

CAPITAL GOLD CORP
Form 8-K
October 07, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 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 1, 2010

CAPITAL GOLD CORPORATION
(Exact name of registrant as specified in Charter)

Delaware (State of other Jurisdiction of incorporation)	0-13078 (Commission file no.)	13-3180530 (IRS employer identification no.)
---	----------------------------------	--

76 Beaver Street, 14th Floor New York, New York (Address of principal executive offices)	10005 (Zip Code)
--	---------------------

Registrant's telephone number, including area code: (212) 344-2785

N/A

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

Additional Information and Where to Find It; Cautionary Note Regarding Forward Looking Statements; Participants in the Solicitation

CAPITAL GOLD COPROPORATION (“CAPITAL GOLD”) AND GAMMON GOLD INC. (“GAMMON”) CLAIM THE PROTECTION OF THE SAFE HARBOR FOR “FORWARD-LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. FORWARD-LOOKING STATEMENTS ARE STATEMENTS THAT ARE NOT HISTORICAL FACTS. SUCH FORWARD-LOOKING STATEMENTS, BASED UPON THE CURRENT BELIEFS AND EXPECTATIONS OF MANAGEMENT OF CAPITAL GOLD AND GAMMON REGARDING, AMONG OTHER THINGS, THE PROPOSED BUSINESS COMBINATION OF CAPITAL GOLD AND GAMMON DISCUSSED HEREIN AND IN THE EXHIBITS HERETO. THE BUSINESS OF CAPITAL GOLD AND THE BUSINESS OF GAMMON AND ITS SUBSIDIARIES, ARE SUBJECT TO SIGNIFICANT RISKS AND UNCERTAINTIES, WHICH COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY OR SUBSTANTIALLY FROM THOSE INDICATED OR IMPLIED IN THE FORWARD-LOOKING STATEMENTS. THE FOLLOWING FACTORS, AMONG OTHERS, COULD CAUSE ACTUAL RESULTS TO DIFFER FROM THOSE SET FORTH IN THE FORWARD-LOOKING STATEMENTS: (1) CAPITAL GOLD AND GAMMON’S ABILITY TO COMPLETE THE TRANSACTION; AND (2) OTHER RISKS REFERENCED FROM TIME TO TIME IN CAPITAL GOLD’S AND GAMMON’S FILINGS WITH THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) AND THOSE FACTORS LISTED IN THE TO BE FILED PRELIMINARY PROXY STATEMENT/PROSPECTUS UNDER “RISK FACTORS.” THE INFORMATION SET FORTH HEREIN SHOULD BE READ IN LIGHT OF SUCH RISKS. NEITHER CAPITAL GOLD NOR GAMMON ASSUMES ANY OBLIGATION TO UPDATE THE INFORMATION CONTAINED IN THIS REPORT, EXCEPT AS REQUIRED BY LAW.

IN CONNECTION WITH THE PROPOSED TRANSACTION, CAPITAL GOLD AND GAMMON WILL FILE RELEVANT MATERIALS WITH THE SEC, INCLUDING A REGISTRATION STATEMENT THAT WILL INCLUDE A PROXY STATEMENT OF CAPITAL GOLD AND A PROSPECTUS OF GAMMON (COLLECTIVELY, THE “REGISTRATION STATEMENT”). CAPITAL GOLD WILL MAIL THE FINAL REGISTRATION STATEMENT TO ITS STOCKHOLDERS. INVESTORS AND STOCKHOLDERS OF CAPITAL GOLD ARE URGED TO READ THESE DOCUMENTS IF AND WHEN THEY BECOME AVAILABLE AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THOSE DOCUMENTS, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT CAPITAL GOLD, GAMMON AND THE PROPOSED TRANSACTION.

INVESTORS AND STOCKHOLDERS MAY ALSO OBTAIN A COPY OF THESE DOCUMENTS (AND ANY OTHER DOCUMENTS FILED BY CAPITAL GOLD AND GAMMON WITH THE SEC), BY DIRECTING A REQUEST TO CAPITAL GOLD IN WRITING AT, 76 BEAVER STREET, 14TH FLOOR, NEW YORK, NEW YORK, 10005 OR BY TELEPHONE AT (212) 344-2785. FREE COPIES OF THESE DOCUMENTS CAN ALSO BE OBTAINED, WHEN AVAILABLE, AT THE SEC’S INTERNET SITE (<http://www.sec.gov>).

COMMENCING SHORTLY AFTER THE FILING OF THIS CURRENT REPORT ON FORM 8-K AND THE REGISTRATION STATEMENT, CAPITAL GOLD INTENDS TO HOLD PRESENTATIONS FOR CERTAIN OF ITS SECURITYHOLDERS, AS WELL AS OTHER PERSONS WHO MIGHT BE INTERESTED IN PURCHASING CAPITAL GOLD’S SECURITIES, REGARDING ITS PROPOSED BUSINESS COMBINATION, AS DESCRIBED IN THIS CURRENT REPORT AND THE REGISTRATION STATEMENT.

CAPITAL GOLD, GAMMON AND THEIR RESPECTIVE DIRECTORS AND EXECUTIVE OFFICERS MAY BE DEEMED TO BE PARTICIPANTS IN THE SOLICITATION OF PROXIES FOR THE SPECIAL MEETING OF CAPITAL GOLD'S STOCKHOLDERS TO BE HELD TO APPROVE THE PROPOSED TRANSACTION. INFORMATION REGARDING THE PERSONS WHO MAY, UNDER THE RULES OF THE SEC, BE CONSIDERED PARTICIPANTS IN THE SOLICITATION OF STOCKHOLDERS IN CONNECTION WITH THE PROPOSED TRANSACTION WILL BE SET FORTH IN THE PROXY STATEMENT/PROSPECTUS WHEN IT IS FILED WITH THE SEC. INFORMATION ABOUT CAPITAL GOLD'S DIRECTORS AND EXECUTIVE OFFICERS IS AVAILABLE IN ITS ANNUAL REPORT. ADDITIONAL INFORMATION REGARDING THE INTERESTS OF POTENTIAL PARTICIPANTS IS INCLUDED IN THE PRELIMINARY PROXY STATEMENT/PROSPECTUS.

THE INFORMATION ON EITHER CAPITAL GOLD OR GAMMON'S WEBSITE IS NOT, AND SHALL NOT BE DEEMED TO BE, A PART OF THIS CURRENT REPORT OR INCORPORATED IN FILINGS CAPITAL GOLD OR GAMMON MAKE WITH THE SEC.

THIS COMMUNICATION SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY ANY SECURITIES, NOR SHALL THERE BE ANY SALE OF SECURITIES IN ANY JURISDICTIONS IN WHICH SUCH OFFER, SOLICITATION OR SALE WOULD BE UNLAWFUL PRIOR TO REGISTRATION OR QUALIFICATION UNDER THE SECURITIES LAWS OF ANY SUCH JURISDICTION. NO OFFERING OF SECURITIES SHALL BE MADE EXCEPT BY MEANS OF A PROSPECTUS MEETING THE REQUIREMENTS OF SECTION 10 OF THE SECURITIES ACT OF 1933, AS AMENDED.

Item 1.01 Entry into a Material Definitive Agreement.

On October 1, 2010, Capital Gold Corporation, a Delaware corporation (the "Company") entered into an Agreement and Plan of Merger (the "Merger Agreement") with Gammon Gold Inc., a corporation incorporated under Part 1A of the Companies Act (Quebec) ("Gammon"), and Capital Gold AcquireCo, Inc., a Delaware corporation and a direct, wholly owned subsidiary of Gammon ("MergerCo").

Pursuant to the terms of the Merger Agreement, the Company and Gammon intend to effect a merger (the "Merger") of the Company with and into MergerCo, with the Company continuing as the surviving entity following the Merger (the "Surviving Company"). By virtue of the Merger, the separate existence of each of the Company and MergerCo shall thereupon cease, and the Surviving Company shall continue its corporate existence under the laws of the State of Delaware as a wholly-owned subsidiary of Gammon. Pursuant to the terms of the Merger Agreement, by virtue of the Merger and without any action on the part of the Company or the holders of any securities of the Company or Gammon, each share of the common stock, par value \$.0001, of the Company ("Company Common Stock") (including all Company Restricted Stock (as defined in the Merger Agreement)) issued and outstanding immediately prior to the Effective Time (as defined in the Merger Agreement), except for shares of Company Common Stock owned by Gammon, MergerCo or the Company, shall be converted into the right to receive (i) 0.5209 (the "Exchange Ratio") validly issued, fully paid and nonassessable common shares, no par value, of Gammon ("Gammon Common Shares"), and (ii) US\$0.79 in cash.

The board of directors for each of the Company and Gammon have unanimously approved the Merger Agreement and the Company's board of directors recommends that its stockholders vote to approve the Merger, the Merger Agreement and each other proposal to be set forth in the definitive proxy statement/prospectus, at the special meeting of the Company's stockholders to be held.

If approved, the Merger is expected to be consummated promptly following the receipt by the Company of approval from its stockholders, and the satisfaction or waiver of other conditions described herein and the Merger Agreement.

The Merger Agreement is described in greater detail below. This description of the Merger Agreement is qualified in its entirety by reference to the full text of such agreement which is attached hereto as Exhibit 2.1 and incorporated by reference herein. You are urged to read the entire Merger Agreement and the other exhibits attached hereto.

The Merger Agreement has been included to provide investors and stockholders with information regarding its terms. It is not intended to provide any other factual information about the Company, Gammon or their respective subsidiaries and affiliates. The Merger Agreement contains representations and warranties of each of the Company, on the one hand, and Gammon and MergerCo, on the other hand, made solely for the benefit of the other. The assertions embodied in those representations and warranties are qualified by information in confidential disclosure schedules that the parties have exchanged in connection with signing the Merger Agreement. The disclosure schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Merger Agreement. Moreover, certain representations and warranties in the Merger Agreement were used for the purpose of allocating risk between the Company, on the one hand, and Gammon and MergerCo, on the other hand. Accordingly, you should not rely on the representations and warranties in the Merger Agreement as characterizations of the actual state of facts about the Company, Gammon or MergerCo.

Closing and Effective Time of the Merger

The Merger is expected to be consummated no later than the fifth Business Day (as defined in the Merger Agreement) after satisfaction or (to the extent permitted by applicable law) waiver of the conditions described below under the caption "Conditions to the Closing of the Merger," unless the Company and Gammon agree in writing to hold the closing at another time.

Consideration

Each share of Company Common Stock (including all Company Restricted Stock) issued and outstanding immediately prior to the Effective Time (except for shares of Company Common Stock owned by Gammon, MergerCo or the Company) shall be converted into the right to receive Gammon Common Shares in the agreed upon Exchange Ratio of 1 share of Company Common Stock for 0.5209 of a share of Gammon Common Shares, and (ii) US\$0.79 in cash (collectively, the "Merger Consideration").

Upon the exchange of Company Common Stock for Gammon Common Stock, all Company Common Stock shall, by virtue of the Merger and without any action on the part of the holders of Company Common Stock, be automatically cancelled and shall cease to exist, and each holder of Company Common Stock will cease to have any rights with respect thereto, except the right to receive the Merger Consideration, subject to the terms and conditions of the Merger Agreement.

Voting and Support Agreement

Each officer and director of the Company (each, a "Locked-up Stockholder") has entered into a voting and support agreement, dated as of September 30, 2010, with Gammon and MergerCo, in the form attached as Exhibit A to the Merger Agreement, pursuant to which each Locked-up Stockholder has agreed, among other things, to vote all of the Company Common Stock beneficially owned by him or her in favor of the Merger.

Non Solicitation and Superior Proposal Provisions

Among other covenants contained in the Merger Agreement, the Company agreed that it shall not, directly or indirectly: (i) solicit, approve, recommend or encourage any inquiry, announcement or consummation of any Takeover Proposal (as defined in the Merger Agreement) or take any similar actions (ii) participate in any way in any discussions regarding any Takeover Proposal, (iii) approve or recommend any agreement in principle (whether or not binding), or any merger or similar agreement intended or expected to lead to a Takeover Proposal, (iv) waive, terminate, modify or fail to enforce any confidentiality or standstill obligation or (v) propose publicly or resolve to agree to do any of the foregoing.

Further, the Company has agreed not to withdraw or withhold its support for the Merger and must publicly reaffirm the desirability of the Merger in response to any third-party offer to engage in a business combination with the Company.

Notwithstanding all of the foregoing, at any time prior to receipt of approval of the Merger by the Company's stockholders, the Company is permitted to respond to a bona fide unsolicited written Takeover Proposal that is, or is reasonably likely to lead to, a Superior Proposal (as defined in the Merger Agreement), provided that the Company first notifies Gammon of such Superior Proposal and enters into a confidentiality agreement with the person making such Takeover Proposal. Upon written notice from the Company, Gammon shall have five Business Days (as defined in the Merger Agreement) to make a counter proposal to any Superior Proposal or amendment thereof and the Company will negotiate in good faith with Gammon to permit Gammon to draft an acceptable counter proposal such that the competing proposal is no longer a Superior Proposal. If Gammon submits an acceptable counter proposal, the Company is obligated to (i) cease discussions with the person who made the formerly Superior Proposal and (ii) recommend Gammon's counter proposal to its stockholders.

Conditions to Closing of the Merger

The respective obligations of the parties to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions, each of which may only be waived with the mutual consent of the parties:

- (a) The Merger Agreement and the Merger shall have been approved by a majority of the outstanding Company Common Stock entitled to vote thereon (excluding, if required under Ontario Securities Commission and Autorité des marchés financiers joint rule MI 61-101, "Protection of Minority Shareholders in Special Transactions," votes cast by persons entitled to receive change of control payments in connection with the Merger).
- (b) If required by Law, the Merger Agreement and the Merger shall have been approved by the affirmative vote of a majority of the outstanding Gammon Common Stock entitled to vote thereon.
- (c) The Gammon's common stock shares to be issued to the holders of Company Common Stock and options shall have been authorized for listing on the New York Stock Exchange and the Toronto Stock Exchange.
- (d) Any applicable waiting period under the Hart Scott Rodino Act shall have expired or been earlier terminated and any other approvals set forth in Merger Agreement Sections 4.5 and 5.4 shall have been obtained (collectively, "Requisite Approvals").

Three months ended
December 31
Nine months ended
December 31
2006

Edgar Filing: CAPITAL GOLD CORP - Form 8-K

2006

2005

Net sales 18,871 16,123 55,702 50,235 Cost of sales -16,207 -13,169 -46,073 -40,549 Gross profit margin 2,664 2,954 9,629 9,686 Selling expenses 629 517 1,885 1,624 Salaries and related costs 1,459 1,505 4,252 4,248 Research and development expenses 107 109 343 381 Administration and general expenses 939 664 2,403 2,280 Amortization of Brand Name 50 50 150 150 Loss/Income from operations -520 109 596 1,003 Interest Income 70 74 193 160 Other income 70 (82)166 173 Interest Expenses -163 -150 -434 -370 Foreign exchange gains \ (Loss) -71 3 -172 -116 Income before income taxes -614 -46 349 850 Income tax expense -16 -30 -38 -35 Net (Loss) / income -630 -76 311 815 Earning per share Basic -0.113 -0.014 0.056 0.146 Diluted -0.109-0.0130.054 0.139 Weighted average shares 5,577,639 5,577,639 5,577,639 5,577,639 Adjusted weighted average shares 5,795,249 5,843,949 5,795,249 5,843,949

>

By:
/s/ Christopher Chipman Name: Christopher Chipman Title: Chief Financial Officer

Dated: October 7, 2010

9

y and Capital Resources

We have financed our growth and cash needs to date primarily from internally generated funds and bank debt. Our primary uses of cash have been to fund expansions and upgrades of our manufacturing facilities and to fund increases in inventory.

As of December 31, 2006 we had \$12,987,806 in cash and cash equivalents as compared to \$8,582,257 as of March 31, 2006. Working capital at December 31, 2006 was \$18,074,899 compared to \$16,847,370 at March 31, 2006. We believe that our cash flows from operations, our current cash balance and funds available under our working capital and credit facilities will be sufficient to meet our working capital needs and planned capital expenditures in the foreseeable future.

Stock Repurchase Program

On November 16, 2006, the Company's Board of Directors authorized a program for the Company to repurchase up to \$1,000,000 of its common stock. This repurchase program does not obligate the Company to acquire any specific number of shares or acquire shares over any specified period of time. Two thousand six hundred seventeen (2,617) shares were purchased under this program in the third quarter of fiscal 2007. The Company may from time to time repurchase shares of its Common Stock under this program. This authorization to repurchase shares increases the amount authorized for repurchase from \$500,000 to \$1,500,000. The Board authorized the previous repurchase program in August of 2001.

Section 404 Compliance

On December 15, 2006, the Securities and Exchange Commission (the SEC) advised that it was extending further the dates that were published on September 29, 2005, to postpone the compliance date for filing internal control reports by companies not designated as accelerated filers. Under this revised compliance schedule, the Company will be required to include an internal control report of management with the annual report on Form 20-F beginning with the fiscal year ending March 31, 2008 (unless otherwise extended by the SEC). Further, the Company will not be required to file the auditor's attestation report on internal control over financial reporting until it files its annual report for the fiscal year ending March 31, 2009 (unless otherwise extended by the SEC).

Submission of Matters to a Vote of Security Holders

The Annual Meeting of the Company's shareholders was held on November 16, 2006. The matters considered at the meeting were:

1. The election of Anthony So; Kim Wah Chung; Woo Ping Fok; John Stewart Jackson IV; and Henry F. Schlueter as members of the Company's Board of Directors;
2. The ratification of the selection of PricewaterhouseCoopers as the independent public accountants of the Company for the fiscal year ending March 31, 2007.

Each of the nominees was elected to the Board of Directors, and PricewaterhouseCoopers were ratified as the Company's independent public accountants. The votes cast at the annual meeting upon the matters considered were as follows:

Nominee	For	Withheld Authority to Vote
Anthony So	5,077,126	32,189
Kim Wah Chung	5,076,908	32,407
Woo-Ping Fok	5,076,908	32,407
J. Stewart Jackson, IV	5,077,126	32,189
Henry F. Schlueter	5,076,992	32,323

Votes on the resolution to ratify Pricewaterhouse Coopers as the Company's independent public accountants for the fiscal year ending March 31, 2007, were cast as follows: 5,095,820 votes were cast for and 5,780 votes were cast against, with 7,715 votes abstaining.

Exhibits List

99.1 Press Release dated February 16, 2007, announcing the Company's Third Quarter Financial Results

SIGNATURE

Pursuant to the requirements 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: March 13, 2007

BONSO ELECTRONICS INTERNATIONAL, INC.
(Registrant)

By: /s/ /s/ Anthony So
Anthony So, Chairman and Chief Executive Officer