

Edgar Filing: MACC PRIVATE EQUITIES INC - Form 10-K

MACC PRIVATE EQUITIES INC

Form 10-K

December 27, 2002

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

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2002

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

COMMISSION FILE NO. 0-24412

MACC PRIVATE EQUITIES INC.  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN CHARTER)

Delaware  
(State or Other Jurisdiction  
of Incorporation)

42-1421406  
(I.R.S. Employer  
Identification No.)

101 Second Street, S.E., Ste. 800  
Cedar Rapids, Iowa

52401  
(Zip Code)

Registrant's Telephone Number  
Including Area Code: (319) 363-8249

Securities Registered Pursuant to Section 12(b) of the Act:

Title of Each Class -----	Name of Each Exchange On Which Registered -----
None	None

Securities Registered Pursuant to Section 12(g) of the Act:  
Common Stock, \$.01 par value

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. YES  NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-25 of the Act). YES  NO .

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The aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of November 29, 2002, was approximately \$4,017,820 based upon the average bid and asked price for shares of the registrant's common stock on that date. As of November 29, 2002, there were 2,329,255 shares of the registrant's common stock outstanding, of which approximately 1,289,830 shares were held by non-affiliates.

### DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Annual Report to Stockholders for the year ended September 30, 2002, are incorporated by reference into Parts II and IV of this Report. Portions of the registrant's definitive Proxy Statement for the Annual Meeting of Stockholders to be held on February 25, 2003, are incorporated by reference into Part III of this Report.

### PART I

#### ITEM 1. BUSINESS.

##### GENERAL

MACC Private Equities Inc. (the "Corporation") was formed as a Delaware corporation on March 3, 1994. It is qualified as a business development company ("BDC") under the Investment Company Act of 1940, as amended (the "1940 Act").

The Corporation has one direct wholly-owned subsidiary, MorAmerica Capital Corporation ("MorAmerica Capital"). As of September 30, 2002, MorAmerica Capital comprised approximately 99% of the Corporation's assets. MorAmerica Capital is an Iowa corporation incorporated in 1959 and which has been licensed as a small business investment company since that year. It has also elected treatment as a BDC under the 1940 Act.

##### THE CORPORATION'S OPERATION AS A BDC

As noted above, both the Corporation and its wholly-owned subsidiary, MorAmerica Capital, have elected treatment as BDCs under the 1940 Act. Under the 1940 Act, a BDC may not acquire any asset other than Qualifying Assets as defined under the 1940 Act, unless, at the time the acquisition is made, Qualifying Assets represent at least 70 percent of the value of the BDC's total assets. The principal categories of Qualifying Assets relevant to the business of the Corporation are the following:

- (1) Securities purchased in transactions not involving any public offering from the issuer of such securities, which issuer is an eligible portfolio company. An eligible portfolio company is defined in the 1940 Act as any issuer that:
  - (a) is organized under the laws of, and has its principal place of business in, the United States;
  - (b) is not an investment company; and
  - (c) does not have any class of securities with respect to which a broker may extend margin credit.

The Corporation's investment in all of the issued and outstanding common stock of MorAmerica Capital is also a

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Qualifying Asset under the 1940 Act.

- (2) Cash, cash items, government securities, or high quality debt securities maturing in one year or less from the time of investment.

In addition, a BDC must have been organized (and have its principal place of business) in the United States for the purpose of making investments in the types of securities described in (1)

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above and, in order to count the securities as Qualifying Assets for the purpose of the 70 percent test, the BDC must make available to the issuers of the securities significant managerial assistance. Making available significant managerial assistance means, among other things, any arrangement whereby the BDC, through its directors, officers or employees offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations or business objectives and policies of a portfolio company.

Under the 1940 Act, once a company has elected to be regulated as a BDC, it may not change the nature of its business so as to cease to be, or withdraw its election as, a BDC unless authorized by vote of a majority, as defined in the 1940 Act, of the company's shares. In order to maintain their status as BDCs, the Corporation and MorAmerica Capital each must have at least 50% of their total assets invested in the types of portfolio companies described by Sections 55(a)(1) through 55(a)(3) of the 1940 Act. Accordingly, the Corporation and MorAmerica Capital may not withdraw their BDC elections or otherwise change their business so as to cease to qualify as BDCs without shareholder approval.

### INVESTMENTS AND DIVESTITURES

For the fiscal year ended September 30, 2002, the Corporation made total investments of \$8,377,006 in six new portfolio companies and in follow-on investments in seven existing portfolio companies. The Corporation's investment-level objectives on a consolidated basis call for new and follow-on investments of approximately \$7,000,000 during fiscal year 2003, subject to adjustment based upon current economic and operating conditions.

During fiscal year 2002, the Corporation recorded \$4,592,480 in net realized losses.

### ITEM 2. PROPERTIES.

The Corporation does not own or lease any properties or other tangible assets. Its business premises and equipment are furnished by InvestAmerica Investment Advisors, Inc. (the "Investment Advisor"), the investment advisor to the Corporation.

### ITEM 3. LEGAL PROCEEDINGS.

MorAmerica Capital is a party to arbitration proceedings instituted on May 30, 2002 by Transcore Holdings, Inc., a company (Buyer) seeking indemnification under a Stock Purchase Agreement (the Stock Purchase Agreement),

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pursuant to which MorAmerica Capital and certain other individuals and institutional investors (the Sellers) sold their interest in a former portfolio company investment (Portfolio Company). The arbitration proceedings are being administered by JAMS. Under the Stock Purchase Agreement, the Sellers agreed to indemnify Buyer for breaches of representations and warranties as to Portfolio Company made by the Sellers. Buyer claims that accounting irregularities at Portfolio Company resulted in a breach of the Sellers' representations and warranties. The Sellers have retained counsel and forensic accountants to defend the Sellers against Buyer's claim for indemnification. Based on its evaluation of Buyer's

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claim and discussions with external legal counsel, the Corporation believes that it is reasonably possible that a loss may have been incurred as a result of the indemnification claim, against which no accrual for loss has been made as of September 30, 2002, but the amount of the possible loss, and therefore its materiality to the financial statements, cannot be estimated. MorAmerica Capital intends to vigorously defend this arbitration.

#### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

There are no items to report.

#### EXECUTIVE OFFICERS OF THE REGISTRANT.

The following table sets forth the names, ages and positions of the Corporation's Executive Officers as of December 15, 2002, as well as certain other information with respect to such persons:

Name	Age	Positions Currently Held With the Corporation	Principal Occupat During the Past Fiv
----	---	-----	-----
David R. Schroder	59	Director, President and Secretary	Director, President the Investment Advi Capital, InvestAmer Inc., InvestAmerica Inc., and InvestAme Since 2002, Directo Secretary of Invest Management, Inc. an L&C, LLC.
Robert A. Comey	56	Director, Executive Vice President and Treasurer	Director, Executive and Treasurer of Mo the Investment Advi Venture Group, Inc. N.D. Management, In InvestAmerica N.D., 2002, Director, Exe President and Treas InvestAmerica L&C M and InvestAmerica L

Kevin F. Mullane 47 Senior Vice President

Senior Vice President of Capital, Senior Vice Director of the Investment America Ventures and InvestAmerica N.D. Since 2002, Senior Director of InvestAmerica Management, Inc. and L&C, LLC.

Michael H. Reynoldson 37 Vice President

Vice President of t Advisor, October, 2 Managing Director, 1999 to September, capacities with Ben and affiliated enti to June, 1999.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

Information in response to this Item is incorporated by reference to the "Shareholder Information" section of the Corporation's Annual Report to Shareholders for the fiscal year ended September 30, 2002 (the "2002 Annual Report").

ITEM 6. SELECTED FINANCIAL DATA.

Information in response to this Item is incorporated by reference to the "Selected Financial Data" section of the 2002 Annual Report.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

Information in response to this Item is incorporated by reference to the "Management's Discussion and Analysis" section of the 2002 Annual Report.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Information in response to this Item is incorporated by reference to the "Quantitative and Qualitative Disclosures About Market Risk" section of the 2002 Annual Report.

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### ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

Information in response to this Item is incorporated by reference to the Consolidated Financial Statements, notes thereto and report thereon contained in the 2002 Annual Report.

### ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

There are no items to report.

## PART III

### ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT.

Information in response to this Item is incorporated by reference to the identification of directors and nominees contained in the "Election of Directors" section and the subsection captioned "Section 16(a) Beneficial Ownership Reporting Compliance" of the Corporation's definitive proxy statement in connection with its 2003 Annual Meeting of Stockholders, scheduled to be held on February 25, 2003 (the "2003 Proxy Statement"). Information in response to this Item also is included under the caption "Executive Officers of the Registrant" in Part I of this Report.

### ITEM 11. EXECUTIVE COMPENSATION.

Information in response to this Item is incorporated by reference to the subsection captioned "Compensation of Directors and Executive Officers" of the 2003 Proxy Statement.

### ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

Information in response to this Item is incorporated by reference to the subsection captioned "Stock Ownership of Certain Beneficial Owners" of the 2003 Proxy Statement.

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### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

The Corporation and MorAmerica Capital each have executed an Investment Advisory Agreement with the Investment Advisor. With respect to the Corporation, the Investment Advisory Agreement provides for a management fee payable to the Investment Advisor equal to 2.5% of Assets Under Management (as that term is defined in the Investment Advisory Agreement). With respect to MorAmerica Capital, the management fee is equal to 2.5% of Capital Under Management (as that term is defined in the Investment Advisory Agreement), not to exceed 2.5% of Assets Under Management or 7.5% of Regulatory Capital. In addition, the Investment Advisor is entitled to an incentive fee under both of the Investment Advisory Agreements equal to 13.4% of the net capital gains, before taxes, on portfolio investments and from the disposition of other assets or property managed by the Investment Advisor.

Management fees under the Investment Advisory Agreements on a consolidated basis amounted to \$1,120,000 for fiscal year 2002. No incentive

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fees were earned under the Investment Advisory Agreements during fiscal year 2002. Incentive fees of \$55,047, representing incentive fees earned and deferred during prior periods, were paid during fiscal year 2002.

The Investment Advisor is owned by its three principal officers and directors, all of whom are also officers and/or directors of the Corporation. These individuals and their positions held with the Investment Advisor are:

Name ----	Offices -----
David R. Schroder	Director, President and Secretary
Robert A. Comey	Director, Executive Vice President, and Treasurer
Kevin F. Mullane	Director and Senior Vice President

Under the Agreement dated May 13, 1996 (the "Agreement"), between the Corporation, Zions Bancorporation ("Zions") and Zions First National Bank (the "Bank"), as amended, Zions and the Bank are permitted to increase their collective ownership of the Corporation's common stock to up to 40% of the issued and outstanding shares. As of November 30, 2002, Zions and the Bank were the beneficial owners of approximately 804,689 shares of the Corporation's Common Stock, representing approximately 34.55% of the outstanding shares.

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### PART IV

#### ITEM 14. CONTROLS AND PROCEDURES

In accordance with Item 307 of Regulation S-K promulgated under the Securities Act of 1933, as amended, and within 90 days of the date of this Annual Report on Form 10-K, the Chief Financial Officer and Chief Financial Officer of the Corporation (the "Certifying Officers") have conducted evaluations of the Corporation's disclosure controls and procedures. As defined under Sections 13a-14(c) and 15d-14(c) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the term "disclosure controls and procedures" means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. The Certifying Officers have reviewed the Corporation's disclosure controls and procedures and have concluded that those disclosure controls and procedures are effective as of the date of this Annual Report on Form 10-K. In compliance with Section 302 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350), each of the Certifying Officers executed an Officer's Certification included in this Annual Report on Form 10-K.

As of the date of this Annual Report on Form 10-K, there have not been any significant changes in the Corporation's internal controls or other factors

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that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

### ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K.

(a) Documents filed as part of this Report:

1. A. The following financial statements are incorporated by reference to the 2002 Annual Report.  
  
Consolidated Balance Sheet at September 30, 2002  
Consolidated Statement of Operations for the year ended September 30, 2002  
Consolidated Statements of Changes in Net Assets for the years ended September 30, 2002 and September 30, 2001  
Consolidated Statement of Cash Flows for the year ended September 30, 2002  
Notes to Consolidated Financial Statements  
Consolidated Schedule of Investments as of September 30, 2002  
Notes to the Consolidated Schedule of Investments
  
- B. The Report of Independent Accountants with respect to the financial statements listed in A. above is incorporated by reference to the 2002 Annual Report.
2. No financial statement schedules of the Corporation are filed herewith because (i) such schedules are not required or (ii) the information required has been presented in the aforementioned financial statements and schedule of investments.
3. The following exhibits are filed herewith or incorporated by reference as set forth below:
  - 3.1(1) Certificate of Incorporation of the Corporation.
  - 3.2 By-Laws of the Corporation.
  4. See Exhibits 3.1 and 3.2.
  - 10.1(2) Investment Advisory Agreement between the Corporation and InvestAmerica Investment Advisors, Inc., dated March 1, 1998.
  - 10.1.a.(6) First Amendment to Investment Advisory Agreement between the Corporation and InvestAmerica Investment Advisors, Inc., dated February 22, 2000.
  - 10.1.b.(6) Second Amendment to Investment Advisory Agreement between the Corporation and InvestAmerica Investment Advisors, Inc., dated February 27, 2001.
  - 10.1.c. Third Amendment to Investment Advisory Agreement



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between the Corporation and InvestAmerica Investment Advisors, Inc., dated February 26, 2002.

- 10.2(3) Investment Advisory Agreement between MorAmerica Capital Corporation and InvestAmerica Investment Advisors, Inc., dated March 1, 1999.
- 10.2.a.(6) First Amendment to Investment Advisory Agreement between MorAmerica Capital Corporation and InvestAmerica Investment Advisors, Inc., dated February 27, 2001.
- 10.2.b. Second Amendment to Investment Advisory Agreement between MorAmerica Capital Corporation and InvestAmerica Investment Advisors, Inc., dated February 26, 2002.
- 10.3.a.(4) Agreement between the Corporation and Zions Bancorporation, dated May 13, 1996.

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- 10.3.b.(2) First Amendment to Agreement between the Corporation, Zions Bancorporation and Zions First National Bank, dated April 29, 1998
- 10.3.c.(5) Second Amendment to Agreement between the Corporation, Zions Bancorporation and Zions First National Bank, dated February 27, 2001
- 13 2002 Annual Report to Stockholders.
- 21 Subsidiary of the Corporation and jurisdiction of incorporation.
- 99.1 Section 906 Certification of David R. Schroder (CEO).
- 99.2 Section 906 Certification of Robert A. Comey (CFO).
- (1) Incorporated by reference to the Corporation's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 1997, as filed with the Commission on May 14, 1997.
- (2) Incorporated by reference to the Corporation's Annual Report on Form 10-K for the year ended September 30, 1998, as filed with the Commission on December 29, 1998.
- (3) Incorporated by reference to the Corporation's Quarterly Report on Form 10-Q for the three months ended March 31, 1999, as filed with the Commission on May 12, 1999.
- (4) Incorporated by reference to the Corporation's Current Report on Form 8-K, dated May 13, 1996, filed with the Commission on May 13, 1996.

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- (5) Incorporated by reference to the Corporation's Quarterly Report on Form 10-Q for the three months ended March 31, 2001, as filed with the Commission on May 14, 2001.
- (6) Incorporated by reference to the Corporation's Annual Report on Form 10-K for the year ended September 30, 2001, as filed with the Commission on December 28, 2001.

(b) Reports on Form 8-K.

No Reports on Form 8-K were filed during the three months ended September 30, 2002.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized on December 20, 2002.

/s/ David R. Schroder

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David R. Schroder  
President and Secretary

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Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

Signature

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Date

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/s/ Paul M. Bass, Jr.

December 16, 2002

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Paul M. Bass, Jr.  
Chairman of the Board of Directors

/s/ David R. Schroder

December 20, 2002

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David R. Schroder  
Director, President and Secretary

/s/ Robert A. Comey

December 20, 2002

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Robert A. Comey  
Director, Executive Vice President  
and Treasurer

/s/ Henry T. Madden

December 16, 2002

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Henry T. Madden  
Director

/s/ John D. Wolfe

December 14, 2002

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John D. Wolfe  
Director

/s/ Michael W. Dunn

December 16, 2002

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Michael W. Dunn  
Director

/s/ Gordon J. Roth

December 16, 2002

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Gordon J. Roth  
Director

/s/ Todd J. Stevens

December 16, 2002

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Todd J. Stevens  
Director

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CERTIFICATION

I, David R. Schroder, certify that:

1. I have reviewed this annual report on Form 10-K of MACC Private Equities Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

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a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of the date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could

significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: December 20, 2002

/s/ David R. Schroder

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David R. Schroder  
President and Secretary  
(principal executive officer)

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### CERTIFICATION

I, Robert A. Comey, certify that:

1. I have reviewed this annual report on Form 10-K of MACC Private Equities Inc.;

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2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of the date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could

significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: December 20, 2002

/s/ Robert A. Comey

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Robert A. Comey  
Executive Vice President and  
Treasurer

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(principal financial officer)