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MACC PRIVATE EQUITIES INC

Form 8-K

May 01, 2008

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of report (Date of earliest event reported) April 29, 2008

MACC PRIVATE EQUITIES INC.

(Exact Name of Registrant as Specified in Its Charter)

|   |                             |                                      |
|---|-----------------------------|--------------------------------------|
| DELAWARE  | 0-24412                     | 42-1421406                           |
| (State or Other Jurisdiction<br>of Incorporation) | (Commission<br>File Number) | (IRS Employer<br>Identification No.) |

|   |            |
|---|------------|
| 101 Second Street SE, Suite 800, Cedar Rapids, Iowa | 52401      |
| (Address of Principal Executive Offices)            | (Zip Code) |

(319) 363-8249

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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**Item 1.01 Entry into a Material Definitive Agreement**

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### *Investment Advisory Agreement*

Following shareholder approval at the 2008 Annual Shareholders Meeting (the "Annual Meeting"), on April 29, 2008, MACC Private Equities Inc. ("MACC") entered into an Investment Advisory Agreement (the "New Advisory Agreement") with Eudaimonia Asset Management, LLC ("EAM") pursuant to which EAM will serve as investment adviser to MACC.

Under the New Advisory Agreement, MACC will pay EAM a management fee equal to 2.0% per annum of Assets Under Management (as defined in the New Advisory Agreement) attributable to each of (i) the assets of MACC in existence as of the effective date of the New Advisory Agreement (the "Existing Portfolio"), including those previously held by MorAmerica Capital Corporation ("MorAmerica") prior to the merger of MorAmerica with and into MACC, as described below under Item 8.01, and (ii) all new portfolio investments made by MACC after the effectiveness of the New Advisory Agreement (the "New Portfolio"). In addition, the New Advisory Agreement provides that MACC will pay EAM an incentive fee in an amount equal to 20.0% of the Net Capital Gains (as defined in the New Advisory Agreement), before taxes, attributable to the New Portfolio (which would include any follow-on investments made to the Existing Portfolio) and 13.4% of the net capital gains, before taxes, attributable to the Existing Portfolio.

The New Advisory Agreement has a term of two years, unless sooner terminated as described below. After the initial two-year term, the New Advisory Agreement will continue in effect so long as such continuance is specifically approved at least annually by MACC's Board of Directors (the "Board") or the vote of a majority of MACC's shareholders. The New Advisory Agreement may be terminated by MACC at any time, without payment of any penalty, on 60 days' written notice to EAM. EAM may also terminate the New Advisory Agreement on 60 days' written notice to MACC provided that another investment advisory agreement with a suitable investment adviser has been approved by MACC's shareholders.

A copy of the New Investment Advisory Agreement has been filed with this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference.

### *Investment Subadvisory Agreement*

Also following shareholder approval at the Annual Meeting, on April 29, 2008, MACC entered into an Investment Subadvisory Agreement (the "Subadvisory Agreement") with InvestAmerica Investment Advisors, Inc. ("InvestAmerica") and EAM pursuant to which InvestAmerica, which has served as investment adviser and sub-advisor to MACC MorAmerica since 1995, has been retained to monitor and manage the Existing Portfolio, including exits, preparation of valuations and other portfolio management matters. Under the Subadvisory Agreement, EAM will pay InvestAmerica management fees and incentive fees based on a portion of the management fees and incentive fees paid to EAM by MACC under the New Advisory Agreement attributable to the Existing Portfolio. The Subadvisory Agreement will not

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result in any additional expense to MACC beyond the expenses associated with the New Advisory Agreement.

The Subadvisory Agreement has a term of two years, unless sooner terminated as described below. After the initial two-year term, the Subadvisory Agreement will continue in effect so long as such continuance is specifically approved at least annually by EAM and the Board or by the vote of a majority of MACC's shareholders. The Subadvisory Agreement may be terminated by EAM or MACC,

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without payment of any penalty, on 60 days written notice to InvestAmerica if the decision to terminate has been made by EAM or by the Board or by the vote of a majority of MACC's shareholders. The Subadvisory Agreement also may be terminated by InvestAmerica at any time, without payment of any penalty, on 60 days' written notice to EAM and MACC.

A copy of the Subadvisory Agreement has been filed with this Current Report on Form 8-K as Exhibit 10.2 and is incorporated herein by reference.

### *Omnibus Amendment, Consent and Waiver Agreement*

On April 29, 2008, MACC and MorAmerica, entered into an Omnibus Amendment, Consent and Waiver Agreement (the "Amendment") with Cedar Rapids Bank and Trust Company ("CRB&T"). Pursuant to the Amendment, MACC, following the merger of MorAmerica with and into MACC, will succeed to the rights and obligations of MorAmerica as borrower under the Business Loan Agreement dated August 30, 2007 between MorAmerica and CRB&T, the Commercial Pledge and Security Agreement dated August 30, 2007 between MorAmerica and CRB&T, the Commercial Security Agreement dated August 30, 2007 between MorAmerica and CRB&T, the Promissory Note in the original principal amount of \$500,000 dated August 30, 2007 made by MorAmerica in favor of CRB&T, the Promissory Note in the original principal amount of \$6,250,000 made by MorAmerica in favor of CRB&T and the Safekeeping Agreement dated September 1, 2007 among MACC, MorAmerica and CRB&T (collectively, the "Operative Documents"). The Amendment also clarifies that CRB&T's security interest in, and custody of, MACC's assets under the Operative Documents is limited to those assets of MACC (including those previously held by MorAmerica prior its merger with and into MACC, as further described below under Item 8.01) in existence as of April 29, 2008 and with respect to which InvestAmerica will provide subadvisory services under the Subadvisory Agreement.

A copy of the Amendment has been filed with this Current Report on Form 8-K as Exhibit 10.3 and is incorporated herein by reference. Copies of the Operative Documents have been filed with this Current Report on Form 8-K as Exhibits 10.4 through 10.9 and are incorporated herein by reference.

### **Item 1.02 Termination of a Material Definitive Agreement**

In connection with the New Advisory Agreement and Subadvisory Agreement, pursuant to a Termination and Waiver Agreement dated April 29, 2008 among MACC, MorAmerica and InvestAmerica (the "Termination Agreement"), the following agreements were terminated as of

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that date: the MACC Private Equities, Inc. Investment Advisory Agreement dated as of July 21, 2005 between MACC and InvestAmerica (the "MACC Advisory Agreement") and the MorAmerica Capital Investment Advisory Agreement dated as of July 21, 2005 between MorAmerica and InvestAmerica (the "MorAmerica Advisory Agreement" and, together with the MACC Advisory Agreement, the "Former Advisory Agreements").

Pursuant to the Termination Agreement, MACC, MorAmerica and InvestAmerica agreed to waive any notice provisions under the Former Advisory Agreements, and neither MACC nor MorAmerica incurred any penalties resulting from the termination of the Former Advisory Agreements.

A copy of the Termination Agreement has been filed with this Current Report on Form 8-K as Exhibit 99.1 and is incorporated herein by reference. Copies of the Former Advisory Agreements have been filed with this Current Report on Form 8-K as Exhibits 99.2 and 99.3 and are incorporated herein by reference.

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### **Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth in Item 1.01 above relating to the Amendment is incorporated herein by reference.

### **Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Consistent with the New Advisory Agreement, on April 29, 2008, the Board appointed Mr. Travis Prentice as President and CEO of MACC. Mr. Prentice, aged 32, currently serves as President and Chief Investment Officer of EAM, a firm he co-founded in 2007. In addition, he serves as portfolio manager for the EAM's Micro Cap Growth and Ultra Micro Cap Growth investment strategies. Prior to founding EAM, Mr. Prentice was a Partner, Managing Director and Portfolio Manager with Nicholas-Applegate Capital Management where he had lead portfolio management responsibilities for their Micro and Ultra Micro Cap investment strategies and a senior role in the firm's US Micro/Emerging Growth team. He brings ten years of institutional investment experience from Nicholas Applegate where he originally joined in 1997. He holds a Masters in Business Administration from San Diego State University and a Bachelor of Arts in Economics and a Bachelor of Arts in Psychology from the University of Arizona.

Consistent with the New Advisory Agreement, on April 29, 2008, the Board appointed Mr. Derek Gaertner as Chief Financial Officer and Chief Compliance Officer of MACC. Mr. Gaertner, aged 36, currently serves as Vice President and Chief Operating/ Compliance Officer of EAM. Prior to joining EAM in 2007, Mr. Gaertner was the Chief Financial Officer of Torrey Pines Capital Management, a global long/short equity hedge fund located in San Diego, California. He was also responsible for overseeing the firm's regulatory compliance and operations functions. Prior to joining Torrey Pines Capital Management in 2004, Mr. Gaertner was a Tax Manager with PricewaterhouseCoopers LLP. He has over 8 years of public

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accounting experience in both the audit and tax departments. Mr. Gaertner is a Certified Public Accountant and has a Bachelors of Science in Accounting from the University of Southern California and Masters of Science in Taxation from Golden Gate University, San Francisco.

Consistent with the New Advisory Agreement, on April 29, 2008 the Board appointed Mr. Montie L. Weisenberger as Treasurer and Secretary of MACC. Mr. Weisenberger, aged 40, currently serves Senior Vice President and Portfolio Manager of EAM, a firm he co-founded in 2007. Mr. Weisenberger has primary portfolio management responsibilities for the firm's Small Cap Growth investment strategy. Prior to founding EAM, Mr. Weisenberger was a Senior Vice President and Portfolio Manager at Nicholas Applegate Capital Management where he had lead portfolio management responsibilities for the firm's Traditional Small-to-Mid Cap Growth strategy and was a senior member of the firm's US Micro / Emerging Growth team since 2001. Prior to joining Nicholas Applegate Capital Management, Mr. Weisenberger was a research analyst at Adams, Harkness & Hill, now Cannacord Adams, an emerging growth investment bank located in Boston, MA. Mr. Weisenberger also spent more than five years as a finance and strategic management consultant, most recently as a manager with KPMG, LLP. Mr. Weisenberger brings more than twelve years of combined investment management and financial analysis experience to EAM. He holds a Masters in Business Administration and a Masters in Health Administration from Georgia State University and a Bachelor of Arts in Business Administration from Flagler College.

These officers were appointed to replace the following prior officers of

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MACC, all of whom resigned their positions effective as of April 29, 2008: Mr. David R. Schroder as President and Secretary; Mr. Robert A. Comey as Chief Financial Officer, Executive Vice President, Chief Compliance Officer, Treasurer and Assistant Secretary; Kevin F. Mullane as Senior Vice President; and Michael H. Reynoldson as Vice President.

### Item 8.01 Other Events.

The Registrant issued a press release on May 1, 2008 regarding its 2008 Annual Shareholders Meeting.

A copy of the press release has been filed with this Current Report on Form 8-K as Exhibit 99.4, and is incorporated herein by reference.

Pursuant to an Agreement and Plan of Merger dated as of April 29, 2008 between MACC and MorAmerica (the "Plan of Merger"), MorAmerica has been merged with and into MACC, effective as of April 30, 2008. As a result of the merger, MACC will now directly hold the portfolio of investments previously held by MorAmerica. A copy of the Plan of Merger has been filed with this Current Report on Form 8-K as Exhibit 99.5 and is incorporated herein by reference.

### Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

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- 10.1 Investment Advisory Agreement dated as of April 29, 2008 between MACC Private Equities, Inc. and Eudaimonia Asset Management, LLC
  - 10.2 Investment Subadvisory Agreement dated as of April 29, 2008 among MACC Private Equities, Inc., Eudaimonia Asset Management, LLC and InvestAmerica Investment Advisers, Inc.
  - 10.3 Omnibus Amendment Consent and Waiver dated as of April 29, 2008 among the Registrant, MorAmerica Capital Corporation and Cedar Rapids Bank and Trust.
  - 10.4(1) Business Loan Agreement dated August 30, 2007 between MorAmerica Capital Corporation and Cedar Rapids Bank and Trust Company.
  - 10.5(1) Commercial Pledge and Security Agreement dated August 30, 2007 between MorAmerica Capital Corporation and Cedar Rapids Bank and Trust Company.
  - 10.6(1) Commercial Security Agreement dated August 30, 2007 between MorAmerica Capital Corporation and Cedar Rapids Bank and Trust Company.
  - 10.7(1) Promissory Note in the amount of \$500,000 dated August 30, 2007 made by MorAmerica Capital Corporation in favor of Cedar Rapids Bank and Trust Company.
  - 10.8(1) Promissory Note in the amount of \$6,250,000 dated August 30, 2007 made by MorAmerica Capital Corporation in favor of Cedar Rapids Bank and Trust Company.
  - 10.9(1) Safekeeping Agreement dated September 1, 2007 between MACC Private Equities Inc., MorAmerica Capital Corporation and Cedar Rapids Bank and Trust Company.
  - 99.1 Termination and Waiver Agreement dated as of April 29, 2008 among

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MACC Private Equities, Inc., MorAmerica Capital Corporation and InvestAmerica Investment Advisors, Inc.

- 99.2(2) Investment Advisory Agreement between MACC Private Equities Inc. and InvestAmerica Investment Advisors, Inc. dated July 21, 2005.
- 99.3(2) Investment Advisory Agreement between MorAmerica Capital Corporation and InvestAmerica Investment Advisors, Inc. dated July 21, 2005.
- 99.4 Press Release dated April 30, 2008.
- 99.5 Agreement and Plan of Merger dated as of April 29, 2008 between MACC Private Equities Inc. and MorAmerica Capital Corporation.
- (1) Incorporated by reference to the Registrant's Current Report on Form 8-K as filed with the SEC on September 6, 2007.
- (2) Incorporated by reference to the Corporation's Current Report on Form 8-K as filed with the SEC on July 21, 2005.
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### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: May 1, 2008

MACC PRIVATE EQUITIES INC.

By: /s/ Derek Gaertner

Name: Derek Gaertner

Title: Chief Financial Officer

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### Exhibit Index

| Exhibit<br>Number<br>----- | Description<br>-----  |
|----------------------------|---|
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Rapids Bank and Trust.

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