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MACC PRIVATE EQUITIES INC

Form 10-K

December 29, 2003

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, 2003

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 .

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of November 28, 2003, was approximately \$3,624,770 based upon the average bid and asked price for shares of the

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registrant's common stock on that date. As of November 28, 2003, there were 2,329,255 shares of the registrant's common stock outstanding, of which approximately 1,173,065 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, 2003, 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 24, 2004, 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, 2003, 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 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.

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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

The Corporation made no new investments during the fiscal year ended September 30, 2003, but invested \$1,301,027 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 \$2,500,000 during fiscal year 2004, subject to adjustment based upon current economic and operating conditions.

During fiscal year 2003, the Corporation recorded \$3,600,749 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.

The Corporation is party to arbitration proceedings instituted by TransCore Holdings, Inc., a company ("Buyer") seeking indemnification under the Stock Purchase Agreement (the "Stock Purchase Agreement"), pursuant to which the Corporation and certain other individuals and institutional investors (collectively, 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. Following discovery, depositions and other preliminary proceedings, in June the formal arbitration

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proceedings commenced and

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are being intensively contested by all parties. Based on the current schedule for the arbitration, a decision will not be rendered until at least February, 2004. Based on its evaluation of the Buyer's 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, 2003, because the amount of the possible loss, and therefore its materiality to the financial statements, cannot be estimated. The Corporation intends to continue vigorously defending this arbitration. The Corporation received approximately \$939,000 of proceeds from the sale of the Portfolio Company. The Corporation owns debt securities of Buyer with a cost of \$508,761 and warrants with a cost of \$24,000 received as part of the sale. Buyer has defaulted on interest payments due on these debt securities. On March 31, 2003, the Corporation reduced the valuation of the debt securities by \$254,380 in light of the interest default and information regarding the related dispute as of that date. On June 30, 2003, the Corporation further reduced the valuation of the debt securities by \$254,380 to \$1 and reduced the valuation of the warrants to zero based upon the continuing interest default and additional information regarding the related dispute as of that date.

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, 2003, as well as certain other information with respect to such persons:

| Name | Age | Positions Currently Held With the Corporation | Principal Occupat During the Past Five |
|-------------------|-----|---|---|
| ---- | --- | ----- | ----- |
| David R. Schroder | 60 | Director, President and Secretary | Director, President the Investment Advis Capital, InvestAmeri Inc., InvestAmerica Inc., and InvestAmer Since 2002, Director Secretary of InvestA Management, Inc. and L&C, LLC. |
| Robert A. Comey | 57 | Director, Executive Vice President and Treasurer | Director, Executive and Treasurer of Mon the |

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| | | | |
|-----------------------|----|-----------------------|---|
| | | | Investment Advisor, Venture Group, Inc., N.D. Management, Inc. InvestAmerica N.D., 2002, Director, Exec President and Treasu InvestAmerica L&C Ma and InvestAmerica L& |
| Kevin F. Mullane | 48 | Senior Vice President | Senior Vice Presiden Capital, Senior Vice Director of the Inve InvestAmerica Ventur InvestAmerica N.D. M and InvestAmerica N. Since 2002, Senior V Director of InvestAm Management, Inc. and L&C, LLC. |
| Michael H. Reynoldson | 38 | Vice President | Vice President of th Advisor, October, 20 Managing Director, A 1999 to September, 2 capacities with Bert and affiliated entit 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, 2003 (the "2003 Annual Report").

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ITEM 6. SELECTED FINANCIAL DATA.

Information in response to this Item is incorporated by reference to the "Selected Financial Data" section of the 2003 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 2003 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 2003 Annual Report.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

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Information in response to this Item is incorporated by reference to the Consolidated Financial Statements, notes thereto and report thereon contained in the 2003 Annual Report.

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

There are no items to report.

ITEM 9A. CONTROLS AND PROCEDURES.

In accordance with Item 307 of Regulation S-K promulgated under the Securities Act of 1933, as amended, 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-15(e) and 15d-15(e) 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

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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 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.

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 2004 Annual Meeting of Stockholders, scheduled to be held on February 24, 2004 (the "2004 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.

AUDIT COMMITTEE FINANCIAL EXPERT

The Corporation's board of directors has determined that Gordon J. Roth is an audit committee financial expert and that Mr. Roth is independent, as that

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term is used in Item 7(d)(3)(iv) of Schedule 14A under the Exchange Act.

CODE OF ETHICS

The Corporation has adopted a Code of Business Conduct and Ethics that applies to all of the Corporation's officers, directors and employees. The Corporation's Code of Business Conduct and Ethics is filed with the Commission as an exhibit to this Annual Report on Form 10-K.

If the Corporation makes any substantive amendments to the Code of Business Conduct and Ethics or grant any waiver, including any implicit waiver, from a provision of the Code of Business Conduct and Ethics to its principal executive or principal financial officer, the Corporation will disclose the nature of such amendment or waiver in a report on Form 8-K.

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 2004 Proxy Statement.

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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 2004 Proxy Statement.

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 \$903,154 for fiscal year 2003. No incentive fees were earned under the Investment Advisory Agreements during fiscal year 2003. Incentive fees of approximately \$27,000 resulting from noncash gains earned during prior periods are being deferred in accordance with the Investment Advisory Agreement.

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 |
|------|---------|
| ---- | ----- |

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

The Corporation, Zions First National Bank ("Zions") and Atlas Management Partners LLC ("Atlas") entered into an Agreement and Waiver of Rights Under Section 203 of the Delaware General Corporation Law ("Section 203 Agreement") in connection with the sale by Zions to Atlas of Zions' 34.5% interest in the Corporation. Under the Section 203 Agreement, the Corporation gave prior approval to the sale of Zions' interest in the Corporation and waived its rights under Section 203 of the Delaware General Corporation Law ("Section 203"). Section 203 contains restrictions on any business combination (as that term is defined therein) with interested shareholders (as that term is defined therein). The Section 203 Agreement provides

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that the Corporation's waiver of its rights under Section 203 is granted on the condition that, for a period of three years from the date of Atlas' purchase of Zions' interest in the Corporation, neither Atlas nor its affiliates may enter into any business combination with the Corporation unless it first obtains the approval of no less than a majority of the Corporation's disinterested directors.

Additional information in response to this Item is incorporated by reference to the subsection captioned "Approval of Investment Advisory Agreements" of the 2004 Proxy Statement.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES.

Information in response to this Item is incorporated by reference to the subsection captioned "Independent Auditor Fees and Services" of the 2004 Proxy Statement.

PART IV

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 2003 Annual Report.

Consolidated Balance Sheet at September 30, 2003
Consolidated Statement of Operations for the year
ended September 30, 2003
Consolidated Statements of Changes in Net Assets for
the years ended September 30, 2003 and
September 30, 2002
Consolidated Statement of Cash Flows for the year
ended September 30, 2003
Notes to Consolidated Financial Statements
Consolidated Schedule of Investments as of September
30, 2003
Notes to the Consolidated Schedule of Investments

- B. The Report of Independent Accountants with respect to

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the financial statements listed in A. above is incorporated by reference to the 2003 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.

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- (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(7) 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.(7) Third Amendment to Investment Advisory Agreement between the Corporation and InvestAmerica Investment Advisors, Inc., dated February 26, 2002.

10.1.d.(8) Fourth Amendment to Investment Advisory Agreement between the Corporation and InvestAmerica Investment Advisors, Inc., dated February 25, 2003.

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, 2000.

10.2.b.(7) Second Amendment to Investment Advisory Agreement between MorAmerica Capital Corporation and InvestAmerica Investment Advisors, Inc., dated February 26, 2001.

10.2.c.(8) Third Amendment to Investment Advisory Agreement between MorAmerica Capital Corporation and InvestAmerica Investment Advisors, Inc., dated February 25, 2002.

10.3 Agreement and Waiver of Rights Under Section 203 of the Delaware General Corporation Law among Zions First National Bank, Atlas Management Partners LLC and MACC Private Equities Inc.

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- 13 2003 Annual Report to Stockholders.
- 14 Code of Business Conduct and Ethics
- 21 Subsidiary of the Corporation and jurisdiction of incorporation.
- 31.1 Section 302 Certification of David R. Schroder (CEO).
- 31.2 Section 302 Certification of Robert A. Comey (CFO).
- 32.1 Section 906 Certification of David R. Schroder (CEO).
- 32.2 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.
- (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.
- (7) Incorporated by reference to the Corporation's Annual
Report on Form 10-K for the year ended September 30,
2002, as filed with the Commission on December 27,
2002.
- (8) Incorporated by reference to the Corporation's
Quarterly Report on Form 10-Q for the three months
ended March 31, 2003, as filed with the Commission on
May 14, 2003.
- (b) Reports on Form 8-K.

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information under Item 5 announcing developments in the arbitration proceedings discussed in Item 3 of this Annual Report on Form 10-K.

(c) Exhibits

See (a) (3) above.

(d) Financial Statement Schedules

See (a) (1) and (a) (2) above.

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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 22, 2003.

/s/ David Schroder

David R. Schroder
President and Secretary

/s/ Robert A. Comey

Robert A. Comey
Executive Vice President and Treasurer

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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 | Date |
|--|-------------------|
| /s/ Paul M. Bass, Jr. ----- Paul M. Bass, Jr. Chairman of the Board of Directors | December 29, 2003 |
| /s/ David R. Schroder ----- David R. Schroder Director, President and Secretary | December 22, 2003 |
| /s/ Robert A. Comey ----- Robert A. Comey Director, Executive Vice President and Treasurer | December 22, 2003 |
| /s/ Henry T. Madden ----- Henry T. Madden Director | December 22, 2003 |

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/s/ John D. Wolfe

December 22, 2003

John D. Wolfe
Director

/s/ Michael W. Dunn

December 22, 2003

Michael W. Dunn
Director

December , 2003

Gordon J. Roth
Director

/s/ Kent Madsen

December 29, 2003

Kent Madsen
Director

/s/ Geoffrey T. Woolley

December 23, 2003

Geoffrey T. Woolley
Director