

WATERSIDE CAPITAL CORP
Form N-5
December 13, 2005
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As filed with the Securities and Exchange Commission on December 13, 2005

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form N-5

REGISTRATION STATEMENT OF SMALL BUSINESS INVESTMENT COMPANY

UNDER

THE SECURITIES ACT OF 1933 AND THE INVESTMENT COMPANY ACT OF 1940

WATERSIDE CAPITAL CORPORATION

(Exact name of registrant as specified in its charter)

Waterside Capital Corporation
500 East Main Street, Suite 800
Norfolk, Virginia 23510
(757) 626-1111
(Address of principal executive offices)

J. Alan Lindauer
President and Chief Executive Officer
Waterside Capital Corporation
500 East Main Street, Suite 800
Norfolk, Virginia 23510
(757) 626-1111
(Name and address of agent for service)

With a copy to:

Bradley A. Haneberg, Esq.

Kaufman & Canoles, P.C.

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Three James Center

1051 East Cary Street, 12th Floor

Richmond, Virginia 23219

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after the Effective Date of this Registration Statement.

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities to be registered	Amount being registered (2)	Proposed maximum offering price per share (3)	Proposed maximum aggregate offering price (3)	Amount of registration fee (4)
Rights to purchase common stock (1)	1,456,675			
Common stock	1,456,675	\$3.85	\$5,608,199	\$601

- (1) Evidencing the rights to subscribe for shares of common stock of the Registrant being registered herewith. Pursuant to Rule 457(g) of the Securities Act of 1933, no separate registration fee is required for the rights because the rights are being registered in the same registration statement as the common stock of the Registrant underlying the rights.
- (2) Represents one Subscription Right for each share of common stock of the Registrant outstanding as of the Record Date.
- (3) Estimated solely for the purpose of calculating the registration fee. Based on the average high and low prices reported on the NASDAQ Capital Market on December 7, 2005 (i.e., a specified date within 5 business days prior to the date of filing of this registration statement).
- (4) Calculated in accordance with Rule 457(c) of the Securities Act of 1933, as amended, based on the estimated maximum aggregate offering price of the common stock of the Registrant.

WE HEREBY AMEND THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL WE SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933, AS AMENDED, OR UNTIL THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SECTION 8(a), MAY DETERMINE.

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WATERSIDE CAPITAL CORPORATION

CROSS REFERENCE SHEET

(Pursuant to Rule 481 showing the location in the Prospectus of the responses to the

Items of Parts I and II of Form N-5)

<u>Item No. and Caption</u>	<u>Prospectus Caption</u>
1. Organization and Business	Our Company General
2. Fundamental Policies of Registrant	See Part I
3. Policies with Respect to Security Investments	See Part I
4. Ownership of Voting and Convertible Securities of Other Issuers	Our Business Portfolio Companies
5. Special Tax Provisions Applicable to Registrant	Federal Income Tax Considerations
6. Pending Legal Proceedings	Our Business - Litigation
7. Summary of Earnings	Summary Financial Information
8. Persons in Control Relationships with Registrant	Principal Shareholders
9. Persons Owning Equity Securities of Registrant	Principal Shareholders
10. Number of Holders of Equity Securities of Registrant	Description of Capital Stock Common Stock
11. Directors and Executive Officers	Management Directors and Executive Officers
12. Members of Advisory Board of Registrant	Not Applicable
13. Remuneration of Directors, Officers and Members of Advisory Board	Compensation
14. Indemnification of Officers and Directors	Indemnification
15. Custodians of Portfolio Securities	Custodian
16. Investment advisers	Not Applicable
17. Business and Other Connections of Investment Advisers and Their Managements	Not Applicable
18. Interest of Affiliated Persons in Certain Transactions	Related Party Transactions
19. Capital Stock	Description of Capital Stock Common Stock and
	Description of Capital Stock Preferred Stock
20. Long-Term Debt	Description of Capital Stock Long Term Debt
21. Other Securities	Not Applicable
22. Financial Statements	See response to Item 28
23. Distribution Spread	Not Applicable
24. Plan of Distribution	Common Stock Rights Offering Distribution Agreements
25. Use of Proceeds to Registrant	Use of Proceeds
26. Sales Otherwise Than for Cash	Not Applicable
27. Information Required by Items of Part I	See above
28. Financial Statements Required by Item 22 of Part I	Financial Statements

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PART I

INFORMATION REQUIRED IN REGISTRATION STATEMENT

UNDER THE INVESTMENT COMPANY ACT OF 1940

(For Part I Items contained in the
Prospectus, see Cross Reference Sheet)

ITEM 2. FUNDAMENTAL POLICIES OF REGISTRANT.

Our policies relating to the activities described below are matters of fundamental policy in accordance with Sections 8(b) and 13(a) of the Investment Company Act of 1940, as amended (the "Investment Act"). We may not change these policies without the approval of the lesser of (i) shareholders collectively holding at least 67% of our voting securities present or represented at a shareholders' meeting at which the holders of more than 50% of such shares are present or represented or (ii) shareholders collectively holding more than 50% of our outstanding voting securities. Undefined capitalized terms have the meanings ascribed in the attached Prospectus.

(a) We are permitted to issue the maximum amount of SBA borrowed funds ("SBA Debentures") permitted by the Small Business Investment Act of 1958, as amended (the "SBA Act") and SBA regulations. As of December 13, 2005, we have issued \$21,400,000 of SBA Debentures and anticipate issuing more in the foreseeable future.

(b) We are permitted to borrow money only for the purpose of investments in, and making loans to, small business concerns. We are permitted, however, to finance the acquisition of capital assets used in our ordinary business operations.

(c) We are not permitted to engage in the business of underwriting the securities of other issuers. We anticipate that all or substantially all of our investments in small business concerns will be in securities that may not be sold to the public without registration under the Securities Act of 1933, as amended. With the exception of a single investment, all of our current equity investments in small business concerns are so restricted.

(d) We are prohibited from concentrating more than 30% of the value of our assets, determined at the time an investment is made, exclusive of U.S. government securities, in securities issued by companies primarily engaged in the same industry.

(e) We are prohibited from engaging in the business of purchasing or selling real estate. We may bring mortgage foreclosure actions and take title to and possession of property with respect to which we are the mortgagee in accordance with applicable mortgage foreclosure laws. Additionally, we may purchase office facilities, although, at present we lease our office facilities.

(f) We are not permitted to engage in the purchase or sale of commodities or commodity contracts.

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(g) We are permitted to make loans to small business concerns to the extent allowed by the SBA Act and SBA regulations.

ITEM 3. POLICIES WITH RESPECT TO SECURITY INVESTMENTS.

Our policies with respect to the following matters are not fundamental policies and may be changed, subject to the SBA Act and SBA regulations, by the Executive Committee of our Board of Directors without shareholder approval.

(a) We may make investments in equity and debt securities of small business concerns as approved by our Executive Committee. We do not have a strict policy regarding the percentage of our assets that may be invested in any specific type of security.

(b) We follow SBA regulations prohibiting an investment in any single small business concern and its affiliates exceeding 20% of our Regulatory Capital (defined as Private Capital less certain non-cash assets).

(c) As permitted by SBA regulations, we may purchase (i) up to 49% of the voting securities of a small business concern if the small business concern has fewer than 50 shareholders or (ii) up to 19% (and in certain situations up to 25%) of the voting securities of a small business concern if the small business concern has 50 or more shareholders.

(d) Except where necessary to protect an investment, we do not invest in companies for the purpose of exercising control of management and do not intend to do so in the future. SBA regulations prohibit small business investment companies from controlling a small business concern except where necessary to protect an investment.

(e) We do not invest in securities of other investment companies and do not intend to do so in the future.

(f) We intend to hold our portfolio debt securities for a minimum of five years as required by SBA regulations or until maturity. We anticipate retaining our equity investments from five to seven years.

(g) We have adopted a code of ethics under Rule 17j-1 of the Investment Company Act. This code permits our personnel subject to the code to invest in securities, including securities that are held by Waterside or securities that may be purchased or held by our company. Nonetheless, our code of ethics places significant restrictions upon these investments to avoid conflicts of interest and to ensure that our shareholders' interests are paramount. A copy of our code of ethics can be reviewed and copied at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Information relating to the operation of the SEC's Public Reference Room may be obtained by calling the SEC at (202) 942-8090. The code is also available on the SEC's website at www.sec.gov, and copies of the code may be obtained, upon the payment of a duplication fee, by electronic request at the following email address: publicinfo@sec.gov or by writing to the SEC's Public Reference Section at 100 F Street, N.E., Washington, D.C. 20549.

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THE INFORMATION IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. WE MAY NOT ISSUE THESE SECURITIES UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL OR ISSUE THESE SECURITIES AND IS NOT SOLICITING AN OFFER TO PURCHASE OR ACCEPT THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

PRELIMINARY PROSPECTUS

SUBJECT TO COMPLETION

December 13, 2005

1,456,675 Shares

Issuable Upon Exercise of Rights to Purchase Common Stock

WATERSIDE CAPITAL CORPORATION

Each of our shareholders as of [____, 2005] (the Record Date) shall receive, at no cost, one non-transferable right (each whole right, a Subscription Right) to purchase one share of our common stock, \$1.00 par value per share, for each share of our common stock such shareholder owns as of the Record Date (the Primary Right). We intend to offer shares of common stock to our shareholders for a price equal to the average closing price of our common stock over the twenty consecutive trading days ending on the Expiration Date. The offer to purchase common stock will expire at 5:00 p.m., Eastern time, on [____], 2005, unless we decide to extend it to some later date (the Expiration Date).

If you elect to purchase the maximum amount of our common stock that you are entitled to pursuant to your Primary Right, you will also be entitled to subscribe, subject to allotment, to purchase additional shares of our common stock, if any, that are not purchased by our other shareholders pursuant to their Primary Right as of the Expiration Date (the Over-Subscription Privilege). If you do not fully subscribe for your Primary Right, your ownership may be diluted. See Risk Factors Risks Related to this Offering If you do not fully exercise your Primary Right, you will experience dilution. As used herein, we collectively refer to the terms Subscription Right and Over-Subscription Privilege as the Rights.

The Rights are non-transferable; however, the common stock issuable upon the exercise of the Rights will be listed for trading on the NASDAQ Capital Market. Our common stock is currently traded on the NASDAQ Capital Market under the symbol WSCC.

Please read this prospectus carefully before investing and keep it for future reference. It contains important information that a prospective investor ought to know before investing in our business. All questions and inquiries relating to the Rights should be directed to us at Waterside Capital Corporation, 500 East Main Street, Suite 800, Norfolk, Virginia 23150, Attention: Gerald T. McDonald, Secretary, telephone: (757) 626-1111. We have filed additional information about our business with the Securities and Exchange Commission (www.sec.gov). Copies of our filings may be obtained upon request by writing to us.

An investment in the Fund involves risks. See Risk Factors beginning on page 8.

These securities have not been approved or disapproved by the Securities and Exchange Commission or any state securities commission nor has the Securities and Exchange Commission or any state securities commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

	<u>Estimated Subscription Price</u>	<u>Estimated Sales Load</u>	<u>Proceeds to the Company (1)</u>
Per Share	\$ 4.00		\$ 4.00
Total (2)	\$ 5,826,700		\$ 5,826,700

(1) Before deduction of offering expenses we will incur, which are estimated to be \$125,000.

(2) Assumes that all Subscription Rights are exercised.

The date of this prospectus is _____, 2005

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PROSPECTUS SUMMARY

*This summary highlights some of the information in this Prospectus. It may not contain all of the information that you may want to consider. You should read carefully the more detailed information set forth under **Risk Factors** and the other information included in this Prospectus. The terms **we**, **us**, **the Company** and **our** refer to Waterside Capital Corporation.*

The Company

We began business operations in July 1996 after receiving a Small Business Administration (**SBA**) license and closing our initial private placement of common stock. We made our first portfolio investment in October 1996 and, as of December 13, 2005, have approximately \$34.7 million in investments at fair value in 21 portfolio companies.

We are a non-diversified, closed-end investment company licensed by the SBA as a small business investment company (an **SBIC**) under the Small Business Investment Act of 1958, as amended (the **SBA Act**). We invest in equity and debt securities of small businesses to finance their growth, expansion and modernization. Our equity investments have generally been in the form of preferred stock bearing current-pay dividends. The weighted average dividend on our preferred stock investments is currently 11.95%. The weighted average annual interest rates on our loans is currently 12.39%. To date, we have made most of our investments in preferred stock because, as an SBIC, our dividend income is non-taxable. Our equity and debt financings are generally coupled with warrants to acquire common stock representing a minority interest in our portfolio companies. We seek to achieve current income from origination fees, preferred stock dividends and interest on loans, as well as long-term growth in the value of our net assets through the appreciation of our common stock positions in portfolio companies.

Rights Offering of Preference Common Stock

Each of our shareholders as of the Record Date shall receive, at no cost, one right (each, a **Subscription Right**) to purchase one share of common stock for each share of our common stock such shareholder owns as of the Record Date (the **Primary Right**). We intend to offer shares of common stock to these shareholders for a price (the **Subscription Price**) equal to the average closing price of our common stock over the twenty consecutive trading days ending on the Expiration Date. The offer to purchase common stock will expire at 5:00 p.m., New York City time, on [_____], 2005, unless we decide to extend it to some later date (the **Expiration Date**).

If you elect to purchase the maximum amount of our common stock that you are entitled to purchase pursuant to your **Primary Right**, you will also be entitled to subscribe, subject to allotment, to purchase additional shares of our common stock, if any, that are not purchased by our other shareholders pursuant to their **Primary Right** as of the Expiration Date (the **Over-Subscription Privilege**). See **Common Stock Rights Offering Over-Subscription Privilege**. If you do not fully subscribe for your **Primary Right**, your ownership is likely to be diluted. See **Risk Factors** **Risks Related to this Offering**. If you do not fully exercise your **Primary Right**,

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you will experience dilution. The Subscription Rights and the Over-Subscription Privilege shall be collectively referred to below as the Rights.

How to Subscribe

Deliver a completed Common Stock Purchase Form (enclosed) and payment to our offices at the address below so that it is received by the Expiration Date (we recommend using an insured courier); or

If you hold shares of our common stock through a broker, dealer, trustee or other nominee, then that nominee is called the record holder of your shares. We will ask your record holder to notify you of this offering. If you wish to elect to purchase the common stock, you will need to have the record holder act for you. To indicate your decision about your rights, you should complete and return to the record holder, with the proper payment, a Beneficial Owner Election Form. You should receive this form from the record holder with the other offering materials.

Important Dates to Remember

Record Date	_____	, 2005
Subscription Period	_____	, 2005 (unless we extend the offer)
Expiration Date / Deadline to Purchase	_____	, 2005 (unless we extend the offer)

The Offering

Common stock to be issued by us	1,456,675
Purpose of the Offering / Use of Proceeds	We expect to use the net proceeds of this offering to make additional equity and/or debt investments in new investment portfolio companies.
Subscription Rights	Each of our shareholders as of the Record Date shall receive, at no cost, one Subscription Right to purchase one share of our common stock for each share of our common stock such shareholder owns as of the Record Date (the Primary Right). We intend to offer shares of our common stock to these shareholders for a price (the Subscription Price) equal to the average closing price of our common stock over the twenty consecutive trading days ending on the Expiration Date.

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Over-Subscription Privilege	If you elect to purchase the maximum amount of our common stock that you are entitled to purchase pursuant to your Primary Right, you will also be entitled to subscribe, subject to allotment, to purchase additional shares of our common stock, if any, that are not purchased by our other shareholders pursuant to their Primary Right as of the Expiration Date (the Over-Subscription Privilege). See Common Stock Rights Offering Over-Subscription Privilege. If you do not fully subscribe for your Primary Right, your ownership is likely to be diluted. See Risk Factors Risks Related to this Offering If you do not fully exercise your Primary Right, you will experience dilution.
Expiration Date	5:00 p.m., Eastern Time, on _____, unless we decide to extend it to some later date.
Risk Factors	See Risk Factors beginning on page 8 and the other information included in this prospectus for a discussion of risks that you should carefully consider about us and this offering.
Non-Transferability of the Rights	Your Rights are non-transferable. If you do not exercise them, you give up any right to the underlying shares of our common stock.
Termination of the Offering	Our Board of Directors may decide to terminate this offering at any time, on or before the Expiration Date. If we terminate the offering, our only obligation to you will be to return any payment, without interest.
Distribution Agreements	We do not intend to engage a dealer manager for the offer. Our officers and directors may solicit the exercise of Rights by our shareholders. The offer is not contingent upon any number of Rights being exercised. We will pay all expenses incurred in connection with the offer.

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Listing	Our common stock is currently listed on the NASDAQ Capital Market. We have applied to list the additional shares of common stock issued in connection with this offering.
Material United States Federal Income Tax Consequences	The receipt and election to purchase common stock are intended to be non-taxable events. If you sell the shares of common stock after purchasing them, you will recognize gain or loss. You should obtain specific tax advice from your personal tax advisor. See Federal Income Tax Considerations.
Available Information	We are subject to the reporting requirements of the Investment Company Act of 1940, as amended (the Investment Company Act) and are required to file reports, proxy statements and other information with the SEC. This information will be available at the SEC's public reference room at 100 F St. NE, Washington, D.C. 20549. You may call the SEC at 1-800-SEC-0330 for information on the operation of the public reference room. Our SEC filings are also available to the public on the SEC's Internet website at http://www.sec.gov .
Dilution	As a result of the terms of this offer, shareholders who do not fully exercise their Primary Rights will own, upon completion of this offer, a smaller proportional interest in us than they owned prior to the offer. In addition, because the Subscription Price may be less than net asset value per share, the offer may result in an immediate dilution of our net asset value per share. See Risk Factors Risks Related to this Offering If you do not fully exercise your Primary Right, you will experience dilution.

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	Year Ended June 30,					Three Months Ended September 30,	
	2001	2002	2003	2004	2005	2004	2005
Summary of Earnings Information:							
Operating Income:							
Dividends	\$ 2,865,832	\$ 2,007,981	\$ 1,444,822	\$ 1,059,292	\$ 767,035	\$ 40,187	\$ 121,000
Interest on debt securities	1,008,202	1,220,768	1,353,940	1,412,148	1,470,747	519,076	356,008
Interest on notes receivable		12,723	36,596	166,052	311,244	75,713	78,319
Interest on cash equivalents	17,642	22,989	41,067	16,575	29,851	4,699	7,321
Fee and other income	354,827	462,522	316,321	357,120	123,054	10,116	8,877
Total operating income	4,246,503	3,726,983	3,192,746	3,011,187	2,701,931	649,791	571,525
Operating Expenses :							
Interest expense	1,913,544	2,019,865	2,025,651	1,896,734	1,806,302	469,137	427,700
Other	1,668,727	1,577,290	1,331,368	1,385,099	1,315,039	325,714	245,493
Total operating expenses	3,582,271	3,597,155	3,357,019	3,281,833	3,121,341	794,851	673,193
Recovery related to investee litigation, net			615,018				
Net operating income (loss) before income taxes	664,232	129,828	450,745	(270,646)	(419,410)	(145,060)	(101,668)
Income tax expense (benefit)	(675,000)						
Net operating income (loss)	1,339,232	129,828	450,745	(270,646)	(419,410)	(145,060)	(101,668)
Realized gain (loss) on investments, net of income taxes (1)	73,372	(3,213,047)	(6,896,966)	2,642,556	499,752	119,956	400,000
Change in unrealized appreciation (depreciation) on investments, net of income taxes (2)	(6,247,984)	(237,934)	10,585,917	(349,930)	1,400,795	9,127	(111,800)
Net increase (decrease) in stockholders' equity resulting from operations	\$ (4,835,380)	\$ (3,321,153)	\$ 4,139,696	\$ 2,021,980	\$ 1,481,137	\$ (15,977)	\$ 186,532
Net operating income (loss) per share - basic and diluted	\$ 0.85	\$ 0.08	\$ 0.29	\$ (0.18)	\$ (0.29)	\$ (0.10)	\$ (0.07)
Net increase (decrease) in stockholders' equity resulting from operations per share - basic and diluted	\$ (3.06)	\$ (2.11)	\$ 2.66	\$ 1.34	\$ 1.02	\$ (0.01)	\$ 0.13
Weighted average number of shares outstanding	1,581,430	1,576,306	1,554,646	1,505,493	1,456,675	1,456,675	1,456,675

At June 30,

At September 30,

2001 2002 2003 2004 2005 2005
