

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549  
-----

FORM 8-K

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

Date of report (Date of earliest event reported) October 12, 2005

Fog Cutter Capital Group Inc.  
(Exact Name of Registrant as Specified in Charter)

Maryland	0-23911	52-2081138
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1410 SW Jefferson Street, Portland, OR 97201  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (503) 721-6500

**Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.**

On October 12, 2005, the Board of Directors of Fog Cutter Capital Group Inc. (the "Company") (OTC Pink Sheets: FCCG) re-appointed Andrew A. Wiederhorn as Chairman of the Board of Directors and as Chief Executive Officer of the Company, following his return to the Company from a leave of absence.

In connection with Mr. Wiederhorn's reappointment, on October 12, 2005, Donald J. Berchtold resigned as Chief Executive Officer, after serving in that position during Mr. Wiederhorn's 14-month leave of absence. Mr. Berchtold will remain with the Company as a director and senior vice president.

The leave of absence resulted from Mr. Wiederhorn's settlement with the federal government regarding its investigation into Capital Consultants, Inc. (the "Settlement"). Under the Settlement terms, Mr. Wiederhorn pled guilty on June 3, 2004 to two federal counts and was sentenced to 18 months incarceration and fined \$2.0 million. The first count, a violation of an ERISA provision, involved a federal law that required no criminal intent and for which his reliance on the advice of counsel was not a defense. The second count related to a violation involving a deduction on a personal tax return. The deduction was structured and approved by Mr. Wiederhorn's tax advisors and did not reduce Mr. Wiederhorn's tax liability or reduce the government's tax collections. The charges to which Mr. Wiederhorn has pled guilty pursuant to the Settlement were not based upon any acts or omission involving the Company or Mr. Wiederhorn in his capacity as an officer or director of the Company.

In entering into the leave of absence agreement, the Company's Board of Directors considered the nature of the statutes to which Mr. Wiederhorn pled and the fact that he relied on the advice of expert legal counsel and a national accounting firm. The Board also believed it was important to assure Mr. Wiederhorn's return to active involvement with the Company because of his expertise and knowledge and to preserve a significant business relationship and the value of the Company's investments.

Effective upon his re-appointment, Mr. Wiederhorn will resume service under his existing Employment Agreement with the Company. Mr. Wiederhorn's employment agreement is described in detail in the Company's annual report on Form 10-K for the year ended December 31, 2004 and has been previously filed with the Securities and Exchange Commission as Exhibit 10.3 to the Company's current report on Form 8-K filed on August 13, 2003.

Mr. Wiederhorn, 39, has been a director, the Treasurer and the Secretary of the Company since its formation, and resumed his service as Chief Executive Officer in October 2005. Mr. Wiederhorn was previously Chief Strategic Officer from August 2004 to October 2005, Co-Chairman and the Co-Chief Executive Officer from June 2004 to August 2004 and Chairman and Chief Executive Officer from the Company's formation until June 2004. Until August 1999, Mr. Wiederhorn was also

chairman of the board of directors, chief executive officer, secretary and treasurer of Wilshire Financial Services Group Inc., a public company which was principally engaged in mortgage loan purchasing and investing in mortgage-backed securities. In 1987, Mr. Wiederhorn founded Wilshire Credit Corporation, and served as its and certain of its subsidiaries chief executive officer until August 1999. Mr. Wiederhorn holds a B.S. degree in Business Administration from the University of Southern California. Mr. Wiederhorn is the son-in-law of Mr. Berchtold.

#### **Certain Relationships and Related Transactions**

*Loans to Mr. Wiederhorn.* Prior to the passage of the Sarbanes-Oxley Act of 2002, the Company had negotiated employment agreements with senior executives, which allowed these executives to borrow a specified maximum amount from the Company to purchase Common Stock. These loans are full recourse, secured loans bearing interest at the prime rate. At December 31, 2004 the Company had outstanding stock purchase loans to Mr. Wiederhorn, including accrued interest, of approximately \$1.0 million. The Company is not obligated to make additional advances on loans under the employment agreements, and all other loans to executive officers have been paid in full.

In addition, prior to the passage of the Sarbanes-Oxley Act of 2002, the Company had loaned Mr. Wiederhorn \$2.0 million. This loan is fully recourse to Mr. Wiederhorn and is secured by trust deeds on two residences located in Oregon. The loan is due on August 1, 2007 and bears interest at 8.5% per annum, payable monthly. The Board of Directors (with Mr. Wiederhorn abstaining) concluded that the terms of the loan were at least as favorable to the Company as would be available in an arm's-length, third-party transaction and approved the loan on July 9, 2002.

The loans to Mr. Wiederhorn are described in detail in the Company's annual report on the Form 10-K for the year ended December 31, 2004.

*Fog Cutter Long-Term Vesting Trust.* In the fourth quarter of 2000, the Company established a trust which purchased 525,000 shares of the Company's Common Stock from an unrelated stockholder. The Company's contribution to the trust of approximately \$1.3 million was included in compensation expense for the year ended December 31, 2000. The Trust was established for the benefit of the Company's employees and directors to raise their ownership in the Company, thereby strengthening the mutuality of interests between them and the Company's stockholders. While these shares are held in trust, they will be voted ratably with ballots cast by all other stockholders. Using the retained earnings on trust assets, the trust has subsequently purchased an additional 190,840 shares of Common Stock from various stockholders.

Mr. Wiederhorn, K. Kenneth Kotler and Don H. Coleman are the trustees of the trust. Pursuant to the terms of the trust, the trustees will, from time to time, allocate the shares to the Company's employees. An employee shall not have any rights with respect to any shares allocated to him or her unless and until the employee completes five years of continuous service with the Company, commencing with the date the employee is first allocated such shares; provided however,

that the trustees and the Company may agree in writing that the period of service need not be continuous for an officer or employee who leaves the Company for a period of not more than 36 months. The trustees and the Company agreed that Mr. Wiederhorn need not provide continuous service and may leave the Company for a period of not more than 36 months without forfeiting his beneficial rights under the Trust. Upon the employee's completion of the vesting period, the trustees shall promptly distribute to such employee the shares allocated to such employee; provided, however, that the trustees may, in lieu of distributing the shares, make a cash payment to the employee equal to the fair market value of the shares allocated to such employee as of the date immediately prior to the date of distribution or distribute any combination of cash or shares, as determined by the trustees, in their sole discretion. As of September 30, 2005, the trustees had allocated 572,000 shares to the Company's employees and directors.

*Call Option.* On March 14, 2005, the Company exercised an option (the "Call Option") to acquire 423,245 shares of the Company's Common Stock from Mr. Wiederhorn, for an exercise price of \$3.99 per share. The Call Option had been acquired from Mr. Wiederhorn on April 27, 2004. The original purchase price for the Call Option was \$750,000, resulting in an "all-in" cost to the Company on exercise of approximately \$5.76 per share. The aggregate price to the Company on exercise of \$5.76 per share represented a premium to the Company's book value per share and market price per share at the time the Call Option was purchased. The exercise price for the shares was less than the Company's book value per share and approximated the recent trading range of the stock in the marketplace. At the time the Call Option was purchased, the Company and its directors also considered the following factors: (1) the potentially negative impact on the Company's share price if the shares under the Call Option were disposed of publicly; (2) the Company's favorable liquidity position; (3) the potential reduction in the risk that shares are transferred in a transaction that would have an adverse impact on its net operating loss position; and (4) the reduction in the future expenditure of cash dividends by the Company once the Company exercises the Call Option. The Board of Directors reviewed the transaction to confirm that the transaction was in the best interest of the Company and its other stockholders.

*Business Use of Private Aircraft.* During 2004, the Company paid \$342,000 to Peninsula Capital Partners LLC, an entity owned by Mr. Wiederhorn, for the Company's business use of certain private aircraft. The Board of Directors is aware of the relationship and approved the fees for the use of the aircraft. The fee paid is a reimbursement of costs for the Company's use of the aircraft. As of September 30, 2005, no costs had been incurred during 2005 from Peninsula Capital for the use of private aircraft.

#### Item 9.01. Financial Statements and Exhibits.

(c) Exhibits.

The following exhibit is filed as part of this report:

Exhibit 99.1 Press release of the Company dated October 12, 2005 announcing the re-appointment of Andrew Wiederhorn as Chairman and Chief Executive Officer.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, Fog Cutter Capital Group Inc. has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: October 12, 2005

FOG CUTTER CAPITAL GROUP INC.

By: /s/ R. Scott Stevenson

-----  
R. Scott Stevenson  
Senior Vice President and  
Chief Financial Officer

**Exhibit Index**

**Exhibit Number**

**Description**

99.1

Press release of the Company dated October 12, 2005  
announcing the re-appointment of Andrew Wiederhorn  
as Chairman and Chief Executive Officer

**For Immediate Release****FOG CUTTER CAPITAL GROUP INC. ANNOUNCES RE-APPOINTMENT OF  
ANDREW A. WIEDERHORN AS CHAIRMAN AND CEO**

PORTLAND, Oregon.— October 12, 2005 -- Fog Cutter Capital Group Inc. (OTC Pink Sheets: FCCG) today announced that Andrew A. Wiederhorn is returning to Portland from his leave of absence and has been re-appointed as Chairman of the Board of Directors and as Chief Executive Officer of the Company. Donald J. Berchtold, who served as the Company's CEO during the 14 month leave of absence period, will remain as a director and senior vice president.

"It's great to be back," commented Mr. Wiederhorn. "I intend to focus on the growth of our current business lines. I appreciate the hard work, dedication and support from the Company's management, board of directors, shareholders and other friends and colleagues during my leave of absence."

"While I believe it was wrong for the government to prosecute me for a non-intent crime involving a business transaction by my former employer, Wilshire Financial Services Group Inc. (now Beverly Hills Bancorp) – a transaction which was approved and structured by Wilshire's in-house counsel as well as other attorneys, I am glad to put the matter behind me," Mr. Wiederhorn continued. "I have certainly fulfilled my end of the settlement agreement. It is time to move on."

Explaining that charge, Marc Blackman, one of Mr. Wiederhorn's attorneys, noted that the obscure statute under which he was prosecuted disregards good faith. "The government never claimed that Mr. Wiederhorn acted against the best interests of his company. On the contrary, it acknowledged that Wilshire's attorney approved the transaction. The government just dug in its heels, relying on a case that says that's all irrelevant. That left Andy with the choice of fighting for years in the off-chance that another court would say that case was wrong or acquiescing in the government's position. No one should fault him for deciding to put it all behind him."

"Guilt that depends on a morally bankrupt law reveals the moral bankruptcy of the law, not of the person accused of violating it," Blackman added. "Andy's decision to accept responsibility demonstrates the presence, not the absence, of good moral character." Blackman also pointed out that the tax charge to which Mr. Wiederhorn pled was based on a transaction that did not benefit Mr. Wiederhorn or reduce his taxes by even a penny.

Lanny Davis, corporate counsel for Fog Cutter stated, "It is gratifying to see the support of the shareholders for the company and Mr. Wiederhorn during this difficult period. Over 97% of shareholders voted to reelect the Board of Directors, including Mr.

Wiederhorn, at the annual meeting of stockholders last December. We believe his return from the Leave of Absence will be a great benefit to the Company.”

The business strategy of Fog Cutter Capital Group consists of developing, strengthening and expanding its restaurant and commercial real estate mortgage brokerage operations and continuing to identify other financing opportunities with favorable risk-adjusted returns. The Company also seeks to identify and acquire controlling interests in operating businesses in which it can add value. The Company’s operating segments consist of (i) restaurant operations conducted through Fatburger Holdings, Inc., (ii) commercial real estate mortgage brokerage activities conducted through George Elkins Mortgage Banking Company and (iii) real estate, merchant banking and financing activities.

### **Forward Looking Statements**

The Private Securities Litigation Reform Act of 1995 provides a “safe harbor” for forward-looking statements so long as those statements are identified as forward-looking and are accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those projected in such statements. All of the statements contained in this release, which are not identified as historical, should be considered forward-looking. In connection with certain forward-looking statements contained in this release and those that may be made in the future by or on behalf of the company which are identified as forward-looking, the Company notes that there are various factors that could cause actual results to differ materially from those set forth in any such forward-looking statements. Such factors include but are not limited to, effectiveness of operating initiatives; success in advertising and promotional efforts; changes in global and local business and economic conditions, including their impact on consumer confidence; fluctuations in interest rates and to a lesser degree currency exchange rates; food, labor and other operating costs; competition, including pricing and marketing initiatives and new product offerings by the Company’s competitors; consumer preferences or perceptions concerning the Company’s product offerings; spending patterns and demographic trends; availability of qualified personnel (including restaurant personnel); severe weather conditions; existence of positive or negative publicity regarding the Company or its industry generally; the real estate market; the availability of real estate assets at acceptable prices; the opportunities in the specialty lending market; the creditworthiness and default experience of the Company's borrowers; the availability of financing; interest rates; European markets; effects of legal claims or Nasdaq or government investigations; cost and deployment of capital; changes in future effective tax rates; changes in governmental regulations; the impact of changes in management and changes in applicable accounting policies and practices. The foregoing list of important factors is not all-inclusive. Accordingly, there can be no assurance that the forward-looking statements contained in this release will be realized or that actual results will not be significantly higher or lower. The forward-looking statements have not been audited by, examined by, or subjected to agreed-upon procedures by independent accountants, and no third party has independently verified or reviewed such statements. Readers of this release should consider these facts in evaluating the information contained herein. The inclusion of the forward-looking statements contained in this release should not be

regarded as a representation by the company or any other person that the forward-looking statements contained in this release will be achieved. In light of the foregoing, readers of this release are cautioned not to place undue reliance on the forward-looking statements contained herein.