

MDC PARTNERS INC
Form 10-K/A
April 22, 2005

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K/A

(Amendment No. 1)

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

For the fiscal year ended: December 31, 2004

Commission File Number: 001-13178

MDC Partners Inc.

(Exact Name of Registrant as Specified in its Charter)

Canada
(State or Other Jurisdiction of
Incorporation or Organization)

98-0364441
(I.R.S. Employer
Identification Number)

45 Hazelton Avenue, Toronto, Ontario, M5R 2E3
(416) 960-9000

(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)

MDC Partners Inc.
375 Hudson Street, New York, NY, 10014
(212) 463-3628

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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

Title of Each Class	Name of Each Exchange On Which Registered
None	n/a

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

Title of Each Class	Name of Each Exchange On Which Registered
Class A Subordinate Voting Shares without par value	

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NASDAQ
Toronto Stock Exchange

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 Exchange Act Rule 12b-2). YES NO

The aggregate market value of the shares of all classes of voting and non-voting common stock of the registrant held by non-affiliates of the registrant on June 30, 2004 was approximately \$213.8 million, computed upon the basis of the closing sales price of the common stock on that date. For purposes of this computation, shares held by directors (and shares held by entities in which they serve as officers) and officers of the registrant have been excluded.

As of April 1, 2005, there were 23,077,846 outstanding shares of Class A Subordinate Voting Shares without par value, and 2,502 outstanding shares of Class B multiple voting shares without par value, of the registrant.

Explanatory Note

This Amendment No. 1 to this Annual Report on Form 10-K for the year ended December 31, 2004, is being filed solely to amend Item 4 of the Form 10-K previously filed on April 18, 2005, to disclose the Company's reliance on an exemption from NASDAQ Marketplace Rule 4350(f) relating to quorum requirements. In 2004, the Company became a US registrant or domestic issuer (as defined in Rule 901 of Regulation S of the Securities Exchange Act of 1934). Prior to that time, the Company was a foreign private issuer (as defined in Rule 901 of Regulation S of the Securities Exchange Act of 1934) and was entitled to rely upon certain exemptions from the requirements of the NASDAQ National Market (NASDAQ). The Company intends to propose amendments to its by-laws in order to comply with the NASDAQ's current quorum requirements prior to July 31, 2005.

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PART I

Item 4. *Submission of Matters to a Vote of Security Holders*

No matters were submitted to a vote of security holders during the fourth quarter of 2004.

NASDAQ Exemption in 2003 and 2004

For the fiscal years ended December 31, 2003 and December 31, 2004, the Company relied on an exemption from the NASDAQ quorum requirement set forth in NASDAQ Marketplace Rule 4350(f) (Rule 4350(f)). Rule 4350(f) requires that a quorum for shareholder meetings be not less than 33 $\frac{1}{3}$ % of the outstanding shares of the quoted company's common voting stock. Pursuant to its exemption and in lieu of Rule 4350(f), the Company instead complied with the quorum provisions set out in the Canada Business Corporations Act. Specifically, the Company's by-laws provide that a quorum for the transaction of business at any meeting of shareholders shall be all of the shareholders or two shareholders, whichever is lesser. The Company intends to propose amendments to its by-laws to comply with the NASDAQ's current quorum requirements prior to July 31, 2005.

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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.

Date: April 22, 2005

MDC PARTNERS INC.
By: /s/ MILES S. NADAL
Name: Miles S. Nadal
Title: *Chairman, President and Chief Executive Officer*

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 and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ MILES S. NADAL (Miles S. Nadal)	Chairman, President and Chief Executive Officer	April 21, 2005
/s/ STEVEN BERNS (Steven Berns)	Executive Vice President and Vice Chairman (principal financial officer)	April 21, 2005
/s/ MICHAEL SABATINO (Michael Sabatino)	Senior Vice President and Chief Accounting Officer	April 21, 2005
/s/ THOMAS N. DAVIDSON (Thomas N. Davidson)	Presiding Director	April 21, 2005
/s/ GUY P. FRENCH (Guy P. French)	Director	April 21, 2005
/s/ RICHARD R. HYLLAND (Richard R. Hylland)	Director	April 21, 2005
/s/ ROBERT KAMERSCHEN (Robert Kamerschen)	Director	April 21, 2005
/s/ MICHAEL J. KIRBY (Michael J. Kirby)	Director	April 21, 2005
/s/ STEPHEN M. PUSTIL (Stephen M. Pustil)	Vice Chairman of the Board	April 21, 2005
/s/ FRANCOIS R. ROY (François R. Roy)	Director	April 21, 2005

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EXHIBIT INDEX

Exhibit No.	Description
3.1	Articles of Amalgamation, dated January 1, 2004 (incorporated by reference to Exhibit 3.1 to the Company's Form 10-Q filed May 10, 2004);
3.2	General By-law No. 1, dated June 9, 2004 (incorporated by reference to Exhibit 3.2 to the Company's Form 10-Q filed August 4, 2004);
3.3	Articles of Continuance dated June 28, 2004 (incorporated by reference to Exhibit 3.3 to the Company's Form 10-Q filed August 4, 2004);
4.1	MDC Communications Corporation and R-M Trust Company (as Trustee) Trust Indenture dated January 7, 1997, providing for the issue of \$50,000,000 7% subordinated unsecured convertible debentures due January 8, 2007 (incorporated by reference to Exhibit 4.1 to the Company's Form 10-Q filed May 10, 2004);
4.2	MDC Corporation Inc., Custom Direct Income Fund and CIBC Mellon Company (as Trustee) Trust Indenture dated December 8, 2003, providing for the issuance of adjustable rate exchangeable securities due December 31, 2028 (incorporated by reference to Exhibit 4.2 to the Company's Form 10-Q filed May 10, 2004);
10.1.1	Underwriting Agreement made as of November 20, 2003 between MDC Corporation Inc., among others, and the Underwriters to issue adjustable rate exchangeable securities (incorporated by reference to Exhibit 10.1.1 to the Company's Form 10-Q filed May 10, 2004);
10.1.2	Underwriting agreement made as of July 18, 2003 between MDC Corporation Inc., among others, and the Underwriters to sell Custom Direct Income Fund Trust units (incorporated by reference to Exhibit 10.1.2 to the Company's Form 10-Q filed May 10, 2004);
10.1.3	Acquisition Agreement made as of May 15, 2003 between MDC Corporation and Custom Direct Income Fund, among others (incorporated by reference to Exhibit 10.1.3 to the Company's Form 10-Q filed May 10, 2004);
10.1.4	Amending Agreement to the Acquisition Agreement dated May 15, 2003, made as of May 29, 2003 between MDC Corporation Inc. and Custom Direct Income Fund, among others (incorporated by reference to Exhibit 10.1.4 to the Company's Form 10-Q filed May 10, 2004);
10.1.5	Amending Agreement made July 25, 2003 to the Underwriting Agreement made July 18, 2003 between MDC Corporation Inc, among others, and the Underwriters (incorporated by reference to Exhibit 10.1.5 to the Company's Form 10-Q filed May 10, 2004);
10.2	Employment Agreement Peter Lewis dated July 19, 1999 (incorporated by reference to Exhibit 10.4 to the Company's Form 10-Q filed May 10, 2004);
10.2.1	Management Services Agreement between MDC Partners Inc. and Peter M. Lewis, dated May 20, 2004 (incorporated by reference to Exhibit 10.11 to the Company's 10-Q filed August 4, 2004);
10.3	Employment Agreement between the Company and Robert Dickson, dated July 26, 2002 incorporated by reference to Exhibit 10.5 to the Company's Form 10-Q filed May 10, 2004);
10.4	Employment Agreement between the Company and Graham Rosenberg, dated October 1, 2002 (incorporated by reference to Exhibit 10.6 to the Company's Form 10-Q filed May 10, 2004);
10.5	Employment Agreement between the Company and Walter Campbell, dated May 24, 2000 (incorporated by reference to Exhibit 10.7 to the Company's Form 10-Q filed May 10, 2004);
10.6	Management Services Agreement relating to employment of Miles Nadal, dated January 1, 2000, as amended (incorporated by reference to Exhibit 10.8 to the Company's Form 10-Q filed May 10, 2004);
10.6.1	Letter Agreement between the Company and Miles Nadal, dated April 11, 2005 (incorporated by reference to Exhibit 10.6.1 to the Company's Form 10-K filed on April 18, 2005);
10.7	Employment Agreement between the Company and Steven Berns, dated August 25, 2004 (incorporated by reference to Exhibit 10.15 to the Company's Form 10-Q filed December 20, 2004);

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- 10.8 Employment Agreement between the Company and Mitchell Gendel, dated November 17, 2004 (incorporated by reference to Exhibit 10.8 to the Company's Form 10-K filed on April 18, 2005);
- 10.9 Employment Agreement between the Company and Michael Sabatino, dated April 1, 2005 (incorporated by reference to Exhibit 10.9 to the Company's Form 10-K filed on April 18, 2005);
- 10.10.1 Amended and Restated Stock Option Incentive Plan (incorporated by reference to Exhibit 10.9 to the Company's Form 10-Q filed May 10, 2004);
- 10.10.2 Stock Appreciation Rights Plan dated as of April 22, 2004 (incorporated by reference to Exhibit 10.10 to the Company's Form 10-Q filed May 10, 2004);
- 10.11 Credit Agreement made June 10, 2004 between MDC Partners Inc, as borrower, The Toronto-Dominion Bank, as Lead Arranger, Sole Bookrunner and administration agent, and the Lenders (incorporated by reference to Exhibit 10.12 to the Company's Form 10-Q filed August 4, 2004);
- 10.12 Credit Agreement made September 22, 2004 between MDC Partners Inc., a Canadian corporation, Maxxcom Inc., an Ontario corporation, and Maxxcom Inc., a Delaware corporation, as borrowers, the Lenders (as defined therein) and JPMorgan Chase Bank, as US Administrative Agent and Collateral Agent, and JPMorgan Chase Bank, Toronto Branch, as Canadian Administrative Agent, and Schedules thereto (incorporated by reference to Exhibit 10.13 to the Company's Form 10-Q filed December 20, 2004);
- 10.13 Amendment No. 1 dated as of November 19, 2004 to the Credit Agreement made September 22, 2004 (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed November 24, 2004);
- 10.14 Amendment No. 2 dated as of March 14, 2005 to the Credit Agreement made September 22, 2004 (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on March 16, 2005);
- 10.15 Amendment No. 3 dated as of April 1, 2005 to the Credit Agreement made September 22, 2004 (incorporated by reference to Exhibit 10.4 to the Company's Form 8-K filed on April 1, 2005);
- 14.1 Code of Conduct of MDC Partners Inc. (2005) (incorporated by reference to Exhibit 14.1 to the Company's Form 10-K filed on April 18, 2005);
- 21.1 Subsidiaries of Registrant (incorporated by reference to Exhibit 21.1 to the Company's Form 10-K filed on April 18, 2005);
- 31.1 Certification by Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934 and Section 302 of the Sarbanes-Oxley Act of 2002*;
- 31.2 Certification by Executive Vice President and Vice Chairman pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934 and Section 302 of the Sarbanes-Oxley Act of 2002*;
- 32.1 Certification by Chief Executive Officer pursuant to 18 USC. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*;
- 32.2 Certification by Executive Vice President and Vice Chairman pursuant to 18 USC. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*;

* Filed electronically herewith.