

Market Announcement

7 December 2018

Capital Mining Limited (ASX: CMY) – Removal from Official List

Description

Capital Mining Limited ('CMY') has been removed from the Official List of ASX Limited ("ASX") effective from the close of trading on 7 December 2018 in accordance with Listing Rule 17.12.

The reasons for the removal will be apparent from the attached query letter from ASX to CMY dated 28 November 2018 identifying a number of potential Listing Rule breaches by CMY.

CMY failed to provide a response to the query letter by the deadline stipulated by ASX, in breach of Listing Rule 18.7.

Since sending the attached query letter, ASX has been advised by lawyers acting for CMY that Messrs Artem Fedula and Alexander Krasnikov have resigned as directors of CMY. It would also appear that ADP Capital Sdn Bhd has taken down its website.

Having regard to the matters raised in the query letter and the subsequent developments mentioned above, ASX has formed the view that it is appropriate to remove CMY from the Official List under Listing Rule 17.12.

Issued by

Elizabeth Harris

Principal Adviser, Listings Compliance (Perth)

28 November 2018

Mr Tim Flahvin
Partner
Thomson Geer
Level 25, 1 O'Connell St
SYDNEY NSW 2000

By email to: tflahvin@tglaw.com.au

Dear Mr Flahvin

Capital Mining Limited (the "Entity"): ASX query letter

ASX Limited ("ASX") refers to the following:

- A. The Entity's announcement titled "Board and Management Changes" lodged on the ASX Market Announcements Platform ("MAP") and released on 9 May 2018, which states that:
 - a) Shannon Davis was appointed as executive director of the Entity effective immediately;
 - b) Robert Crossman had resigned as non-executive chairman of the Entity; and
 - c) Anthony Dunlop had been appointed on an interim basis to the role of non-executive chairman of the Entity.
- B. The Entity's announcements titled "Resignation of Director" and "Confirmation of Voluntary Administrators Appointed" lodged on MAP and released on 16 May 2018 which confirm, respectively, that Mr Peter Torney had resigned as a director of the Entity and that voluntary administrators of the Entity had been appointed pursuant to s436A of the Corporations Act 2001 (Cth) ("Corporations Act").
- C. The Second Report to Creditors Under Insolvency Practice Rules (Corporations) 2016 s75-225 dated 13 June 2018 ("Second Creditors' Report") regarding the Entity prepared by Andrew Cummins & Peter Krejci of BRI Ferrier (NSW) Pty Ltd as Joint and Several Administrators ("Administrators"), which states the following on page 19-20 in relation to Chapmans (references to the "Company" in the following excerpts are references to the Entity):

"Chapmans Limited

Chapmans Limited ("Chapmans") is a related entity to the Company of which Mr Dykes and Mr Dunlop are also directors. According to a response dated 29 September 2017 provided by the Company to ASX, the entry into consulting agreements with Chapmans was approved by Mr Torney.

Loan Agreements

According to the Company's audited 2016 Annual Report and the draft 2017 Annual Report, the balance of loans advanced from the Company to Chapmans are listed as below:

	FY16	FY17
Loans to Chapmans	\$1,934,683	\$1,650,000

To date, cash repayments totalling \$750,000 have been received in the Company's NAB bank account.

From the books and records provided by ASIC, there is an undated loan agreement which shows the Company executed a loan agreement advancing an unspecified amount to Chapmans. The repayment date was set at 180 days after the date of the agreement bearing an interest rate of 8% per annum (or 16% per annum for overdue amounts). The loan agreement was executed by the Company's directors, Mr Dykes and Mr Torney.

Consultancy Fees

According to the Company's audited 2016 Annual Report and the draft 2017 Annual Report, consulting fees for services provided by Chapmans to the Company are listed as below:

	FY16	FY17
Chapmans' Consulting Fees	\$1,350,000	\$1,397,861

The above consulting fees were offset by loans provided by the Company to Chapmans.

According to the audited 2016 Annual Report, on 30 October 2015 the Company entered into a mandate with Chapmans for the provision of sales, marketing and capital markets initiatives. The mandate consisted of a monthly fee of \$150,000 (excl. GST) plus a 6% fee on any capital raisings. The agreement expired on 30 September 2016. For the financial year ending 30 June 2016, a total of \$1,350,000 had been charged by Chapmans to the Company.

According to the 2017 draft Annual Report, for the period 1 October 2016 to 31 March 2017 a monthly retainer fee of \$100,000 (excl. GST) plus a 6% fee on any capital raisings was charged to the Company. We have not been provided any mandates in regard to these terms. For the financial year ending 30 June 2017, \$750,000 of retainer fees and \$497,861 of capital raising fees had been charged by Chapmans.

We have been provided an undated Deed of Termination and Release executed by the Company for a Chapmans' mandate dated 1 April 2017. According to the 2017 draft Annual Report a termination fee of \$150,000 was paid to Chapmans."

ASX also notes that the Second Creditors' Report states that Shannon Davis resigned as a director of the Entity effective on 18 July 2018.

- D. The Supplementary Report to Creditors under Insolvency Practice Rules (Corporations) 2016 s75-225 dated 14 August 2018 ("Supplementary Creditor's Report") regarding the Entity prepared by the Administrators, which includes discussion of a Deed of Company Arrangement ("DOCA") proposal received by the Administrators from Mr Artem Fedula on 9 August 2018. It also states on page 7 that:

"We requested that the Director and Former Directors provide documents evidencing the services provided by them which gave rise to the various amounts received by them as directors and consulting fees. No such information has been forthcoming. We note that the last shareholder approval of directors remuneration occurred at the Annual General Meeting held on 9 November 2016 in respect of amounts paid in the final year ended 30 June 2016. Shareholders have not passed a resolution adopting a Remuneration Report dealing with remuneration paid from 1 July 2016 onward.

Obviously a number of investigation issues remain unresolved as the date of this report. If such matters are advanced prior to the next meeting of creditors we will provide creditors with a summary at the meeting. Of course, if a DOCA is accepted by creditors, a newly constituted Board of Directors and the regulatory bodies will be able to continue these investigations on shareholders' behalf."

- E. The Circular to Creditors dated 7 September 2018 ("Circular") signed by the Administrators, which confirms that at a Meeting of Creditors of the Entity held on 22 August 2018, creditors passed a resolution requiring the Entity to execute a DOCA. ASX understands the proponent of the approved DOCA was Artem Fedula. The Circular referred to the fact that upon effectuation of the DOCA:

"Control of the Company will revert to the Director, Anthony Dunlop. We are informed however that it is not intended the current or former directors will remain as directors going forward."

- F. The Entity's announcement titled "Execution of Deed of Company Arrangement" lodged on MAP and released on 7 September 2018 which confirms that the DOCA was executed and that control of the Entity was returned to the Entity's directors.
- G. The Entity's announcement titled "Restructure Continues with New Board" lodged on MAP and released on 17 September 2018 ("September Restructure Announcement") in which the Company advised that:
- a) with the execution of the DOCA on 7 September 2018, the control of the Company returned to the Directors;
 - b) as a number of the Board resigned at or around the date of appointment of the voluntary administrators, the remaining director (Anthony Dunlop), appointed Artem Fedula, Alexander Krasnikov and Christian Sese as non-executive directors; and
 - c) Anthony Dunlop resigned from the Company's board.

The September Restructure Announcement also included the following biographies for Artem Fedula and Alexander Krasnikov:

"Mr Artem Fedula holds a Bachelor degree in Computer Sciences from the Moscow Institute of Physics and Technology. He originates from Krasnoyarsk in Siberia, Russia and brings strong relationships from the resources and related industries to the Company. The region has more than 95% of Russian reserves of nickel and platinum group metals, more than 20% of gold, significant reserves of cobalt and other minerals as well as about 70% of Russian coal, which makes 20% of the world's coal."

Alexander Krasnikov has a Bachelor of Science (Hons) from the Asia Pacific University of Technology and Innovation. He is currently a freelance Russian-English translator and previously worked with the Russian Center of Science and Culture (Cultural Department, Embassy of Russian Federation). He brings significant experience, relationships and opportunities with Russian mining and other Central Asian resource companies seeking international expansion."

ASX notes that the Entity has made no announcements since 16 May 2018 under listing rule 3.16.1 regarding director resignations, other than the September Restructure Announcement regarding Anthony Dunlop's resignation as a director.

- H. The Company's website as at the date of this letter, which states that the current directors of the Entity are Shannon Davis, Artem Fedula, Alexander Krasnikov and Christian Sese. The inclusion of Shannon

Davis as a director would appear to be an error, given the comment in the Second Creditors' Report that Shannon Davis had resigned as a director of the Entity effective on 18 July 2018 and the constitution of the board stated in the September Restructure Announcement.

- I. The Entity's Corporate Governance Statement located on its website, which states that the Entity complies with Recommendation 1.2 of the ASX Corporate Governance Council's Principles of Good Corporate Governance and Recommendations. This Recommendation states that a listed entity should a) undertake appropriate checks before appointing a person, or putting forward to security holders a candidate for election, as a director; and b) provide security holders with all material information in its possession relevant to a decision on whether or not to elect or re-elect a director.
- J. The ADP Capital Sdn Bhd ("ADP") website (<http://adpcapital.org/>) ("ADP Website"), which states that Artem Fedula is ADP's Head of Operations and Alex Krasnikov is ADP's Project Manager. ASX notes that there was no reference to Mr Fedula or Mr Krasnikov's relationships with ADP Capital in the Entity's September Restructure Announcement.

ASX notes that if Messrs. Fedula and Krasnikov are based in Malaysia (as they appear to be from the information on the ADP Website) and Messrs. Dunlop and Davis have resigned, it appears to ASX that the Entity does not have the number of Australian resident directors required under s201A(2) of the Corporations Act.

- K. The "white paper" at this link (https://ico.exit-factory.com/docs/white-paper-eng_18-05_af79.pdf) titled "Exit Factory: Decentralized Economy of Trendsetting High Income Investments" that would appear to have been published by ADP. ASX cannot comment on the authenticity or currency of the white paper as it has not been able to find any further references to it on the World Wide Web. Nor does ASX have any information about whether ADP was pursuing an initial coin offering ("ICO") on the basis of the white paper. However, if it was, ASX would have some concerns about the bona fides of the ICO offer based on what appears in the white paper.

ASX does note, however, that Artem Fedula and Daleri Nasibi (the CEO of ADP) are named as two out of the three contacts on the final page of the white paper.

- L. The "Partners" section of the ADP website, in which ADP lists Chapmans Limited (ASX: CHP) ("Chapmans") as one of its partners.

Having regard to the above, ASX asks the Entity to respond separately to each of the following questions and requests for information.

- 1. Who are the current directors of the Entity and where do they reside?
- 2. Why has the Entity not lodged an Appendix 3Z in relation to the resignation of Peter Torney as a director on 16 May 2018, as required by listing rule 3.19A.3?
- 3. Why has the Entity not lodged an Appendix 3Z in relation to the resignation of Shannon Davis as a director on 18 July 2018, as required by listing rule 3.19A.3?
- 4. When did Anthony Dunlop resign as a director of the Entity and why has the Entity not lodged an Appendix 3Z in relation to his resignation, as required by listing rule 3.19A.3?
- 5. Please provide details of the background checks undertaken by the Entity before it appointed Artem Fedula, Alexander Krasnikov and Christian Sese ("New Directors") as new non-executive directors of the Entity.

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6. With reference to Artem Fedula's biography set out in the September Restructure Announcement (as quoted above):
 - a) please clarify how the fact that Adam Fedula was born in Siberia and that region has substantial mineral reserves has a bearing on his expertise to be a director of a mining company; and
 - b) please provide specific details and examples of the "strong relationships from the resources and related industries" that Artem Fedula claims.
 7. It appears from the Entity's ASX disclosure that the New Directors were appointed by Anthony Dunlop as sole director. In relation to this:
 - a) please explain the process by which the New Directors were appointed as new directors by the Entity;
 - b) please provide a copy of the Entity's board minute, resolution or any other relevant document which appoints the New Directors as directors of the Entity;
 - c) please provide a copy of signed and dated consents to appointment as directors from each of the New Directors;
 - d) please advise whether the Entity has received any legal advice on the validity of the appointment of the New Directors, given that it appears to ASX that the Entity's board was inquorate at the time these directors were appointed. If so, what is the substance of that advice?
 - e) please advise whether the Entity has received any legal advice on what action it should now take to validate the appointment of the New Directors, and more specifically, on whether the Entity should immediately convene a meeting of the Entity's shareholders to ratify their appointment before the New Directors undertake any other duties as directors? If so, what is the substance of that advice?
 8. Please clarify how and/or whether the Entity considers that its current board satisfies the requirements of s201A(2) of the Corporations Act with respect to the required number of Australian resident directors.
 9. To the knowledge of the Entity and its directors, was the relationship between Artem Fedula, ADP and Chapmans disclosed to the Administrators at any time before the DOCA proposed by Artem Fedula was executed?
 10. What consideration (if any) has the current board of the Entity given to pursuing legal action against Chapmans and any former directors of the Entity for recovery of the consulting fees paid to Chapmans, as suggested in the Supplementary Creditors' Report.
 11. What impact will the fact that the Entity's board is now controlled by persons employed by ADP, an organisation that claims a business partnership with Chapmans, have on the likelihood that the Entity will pursue legal action against Chapmans and former directors of the Entity for recovery of the consulting fees paid to Chapmans?

When and where to send your response

This request is made under, and in accordance with, listing rule 18.7. Your response in relation to the above queries is required as soon as reasonably possible and, in any event, by not later than 9.00am WST on Wednesday, 5 December 2018.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under listing rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent by e-mail to elizabeth.harris@asx.com.au and copied to ListingsCompliancePerth@asx.com.au. It should not be sent directly to the ASX Market Announcements Office. This will allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

Should you have any queries in relation to the above, please let me know.

Kind regards

[Sent electronically, without signature]

Elizabeth Harris
Principal Adviser, Listings Compliance (Perth)

Copy to: Australian Securities and Investments Commission