

# **FOG CUTTER CAPITAL GROUP INC. CHARTER FOR THE NOMINATING COMMITTEE OF THE BOARD OF DIRECTORS**

*November 16, 2004*

## **FOG CUTTER CAPITAL GROUP INC. CHARTER FOR THE NOMINATING COMMITTEE OF THE BOARD OF DIRECTORS**

### **PURPOSE**

The purpose of the Nominating Committee (the “Committee”) of Fog Cutter Capital Group Inc. (the “Company”) is to establish general qualification guidelines applicable to nominees for election to the Board of Directors of the Company (the “Board”) and to ensure that the Board is appropriately constituted to meet its fiduciary obligations to the Company and its stockholders. The Committee shall also provide a leadership role in shaping and monitoring the corporate governance practices of the Company.

### **MEMBERSHIP**

The Committee shall be comprised of no fewer than three members, who shall be appointed by and serve at the pleasure of the Board. Each member of the Committee must be an “independent director,” as defined by and to the extent required by the rules of The NASDAQ Stock Market, Inc.

### **RESPONSIBILITIES**

The Committee shall recommend nominees for election to the Board and shall monitor and safeguard the independence of the Board. The Committee also shall recommend directors for appointment to committees of the Board. Specifically, the Committee shall:

- evaluate the current composition, organization and qualifications of the Board and its committees, determine future requirements and make recommendations to the Board for approval;
- review applicable rules and regulations that impact the composition of the Board, including, but not limited to, the rules of The NASDAQ Stock Market, Inc.;
- establish and annually review general qualification guidelines applicable to nominees for election to the Board and for committee membership, including the minimum required qualifications and any specific qualities or skills that the Committee believes are necessary for one or more directors to possess;
- evaluate and make recommendations to the Board concerning the size of the Board, the appointment of directors to, and the removal of directors from, Board committees, and the selection of Board committee chairs;
- evaluate the contributions of current directors in connection with their renomination and, where appropriate, recommend termination of membership of individual directors for cause or for other appropriate reasons;

- establish procedures for stockholders to submit nominees for election to the Board;
  - review the qualifications of prospective board members, including nominees submitted by stockholders, and evaluate any potential conflicts with the Company's interests; and
  - identify, interview and recommend to the Board suitable candidates for election to the Board.
- The Committee shall also provide a leadership role in shaping and monitoring the corporate governance practices of the Company. Specifically, the Committee shall:
- oversee the Company's processes for providing information to the Board;
  - assess the reporting channels through which the Board receives information and the quality and timeliness of information received to ensure that the Board obtains appropriately detailed information in a timely fashion;
  - establish procedures for stockholders to communicate with the Board and, if applicable, individual directors;
  - review annually the Company's corporate governance practices and code of ethics and recommend to the Board any amendments deemed necessary or appropriate;
  - oversee an annual performance evaluation of the Board and management, and report the results of such evaluations to the Board;
  - conduct an annual performance evaluation of the Committee; and
  - review this charter annually and make recommendations to the Board for any proposed changes.

In addition to the above responsibilities, the Committee shall undertake such other specific duties and responsibilities as the Board from time to time delegates to it.

## **MEETINGS**

The Committee shall meet as often as it deems necessary or appropriate, either in person or telephonically. The majority of the members of the Committee shall constitute a quorum. The Committee may act without a meeting by securing the unanimous written consent of the members of the Committee. Officers of the Company may attend Committee meetings at the invitation of the Committee. The Committee shall report to the full Board with respect to its meetings and shall periodically report to the Board with respect to significant results of its activities. Minutes of all meetings, including telephone meetings, and copies of all consents in lieu of meeting shall be maintained and furnished to members of Committee, the Board and the Secretary of the Company. In addition, all materials relating to Committee meetings shall be circulated to all members of the Board in advance of Board meetings.

## **REPORTS**

Within 60 days of a request by the Board, the Committee shall provide the Board with a written report describing the criteria it has identified as appropriate to the selection of nominees for election to the Board. In addition, before recommending a nominee for election to the Board, the Committee shall provide a written report detailing the basis of its recommendation. Any written report of the Committee shall be incorporated as part of the minutes of the Board meeting at which such report is presented.

## **OUTSIDE ADVISORS**

The Committee shall have the authority to retain such outside counsel, experts and other advisors as it determines appropriate to assist in the full performance of its functions, including the authority to approve the fees of such outside advisors.