

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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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

**ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT  
AND DISMISSING THE ACTION WITH PREJUDICE**

THESE MATTERS have come before the Court to determine whether the proposed Settlement should be finally approved pursuant to the terms set forth in the Stipulation of Settlement, dated July 18, 2011 (the "Stipulation"), relating to this Action. The Court has considered all papers filed and proceedings had herein and otherwise is fully informed in the premises, and after holding a Fairness Hearing on November 10, 2011 has determined that the Settlement set forth in the Stipulation should be approved as fair, reasonable, and adequate. The Court hereby enters this Order and Final Judgment, which constitutes a final adjudication of this Action on the merits. Good cause appearing therefore, **IT IS HEREBY ORDERED:**

1. The definitions of terms set forth in the Stipulation and in the Preliminary Order entered by this Court on August 4, 2011 are hereby incorporated as though fully set forth in this Final Judgment. Any inconsistencies between the terms of the Stipulation and this Final Judgment shall be resolved in favor of the Stipulation.

2. This Court has jurisdiction over the subject matter of the Class Action and over all parties to the Class Action, including all Class Members, who are defined as: 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, and who suffered damages as a result:

- 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.

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.

3. With respect to the Class, the Court reaffirms that: (a) the members of the Class are so numerous that joinder of all Class Members is impracticable; (b) there are questions of law

and fact common to the Class that predominate over any individual questions; (c) the claims as asserted in the Complaint are typical of the claims of the Class; (d) Class Counsel has fairly and adequately represented and protected the interests of the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversies in the Class Action, considering: (i) the interests of the Class Members in individually controlling the prosecution of the separate actions; (ii) the extent and nature of any litigation concerning the controversies already commenced by Class Members; (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum; and (iv) the difficulties likely to be encountered in the management of the Action as a class action.

4. The Notice was approved by the Court in the Preliminary Order. The Notice, among other things, advised the Class Members of their right to appear and express their views on the fairness of the Settlement of the Class Action at the Fairness Hearing before the Court mentioned above. The Notice also advised Class Members of their right to exclude themselves from the Class. 4 person(s) have submitted valid and timely requests for exclusion pursuant to the terms of the Notice. These person(s) are listed on the attached Exhibit 1 and are not bound by this Final Judgment. *See p. 11.*

5. The Court hereby finally approves the Settlement of the Class Action set forth in the Stipulation and finds that said Settlement of the Class Action is, in all respects, fair, reasonable, and adequate to the Class, and within the authority of the Parties. The Court further finds that the Settlement set forth in the Stipulation is the result of arm's length negotiations between experienced counsel representing the interests of the Parties, and that it was negotiated with the assistance of an experienced mediator. The Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

6. The Plan of Allocation is approved as fair and reasonable, and Class Counsel and the Claims Administrator are directed to administer the Plan of Allocation in accordance with the terms and provisions of the Stipulation.

7. Class Counsel shall continue to serve as Escrow Agent for the Settlement Account, until such time as all funds in the Settlement Account are distributed pursuant to the terms of the Stipulation or further Court Order.

8. The Amended Class Action Complaint, which the Court finds was filed in good faith in accordance with the Private Securities Litigation Reform Act and Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information, is dismissed with prejudice with each party paying his, her or its own costs, except as provided in the Stipulation.

9. Upon the Effective Date, Class Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, and assigns, and any other person claiming by, through or on behalf of them, whether or not that Class Member executes and delivers a Proof of Claim or otherwise shares in the Settlement Fund, (a) shall be deemed by operation of law to have released, waived, dismissed and forever discharged each and every Settled Claim, (b) shall forever be enjoined from prosecuting, commencing, or instituting, either directly or indirectly, whether in the United States or elsewhere, any Settled Claims against any of the Released Parties, and (c) shall forever be enjoined from prosecuting, commencing, instituting, continuing, maintaining, or asserting, either directly or indirectly, whether in the United States or elsewhere, any action, suit, cause of action, claim or demand against any person or entity who may claim any form of contribution or indemnity from any of the Released Parties in respect of any Settled Claim or any matter related thereto, except with regard to claims to enforce any of the terms of the Stipulation.

10. The Released Parties, on behalf of themselves, their executors, administrators, predecessors, successors, assigns, and all persons and entities claiming through or on behalf of them, (a) shall be deemed by operation of law to have released, waived, dismissed and forever discharged each and every Settled Defendant's Claim, (b) shall forever be enjoined from prosecuting, commencing, or instituting, either directly or indirectly, whether in the United States or elsewhere, any Settled Defendant's Claim, and (c) shall forever be enjoined from prosecuting, commencing, instituting, continuing, maintaining, or asserting, either directly or indirectly, whether in the United States or elsewhere, any action, suit, cause of action, claim or demand against any person or entity who may claim any form of contribution or indemnity from Class Members or their counsel in respect of any Settled Defendant's Claim.

11. The Notice given to the Class, which set forth the principal terms of the Stipulation, was the best notice practicable under the circumstances, consisting of individual notice to all Class Members who could be identified through reasonable efforts, as well as Summary Notice to all others. The Notice and Summary Notice provided due and adequate notice of these proceedings and of the matters set forth therein, including the Settlement, to all persons entitled to such notice, and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process. The Court hereby finds that all persons and entities who are Class Members were provided a full and fair opportunity to be heard with respect to the foregoing matters. Thus, it is hereby determined that all Class Members who did not timely and properly elect to exclude themselves by written communication postmarked or otherwise delivered on or before the date set forth in the Preliminary Order, the Notice and Summary Notice are bound by this Judgment.

12. Neither this Final Order and Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against the Released Parties as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Released Parties with respect to the truth of any fact asserted in this Action or the validity of any claim that had been or could have been asserted in this Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Released Parties;

(b) offered or received against the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Released Party, or against any Class Member as evidence of any infirmity in the claims of the Class;

(c) offered or received against the Released Parties or against any Class Member as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties to the Stipulation, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that the Released Parties may refer to the Stipulation to effectuate the liability protection granted them thereunder;

(d) construed against the Released Parties or any Class Member as an admission or concession that the consideration to be given hereunder represents the

amount which could be or would have been recovered after trial; or

(e) construed as or received in evidence as an admission, concession or presumption against any Class Member that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the Cash Settlement Amount.

13. Class Counsel are hereby awarded 33 1/3 % of the Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and \$ 303,886.74 in reimbursement of expenses, which shall be paid to Class Counsel from the Settlement Fund. The award of Counsel Fees and Expenses may be allocated among all plaintiff's counsel in a fashion which, in the opinion of Class Counsel, fairly compensates plaintiff's counsel for their respective contributions in the prosecution of the Action.

14. In making this award of Counsel Fees and Expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) the Settlement has resulted in the creation of the Cash Settlement Amount of \$9,000,000 that is already on deposit, and that numerous Class Members who submit valid Proofs of Claim will benefit from the Settlement achieved by Class Counsel;

(b) over 15,144 copies of the Notice were distributed to putative Class Members indicating that Class Counsel was moving for attorneys' fees in an amount not to exceed 33 1/3 percent of the Settlement Fund and for reimbursement of actual expenses, and 2 objections were filed against the terms of the proposed Settlement or the ceiling on the fees and expenses to be requested as disclosed in the Notice;

(c) Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) the Action involves complex legal and factual issues and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of these complex issues;

(e) had Class Counsel not achieved the Settlement, there would remain a significant risk that the Class may have recovered less or nothing from Harmony Gold;

(f) the amount of Counsel Fees and Expenses reimbursed from the Settlement Fund is fair and reasonable and consistent with awards in similar cases.

15. Without affecting the finality of this Final Judgment in any way, this Court hereby retains exclusive jurisdiction over: (a) the implementation of this Settlement and any distributions to Class Members pursuant to further orders of this Court; (b) the disposition of the Settlement Fund; (c) this Class Action until this Final Judgment becomes final, non-appealable and each and every act agreed to be performed by the parties has been performed pursuant to the Stipulation; and (d) all Parties to this Class Action for the purpose of enforcing and administering the Stipulation.

16. The Court finds, under Rules 54(a) and 54(b) of the Federal Rules of Civil Procedure, that this Final Judgment constitutes the final adjudication on the merits of the Class Action and should be entered without delay. Accordingly, the Clerk is directed to enter this Judgment forthwith.

17. If the Settlement is terminated pursuant to the Stipulation, then this judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation, and shall be vacated to the extent provided by the Stipulation and, in such event: (a) all Orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation; (b) the fact of the Settlement shall not be




admissible in any trial of this Action and the Parties shall be deemed to have reverted to their respective status in this Action immediately prior to May 24, 2011; and (c) any portion of the Settlement Amount previously paid or caused to be paid by Harmony Gold, including, but not limited to, any funds disbursed in payment of Litigation Expenses and attorneys' fees, together with any interest actually earned or gains thereon, less any amounts for Taxes paid or owing with respect to such interest income and/or gains and/or for Notice and Administration Costs actually incurred and paid or payable, shall be returned by the Escrow Agent and/or Class Counsel, as applicable, to Harmony Gold within seven business days after written notification of such event by Harmony Gold, as specified in Paragraph 70 of the Stipulation.

18. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

19. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.

Dated: Nov. 10, 2011

  
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THE HONORABLE BARBARA S. JONES  
UNITED STATES DISTRICT JUDGE

# EXHIBIT 1



Harmony Gold Mining Co. ADR Litigation Requests For Exclusion

Exclusion	Name	Postmarked Date	Status	Transactions
1	Robert E Austin & Pauline Austin	10/17/2011	Timely	Did not provide any transactional data
2	Roland Neil Blake	8/25/2011	Timely	Did not provide any transactional data
3	Werner U Renato Ludwig	9/15/2011	Timely	Did not provide any transactional data
4	Dr. Wolfram Ritter & Gisela Ritter	9/2/2011	Timely	Did not provide any transactional data

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