UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES J. HAYES, Individually and On Behalf of All Others Similarly Situated,	)	CIVIL ACTION NO. 08-CV-3653-BSJ (MHD) (ECF CASE)
Plaintiff,	)	
vs.	)	AMENDED CLASS ACTION COMPLAINT
HARMONY GOLD MINING COMPANY LIMITED,	)	JURY TRIAL DEMANDED
Defendant.	)	

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Lead Plaintiff, James J. Hayes ("Plaintiff" or "Lead Plaintiff"), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon the investigation conducted by Plaintiff's counsel. This investigation included a review and analysis of filings made with the U.S. Securities and Exchange Commission (the "SEC") by Harmony Gold Mining Company Limited ("Harmony" or the "Company"), as well as securities analyst reports, press releases, media reports, and other publications issued by and through the Company, published interviews and interviews with numerous former employees, independent contractors and information technology consultants of Harmony. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

I. NATURE OF THE ACTION AND SUMMARY OF ALLEGATIONS

1. This is a class action brought on behalf of all persons and entities who purchased or otherwise acquired American Depository Receipts ("ADRs" or "shares") and call options of Harmony and/or who sold put options (collectively, the "securities") of Harmony from April 25, 2007 through August 7, 2007, inclusive (the "Class Period"), who have incurred damages as a result of Defendant's conduct, seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Harmony's operations have grown significantly since 1995, when through a series of acquisitions, the Company expanded from a single lease-bound mine operation into a self-described "independent world-class gold producer." As of June 30, 2007, the Company reported that it had total proven and probable reserves of approximately 53.67 million ounces of gold, and Harmony emphasized that the Company was benefitting from a rising gold price environment.

During the Class Period, the Company reported its financial and operational results in divisions and segments of groups by country of location. Mines in the Company's South African operations division included the Tshepong, Bambanani and Joel mines. Mines among the Company's Australian operations division included the Mt. Magnet and South Kal mines.

3. On April 25, 2007, the first day of the Class Period, Harmony reported its Third Quarter 2007 financial and operational results for the quarter ended March 31, 2007. The Company reported its results and earnings using South African Rand, which is the lawful currency of South Africa. For Third Quarter 2007, Harmony reported that net profit had ***increased*** to R247 million compared with a Third Quarter 2006 ***loss*** of R174 million,[1] and that total operating profit was ***up 184%*** compared with Third Quarter 2006. The Company also reported that its "headline earnings" (i.e., net profit adjusted for non-operating items) had "***improved by 31.8%*** to 58 cents [South African] per share compared with 44 cents [South African] per share for the December 2006 quarter and a 48 cents [South African] per share ***loss*** for the March 2006 quarter." Harmony further reported that the corresponding US$ "headline earnings" had "***improved by 33.3%*** from 6 cents per share to 8 cents per share during the March 2007 quarter."

4. The main drivers of the Company's purported dramatically increased earnings and profits for Third Quarter 2007 were "a higher Rand gold price" and decreased cash operating costs for the quarter, which Harmony attributed to "***good cost control***." Specifically, the

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1 As designated herein, "R274 million" and "R174 million" mean 274 and 174 million South African Rand, respectively. For reference, using the currency exchange rate for Rand to U.S. Dollars that was published by the Company on March 31, 2007 of 7.24 Rand per U.S. Dollar, Harmony reported a net profit in Third Quarter 2007 of $34.1 million as compared to a net loss of ($24 million) for Third Quarter 2006.

Company reported a 2.1% cost reduction for South African underground operations and a marginal improvement to total cash operating costs.

5. Immediately following the release of Harmony's quarterly financial and operational results on April 25, 2007, the Company held numerous earnings conference calls with investors and financial analysts. In addition to reaffirming the Company's financial and operational results, Harmony's Chief Executive Officer ("CEO"), Bernard Swanepoel, stated that "the cost reduction of [R]80-odd million in South Africa is really very pleasing." The CEO also stated that "the cost per tonne number really just indicates that, although we had slightly lower tonnages, ***we still managed to bring cost per tonne down*** as well." Harmony's CEO further detailed the Company's financial results and metrics for the quarter (in large part achieved and attributed to the decreased costs that the Company reported for the quarter) and provided guidance stating that the Company's operating margin was "beginning to look healthier in the low 30s [%] and cash earnings 218 [South African] cents per share, so in US dollar terms $0.30 per share." Highlighting the significance of these financial results, the Company's CEO further stated that Harmony's reported results were "***very pleasing results for what is historically our worst quarter***."

6. Additionally, during the earnings conference calls, Company representatives downplayed the effect that numerous "production incidents" had on the Company's financial and operational results for the quarter, and as projected going forward. Harmony failed to disclose the actual adverse and significant cost effect that production incidents, including underground fires and the redesign and reengineering at certain mines, had on the Company's financial results for the quarter, and would have in subsequent quarters.

7. Following Harmony's press release announcing its quarterly financial results, on May 2, 2007, the Company filed with the SEC its quarterly report on Form 6-K for Third Quarter 2007. In addition to reaffirming the financial results and operational measures previously reported to investors, Harmony stated that its "March quarter was marked by a steady operational performance with ***sound cost control***." Additionally, with specific reference to its South African underground operations, Harmony reported that "***cost was well contained*** throughout the Group." Further, with regard to the Company's operating costs, Harmony reported in the Form 6-K that the Company's quarterly "total cash operating costs were marginally down at R103 608/kg from R104 132/kg previously,"[2] and again reported that the South African "underground operations showed strong cost containment with a 2.1% cost reduction" for the quarter.

8. In addition to reporting its financial results in South African Rand, Harmony's quarterly report on Form 6-K for Third Quarter 2007 also provided quarterly financial results converted to U.S. dollars. For the quarter, Harmony reported a net profit of $34.1 million and earnings per share ("EPS") of $0.09. These results were remarkable compared to Third Quarter 2006, for which the Company reported a net loss of ($27 million) and a per share loss of ($0.07).

9. In the weeks following the Company's release of its Third Quarter 2007 earnings report, securities analysts praised Harmony as a result of its financial position, stating for example that "Harmony is in a financial sweet spot, certainly the best position we've ever seen." Another analyst upgraded the recommendation on Harmony's securities, commenting that Harmony had "a surprisingly good cost performance, despite lower tonnages" and that "unit

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[2] Harmony provides periodic reports of its operating costs as measured in South African Rand per kilogram (R/kg). The Company reported that its operating costs for Third Quarter 2007 were R103,608/kg, which is equivalent to $445/oz, according to the Company's earnings release. In a year-over-year comparison, Harmony reported that its operating costs in Third Quarter 2006 were $470/oz. As a result, Harmony reported 5% lower operating costs in Third Quarter 2007 against the comparable quarter.

costs [Rand/tonne] fell 2% in the quarter" – exclaiming: "We have no idea quite how the company managed to achieve this!"

10. Unbeknownst to analysts, shareholders and the investing public was that the foregoing statements were utterly false. Months prior to the start of the Class Period, Harmony had implemented a new accounting software system that ***failed to capture and report R250 million [$34.5 million] of actual operating costs and other costs and expenses*** incurred by Harmony during its Third Quarter 2007. The Company's executives, including its CEO and Financial Director, Nomfundo Qangule (the "Finance Director"), knew or recklessly disregarded this and other facts in reporting the Company's Third Quarter 2007 financial results. Harmony's Class Period statements are thus actionably false and misleading under the Exchange Act.

11. The public learned of Defendant's fraud and its impact on August 6, 2007. On that day, the Company disclosed that it expected to report quarterly financial results for Fourth Quarter 2007 (ended June 30, 2007) that would "differ significantly from those of the three previous quarters as well as from the analysts' consensus." Specifically, for Fourth Quarter 2007 the Company stated that it expected to announce "a headline loss per share of between 130 and 160 cents [South African] per share for the June 2007 quarter, compared with the March 2007 quarter headline profit of 58 cents [South African] per share," and a dramatically lower profit per share for the full fiscal year 2007. The Company also stated that it was postponing the actual reporting of its quarterly results for the Fourth Quarter and fiscal year 2007 until later in August 2007 due to "the need to have externally audited numbers available." The Company attributed the shocking quarterly variance "to a combination of lower production and an increase in costs," and noted that Harmony's gold production was expected to be down by between ***8% and 12%*** mainly due to the "previously disclosed, production incidents at Bambanani and Joel."

Additionally, Harmony disclosed that "***during the last six months, the company's cost base increased by between 8% and 12%*** on the previous six months." This combination of lower production and higher costs resulted in a cash cost per kilogram ***increase*** for Harmony of between ***35% and 45%*** from Third Quarter 2007, and a quarterly cash operating cost increase for Harmony of between ***25% and 28%*** from Third Quarter 2007.

12. The Company admitted that its financial reporting for Third Quarter 2007 was false because of the failure of its newly-implemented Enterprise Resource Planning ("ERP") accounting system. As it was later revealed, the CEO and Finance Director (and other executives at Harmony in charge of the new computer software system integration) knew or recklessly: (i) disregarded material flaws and known errors in the ERP system's operation; (ii) failed to implement any monitoring or mitigating controls (such as manual procedures to prevent and detect configuration deficiencies and financial reporting errors created by the Company's transition to the new system); (iii) failed to properly test the new ERP system for correctness against the Company's tried and true "Legacy" system, which it had relied upon for accurately reporting its financial numbers for years; and (iv) concealed this information while making materially false and misleading statements concerning the Company's financial results and cost control to the public.

13. Not surprisingly, on August 6, 2007, the same day the Company announced the R250 million cost disaster, it announced the resignation of its CEO "with immediate effect." Barely two weeks later, on August 22, 2007, the Company also announced the resignation of its Finance Director.

14. Following Harmony's earnings warning and guidance on August 6, 2007, numerous analysts slammed the Company and its management. For example, one analyst report

entitled “Harmony Gold Mining Co Ltd Neutral; CEO Bernard Swanepoel resigns suddenly – costs spiral, production slumps. Trouble. – ALERT” stated that the Company’s revelations “indicate a loss of management control.” Foreboding, the analyst report also stated that Harmony would likely be “forced to reevaluate its business plan and structure in light of its predicament. The apparent stresses may lead to further management departures.”

15. As a result of the Company’s disclosures, Harmony’s share price plummeted, on extremely heavy trading, to close on August 6, 2007 at $11.02 per share, or over 18% below the previous day’s closing price of $13.47 per share. On August 7, 2007, as the market continued to digest the Company’s disastrous disclosures, the price of the Company’s shares continued to fall, dropping by an additional $1.57 per share, or over 14 percent, to close at $9.45 per share. This represented a two-day decline in the Company’s shares of $4.02 per share, or 29.8 percent, and a cumulative decline of $7.25 per share, or over 43.4 percent, from the value of the Company’s shares at their Class Period high of $16.58 on April 25, 2007.

16. Subsequently, the fallout from Defendant’s fraud continued, and more details were released by the Company. On August 21, 2007, Deutsche Securities issued an analyst report on Harmony after meeting with Graham Biggs, Harmony’s interim CEO. The analyst report stated that “Harmony is still struggling with the accounting system. We expect it will take a further 3-4 months to rectify this issue.” The report also stated that “costs remain the biggest issue,” and that the Company’s “cost estimates remain vague, given the continued problems in the group’s accounting system.”

17. On August 27, 2007, Harmony reported its “externally audited” Fourth Quarter 2007 financial and operational results. For the quarter, which was significantly impacted by having to account for R250 million [$34.5 million] in costs that were not reported in Third

Quarter 2007 financial results, Harmony reported a ***loss*** of "133 [South African] cents per share … for the June 2007 quarter compared to a headline ***profit*** of 58 [South African] cents per share in the March 2007 quarter." Additionally, the Company's Fourth Quarter 2007 ***net loss was R653 million*** compared to a ***net profit of R247 million*** reported in Third Quarter 2007. The $34.5 million in costs that the Company failed to account for in its Third Quarter 2007 results was the ***only*** reason that Harmony reported a net profit for Third Quarter 2007. Had the Company accurately reported the $34.5 million in costs for the quarter, the Company ***would have reported a net loss of ($414,000)*** for Third Quarter 2007, against the $34.1 million in net profit that it falsely reported for the quarter.

18. Further, the Company stated that continued production incidents and "the inaccurate cost allocation between the March and June quarters from the implementation of the accounting software resulted in a ***48.8% increase*** cash operating costs" for the quarter, and an ***increase of 26.8%*** higher costs for the year. In an attempt to combat these substantially increased costs incurred ***over the last six months*** (including the inaccurately reported Third Quarter 2007 financial results and the compensatory Fourth Quarter 2007 financial results), the Company stated that "***the last six months' increasing costs*** have been a major concern for management and cost control is already being actively addressed at all levels of the operations," and that "our back to basics approach and focus on disciplined mining should have the management and workforce concentrate on reversing the direction of ***the downward trend of our production and the upward trend in our cost graphs.***"

19. Additionally, regarding the Company's accounting system failure, the Company acknowledged that an internal review of its new accounting system was "underway" and that

implementation of the new system from the old accounting system, which was an accumulation of numerous acquisitions, would take approximately another six months to "stabilize."

20. Shockingly, Harmony admitted in conference calls with analysts and investors on August 27, 2007, that it had aggressively implemented the new accounting system beginning in late 2006 and took the system ***"live and standalone" in January 2007, without adequate employee training*** to operate the system.

21. The Company's mea culpa continued when, on December 7, 2007, it filed its Annual Report for fiscal 2007 (ended June 30, 2007) with the SEC on Form 20-F. Therein, the Company ***admitted that it had identified numerous "material weaknesses"*** in its internal controls over financial reporting, including "a breakdown in internal controls over financial reporting related in part to the implementation of a new Enterprise Resource Planning (ERP) system." Among other material weaknesses in its reporting and controls, Harmony reported that basic functions such as "month-end controls relating to accounts payable, cash and bank deposits as well as inventory could not be performed during the fiscal year" due to difficulties encountered with the implementation of the ERP system. The Company reported that these material weaknesses had "led to material adjustments being required in our financial statements."

22. With regard to the Company's admitted ineffective disclosure controls and procedures, Harmony's Form 20-F further detailed the extent of the ***known material weaknesses at the time the ERP system was taken "live" in January 2007***. Most significantly, the Company reported that it had "***detected in the system at the time of going live***" configuration deficiencies that caused reports generated by the system to be "***incorrect and unreliable as certain elements within working costs were posted to suspense accounts*** on the balance sheet with the effect of understating the costs recorded in the business unit." Additionally, Harmony ***admitted*** that, at

the time the new ERP system was taken "live" in January 2007, the Company had detected system errors that: i) precluded standard bank reconciliations from being timely performed; ii) caused duplicated payments to suppliers; and iii) resulted in "inventory items being recorded at the incorrect units of measure as well as unit prices."

23. Thus, and as further detailed below, throughout the Class Period, Harmony and its management knew and/or recklessly disregarded that the Company had materially misstated its financial results in Third Quarter 2007, and deliberately and recklessly ignored suspense accounts in the new ERP system that reflected more than $34.5 million in costs and other expenses that were not reported in the Company's quarterly financial results.[3]

24. As a result of Defendant's fraud, the price of Harmony's ADRs and call options was artificially inflated, and the price of Harmony's put options was artificially deflated, during the Class Period. This action seeks to recover the damages suffered by members of the Class when the true state of the Company's finances was revealed.

II. JURISDICTION AND VENUE

25. The claims asserted herein arise under and pursuant to Sections 10(b) of the Exchange Act (15 U.S.C. §§ 78(j)(b)), and Rule 10b-5 promulgated there-under (17 C.F.R. § 240.10b-5). The claims arising under Section 10(b) and Rule 10b-5 are based on fraud on the market.

26. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331(b).

[3] A suspense account is a "temporary account (i.e., not included in the financial statements) for recording part of a transaction, such as those involving receipts or disbursements, prior to final analysis or identification of that transaction." Barron's Dictionary of Accounting Terms 445 (4th ed. 2005).

27. Pursuant to the "effects test" of extraterritorial jurisdiction, this Court may properly exercise subject matter jurisdiction over the claims of all investors who purchased or acquired Harmony securities traded on U.S. Markets.

28. Venue is proper in this Judicial District pursuant to § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Harmony's ADRs actively trade on the New York Stock Exchange ("NYSE") in this Judicial District and are dual listed on the NASDAQ National Market.

29. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange. Defendant's materially false and misleading statements during the Class Period were disseminated into the United States and internationally through the means and instrumentalities of interstate commerce, including but not limited to the mails, interstate telephone communications and the facilities of the national securities markets.

III. PARTIES

Plaintiff

30. Lead Plaintiff, James J. Hayes, as set forth in his certification previously filed with the Court and incorporated by reference herein, purchased Harmony's ADRs at artificially inflated prices, and sold put options at artificially deflated prices, during the Class Period and has suffered damages as a result of the wrongful acts of Defendant and its executive officers and employees as alleged herein.

Defendant

31. Harmony is a gold producer that operates 22 individual mines and projects across the world. The Company is incorporated in the Republic of South Africa and maintains its

principal executive offices at Randfontein Office Park, CNR Ward Avenue and Main Reef Road, Randfontein, South Africa. Harmony's ADRs are dual listed on the NYSE and NASDAQ. Harmony's shares are registered with the SEC pursuant to Section 12(g) of the Exchange Act, 15 U.S.C. § 78l, and the Company is required to file periodic reports on Form 6-K and Annual Reports on Form 20-F with the SEC.

Relevant Non-defendant Individuals

32. Zacharias Bernardus Swanepoel, also known as Bernard Swanepoel (defined herein as the "CEO") was, at relevant times, Harmony's Chief Executive Officer, a position he held since May 1995. Bernard Swanepoel resigned from the Company on August 6, 2007.

33. Nomfundo Qangule (defined herein as the "Financial Director") was, at relevant times, Harmony's Financial Director, a position she held since July 2004. Nomfundo Qangule resigned from the Company on August 22, 2007.

IV. BACKGROUND TO THE FRAUD

A. Harmony's Focus on Cost Control

34. Prior to and during the Class Period, Harmony consistently represented to investors that it maintained a strong focus on cost control, which would continue to distinguish the Company from its competitors as the price of gold increased. At numerous times, the Company's CEO stated that both he and Harmony were "cost obsessed." In the months leading up to the Class Period, the Company continued to make these representations to investors. Such statements served to condition the market for Defendant's actionably false Class Period statements.

35. For example, on August 7, 2006, in reporting Harmony's financial results for Fourth Quarter 2006 (ended June 30, 2006), Harmony stated that "Cash operating profit increased from R305.6 million in the March 2006 quarter to R645.2 million (111.1%) in the June

2006 quarter." The Company attributed these results to, *inter alia*, "tighter cost control that did not go up commensurately with the increased volumes that were mined."

36. Also, in the conference call following Harmony's Fourth Quarter 2006 earnings release, the Company's CEO stated that "thanks to the rise in gold price our cash operating profit is up by 111% to [R]645 million. Our cash operating profit margin has also jumped from 15,9 to 28,5% …. Because we've managed to achieve all of this with cost expenditure remaining constant, our cost -- cash costs and rent [ ] overall is down by some 10% and by some 7% from underground as well." The Company's CEO also stated that "***Reducing unit costs per ton is something we decided to get really serious about again in the last six months***; and I think the last quarter, we demonstrated that an increase in tonnage, a significant increase in tonnage, was achieved without further increasing our costs and therefore it resulted in a -- quite a substantial reduction in cost per ton. ***This, of course, is exactly the [course] on which we build Harmony*** and many of our shops I cue now on our [ ] costs per ton targets, we are making really good progress with that specific aspect." Additionally, the Company's CEO stated "I think with the volume increases now coming through, going forward, ***we would expect our cost performance to also improve***." The Company's CEO further stated that "You can see, as our volume reduces, because of our ability and our cost focus - the way we've structured our mines, we actually had a very pleasing reduction in working cost. And hence my argument that ***we don't have a cost problem***. When we produce less in volume, we have a reduction in our working cost, there is not a lot more that we can achieve."

37. Harmony's fiscal 2006 Annual Report, filed with the SEC on Form 20-F on October 30, 2006, also touted the Company's strong focus on cost containment, and indicated that "a no-frills, low cost ethic," "an obsession about lowering its cost base," and Harmony's

implementation of a cost accounting system were key characteristics of the "Harmony Way." For example, the Company's Form 20-F stated that the "Harmony Way," or the Company's core strategy, was as follows:

> ***A no-frills, low cost ethic. Harmony has an obsession about lowering its cost base*** and, to this end, Harmony extensively benchmarks its costing parameters both internally between operations within Harmony and externally against other gold producers.
>
> * * *
>
> ***Systems. Harmony has implemented cost accounting systems and strict ore accounting and ore reserve management systems to measure and track costs and ore reserve depletion accurately, so as to enable it to be proactive in its decision making.***
>
> Harmony has implemented the "Harmony Way" at its original mining operations and at each mining property Harmony has acquired since 1995, and has also implemented the "Harmony Way" at the Australian operations. ***By implementing this process, Harmony generally has been able to reduce unit costs substantially allowing them to move resources into the reserve category.*** This in turn allowed the company to increase production and extend mine life. (Emphasis added.)

38. Similarly, on October 31, 2006, in reporting Harmony's financial results for First Quarter 2007 (ended September 30, 2006), Bernard Swanepoel, Harmony's CEO, preached the virtues of the Company's intense focus on costs, and Harmony's strategic positioning in the mining industry relative to its competitors, and stated that "Harmony has produced a pleasing set of results for the quarter and I am confident that we will unlock further value through ***vigilant cost containment***." Additionally, Swanepoel stated that "Going forward we will continue to build the robustness of the group by focusing on operational development, operating efficiencies and unit costs. The Harmony Improvement Process (HIP) initiative, ***aimed at reducing costs*** and improving volumes, is being introduced throughout the group and we remain confident that this and other initiatives currently in place will enhance our efforts in unlocking shareholder value."

39. In a conference call on October 31, 2006, Swanepoel stated that "We are rolling out our improvement process that is ***mainly aimed at containing cost and regaining our cost competitiveness on a cost per tonne basis***." Swanepoel also stated that "Surface operations is really full of material. We fill our mills where we have got spare capacity with the exception of Kalgold, which is of course our small open pit operation. We are, albeit six weeks late, very close to completion of the fourth and final cutback. We will aim towards the end of this quarter that we are in now. We will start to mine fresh ore from that at significantly higher grade. So we've got something to look forward to. Albeit not a lot of that coming into this coming quarter. ***Certainly in the March quarter, we will see significant improvement***." Additionally, during the conference call Swanepoel stated that "***I am reasonably bullish on our ability to contain costs.***"

40. On February 2, 2007, the Company's CEO stated that Harmony's "higher unit costs this quarter … are frustrating at a time when ***we are harnessing all efforts to reduce costs***. Over the next six months, we will continue to develop at these significantly higher levels in order to create sufficient available face length which will not only enable us to increase grades by some 10 to 15%, but will also put us in a position where we will have more consistent production results. This should enable us to have reduced unit costs and improved performance" in the future.

41. As demonstrated above, in 2006 and early 2007, prior to the Class Period, Harmony and its executive officers continually represented to the market that the Company was intensely focused on strong cost control while it generating quality amounts of production from its various operations. As a result, the market was primed for Harmony to report another a quarter of strong cost containment and solid financial results. This expectation was shared not only by the Company's investors and the market, but by financial analysts as well. For example,

on March 30, 2007, in a note generally discussing, inter alia, the impact that rising costs would likely have on gold equities, HSBC downgraded its recommendations and lowered its 2007 share price targets for the securities of many of Harmony's competitors, including AngloGold Ashanti Ltd. and Lihir Gold Ltd.[4] However, HSBC ***raised*** its recommendation from "neutral" to "overweight" (meaning that HSBC recommends that investors ***buy*** the Company's securities) and ***increased*** its 2007 price target on Harmony's securities. As evidence of the weight that HSBC attributed to Harmony's cost control, HSBC's note stated that "The principal downside risk to our Overweight rating is that [Harmony] fails to deliver the improvements in production and costs from its development-stage projects."

42. In response to these statements, on April 2, 2007, the price of the Company's shares increased almost 3%, and continued to increase over the following days. By April 5, 2007, the price of the Company's shares closed at $15.52 per share, an increase of $1.62, or 11.6 percent, from the price of the Company's shares on March 30, 2007, when they closed at $13.90 per share.

43. The Company's positive statements regarding its cost controls continued (as discussed in more detail in Section V., below) during the Class Period. For example, the Company represented on April 25, 2007, when it reported financial results for Third Quarter 2007, that the main driver of the Company's dramatically increased earnings and profit figures was that Harmony reported decreased cash operating costs for the quarter, particularly in the Company's South African underground operations.

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[4] HSBC stated that the price target for a stock represents the value the analyst expects the stock to reach over our performance horizon. The performance horizon is 12 months. For a stock to be classified as "Overweight," the implied return must exceed the required return by at least 5 percentage points over the next 12 months

44. Following the release of Harmony's quarterly financial and operational results, on April 25, 2007, the Company held numerous earnings conference calls with investors and financial analysts. In addition to reaffirming the Company's financial and operational results, Harmony's CEO emphasized that the Company had reported lower cost per tonne results, and indicated that although Harmony had produced "slightly lower tonnages," the Company "managed to bring cost per tonne down as well."

45. Further, during the April 25, 2007 conference calls, Company representatives downplayed the effect that numerous "production incidents" and reengineering projects had on the Company's financial and operational results for the quarter, and would have on its results going forward. For example, in discussing the production incidents and major reengineering at the Company's mines that had occurred during Third Quarter 2007, Harmony's CEO simply stated that "at [the] Joel mine, the sort of temporary, quite clever installation we made to access North Shaft …. But we can hardly continue with some sort of makeshift arrangement. So we redesigned the shaft installation … into something more permanent …. [A]t the end of the quarter, we were about five weeks into a four and a half month program to re-equip the shaft bottom with permanent installation. So we had an impact from that, and that impact will continue into the next quarter as well. So [the] Joel mine for one quarter will min[e] at about half the tonnes and slightly below average grades." However, the CEO failed to disclose the actual and adverse significant cost effect that the redesign and reengineering had on the Company's financial results for the quarter, or that they would have on the Company's subsequent quarterly results, or the effect of the numerous "production incidents" at the Company's mines.

46. Additionally, regarding the Company's "cost obsession," or its continuous efforts to reduce costs, during the conference calls Harmony held on April 25, 2007, Company

representatives made numerous reassuring statements that Harmony continued to intensely manage its costs. For example, in connection with a recent announcement that Harmony was selling a number of "less-profitable mines" in an effort to further reduce its costs, the Company's CEO stated that Harmony's obsession with cost reduction was ongoing, and emphasized to investors that the quarter's results demonstrated the success of the efforts by touting: "Look at our numbers for this quarter." Additionally, Harmony's CEO stated that "we're ***not giving up on our cost obsession. We're not giving up on any of it***." These statements by the Company's CEO were similar in substance to comments that he and other executive officers had made over the past number of years. In fact, the "cost obsession" that Harmony and its executives portrayed to investors was carefully crafted and repeated by Company executives at every available opportunity.

47. In the weeks following the Company's earnings release, conference calls and SEC filing, numerous financial analyst firms provided extremely positive coverage of Harmony as a result of its reported financial position. For example, one analyst report stated that "In our view, ***Harmony is in a financial sweet spot, certainly the best position we've ever seen***." Another analyst report upgraded its recommendation on Harmony's securities and stated that "March quarter costs … lower than forecast. In a surprisingly good cost performance, despite lower tonnages, unit costs … fell 2% in the quarter. ***We have no idea quite how the company managed to achieve this!*** Combined with better grades, this helped Harmony report lower cash costs quarter on quarter."

48. The Company's financial results also caused Fitch Ratings ("Fitch") to assign the Company an Issuer Default Rating of BB+ and a "stable" outlook. Fitch's announcement echoed the sentiments of the financial analyst's positive views of Harmony's financial position, and

stated that "Harmony's ratings reflect the positive financial trend evident in the company's H107 results, and the prospect that its financial performance over the next two to three years will benefit from higher production levels and a stabilisation of operating costs." Achieving this rating from Fitch was critical to the Company because Harmony planned to sell $350 million in bonds to investors in July 2007 to finance the development and expansion of mines within the next couple of months. Harmony's reported financial results demonstrated that the Company had managed to reduce its costs at a time when production had decreased, and in a quarter when the Company had suffered a number of adverse production incidents in its mines. The Company's Third Quarter 2007 financial results were crucial to obtaining such a favorable rating from Fitch, which would serve to enable the Company to secure more favorable financing conditions, and attract investors to the Company.

49. Unbeknownst to investors, in actuality Harmony had recklessly and dramatically understated its costs for Third Quarter 2007 to investors and the SEC. Additionally, the Company had downplayed the effect that numerous adverse production incidents had on the Company's ability to produce gold, the full effect that the major reengineering projects would have on the Company's production from the effected mines, and the effect on the Company's financial results due to the major costs incurred in connection with the reengineering projects.

50. Finally, on August 6, 2007, the Company shocked investors when it was forced to disclose that it expected to report a substantial loss for Fourth Quarter 2007 due "to a combination of lower production and an increase in costs," and noted that gold production was expected to be ***down by between 8% and 12%*** mainly due to the "previously disclosed, production incidents at Bambanani and Joel." Additionally, Harmony disclosed that "***during the last six months***, the company's cost base <u>***increased***</u> by between ***8% and 12%*** on the previous six

months." This combination of lower production and higher costs resulted in a cash cost per kilogram increase for Harmony of between ***35% and 45%*** from Third Quarter 2007, and a quarterly cash operating cost increase for Harmony of between ***25% and 28%*** from Third Quarter 2007.

51. The Company blamed its false financial reporting for Third Quarter 2007, which it attempted to remedy in the Company's Fourth Quarter 2007, on the failed implementation of a new ERP accounting system. This was the first announcement that the Company provided to investors discussing any problems in the implementation of the accounting system. As discussed below, it was later revealed that not only had Harmony encountered numerous systematic problems with the implementation of its system, but also that ***Harmony management had been aware of the nature and extent of these problems for months prior to the start of the Class Period***. Despite this knowledge, Harmony and its executive officers recklessly failed to run a parallel accounting system (or even continue to operate the Company's existing accounting system) alongside the new and unproven accounting system for verification, as prudence dictated, to demonstrate minimum competency and faithfulness in that the financial and operational results reported to investors were accurate or even realistic.

52. As the Company disclosed, its reported costs for Third Quarter 2007 were falsely understated due to "the newly installed accounting software system that resulted in some of the March quarter's costs being captured in the June 2007 quarter." In reality, rather than put any procedures into place to ensure accurate and realistic financial reporting, Harmony's executives knowingly and recklessly reported the financial results generated by the faulty and inaccurate accounting system to investors. Further troublesome, Harmony's CEO and Financial Director failed to investigate when, in the Company's historically worst quarter of any given year, and in

a quarter filled with rising production costs, when the Company undertook major engineering projects and suffered multiple adverse "production incidents," the Company's costs overall somehow managed to magically decrease! Instead of simply investigating this anomaly, which basic prudence dictated, Harmony's executives ***recklessly ignored the obvious red flags and daily reports*** generated by Harmony's Data Warehouse system which informed them that the Company's accounting system had continued to exhibit problems and generate unreliable financial figures, and knowingly and recklessly reported the materially false and misleading financial results for Harmony's Third Quarter 2007. The specifics of the Company's accounting system, which led, *inter alia*, to the Company's problems, are discussed in detail, below.

B. Harmony's Accounting System Prior to and During the Class Period

53. During fiscal 2006, Harmony and its executive officers determined that it was necessary to replace the Company's "legacy," or "homegrown" accounting system with a modern Oracle Enterprise Resource Planning system (ERP system), because the Company's system at that time represented a weakness in Harmony's accounting controls. ERP systems are designed to integrate the data and processes of an organization into one single system. Harmony's 2006 Annual Report, filed with the SEC on October 30, 2006, contained the only significant reference to such a major undertaking in the Company's financial and accounting systems. Harmony's Annual Report also indicated that the Company was prepared for such an overhaul, stating:

> During the period covered by this report, we initiated our preparation for the new corporate governance and public disclosure requirements in the United States that will come into effect for us with respect to our internal controls beginning with our annual report for the 2007 fiscal year .… Based on this evaluation, our chief executive officer and chief financial officer concluded that as of June 30, 2006, our disclosure controls and procedures were not effective due to the material weaknesses described more fully below .… A material weakness is a control deficiency, or combination of control deficiencies that results in more than a remote likelihood that a material misstatement of our annual financial statements

> prepared in accordance with U.S. GAAP would not have been detected or prevented. In connection with the audit of our financial statements for the year ended June 30, 2006, we have identified a number of control deficiencies, some of which constitute material weaknesses. ***Areas classified as material weaknesses are (1) insufficient segregation of duties over the U.S. GAAP reporting process and a lack of experience in the application of U.S. GAAP and (2) a lack of current external support for the existing computer system used for our financial reporting and computer system integrity issues which require substantial workarounds including the use of spreadsheets.*** The full impact and nature of these material weaknesses have been reported and discussed with our Audit Committee.
>
> As discussed with the Audit Committee, we identified steps to address these material weaknesses and plan on implementing appropriate changes to our internal control structure which ***we believe will remedy these weaknesses. The group finance team will be strengthened by additional staff members who will assist with the preparation of financial information. A senior finance team member will in the future be responsible to manage this group*** and their responsibilities will include researching U.S. GAAP and SEC matters, monitoring new U.S. GAAP issues and performing a detailed review of the U.S. GAAP adjustments and financial statements, including related disclosures, and ensuring that all supporting documentation exists for the adjustments recorded. In addition, we are in the process of putting in place an agreement with an external professional services firm to provide international and technical expertise and guidance on matters relating to the U.S. GAAP reconciliation on an as needed basis. ***The existing financial reporting computer system is scheduled for replacement with a more robust system beginning December 2006. We have also employed additional resources to oversee this installation and transition between systems. The preparation and transition processes have been ongoing since April 2006.*** The foregoing steps may be supplemented by additional measures as we believe necessary or appropriate to remedy the material weaknesses. (Emphasis added.)

54. To implement the ERP system, Harmony hired e.com institute (Pty) Ltd. ("Ecom"), an organization whose senior management consisted of former Harmony employees who were, according to Plaintiff's confidential witnesses, "very close to Bernard Swanepoel and other Harmony executives."

55. The ERP system project began in June 2006, and originally had a deadline of December 2006 for completion. However, numerous problems arose with the implementation of the ERP system, which Ecom brought to Harmony's attention, as discussed more fully below.

Numerous confidential witnesses (discussed below) confirm that Harmony was aware prior to, and during, the Class Period of these problems and that financial information generated by the Company's new computer system was not accurate or reliable.

56. Confidential Witness Number 1 ("CW1") is the Chairman and CEO of Ecom. CW1 was directly involved in the contract negotiations between Ecom and Harmony. According to CW1, Harmony wanted the ERP system to be implemented very quickly and wanted the system migration to be completed in six months and fully implemented by December 2006. CW1 stated that Harmony's requested time frame for implementation of the ERP system was "very unusual" because system upgrades usually take a significantly longer amount of time than the six months dictated by Harmony for full implementation of the new system. Harmony's ERP implementation was particularly complicated as it required the integration of an out-of-date, "home grown" proprietary stand-alone financial system that the Company maintained, and the integration of at least four separate sets of books and manually-created records and spreadsheets from companies that Harmony had acquired in different countries.

57. CW1 stated that ***Harmony's Finance Director, Nomfundo Qangule, was Ecom's direct contact for the new ERP system implementation project***. Ecom's senior manager in charge of the ERP integration was a former Harmony employee named Carlo Gunter ("Gunter"), and according to CW1, during the course of Ecom's migration of Harmony's legacy systems to the new ERP system, Gunter ***maintained a very close working relationship with Harmony's CEO***. CW1 stated that the first hint of a major problem with the system implementation ***became known to Ecom and Harmony during the course of the migration to the new system*** when approximately R150 million in "project costs" were not captured in the new system. CW1 stated that Gunter told him about this problem, and CW1 further stated that, because of the problems

with implementation of the ERP system, Ecom was not able to meet Harmony's deadline for the full implementation of the ERP system in December 2006.[5]

58. Confidential Witness Number 2 ("CW2") was hired by Ecom to work on the Harmony project as a consultant from December 2006 through December 2007, and was the Program Manager of the Data Warehouse, which was the system that held all of Harmony's financial information. CW2 stated that the Data Warehouse was extremely important and stored the entire Company's data and "***sends daily reports to Harmony executives***." According to CW2, the Data Warehouse and ERP system implementation were behind schedule and over budget. He further stated that most of the problems with transfer of information from the Data Warehouse to the ERP system (discussed in more detail by CW3, below) ***surfaced in January 2007***, which he noted was eight months prior to Harmony's related news announcement in August 2007.

59. CW2 stated that Harmony failed to employ any individuals "in house" with the technical expertise to monitor the progress of the ERP implementation project, and that Harmony executives left all the work in the hands of Ecom management. Although Harmony put one of its employees, Danie Muller, in charge of the ERP implementation project "on the Data Warehouse side," according to CW2, Muller's expertise was limited to finance, and he no knowledge regarding Information Technology or the Data Warehouse. CW2 bluntly stated: "Muller had no idea what he was doing." CW2 also stated that due to the problems Harmony should have dismissed Ecom from the project "six to eight months" prior to the August 2007 public disclosure of problems with the new accounting system, but Harmony did not "try to figure out what went wrong" until it was too late.

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[5] According to CW1, Harmony terminated Ecom's relationship with the Company in late 2007.

60. When it became clear that Ecom would be audited for problems with the Data Warehouse and implementation of the ERP system, Gunter and Boetie Swanepoel ("Boetie") "walked off the job," according to CW2. Boetie was employed by Harmony as the Company's senior executive in charge of finance operations (referred to herein as the "Executive Finance Manager") during the Class Period. Boetie was involved in the day-to-day migration of Harmony's financial reporting from its old systems to the new ERP system. Subsequent to resigning from Harmony in July 2007, Boetie went to work for Ecom, although he continued to work on the ERP implementation at Harmony.

61. CW2 stated that he took over the project when Gunter and Boetie walked off the job, and he was given two to three months to finish the project, during which time he used consultants from another company called Integrated Solutions to help finish the project. However, CW2 stated that by that time the project was "too far gone to finish on time." CW2 also stated that if Harmony had employed staff with the correct knowledge to implement the Data Warehouse and ERP system, the project would have been completed without problems and less expensively.

62. Confirming the statements of other confidential witnesses, Confidential Witness Number 3 ("CW3") stated that when he started working on the Company's ERP system in April 2007, "the sh-t had already hit the fan." CW3 was employed as a consultant by Ecom from approximately April 2007 through October 2007, and was primarily responsible for the Harmony ERP implementation project. CW3 stated that he worked directly with Danie Muller, the "Project Leader" on the ERP implementation project, prior to Muller subsequently being "removed" from the project. Although CW3 undertook to model the entire ERP system when he began working on it in April 2007, he stated that ***significant damage had already occurred***

when financial information was migrated from Harmony's "legacy" system to the new ERP system.

63. According to CW3, information that was summarized in the Data Warehouse was used in the Company's general ledger, and the corrupted transfer of files from the Data Warehouse during the ***initial*** stages of the ERP implementation (prior to CW3's work on the project in April 2007) ***was the cause of all of Harmony's erroneous financial reporting issues***. Additionally, CW3 explained that ***no parallel system had been put into place to verify that the new ERP system "worked."*** According to CW3, a parallel system would have caught any errors in the new system. CW3 quipped that anyone "with common sense" would have run a parallel system during the rollover of the ERP system.

64. Similar to other confidential witnesses, CW3 stated when he arrived on the project in April 2007, there had been many delays with implementation of the system and the project was over budget. CW3 stated that he understood from speaking with other Ecom consultants that in November 2006 Harmony began pressuring Ecom to ***finish the project despite the problems***. CW3 stated that in addition to implementing the new ERP system, in November 2006, Harmony also had decided to implement a "larger" reporting server. The new server "housed" the Company's financial reporting system. CW3 stated that the new server had limited capabilities, which caused significant problems with, and "compromised," the ERP system. CW3 stated that he was told by other Ecom consultants with whom he worked on the Harmony project that ***Harmony had been aware of the ERP system implementation problems from the time that the new server was implemented in November 2006***. CW3 also definitively stated that "***Harmony knew about the problems with the ERP Oracle system***," and "would have

been ***made aware of the problems when they accepted the solution from Ecom management in November 2006***."

65. Thus, from as early as November 2006, Harmony and its CEO, Finance Director and Executive Finance Manager were aware that data and information used in the Company's financial reporting had been corrupted when it was migrated to the new ERP system, among other known problems, and these executive officers knew or recklessly disregarded that the information was not reliable and did not reflect the true financial condition of the Company or its operations.

V. DEFENDANT'S FALSE AND MISLEADING STATEMENTS

66. During the Class Period, Harmony and its executives issued numerous materially false and misleading statements. Each of those statements is set forth below, including detail regarding: (i) the date of the statement; (ii) the speaker; (iii) the nature of the statement; (iv) to whom the statement was made; (v) the location/context of the statement; (vi) why the statement was materially false and misleading; and (vii) facts giving rise to a strong inference that Harmony by and through its executive officers who made (or caused to be made) the statement had the requisite state of mind.

A. April 25, 2007 Press Release

67. The Company's first false and misleading statement was issued on April 25, 2007. On that day Harmony issued a press release to the public on its website and to various media outlets (the "April 25, 2007 Press Release") in which it stated "headline earnings improved by 31.8% to 58 cents per share" and "US$ headline earnings improved by 33.3% from 6 cents per share to 8 cents per share during the March 2007 quarter."

68. The April 25, 2007 Press Release also stated that "Total operating profit rose 15.1% to R869 million (R755 million) quarter on quarter and is up by 184.0% from R306 million

compared with the corresponding period ended March 2006" and "The March 2007 net profit was up 6.5% to R247 million compared with the December 2006 quarter."

69. The April 25, 2007 Press Release further stated that "Total cash operating costs were marginally down at R103 608/kg from R104 132/kg previously. The SA underground operations showed strong cost containment with a 2.1% cost reduction to R101 868/kg (R104 056/kg), despite volumes being negatively effected by the end of the year holidays."

70. Harmony, its CEO, Finance Director, and Financial Manager were reckless in issuing the statements in the Company's April 25, 2007 Press Release, as set forth in ¶¶ 67 – 69 above, as they knew facts or recklessly disregarded information suggesting that such statements were not accurate, or failed to check information that they had a duty to monitor. The statements in ¶¶ 67 – 69 were materially false and misleading when made and omitted material facts necessary to make the statements not misleading, because: (i) the Company's costs had significantly ***increased*** during Third Quarter 2007; (ii) the Company had experienced a significant ***decrease*** in gold production during Third Quarter 2007 due to serious production problems at various sites; (iii) as a result of the Company's understatement of its costs and its lower production in Third Quarter 2007, the Company had understated its reported operating costs and overstated its reported net profit for Third Quarter 2007; and (iv) the Company lacked adequate internal and financial controls over its accounting.

71. Plaintiff relies on the following facts in support of his allegation that Harmony and its executive officers knew that the foregoing statements were false when made, or were reckless as to their truth in making the materially false and misleading statements, and omitting material information from the statements set forth in ¶¶ 67 – 69:

(a) Harmony and the Company's CEO, Finance Director and Executive Finance Manager each knew that when Harmony's newly implemented ERP system was taken "live" in January 2007 it was profoundly flawed and defective. (¶¶ 22, 51, 58, 62, 103, 108 – 111, 117, 122 and 123);

(b) Harmony and the Company's CEO, Finance Director and Executive Finance Manager were aware of, or recklessly disregarded, the ERP system implementation problems from the time that the new server was implemented in November 2006. (¶¶ 57, 62, 64, and 103);

(c) Harmony and the Company's CEO, Finance Director and Executive Finance Manager were aware that no parallel system had been put into place to verify that the new ERP system "worked" before basing the Company's financial reporting on it. (¶¶ 52, 63 and 103);

(d) The Company's Data Warehouse system generated daily financial reports that provided Harmony's CEO, Finance Director and Executive Finance Manager with facts demonstrating that the Company's new ERP system was not generating reliable information. This resulted in Harmony's new ERP accounting system trapping R250 million [$34.5 million] in costs in suspense accounts, and these accounts should have been reviewed and the costs allocated prior to the Company reporting its Third Quarter 2007 financial results. (¶¶ 58, and 109);

(e) The magnitude of the Company-wide undertaking to fully implement a new ERP system, which housed all of Harmony's financial data and reporting information, was haphazardly implemented in six months without sufficient staff or training for employees on the new system. (¶¶ 55 – 64, 97 – 99, 101 – 103, and 108 – 111);

(f) The reduced costs and record operating profits reported by the Company for Third Quarter 2007 (when the third quarter traditionally was the Company's worst quarter) were sufficiently anomalous to constitute a "red flag" regarding the accuracy of the Company's financial results as reported by the ERP system. (¶¶ 5, 52, 69, 76, 77, and 79 – 81);

(g) Harmony and its CEO had been "obsessed" with, and closely monitored, costs since at least October 2006. (¶¶ 34 – 40, 46, 75, 79, and 81); and

(h) The impending deadline for Harmony to comply with Sarbanes-Oxley to issue written certifications by the Company' CEO and Finance Director reporting on the reliance of Harmony's internal controls and financial reporting for fiscal 2007 created a heightened awareness of the need to cure material weaknesses in Harmony's internal controls, and therefore Harmony and all of its executives were reckless in failing to verify the internal controls and financial information provided by the new ERP system. (¶¶ 53 – 59, 63 – 65, 101 – 104, 109 – 112 and 119 - 121).

B. April 25, 2007 Conference Calls

72. On April 25, 2007, Harmony held two earnings conference calls with analysts and the investing public. During the first conference call (the "first April 25, 2007 Conference Call"), Harmony's CEO stated:

> If I do the normal variance analysis, volume negative impact of 150. About 50 of that is Australia, so 100 of that is South Africa. Therefore, the cost reduction of 80-odd million in South Africa is really very pleasing.[6] It does show a high variable cost sort of component, so if we've got less [tonnes] or less days, we incur less costs. Of course, some of that was due to lower development, and one has to acknowledge that as well.

73. Additionally, during the first April 25, 2007 Conference Call, Harmony's CEO also stated that "Trade recoveries was, of course, as expected, mainly at Tshepong and Target. Therefore, kilograms up, and that flows quite nicely through to positive numbers. The cost per tonne number really just indicates that, although we had slightly lower tonnages, we still managed to bring cost per tonne down as well."

74. During the first April 25, 2007 Conference Call, Harmony's CEO further stated:

> Then we also, at Joel mine, the sort of temporary, quite clever installation we made to access North Shaft, obviously with the prices where they are now and the great continuity of North Shaft, we like North Shaft and that block of ground a lot. But we can hardly continue with some sort of makeshift arrangement. So we redesigned the shaft installation, especially the bottom of the shaft installation, into something more permanent. We are about five or -- at the end of the quarter, we were about five weeks into a four and a half month program to re-equip the shaft bottom with permanent installation.
>
> So we had an impact from that, and that impact will continue into the next quarter as well. So Joel mine for one quarter will mine at about half the tonnes and slightly below average grades. But that's in order for us to then be able to mine sustainably there for a long time.

[6] The cost reduction of "80-odd million in South Africa" refers to the "working cost" to mine the ore. *See* Harmony's Results Presentation for the Quarter ended March 2007. (Released April 25, 2007).

75. Also, during the first April 25, 2007 Conference Call, various Company representatives responded to questions from financial analysts and investors. During this session of the Conference Call, Harmony's CEO stated:

> UNIDENTIFIED AUDIENCE MEMBER: In line with the same sort of thing, Harmony really has been sort of building its base on the cost -- not cost consciousness, cost -- you're obsessed with costs, I think you said at one stage. But you clearly are sort of giving up on that, in terms of some of these marginal assets that you would rather give to someone else.
>
> BERNARD SWANEPOEL: Clearly, your opinion is that we're giving up on that. We are not giving up on that. Look at our numbers for this quarter.
>
> UNIDENTIFIED AUDIENCE MEMBER: I'm talking about the marginal assets.
>
> BERNARD SWANEPOEL: No, we're not giving up on our cost obsession. We're not giving up on any of it.

76. Later on April 25, 2007, Harmony held the second of its two earnings conference calls with analysts and the investing public (the "second April 25, 2007 Conference Call"). During the second April 25, 3007 Conference Call, Harmony's CEO stated:

> Headline earnings up to 58 cents per share. This is South African cents. Net profit of [R]247 [million] and Rand per kilogram cost down under South African operations at 2.1%, the South African grade up by 4% and 5 grams per ton, I think very much in line with the guidance we've given earlier and this is really mainly driven by solid performance from so called quality and leverage operations because of the bulk of our South African operations.

77. Additionally, during Harmony's second April 25, 2007 Conference Call, Harmony's CEO stated that "Operating profit up by 15% and again in US dollar terms…you will see that is up by 16%. Operating margin beginning to look healthier in the low 30s and cash earnings 218 cents per share, so in US dollar terms $0.30 per share," and that "Overall, South Africa up by 18%. As I have indicated, ***very pleasing results for what is historically our worst quarter***."

78. Harmony, its CEO, Finance Director, and Financial Manager were reckless in issuing the statements in the Company's April 25, 2007 Conference Calls, as set forth in ¶¶ 72 – 77 above, as they knew facts or recklessly disregarded information suggesting that such statements were not accurate, or failed to check information that they had a duty to monitor. The statements in ¶¶ 72 – 77 were materially false and misleading when made and omitted material facts necessary to make the statements not misleading for the reasons set forth in ¶¶ 70 and 71. Defendant Harmony and its executive officers knew that the foregoing statements were false when made or were reckless as to their truth for the reasons set forth in ¶¶ 70 – 71.

C. May 2, 2007 Form 6-K

79. On May 2, 2007, Harmony filed a Form 6-K current report with the SEC to report its financial and operational results for Third Quarter 2007 (ended March 31, 2007) (the "May 2, 2007 Form 6-K"). Within a section of the report entitled "Chief Executive's Review," the Company stated:

> ***Harmony's March quarter was marked by a steady operational performance with sound cost control. The full benefits of the higher gold price and improving flexibility through increasing development over the past 15 months are now being realized when comparing the current quarter with the corresponding period for March 2006.***
>
> ***Headline earnings improved by 31.8% to 58 cents per share*** compared with 44 cents per share for the December 2006 quarter and a 48 cents per share loss for the March 2006 quarter.
>
> ***Total operating profit rose 15.1% to R869 million (R755 million) quarter on quarter and is up by 184.0% from R306 million compared with the corresponding period ended March 2006.***
>
> ***The March 2007 net profit was up 6.5% to R247 million compared with the December 2006*** quarter considering that the December 2006 had an accounting profit of R236 million which arose from the conversion of Western Areas shares to Gold Fields shares. A loss of R174 million was reported for March 2006. (Emphasis added.)

80. The May 2, 2007 Form 6-K also stated "Total cash operating costs were marginally down at R103 608/kg from R104 132/kg previously. The SA underground operations showed strong cost containment with a 2.1% cost reduction to R101 868/kg (R104 056/kg)."

81. Harmony's May 2, 2007 Form 6-K also stated that "Harmony's March quarter showed a steady recovery from the previous quarter with the December holiday period having only a modest impact on our operations. Grades were at more acceptable levels and ***costs were well contained throughout Harmony***." Additionally, the Company's May 2, 2007 Form 6-K stated that "Cost was well contained throughout the Group. Cash operating costs for the SA underground operations dropped by 2.1% to R101 868/kg from R104 056/kg previously, on the back of lower tonnes milled."

82. Regarding Harmony's accounting standards, and the Company's adherence to such accounting standards, the May 2, 2007 Form 6-K stated:

> The unaudited results for the quarter have been prepared using accounting policies that comply with International Financial Reporting Standards (IFRS). These consolidated quarterly statements are prepared in accordance with IFRS 34, Interim Financial Reporting. The accounting policies are consistent with those applied in the previous financial year.

83. Harmony, its CEO, Finance Director, and Financial Manager were reckless in issuing the statements in the Company's May 2, 2007 Form 6-K, as set forth in ¶¶ 79 – 82 above, as they knew facts or recklessly disregarded information suggesting that such statements were not accurate, or failed to check information that they had a duty to monitor. The statements in ¶¶ 79 – 82 were materially false and misleading when made and omitted material facts necessary to make the statements not misleading for the reasons set forth in ¶¶ 70 – 71. Defendant Harmony and its executive officers knew that the foregoing statements were false when made or was reckless as to their truth for the reasons set forth in ¶¶ 70 – 71.

VI. EFFECT OF DEFENDANT'S FALSE AND MISLEADING STATEMENTS ON THE MARKET

84. Following Harmony's April 25, 2007 Press Release and Conference Calls, and the filing of the Company's May 2, 2007 Form 6-K with the SEC, and in response to the Company's reported financial position, on May 21, 2007, Deutsche Securities issued an analyst report on Harmony. The report, in relevant part, stated:

> ***In our view, Harmony is in a financial sweet spot, certainly the best position we've ever seen.*** Not only does its have the capacity on its balance sheet to maintain project and maintenance capex levels (critical if targeted grades are going to be achieved), but it also holds further firepower through its R2bn near cash investment in Gold Fields.
>
> ***In our view the close out not only illustrates the group's current financial clout but also its new found confidence (compliments of weak recent operating performances from its peers).*** While the close out is an expensive one, its [sic] confirms Harmony [sic] belief in a stronger gold price. Further it eradicates what has long been a troublesome financial obligation. ***On the softer side, earnings should be less noisy, as swings from gains and losses on financial instruments fall away.*** (Emphasis added.)

85. Additionally, on May 30, 2007, Barnard Jacobs Mellett, a securities research firm, issued its Quarterly Global Gold Review. In upgrading Harmony to "neutral," the Quarterly Global Gold Review stated:

> March quarter costs hold above R100,000/kg, but lower than forecast***. In a surprisingly good cost performance, despite lower tonnages, unit costs (R/t) fell 2% in the quarter. We have no idea quite how the company managed to achieve this!*** Combined with better grades, this helped Harmony report lower cash costs quarter on quarter at R103,608/kg ($445/oz).
>
> * * *
>
> Favorite name in SA Golds - With Anglogold and Gold Fields unlikely to deliver much improvement on their current poor performances until next year, ***we have upgraded our recommendation on Harmony and believe it will outperform its SA peers through the remainder of the year.*** (Emphasis added.)

86. On June 14, 2007, Fitch announced that it had assigned the Company an Issuer Default Rating of BB+ and a "stable" outlook. Fitch's announcement, in relevant part, stated:

Fitch Ratings has today assigned South Africa-based Harmony Gold Mining Company Limited ("Harmony") an Issuer Default rating ("IDR") of 'BB+' and a Short-term IDR of 'B'. At the same time the agency has ***affirmed*** Harmony's National ratings at Long-term 'BBB(zaf)' and Short-term'F3(zaf)'. The Outlooks on both the IDR and National Long-term rating are Stable.

*   *   *

Harmony's ratings reflect the positive financial trend evident in the company's H107 results, and the prospect that its financial performance over the next two to three years will benefit from higher production levels and a stabilisation of operating costs. Costs are in part expected to stabilise as a result of the Hidden Valley mine coming into production in late 2008. This operation is forecast to have significantly lower cash costs than the company's existing, mature underground operations in South Africa. (Emphasis added.)

87. The rating Harmony received from Fitch was assigned based on the perceived operating and financial strength of the Company, as reported in the Company's financial reports and statements. Achieving this favorable rating from Fitch was critical for Harmony as it had announced plans to sell $350 million in new bonds to investors in July 2007. As a result of the Company's inaccurately reported and presented financial condition, and the resulting rating that it received from Fitch, Harmony's capital borrowing costs were going to be significantly lower than they would have been if the Company had presented its true financial and operational condition to investors and Fitch.

VII. THE CLASS PERIOD ENDS AND THE TRUTH BEGINS TO EMERGE

88. On August 6, 2007, Harmony filed with the SEC on Form 6-K a press release that the Company issued to the public on its website and to various media outlets (the "August 6, 2007 Press Release") which disclosed:

Harmony Gold Mining Company Limited (Harmony) announces that its financial results for the quarter ending 30 June 2007 are ***expected to differ significantly*** from those of the three previous quarters as well as from the analysts' consensus.

Shareholders are advised that Harmony ***expects to announce a headline loss per share of between 130 and 160 SA cents per share for the June 2007 quarter***, compared with the March 2007 quarter headline profit of 58 SA cents per share. It is expected that a headline profit of between 20 and 30 SA cents per share will be reported for the 2007 financial year compared with a headline loss of 269 SA cents per share for the 2006 financial year.

This quarter-on-quarter variance is attributable to a combination of ***lower production and an increase in costs. Gold production is expected to be down by between 8% and 12%***, mainly due to, and as previously disclosed, production incidents at Bambanani and Joel, lower grades mined at Tshepong as well as the underperformance at Mt Magnet's underground operations in Australia. Progress on rectifying this situation will be reported at the June 2007 results presentation to the investment community.

The combination of lower production and higher cost will result in the June 2007 quarter's cash cost per kilogram being up by between 35% and 45%. Harmony's total cash operating costs are up by between 25% and 28% quarter-on-quarter. The company ascribes this in part to the newly installed accounting software system that resulted in some of the March quarter's costs being captured in the June 2007 quarter and thus the average of the last six months' cost would be a more accurate reflection of the company's current cost base.

During the last six months, the company's cost base increased by between 8% and 12% on the previous six months. The increase in costs is mainly due to consumables (stores) and supervisory labour and detailed plans are being implemented to address the production and cost issues.

Shareholders are advised of the resignation of the Chief Executive, Bernard Swanepoel, with immediate effect and the appointment of Graham Briggs as acting Chief Executive.

* * *

The financial information on which this trading statement is based has not been reviewed nor reported on by the company's auditors. ***Due to the time taken to install new software and the need to have externally audited numbers available, the announcement of Harmony's quarter and year-end financial results has been postponed*** to Monday, 27 August 2007. (Emphasis added.)

89. Harmony's August 6, 2007 disclosures drove its share price downward, to close that same day at $11.02 per share, or over 18% below the previous day's closing price of $13.47 per share.

90. As illustrative of the impact that the Company's disclosures had on the market, on August 6, 2007, JP Morgan issued an analyst report about the Company entitled "Harmony Gold

Mining Co Ltd Neutral; CEO Bernard Swanepoel resigns suddenly – costs spiral, production slumps. Trouble. – ALERT." The report stated, in relevant part:

- Harmony's CEO Bernard Swanepoel has resigned with immediate effect and the group has issued a trading statement guiding earnings for the June quarter significantly lower. ***The group has stated that its March quarter costs had been understated as a result of new accounting system software not capturing costs accurately***. After failing to raise $350m by way of a planned corporate bond last month and taking account of the group's revised cash cost guidance (R125,000/kg – before upcoming wage increases) we believe that Harmony will struggle to fund its disclosed business plan at the current gold price (R152,000/kg).

* * *

- According to the statement Harmony expects to announce a headline loss per share of between 130cps and 160cps (March: profit of 58cps) as a result of lower production and an increase in costs. Gold production is expected to decline 8–12% due to production incidents at Bambanani and Joel, lower grade at Tshepong and underperformance at Mt Magnet in Australia. This was much worse than the 5% decline in gold production to 517koz we had forecast.

- ***The group's cash cost guidance is more startling. Total cash operating costs are expected to be up 25–28% qoq*** (from R1.9bn to R2.4bn). The group has stated that ***part of the problem is a newly installed accounting software system that resulted in some of March quarter's costs being captured in the June quarter. Management has guided that an average of the last six months cost would be a more accurate reflection of the cost base – we estimate this number at cR125,000/kg which is 19% higher*** than the R104,132/kg reported in the December 2006 quarter. Lower production and the higher cost base in the June quarter will see cash costs rise 35–45% to +R145,000/kg as a result.

- The trading statement said that ***during the last six months the cost base increased 8–12% and that this increase was ascribed to the higher costs of consumables, supervisory labour and detailed plans being implemented to address production and costs issues. In our view these problems indicate a loss of management control and that the situation could get worse*** (more staff turnover and spooked creditors) before it MAY improve – we consider forecasting risk unusually high now.

* * *

- Harmony has lost its architect and CEO in startling fashion. Moreover, it seems likely to us it will be ***forced to reevaluate its business plan and***

> ***structure in light of its predicament. The apparent stresses may lead to further management departures*** in a skills-starved market. The bottom line for us is that forecasting and valuation uncertainty have risen sharply. (Emphasis added.)

91. Additionally, on August 6, 2007, Fitch placed the Company's long-term issuer default rating of "BB+" and short-term issuer default rating of "B" on Rating Watch Negative ("RWN"). Fitch's announcement, in relevant part, stated:

> The company's National ratings of Long-term 'BBB(zaf)' and Short-term'F3(zaf)' have also been placed on RWN.
>
> Harmony's trading update indicated that it would report a loss of between 130-160 cents per share (equivalent to around ZAR500m-640m), ***significantly below previous expectations***, for Q407 [30 June 2007] ***due to a combination of lower gold production (reduction of between 8-12%), and a 35-45% increase in cash operating costs***. In conjunction with the trading update Harmony also announced the departure of its long-serving CEO, Mr Bernard Swanepoel, and his replacement on an interim basis by Mr Graham Briggs (currently MD of Harmony Australasia).
>
> Fitch plans to meet with the company's management during the next 1-2 weeks to discuss, among other issues, its plans to address the reported escalation in costs, its future production schedule and possible changes in strategy resulting from the departure of Mr Swanepoel. The agency would expect to resolve the RWN shortly thereafter. (Emphasis added.)

92. The investor sell-off, loss of confidence in Harmony's management, and lack of visibility regarding the Company's inability to accurately report costs, which was a metric widely followed by investors and analysts, drove the price of Harmony's shares down even further, as they declined an additional $1.57 per share, or over 14 percent, to close on August 7, 2007 at $9.45 per share. This closing price on August 7, 2007 represented a two-day decline in the Company's shares of $4.02 per share, or 29.8 percent, and a cumulative decline of $7.25 per share, or over 43.4 percent, from the value of the Company's shares at their Class Period high of $16.58 on April 25, 2007.

93. Later on August 7, 2007, *Forbes.com* published an article entitled "Discord at Harmony Mining?" The article, in relevant part, stated:

> On Tuesday, Harmony Gold's shares slipped 14.3%, or $1.57, to $9.49 at the end of trading, after tumbling 18.1% on Monday, as investors questioned the stability of the South African mining company.
>
> On Monday, the mining company slashed its third quarter forecast and announced the abrupt resignation of Chief Executive Bernard Swanepoel. The sudden removal of Swanepoel, who had served the company for 12 years, shocked industry watch dogs.
>
> "He was the main man at the company," Barnard Jacobs Mellet[t] analyst Patrick Chidley said Tuesday. "The company is left without a clear leadership or a clear direction." In a Monday press release, the company provided little color on the departure, even as it gave a rough snapshot of its production and cost control problems.
>
> ***Harmony said third quarter profits will "differ significantly" from previous quarters because of lower production, and higher overhead, costs. The shortfall will be significant.*** Harmony now expects a loss per share of 130 to 160 South African cents a share. For comparison, the company earned 58 cents a share in the second quarter. ***In the third quarter, gold production slipped 8 to 12%, due to production problems at various sites including its Bamanani, Joel and Tshepong sites*** in Africa. "Progress on rectifying this situation will be reported at the June 2007 results presentation to the investment community," the company said.
>
> ***As production fell, costs have soared. Harmony's cash operating costs balloned 25 to 28% from the previous quarter. Aside from changes in its accounting software system, the company said its cost base rose 8 to 12% in the last six months.*** "The increase in costs is mainly due to consumables (stores) and supervisory labour and detailed plans are being implemented to address the production and cost issues," Harmony said.
>
> "***It was worse than we expected***," Chidley said. The skimpy press release and the strange departure is not a good sign for the company, which has a market capitalization of $3.8 billion. The massive two-day sell-off "seems to imply that there is something else is going on that we don't know about," Chidley said. (Emphasis added.)

VIII. POST CLASS PERIOD DISCLOSURES AND DEVELOPMENTS

94. In the days and weeks that followed Harmony's shocking revelations of August 6, 2007, analysts struggled to make sense of the news, and Harmony continued to disclose

additional information regarding the nature of its inability to provide accurate financial results, including admission after admission concerning the Company's lack of internal controls that led it to materially misstating its costs for Third Quarter 2007. For example, on August 21, 2007, Deutsche Securities issued an analyst report on Harmony after meeting with Graham Biggs, Harmony's interim CEO. The report stated:

> ***Harmony is still struggling with the accounting system. We expect it will take a further 3-4 months to rectify this issue.*** Harmony is also looking to source up a much weakened finance department and will look to use consultants in the short term to get the accounting system back up and running. ***Costs remain the biggest issue.*** Briggs hopes to bring cash costs down from a current R125 000/kg to around R115 000/kg. ***Cost estimates remain vague, given the continued problems in the group's accounting system.*** We estimate costs are closer to R130 000/kg (inclusive of a 10% wage increase). (Emphasis added.)

95. On August 22, 2007, Harmony issued a press release to the public on its website and to various media outlets disclosing that Nomfundo Qangule, the Company's Financial Director, had resigned from Harmony "with immediate effect."

96. Days later, on August 27, 2007, Harmony issued a press release to the public on its website and to various media outlets announcing its Fourth Quarter 2007 financial results. For Fourth Quarter 2007, Harmony announced ***a headline loss of 133 SA cents per share*** compared to a headline profit of 58 SA cents per share reported in Third Quarter 2007. The Company also reported that its Fourth Quarter 2007 ***net loss was R653 million*** compared to a net profit of R247 million in Third Quarter 2007, and that its ***total operating profit decreased to R39 million in the Fourth Quarter from R869 million*** in Third Quarter 2007. The reason that the Company's Fourth Quarter financial results were so dismal was because rather than restating the incorrect financial results previously reported for the Third Quarter, the Company simply shifted the actual costs that it had incurred (but failed to report) in its Third Quarter 2007 into its Fourth

Quarter 2007 financial results. Additionally, Harmony offered a further mea culpa with regard to its financial and accounting debacle, stating:

> SA underground tonnes were 6.6% lower for the June 2007 quarter due to the re-engineering of the Joel shaft and an orepass blockage at Bambanani necessitating the temporary closure of the mine and thereby losing two months worth of production. Grades at the SA underground operations were also lower at 4.76g/t (4.97g/t), mainly attributable to mining a lower grade area at Tshepong. ***This as well as the inaccurate cost allocation between the March and June quarters from the implementation of the accounting software resulted in a 48.8% increase cash operating costs.***
>
> An internal review of our new accounting system is currently underway to address the shortcomings of the system in order to understand the underlying issues, establish the current backlog to improve cost management. Employee's knowledge of the system will be established and where necessary retraining will be provided to ensure the highest proficiency. We anticipate the findings of the review within the next four months.
>
> * * *
>
> ***The last six months' increasing costs have been a major concern for management and cost control is already being actively addressed at all levels of the operations***, but more specifically in areas of capital expenditure and services. We will, however, have to work harder to reduce the overhead costs linked to Rand per tonne and simultaneously increase our grades by working smarter to ensure that ultimately our Rand per kilogram cost is also reduced.
>
> * * *
>
> Graham Briggs, Acting Chief Executive of Harmony says: "The major challenges ahead for Harmony are to increase gold production and reduce costs. ***Our back to basics approach and focus on disciplined mining should have the management and workforce concentrate on reversing the direction of the downward trend of our production and the upward trend in our cost graphs.*** We have commenced our new strategy to realize our full potential. (Emphasis added.)

97. Similarly, and also on August 27, 2007, Harmony published a "Results Presentation," which was made available to analysts and investors through the Company's website. The Results Presentation contained other admissions concerning the shortcomings of the Company's accounting system, and the lack of internal controls, including:

- Introduction of new accounting system

- System 'live and stand-alone' from January 2007
- March Q – not all stores' cost of about R250 million reflected

*   *   *

- Internal review immediately conducted to address shortcomings and understand underlying issues
- Employee training seen as key
- External consultants will do comprehensive audit of the system
- System should take six months to stabilize
- Will perform simultaneous manual checks
- External audit to be performed on accounting system after December 2007

98. Also on August 27, 2007, Harmony held the first of two earnings conference calls with analysts and the investing public. During the first call on this day (the "first August 27, 2007 Conference Call"), Patrice Motsepe, the Chairman of Harmony, discussed the Company's materially misstated costs and unreliable accounting system, and their effect on the Company's share price, and called for accountability, stating:

> Because I have a duty as the Chairman but also as the largest shareholder in Harmony, I have a very, very, very serious obligation and very fundamental expectations in terms of where the Company should go. So I really want us to put behind us because it's very, very important, ***what has happened during the period of the old CEO, whatever challenges, mistakes, problems, errors, what may have been done, what should have been done; all that is behind us now.***
>
> *   *   *
>
> Now having said that, I belong to the old school of thought -- whenever there is a problem, there has to be proper accountability at all levels. ***And there's got to be accountability at management level, but there also has to be accountability at board level.*** And we have really had to look at ourselves very hard and see this as the board. I had to look at myself as Chairman of the Company, and we had to ask ourselves, are there certain things that we should have done differently? And I think one of the fundamental issues is, you've got to ask yourself that question particularly against the background of what has happened in relation to, well, the share price but more importantly in relation to the whole performance and the results within management.

*   *   *

> But ***there were problems and the problem related to what happened in the accounting area***, and that was also one of the final straws [that broke] the camel's back. When we look at what happened last year, we had resolved that we are reasonable that reflected Harmony going in the right direction. ***But there was this overstatement amounting to more than ZAR200 million that somehow slipped through the system. Now you cannot blame her for that. But we have to take responsibility. All of us have to take responsibility.***

*   *   *

> No, but let me -- you see, one of the -- I don't want to say safe things, but one of the not so positive developments was ***we were in the middle of a very interesting transaction with Bernard at a time when these challenges arose looking at it is very, very interesting, and we're engaged in discussions. And then, of course, as I said, some of these issues arose in relation to specifically this overstatement*** …. It is difficult to be here and not to give good answers …. So you want to come here and be able to say good things all the time. And, as I said, the 250 was a bit of a -- you know, something that just cropped out of nowhere. But besides that, that is behind us now. (Emphasis added.)

99. Additionally, during the first August 27, 2007 Conference Call, Graham Biggs, the acting CEO of Harmony, admitted the Company's reckless acts with regard to its false and misleading Third Quarter 2007 financial statements and earnings release, as follows:

> ***The quarter cost problem, we introduced a new accounting system. The old accounting system was an accumulation of all the acquisitions. That accounting system started in December. It was stand-alone and live from January. In the March quarter, not all the stores costs. About ZAR250 million should have been reflected but was not.*** This discrepancy was discovered in July, end of July, and obviously we started an internal review immediately and started addressing the shortcomings in understanding the underlying issues.
>
> ***Systems are fairly complex when they are brought on, so it is not really the systems fault. But a lot of the employee issues, the training, we implemented I think too fast and created problems.*** (Emphasis added.)

100. Harmony's acting CEO continued to cover up the fact that the Company's executive officers knew that the ERP implementation had a disastrous effect on Harmony's ability to generate and report reliable financial statements and earnings reports as early as January 2007, as detailed herein.

101. Later on August 27, 2007, Harmony held the second of two earnings conference calls with analysts and the investing public (the "second August 27, 2007 Conference Call). During this call, Harmony's acting CEO again admitted the Company's recklessness with regard to its financial reporting and disclosures, stating:

> Slide 13 is the quarter-on-quarter US and Imperial, showing that we produced 527,000 ounces and at ***a cash cost of $655 per ounce*** ….
>
> ***The June 2007 quarter, of course, is the anomaly with the cost, and the March 2007 was understated, June 2007 overstated, and in the last bar for June 2007, sort of excluding the Bambanani effect, which is one of the major production hiccups that we had*** ….
>
> ***Talking about the quarterly cost problem, we introduced a new accounting system. System went live basically in December, and live and standalone as from January 2007.*** That's been going for just over seven months – well, eight months now. ***In the March quarter, not all the stores, and that's about 250 million was reflected in that March quarter.***
>
> * * *
>
> [T]***he implementation, of course, of a new system like this was fairly aggressive and probably optimistic. One of the big issues is that employees need to be trained properly to be able to use the system.*** We have got external consultants to do a comprehensive audit of the system. It will take them probably four or five weeks to do that. ***The system should take about six months to stabilize, is our anticipation as we go forward. Simultaneous to it, we're doing some manual checks***, and after the December quarter, we will do an external audit. (Emphasis added.)

102. On August 30, 2007, the Company filed a Form 6-K with the SEC to report its Fourth Quarter and fiscal 2007 (ended June 30, 2007) financial and operational results. Therein, the Company echoed its admissions concerning the reckless manner with which it had implemented and relied on the faulty accounting software, stating:

> Cash operating costs increased year on year by R1.6 billion from R6.6 billion to R8.2 billion. ***The last six months' increasing costs have been a major concern for management and cost control is already being actively addressed at all levels of the operations, but more specifically in areas of capital expenditure, overheads and services.*** We will, however, have to work harder to reduce the overhead costs linked to Rand per tonne and simultaneously increase our grades

> by working smarter to ensure that ultimately our Rand per kilogram cost is also reduced.
>
> The main contributors to costs were consumables and supervisory labour. ***The once-off cost adjustment for the June quarter is ascribed to the newly installed accounting software system that resulted in some of the March quarter's costs being captured in the June 2007 quarter. As a result, Harmony's total cash operating costs rose by 31.1% quarter-on-quarter to R2.4 billion from R1.9 billion.***
>
> An internal review of our new accounting system is currently underway to address the shortcomings of the system in an effort to understand the underlying issues and establish the current backlog of payments in order to improve cost management. ***Employee's knowledge of the system will be established and where necessary, retraining will be provided to ensure the highest level of proficiency.*** External consultants have been engaged to do a comprehensive audit of the system. ***We anticipate that the system should be bedded-down within six months.*** A further audit conducted by Harmony's auditors should be completed in December 2007. (Emphasis added.)

103. On October 2, 2007, Bernard Swanepoel, Harmony's CEO during the Class Period, was interviewed by Alec Hogg of Moneyweb ("South Africa's leading source for independent investment information"). The transcript from the interview was posted on Moneyweb's website, and made available to the public.[7] During the interview, Bernard Swanepoel admitted that ERP implementation projects, such as the exact one that was implemented at Harmony, cannot be implemented in the time dictated by him and others at the Company. Harmony's former CEO made the following telling statements:

> MONEYWEB: This whole reporting by quarters…
>
> BERNARD SWANEPOEL: Crazy, and painful and, quite honestly, a major contributor to the incident whilst implementing new accounting software. ***You know, some other companies would have <u>12 months</u> in which to implement a system, <u>run it parallel</u>, switch off the one and have no hiccups. When you've got <u>three months, anybody would tell you there's no way</u>***<u>s</u> [*sic*] ***you implement a system perfectly, smoothly, in three months.*** (Emphasis added.)

[7] *Available at* http://www.moneyweb.co.za/mw/view/mw/en/page55?oid=163716&sn=Detail.

104. On October 8, 2007, Deutsche Securities issued an analyst report on Harmony following a meeting with the Company's management which focused on "the group's status update," including its accounting system issues. The analyst report stated:

> With the help of external consultants, Harmony has completed a full review of its management accounting system. ***A washing list of potential problems has been compiled, and Harmony will now begin the process of repairing the corrupted Oracle ERP system*** (the root of the accounting system failure). Management expects the system to be up and running by the end of the financial year (June 2008).
>
> In the meanwhile, Harmony is running a manual cost reporting system (that will remain in parallel until the ERP system is back up) with the group having just completed a full stock take at the end of the quarter.
>
> * * *
>
> ***The failure of Harmony's accounting system has unearthed a range of new risks*** namely a reduction [in] the group's reserve base, the potential for high grading and the possible pull back in crucial [capital expenditure] spend. While these new risks may result in short terms earnings upgrades, they remain dangerous to the long term sustainability of the Harmony quality portfolio. (Emphasis added.)

105. On October 12, 2007, the Company filed with the SEC its Annual Report and financial statements for fiscal year 2007 (ended June 30, 2007). The Company's 2007 Annual Report contained a "Letter to shareholders," authored by Harmony's Chairman, Patrice Motsepe, and dated September 28, 2007, which stated:

> From an operational point of view, Harmony experienced a number of challenges which, when combined with the ***unsatisfactory focus on cost control and systems***, resulted in various operational areas underperforming during the year. These areas will be more closely managed by the strong leadership team that has been put in place and this should result in improved productivity and competitiveness.
>
> * * *
>
> Both the operational and financial performance in the fourth quarter were disappointing. ***In particular, data capturing problems with a newly-installed accounting system led to the under-reporting of costs amounting to some R250 million in the third quarter with these having to be allocated to the fourth***

> ***quarter, with negative effects.*** An internal review of the new accounting system is currently underway to address shortcomings in both the system and its operation.
>
> ***Total cash operating costs for the group rose by 26.8% year-on-year*** which was more than anticipated. Management is giving this matter serious attention. (Emphasis added.)

106. The Company's 2007 Annual Report also contained a "Review of the Year" section authored by Graham Briggs, Harmony's acting CEO. Dated September 28, 2007, this section of the Annual Report stated:

> ***The issue of most concern during the year was the significant increase in cash operating costs, which rose by 26.8% year-on-year from R6.6 billion to R8.2 billion. The cost spiral was felt particularly in the second half of the year, but was masked in the third quarter owing to a system-capturing error.***
>
> The erroneous reporting is regrettable and was first reported in a trading update to the market on 6 August 2007 when initially discovered. ***It had a significant impact on both the results for the fourth quarter and for the year. The error is ascribed to a newly installed accounting software system that resulted in some R250 million of the March quarter's costs not being reported and having to be captured in the June quarter. This in turn resulted in the final quarter's total cash operating costs rising by 44.0%, quarter-on-quarter.***
>
> Costs remain of foremost concern to management and ***stringent cost control mechanisms are actively being implements, particularly regarding capital expenditure, overheads and services***. Some of the biggest culprits in recent months have been the rising cost of consumables (such as steel) and supervisory labour ….
>
> ***Internal and external reviews of our new accounting system are being conducted and we believe that by FY08 all outstanding issues should have been resolved.*** We understand that it will require consistent effort to regain investor confidence, both in our systems and our ability to manage our costs.
>
> * * *
>
> Our back to basics approach and focus on disciplined mining should have management and the workforce concentrating ***on reversing the downward trend in our production and the upward trend in costs***. We are keenly aware that good management and intensive cost controls will enhance the company's prospects. Although no dramatic upturn should be expected in the next two quarters, productivity improvements will, however, be expected from each and every employee throughout the company. (Emphasis added.)

107. The fact that Harmony had still not fully recovered from the accounting disaster of earlier in 2007 was reflected in the Company's October 31, 2007 Form 6-K filed with the SEC to report its First Quarter 2008 (ended September 30, 2007) financial and operational results. Specifically, the section entitled "Acting Chief Executive's Review" stated:

> I can safely report that, besides the due diligence, we have accomplished most of the undertakings made to shareholders in the previous quarter: … We said we would conduct an independent review of our accounting system in order to understand the underlying issues. This has been done. ***We have now advanced to the stage where anomalies in the system are being corrected.*** (Emphasis added.)

108. Also on October 31, 2007, Harmony held an earnings conference call with analysts and the investing public. During this call, Frank Abbott, Harmony's Interim Finance Director, again admitted the Company's recklessness with regard to its accounting meltdown, stating:

> We've completed the IT audit. And ***the findings conclude that our new IT system was implemented too quickly. We didn't allow enough time for proper training and for proper implementation.***
>
> We believe that it could take ***another five to six months to fix*** that before we can do this, all the efficiencies out of the accounting system that we should be doing. (Emphasis added.)

109. On December 7, 2007, Harmony filed its Annual Report with the SEC on Form 20-F. Therein, the Company further disclosed, in relevant part:

> ***Commitment to cost control***
>
> Harmony is committed to reducing its cost base and, to this end, Harmony ***benchmarks its costing parameters both internally between operations within Harmony and externally*** against other gold producers.
>
> * * *
>
> ***Implementation of new systems***
>
> Harmony has implemented cost accounting systems and strict ore accounting and ore reserve management systems to measure and track costs and ore reserve depletion accurately, so as to enable it to be proactive in its decision making.

*   *   *

Beginning this fiscal year ending June 30, 2007, pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, Harmony is required to furnish a report by its management on its internal control over financial reporting. The report in this annual report contains, among other matters, an assessment of the effectiveness of Harmony's internal control over financial reporting as of the end of the fiscal year, including a statement as to whether or not its internal controls over financial reporting are effective. Harmony is required to have its independent auditors publicly disclose their conclusions regarding the evaluation.

During fiscal 2007, we experienced a breakdown in internal controls over financial reporting related in part to the implementation of a new Enterprise Resource Planning (ERP) system. Certain month-end controls relating to accounts payable, cash and bank deposits as well as inventory could not be performed during the fiscal year due to difficulties encountered with the implementation of the system which led to material adjustments being required in our financial statements. Accordingly, we have identified certain material weaknesses in our internal controls over financial reporting, in particular relating to the information technology control environment and the financial reporting closing process which have also negatively impacted the report issued by our auditors regarding our internal controls over financial reporting. *See Item 15. – "Disclosure Controls and Procedures."*

*   *   *

[Item 15. DISCLOSURE CONTROLS AND PROCEDURES

(a) Disclosure Controls and Procedures]

Based on the foregoing, the Company's management, including the CEO and CFO, ***concluded that our disclosure controls and procedures were not effective as of June 30, 2007 due to material weaknesses in our internal control over financial reporting described below.***

(b) Management's Annual Report on Internal Control over Financial Reporting

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. Our system of internal control over financial reporting is required to be designed to provide reasonable assurance to the company's management and board of directors regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with applicable generally accepted accounting principles.

*   *   *

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual financial statements will not be prevented or detected on a timely basis.

Based on the assessment under these criteria, management has identified the following material weaknesses:

1. Information technology control environment

The Company has failed to maintain an effective information technology control environment as evidenced by certain control deficiencies related to the implementation of the Oracle ERP system. These deficiencies relate to the Company's inability to prevent and detect errors in the configuration of various modules in the Oracle ERP system, including standard reconciliations, inventory valuation and financial reports being generated by the system. In addition the Company did not properly implement controls to achieve adequate segregation of duties or prevent and detect unauthorised access to data within the Oracle ERP system and controls to prevent and detect unauthorised changes to the Oracle ERP system. In addition the company failed to effectively monitor the Oracle ERP implementation process as management was unable to identify the aforementioned configuration deficiencies as well as the absence of mitigating manual controls.

2. Assets brought into use

The Company failed to maintain effective preventative and detective monitoring controls over the accuracy of depreciation expense on mining assets under construction ….

3. Capitalisation of borrowing costs

The Company failed to maintain effective preventative and detective controls over the completeness of capitalized borrowing costs on qualifying assets ….

4. Valuation of inventory

The Company failed to maintain effective preventative and detective controls over the completeness and accuracy of the reconciliation of stores inventory. This deficiency relates to the proper capitalisation of inventory costs.

5. Deferred tax

The Company failed to maintain effective preventative and detective controls over the completeness and accuracy of the reconciliation of certain adjustments recorded within the deferred tax balance. This deficiency relates to adjustments recorded at the Western Australian and Papua New Guinea operations.

*   *   *

Background and Additional Information Regarding Material Weaknesses

Information technology control environment

An evaluation of the effectiveness of our internal controls over financial reporting was conducted in fiscal 2006. It was evident that the accounting system then in use had to be replaced, due to the following reasons:

- To move away from legacy systems which make extensive use of external spreadsheets and databases which are prone to both error and manipulation;

- To assist in complying with the requirements of the Sarbanes Oxley Act of 2002;

- Lack of external support for the system from the software providers.

The system was replaced with an Oracle Enterprise Resource Planning (ERP) system that would enhance the control environment. ***An aggressive implementation plan was embarked on in May 2006 and the implementation date was set for December 3, 2006.***

Regular Management Committee meetings and Steering Committee meetings were held to monitor and measure the implementation process with quarterly reporting to the Board of Directors. However, the IT Steering Committee could not effectively monitor the process as they were not provided with detailed information by the implementation team. As a result, ***the Company failed to identify that the controls over the system development life cycle were not operating effectively. These deficiencies relate to the company's inability to prevent and detect errors in the configuration of various modules in the Oracle ERP system, including standard reconciliations, inventory valuation and financial reports being generated by the system***

In addition, the Company did not properly implement controls to achieve adequate segregation of duties to prevent and detect unauthorised access to data within the Oracle ERP system.

Furthermore, the Company did not have a contingency plan in place to ensure effective controls over financial reporting in the event of a breakdown in the Oracle automated controls. The time period in which the new system was implemented did not allow the company to implement a fully collaborative approach between the project implementation team, business process owners, service providers and advisors. ***The following configuration deficiencies were detected in the system at the time of going live:***

Standard reconciliations

- The automated bank reconciliation function within the Oracle ERP system was not available due to incorrect configuration of the system at the implementation date. As a result bank reconciliations were not performed timely.

- Supplier reconciliations were not performed and payments were not allocated accurately to suppliers which resulted in duplicated payments.

Inventory valuation

Incorrect configuration of the inventory module resulted in inventory items being recorded at the incorrect units of measure as well as unit prices.

Business performance reviews

Reports generated by the system were incorrect and unreliable as certain elements within working costs were posted to suspense accounts on the balance sheet with the effect of understating the costs recorded in the business unit. (Emphasis added.)

110. The Company's own Annual Report provides strong evidence that Defendant and its executive officers and IT Steering Committee were reckless in: i) embarking on an aggressive implementation of a new ERP system; ii) failing to effectively monitor the implementation process; and iii) failing to detect errors in the newly implemented system's ability to generate basic financial reporting and other standard reports that were fundamental to Harmony's business and operations.

111. Additionally, Harmony's Form 20-F filed with the SEC on December 7, 2007 contained an adverse opinion from the Company's independent auditor, PricewaterhouseCoopers ("PWC"), which listed five different material weaknesses in Harmony's internal controls and deemed them ineffective as of June 30, 2007. Among many other material weaknesses in Harmony's internal control over financial reporting, PWC cited the following:

> The Company has failed to maintain an effective information technology control environment as evidenced by certain control deficiencies related to the implementation of the Oracle ERP system. These deficiencies relate to the Company's inability to prevent and detect errors in the configuration of various modules in the Oracle ERP system, including standard reconciliations, inventory

> valuation and financial reports being generated by the system. In addition the Company did not properly implement controls to achieve adequate segregation of duties or prevent and detect unauthorised access to data within the Oracle ERP system and controls to prevent and detect unauthorised changes to the Oracle ERP system. In addition the company failed to effectively monitor the Oracle ERP implementation process as management was unable to identify the aforementioned configuration deficiencies as well as the absence of mitigating manual controls.

112. As evidenced by the adverse opinion of PWC, Harmony failed to create and monitor any adequate internal controls, and recklessly failed to comply with the entire spirit of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") by knowingly and recklessly implementing materially deficient internal controls over the Company's financial reporting.

IX. <u>ADDITIONAL FACTS SUPPORTING DEFENDANT'S SCIENTER</u>

113. As alleged herein, during the Class Period Harmony and its executive officers, including its CEO, Financial Director and Executive Finance Manager – all of who were also members of the Company's Executive Committee during the Class Period – acted with scienter during the Class Period.

114. Harmony's CEO, Financial Director, Executive Finance Manager and other executive officers knew or deliberately and recklessly disregarded that the public statements and documents Harmony issued or disseminated to shareholders and investors were materially false and misleading. These executive officers also knew, or deliberately and recklessly disregarded, that such statements and documents would be issued or disseminated to the investing public, and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements and documents as primary violations of the federal securities laws. Harmony's executive officers, by virtue of their receipt of information reflecting the true facts regarding Harmony, their control over, and/or receipt and/or modification of the Company's allegedly materially misleading misstatements and/or their associations with the Company which made

them privy to confidential proprietary information concerning Harmony, participated in the fraudulent scheme alleged herein.

115. As detailed above, Harmony and its executive officers knew and/or recklessly disregarded the factors that led to the Company's erroneous financial reporting for Harmony's Third Quarter 2007. As a result of Harmony's highly publicized close review and intense focus on costs, the numerous production incidents and reengineering projects undertaken in the Company's Third Quarter 2007, as well as the knowledge of all of the problems that the Company had, and continued to have, with its accounting and financial reporting systems, the Company and its executive officers knew that Harmony's reported financial results for Third Quarter 2007 were false and misleading, and had no reasonable basis in fact. Additionally, the Company's intense focus on cost control alerted Harmony's executive officers to the fact that the Company was poised to publicly report financial results for Third Quarter 2007 that were wholly inaccurate, and that were not representative of the Company's true financial condition or performance for Third Quarter 2007.

116. Additionally, Harmony's executive officers' cost obsession and ability to previously accurately predict and report financial results provides further support for their reckless disregard that Harmony was underreporting its costs, and overstating its profit, during the Class Period. As set forth in ¶¶ 34 – 40 and 115, Harmony and its executive officers consistently represented to investors that they possessed a strong focus on cost control. At one point, the Company's CEO even stated that both he and Harmony were "cost obsessed." Additionally, Harmony's 2006 Annual Report, filed with the SEC on October 30, 2006, further touted the Company's strong focus on cost containment, and indicated that "a no-frills, low cost ethic," "an obsession about lowering its cost base," and Harmony's implementation of "cost

accounting systems…to measure and track costs" were key characteristics of the Company's strategy, termed the "Harmony Way." The fact that Harmony and its executives could predict costs to the dollar and to the ounce in previous financial reporting periods renders it untenable that the Company's CEO, Financial Director, Executive Finance Manager and other executive officers were unaware that Harmony was materially underreporting its costs, and overstating its net profit, for Third Quarter 2007, and throughout the Class Period. Harmony's Third Quarter 2007 financial results were dazzlingly remarkable, and given the circumstances surrounding the Company during the quarter, the Company's executive officers should have realized and investigated the basis for such incredible financial results instead of simply recklessly reporting them to investors, and recklessly disregarding the probability that the Company would underreport its costs for Third Quarter 2007 to investors and the market.

117. Further, as detailed by CW2, the Program Manager of the Data Warehouse (the system that held all of the Company's financial information), and as set forth at ¶¶ 57 and 58, the Data Warehouse sent "***daily reports to Harmony executives***" regarding the Company's costs and financial information, and ***which demonstrated that the accounting system was systematically failing to properly allocate the Company's costs, and was placing a substantial sum of money into suspense accounts*** as Harmony's financial accounting system was unable to determine the appropriate accounts in which to allocate charges. As further stated by CW2, most of the ***problems with Harmony's financial accounting system surfaced in January 2007*** – months prior to the start of the Class Period. The daily reports generated by the Data Warehouse were sent directly to Harmony's executives, including the Company's CEO, Financial Director and Executive Finance Manager. The daily reports received by Harmony's executive officers ***demonstrate that these executive officers knew facts and had access to information***

demonstrating that their public statements were not accurate, and further, that they failed to check information that they had a duty to monitor. The following facts, as alleged herein, are also indicative of scienter: i) a dramatic improvement in the Company's financial results and costs in Third Quarter 2007; ii) for a Company that prided itself on "cost obsession;" iii) in a quarter that was filled with rising costs and lower production, which was compounded by major engineering projects and multiple adverse "production incidents;" iv) significant delays and insurmountable obstacles in implementing the new ERP system, which was a highly publicized and massive corporate undertaking; and v) in a quarterly period that was admittedly Harmony's "historically worst quarter," should have alerted each of the Company's executives that Harmony's financial results and significantly improved costs were largely generated by an unreliable and dysfunctional accounting system.

118. Harmony also failed to properly staff and supervise the implementation of the Company's ERP system in that they hired Ecom without increasing its staffing for the project, as they publicly promised in 2006. They also did not provide regular reports to the IT Steering Committee and did not implement manual checks and controls. These failures are probative of scienter. As discussed herein at ¶¶ 54 and 57, Ecom's management was very close to Harmony's CEO and other Harmony executives. CW1 corroborated this fact, and further stated that Ecom's senior manager in charge of implementing the ERP system and integrating the Company's accounting system ***maintained a very close-working relationship with Harmony's CEO*** throughout the process of implementing the ERP system.

119. Further, Harmony, its CEO, Financial Director, Executive Finance Manager and other executive officers were under a deadline to comply with Sarbanes-Oxley reporting requirements, and they did not want to disclose in the Company's 2007 Annual Report, as would

have had to under Sarbanes-Oxley reporting requirements, that the Company's internal controls with regard to financial reporting remained materially deficient. As detailed herein, numerous areas were previously identified as materially deficient in Harmony's financial and operational internal controls, and the Company reported in 2006 – three months before the new ERP system went live in January 2007 – that it was "implementing appropriate changes to our internal control structure which we believe will remedy these weaknesses," including the strengthening of Harmony's finance team and placing responsibility for Harmony's finance team on "a senior finance team member." The immediate correction of these previously identified material deficiencies in the Company's internal controls was critical for Harmony, in that it faced an imminent deadline to become Sarbanes-Oxley compliant, specifically with regard to remedying the Company's admittedly materially deficient internal weaknesses in financial reporting.

120. These deficiencies in the Company's internal controls over financial reporting were identified at least as far back as April 2006, and included known material weaknesses in reporting the Company's financial results under U.S. Generally Accepted Accounting Principles ("GAAP"), and that the Company possessed an inadequate financial reporting system. As stated by the Company in its public filings, "Beginning this fiscal year ending June 30, 2007, pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, Harmony is ***required*** to furnish a report by its management on its internal control over financial reporting. The report in this annual report contains…an assessment of the effectiveness of Harmony's internal control over financial reporting … including a statement as to whether or not its internal controls over financial reporting are effective." The Company stated that it started preparing and transitioning for the change in financial reporting computer systems in ***April 2006***, and set an early ***December 2006 deadline*** for the replacement of its inadequate financial reporting computer system.

Additionally, on October 30, 2006 Harmony represented that "***We have also employed additional resources to oversee this installation and transition between systems***." However, as stated by CW2, the Company never employed sufficient resources to oversee Harmony's transition to the new ERP system. This statement is corroborated by the Company's own post-class period disclosures regarding inadequate staffing and employee training related to the new accounting system.

121. It is impossible to imagine that Harmony's CEO, Financial Director, Executive Finance Manager and other executive officers could plausibly claim that they were unaware of the dire situation surrounding the full extent of the ineffective financial reporting system and the fact that the Company's accounting system was failing to report Harmony's costs and most basic financial results accurately. This is due to, *inter alia*, the fact that the Company was required to become Sarbanes-Oxley compliant, and had previously represented that it had dedicated a significant amount of managerial and financial recourses to achieve this goal, under an impending deadline.

122. Additionally, with regard to the Company's admitted ineffective disclosure controls and procedures, and as detailed at ¶¶ 109 – 112, Harmony's 2007 Annual Report detailed the full extent of ***known*** material weaknesses at the time the ERP system was taken "live" ***in January 2007***. Most significantly, the Company reported that it had "***detected in the system at the time of going live***" configuration deficiencies that caused reports generated by the system to be "***incorrect and unreliable*** as certain elements within working costs ***were posted to suspense accounts on the balance sheet with the effect of understating the costs recorded in the business unit***." The sheer magnitude of the R250 million [$34.5 million] in costs trapped in "suspense" accounts – a deficiency in the Company's accounting system that was known in

January 2007 – should have alerted and triggered the CEO, Financial Director and Executive Finance Manager to investigate the nature of the unallocated amounts trapped in the new system, rather than recklessly disregard their existence.

123. Additionally, Harmony ***admitted that, at the time the new ERP system was taken "live" in January 2007, the Company had detected system errors*** that: i) precluded standard bank reconciliations from being timely performed; ii) caused duplicated payments to suppliers; and iii) resulted in "inventory items being recorded at the incorrect units of measure as well as unit prices." The absence of these most basic reporting needs had to have put all of Harmony's executive officers on notice of the material deficiencies in the new accounting system as early as January 2007.

124. Further probative of Harmony and its executive officers' conscious knowledge of their public statements and omissions during (and before) the Class Period arises from the immediate terminations of Harmony's CEO and Financial Director in the wake of the Company's disastrous disclosures that called into question the Company's credibility and viability. Harmony's CEO had held his position at the Company for twelve years and had "built" the Company, until his abrupt resignation on the same day that the Company disclosed that its Third Quarter 2007 financial results were false and misleading. Similarly, Harmony's Financial Director had held her position at the Company for three years, until her resignation mere weeks following the Company's disclosure that its Third Quarter 2007 financial results were false and misleading. As stated by Harmony's Chairman, after both the Company's CEO and Financial Director "resigned" almost immediately following the Company's disclosures, "I belong to the old school of thought -- whenever there is a problem, there has to be proper accountability at all levels. And there's got to be accountability at management level."

Defendant's executive officers' recklessness in the haphazard implementation of inadequate financial controls is undeniable.

125. Additionally, Harmony's CEO, Financial Director and other executive officers were motivated to conceal the false and misleading statements and omissions alleged herein to protect not only their positions at the Company, but also their lucrative compensation packages. According to Harmony's Form 20-F, for fiscal 2007 the Company's CEO received total compensation in the amount of $508,000, plus stock options tied to the Company's performance and stock price. Similarly, for fiscal 2007 the Company's Financial Director received total compensation of $278,000, plus stock options tied to the Company's performance and stock price.

X. <u>ADDITIONAL CAUSATION ALLEGATIONS</u>

126. During the Class Period, as detailed herein, Harmony engaged in a scheme to deceive the market and a course of conduct that artificially inflated the Company's share price and operated as a fraud or deceit on Class Period purchasers of Harmony's securities.

127. During the Class Period, Harmony achieved a façade of stable results, success, lower costs, growth and strong future business prospects by disseminating statements the Company knew were false and misleading regarding, *inter alia*, the Company's internal controls and compliance with securities laws.

128. Harmony's false and misleading statements caused the Company's shares to trade at artificially inflated levels, reaching as high as $16.58 per share, throughout the Class Period.

129. On August 6, 2007, Harmony was forced to publicly disclose that it was not the financially sound company investors had been led to believe it was during the Class Period. The Company revealed that its Third Quarter 2007 financial results were incorrect and that its methods were unreliable due to the Company's weak internal controls and its unreliable newly-

implemented accounting software and practices. As a direct result of the disclosure of Defendant's fraud and recklessness, the artificial inflation of its securities evaporated, and its price per share fell to $11.02, or over 18% below the previous day's closing price of $13.47 per share, damaging investors. Reports of the Company's announcement drove the price of Harmony's shares down even further, as they declined an additional $1.57 per share, or over 14 percent, to close on August 7, 2007 at $9.45 per share. This closing price on August 7, 2007 represented a two-day decline in the Company's shares of $4.02 per share, or 29.8 percent, and a cumulative decline of $7.25 per share, or over 43.4 percent, from the value of the Company's shares at their Class Period high of $16.58 on April 25, 2007.

130. The timing and magnitude of Harmony's share price decline negates any inference that the loss suffered by Plaintiff and other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the Defendant's fraudulent and reckless conduct.

XI. APPLICABILITY OF THE PRESUMPTION OF RELIANCE: FRAUD-ON-THE-MARKET DOCTRINE

131. At all relevant times, the markets for Harmony's ADRs and options were efficient markets for the following reasons, among others:

(a) Harmony's ADRs met the requirement for listing, and was listed and actively traded on the NYSE and NASDAQ, highly efficient and automated markets;

(b) Harmony's put and call options met the requirement for listing, and were listed and actively traded on the Chicago Board Options Exchange ("CBOE");

(c) As a regulated issuer, Harmony filed periodic public reports with the SEC and NYSE;

(d) Harmony regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(e) Harmony was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

132. As a result of the foregoing, the market for Harmony's ADRs and options promptly digested current information regarding Harmony from all publicly-available sources and reflected such information in the price of Harmony's securities. Under these circumstances, all purchasers of Harmony's ADRs and call options, and sellers of Harmony's put options, during the Class Period suffered similar injury, and a presumption of reliance applies.

XII. NO STATUTORY SAFE HARBOR EXISTS FOR DEFENDANT'S STATEMENTS

133. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the false statements pleaded in this complaint. The specific statements pleaded herein either were not identified as "forward-looking statements" when made or were not accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. To the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendant is liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker

knew that the particular forward-looking statement was authorized and/or approved by an executive officer of Harmony who knew that those statements were false when made.

XIII. CLASS **ACTION** ALLEGATIONS

134. Lead Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the ADRs and call options, and sold put options, of Harmony from April 25, 2007 through August 7, 2007, inclusive and who were damaged thereby. Excluded from the Class is Defendant, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendant has or had a controlling interest.

135. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Harmony's ADRs were actively traded on the NYSE and NASDAQ, and its options were traded on the CBOE. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believe that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Harmony or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

136. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct in violation of federal law that is complained of herein.

137. Plaintiff will fairly and adequately protect the interests of the members of the Class and he has retained counsel competent and experienced in class and securities litigation.

138. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by the Defendant's acts as alleged herein;

(b) whether statements made by the Defendant and its officers and employees to the investing public during the Class Period misrepresented material facts about the financial, business, operations and management of Harmony; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

139. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

XIV. COUNT I

Violations of Section 10(b) of the Exchange Act And
Rule 10b-5 Promulgated Thereunder
(Against Defendant Harmony)

140. Plaintiff repeats and realleges each and every allegation contained above as if fully alleged herein.

141. Harmony and its officers: (i) knew or recklessly disregarded material adverse nonpublic information about the Company's financial results and then existing business

conditions, which were not disclosed; and (ii) issued and participated in the issuing, drafting, reviewing and/or approving the misleading statements, releases, reports, and other public representations of and about the Company. Harmony's executive officers, including its CEO, Financial Director, and Executive Finance Manager, were privy to adverse non-public information concerning Harmony's business, finances, products, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof, and via reports and other information provided to them in connection therewith. Because of their possession of such information, Harmony's executive officers knew or recklessly disregarded that the adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public.

142. By virtue of Harmony's executive officers' high-level positions with the Company, they directly participated in the management of the Company, were directly involved in the day-to-day operations of the Company at the highest levels, and were privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements, and financial condition, as alleged herein. These executive officers were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, and were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

143. As officers and controlling persons of a publicly-held company whose ADRs were, and are, registered with the SEC pursuant to the Exchange Act, and were traded on the NYSE and NASDAQ, and governed by the provisions of the federal securities laws, Harmony's

officers had a duty to disseminate promptly, accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially false and/or misleading, so that the market price of the Company's publicly-traded securities would be based upon truthful and accurate information. Harmony and its officers' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

144. During the Class Period, Harmony and its officers, with knowledge of or reckless disregard for the truth, disseminated or approved the false statements specified above, which were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

145. Defendant Harmony violated § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that it, and its officers and directors: (i) employed devices, schemes and artifices to defraud; (ii) made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or (iii) engaged in acts, practices and a course of business that operated as a fraud or deceit upon the purchasers of Harmony ADRs and call options, and upon the sellers of Harmony put options, during the Class Period.

146. Plaintiff and the Class have suffered damage in that, in reliance on the integrity of the market, they paid artificially inflated prices for Harmony ADRs and call options, and artificially deflated prices for Harmony call options. Plaintiff and the Class would not have purchased Harmony ADRs or call options, or sold Harmony put options, at the prices they had,

or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendant's false and misleading statements.

147. As a direct and proximate result of Harmony and its executive officers' wrongful conduct, Plaintiff and the Class suffered damages in connection with their respective purchases of the Company's securities during the Class Period.

XV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action and certifying Plaintiff as class representatives under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against the Defendant for all damages sustained as a result of Defendant's wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

XVI. JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: January 7, 2009

Respectfully submitted,

BRODSKY & SMITH, LLC
By: *s/ Evan J. Smith, Esquire*
Evan J. Smith, Esquire
240 Mineola Boulevard
Mineola, NY 11501
(516) 741-4977
Fax: (516) 741-0626

Liaison Counsel for Lead Plaintiff

[Additional Counsel Appear on Next Page]

BARROWAY TOPAZ KESSLER MELTZER & CHECK, LLP
Christopher L. Nelson, Esquire
Lauren Wagner Pederson, Esquire
John J. Gross, Esquire
D. Seamus Kaskela, Esquire
280 King of Prussia Road
Radnor, PA 19087
(610) 667-7706
Fax: (610) 667-7056

Lead Counsel for Lead Plaintiff

PROOF OF MAILING

I, Evan J. Smith, hereby certify that on this 7th day of January, 2009, the attached Amended Complaint was manually filed with the Clerk of Court's Office and will be properly electronically filed with the Clerk of Court using the CM/ECF system pursuant to the Court's local rules on electronic filing Amended Complaints, and further certify that this attached document was served upon the following counsel for Defendant via U.S. First Class Mail, postage prepaid:

Mark D. Gately, Esquire
Hogan & Hartson, LLP
111 S. Calvert Street, Suite 1600
Baltimore, MD 21202
410-659-2700
Fax: 410-539-6981

Dated: January 7, 2009

s/ Evan J Smith, Esquire
Evan J. Smith, Esquire