeding an aggregate amount of 538,262 shares;

the issuance of securities by K2 in connection with the acquisition of a business or the operating assets of a person or business; or

the issuance of securities to any strategic investors, vendors, financial institutions or other lenders in connection with commercial credit arrangements and similar financings the primary purpose of which is not to raise equity capital.

### **Shares Available Upon Full Exercise**

The warrants give the holders the right to acquire up to 524,329 shares of K2 common stock. However, after any adjustment to the exercise price discussed above, the number of shares of K2 common stock issuable upon exercise of the warrants shall be adjusted by *multiplying* the exercise price prior to the adjustment by the number of shares of K2 common stock issuable upon exercise of the warrants immediately prior to such adjustment and *dividing* the product of those two numbers by the new adjusted exercise price.

**Limitations on the Holder's Ability to Exercise**

A holder may not exercise any warrant to the extent the number of shares of K2 common stock issued upon exercise *plus* the number of shares of K2 common stock already owned by the exercising holder and its affiliates would cause the beneficial ownership of K2 common stock, as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, of the holder and its affiliates to exceed 9.9% of the outstanding shares of K2 common stock.

**Transfer, Exchange, Replacement**

The warrants are fully transferable, in whole or in part, by surrendering the warrant and executing a form of assignment attached to the warrant. As conditions of transfer, K2 may require that (i) the holder or the transferee provide K2 with an opinion of counsel acceptable to K2 stating that the transfer may be made without registration under the Securities Act of 1933 and any applicable state securities and blue sky laws, (ii) the holder or transferee provide K2 with an investment letter acceptable to K2 and (iii) that the transferee be an accredited

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investor as defined in Rule 501(a) of the Securities Act of 1933. If the transfer is made pursuant to Rule 144 of the Securities Act of 1933 then the above listed three items will not be required. The registration rights described in the related registration rights agreement are assignable only in accordance with the provisions of the registration rights agreement.

## **Additional Covenants of K2**

K2 has also covenanted that, among other things:

all shares of K2 common stock issued upon exercise of the warrants will be validly issued, fully paid and non-assessable;

K2 will have authorized and reserved a sufficient number of shares of K2 common stock to provide for the full exercise of the warrants;

K2 will secure the listing of the shares of K2 common stock issuable upon exercise of the warrants on the New York Stock Exchange;

K2 will not increase the par value of K2 common stock to be issued upon exercise of the warrants; and

K2 acknowledges that any remedy at law for breach of any of its obligations under the warrants will be insufficient and that in such case, without any showing of economic loss, the holders shall be entitled to, among other things, an injunction or injunctions to prevent or cure the breach and specific performance of the terms and provisions of the warrant.

## **Governing Law**

The warrants are governed by and construed in accordance with the laws of the State of New York; however all issues concerning the relative rights of K2 and its stockholders are governed by the General Corporation Law of the state of Delaware.

## **REGISTRATION RIGHTS**

In connection with the initial purchase and sale of the debentures and warrants K2 entered into a registration rights agreement, dated as of February 14, 2003, in which K2 agreed, at its sole expense, to file the registration statement of which this prospectus forms a part with the Securities and Exchange Commission. A copy of the registration rights agreement has been filed as an exhibit to K2's Form 8-K filed February 24, 2003 and is incorporated herein by reference.

**Table of Contents****SELLING SECURITY HOLDERS**

The common stock offered pursuant to this prospectus has been or will be issued to the selling security holders, or their assignees, directly by K2. The selling security holders, all of whom are accredited investors as defined in Rule 501(a) of the Securities Act of 1933, purchased the debentures and warrants in a private placement pursuant to a securities purchase agreement entered into on December 10, 2002. K2 agreed to file this registration statement for the resale of the common stock underlying the debentures and the warrants. K2 agreed to bear all out-of-pocket expenses of this offering, other than underwriting discounts and commissions. The selling security holders may sell none, some, or all of the common stock offered by them as listed below.

The following table sets forth certain information with respect to the beneficial ownership of shares of K2 common stock by the selling security holders as of the date of this prospectus, the maximum number of shares of K2 common stock acquirable by the selling security holders pursuant to conversion of the debentures and/or exercise of the warrants and the number of shares which may be offered pursuant to this prospectus for the account of each of the selling security holders.

<b>Selling Security holders</b>	<b>Beneficial Ownership Before the Offering (1)</b>	<b>Maximum Number of Shares Acquirable Upon Complete Conversion of Debentures (2)(3)</b>	<b>Maximum Number of Shares Acquirable Upon Complete Exercise of the Warrants (3)(4)</b>	<b>Maximum Number of Shares Which May be Offered Pursuant to this Prospectus</b>	<b>Shares of Common Stock Included in this Prospectus (1)</b>	<b>Beneficial Ownership After the Offering (1)</b>
k1 Ventures Limited	0	0	524,329	524,329(4)	0	0
Sporting Goods Investment I, LP	0	1,048,657	0	1,048,657(2)	0	0
Sporting Goods Investment II, LP	0	1,048,657	0	1,048,657(2)	0	0
<b>Total</b>	<b>0</b>	<b>2,097,314</b>	<b>524,329</b>	<b>2,621,643</b>	<b>0</b>	<b>0</b>

- (1) At the time of filing the registration statement of which this prospectus forms a part, the selling security holders held no K2 common stock and had neither converted any portion of the debentures nor exercised any part of the warrants.
- (2) Because the number of shares of common stock issuable upon conversion of the debentures is dependent in part upon certain actions of K2 prior to a conversion, the actual number of shares of common stock that will be issued upon conversion may increase due to an adjustment to the conversion price; however, for the purposes of the table set forth above and based on the terms of the debentures, a conversion price of \$11.92 is used, which assumes no such action has been taken by K2.
- (3) k1 Ventures Limited, Sporting Goods Investment I, LP and Sporting Goods Investment II, LP are affiliates of each other. Under the terms of the debentures and the warrants, the debentures are convertible, and the warrants are exercisable, by the holders only to the extent that the number of shares of common stock issuable pursuant to such securities, together with the number of shares of common stock owned by the holders and their affiliates, but not including shares of common stock underlying unconverted portions of the debentures or unexercised portions of the warrants, would not exceed 9.9% of the then outstanding K2 common stock as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934. Accordingly, the number of shares of common stock set forth in the table collectively exceeds the number of shares of common stock that the selling security holders collectively could beneficially own at any given time through the ownership of the debentures and the warrants. In that regard, the beneficial ownership of the common stock by k1 Ventures Limited and its affiliates set forth in the table is not determined in accordance with Rule 13d-3 under the Securities Exchange Act of 1934.
- (4) Because the number of shares of common stock issuable upon exercise of the warrants is dependent in part upon certain actions of K2 prior to the exercise, the actual number of shares of common stock that will be issued upon exercise may increase due to an adjustment to the exercise price; however, for the purposes of the table set forth above and based on the terms of the warrants, an exercise price of \$13.91 is used, which assumes no such action has been taken by K2.

To the best of K2's knowledge, none of the selling security holders have any position, office or other material relationship with K2 or any of K2's affiliates.

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**PLAN OF DISTRIBUTION**

The selling security holders and any of their donees, pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their shares of K2 common stock offered by this prospectus; however, there is no assurance that the selling security holders will sell any or all of their common stock. The underlying common stock may be sold in one or more transactions at:

fixed prices;

prevailing market prices at the time of sale;

varying prices determined at the time of sale; or

negotiated prices.

These sales may be effected in transactions:

on the New York Stock Exchange;

in the over-the-counter market;

in transactions otherwise than on such exchanges or services or in the over-the-counter market; or

through the writing of options.

These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the transaction. The selling security holders may also enter into hedging transactions with broker-dealers in connection with the sales of the underlying common stock. These broker-dealers may in turn engage in short sales of the common stock in the course of hedging their positions. The selling security holders may sell short the underlying common stock to close out short positions, or loan or pledge the underlying common stock to broker-dealers that, in turn, may sell the underlying common stock.

Brokers, dealers, underwriters or agents participating in the distribution of the underlying common stock may receive compensation in negotiated amounts in the form of discounts, concessions, commissions or fees from the selling security holders and/or the purchasers of the common stock for whom such broker or dealer may act as agent or to whom they may sell as principal, or both. The compensation as to a particular broker or dealer may be in excess of customary commissions. In connection with the sales, the brokers or dealers or other participating brokers or dealers and the selling security holders may be deemed to be underwriters within the meaning of the Securities Act of 1933. Except for customary selling commissions in ordinary transactions, any such underwriter or agent will be identified, and any compensation paid to such

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persons will be described in a prospectus supplement. In addition, any common stock covered by this prospectus that qualifies for sale under Rule 144 under the Securities Act of 1933 may be sold under Rule 144 rather than pursuant to this prospectus.

The selling security holders and any other persons participating in the sale or distribution of the shares will be subject to applicable provisions of the Securities Exchange Act of 1934 and the rules and regulations under such act, including, without limitation, Regulation M. These provisions may restrict certain activities of, and limit the timing of purchases and sales of any of the shares by, the security holders or any other such person. Furthermore, under Regulation M, persons engaged in a distribution of securities are prohibited from simultaneously engaging in market making and certain other activities with respect to such securities for a specified period of time prior to the commencement of such distributions, subject to specified exceptions or exemptions. All of these limitations may affect the marketability of the shares of common stock.

K2 has agreed to indemnify the selling security holders, or their transferees or assignees, against certain liabilities, including liabilities under the Securities Act of 1933, or to contribute to payments the selling security holders or their respective pledgees, donees, transferees or other successors in interest, may be required to make in respect of such liabilities.

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**USE OF PROCEEDS**

The proceeds from the sale of the K2 common stock offered by this prospectus will be received directly by the selling security holders. K2 will not receive any proceeds from the sale of the common stock offered by the selling security holders pursuant to this prospectus. K2 will receive proceeds if the selling security holders exercise their warrants to purchase shares of K2 common stock. If all of the warrants were exercised, K2 would receive gross proceeds of \$7,293,416. Any proceeds received upon the selling security holders exercising their warrants will be used as working capital. The \$25,000,000 received as consideration for the debentures was used to pay down a portion of K2's then outstanding 8.41% senior notes due December 1, 2009.

**LEGAL MATTERS**

The legality of the common stock offered by this prospectus will be passed upon for K2 by Gibson, Dunn & Crutcher LLP, Los Angeles, California.

**EXPERTS**

The financial statements incorporated by reference in this prospectus, and elsewhere in the registration statement of which this prospectus forms a part, have been audited by Ernst & Young LLP, independent auditors, as set forth in their reports with respect thereto, and are included herein in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

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**WHERE YOU CAN FIND MORE INFORMATION;  
INCORPORATION OF DOCUMENTS BY REFERENCE**

The SEC allows K2 to incorporate by reference information into this prospectus, which means that K2 can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus, except for any information that is superseded by information that is included directly in this document. However, as allowed by SEC rules, this prospectus does not contain all the information you can find in the K2 registration statement or the exhibits to the registration statement. This prospectus incorporates by reference the documents set forth below that K2 previously filed with the SEC. These documents contain important information about K2 and its financial condition.

<b>K2 SEC Filings (File No. 001-04290)</b>	<b>Period</b>
Annual Report on Form 10-K	Year ended December 31, 2002
Current Reports on Form 8-K	Filed on February 24, 2003, March 13, 2003 and April 1, 2003
Registration Statement on Form 8-A	Filed on August 21, 1989 and August 9, 1999
Registration Statement on Form 8-A/A	Filed on January 23, 1998
Registration Statement on Form S-4/A	Filed on February 25, 2003

All additional documents that K2 may file with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act of 1934 after the date of this prospectus and prior to the termination of this offering of common stock, shall also be deemed to be incorporated by reference.

References herein to this prospectus are intended to include the documents incorporated by reference, which are an integral part of this prospectus. You should obtain and review carefully copies of the documents incorporated by reference. Any statement contained in the documents incorporated by reference in this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus modifies or supersedes the statement. Information that K2 later file with the Commission before the termination of this offering of notes will automatically modify and supersede the information previously incorporated by reference and the information in this prospectus. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

Upon written or oral request, K2 will provide any person, including beneficial owners, to whom a copy of this prospectus is delivered, a copy of any documents incorporated by reference in this prospectus but not delivered along with this prospectus free of charge, excluding all exhibits, unless K2 specifically incorporated by reference an exhibit in this prospectus. Any such requests should be addressed to:

K2 Inc.

Attention: Investor Relations

2051 Palomar Airport Road Carlsbad, California 92009

Telephone: (760) 494-1000

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Facsimile: (760) 494-1099

K2 files annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or information that K2 files at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-732-0330 for further information on the Public Reference Rooms. K2's SEC filings are available to the public from commercial document retrieval services and at the Internet web site maintained by the SEC at [www.sec.gov](http://www.sec.gov).

**Table of Contents****PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

Other than underwriting discounts and commissions, the Registrant will pay all expenses related to the private placement and issuance and distribution of the securities registered hereby. The following table sets forth the estimated fees and expenses payable by the Registrant in connection with the issuance and distribution of the securities registered hereby:

SEC Registration fee	\$ 2,612.53
Printing, duplicating and engraving expenses	\$ 10,000
Legal fees and expenses	\$ 100,000*
Accounting fees and expenses	\$ 10,000
Miscellaneous	\$ 760,000
<b>Total</b>	<b>\$ 882,612.53*</b>

\* Estimate

**Item 15. Indemnification of Directors and Officers.**

Section 102(b)(7) of the Delaware General Corporation Law, as amended, allows a corporation to include a provision in its certificate of incorporation limiting or eliminating the personal liability of directors of the corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director (a) breached his/her duty of loyalty to the corporation or its stockholders, (b) acted not in good faith or in knowing violation of a law, (c) authorized the payment of a dividend or approved a stock repurchase in violation of Delaware General Corporation Law or (d) obtained an improper personal benefit from a transaction.

Section 145 of the Delaware General Corporate Law permits a corporation to indemnify a person who was or is a party or is threatened to be made a party to any threatened, pending or completed third party proceeding, other than an action by or in the right of the Registrant, by reason of the fact that such person is or was a director, officer, employee or agent of the corporation against expenses including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding. The power to indemnify applies (a) if such person is successful on the merits or otherwise in defense of any action, suit or proceeding, or (b) if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such person's conduct was unlawful. In a derivative action, i.e., one by or in the right of the corporation, the corporation is permitted to indemnify any of its directors or officers against expenses, including attorneys' fees, actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, except that the corporation shall not indemnify such person if such person shall have been adjudged liable to the corporation, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that such person is fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability. The rights granted under this

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section of the Delaware General Corporate Law are not exclusive of any other rights to which such person is entitled. The corporation may purchase and maintain insurance on behalf of such persons against any liability asserted against or incurred by such persons in any capacity as or arising out of such persons status as a director, officer, employee or agent of the corporation.

Section 174 of the Delaware General Corporation Law provides, among other things, that all directors who willfully or negligently approve an unlawful payment of dividends or an unlawful stock purchase or redemption

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may be held liable for the full amount paid out in connection with these actions. A director who was either absent when the unlawful actions were approved or dissented at the time, may avoid liability by causing his or her dissent to these actions to be entered in the books containing the minutes of the meetings of the board of directors at the time the action occurred or immediately after the absent director receives notice of the unlawful acts. Any director against whom a claim is successfully asserted may recover contribution from any other directors who voted or concurred in the unlawful action.

Article 17 of the Registrant's Restated Certificate of Incorporation, as amended, includes a provision eliminating the personal liability of its officers and directors for monetary damages for breach of fiduciary duty as a director to the fullest extent authorized by, and subject to the limitations expressed in Delaware law. In addition, as permitted by Section 145 of the Delaware General Corporation Law, Article 18 of the Restated Certificate provides that: (a) the Registrant is required to indemnify its directors, officers and persons serving at the request of the Registrant as a director, officer, employee or agent of another corporation or business entity, to the fullest extent permitted by Delaware law; (b) the Registrant may indemnify employees and agents of the Registrant with the same scope and effect as the indemnification provided to officers and directors; (c) the Registrant will advance amounts as required by law after the director or officer delivers to the Registrant an undertaking to repay all amounts advanced if it is determined that the director or officer is not entitled to indemnification; (d) the director or officer may bring suit against the Registrant to recover an amount if the director or officer was successful in whole or in part and the Registrant has not paid the director or officer within thirty days of receipt of the director or officer's claim for payment; (e) the rights conferred in the Restated Certificate are not exclusive of any other right which the director or officer may have, or thereafter acquire under any statute, provision of the Restated Certificate, bylaw, agreement or otherwise; and (f) the Registrant may maintain director and officer liability insurance at its own expense.

### **Item 16. Exhibits.**

See Exhibit Index attached hereto and incorporated by reference.

### **Item 17. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

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- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
  
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
  
- (c) The undersigned Registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report, to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X is not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.
  
- (d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.



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Exhibit Number	Description
4.1	Rights Agreement dated as of July 1, 1999 between K2 Inc. and Harris Trust Company of California, as Rights Agent, which includes thereto the Form of Rights Certificate to be distributed to holders of Rights after the Distribution, filed as Item 2, Exhibit 1 to Form 8-A filed August 9, 1999 and incorporated herein by reference.
4.2	Form of Convertible Subordinated Debenture Exhibit A to the Securities Purchase Agreement, filed as Exhibit 4.2 to Form 8-K filed February 24, 2003 and incorporated herein by reference.
4.3	Form of Stock Purchase Warrant Exhibit B to the Securities Purchase Agreement filed as Exhibit 4.3 to Form 8-K filed February 24, 2003 and incorporated herein by reference.
5.1#	Opinion of Gibson, Dunn & Crutcher LLP.
10.1	Securities Purchase Agreement dated as of November __, 2002, among K2 Inc. and the parties set forth on the signature pages thereto, filed as Exhibit 4.1 to Form 8-K filed February 24, 2003 and incorporated herein by reference.
10.2	Registration Rights Agreement Exhibit C to the Securities Purchase Agreement filed as Exhibit 4.4 to Form 8-K filed February 24, 2003 and incorporated herein by reference.
23.1#	Consent of Gibson, Dunn & Crutcher LLP (Included in Exhibit 5.1).
23.2#	Consent of Ernst & Young LLP.
24.1#	Powers of Attorney.

# Previously filed as an exhibit to the Registration Statement of K2 Inc. on Form S-3 (file No. 333-104530) dated April 14, 2003.