

MEDIFAST INC  
Form 10-K/A  
May 02, 2007

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

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FORM 10-K/A  
(Amendment No. 1)

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

For the fiscal year ended December 31, 2006

Commission File No. 000-23016

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MEDIFAST, INC.

DELAWARE  
Incorporation State

13-3714405  
Tax Identification number

11445 CRONHILL DRIVE, OWINGS MILLS, MD 21117  
Principal Office Address

Phone (410) 581-8042

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT: NONE

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT:

COMMON STOCK, PAR VALUE \$.001 PER SHARE

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New York Stock Exchange

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.  
Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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 a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the voting common equity held by non-affiliates of the registrant as of June 30, 2006, based upon the closing price of \$17.87 per share on the American Stock Exchange on that date, was \$208,000,000.

As of April 24, 2007, the Registrant had 13,643,998 shares of Common Stock outstanding.

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## EXPLANATORY NOTE

Medifast, Inc., a Delaware Corporation (“Medifast,” the “Company,” “we,” “us,” and “our”), is filing this Amendment No. 1 on Form 10-K/A for the year ended December 31, 2006 (the “Form 10-K/A Report”) to amend our Annual Report on Form 10-K for the year ended December 31, 2006 (the “Original Filing”) that was filed with the Securities and Exchange Commission (the “SEC”) on March 16, 2007. This Form 10-K/A is being filed to include responses to certain items required by Part III, which were originally expected to be incorporated by reference in our definitive proxy statement to be delivered to our stockholders in connection with the 2007 annual meeting of stockholders. Except as set forth in this Form 10-K/A Report, no changes have been made to the Original Filing, and this Form 10-K/A Report does not amend, update or change any other items or disclosures in the Original Filing. This Form 10-K/A Report does not reflect events that occurred after the Original Filing. As a result of this amendment, we are also filing the certifications pursuant to Section 302 and Section 906 of the Sarbanes-Oxley Act of 2002 as exhibits to this Form 10-K/A Report.

## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The Board of Directors currently consists of 9 persons. The directors, their ages, and the year in which they first became director are provided in the table below:

Name and Experience	Director Since
<p><b>Joseph D. Calderone</b>, age 58, is the Associate Director of Campus Ministry at Villanova University. He formerly spent over eight years with the Loyola University Medical Center as the hospital Chaplain and taught multiple courses including Introduction to the Practice of Medicine and Business Ethics. Rev. Calderone recently retired as a Captain in the US Navy Reserves. He served as the Wing Chaplain for the 4th Marine Aircraft Wing.</p>	2003
<p><b>Charles P. Connolly, age 58</b>, is currently an independent director focusing on bank relationships, debt refinancing, merger and acquisition strategy and executive compensation design. Mr. Connolly spent 29 years at First Union Corp. that merged with Wachovia Bank in 2001. He retired in 2001 as the President and CEO of First Union Corp. Mr. Connolly serves on the Boards of numerous non-profit organizations. He holds an MBA from the University of Chicago and AB from Villanova University.</p>	2006
<p><b>Bradley T. MacDonald</b>, age 59, is the Chairman of the Board of Medifast, Inc. Mr. MacDonald has been Chairman of the Board of Medifast, Inc. since January 1998 and was also Chief Executive officer until March of 2007. He was the principal architect of the turnaround of Medifast and formulated the “Direct to Consumer” business models that are the primary drivers of Revenue to this day. He also was the co-founder of Take Shape for Life and acquired the Clinic operations in 2002. During his time as CEO, he managed the company to 29 consecutive quarters of profits and</p>	1996

improved shareholders equity from negative \$4 million to over \$27 million in less than seven years. He also increased the Company's market cap from less than \$1 million to over \$100 million and listed the company on the NYSE. In 2006, Mr. MacDonald received the prestigious and audited Ernst and Young award of "Entrepreneur of the Year" for the state of Maryland in the consumer products category. Also, he helped lead the Company to national recognition in Forbes Magazine ranking Medifast 28<sup>th</sup> of the top 200 small companies in America. Mr. MacDonald was previously employed by the Company as its Chief Executive Officer from September 1996 to August 1997. From 1991 through 1994, Colonel MacDonald returned to active duty to be Deputy Director and Chief Financial Officer of the Retail, Food, Hospitality and Recreation Businesses for the United States Marine Corps. Prior thereto, Mr. MacDonald served as Chief Operating Officer of the Bonneau Sunglass Company, President of Pennsylvania Optical Co., Chairman and CEO of MacDonald and Associates, which had major financial interests in a retail drug, consumer candy, and pilot sunglass companies. Mr. MacDonald was national president of the Marine Corps Reserve Officers Association and retired from the United States Marine Corps Reserve as a Colonel in 1997, after 27 years of service. He has been appointed to the Defense Advisory Board for Employer Support of the Guard and Reserve (ESGR) Mr. MacDonald serves on the Board of Directors of the Wireless Accessories Group (AMEX: XWG). He also serves on the Board of Directors of the Marine Corps Reserve Toys for Tots Foundation and is on the Board of Trustees of Villa Julie College of Stevenson, Maryland and the Institute of Notre Dame, the oldest Catholic girl's urban high school in Maryland, located in Baltimore.

<p><b>Michael C. MacDonald, age 53</b>, is president of global accounts and marketing operations for Xerox Corporation, Stamford, Conn. He was named to this position in October 2004 and was appointed a corporate senior vice president in July 2000. Mac Donald is responsible for directing the company's largest global accounts, improving the customer experience, corporate marketing, xerox.com, advertising, worldwide public relations and marketing communications. Most recently, Mac Donald was president, North American Solutions Group responsible for all products, services and solutions sold by Xerox direct sales force in the United States and Canada. Prior to that, he served as the group's senior vice president of marketing and chief of staff. Mac Donald is on the board of directors of the Rochester Institute of Technology, PAETEC, and the Jimmy V Foundation. He is also a board member of the CMO Council North American Advisory Board. Mr. MacDonald completed executive business and management programs at Columbia University in 1992 and the International Senior Management Program at Harvard University in 1998</p>	1998
<p><b>Dennis M. McCarthy</b>, age 62, practiced law for 21 years as a civil litigator in tort and contract cases. He was the founding member and managing partner of a Columbus, Ohio based law firm. Additionally, he served active duty in the U.S. Marine Corps for 23 years and served 18 years in reserve service. Mr. McCarthy retired from the Marine Corps in 2005 in the grade of Lieutenant General after four years in command of all Marine Reserve forces. Mr. McCarthy is currently the Executive Director of the Reserve Officers Association, a congressionally chartered association devoted to national defense. In addition to Medifast, he is a member of the Board of Directors of Rivada Networks.</p>	2006
<p><b>Michael J. McDevitt</b>, age 58, is a retired FBI Special Agent with over 29 years of government service with the United States Marine Corps and the FBI. He had attained Senior Executive status within the FBI's Investigative Technology Branch and is currently providing consulting services, focusing on physical threat and risk assessments and conducting specialized training for law enforcement and US Government entities.</p>	2002
<p><b>Donald F. Reilly, OSA</b>, age 59, holds a Doctorate in Ministry (Counseling) from New York Theological and an M.A. from Washington Theological Union as well as a B.A. from Villanova University. Reverend Don Reilly was ordained a priest in 1974. His assignments included Associate Pastor, Pastor at St. Denis, Havertown, Pennsylvania, Professor at Villanova University, Personnel Director of the Augustinian Province of St. Thomas of Villanova, Provincial Counselor, Founder of SILOAM Ministries where he ministers and counsels HIV/AIDS patients and caregivers. He is currently on the Board of Directors of Villanova University, and is Board Member of Prayer Power. Fr. Reilly was recently re-elected Provincial of the Augustinian Order at Villanova, PA. He oversees more than 220 Augustinian Friars and their service to the Church, teaching at universities and high schools, ministering to parishes, serving as chaplain in the Armed Forces and hospitals, ministering to AIDS victims, and serving missions in Japan and South America.</p>	1998

**Mary T. Travis**, age 56, is currently employed with Sunset Mortgage Company, L.P. in Pennsylvania as the Senior Vice President of wholesale operations and was formerly the Vice President of operations for the Financial Mortgage Corporation. Mrs. Travis is an expert in mortgage banking with over 36 years of diversified experience. She is an approved instructor of the Mortgage Bankers Association Accredited School of Mortgage Banking. Mrs. Travis was also formally a delegate and 2nd Vice President of the Mortgage Bankers Association of Greater Philadelphia and the Board of Governors of the State of Pennsylvania.

2002

## **ADDITIONAL INFORMATION ABOUT THE BOARD OF DIRECTORS AND COMMITTEES**

### **Director Independence**

The Board consists of 9 members of which 8 are non-management directors. Determination as to the qualifications of an independent directors are determined under section 303A.02 of the New York Stock Exchange, or the NYSE, Listed Company Manual and the Company's Categorical Standards of Independence. The NYSE's independence guidelines and the Company's categorical standards include a series of objective tests, such as the director is not an employee of the Company and has not engaged in various types of business dealings involving the Company, which would prevent a director from being independent. The Board of Directors has affirmatively determined that none of the Company's independent directors had any relationships with the Company.

The Board, in applying the above referenced standards has affirmatively determined the Company's current independent directors are: Joseph Calderone, Charles P. Connolly, George Lavin, Jr. Esq., Dennis M. McCarthy, Donald F. Reilly, and Mary Travis.

## Board Meetings

For the fiscal year ended December 31, 2006 (“Fiscal 2006”), the Board of Directors held four meetings. All Board members attended at least 75% of the aggregate number of Board meetings and applicable committee meetings held while such individuals were serving on the Board of Directors, or such committees. Under the Company’s *Principles of Corporate Governance*, which is available on the Company’s website [www.choosemedifast.com](http://www.choosemedifast.com), by following the link

## Committees of the Board

Our Board of Directors has a standing audit committee, nominating and corporate governance committee, compensation committee, and executive committee.

### *Audit Committee*

Our audit committee consists of Joseph Calderone, Charles Connolly, George Lavin, and Mary Travis, each of whom are independent as discussed above under “— Director Independence.” As required by Rule 303A.07 of the NYSE Listed Company Manual, the Board of Directors has affirmatively determined that each audit committee member is financially literate, and that Mr. Connolly is an “audit committee financial expert,” as defined in Item 407(d)(5) of Regulation S-K.

The principal duties of the audit committee are as follows:

- have the sole authority and responsibility to hire, evaluate and, where appropriate, replace the independent auditors;
- meet and review with management and the independent auditors the interim financial statements and the Company’s disclosures under Management’s Discussion and Analysis of Financial Condition and Results of Operations prior to the filing of the Company’s Quarterly Reports on Form 10-Q;
- meet and review with management and the independent auditors the financial statements to be included in the Company’s Annual Report on Form 10-K (or the annual report to shareowners) including (i) their judgment about the quality, not just acceptability, of the Company’s accounting principles, including significant financial reporting issues and judgments made in connection with the preparation of the financial statements; (ii) the clarity of the disclosures in the financial statements; and (iii) the Company’s disclosures under Management’s Discussion and Analysis of Financial Condition and Results of Operations, including critical accounting policies;
- review and discuss with management, the internal auditors and the independent auditors the Company’s policies with respect to risk assessment and risk management;
- review and discuss with management, the internal auditors and the independent auditors the Company’s internal controls, the results of the internal audit program, and the Company’s disclosure controls and procedures, and quarterly assessment of such controls and procedures;
- establish procedures for handling complaints regarding accounting, internal accounting controls and auditing matters, including procedures for confidential, anonymous submission of concerns by employees regarding accounting and auditing matters; and
- review and discuss with management, the internal auditors and the independent auditors the overall adequacy and effectiveness of the Company’s legal, regulatory and ethical compliance programs.

Our Board of Directors has adopted a written charter for the audit committee which is available on the Company’s website at [www.choosemedifast.com](http://www.choosemedifast.com) by following the links through “Investor Relations” to “Corporate Governance.” In



fiscal 2006, the audit committee met five times.

*Nominating and Corporate Governance Committee*

The nominating and corporate governance committee consists of Joseph Calderone, Donald F. Reilly, and George Lavin, all of whom are independent as discussed above under “— Director Independence.”

The principal duties of the nominating and corporate governance committee are as follows:

- to recommend to our Board of Directors proposed nominees for election to the Board of Directors both at annual general meetings and to fill vacancies that occur between general meetings; and
- to make recommendations to the Board of Directors regarding the Company’s corporate governance matters and practices.

Our Board of Directors has adopted a written charter for the nomination and corporate governance committee which is available on the Company's website at [www.choosemedifast.com](http://www.choosemedifast.com) by following the links through "Investor Relations" to "Corporate Governance." In fiscal 2006, the nomination and corporate governance committee met four times.

Our Board of Directors has adopted a written charter for the nominating and corporate governance committee, which is available on the Company's website at [www.choosemedifast.com](http://www.choosemedifast.com) by following the links through "Investor Relations" to "Corporate Governance" or in print to any shareholder who requests it as set forth under "Additional Information — Annual Report, Financial and Additional Information." In fiscal 2006, the nominating and corporate governance committee met four times.

### ***Compensation Committee***

The compensation committee currently consists of George Lavin, Jr., Esq, Dennis M. McCarthy, Esq., Donald F. Reilly, and Mary Travis, all of whom were independent as discussed above under "— Director Independence

The principal duties of the compensation committee are as follows:

- measure the Chief Executive Officer's performance against his goals and objectives pursuant to the Company plans;
- determine the compensation of the Chief Executive Officer after considering the evaluation by the Board of Directors of his performance;
- review and approve compensation of elected officers and all senior executives based on their evaluations, taking into account the evaluation by the Chief Executive Officer;
- review and approve any employment agreements, severance arrangements, retirement arrangements, change in control agreements/provisions, and any special or supplemental benefits for each elected officer and senior executive of the Company;
- approve, modify or amend all non-equity plans designed and intended to provide compensation primarily for elected officers and senior executives of the Company;
- make recommendations to the Board regarding adoption of equity plans; and
- modify or amend all equity plans.

Our Board of Directors has adopted a written charter for the compensation committee which is available on the Company's website at [www.choosemedifast.com](http://www.choosemedifast.com) by following the links through "Investor Relations" to "Corporate Governance." In fiscal 2006, the compensation committee met four times.

### ***Executive Committee***

Messrs. Bradley T. MacDonald, Michael C. MacDonald, Michael J. McDevitt, and Dennis M. McCarthy, Esq. are members of the Executive Committee. The Executive Committee has all the authority of the Board of Directors, except with respect to certain matters that by statute may not be delegated by the Board of Directors. The Committee meets periodically during the year to develop and review strategic operational and management polices for the Company. The Committee held three meetings during fiscal 2006.

## **ADDITIONAL INFORMATION**

**Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Exchange Act requires the Company's directors and executive officers and persons who beneficially own more than ten percent of a registered class of the Company's equity securities to file with the SEC and the NYSE initial reports of ownership and reports of changes in ownership of equity securities of the Company. Directors, officers and greater-than-ten-percent beneficial owners are required by SEC regulations to furnish the Company with copies of all Section 16(a) forms filed by them. In 2006, To the Company's knowledge, based solely on a review of the copies of such filings on file with the Company and written representations from the Company's directors and executive officers, no Section 16(a) filing requirements were applicable to the Company's directors, executive officers and greater-than-ten-percent beneficial owners in fiscal 2006.

## **Codes of Business Conduct and Ethics and Corporate Governance Guidelines**

Our Board of Directors has adopted a corporate Code of Business Conduct and Ethics applicable to our directors, officers, including our principal executive officer, principal financial officer and principal accounting officer, and employees, as well as Corporate Governance Guidelines, in accordance with applicable rules and regulations of the SEC and the NYSE. Each of our Code of Business Conduct and Ethics and Corporate Governance Guidelines are available on our website at [www.choosemedifast.com](http://www.choosemedifast.com) by following the links through “Investor Relations” to “Corporate Governance.”

Any amendment to, or waiver from, a provision of the Company’s Code of Business Conduct and Ethics with respect to the Company’s principal executive officer, principal financial officer, principal accounting officer or controller will be posted on the Company’s website, [www.choosemedifast.com](http://www.choosemedifast.com).

## **ITEM 11. EXECUTIVE COMPENSATION.**

### **COMPENSATION DISCUSSION AND ANALYSIS**

#### **Overview of Compensation Program**

Our Compensation Committee of the Board of Directors has responsibility for establishing, implementing and continually monitoring adherence with the Company’s compensation philosophy. The Compensation Committee ensures that the total compensation paid to our named executive officers is fair, reasonable and competitive. Generally, the types of compensation and benefits provided to our named executive officers are similar to those provided to other officers and employees of the Company.

Throughout this discussion, the individuals who served as our CEO and CFO during Fiscal 2006, as well as the other individuals included in the Summary Compensation Table on page 10, are referred to as the “named executive officers.”

#### **Objectives of Compensation Program**

The main objective of our executive compensation program is to create a competitive total rewards package based on the attainment of short-term performance objectives and long-term strategic goals. Accordingly, our executive compensation program consists of the following three principal elements: base salary, cash bonus and equity grants in the form of stock options and restricted stock, with an emphasis on incentive compensation rather than base salary. Our executives are also eligible to participate in employee benefit and retirement plans offered by the Company, which currently include defined contribution and 401(k) plans, and health care and other insurance programs. The benefit programs available to executives are the same as those available to all other eligible employees.

#### **Decision-Making; Role of Executive Officers in Compensation Decisions**

The Compensation Committee of our Board of Directors is comprised solely of non-affiliate independent Directors who meet the independence requirements of the NYSE. Our Compensation Committee makes all decisions regarding the compensation of our CEO, including establishing the performance goals and objectives for our CEO, evaluating our CEO’s performance in light of the goals and objectives that were set, and determining and recommending to our Board the CEO’s compensation based on that evaluation.

Our CEO makes recommendations to our Compensation Committee for the compensation of our CFO and all other named executive officers. Our Compensation Committee and Board may accept or adjust such recommendations as they determine in the best interests of the Company and its stockholders and has final approval over all such compensation decisions. To the extent not established by our Board of Directors, our Compensation Committee is also

authorized to establish compensation and benefits for our Chairman and for new and existing non-affiliate independent Directors.

Our Chairman, CEO, and Vice President of Human Resources provide advice, analysis and recommendations to our Compensation Committee.

#### Elements of Executive Compensation

Our Compensation Committee also evaluates the achievement of corporate, individual and organizational objectives for each executive officer during the prior fiscal year. Each element of compensation is chosen in order to attract and retain the necessary executive talent, reward corporate performance and provide incentive for the attainment of long-term strategic goals. The allocation of each element of compensation is determined by our Compensation Committee for each executive based on the following factors:

- Performance against corporate, individual and organizational objectives for the fiscal year;
- Importance of particular skill sets and professional abilities to the achievement of long-term strategic goals; and
- Contribution as a leader, corporate representative and member of the senior management team.

These elements support our overall compensation philosophy by creating a balanced focus on shorter-term corporate performance and the achievement of longer-term business goals and stockholder value. While we believe in structuring executive compensation plans that give our executives incentive to deliver certain objective elements of corporate financial performance over specified time periods, we do not believe in a purely mechanical approach. Instead, part of our executive compensation philosophy includes an element of reward for non-quantitative achievements demonstrated by our executives in the actions and decisions they have taken throughout the year. When establishing our executive compensation plans for a given year, it is not possible to foresee all of the challenges and demands that will be made of our executives, both as a management team and in their areas of individual responsibility. We believe that by rewarding the quality of our decision-making and leadership, in addition to the achievement of quantifiable results, we are building a management team capable of creating stockholder value over the longer-term, while remaining disciplined in delivering shorter-term financial results. Accordingly, there is no pre-established policy or target for the allocation between either cash and non-cash or short-term and long-term incentive compensation. Rather, the Compensation Committee reviews information provided by its compensation consultant, industry surveys and peer company data to determine appropriate level and mix of incentive compensation. Income from such incentive compensation is realized as a result of the performance of the Company and the individual, depending on the type of award, compared to established goals.

#### Base Salary

Our base salary determinations principally reflect the skills and performance levels of individual executives, the needs of the Company, and pay practices of comparable public companies. It is not our policy to pay our executive officers at the highest base salary level. Instead, we establish executive base salaries conservatively at or below a midpoint level relative to an appropriate set of peers. We believe this policy sets a prudent and fiscally responsible tone for the Company's overall base salary compensation programs.

#### Target Bonus

Cash bonuses principally reflect the Company's financial performance and achievement of corporate objectives established by our Board prior to the fiscal year. The executive bonus plan is designed to reward our executives for the achievement of shorter-term financial goals, predominantly revenue growth and profitability, with cash flow and other operating ratios also considered. The allocation of the bonus pool among the employees, including senior executives, is at the discretion of the Compensation Committee. The Chief Executive Officer, Chief Financial Officer and other senior executives discuss and jointly develop recommended bonus allocations among the staff within the various functional areas of the Company. In addition, the Chief Executive Officer prepares an allocation of bonus payments among the senior executive group. In consultation with the Chief Executive Officer, the Compensation Committee evaluates, adjusts and approves the amount and allocation of the bonus pool. In determining the cash bonus allocation among senior executives, the Compensation Committee and the Chief Executive Officer consider each executive's a) contribution to current and long-term corporate goals, and b) value in the labor market.

#### Equity Compensation

Stock option and restricted stock awards principally reflect the responsibilities to be assumed by each executive in the upcoming fiscal year, the responsibilities of each executive in prior periods, the size of awards made to each executive in prior years relative to the Company's overall performance, available stock for issuance under our Option Plan, and potential grants in future years. The Committee believes that stock option and restricted stock grants (1) align the interests of executives with long-term stockholder interests, (2) give executives a significant, long-term interest in the Company's success, and (3) help retain key executives in a competitive market for executive talent. The Company does not plan on issuing stock options as part of compensation in 2007 and beyond.