

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JAMES J. HAYES, Individually and on Behalf of All  
Others Similarly Situated,

Plaintiff,

v.

HARMONY GOLD MINING COMPANY LIMITED,

Defendant.

CASE NO. 1:08 Civ. 3653-BSJ-MHD

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION  
AND MOTION FOR ATTORNEYS' FEES AND FAIRNESS HEARING**

**IF YOU PURCHASED HARMONY GOLD MINING CO., LTD. ("HARMONY GOLD") AMERICAN DEPOSITORY RECEIPTS (ADRs) OR CALL OPTIONS ON HARMONY GOLD ADRs, OR SOLD PUT OPTIONS ON HARMONY GOLD ADRs, BETWEEN APRIL 25, 2007 AND AUGUST 7, 2007, YOU COULD GET A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

If approved by the United States District Court for the Southern District of New York (the "Court"), the Settlement will provide \$9,000,000 (the "Cash Settlement Amount") to pay claims from investors who bought Harmony Gold ADRs or call options on Harmony Gold ADRs, or sold put options on Harmony Gold ADRs, between April 25, 2007 and August 7, 2007, inclusive (the "Class Period").

The Settlement resolves a class action lawsuit, titled *James J. Hayes, et al. v. Harmony Gold Mining Company Limited, et al.* and filed in the Court under case number 1:08 Civ. 3653-BSJ-MHD (the "Action"), alleging that Harmony Gold misled investors about its financial performance, costs, cost allocations and internal controls during the Class Period. The Class is represented in the Action by court-appointed Class Counsel, Saxena White, P.A. ("Class Counsel").

Your legal rights are affected whether you act or do not act. Read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Submit a Claim Form by January 9, 2012:</b>	The only way to get a payment.
<b>Exclude Yourself by October 20, 2011:</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Harmony Gold and the Released Parties about the Settled Claims.
<b>Object by October 20, 2011:</b>	Write to the Court about why you do not like the Settlement.
<b>Go to a Hearing on November 10, 2011:</b>	Ask to speak in Court about the Settlement.
<b>Do Nothing</b>	Get no payment. Give up rights.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**SUMMARY NOTICE**

Statement of Class Recovery

Pursuant to the Settlement described here and in the Stipulation and Agreement of Settlement, a Cash Settlement Amount in the amount of \$9,000,000 has been established, and will be deposited into the Settlement Fund. Class Counsel estimates that there were approximately 19.8 million Harmony Gold ADRs traded during the Class Period which allegedly may have been damaged. Class Counsel estimates that the average recovery under the Settlement is \$0.45 per allegedly damaged ADR, before damages are apportioned to eligible options holders and before deduction of Court-approved costs, expenses and attorneys' fees. A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by that Class Member's Recognized Claim as compared to the total Recognized Claims of all Class Members who submit valid Proofs of Claim.

Statement of Potential Outcome of Case

Class Counsel and Defendant's Counsel disagree on both liability and damages, and do not agree on the amount of damages that would be recoverable if the Class were to have prevailed on each claim alleged. Harmony Gold denies that it is liable to the Class and denies that the Class has suffered any loss. While Class Counsel believes that the Class has meritorious claims, it recognizes that there are significant obstacles to be overcome before there could be any recovery.

Statement of Attorneys' Fees and Costs Sought

Class Counsel are moving the Court to award them attorneys' fees not to exceed 33 1/3 percent of the Settlement Fund, and for expenses actually incurred in connection with the prosecution of the case. The requested attorneys' fees would amount to an average of \$0.15 per allegedly damaged ADR. Class Counsel has expended considerable time and effort in the prosecution of this Action on a contingent fee basis, and have advanced all the expenses of the litigation, in the expectation that if they were successful in obtaining a recovery for the Class they would be paid from such recovery. All Counsel Fees and Expenses must be approved by the Court. The fee requested is within the range of fees awarded to counsel under similar circumstances in litigation of this type.

Reasons for the Settlement

The principal reason for the Settlement is the benefit to be provided to the Class now. This benefit must be compared to the risk that no recovery might be achieved after a contested trial and likely appeals, possibly years into the future, and the risk that South African courts may not recognize or enforce an American securities fraud class action judgment.

For Harmony Gold, which has denied and continues to deny all allegations of wrongdoing or liability whatsoever, the principal reason for the Settlement is to eliminate the expense, risks, and uncertain outcome of the litigation.

Further Information

Further information regarding this case and Settlement may be obtained by contacting Class Counsel: Joseph E. White, III, Saxena White P.A., 2424 N. Federal Highway, Suite 257, Boca Raton, Florida, 33431, telephone 1-800-361-4128. **Please do not contact the Court, Harmony Gold, or Defendant's Counsel with questions about the Settlement.**

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## BASIC INFORMATION

### 1. Why did I get this Notice package?

You or someone in your family may have purchased Harmony Gold ADRs or call options on Harmony Gold ADRs, or sold put options on Harmony Gold ADRs, between April 25, 2007 and August 7, 2007, inclusive.

The Court directed that this Notice be sent to possible Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

This package explains the lawsuit, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this case is the United States District Court for the Southern District of New York, Judge Barbara Jones presiding, Case No. 08 Civ. 3653-BSJ-MHD.

### 2. What is this lawsuit about?

Harmony Gold is a gold mining company that is incorporated in the Republic of South Africa.

The Amended Class Action Complaint (the "Complaint") alleges that, as a result of the shortcomings of Harmony Gold's legacy accounting system and the impending deadline to comply with the reporting requirements of the Sarbanes-Oxley Act, Harmony Gold determined that it was necessary to replace its old accounting system with a modern Oracle Enterprise Resource Planning ("ERP") system. The Complaint alleges that the implementation of the ERP system was beset by problems, including uncaptured project costs, corrupted data files, insufficient employee training and the installation of incompatible computer servers. The Complaint alleges that despite knowledge of these problems, Harmony Gold took the ERP system live in January 2007 and then issued a series of misleading public statements regarding its financial and operating results, and internal controls, for the quarter ending March 31, 2007. The Complaint alleges that Harmony Gold's alleged fraud was revealed to investors on August 6, 2007, when Harmony announced that its financial results for the quarter ending June 30, 2007 were expected to differ significantly from those of the three previous quarters as well as from securities analysts' expectations, and that certain costs had not been captured in the quarter ending March 31, 2007 due to the newly installed accounting software system.

The Complaint was filed after an extensive investigation by counsel that included, among other things, review and analysis of: (a) documents filed publicly by Harmony Gold with the United States Securities and Exchange Commission ("SEC"); (b) press releases, newspaper articles, and other public statements issued by or concerning Harmony Gold and current or former officers of Harmony Gold; (c) research reports issued by financial analysts concerning Harmony Gold's securities and business; (d) other publicly available information and data concerning Harmony Gold and its securities; and (e) interviews of persons involved in the implementation of the ERP system at Harmony Gold.

The Complaint alleges that Class Members purchased Harmony Gold ADRs during the Class Period at artificially inflated prices and were allegedly damaged when the truth about Harmony Gold's alleged fraud was disclosed and the ADR price dropped. The lawsuit seeks money damages against Harmony Gold for alleged violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b). Harmony Gold denies all allegations of misconduct, and denies having engaged in any wrongdoing whatsoever.

### 3. Why is this a class action?

In a class action, one or more people called class representatives sue on behalf of people who have similar claims. All of these people are a Class or Class Members. Bringing a case, such as this one, as a class action allows adjudication of many similar claims of persons and entities that might be economically too small to bring in individual cases. One court resolves the issues for all class members, except for those who exclude themselves from the class.

#### **4. Why is there a settlement?**

The Court did not decide in favor of the Class or of Harmony Gold. Instead, both sides agreed to a Settlement. That way, they avoid the risks and costs of a trial, and the people affected will get compensation.

Class Counsel thinks the Settlement is in the best interests of the Class. Beginning in July 2010, the Parties have conducted fact discovery consisting of requests for documents, interrogatories, and commencing the legal process for taking certain third-party depositions in South Africa. Class Counsel received over 190,000 pages of documents in response to its requests for documents, and has conducted an extensive review and analysis of all of the documents produced. Class Counsel has also consulted with experts in the fields of forensic accounting and damages. In January 2011, the Parties commenced a mediation and retained the services of a highly regarded former United States District Judge to serve as Mediator. After several months of mediation, the Mediator recommended a settlement amount to the Parties, which was based on his view of the facts and allegations (as presented to him by the Parties), his experience in trying and mediating class actions such as this lawsuit, his recognition of the logistical complications in obtaining evidence from parties and witnesses located in South Africa, and his assessment of the potential risks and costs of proceeding with the litigation from the perspective of both Harmony Gold and the Class. This recommendation was accepted by Class Counsel and by Harmony Gold, resulting in the proposed Settlement which is the subject of this Notice.

#### **WHO IS IN THE SETTLEMENT**

To see if you will get money from this Settlement, you first have to decide if you are a Class Member.

#### **5. How do I know if I am part of the Settlement?**

The Court ordered that everyone who fits this description is a Class Member: all persons and entities who, during the period between April 25, 2007 and August 7, 2007, inclusive, satisfy subsection (a) and/or subsection (b) below, suffered damages as a result, and are not subject to any of the exclusions set forth in response to Question 6:

- a) Purchased Harmony Gold ADRs on the New York Stock Exchange or NASDAQ, and who
  - (i) Sold those same ADRs on August 6 or August 7, 2007; or
  - (ii) Held those same ADRs through August 7, 2007;
- b) Sold put options or purchased call options on Harmony ADRs on the Chicago Board of Exchange, and who
  - (i) Purchased those same put options on August 6 or 7, 2007;
  - (ii) Sold those same call options on August 6 or 7, 2007; or
  - (iii) Held those same option positions through August 7, 2007.

#### **6. Are there exceptions to being included?**

Yes. Excluded from the Class are:

- (i) All persons or entities who purchased Harmony ADRs beginning on April 25, 2007 to the extent that they sold or otherwise disposed of those same Harmony ADRs prior to August 6, 2007;
- (ii) All persons or entities who sold put options or purchased call options on Harmony ADRs beginning on April 25, 2007, to the extent that the option contracts for those same options closed prior to August 6, 2007;
- (iii) Any entity in which Harmony had a controlling interest during the Class Period;
- (iv) Officers and directors of Harmony during the Class Period and their immediate families;
- (v) The legal representatives, heirs, successors, or assigns of any of the excluded persons or entities who assert any interest in Harmony ADRs or put or call options on Harmony ADRs through or on behalf of any of the excluded persons or entities; and
- (vi) Any persons or entities who exclude themselves by filing a request for exclusion in accordance with the requirements set forth by the Court.

If one of your mutual funds owns Harmony Gold ADRs, that alone does not make you a Class Member. You are a Class Member only if you bought Harmony Gold ADRs or call options on Harmony Gold ADRs, or sold put options on Harmony

Gold ADRs individually. Check your investment records or contact your broker to see if you purchased or otherwise acquired these securities during the Class Period.

If you sold Harmony Gold ADRs or call options on Harmony Gold ADRs, or purchased put options on Harmony Gold ADRs, that alone does not make you a Class Member. You are a Class Member only if you purchased ADRs or call options, or sold put options during the Class Period.

**7. What if I am still not sure I am included?**

If you are still not sure whether you are included, you can ask for free help. You can call toll-free 1-800-408-7518, or visit [www.harmonygoldadr litigation.com](http://www.harmonygoldadr litigation.com) for more information. Or you can fill out and return the Proof of Claim described in Question 10, to see if you qualify.

**THE SETTLEMENT BENEFITS: WHAT YOU GET**

**8. What does the Settlement Provide?**

In exchange for the settlement and dismissal of the case and the release of all Settled Claims (defined below), Harmony Gold has agreed to create a \$9,000,000 fund to be divided, after the withdrawal of fees and expenses that are approved by the Court, among all Class Members who send in a valid Proof of Claim.

**9. How much will my payment be?**

If you are an eligible Class Member, your share of the fund will depend on how many Harmony Gold ADRs or call options you bought or put options you sold, the price at which you bought or sold those respective securities, and the date when you bought or sold those securities (or if you held them through the end of the Class Period).

You can calculate your claim in accordance with the formula shown below in the Plan of Allocation. It is unlikely that you will get a payment that covers all of your losses. After all Class Members have sent in their Proofs of Claim, the payment you get will be part of the Net Settlement Fund equal to your claim, divided by the total of everyone's claim. See the Plan of Allocation for more information on your claim.

**HOW YOU GET A PAYMENT: SUBMITTING A PROOF OF CLAIM FORM**

**10. How can I get a payment?**

To qualify for payment, you must send in a Proof of Claim. A Proof of Claim is attached to this Notice. You may also get a Proof of Claim at [www.harmonygoldadr litigation.com](http://www.harmonygoldadr litigation.com), or by calling toll-free 1-800-408-7518. Read the instructions carefully, fill out the form, include all documents the form asks for, sign it, and mail it postmarked no later than January 9, 2012.

**11. When would I get my payment?**

The Court will hold a hearing at 2:00 p.m. on November 10, 2011, to decide whether to approve the Settlement. If the Court approves the Settlement, there may be subsequent appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

**12. What am I giving up to get a payment or stay in the Class?**

Unless you exclude yourself, you are staying in the Class, and that means that once the Settlement becomes effective you will release all Settled Claims (as defined below) against the Released Parties (as defined below). You will not in the future be able to bring a case asserting any Settled Claims against the Released Parties. If you remain a member of the Class, all of the Court's orders will apply to you and legally bind you.

"Settled Claims" means any and all claims, debts, demands, rights, causes of action or liabilities, of every nature and description whatsoever, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, based in law or equity, or based on any foreign, federal, state, local, statutory or common law, or any other law, rule or regulation (including any claims for violations of Fed. R. Civ. P. 11), including both known claims and Unknown Claims that have been or could have been asserted in any forum by the Class Members or any of them, or the successors or assigns of any of them, whether directly, indirectly, derivatively, representatively or in any other capacity against any of the Released Parties, which arise out of, relate to, or are based upon, in any way, directly or indirectly, (a) the allegations, transactions, facts, events, matters, occurrences, acts, representations or omissions involved, set forth, or referred to, or that could have been asserted in the Action, including without limitation, claims for negligence, gross negligence, breach of duty of care, breach of duty of loyalty, breach of duty of candor, fraud, negligent misrepresentation, and breach of fiduciary duty, or (b) the purchase, acquisition, sale, disposition or transfer of Harmony Gold securities by any Class Member during the

Class Period, including without limitation all claims arising out of or relating to any disclosures, public filings, registration statements or other statement by any or all of the Released Parties. Settled Claims does not mean or include claims, if any, against the Released Parties arising under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*, which are not common to all Class Members. Additionally, "Settled Claims" does not include claims relating to the enforcement of the Settlement or the terms of this Stipulation.

"Released Parties" and "Released Party" means any and all of Harmony Gold, as well as its present and former directors, officers (including Bernard Swanepoel and Nomfundo Qangule), employees, agents, consultants, attorneys, accountants, auditors, underwriters, partners, insurers, reinsurers, personal representatives, spouses, issues, heirs, executors, administrators, predecessors, successors, assigns, parent corporations, subsidiaries, divisions, affiliates, trusts, or any other individual or entity in which Harmony Gold has a controlling interest or which is affiliated with Harmony Gold or any of the parties listed above.

"Unknown Claims" means any and all Settled Claims that any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any of Settled Defendant's Claims that Defendant does not know or suspect to exist in its favor, which if known by him, her, or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendant's Claims, the Released Parties and each Class Member, acting through Class Counsel, shall each, for themselves and all persons claiming by, through, or on behalf of them, be deemed to have waived, and by operation of the Order and Final Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Class Member's and the Released Parties' successors and assigns and any persons or entities claiming through or on behalf of them shall, by operation of law, be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Settled Defendant's Claims was separately bargained for and was a material element of the Settlement and Stipulation.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from this Settlement, but you want to keep any right you may have to sue or continue to sue the Released Parties, on your own, about the Settled Claims, then you must take steps to get out. This is called excluding yourself from the Settlement, or is sometimes referred to as "opting out" of the Settlement. Harmony Gold may withdraw from and terminate the Settlement if more than a certain number of claimants exclude themselves from the Settlement.

#### **13. How do I get out of the proposed Settlement?**

You cannot exclude yourself by telephone or by email. To exclude yourself from the Settlement, you must send a signed letter by mail stating that you "request exclusion from the Settlement in the Harmony Gold Mining Co. Litigation, Case No. 08 Civ. 3653." Your letter should state the dates, prices, and amount of all purchases and sales of ADRs, call options, and put options. Please be sure to include your name, address, telephone number and your signature. If the exclusion request is made by someone other than the Class Member directly, the person or entity submitting the exclusion request must provide documentation evidencing authority to submit the exclusion request on behalf of the Class Member. You must mail your exclusion request postmarked no later than October 20, 2011 to:

Harmony Gold Mining Co. ADR Litigation  
Exclusions  
c/o GCG, Inc.  
P.O. Box 9681  
Dublin, OH 43017-4981

If you ask to be excluded, you will not get any Settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Harmony Gold or the Released Parties in the future.

#### **14. If I do not exclude myself, can I sue Harmony Gold for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Harmony Gold or any of the Released Parties for any and all Settled Claims. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is October 20, 2011.

**15. If I exclude myself, can I get money from the proposed Settlement?**

No. If you exclude yourself, do not send in a Proof of Claim to ask for any money. But you may sue, continue to sue, or be part of a different lawsuit against Harmony Gold or any of the Released Parties.

**THE LAWYERS REPRESENTING YOU**

**16. Do I have a lawyer in this case?**

The Court appointed the law firm Saxena White P.A. to represent all Class Members. This law firm and its lawyers are called Class Counsel. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**17. How will the lawyers be paid?**

Class Counsel has not received any payment for their services in pursuing the claims against Harmony Gold on behalf of the Class, nor have they been reimbursed for their litigation expenses. Class Counsel will ask the Court to award attorneys' fees from the Settlement Fund in an amount not to exceed 33 $\frac{1}{3}$  percent of the Settlement Fund, and for reimbursement of their expenses incurred in prosecuting the case not to exceed \$550,000. Class Counsel's motion for attorneys' fees and reimbursement of litigation expenses will be posted on the website for this case, [www.harmonygoldadrlitigation.com](http://www.harmonygoldadrlitigation.com), promptly after being filed. The fee requested by Class Counsel would compensate them for their efforts in achieving the Settlement for the benefit of the Class and for the risk in undertaking the Action on a contingency basis. A request of 33 $\frac{1}{3}$  percent may be determined by the Court to be reasonable given: (a) the result achieved; (b) the novelty and difficulty of the claims; (c) the risk that the Class would not prevail; (d) the quality of counsels' representation; and (e) the fees awarded in similar cases. The Court will determine the amount of the reward.

Class Counsel, without further notice to the Class, may subsequently apply to the Court for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the members of the Class and any proceedings subsequent to the Fairness Hearing.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

**18. How do I tell the Court that I do not like the proposed Settlement?**

If you are a Class Member, you can object to the Settlement or any of its terms, the Plan of Allocation and/or the application by Class Counsel for an award of fees and expenses. You may give your reasons why you think the Court should not approve any or all of the Settlement terms. The Court will consider your views if you serve a proper objection within the deadline identified, and according to the following procedures.

To object, you must send a signed letter by mail stating that you object to the Settlement in the Harmony Gold Mining Co. Litigation, Case No. 08 Civ. 3653. You cannot object by telephone or email. Be sure to include your name, address, telephone number, your signature, and the reasons why you object to the Settlement. Also be sure to include the dates, prices, and amount of all purchases and sales of ADRs, call options, and put options. Your objection must be sent to the Court, and served on all the following counsel on or before October 20, 2011:

**Court**

Clerk of Court  
U.S. District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312  
Harmony Gold Mining Co. Litigation  
Case No. 08-Civ. 3653-BSJ-MHD

**Class Counsel**

Joseph E. White, III  
SAXENA WHITE P.A.  
2424 N. Federal Highway  
Suite 257  
Boca Raton, FL 33431

**Defendant's Counsel**

Mark D. Gately  
HOGAN LOVELLS US LLP  
100 International Drive  
Suite 2000  
Baltimore, MD 21202

You do not need to go to the Fairness Hearing to have your written objection considered by the Court.

Unless otherwise ordered by the Court, any Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will not be able to make any objection to the Settlement in the future.

**19. What is the difference between objecting and excluding yourself?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be a part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**THE COURT'S SETTLEMENT FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to.

**20. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Fairness Hearing at 2:00 p.m., on November 10, 2011, at the United States District Court, 500 Pearl Street, New York, NY 10007-1312. At the Fairness Hearing, the Court will decide whether the Settlement is fair, reasonable and adequate. The Court will also consider the Plan of Allocation and the application for attorneys' fees and reimbursement of expenses. If there are any objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

You should be aware that the Court may change the date and time of the hearing. Thus, if you want to come to the hearing, you should check with the Court before coming to be sure that the date and/or time has not changed.

**21. Do I have to come to the hearing?**

No. Class Counsel will answer questions that the Court may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but your lawyer's attendance is not necessary. Class Members do not need to appear at the hearing to indicate their approval of the Settlement.

**22. May I speak at the hearing?**

If you object to the Settlement, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include with your objection (see question 18 above) a statement saying that you intend to appear. You cannot speak at the hearing if you excluded yourself from the Class, or if you have not provided written notice of your intention to speak by the deadline identified, and in accordance with the procedures described in Questions 18 and 20.

**IF YOU DO NOTHING**

**23. What happens if I do nothing at all?**

If you do nothing, you will get no money from this Settlement and you will be precluded from filing or continuing a lawsuit against any of the Released Parties about any of the Settled Claims, as described in Question 12. To receive a payment, you must submit a valid Proof of Claim.

**GETTING MORE INFORMATION**

**24. Are there more details about the proposed Settlement?**

This Notice summarizes the proposed Settlement. More details are in the Stipulation and Agreement of Settlement filed with the Court. You can get a copy of the Stipulation and Agreement of Settlement by writing to Joseph E. White, III, Saxena White P.A., 2424 N. Federal Highway, Suite 257, Boca Raton, FL 33431, or by visiting [www.harmonygoldadr litigation.com](http://www.harmonygoldadr litigation.com).

**25. How do I get more information?**

For even more detailed information concerning the matters involved in this case, reference is made to the pleadings, the Stipulation and Settlement Agreement, the Orders entered by the Court and the other papers filed in the case, which may be inspected during regular business hours at the Office of the Clerk of the Court, U.S. District Court, 500 Pearl Street, New York, NY 10007-1312. PLEASE DO NOT CONTACT THE COURT OR HARMONY GOLD REGARDING THIS NOTICE OR FOR MORE INFORMATION.

You can also call the Claims Administrator toll-free at 1-800-408-7518; write to Harmony Gold Mining Co. ADR Litigation, c/o GCG, Inc., P.O. Box 9681, Dublin, OH 43017; or visit [www.harmonygoldadr litigation.com](http://www.harmonygoldadr litigation.com).



## PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS

The Settlement Fund, less all taxes, approved costs, fees and expenses (“Net Settlement Fund”) shall be distributed to Class Members who file valid Proofs of Claim (“Authorized Claimants”). Class Members who do not timely file valid Proofs of Claim will not share in the Settlement proceeds, but will otherwise be bound by the terms of the Settlement. The Court may approve the Plan of Allocation with or without modifications, or another plan of allocation, without further notice to the Class.

The Claims Administrator shall determine each Authorized Claimant’s pro rata share of the Net Settlement Fund based upon each Authorized Claimant’s “Recognized Claim.”

The proposed Plan of Allocation takes into account the Complaint’s allegations that the price of Harmony Gold’s securities was artificially inflated during the period from April 25, 2007 to August 7, 2007 due to allegedly misleading statements about its financial and operating results, and internal controls.

### **ADR Purchases**

The amount of Recognized Claim from purchases of Harmony Gold ADRs on the New York Stock Exchange or NASDAQ will be calculated as follows:

For Harmony Gold ADRs purchased between April 25, 2007 and August 5, 2007:

- a) For ADRs sold on or before August 5, 2007, the Recognized Claim is zero;
- b) For ADRs sold at a loss on August 6, 2007, the Recognized Claim is the lesser of:
  - 1) \$2.82 per ADR; or
  - 2) The purchase price paid less the sales proceeds received;
- c) For ADRs sold at a loss on August 7, 2007, the Recognized Claim is the lesser of:
  - 1) \$4.69 per ADR; or
  - 2) The purchase price paid less the sales proceeds received;
- d) For ADRs sold at a loss between August 8, 2007 and November 5, 2007, the Recognized Claim is the lesser of:
  - 1) \$4.69 per ADR; or
  - 2) The purchase price paid less the greater of (i) the sales proceeds received, or (ii) the average closing price per ADR applicable to the date of sale as found in Table 1;
- e) For ADRs sold at a loss after November 5, 2007, the Recognized Claim is the lesser of:
  - 1) \$4.69 per ADR; or
  - 2) The purchase price paid less the greater of (i) the sales proceeds received, or (ii) \$10.31, the average closing price per ADR in the 90 days following the end of the Class Period.

For Harmony Gold ADRs purchased on August 6, 2007:

- a) For ADRs sold on August 6, 2007, the Recognized Claim is zero;
- b) For ADRs sold at a loss on August 7, 2007, the Recognized Claim is \$1.87 per ADR;
- c) For ADRs sold at a loss between August 8, 2007 and November 5, 2007, the Recognized Claim is the lesser of:
  - 1) \$1.87 per ADR; or
  - 2) The purchase price paid less the greater of (i) the sales proceeds received, or (ii) the average closing price per ADR applicable to the date of sale as found in Table 1;
- d) For ADRs sold at a loss after November 5, 2007, the Recognized Claim is the lesser of:
  - 1) \$1.87 per ADR; or
  - 2) The purchase price paid less the greater of (i) the sales proceeds received, or (ii) \$10.31, the average closing price per ADR in the 90 days following the end of the Class Period.

For Harmony Gold ADRs purchased on August 7, 2007, the Recognized Claim is zero.

### **Call Option Purchases**

The amount of Recognized Claim from purchases of call options on Harmony Gold ADRs on the Chicago Board Options Exchange will be calculated as follows:

Harmony Gold ADRs acquired through the exercise of a call option purchased during the Class Period shall be treated as an ADR purchase on the date of call option purchase for the exercise price plus the cost of the call option (no call option calculation needed).

For call options purchased between April 25, 2007 and August 5, 2007:

- a) The Recognized Claim for any call options that were not owned as of the close of trading on August 5, 2007 is zero;
- b) For call options sold on August 6, 2007, the Recognized Claim is the lesser of:

- 1) \$1.53 per call option; or
  - 2) The difference, if a loss, between the purchase price paid and the sales price received;
- c) For call options sold or expired unexercised after August 6, 2007, the Recognized Claim is the lesser of:
- 1) \$2.66 per call option; or
  - 2) The difference, if a loss, between the purchase price paid and the sales price received;<sup>1</sup>

For call options purchased on August 6, 2007:

- a) For call options sold on August 6, 2007, the Recognized Claim is zero;
- b) For call options sold on August 7, 2007, the Recognized Claim is \$1.13 per call option;
- c) For call options sold or expired unexercised after August 7, 2007, the Recognized Claim is the lesser of:
  - 1) \$1.13 per call option; or
  - 2) The difference, if a loss, between the purchase price paid and the sales price received;<sup>1</sup>

For call options purchased on August 7, 2007, the Recognized Claim is zero.

### **Put Option Sales**

The amount of Recognized Claim from sales (writing) of put options on Harmony Gold ADRs on the Chicago Board Options Exchange will be calculated as follows:

For put options written during the Class Period that were “put” to the Authorized Claimant (i.e. exercised) the Authorized Claimant’s “Recognized Claim” shall be calculated as a purchase of Harmony Gold ADRs on the date of the sale of the put option, and the purchase price paid shall be the strike price less the proceeds received on the sale of the put option (no put option calculation needed).

For put options sold (written) between April 25, 2007 and August 5, 2007:

- a) The Recognized Claim for any put options that were not the obligation of the Claimant as of the close of trading on August 5, 2007 is zero;
- b) For put options repurchased on August 6, 2007, the Recognized Claim is the lesser of:
  - 1) \$1.73 per put option; or
  - 2) The difference, if a loss, between the repurchase price and the amount received for writing the put options;
- c) For put options repurchased after August 6, 2007, the Recognized Claim is the lesser of:
  - 1) \$2.55 per put option; or
  - 2) The difference, if a loss, between the repurchase price and the amount received for writing the put options;<sup>2</sup>

For put options sold (written) on August 6, 2007:

- a) For put options repurchased on August 6, 2007, the Recognized Claim is zero;
- b) For put options repurchased on August 7, 2007, the Recognized Claim is \$0.82 per put option;
- c) For put options repurchased after August 7, 2007, the Recognized Claim is the lesser of:
  - 1) \$0.82 per put option; or
  - 2) The difference, if a loss, between the repurchase price and the amount received for writing the put options;<sup>2</sup>

For put options sold (written) on August 7, 2007, the Recognized Claim is zero.

**Table 1**

Date	Closing Price*	Average Price	Date	Closing Price*	Average Price
8/8/2007	\$10.06	\$10.06	9/22/2007	N/A	9.93
8/9/2007	9.65	9.86	9/23/2007	N/A	9.93
8/10/2007	9.87	9.86	9/24/2007	12.15	10.00
8/11/2007	N/A	9.86	9/25/2007	12.18	10.06
8/12/2007	N/A	9.86	9/26/2007	12.09	10.12
8/13/2007	9.95	9.88	9/27/2007	12.11	10.18
8/14/2007	9.43	9.79	9/28/2007	11.91	10.22
8/15/2007	9.44	9.73	9/29/2007	N/A	10.22
8/16/2007	8.82	9.60	9/30/2007	N/A	10.22
8/17/2007	8.98	9.53	10/1/2007	11.90	10.27
8/18/2007	N/A	9.53	10/2/2007	11.07	10.29

<sup>1</sup> For expired unexercised call options, the net exercise proceeds received are zero.

<sup>2</sup> For expired unexercised put options, the Recognized Claim is zero.

Date	Closing Price*	Average Price	Date	Closing Price*	Average Price
8/19/2007	N/A	9.53	10/3/2007	10.46	10.29
8/20/2007	8.97	9.46	10/4/2007	10.76	10.30
8/21/2007	8.77	9.39	10/5/2007	10.79	10.32
8/22/2007	8.94	9.35	10/6/2007	N/A	10.32
8/23/2007	8.48	9.28	10/7/2007	N/A	10.32
8/24/2007	9.01	9.26	10/8/2007	10.39	10.32
8/25/2007	N/A	9.26	10/9/2007	10.31	10.32
8/26/2007	N/A	9.26	10/10/2007	10.19	10.31
8/27/2007	8.96	9.24	10/11/2007	10.16	10.31
8/28/2007	8.96	9.22	10/12/2007	10.12	10.31
8/29/2007	9.14	9.21	10/13/2007	N/A	10.31
8/30/2007	9.04	9.20	10/14/2007	N/A	10.31
8/31/2007	8.95	9.19	10/15/2007	9.91	10.30
9/1/2007	N/A	9.19	10/16/2007	9.75	10.29
9/2/2007	N/A	9.19	10/17/2007	9.62	10.27
9/3/2007	N/A	9.19	10/18/2007	9.65	10.26
9/4/2007	9.50	9.21	10/19/2007	9.58	10.25
9/5/2007	9.33	9.21	10/20/2007	N/A	10.25
9/6/2007	9.86	9.24	10/21/2007	N/A	10.25
9/7/2007	10.19	9.29	10/22/2007	9.63	10.24
9/8/2007	N/A	9.29	10/23/2007	10.00	10.23
9/9/2007	N/A	9.29	10/24/2007	10.06	10.23
9/10/2007	10.43	9.34	10/25/2007	10.25	10.23
9/11/2007	10.66	9.39	10/26/2007	10.70	10.24
9/12/2007	11.05	9.46	10/27/2007	N/A	10.24
9/13/2007	11.13	9.52	10/28/2007	N/A	10.24
9/14/2007	11.21	9.58	10/29/2007	10.75	10.25
9/15/2007	N/A	9.58	10/30/2007	10.80	10.26
9/16/2007	N/A	9.58	10/31/2007	11.20	10.27
9/17/2007	11.13	9.64	11/1/2007	10.80	10.28
9/18/2007	11.61	9.71	11/2/2007	11.18	10.30
9/19/2007	11.78	9.78	11/3/2007	N/A	10.30
9/20/2007	12.22	9.86	11/4/2007	N/A	10.30
9/21/2007	12.31	9.93	11/5/2007	11.05	10.31

Source: Bloomberg, L.P.

\* N/A's represent non-trading days, weekends and holidays, in which case no pricing data is available and thus is not included in the average calculation.

To the extent a Claimant had a gain from his, her or its overall transactions in Harmony Gold ADRs and/or options during the Class Period, the value of the Recognized Claim will be zero. To the extent that a Claimant suffered an overall loss on his, her or its overall transactions in Harmony Gold ADRs and/or options during the Class Period, but that loss was less than the Recognized Claim calculated above, then the Recognized Claim shall be limited to the amount of the actual loss.

For purposes of determining whether a Claimant had a gain from his, her or its overall transactions in Harmony Gold ADRs and/or options during the Class Period or suffered a loss, the Claims Administrator will:

- a) For Harmony Gold ADRs: (i) total the amount paid for all ADRs purchased during the Class Period by the Claimant (the "Total ADR Purchase Amount"); (ii) match any sales of ADRs during the Class Period first against the Claimant's opening position in the ADRs (the proceeds of those sales will not be considered for purposes of calculating gains or losses); (iii) total the amount received for sales of the remaining ADRs sold during the Class Period (the "ADR Sales Proceeds"); (iv) ascribe a \$10.31 per ADR holding value for the number of shares of ADRs purchased during the Class Period and still held at the end of the Class Period ("ADR Holding Value"). The difference between (i) the Total ADR Purchase Amount and the (ii) sum of the ADR Sales Proceeds and ADR Holding Value will be deemed a Claimant's gain or loss on his, her or its overall transactions in Harmony Gold ADRs during the Class Period.
- b) For Harmony Gold call options: (i) total the amount paid for all call options purchased during the Class Period by the Claimant (the "Total Call Option Purchase Amount"); (ii) match any sales of call options during the Class

Period first against the Claimant's opening position in call options (the proceeds of those sales will not be considered for purposes of calculating gains or losses); (iii) total the amount received for sales of the remaining call options whenever sold (including after the Class Period) (the "Call Option Sales Proceeds"). The difference between (i) the Total Call Option Purchase Amount and the (ii) the Call Option Sales Proceeds will be deemed a Claimant's gain or loss on his, her or its overall transactions in Harmony Gold call options.

- c) For Harmony Gold put options sold (written) during the Class Period: (i) total the amount received on the sale of all put options sold during the Class Period by the claimant (the "Total Put Option Sales Proceeds"); (ii) match any repurchases of put options whenever repurchased to cover the put options sold during the Class Period ("Total Put Option Cost"). The difference between the Total Put Option Cost and the Total Put Option Sales Proceeds will be deemed a Claimant's gain or loss on his, her or its overall transactions in Harmony Gold Put Options.
- d) If the overall total of the gains and losses from the Claimant's transactions in Harmony Gold ADRs, call options and put options is a gain, then the Claimant shall have a Recognized Claim of zero. If the overall total of the gains and losses from the Claimant's transactions in Harmony Gold ADRs, call options and put options is a loss, the amount of such loss shall, if lower than the Recognized Claim amount otherwise calculated, be the limit of such Claimant's Recognized Claim amount.

Each Authorized Claimant shall be allocated a pro rata share of the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Authorized Claimants.

Class Members who do not submit valid Proofs of Claim will not share in the Settlement proceeds. Class Members who do not either submit a request for exclusion or submit a valid Proof of Claim will nevertheless be bound by the Settlement and the Order and Final Judgment of the Court dismissing this case.

If, after 6 months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) (the "Reallocation Date"), there is a balance greater than 2% of the Cash Settlement Amount remaining in the Net Settlement Fund, the Claims Administrator shall reallocate the balance among Authorized Claimants in an equitable and economic fashion, but only to those Authorized Claimants who have cashed their first distribution check and would receive at least \$10.00 from the reallocation. Any balance which still remains in the Net Settlement Fund four (4) months after the Reallocation Date (whether any reallocation was necessary), shall be donated to secular non-profit organization(s) qualifying under Internal Revenue Code § 501(c) as designated by Class Counsel.

Harmony Gold, its counsel, Class Counsel, and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any Proof of Claim or non-performance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

#### **SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased Harmony Gold ADRs or call options on Harmony Gold ADRs, or sold put options on Harmony Gold ADRs during the period from April 25, 2007 to August 7, 2007, inclusive, for the beneficial interest of a person or organization other than yourself, the Court has directed that, **WITHIN 7 DAYS OF YOUR RECEIPT OF THIS NOTICE**, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you transacted in such securities during such time period or (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within 7 days mail the Notice and Proof of Claim form directly to the beneficial owners of the securities referred to herein. If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

Harmony Gold Mining Co. ADR Litigation  
c/o GCG, Inc.  
P.O. Box 9681  
Dublin, OH 43017-4981

Dated: August 2, 2011

By Order of the Court  
CLERK OF THE COURT