

GOLD FIELDS LTD
Form 425
October 21, 2004

File by Harmony Gold Mining Company Limited

Pursuant to Rule 425 under the United States Securities Act of 1933, as amended,

and deemed filed pursuant to Rule 14d-2(b)(2) of the

United States Securities Exchange Act of 1934, as amended

Subject Company: Gold Fields Limited

Commission File No. 001-31318

Date: October 21, 2004

This announcement is neither an offer to purchase or exchange nor a solicitation of an offer to sell or exchange Gold Fields Limited ordinary shares or Gold Fields ADSs (collectively, "Gold Fields securities"). The U.S. Offer (as defined below) is made solely by the Prospectus (as defined below), the related ADS Letter of Transmittal, the related Form of Acceptance and any amendments or supplements thereto, and is being made to all holders of Gold Fields ordinary shares who are located in the United States and to all holders of Gold Fields ADSs, wherever located. The U.S. Offer is not being made to, nor will Gold Fields securities be accepted from or on behalf of, holders of Gold Fields securities in any jurisdiction in which the making of the U.S. Offer or the acceptance thereof would not be in compliance with applicable law. In U.S. jurisdictions where the applicable laws require that the U.S. Offer be made by a licensed broker or dealer, the U.S. Offer shall be deemed to be made on behalf of Harmony Gold Mining Company Limited by HSBC Securities (USA) Inc. and Investec (US) Inc., as joint dealer-managers, or one or more registered brokers or dealers licensed under the laws of such jurisdiction.

Harmony Gold Mining Company Limited

Notice of Offer to Exchange

1.275 ordinary shares of Harmony

Gold Mining Company Limited,

for

Each Outstanding Ordinary Share

(held by holders who are located in the United States)

of

Gold Fields Limited

and

1.275 American Depositary Shares of

Harmony Gold Mining Company Limited

for

Each Outstanding American Depositary Share

(held by holders wherever located)

of

Gold Fields Limited

Harmony Gold Mining Company Limited, a company organized under the laws of the Republic of South Africa, is offering to exchange 34.9% outstanding ordinary shares, nominal value Rand 0.50 per share, of Gold Fields Limited, a company organized under the laws of the Republic of South Africa, including Gold Fields ordinary shares represented by American depositary shares (ADSs), on the terms and subject to the conditions set forth in the prospectus, dated October 21, 2004 (the Prospectus), the related ADS Letter of Transmittal and the related Form of Acceptance (which collectively constitute the U.S. Offer). In the U.S. Offer, Harmony will exchange:

1.275 newly issued Harmony ordinary shares, nominal value Rand 0.50 per share, for each validly tendered Gold Fields ordinary share; and

1.275 newly issued Harmony ADSs (each Harmony ADS representing one Harmony ordinary share) for each validly tendered Gold Fields ADS (each Gold Fields ADS representing one Gold Fields ordinary share).

If Harmony pays any dividend or any interim dividend in respect of the Harmony ordinary shares, including Harmony ordinary shares represented by Harmony ADSs, before the settlement of the U.S. Offer, the consideration offered in exchange for each Gold Fields ordinary share and each Gold Fields ADS tendered will be reduced by an amount equal to the net value of the dividend paid per Gold Fields ordinary share. In respect of any Harmony ordinary share, including any Harmony ordinary shares represented by Harmony ADSs, that a holder receives in exchange for the Gold Fields ordinary shares or the Gold Fields ADSs that such holder tenders in the U.S. Offer, such holder will be entitled to receive any dividend that is paid after the settlement of the U.S. Offer.

No fractional Harmony ordinary share or fractional Harmony ADS will be issued in connection with the U.S. Offer. To the extent that Gold Fields shareholders become entitled to fractions of Harmony ordinary shares or ADSs under the terms of the U.S. Offer, those fractions will be rounded to the nearest whole number.

The U.S. Offer, which is open to all holders of Gold Fields ordinary shares who are located in the United States and to all holders of Gold Fields ADSs, wherever located, is being made separately from a South African offer (the South African Offer), which is open to all holders of Gold Fields ordinary shares who are located in South Africa and to holders of Gold Fields ordinary shares who are located outside of South Africa and the United States, if, pursuant to the local laws and regulations applicable to such holders, they are permitted to participate in the South African Offer. Together, the U.S. Offer and the South African Offer (collectively, the Offers) are being made for 34.9% of the issued and outstanding Gold Fields ordinary shares, including Gold Fields ordinary shares represented by Gold Fields ADSs, and all Gold Fields ordinary shares that are or may become issuable prior to the expiration of the Offers due to the exercise of outstanding Gold Fields stock options. The Offers are being made on substantially similar terms and completion of the Offers is subject to the same conditions.

Harmony will pay the fees charged by the ADS depository for Gold Fields ADSs tendered into the U.S. Offer, including any fees charged by the ADS depository to redeposit Gold Fields ordinary shares underlying tendered Gold Fields ADSs that have been previously withdrawn from deposit with the ADS depository in the event that the Offers are not consummated. Harmony will pay all charges and expenses of The Bank of New York, which is acting on behalf of Harmony as exchange agent for the Gold Fields ADSs (the U.S. ADS Exchange Agent), MacKenzie Partners, Inc., which is acting as the information agent (the Information Agent), and HSBC Bank plc and Investec Bank Limited, which are acting as joint dealer-managers (the Joint Dealer-Managers), incurred in connection with the U.S. Offer.

THE U.S. OFFER AND WITHDRAWAL RIGHTS WILL EXPIRE AT 6:00 A.M., NEW YORK CITY TIME, ON NOVEMBER 26, 2004, UNLESS THE U.S. OFFER IS WITHDRAWN PRIOR TO THAT TIME. YOU MAY WITHDRAW ANY GOLD FIELDS SECURITIES TENDERED AT ANY TIME PRIOR TO THE EXPIRATION TIME.

Harmony's obligation to complete the Offers is subject to the following conditions: (1) the issuance of additional Harmony ordinary shares to be issued on completion of the Offers has been duly approved by the shareholders of Harmony at an extraordinary meeting of shareholders to be held for this purpose (the "share issuance condition"); and (2) the registration statement on Form F-4 with respect to the Harmony securities having been declared effective by the SEC. MMC Norilsk Nickel, Gold Fields' largest shareholder, (holding, as of October 19, 2003, an aggregate of 20.03% of Gold Fields' outstanding share capital), confirmed its full support of the Offers. Norilsk also expressed that it will approve the increase in share capital that will be submitted to the extraordinary meeting of shareholders. Harmony has irrevocably committed, upon the successful closing of the Offers, to make an offer for all of the Gold Fields securities not then held by Harmony on the same terms and for the same consideration as in the Offers. In addition, if the Offers are not completed because a condition is not satisfied, or the South African Offer lapses and Harmony withdraws the U.S. Offer, Harmony reserves the right to commence a new offer or not, in its sole discretion, and to make that offer available in the United States or not, in its sole discretion. If the Offers are not successful, or the South African Offer lapses and Harmony withdraws the U.S. Offer, the Gold Fields securities tendered in the U.S. Offer will be returned to tendering holders of Gold Fields securities, without interest or any other payment being due. This should occur within five South African trading days following the announcement of the lapse, withdrawal or failure of the Offers.

The U.S. Offer will expire at 6:00 a.m., New York City time, on November 26, 2004. Harmony intends that the U.S. Offer and the South African Offer will expire simultaneously. If Harmony is required or elects to extend the Offers, it will comply with the notice requirements of the SRP and to the extent it is able, the Exchange Act (as defined below). It will also, no later than the next business day, issue a press release announcing its decision. Harmony's press release will set forth the expiration date and time of the extended Offers and inform holders of Gold Fields securities subject to the Offers that they may tender, or withdraw their tendered Gold Fields securities at any time until the expiration of the extended offer period.

In accordance with JSE and South African Securities Regulation Panel regulations, Harmony will publish an announcement through SENS, the JSE Stock Exchange News Service, and through a simultaneous announcement in the press within four South African business days of the expiration of the Offers. Harmony will issue a press release regarding the results of the Offers promptly after each announcement by SENS. Harmony will file those press releases with the SEC.

Holders of Gold Fields ADSs held in certificate form, commonly known as American depository receipts ("ADRs"), may tender such Gold Fields ADSs in the U.S. Offer by delivering prior to the expiration date the following materials to the U.S. ADS Exchange Agent at one of its addresses set forth on the back cover of the Prospectus: (1) their Gold Fields ADRs, (2) a properly completed and duly executed ADS Letter of Transmittal, or a facsimile copy with an original manual signature, with any required signature guarantees, and (3) any other documents required by the ADS Letter of Transmittal. Holders of Gold Fields ADSs held in book-entry form may tender such Gold Fields ADSs in the U.S. Offer by taking the following actions prior to the expiration date: (A) a book-entry transfer of such Gold Fields ADSs into the U.S. ADS Exchange Agent's account at the Depository Trust Company ("DTC"), (B) delivery to the U.S. ADS Exchange Agent at one of its addresses set forth on the back cover of the Prospectus of either (1) a properly completed and duly executed ADS Letter of Transmittal, or a facsimile copy with an original manual signature, with any required signature guarantees, or (2) an agent's message (as defined in the Prospectus), and (C) delivery to the U.S. ADS Exchange Agent at one of its addresses set forth on the back cover of the Prospectus of any other documents required by the ADS Letter of Transmittal. Gold Fields ordinary shares held through a South African financial intermediary may be tendered pursuant to the U.S. Offer only by completing the relevant Form of Acceptance and other transmittal materials sent by the South African financial intermediary and pursuant to the instructions for participating in the U.S. Offer. Gold Fields ordinary shares held through a U.S. custodian may be tendered pursuant to the U.S. Offer only by completing the relevant Form of Acceptance and other transmittal materials sent by the U.S. custodian pursuant to instructions for participating in the U.S. Offer. Gold Fields ordinary shares may not be tendered by completing the ADS Letter of Transmittal. All questions as to the validity, form and eligibility for exchange of any tendered Gold Fields securities will be determined by Harmony, in its discretion, and its determination will be final and binding on the holders of the Gold Fields securities.

If a holder wishes to tender Gold Fields ADSs pursuant to the U.S. Offer and its Gold Fields ADRs are not immediately available or the holder cannot deliver such Gold Fields ADRs and all other required documents to the U.S. ADS Exchange Agent prior to the expiration date, or the holder cannot complete the procedure for book-entry transfer on a timely basis, the holder may nevertheless tender such Gold Fields ADSs provided that all of the conditions following conditions are satisfied: the tender is made by or through an eligible institution; a properly completed and duly executed notice of guaranteed delivery, substantially in the form made available by Harmony, is received by the U.S. ADS Exchange Agent as provided in the Prospectus on or prior to the expiration date; and within three NYSE trading days after the date of execution of such notice of guaranteed delivery, the holder delivers to the U.S. ADS Exchange Agent, either: the holder's Gold Fields ADRs, in proper form for transfer, together with a properly completed and duly executed ADS letter of transmittal or a manually executed facsimile copy, with any required signature guarantee, or a confirmation of a book-entry transfer of the holder's Gold Fields ADSs into the account of the U.S. ADS Exchange Agent at DTC as described above, together with a properly completed and duly executed ADS letter of transmittal or a manually executed facsimile copy, with any required signature guarantee or an agent's message. The notice of guaranteed delivery may be delivered by hand or transmitted by facsimile transmission or mailed to the U.S. ADS Exchange Agent. The notice of guaranteed delivery must in all cases include a guarantee by an eligible institution in the form set forth in such notice. Delivery of documents to DTC in accordance with its procedures does not constitute delivery to the U.S. ADS Exchange Agent.

Tenders of Gold Fields securities made pursuant to the U.S. Offer may be withdrawn at any time prior to the expiration of the U.S. Offer. For a withdrawal to be effective, the South African financial intermediary, the U.S. custodian or the U.S. ADS Exchange Agent, as applicable, must receive in a timely manner the written or facsimile transmission notice of withdrawal. Any such notice must specify the name of the person who tendered the Gold Fields securities being withdrawn, the number of Gold Fields securities being withdrawn and the name of the registered holder, if different from that of the person who tendered such Gold Fields securities. If Gold Fields ADRs being withdrawn have been delivered or otherwise

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identified to the U.S. ADS Exchange Agent, then, prior to the physical release of such ADRs, (1) the U.S. ADS Exchange Agent also must receive the name of the registered holder and the serial numbers of the particular Gold Fields ADRs and (2) the signature(s) on the notice of withdrawal must be guaranteed by an eligible institution unless such Gold Fields ADSs have been tendered for the account of an eligible institution. If Gold Fields ADSs have been tendered pursuant to the procedure for book-entry transfer, any notice of withdrawal must specify the name and number of the account at DTC to be credited with the withdrawal of Gold Fields ADSs. If tendered Gold Fields ordinary shares are being withdrawn, the notice of withdrawal must specify the name and number of the account to be credited with the withdrawn Gold Fields securities. All questions as to the form and validity (including time of receipt) of any notice of withdrawal will be determined by Harmony, in its sole discretion, and its determination will be final and binding on the holders of the Gold Fields securities.

If the Offers are successful, Harmony securities will be delivered to tendering holders of Gold Fields securities following the publication by the SRP of the final results of the Offers. Settlement is currently expected to take place approximately seven days following the expiration date of the Offers. Harmony ADSs to be evidenced by ADRs registered in the name of the tendering holder may not be delivered until approximately two weeks after the settlement date.

Harmony's acquisition of the Gold Fields securities will be accounted for using the purchase method under both IFRS and U.S. GAAP.

If a tendering holder is a non-resident of South Africa and not a member of a special class of taxpayers (as described in the Prospectus under "Material South African Tax and U.S. Federal Tax Consequences") for South African tax purposes, such holder will not be subject to South African tax on any capital gain or loss recognized, for South African tax purposes, as a result of exchanging such holder's Gold Fields securities pursuant to the U.S. Offer, unless such holder has a permanent establishment or fixed base in South Africa and the Gold Fields securities exchanged are part of the business property of that permanent establishment or fixed base. For South African tax purposes, the gain or loss, if any, will equal the difference between (a) the fair market value of the Harmony ordinary shares or ADSs such holder receives in the exchange and (b) such holder's adjusted tax basis in the Gold Fields securities that such holder exchanges.

If a tendering holder is a U.S. holder (as defined in the Prospectus under "Material South African Tax and U.S. Federal Tax Consequences") and is not a member of a special class of taxpayers (as described in the Prospectus under "Material South African Tax and U.S. Federal Tax Consequences") for U.S. federal tax purposes, as a result of exchanging Gold Fields securities pursuant to the U.S. Offer, such holder will generally recognize gain or loss, unless (i) the U.S. Offer and the South African Offer are consummated as described herein, (ii) the further offers are consummated promptly after the consummation of the U.S. Offer and the South African Offer and treated as part of the same transaction and, (iii) as a result of the U.S. Offer, South African Offer and the further offers, taken together, not less than 80% of the voting stock and 80% of all other classes of Gold Fields stock are validly deposited and not validly withdrawn (collectively, conditions (i) through (iii) are referred to herein as the primary supporting conditions). However, if the primary supporting conditions are satisfied, it is possible that exchange would be treated as part of a tax-free reorganization for U.S. federal income tax purposes. Exceptions are described in more detail in the Prospectus under "Material South African Tax and U.S. Federal Income Tax Consequences" and "Tax Consequences of Exchanging Gold Fields Securities" under "United States federal income taxation" - "Non-U.S. Holders".

The information required to be disclosed by Rule 14d-6(d)(1) of the General Rules and Regulations under the Securities Exchange Act of 1934 (the "Exchange Act Rules") is contained in the Prospectus and is incorporated herein by reference. In connection with the U.S. Offer, Harmony has delivered a written request to Gold Fields pursuant to Rule 14d-5 of the Exchange Act Rules relating to the use of Gold Fields' stockholder lists and security position listings. The Prospectus, the related ADS Letter of Transmittal, the related Form of Acceptance and other related materials will be mailed to registered holders of Gold Fields ADSs and to registered holders of Gold Fields ordinary shares in the United States and will be furnished to brokers, dealers, commercial banks, trust companies and similar persons whose names, or the names of whose nominees, appear on the stockholder list or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of Gold Fields securities.

The Prospectus, the related ADS Letter of Transmittal and the related Form of Acceptance contain important information that should be read carefully before any decision is made with respect to the U.S. Offer.

Any questions or requests for assistance or for additional copies of the Prospectus, the related ADS Letter of Transmittal, the related Form of Acceptance and other related tender offer materials may be directed to the Information Agent at its address and telephone number set forth below, and copies will be furnished promptly at Harmony's expense.

The Information Agents for the U.S. Offer is:

105 Madison Avenue

New York, New York 10016

(212) 929-5500 (Call Collect)

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or

CALL TOLL-FREE (800) 322-2885

E-mail: proxy@mackenziepartners.com

The Joint Dealer Managers for the U.S. Offer are:

HSBC Securities (USA) Inc.
452 Fifth Avenue
New York, NY 10018

Investec (US) Inc.
One Battery Park Plaza
New York, NY 10004-1478

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