the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

2. Each Applicant may be deemed to be an affiliated person of the other Applicants or an affiliated person of an affiliated person by virtue of being under the common control of American Fidelity, and the Reorganization may be deemed to entail the purchase or sale of securities or other property by or between Applicants. Accordingly, Account A's sale of its portfolio assets to the Dual Strategy Fund and the Dual Strategy Fund's purchase of those assets from Account A may be prohibited by Section 17(a) of the 1940 Act absent an exemptive order permitting the purchase and sale transaction.

3. Rule 17a–8 under the 1940 Act provides exemptive relief for sales of substantially all of the assets of one registered investment company to another if such companies are affiliated solely because of common directors, officers, or investment advisers. Because of the various relationships among them, Applicants state that they may not be able to rely on Rule 17a–8 in connection with the Reorganization. Applicants state that they intend to conform to the conditions set forth in Rule 17a–8, including the requirement that a majority of the independent directors of the Board of Managers of Account A and a majority of the independent directors of the Board of Directors of the Dual Strategy Fund make the determinations prescribed by Rule 17a–8.

4. Applicants maintain that the proposed Reorganization is in the best interests of Account A, to the extent the Dual Strategy Fund is used to fund other separate accounts. Applicants state that Contract owners and participants will benefit from administrative efficiencies and economies of scale, particularly with respect to the level of fixed administrative expenses. Applicants state that these benefits are created without any diminution or dilution of Contract owners and participants interests and at no cost to Contract owners or participants.

5. Applicants state that the restructuring of Account A into a unit investment trust also will benefit future owners of other variable contracts issued by American Fidelity because they will benefit from administrative efficiencies and economies of scale created by this structure without bearing the organizational costs.

6. The conversion of Account A from a management investment company to a unit investment trust will result in Contract owner and participant interests which, in practical economic terms, do not differ in any measurable way from such interests immediately prior to the Reorganization. The exchange of the portfolio assets of Account A for shares of the Dual Strategy Fund will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. American Fidelity will assume all expenses incurred in preparing for and carrying out the transactions constituting the Reorganization. As a result, Contract owners' and participants' interests in Continuing Account A immediately after the Reorganization will be equal to their former interests in Account A immediately prior to the Reorganization and their interests will not be diluted as a result of the Reorganization.

7. Applicants state the Reorganization will not require the liquidation of any assets of Account A because the Reorganization will take the form of an exchange of the portfolio investments of Account A for shares of the Dual Strategy Fund. Because the investment policies and restrictions of the Dual Strategy Fund will be indentical in substance to those of Account A the only sales of Account A assets following the Reorganization will be those arising in the ordinary course of business. Therefore, neither Account A nor the Dual Strategy Fund will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets.

8. American Fidelity believes that the transfer of portfolio assets from Account A to the Dual Strategy Fund in exchange for the issuance of shares of the Dual Strategy Fund will be a tax-free event. As a condition to the closing of the Reorganization. American Fidelity will receive an opinion of counsel confirming the tax-free nature of the Reorganization. However, to the extent any tax liability arises out of this transfer, Applicants state that such liability will be borne by American Fidelity.

9. Applicants maintain that because the investment objectives of the Dual Strategy Fund will be substantially identical to the investment objectives of Account A immediately prior to the Reorganization, the transactions are consistent with the objectives and policies of Account A and the Dual Strategy Fund. Applicants state that they will obtain Contract owner and participant approval of the transactions by at least the vote required under the 1940 Act to effect any change in fundamental investment policy. This eliminates any questions that might otherwise exist as to whether investment in the Dual Strategy Fund is in compliance with the investment objectives and policies of Account A. The Account A Contract owners and participants will be fully informed of the terms of the Reorganization through proxy materials and will have an opportunity to approve or disapprove the Reorganization Agreement at a meeting of Account A Contract owners.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemption from Section 17(a) of the 1940 Act to permit the Reorganization and the related transactions meets the standards set forth in Section 17(b) of the 1940 Act. In this regard, Applicants assert the Reorganization is fair and reasonable, does not involve any overreaching on the part of any person concerned, is consistent with the policy of each registered investment company concerned, and is consistent with the provisions, policies, and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27415 Filed 10–13–098; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23478; 812–11148]

MACC Private Equities Inc., et al.; Notice of Application

October 6, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(c0 and 57(i) of the Investment Company Act of 1940 (the ''Act''), and under rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies to co-invest with certain affiliates in portfolio companies.

APPLICANTS: MACC Private Equities, Inc. (''Private equities''), MorAmerica Capital Corporation (''MorAmerica Capital''), and InvestAmerica Investment Advisors, Inc. (''InvestAmerica'').

FILING DATES: The application was filed on May 21, 1998, and amended on

September 21, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 2, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, Suite 310, 101 Second Street SE, Cedar Rapids, Iowa 52401.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549. (tel. 202–942–8090).

Applicants' Representations

1. Private Equities and MorAmerica, incorporated under the laws of the States of Delaware and Iowa, respectively, are closed-end investment companies that each have elected to be regulated as a business development company (a ''BDC'') under the Act. MorAmerica, a wholly-owned subsidiary of Private Equities, is licensed to operate as a small business investment company under the Small Business Investment Act of 1958. Both Private Equities and MorAmerica have the investment objective of long-term capital appreciation through venture capital investments in small, lesser-known companies (''Portfolio Companies'').[1]

2. InvestAmerica is an investment adviser registered under the Investment Advisers Act of 1940. InvestAmerica serves as investment adviser to both Private Equities and MorAmerica Capital.

3. As of January 15, 1998, Zions Bancorporation (''Zions''), a bank-holding company, and Zions First National Bank (''Bank''), a wholly-owned subsidiary of Zions, owned approximately 21.44% of the issued and outstanding shares of Private Equities. On February 24, 1998, a majority of the board of directors (''Board'') of Private Equities, including a majority of the Board who are not ''interested persons'' of Private Equities, agreed to permit Zions and/or the Bank to increase their collective ownership of Private Equities common stock up to 35% of Private Equities' issued and outstanding shares.

4. Applicants request an order under section 57(i) of the Act and under rule 17d–1 under the Act to permit Private Equities and/or MorAmerica (the ''Investing Company''), Zions, and/or direct or indirect wholly-owned subsidiaries of Zions (''Zions Subsidiaries,'' and together with Zions, ''Zions Affiliates'') to co-invest in Portfolio Companies.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons from participating in a joint transaction with a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2), any person directly or indirectly controlling, controlled by, or under common control with, a BDC is subject to section 57(a)(4) of the Act. Under section 2(a)(9) of the Act, a control relationship is presumed to exist if a person, either directly or through one or more controlled companies, is the beneficial owner of more than 25% of a company's outstanding voting securities.

2. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under sections 17(a) and (17)(d) of the Act applicable to closed-end investment companies shall be deemed to apply to sections 57(a) and 57(d) of the Act. Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

3. rule 17d–1 under the Act generally prohibits affiliated persons of an investment company from entering into joint transactions with the company without prior Commission authorization. In passing upon applications under rule 17d–1(b), the Commission will consider whether the participation by the BDC in such joint transaction in consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

4. Applicants state that when Zions and the Bank increase their collective ownership of Private Equities above 25% of the issued and outstanding shares, they will be presumed to control Private Equities. Applicants also state that because Zions directly or indirectly owns all, or substantially all, of the issued and outstanding shares of each of the Zions Subsidiaries, Private Equities and the Zions Subsidiaries may be deemed to be under common control. As a result, the Zions Affiliates may be prohibited from entering into joint transactions with applicants absent an exemptive order.

5. Applicants anticipate that the Zions Affiliates may have access to a broad range of attractive co-investment opportunities which are consistent with applicants' investment objectives and which may allow investment in a broader geographic area.[2] Applicants state that Private Equities and MorAmerica both have investment committees (each an ''Investment Committee'') which will review the proposed co-investments with the Zions Affiliates. None of the voting members of the Investment Committees are interested persons or applicants, nor will they have any direct or indirect financial interest in any matter than before the Investment Committees. The voting members consist of five outside directors of MorAmerica and Private Equities. The non-voting members are two directors who are affiliates of InvestAmerica and a nominee of Zions. Applicants submit that granting the requested relief is consistent with the provisions, policies, and purposes of the Act and that the co-investments will be on a basis no different from or less advantageous than that of the other participants.

Applicants' Conditions.

Applicants agree that the requested order shall be subject to the following conditions:

1. (a) To the extends that Private Equities and MorAmerica Capital are considering new investments,

[1] Private Equities and MorAmerica received an order to operate essentially as one company. *See MACC Private Equities Inc.*, Investment Company Act Release Nos. 20831 (Jan. 12, 1995) (notice) and 20887 (Feb. 7, 1995) (order).

[2] To the extent permitted by rule 17d–1(d)(3) under the Act, a Zions Affiliate may make loans or extend credit to companies in which Private Equities or MorAmerica Capital invest. Under no circumstances will an investment by Private Equities or MorAmerica Capital in a Portfolio Company be used to repay a loan to a Zions Affiliate.

InvestAmerica will review investment opportunities on their behalf, including investments which are being considered by the Zions Affiliates. InvestAmerica will determine whether an investment being considered by one or more of the Zions affiliates and which is offered to Private Equities and MorAmerica Capital for investment (a ''Zions Affiliates Investment'') is eligible for investment by Private Equities and MorAmerica Capital.

(b) If InvestAmerica deems a Zions Affiliates Investment eligible for investment by the Investing Company (a ''co-investment opportunity''), InvestAmerica will determine what it considers to be an appropriate amount that the Investing Company should invest. Where the aggregate amount recommended for the Investing Company and that sought by the Zions Affiliates exceeds the amount of the co-investment opportunity, the amount invested by the investing Company shall be based on the ratio of the net assets of the Investing Company to the aggregate net assets of the Investing Company and the Zions Affiliate seeking to make the investment.

(c) Following the making of the determinations referred to in (a) and (b) above, InvestAmerica will distribute written information concerning all co-investment opportunities to the Investing Company's Investment Committee. The information will include the amount the Zions Affiliate proposes to invest.

(d) Information regarding InvestAmerica's preliminary determinations will be reviewed by the Investing Company's Investment Committee. The Investing Company will co-invest with a Zions Affiliate only if a required majority (as defined in section 57(o) of the Act) (''Required Majority'') of the Investing Company's Investment Committee conclude, prior to the acquisition of the investment, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of Private Equities and do not involve overreaching of the Investing Company or it shareholders on the part of any persons concerned;

(ii) The transaction is consistent with the interests of the shareholders of Private Equities and is consistent with the Investing Company's investment objectives and policies as recited in filings made by the Investing Company under the Securities Act of 1933, as amended, its registration statement and reports filed under the Securities Exchange Act of 1934, as amended, and its reports to shareholders;

(ii) The investment by the Zions Affiliates would not disadvantage the Investing Company, and that participation by the Investing Company would not be on a basis different from or less advantageous than that of the Zions Affiliates; and

(iv) The proposed investment by the Investing Company will not benefit the Zions Affiliates or any affiliated entity thereof, other than the Zions Affiliates making the co-investment, except to the extent permitted pursuant to sections 17(e) and 57(k) of the Act.

(e) The Investing Company has the right to decline to participate in the co-investment opportunity or purchase less than its full allocation.

2. The Investing Company will not make an investment for its portfolio if any Zions Affiliate, or a person controlling, controlled by, or under common control with the Zions Affiliates: (a) is an existing investor in such issuer, with the exception of a follow-on investment that complies with condition 5 below; or (b) has made a loan or extended credit to the issuer, except as permitted by rule 17d–1(d)(3) under the Act.

3. For any purchase of securities by the Investing Company and Zions Affiliate is a joint participant, the terms, conditions, price, class of securities, settlement date, and registration rights shall be the same of or the Investing Company and the Zions Affiliate.

4. If a Zions Affiliate elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by the Investing Company, such Zions Affiliate will notify the Investing Company of the proposed disposition at the earliest practical time and the Investing Company will be given the opportunity to participate in the disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Zions Affiliates. InvestAmerica will formulate a recommendation as to participation by the Investing Company in a follow-on co-investment, and provide the recommendation to the Investing Company in such a disposition, and provide a written recommendation to the Investing Company's Investment Committee. The Investing Company will participate in the disposition to the extent that a Required Majority of its Investment Committee determines that it is in the Investing Company's best interest. Each of the Investing Company and Zions Affiliate will bear its own expenses associated with any such disposition of a portfolio security.

5. If a Zions Affiliate desires to make a ''follow-on'' co-investment (*i.e.*, an additional investment in the same entity) in a portfolio company whose securities are held by the Investing Company or to exercise warrants or other rights to purchase securities of the issuer, such Zions Affiliate will notify the Investing Company of the proposed transaction at the earliest practical time. InvestAmerica will formulate a recommendation as to the proposed participation by the Investing Company's Investment Committee along with notice of the total amount of the follow-on co-investment. The Investing Company's Investment Committee will make its own determination with respect to follow-on co-investment. The relative amount of investment in a follow-on co-investment opportunity by the Investing Company and each Zions Affiliate will be based upon the amount of the Investing Company's and the Zions Affiliate's initial investments. The Investing Company will participate in the follow-on co-investment to the extent that a Required Majority of its Investment Committee determines that it is in the Investing Company's best interest. The acquisition of follow-on co-investments as permitted by this condition will be subject to the other conditions in the application.

6. The voting member of the Investing Company's Investment Committee will review quarterly all information concerning co-investment opportunities during the preceding quarter to determine whether the conditions in the application were complied with.

7. The Investing Company will maintain the records required by section 57(f)(3) of the Act as if each of the investments under these conditions were approved by the Investing Company's Investment Committee under section 57(f).

8. No voting member of the Investing Companies' Investment Committees will be a director or general partner of a Zions Affiliate with which the Investing Company co-invests.

For the Commission, by Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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