

GOLD FIELDS LTD
Form SC 14D9
November 03, 2004

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

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)*

Copy to:

Jennifer M. Schneck

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

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

ITEM 1. SUBJECT COMPANY INFORMATION

The name of the subject company is Gold Fields Limited, a company organized under the laws of South Africa (the **Company** or **Gold Fields**). The principal executive office of the Company is located at 24 St. Andrews Road, Parktown, 2193, South Africa. The telephone number of its principal executive office is 011-27-11-644-2400.

The title of the class of the equity securities to which this Solicitation/ Recommendation Statement on Schedule 14D-9, together with the exhibits hereto (this **Schedule 14D-9**), relates is ordinary shares, nominal value Rand 0.50 per share, of Gold Fields (the **Gold Fields Ordinary Shares**), which are in the form of shares or American Depositary Shares (**Gold Fields ADSs**), and together with the Gold Fields Ordinary Shares, the **Gold Fields Shares**). Each Gold Fields ADS is evidenced by a Gold Fields American Depositary Receipt (a **Gold Fields ADR**) and represents one Gold Fields Ordinary Share.

As of October 29, 2004, there were 491,831,765 Gold Fields Ordinary Shares outstanding, of which 112,862,287 (approximately 22.95% of Gold Fields issued and outstanding share capital) were represented by Gold Fields ADSs. In addition to the issued and outstanding share capital, as of October 29, 2004, Gold Fields had 22,791,830 Gold Fields Ordinary Shares reserved for issuance under its equity compensation plans, of which 9,658,623 Gold Fields Ordinary Shares are issuable upon or otherwise deliverable in connection with the exercise of outstanding options issued pursuant to such plans.

ITEM 2. IDENTITY AND BACKGROUND OF FILING PERSON

The name, business address and business telephone number of the Company, which is the person filing this Schedule 14D-9 and is also the subject company, are set forth in Item 1 above and are incorporated herein by this reference.

This Schedule 14D-9 relates to the partial tender offer (the **Offer**) for 34.9% of the Gold Fields Shares by Harmony Gold Mining Company Limited, a company organized under the laws of South Africa (the **Offeror** or **Harmony**). The Offer is described in a Tender Offer Statement on Schedule TO, together with the exhibits thereto (as amended or supplemented from time to time, the **Schedule TO**), initially filed by Harmony with the Securities and Exchange Commission (the **SEC**) on October 22, 2004. The Offer is being made pursuant to the terms and conditions set forth in the Prospectus, dated October 21, 2004 (the **Prospectus**) and the related ADS Letter of Transmittal, each of which has been filed as an exhibit to the Schedule TO.

According to the disclosure set out in the Schedule TO, Harmony has structured the Offer as an exchange offer to holders of Gold Fields Ordinary Shares inside the United States and holders of Gold Fields ADRs wherever located (the **U.S. Offer**) and as an exchange offer to holders of Gold Fields Ordinary Shares inside South Africa and holders of Gold Fields Ordinary Shares outside the United States to the extent such holders may lawfully participate in the Offer (the **International Offer**). The U.S. Offer and the International Offer are collectively referred to herein as an **Early Settlement Offer** . In the Early Settlement Offer, subject to the terms and conditions set out in the Prospectus, Harmony has offered to purchase Gold Fields Ordinary Shares and Gold Fields ADSs, up to 34.9% of the issued and outstanding share capital of Gold Fields, in exchange for 1.275 new Harmony Shares and 1.275 new Harmony ADSs, respectively. Harmony also indicates in the Schedule TO that following the completion of the Early Settlement Offer, it intends to commence a subsequent offer (the **Subsequent Offer**) to purchase the remaining Gold Fields Ordinary Shares and Gold Fields ADSs not tendered or accepted for payment in the Early Settlement Offer in exchange for 1.275 new Harmony Shares and 1.275 new Harmony ADSs, respectively.

As set forth in the Prospectus, the principal executive office of Harmony is located at Suite No 1, Private Bag X1, Melrose Arch, 2076, South Africa.

With respect to all information described herein which is set out in the Schedule TO and the Prospectus contained in the Registration Statement on Form F-4 (together with exhibits thereto and as amended or supplemented from time to time) initially filed by Harmony with the SEC on October 21, 2004, and any exhibits thereto, including information regarding Harmony or its affiliates, officers or directors or actions or events with respect to any of them, the Company takes no responsibility for the accuracy or completeness of such information

or for any failure by Harmony to disclose events or circumstances that may have occurred and may affect the significance, completeness or accuracy of any such information.

ITEM 3. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS

Certain Employment, Severance and Other Compensatory Arrangements

Employment agreements of Ian D. Cockerill and Nicholas J. Holland

Each of Ian D. Cockerill (Executive Director and Chief Executive Officer of Gold Fields) and Nicholas J. Holland (Executive Director and Chief Financial Officer of Gold Fields) has entered into service agreements with subsidiaries of Gold Fields, one agreement (the **Guernsey Contract**) is with Gold Fields Guernsey Limited (**GF Guernsey**) and the other agreement (the **GFL Contract**) is with GFL Mining Services Ltd. (**GFL**). The terms and conditions of employment for each executive director are substantially similar, except where otherwise indicated.

The GFL Contract

Under the GFL Contract, the employment of Mr. Cockerill and Mr. Holland will continue until terminated upon (i) six months' notice by either relevant party or the relevant executive director or (ii) retirement of the relevant executive director (currently provided for at age 63). Gold Fields can also terminate the executive director's employment summarily for any reason recognised by law as justifying such summary termination. If the summary termination is due to the inability of the executive director (as a result of ill health or other cause) to provide his services for a continuous period of three consecutive months in any one year or more, he must also be paid in lieu of his six-month notice period.

Mr. Cockerill receives a gross annual remuneration package of Rand 3,201,000 and Mr. Holland receives a gross annual remuneration package of Rand 1,985,000.

The value of the gross annual remuneration package is to be allocated amongst the following benefits: (i) salary; (ii) compulsory retirement fund contribution (with contributions set at 20% of Pensionable Emoluments; and Pensionable Emoluments being a rate between 50% and 100% of the gross annual remuneration package as elected by the executive director); (iii) voluntary participation in a vehicle scheme; (iv) compulsory medical coverage; and (v) compulsory Group Personal Accident Policy coverage. In addition, it is compulsory for each of Mr. Cockerill and Mr. Holland to contribute 1% of the gross annual remuneration package to the Unemployment Insurance Fund (subject to any legislated contribution maximum at the time).

In addition, each of Mr. Cockerill and Mr. Holland is entitled, *inter alia*, to the following benefits under the GFL Contract: (i) participation in the GF Management Incentive Scheme at the discretion of Gold Fields; and (ii) consideration for an annual (financial year) incentive bonus based upon the fulfilment of certain targets set by the Board of Directors.

The amount and manner of any payment shall be determined by the Compensation Committee appointed by the Board. The annual bonus is set at a target of 50% of the value of the gross annual remuneration package (assuming fulfilment of all targets) with scope to award a lesser bonus if targets are not met, or a greater bonus (up to a further 50% of the gross annual remuneration package) if targets are exceeded.

The GFL Contract also provides that in the event of the relevant executive director's employment being terminated solely as a result of a change of control (as defined below), and within 12 months of the change of control, such director is entitled to: (i) payment of an amount equal to twice his gross annual remuneration package; (ii) payment of an amount equal to the average of the incentive bonuses paid to the executive director during the previous two completed financial years; (iii) any other payments and/or benefits due under his GFL Contract; (iv) payment of any annual incentive bonus he has earned during the financial year notwithstanding that the financial year is incomplete; and (v) an entitlement, for two years after the date of termination, subject to the relevant rules of the share option scheme then in force, to retain and to exercise all share options allocated to him including those which may not have vested at the date of such termination. The GFL Contract further provides that these payments cover any compensation or damages the executive director may have under

any employment legislation. A change of control for these purposes includes, but is not limited to, the acquisition by a third party of 30% or more of either the Gold Fields Ordinary Shares or the combined voting power of Gold Fields International.

In the event of the consummation of an acquisition, merger, consolidation, scheme of arrangement or other re-organisation, whether or not there is a change of control, if the executive director's services are terminated the change of control provisions summarized above also apply.

Each of Mr. Cockerill and Mr. Holland has agreed to: (i) not use or divulge any trade secrets without Board consent; (ii) surrender any written or electronic documentation relating to any trade secrets at the Board's demand (and not keep any copies thereof); (iii) not (for a period of 24 months after his employment terminates) induce, solicit, encourage or procure (or endeavour to do so) any employee to (a) terminate his employment with the Gold Fields Group or (b) become employed by or interested in any competitor of the Gold Fields Group; (iv) not provide any information acquired by him in the course of his association with or employment by Gold Fields, to anyone, if the provision of the information results or may result in any of the Gold Fields Group's employees becoming employed by or interested in any manner whatsoever (whether directly or indirectly) in any concern; (v) not solicit, interfere with or entice or endeavour to entice away from the Gold Fields Group any person who was an associate, customer or supplier of, or who was accustomed to dealing with, the Gold Fields Group, during the past two years; and (vi) not disclose any information which comes to his knowledge as a result of his employment or the termination thereof (but excluding information from an independent third person), which relates to any business/marketing method or practice, or any business/marketing associates of the Gold Fields Group.

A general exception to the various restrictions on disclosure of information is that the executive director is entitled to disclose information to such person(s) to whom it is necessary for the purpose of implementing his employment rights and obligations.

The Guernsey Contract

Each of Mr. Cockerill's and Mr. Holland's agreement with GF Guernsey provides for his salary payable under that agreement to be determined in U.S. dollars. The annual salary of Mr. Cockerill is U.S.\$194,000 and of Mr. Holland is U.S.\$86,750. The notice period under the Guernsey Contract is six months.

In addition, each of Mr. Cockerill and Mr. Holland is entitled to be considered for an annual incentive bonus payment depending upon the fulfilment of certain targets as agreed between the relevant executive director and the Board. The annual bonus is set at a target of 50% of the value of the annual salary (as provided above) (assuming fulfilment of all targets) with scope to award a lesser bonus if targets are not met, or a greater bonus (up to a further 50% of the annual salary) if targets are exceeded.

All conditions relating to the employment of Mr. Cockerill and Mr. Holland, other than with respect to remuneration, apply to their employment under the Guernsey Contract. In addition, the Guernsey Contract expressly provides that the change of control clause in the GFL Contract also applies on the same terms in respect of remuneration paid under the Guernsey Contract.

Additional information

Mr. Cockerill also participated in a retention scheme in which he was entitled to a payment in January 2004 based upon the value of his share options and emoluments. The scheme expired in January 2004 and no payment was made in terms of the scheme to Mr. Cockerill.

Mr. Cockerill's Guernsey Contract and GFL Contract are filed herewith as Exhibits 99.(e)(1) and 99.(e)(2), respectively, and are incorporated herein by this reference.

Mr. Holland's Guernsey Contract and GFL Contract are filed herewith as Exhibits 99.(e)(3) and 99.(e)(4), respectively, and are incorporated herein by this reference.

Employment agreements of John A. Munro, Craig J. Nelsen and Michael J. Prinsloo

John A. Munro (Executive Vice President of Gold Fields, International Operations), Craig J. Nelsen (Executive Vice President of Gold Fields, Exploration) and Michael J. Prinsloo (Executive Vice President of Gold Fields, South African Operations) have also concluded service contracts with certain subsidiaries of Gold Fields.

The terms of their respective contracts are substantially similar to the terms of Mr. Cockerill and Mr. Holland under the GFL and Guernsey Contracts detailed above, including change of control provisions, except as set forth in material part below.

John A. Munro

Mr. Munro has an employment agreement with GFL with a gross annual remuneration package valued at Rand 1,608,849. Mr. Munro has an employment agreement with GF Guernsey pursuant to which his annual salary is U.S.\$71,500, and his annual bonus is set at a target of 40% of the value of his annual salary.

Mr. Munro's employment agreements with GF Guernsey and GFL are filed herewith as Exhibits 99.(e)(5) and 99.(e)(6), respectively, and are incorporated herein by this reference.

Craig J. Nelsen

Mr. Nelsen has entered into a service agreement with Gold Fields Exploration, Inc. (the **GFE Contract**). The GFE Contract provides that Gold Fields can terminate his employment summarily or upon notice at any time for cause. If there is a change in control of Gold Fields and Mr. Nelsen is terminated other than for cause or resigns for good reason within 12 months following the change in control, the GFE Contract provides for a payment of twice Mr. Nelsen's annual salary. Mr. Nelsen's gross annual remuneration package is valued at U.S.\$300,000 and, with respect to allocation among benefits, Mr. Nelsen is entitled to the benefit of contribution into the Pensionable Emoluments fund by his employer equivalent to 12% of his annual salary. Mr. Nelsen's contract does not provide for voluntary participation in a vehicle scheme and his medical coverage is voluntary. Mr. Nelsen is entitled to insurance cover for accidental death or disability in the amount of three times his annual salary. Moreover, in addition to his participation in the GF Management Incentive Plan, Mr. Nelsen's Contract also entitles him to participate in the Exploration Incentive Plan. The GFE Contract does not require a compulsory contribution of 1% of gross annual remuneration package toward the Unemployment Insurance Fund.

Mr. Nelsen's GFE Contract is filed herewith as Exhibit 99.(e)(7) and is incorporated herein by this reference.

Michael J. Prinsloo

Mr. Prinsloo is party to a service agreement with GFI Mining South Africa (Pty) Limited (**GFI Mining**). Mr. Prinsloo's gross annual remuneration package is valued at Rand 2,464,000 and his annual bonus is set at a target of 40% of his gross annual remuneration package.

Mr. Prinsloo's service agreement is filed herewith as Exhibit 99.(e)(8) and is incorporated herein by this reference.

Compensation for the Fiscal Year Ended June 30, 2004

During the fiscal year ended June 30, 2004, the aggregate compensation paid or payable to directors and executive officers of Gold Fields as a group was approximately Rand 28.3 million, including all salaries, fees, bonuses and contributions during such period to provide pension, retirement or similar benefits for executive directors and executive officers of Gold Fields, of which Rand 3.2 million was due to pension scheme contributions and life insurance, and Rand 5.8 million was due to bonus and performance related payments.

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The following table presents information regarding the compensation paid to the Board of Directors by Gold Fields for the fiscal year ended June 30, 2004:

	<u>Board fees</u>	<u>Committee fees</u>	<u>Salary</u>	<u>Bonuses and performance related payments</u>	<u>Pension scheme contributions</u>	<u>One-off payments⁽³⁾</u>	<u>Total</u>
	(in Rand)						
Executive Directors							
Ian D. Cockerill			3,802,881(1)	1,500,000	551,061	278,356	6,132,298
Nicholas J. Holland			1,909,507(1)	800,000	300,291	23,586	3,033,384
Non-executive Directors⁽²⁾							
Christopher M. T. Thompson	352,000	296,600					648,600
Alan J. Wright	130,000	113,100					243,100
Kofi Ansah	22,750						22,750
Michael J. McMahon	110,500	101,400					211,900
Gordon R. Parker	130,000	83,200					213,200
Patrick J. Ryan	130,000	105,300					235,000
Bernard R. van Rooyen	130,000	83,200					213,200
Tokyo M. G. Sexwale	123,500	79,300					202,800
Chris I. von Christerson	123,500	83,200					206,700
Rupert L. Pennant-Rea	104,000	45,500					149,500
Jakes G. Gerwel	110,500	45,500					156,000
Total	1,466,750	1,036,300	5,712,388	2,300,000	851,352	301,942	11,668,732

Notes:

(1) Mr. Cockerill's and Mr. Holland's employment agreements with GF Guernsey provide for their salaries to be determined in U.S. dollars and their agreements with GFL provide for their salaries to be determined in Rand.

(2) Bonuses for performance in fiscal year 2003 and paid in fiscal year 2004.

(3) Payment for leave not taken.

Gold Fields Share Ownership of Directors and Executive Officers

The following table sets forth, to the knowledge of Gold Fields' management, the total amount of Gold Fields Shares directly or indirectly owned by the directors and executive officers of Gold Fields as of October 29, 2004:

<u>Holder</u>	<u>Gold Fields Shares⁽¹⁾</u>	<u>Percentage</u>
Ian D. Cockerill	62,000	0.01
Nicholas J. Holland	20	0.00
Christopher M. T. Thompson	155,000	0.03
Alan J. Wright	135,690	0.03
Bernard R. van Rooyen	59,276	0.01
Total Directors (13 persons)	411,986	0.08
Total Non-Director Executive Officers (8 persons)		
Total Directors and Executive Officers (21 persons)	411,986	0.08

Note:

(1) In addition to the Gold Fields Shares beneficially owned by the directors and executive officers set out in the table above, the following directors and executive officers have the ability to acquire Gold Fields Shares underlying share options within 60 days of the date of this document: Ian D. Cockerill (410,700), Nicholas J. Holland (246,300), Christopher M.T. Thompson (213,400), Alan J. Wright (45,000), Michael J. McMahon (41,000), Gordon R. Parker (45,000), Patrick J. Ryan (35,000), Tokyo M.G. Sexwale (22,000), Bernard R. van Rooyen (45,000), Chris I. von Christierson (20,000), Rupert L. Pennant-Rea (15,000), Jakes G. Gerwell (15,000), Adele L. Cleaver (26,333), James W.D. Dowsley (59,600), Craig J. Nelsen (28,600), Michael Prinsloo (123,300), Jan W. Jacobsz (22,850), John A. Munro (52,333), Terence P. Goodlace (22,200) and James T. Nkosi (5,900).

Share Options Held by Directors and Executive Officers

Share options outstanding as of October 29, 2004, and held by the directors and executive officers of Gold Fields were, to the knowledge of Gold Fields management, as follows:

Name	Options to purchase Gold Fields Ordinary Shares	Option exercise price (in Rand)	Expiration date
Ian D. Cockerill	347,000	20.90	October 1, 2006
	50,000	46.23	December 12, 2008
	91,000	125.37	July 2, 2009
	41,200	84.17	March 17, 2010
	36,700	93.49	August 19, 2010
	37,500(1)	83.18	March 3, 2011
Nicholas J. Holland	37,500(2)	76.75	October 22, 2011
	87,000	14.19	June 25, 2005
	125,000	25.67	December 1, 2006
	40,000	46.23	December 12, 2008
	23,000	125.37	July 2, 2009
	17,700	84.17	March 17, 2010
Christopher M. T. Thompson	15,800	93.49	August 19, 2010
	19,000(1)	83.18	March 3, 2011
	19,000(2)	76.75	October 22, 2011
	20,000	22.97	October 27, 2005
	260,000	46.23	December 12, 2008
	10,000	110.03	December 12, 2007
Alan J. Wright	10,000(1)	88.38	November 27, 2008
	25,000	43.70	October 31, 2006
	10,000	110.03	December 12, 2007
Michael J. McMahon	10,000(1)	88.38	November 27, 2008
	21,000	43.70	October 31, 2006
	10,000	110.03	December 12, 2007
Gordon R. Parker	10,000(1)	88.38	November 27, 2008
	25,000	43.70	October 31, 2006
	10,000	110.03	December 12, 2007
Patrick J. Ryan	10,000(1)	88.38	November 27, 2008
	15,000	43.70	October 31, 2006
	10,000	110.03	December 12, 2007
Tokyo M. G. Sexwale	10,000(1)	88.38	November 27, 2008
	5,000	43.70	October 31, 2006
	7,000	110.03	December 12, 2007
Bernard R. van Rooyen	10,000(1)	88.38	November 27, 2008
	25,000	43.70	October 31, 2006
	10,000	110.03	December 12, 2007
Chris I. von Christierson	10,000(1)	88.38	November 27, 2008
	10,000	110.03	December 12, 2007
	10,000(1)	88.38	November 27, 2008
Rupert L. Pennant-Rea	5,000	110.03	December 12, 2007
	10,000(1)	88.38	November 27, 2008
Jakes G. Gerwel	5,000	110.03	December 12, 2007
	10,000(1)	88.38	November 27, 2008
Kofi Ansah			

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Name	Options to purchase Gold Fields Ordinary Shares	Option exercise price	Expiration date
		(in Rand)	
Adele L. Cleaver	5,333	25.67	December 1, 2006
	15,000	21.00	November 23, 2007
	9,000	46.23	December 12, 2008
	2,800	84.17	March 17, 2010
	2,500	93.49	August 19, 2010
	3,600(1)	83.18	March 3, 2011
	15,000(2)	65.25	July 2, 2011
James W. D. Dowsley	45,000	25.67	December 1, 2006
	22,000	46.23	December 12, 2008
	7,700	84.17	March 17, 2010
	6,900	93.49	August 19, 2010
	7,500(1)	83.18	March 3, 2011
	7,500(2)	76.75	October 22, 2011
Craig J. Nelsen	10,000	19.47	December 1, 2006
	11,000	25.67	December 1, 2006
	22,800	154.65	May 24, 2009
	17,000	84.17	March 17, 2010
	33,200	73.80	March 17, 2010
	15,900	93.49	August 19, 2010
	15,000(1)	83.18	March 3, 2011
	15,000(2)	76.75	October 22, 2011
Michael J. Prinsloo	160,000(1)	46.23	December 12, 2008
	50,000	154.65	May 24, 2009
	13,300(1)	93.49	August 19, 2010
	15,000(1)	83.18	March 3, 2011
	15,000(2)	76.75	October 22, 2011
Jan W. Jacobsz	10,850	14.19	June 25, 2005
	12,000	46.23	November 30, 2008
	11,900	154.65	May 24, 2009
	5,500(1)	84.17	March 17, 2010
	5,000(2)	93.49	August 19, 2010
	7,500(1)	83.18	March 3, 2011
	7,500(2)	76.75	October 22, 2011
John A. Munro	24,800	14.19	June 25, 2005
	13,333	25.67	December 1, 2006
	12,000	46.23	November 30, 2008
	18,500	92.95	February 27, 2009
	7,500	84.17	March 17, 2010
	34,800(1)	93.49	