

GOLD FIELDS LTD
Form SC 14D9/A
November 23, 2004

Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14D-9
(Rule 14d-101)

SOLICITATION/ RECOMMENDATION STATEMENT UNDER SECTION 14(d)(4)

OF THE SECURITIES EXCHANGE ACT OF 1934

(AMENDMENT NO. 10)

GOLD FIELDS LIMITED

(Name of Subject Company)

GOLD FIELDS LIMITED

(Name of Person(s) Filing Statement)

Ordinary Shares of nominal value Rand 0.50 each

American Depositary Shares, each representing one Ordinary Share
(Title of Class of Securities)

ZAE000018123 (Ordinary Shares)

38059T106 (American Depositary Shares)
(CUSIP Number of Class of Securities)

Cain Farell

**24 St. Andrews Road
Parktown, 2193
South Africa
011-27-11-644-2400**

*(Name, Address, and Telephone Number of Person
Authorized to Receive Notices and Communications
On Behalf of the Person(s) Filing Statement)*

**Jennifer M. Schneck
Linklaters
One Silk Street
London EC2Y 8HQ
England
011-44-20-7456-2000**

**Scott V. Simpson
Ann Beth Bejgrowicz
Skadden, Arps, Slate, Meagher & Flom (UK) LLP
40 Bank Street, Canary Wharf
London E14 5DS
England**

- o Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

TABLE OF CONTENTS

ITEM 8. ADDITIONAL INFORMATION TO BE FURNISHED

ITEM 9. EXHIBITS

SIGNATURE

EXHIBIT INDEX

EX-99.A.59: DECISION AND ORDER OF US DISTRICT COURT SDNY ON 11/23/04

EX-99.A.60: ADVERTISEMENT

Table of Contents

This Amendment No. 10 (**Amendment No. 10**) amends and supplements the Schedule 14D-9 (the **Schedule 14D-9**) initially filed by Gold Fields with the Securities and Exchange Commission (the **SEC**) on November 3, 2004, as amended, relating to the Offer. Except as otherwise defined herein, capitalized terms shall have the meaning given to them in the Schedule 14D-9.

This Amendment No. 10 amends and supplements Item 8 as follows:

ITEM 8. ADDITIONAL INFORMATION TO BE FURNISHED

Legal Proceedings

On November 23, 2004, the United States District Court for the Southern District of New York (the **U.S. District Court**) denied Gold Fields' motion for a preliminary injunction to enjoin Harmony from implementing the Early Settlement Offer based on allegations that Harmony violated the U.S. federal securities laws. The U.S. District Court's Decision and Order, dated November 23, 2004, is filed herewith as Exhibit 99.(a)(59) and is incorporated herein by this reference.

The re-hearing before a full panel of the South African Securities Regulation Panel with respect to the concert party allegations made by Gold Fields against Harmony and MMC Norilsk Nickel that was originally scheduled to be heard on November 19, 2004 is currently scheduled to be heard on November 25, 2004.

Shareholder Communications

On November 23, 2004, Gold Fields made the following public communication:

Gold Fields placed an advertisement in certain publications on November 23, 2004 advising holders of Gold Fields Shares to reject the Offer. A copy of the advertisement has been filed herewith as Exhibit 99.(a)(60) and is hereby incorporated herein by this reference.

Table of Contents

This Amendment No. 10 amends and restates Item 9 as follows:

ITEM 9. EXHIBITS

| Exhibit | Description |
|-------------|--|
| 99.(a)(1)+ | Offer Response Document of Gold Fields Limited, dated November 3, 2004 |
| 99.(a)(2)+ | Form of Withdrawal with respect to Gold Fields Ordinary Shares |
| 99.(a)(3)+ | Form of Withdrawal with respect to Gold Fields American Depositary Shares |
| 99.(a)(4)+ | Opinion of J.P. Morgan plc |
| 99.(a)(5)+ | Opinion of Goldman Sachs International |
| 99.(a)(6)+ | Shareholder Circular of Gold Fields Limited, dated October 29, 2004 |
| 99.(a)(7)+ | Agreement amongst Gold Fields Limited, Gold Fields Ghana Holdings Limited, Gold Fields Guernsey Limited and IAMGold Corporate, dated September 30, 2004 |
| 99.(a)(8)* | Covenants Agreement between Gold Fields Limited, Mvelaphanda Resources Limited, Lexshell 579 Investments (Proprietary) Limited and Newshelf 706 Limited, dated November 26, 2003 |
| 99.(a)(9)* | Subscription and Share Exchange Agreement amongst Lexshell 579 Investments (Proprietary) Limited, GFL Mining South Africa Limited and Gold Fields Limited, dated December 11, 2003 |
| 99.(a)(10)* | GFI-SA Loan Agreement amongst Lexshell 579 Investments (Proprietary) Limited, First Rand Bank Limited, GFI Mining South Africa Limited, Gold Fields Limited, Gold Fields Australia Pty Limited and Gold Fields Guernsey Limited, dated December 11, 2003 |
| 99.(a)(11)+ | Letter to shareholders of Harmony Gold Mining Limited, dated November 3, 2004 |
| 99.(a)(12)+ | Application to the Competition Tribunal of South Africa, including a Notice of Motion and Founding Affidavit, dated October 26, 2004 |
| 99.(a)(13)+ | Application to the High Court of South Africa, dated October 28, 2004 |
| 99.(a)(14)+ | Announcement advising that the Offer Response Document has been published and that holders of Gold Fields Shares should reject the Offer, dated November 3, 2004 |
| 99.(a)(15)+ | Advertisement recommending that holders of Gold Fields Shares reject the Offer, dated November 3, 2004 |
| 99.(a)(16)+ | Presentation given by Gold Fields in connection with the publication of its recommendation to reject the Offer and the Offer Response Document, dated November 3, 2004 |
| 99.(a)(17)+ | Questions and answers with Ian Cockerill, dated November 3, 2004 |
| 99.(a)(18)+ | Questions and answers with Nicholas Holland, dated November 3, 2004 |
| 99.(a)(19)+ | Letter from the South African Securities Regulation Panel, dated November 3, 2004 |
| 99.(a)(20)+ | Press release, dated November 4, 2004, of a letter from Ian Cockerill to Bernard Swanepoel, dated November 3, 2004 |
| 99.(a)(21)+ | Press release urging rejection of the Offer and advising holders of Gold Fields shares that the Gold Fields Board believes the Offer to be coercive, dated November 4, 2004 |
| 99.(a)(22)+ | Complaint filed in the United States District Court for the Southern District of New York against Harmony in connection with Harmony's two-step offer for Gold Fields Shares, dated November 5, 2004 |
| 99.(a)(23)+ | Press release announcing the commencement of litigation against Harmony in the United States District Court for the Southern District of New York, dated November 5, 2004 |
| 99.(a)(24)+ | Letter from Gold Fields to Harmony shareholders instructing them to vote against Harmony resolutions to be tabled at Harmony's November 12, 2004 shareholder meeting, dated November 5, 2004 |
| 99.(a)(25)+ | Transcript of presentation given by Gold Fields, dated November 3, 2004 |
| 99.(a)(26)+ | Transcript of conference call hosted by Gold Fields, dated November 3, 2004 |
| 99.(a)(27)+ | Gold Fields press release announcing a ruling by the South African Securities Regulation Panel, dated November 8, 2004 |
| 99.(a)(28)+ | A letter re-released on November 8, 2004, from Gold Fields to Harmony shareholders, dated November 3, 2004 |
| 99.(a)(29)+ | Letter from Gold Fields to its shareholders, dated November 8, 2004 |
| 99.(a)(30)+ | Investor script used by Computershare Investor Services 2004 (Proprietary) Limited to answer questions by Gold Fields shareholders |
| 99.(a)(31)+ | Editorial by Ian Cockerill appearing in the <i>South African Sunday Times</i> on November 7, 2004 |
| 99.(a)(32)+ | Announcement issued by the South African Securities Regulation Panel, dated November 9, 2004 |
| 99.(a)(33)+ | Gold Fields press release relating to Harmony's gold reserves, dated November 9, 2004 |
| 99.(a)(34)+ | Advertisement recommending that holders of Gold Fields Shares reject the Offer, dated November 9, 2004 |
| 99.(a)(35)+ | Gold Fields press release responding to a Harmony presentation, dated November 9, 2004 |
| 99.(a)(36)+ | Letter from Chris Thompson, Chairman of Gold Fields, to Gold Fields and Harmony shareholders, dated November 9, 2004 |

Edgar Filing: GOLD FIELDS LTD - Form SC 14D9/A

- 99.(a)(37)+ Judgment by the High Court of South Africa, dated November 11, 2004
- 99.(a)(38)+ Amended Complaint filed in the United States District Court for the Southern District of New York, dated November 12, 2004
- 99.(a)(39)+ Press release announcing relating to Andisa Capital, dated November 11, 2004
- 99.(a)(40)+ Editorial by Ian Cockerill appearing in the *Star Business Report*, on November 11, 2004
- 99.(a)(41)+ Press release commenting on the results of Harmony's general meeting, dated November 12, 2004
- 99.(a)(42)+ Advertisement appearing in *Business Day* on November 15, 2004
- 99.(a)(43)+ Press release regarding the decline in price of Gold Fields and Harmony shares, dated November 16, 2004
- 99.(a)(44)+ Letter from Chris Thompson, Chairman of Gold Fields, to Gold Fields shareholders, dated November 16, 2004
- 99.(a)(45)+ Transcript of address by Ian Cockerill to Gold Fields shareholders at Gold Fields Annual General Meeting, dated November 16, 2004

Table of Contents

| Exhibit | Description |
|-------------------------|--|
| 99.(a)(46)+ | Press release regarding address by Ian Cockerill at Gold Fields Annual General Meeting, dated November 16, 2004 |
| 99.(a)(47)+ | Press release regarding the results of Gold Fields Annual General Meeting, dated November 16, 2004 |
| 99.(a)(48)+ | Advertisement appearing in <i>Business Day</i> on November 16, 2004 |
| 99.(a)(49)+ | Gold Fields advertisement with the remarks of Ian D. Cockerill, Chief Executive Officer of Gold Fields, at the Gold Fields Annual General Meeting held on November 16, 2004, dated November 17, 2004 |
| 99.(a)(50)+ | Findings by the Competition Tribunal of South Africa, dated November 18, 2004 |
| 99.(a)(51)+ | Gold Fields advertisement discussing the Offer, dated November 18, 2004 |
| 99.(a)(52)+ | Gold Fields press release announcing its production expectations for the three months ending December 31, 2004, dated November 18, 2004 |
| 99.(a)(53)+ | Gold Fields Frequently Asked Questions in respect of the Offer, dated November 18, 2004 |
| 99.(a)(54)+ | Letter from Ian Cockerill, Chief Executive Officer of Gold Fields, to holders of Gold Fields Shares, dated November 18, 2004 |
| 99.(a)(55) | Gold Fields Notice of Appeal filed in the Competition Appeal Court of South Africa, dated November 19, 2004 |
| 99.(a)(56) | Gold Fields advertisement highlighting its financial and operational performance, dated November 19, 2004 |
| 99.(a)(57) | Gold Fields advertisement with a Q&A for the holders of Gold Fields Shares, dated November 19, 2004 |
| 99.(a)(58) | Press release of a statement by the Gold Fields Board relating to the Offer and the proposed transaction with IAMGold Corporation, dated November 19, 2004 |
| 99.(a)(59) ^o | Decision and Order of United States District Court for the Southern District of New York, dated November 23, 2004 |
| 99.(a)(60) ^o | Gold Fields advertisement advising holders of Gold Fields Shares to reject the Offer, dated November 23, 2004 |
| 99.(e)(1)+ | Agreement between Ian D. Cockerill and Gold Fields Guernsey Limited, effective March 1, 2004 |
| 99.(e)(2)+ | Service Agreement between Ian D. Cockerill and GFL Mining Services Limited, effective March 1, 2004 |
| 99.(e)(3)+ | Agreement between Nicholas J. Holland and Gold Fields Guernsey Limited, effective March 1, 2004 |
| 99.(e)(4)+ | Service Agreement between Nicholas J. Holland and GFL Mining Services Limited, effective March 1, 2004 |
| 99.(e)(5)+ | Agreement between John A. Munro and Gold Fields Guernsey Limited, effective March 1, 2004 |
| 99.(e)(6)+ | Service Agreement between John A. Munro and GFL Mining Services Limited, effective March 1, 2004 |
| 99.(e)(7)+ | Employment Agreement between Craig J. Nelsen and Gold Fields Exploration, Inc., as amended, effective May 1, 2003 |
| 99.(e)(8)+ | Service Agreement between Michael J. Prinsloo and GFI Mining South Africa (Pty) Limited, effective March 1, 2004 |
| 99.(e)(9) | The GF Management Incentive Scheme, adopted November 10, 1999 |
| 99.(e)(10)+ | Deed of Amendment to the GF Management Incentive Scheme between Gold Fields Limited and Tokyo Mosima Gabriel Sexwale and Gordon Rae Parker, adopted May 4, 2001 |
| 99.(e)(11)+ | Second Deed of Amendment to the GF Management Incentive Scheme between Gold Fields Limited and Tokyo Mosima Gabriel Sexwale and Gordon Rae Parker, adopted October 31, 2001 |
| 99.(e)(12) | The GF Non-Executive Director Share Plan, adopted October 31, 2000 |
| 99.(e)(13)+ | Deed of Amendment to the GF Non-Executive Share Plan, adopted December 6, 2002 |

^o Filed herewith.

+ Previously filed.

* Incorporated by reference to the Annual Report on Form 20-F (File No. 1-31318), filed by Gold Fields with the Securities and Exchange Commission on December 29, 2003.

Incorporated by reference to the Registration Statement on Form 20-F (File No. 1-31318), filed by Gold Fields with the Securities and Exchange Commission on May 6, 2002.

Table of Contents

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

By: /s/ NICHOLAS J. HOLLAND

Name: Nicholas J. Holland

Title: Executive Director and
Chief Financial Officer

Date: November 23, 2004

Table of Contents**EXHIBIT INDEX**

| Exhibit | Description |
|----------------|--|
| 99.(a)(1)+ | Offer Response Document of Gold Fields Limited, dated November 3, 2004 |
| 99.(a)(2)+ | Form of Withdrawal with respect to Gold Fields Ordinary Shares |
| 99.(a)(3)+ | Form of Withdrawal with respect to Gold Fields American Depositary Shares |
| 99.(a)(4)+ | Opinion of J.P. Morgan plc |
| 99.(a)(5)+ | Opinion of Goldman Sachs International |
| 99.(a)(6)+ | Shareholder Circular of Gold Fields Limited, dated October 29, 2004 |
| 99.(a)(7)+ | Agreement amongst Gold Fields Limited, Gold Fields Ghana Holdings Limited, Gold Fields Guernsey Limited and IAMGold Corporate, dated September 30, 2004 |
| 99.(a)(8)* | Covenants Agreement between Gold Fields Limited, Mvelaphanda Resources Limited, Lexshell 579 Investments (Proprietary) Limited and Newshelf 706 Limited, dated November 26, 2003 |
| 99.(a)(9)* | Subscription and Share Exchange Agreement amongst Lexshell 579 Investments (Proprietary) Limited, GFL Mining South Africa Limited and Gold Fields Limited, dated December 11, 2003 |
| 99.(a)(10)* | GFI-SA Loan Agreement amongst Lexshell 579 Investments (Proprietary) Limited, First Rand Bank Limited, GFI Mining South Africa Limited, Gold Fields Limited, Gold Fields Australia Pty Limited and Gold Fields Guernsey Limited, dated December 11, 2003 |
| 99.(a)(11)+ | Letter to shareholders of Harmony Gold Mining Limited, dated November 3, 2004 |
| 99.(a)(12)+ | Application to the Competition Tribunal of South Africa, including a Notice of Motion and Founding Affidavit, dated October 26, 2004 |
| 99.(a)(13)+ | Application to the High Court of South Africa, dated October 28, 2004 |
| 99.(a)(14)+ | Announcement advising that the Offer Response Document has been published and that holders of Gold Fields Shares should reject the Offer, dated November 3, 2004 |
| 99.(a)(15)+ | Advertisement recommending that holders of Gold Fields Shares reject the Offer, dated November 3, 2004 |
| 99.(a)(16)+ | Presentation given by Gold Fields in connection with the publication of its recommendation to reject the Offer and the Offer Response Document, dated November 3, 2004 |
| 99.(a)(17)+ | Questions and answers with Ian Cockerill, dated November 3, 2004 |
| 99.(a)(18)+ | Questions and answers with Nicholas Holland, dated November 3, 2004 |
| 99.(a)(19)+ | Letter from the South African Securities Regulation Panel, dated November 3, 2004 |
| 99.(a)(20)+ | Press release, dated November 4, 2004, of a letter from Ian Cockerill to Bernard Swanepoel, dated November 3, 2004 |
| 99.(a)(21)+ | Press release urging rejection of the Offer and advising holders of Gold Fields shares that the Gold Fields Board believes the Offer to be coercive, dated November 4, 2004 |
| 99.(a)(22)+ | Complaint filed in the United States District Court for the Southern District of New York against Harmony in connection with Harmony's two-step offer for Gold Fields Shares, dated November 5, 2004 |
| 99.(a)(23)+ | Press release announcing the commencement of litigation against Harmony in the United States District Court for the Southern District of New York, dated November 5, 2004 |
| 99.(a)(24)+ | Letter from Gold Fields to Harmony shareholders instructing them to vote against Harmony resolutions to be tabled at Harmony's November 12, 2004 shareholder meeting, dated November 5, 2004 |
| 99.(a)(25)+ | Transcript of presentation given by Gold Fields, dated November 3, 2004 |
| 99.(a)(26)+ | Transcript of conference call hosted by Gold Fields, dated November 3, 2004 |
| 99.(a)(27)+ | Gold Fields press release announcing a ruling by the South African Securities Regulation Panel, dated November 8, 2004 |
| 99.(a)(28)+ | A letter re-released on November 8, 2004, from Gold Fields to Harmony shareholders, dated November 3, 2004 |
| 99.(a)(29)+ | Letter from Gold Fields to its shareholders, dated November 8, 2004 |
| 99.(a)(30)+ | Investor script used by Computershare Investor Services 2004 (Proprietary) Limited to answer questions by Gold Fields shareholders |
| 99.(a)(31)+ | Editorial by Ian Cockerill appearing in the <i>South African Sunday Times</i> on November 7, 2004 |
| 99.(a)(32)+ | Announcement issued by the South African Securities Regulation Panel, dated November 9, 2004 |
| 99.(a)(33)+ | Gold Fields press release relating to Harmony's gold reserves, dated November 9, 2004 |
| 99.(a)(34)+ | Advertisement recommending that holders of Gold Fields Shares reject the Offer, dated November 9, 2004 |
| 99.(a)(35)+ | Gold Fields press release responding to a Harmony presentation, dated November 9, 2004 |
| 99.(a)(36)+ | Letter from Chris Thompson, Chairman of Gold Fields, to Gold Fields and Harmony shareholders, dated November 9, 2004 |
| 99.(a)(37)+ | Judgment by the High Court of South Africa, dated November 11, 2004 |
| 99.(a)(38)+ | Amended Complaint filed in the United States District Court for the Southern District of New York, dated November 12, 2004 |

Edgar Filing: GOLD FIELDS LTD - Form SC 14D9/A

- 99.(a)(39)+ Press release announcing relating to Andisa Capital, dated November 11, 2004
- 99.(a)(40)+ Editorial by Ian Cockerill appearing in the *Star Business Report*, on November 11, 2004
- 99.(a)(41)+ Press release commenting on the results of Harmony's general meeting, dated November 12, 2004
- 99.(a)(42)+ Advertisement appearing in *Business Day* on November 15, 2004
- 99.(a)(43)+ Press release regarding the decline in price of Gold Fields and Harmony shares, dated November 16, 2004
- 99.(a)(44)+ Letter from Chris Thompson, Chairman of Gold Fields, to Gold Fields shareholders, dated November 16, 2004
- 99.(a)(45)+ Transcript of address by Ian Cockerill to Gold Fields shareholders at Gold Fields Annual General Meeting, dated November 16, 2004

Table of Contents

| Exhibit | Description |
|-------------------------|--|
| 99.(a)(46)+ | Press release regarding address by Ian Cockerill at Gold Fields Annual General Meeting, dated November 16, 2004 |
| 99.(a)(47)+ | Press release regarding the results of Gold Fields Annual General Meeting, dated November 16, 2004 |
| 99.(a)(48)+ | Advertisement appearing in <i>Business Day</i> on November 16, 2004 |
| 99.(a)(49)+ | Gold Fields advertisement with the remarks of Ian D. Cockerill, Chief Executive Officer of Gold Fields, at the Gold Fields Annual General Meeting held on November 16, 2004, dated November 17, 2004 |
| 99.(a)(50)+ | Findings by the Competition Tribunal of South Africa, dated November 18, 2004 |
| 99.(a)(51)+ | Gold Fields advertisement discussing the Offer, dated November 18, 2004 |
| 99.(a)(52)+ | Gold Fields press release announcing its production expectations for the three months ending December 31, 2004, dated November 18, 2004 |
| 99.(a)(53)+ | Gold Fields Frequently Asked Questions in respect of the Offer, dated November 18, 2004 |
| 99.(a)(54)+ | Letter from Ian Cockerill, Chief Executive Officer of Gold Fields, to holders of Gold Fields Shares, dated November 18, 2004 |
| 99.(a)(55) | Gold Fields Notice of Appeal filed in the Competition Appeal Court of South Africa, dated November 19, 2004 |
| 99.(a)(56) | Gold Fields advertisement highlighting its financial and operational performance, dated November 19, 2004 |
| 99.(a)(57) | Gold Fields advertisement with a Q&A for the holders of Gold Fields Shares, dated November 19, 2004 |
| 99.(a)(58) | Press release of a statement by the Gold Fields Board relating to the Offer and the proposed transaction with IAMGold Corporation, dated November 19, 2004 |
| 99.(a)(59) ^o | Decision and Order of United States District Court for the Southern District of New York, dated November 23, 2004 |
| 99.(a)(60) ^o | Gold Fields advertisement advising holders of Gold Fields Shares to reject the Offer, dated November 23, 2004 |
| 99.(e)(1)+ | Agreement between Ian D. Cockerill and Gold Fields Guernsey Limited, effective March 1, 2004 |
| 99.(e)(2)+ | Service Agreement between Ian D. Cockerill and GFL Mining Services Limited, effective March 1, 2004 |
| 99.(e)(3)+ | Agreement between Nicholas J. Holland and Gold Fields Guernsey Limited, effective March 1, 2004 |
| 99.(e)(4)+ | Service Agreement between Nicholas J. Holland and GFL Mining Services Limited, effective March 1, 2004 |
| 99.(e)(5)+ | Agreement between John A. Munro and Gold Fields Guernsey Limited, effective March 1, 2004 |
| 99.(e)(6)+ | Service Agreement between John A. Munro and GFL Mining Services Limited, effective March 1, 2004 |
| 99.(e)(7)+ | Employment Agreement between Craig J. Nelsen and Gold Fields Exploration, Inc., as amended, effective May 1, 2003 |
| 99.(e)(8)+ | Service Agreement between Michael J. Prinsloo and GFI Mining South Africa (Pty) Limited, effective March 1, 2004 |
| 99.(e)(9) | The GF Management Incentive Scheme, adopted November 10, 1999 |
| 99.(e)(10)+ | Deed of Amendment to the GF Management Incentive Scheme between Gold Fields Limited and Tokyo Mosima Gabriel Sexwale and Gordon Rae Parker, adopted May 4, 2001 |
| 99.(e)(11)+ | Second Deed of Amendment to the GF Management Incentive Scheme between Gold Fields Limited and Tokyo Mosima Gabriel Sexwale and Gordon Rae Parker, adopted October 31, 2001 |
| 99.(e)(12) | The GF Non-Executive Director Share Plan, adopted October 31, 2000 |
| 99.(e)(13)+ | Deed of Amendment to the GF Non-Executive Share Plan, adopted December 6, 2002 |

^o Filed herewith.

+ Previously filed.

* Incorporated by reference to the Annual Report on Form 20-F (File No. 1-31318), filed by Gold Fields with the Securities and Exchange Commission on December 29, 2003.

Incorporated by reference to the Registration Statement on Form 20-F (File No. 1-31318), filed by Gold Fields with the Securities and Exchange Commission on May 6, 2002.