

## Declaration by the directors of a holding company in relation to assistance for the acquisition of shares

**155(6)b**

**T T T**

00478794

\* Yates Group Limited

y/Weø See Rider 1

~~(The sole director)~~ [all the directors]<sup>†</sup> of the above company (hereinafter called 'this company') do solemnly and sincerely declare that:

The business of this company is:

(a) bank of america national association with the headquarters of the Bank in New York  
(b) bank of america national association with the headquarters of the Bank in New York  
in various businesses in the Washington area  
(c) something other than the above

This company is [the] [x] holding company of\* Forno Vivo Limited  
(Company Number 04318283) ("the Subsidiary") which is  
 proposing to give financial assistance in connection with the acquisition of shares  
 in [this company] [\_\_\_\_\_]

Post room



LD7  
COMPANIES HOUSE

0416  
28/10/04

The assistance is for the purpose of ~~that acquisition~~ [reducing or discharging a liability incurred for the purpose of that acquisition].† (note 1)

Please do not write in this margin

Please complete legibly, preferably in black type, or bold block lettering

The number and class of the shares acquired or to be acquired is: See Rider 2

The assistance is to be given to: (note 2) Thorium plc (Company Number 05141092)  
("the Acquirer") c/- Peter Yates House, Manchester Road, Bolton BL3 2PY

The assistance will take the form of:

See Rider 3

The person who [has acquired] ~~will acquire~~ the shares is:  
Thorium plc (Company Number 05141092)

† delete as appropriate

The principal terms on which the assistance will be given are:

See Rider 4

The amount (if any) by which the net assets of the company which is giving the assistance will be reduced by giving it is Nil

The amount of cash to be transferred to the person assisted is £ See Rider 5

The value of any asset to be transferred to the person assisted is £ Nil

The date on which the assistance is to be given is See Rider 6

**Please complete legibly, preferably in black type, or bold block lettering**

X/We have formed the opinion, as regards this company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts. (note 3)

(a) ~~W~~We have formed the opinion that this company will be able to pay its debts as they fall due during the year immediately following that date)\* (note 3)

\* delete either (a) or (b) as appropriate

[illegible]

And ~~X~~/we make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at

Declarants to sign below

Declared at 64. Noble Row. WI.

Declarants to sign below

Day Month Year

on 

1	8	1	0	2	0	0	4
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before me

PK MT

MT

A Commissioner for Oaths or Notary Public or Justice of the Peace or a Solicitor having the powers conferred on a Commissioner for Oaths.

**REXFORD E. DIAS**  
**COMMISSIONER FOR OATHS**

## NOTES

- 1 For the meaning of "a person incurring a liability" and "reducing or discharging a liability" see section 152(3) of the Companies Act 1985.
- 2 Insert full name(s) and address(es) of the person(s) to whom assistance is to be given; if a recipient is a company the registered office address should be shown.
- 3 Contingent and prospective liabilities of the company are to be taken into account - see section 156(3) of the Companies Act 1985.
- 4 The auditors report required by section 156(4) of the Companies Act 1985 must be annexed to this form.
- 5 The address for companies registered in England and Wales or Wales is:-

The Registrar of Companies  
Companies House  
Crown Way  
Cardiff  
CF14 3UZ

or, for companies registered in Scotland:-

The Registrar of Companies  
Companies House  
37 Castle Terrace  
Edinburgh  
EH1 2EB

## **RIDER 1**

**Yates Group Limited**  
**(Company No. 00478794)**

### **Form 155(6)(b)**

Alfred Louise Foglio  
12 Palace Gardens Mews  
London W8 4RA

Stevan Lloyd Fowler  
The Tower House  
Kirkless Hall Clifton  
Brighouse  
Yorkshire HD6 4HD

Mark Vincent Jones  
The Hollies  
Hawley Lane  
Halebarns  
Altincham  
Cheshire WA15 0DR

Philip Bernard Kaziewicz  
17 The Mount  
London NW3 6SZ

Mark Tagliaferri  
Flat 7  
155 Sloane Street  
London SW1X 9AB

**RIDER 2**

**Yates Group Limited**  
**(Company No. 00478794)**

**Form 155(6)(b)**

The number and class of the shares acquired is:

67,058,999 ordinary shares

### RIDER 3

Yates Group Limited  
(Company No. 00478794)

#### Form 155(6)(b)

The background to the financial assistance is as follows

- 1.1 The Acquirer has acquired the entire issued share capital of the Company (the "Acquisition").
- 1.2 The Acquirer has financed the purchase of the shares by means of funds provided under, inter alia:
  - 1.2.1 a senior credit agreement (the "**Senior Credit Agreement**") dated 9 June 2004 between, inter alia, (1) Lanthanum Limited (the "**Parent**") (2) the Acquirer (3) The Royal Bank of Scotland plc and Barclays Bank PLC as arrangers, (4) the persons listed in Schedule 1 thereto as original lenders, (5) The Royal Bank of Scotland plc and Barclays Bank PLC as ancillary lender, (6) Barclays Bank PLC as notes guarantor, and (7) Barclays Bank PLC as facility agent;
  - 1.2.2 a mezzanine credit agreement (the "**Mezzanine Credit Agreement**") dated 9 June 2004 between, inter alia, (1) the Parent (2) the Acquirer (3) The Royal Bank of Scotland plc and Barclays Bank PLC as arrangers, (4) the persons listed in Schedule 1 thereto as original lenders, and (5) The Royal Bank of Scotland plc as facility agent.
- 1.3 The following facility has been provided under the Senior Credit Agreement in part in order to assist the Acquisition:
  - 1.3.1 an A Term Loan Facility in the amount of £56,000,000 (to be provided by way of cash advance and a guarantee of loan notes);
- 1.4 The following facility has been provided under the Mezzanine Credit Agreement in order to assist the Acquisition:
  - 1.4.1 a term loan facility in the amount of £20,000,000.
- 1.5 The Subsidiary has acceded as a guarantor under the Senior Credit Agreement.
- 1.6 Under the terms of the Senior Credit Agreement the Subsidiary has agreed, amongst other things:
  - 1.6.1 (subject to paragraph 1.7 below), to guarantee to each Finance Party (as defined in the Senior Credit Agreement and hereinafter referred to as the "**Senior Finance Parties**") and each a "**Senior Finance Parties**") the due and punctual performance by each Obligor (as defined in the Senior Credit Agreement and including the Parent and the Acquirer and hereinafter referred to as the "**Senior Obligors**" and each a "**Senior Obligor**") of all of its obligations under the Finance Documents (as

defined in the Senior Credit Agreement and hereinafter referred to as the **"Senior Finance Documents"** and each a **"Senior Finance Document"**);

- 1.6.2 to indemnify each Senior Finance Party immediately on demand against any loss or liability suffered by that Senior Finance Party if any payment obligation expressed to be guaranteed by it is or becomes unenforceable, invalid or illegal; the amount of the loss or liability under this indemnity will be equal to the amount the Senior Finance Party would otherwise have been entitled to recover; and
  - 1.6.3 that its guarantee and indemnity obligations will not be affected by (among other things) any act, omission, matter or thing which would otherwise reduce, release or prejudice any of such obligations or prejudice or dismiss such obligations.
- 1.7 The guarantee given by the Subsidiary under the Senior Credit Agreement currently only extends to the obligations of:
- 1.7.1 the Acquirer as Borrower of the Refinancing Loans (as defined in the Senior Credit Agreement and meaning the financial indebtedness of the members of the Company and its subsidiaries outstanding under the £85,000,000 revolving credit facility dated 20 March, 2003 between, amongst others, The Royal Bank of Scotland plc and the Company and any break funding costs, redemption premia and other costs payable in connection with that refinancing (including any hedging termination costs));
  - 1.7.2 the Company as Borrower of the Revolving Loan Facility and the Ancillary Facility only (each term as defined in the Senior Credit Agreement); and
  - 1.7.3 the Company as counterparty under the Hedging Documents (as defined in the Senior Credit Agreement).
- 1.8 In addition the Subsidiary has entered into a debenture (the **"Debenture"**) dated 10 September 2004 between, inter alia, (1) the Company, the Subsidiary and certain other subsidiaries of the Company and (2) Barclays Bank PLC as security agent. Under the terms of the Debenture the Subsidiary, amongst other things:
- 1.8.1 charges all of its property, assets and undertaking by way of fixed and floating charge in favour of the Security Agent (as defined therein) as security for certain obligations under the Senior Finance Documents; and
  - 1.8.2 undertakes to, at its own expense, execute and do all such assurances, acts and things as the Security Agent may reasonably require for perfecting or protecting the security intended to be created by the Debenture over the assets thereby.
- 1.9 The Secured Liabilities (as defined in the Debenture) of the Subsidiary under the Debenture, currently only extend to the obligations of:

- 1.9.1 the Acquirer as Borrower of the Refinancing Loans (as defined in the Senior Credit Agreement and meaning the financial indebtedness of the members of the Company and its subsidiaries outstanding under the £85,000,000 revolving credit facility dated 20 March, 2003 between, amongst others, The Royal Bank of Scotland plc and the Company and any break funding costs, redemption premia and other costs payable in connection with that refinancing (including any hedging termination costs);
  - 1.9.2 the Company as Borrower of the Revolving Loan Facility and the Ancillary Facility only (each term as defined in the Senior Credit Agreement); and
  - 1.9.3 the Company as counterparty under the Hedging Documents (as defined in the Senior Credit Agreement).
- 1.10 It is a condition of the Senior Credit Agreement that the Subsidiary enter into certain security and other documents.
- 1.11 The Subsidiary will enter into the following documents:
- 1.11.1 an accession agreement (the "**Mezzanine Accession Agreement**") to the Mezzanine Credit Agreement between inter alia, (1) the Subsidiary (2) the Parent and (3) The Royal Bank of Scotland plc;
  - 1.11.2 an amendment agreement (the "**Amendment Agreement**") to the Senior Credit Agreement between, inter alia, (1) the Subsidiary (2) the Parent, and (3) Barclays Bank PLC as senior agent;
  - 1.11.3 a supplemental debenture (the "**Supplemental Debenture**") to the Debenture between (1) the Company, (2) the Subsidiary and each of the other parties to the Debenture and (3) Barclays Bank PLC as security agent;
  - 1.11.4 a deed of accession between the Subsidiary and Barclays Bank PLC as security agent (the "**Priority Deed of Accession**") under which the Subsidiary accedes to a priority agreement dated 9 June 2004 (the "**Priority Agreement**") between (1) Holmium Limited (2) the Parent (3) the Company (4) the persons listed in Schedule 1 thereto as obligors (5) the persons listed in Schedule 2 thereto as senior creditors (6) the persons listed in Schedule 3 thereto as mezzanine creditors and (7) The Royal Bank of Scotland plc as hedging bank (8) The Royal Bank of Scotland plc as mezzanine agent and (8) Barclays Bank PLC as senior agent and security agent; and
  - 1.11.5 an intra group funding agreement (the "**Intra Group Funding Agreement**") between inter alia (1) the Company and certain of its subsidiaries as lenders (including the Subsidiary) and (2) the Parent and the Acquirer as borrowers.
- 1.12 It is also proposed that the Company pay dividends of an amount of up to £60,000,000 to the Acquirer. It is also intended that the Subsidiary and certain other subsidiaries of the Company pay dividends to the Company. It is intended



that in order to assist the Company and the Subsidiary to pay dividends, the Company, the Subsidiary and certain other subsidiaries of the Company will enter into a loan agreement (the "**Dividend Loan Agreement**") under which, inter alia, the Acquirer will provide an uncommitted £130,000,000 facility to the Company, the Subsidiary and certain of the Company's subsidiaries in order to assist (i) the Company to pay dividends to the Acquirer (ii) the Company to refinance part of the Company's existing indebtedness with the Acquirer and (iii) the Subsidiary and the other subsidiaries of the Company to pay dividends to the Company.

- 1.13 The financial assistance will take the form of the Subsidiary entering into:
  - 1.13.1 the Mezzanine Accession Agreement;
  - 1.13.2 the Amendment Agreement;
  - 1.13.3 the Supplemental Debenture;
  - 1.13.4 the Priority Deed of Accession; and
  - 1.13.5 the Intra Group Funding Agreement.
- 1.14 If the Subsidiary enters into the Dividend Loan Agreement, the financial assistance will also take the form of the Company entering into the Dividend Loan Agreement.

#### RIDER 4

Yates Group Limited  
(Company No. 00478794)

#### Form 155(6)(b)

The principal terms on which the financial assistance will be given are contained in:

- 2.1 the Mezzanine Accession Agreement. The principal terms of the Mezzanine Accession Agreement are that the Subsidiary will accede to the Mezzanine Credit Agreement and thereby, amongst other things:
  - 2.1.1 guarantee to each Finance Party (as defined in the Mezzanine Credit Agreement and hereinafter referred to as the "**Mezzanine Finance Parties**") and each a "**Mezzanine Finance Parties**") the due and punctual performance by each Obligor (as defined in the Mezzanine Credit Agreement and including the Parent and the Acquirer and hereinafter referred to as the "**Mezzanine Obligors**") and each a "**Mezzanine Obligor**") of all of its obligations under the Finance Documents (as defined in the Mezzanine Credit Agreement and hereinafter referred to as the "**Mezzanine Finance Documents**" and each a "**Mezzanine Finance Document**");
  - 2.1.2 indemnifies each Mezzanine Finance Party immediately on demand against any loss or liability suffered by that Mezzanine Finance Party if any payment obligation expressed to be guaranteed by it is or becomes unenforceable, invalid or illegal; the amount of the loss or liability under this indemnity will be equal to the amount the Mezzanine Finance Party would otherwise have been entitled to recover; and
  - 2.1.3 agrees that its guarantee and indemnity obligations will not be affected by (among other things) any act, omission, matter or thing which would otherwise reduce, release or prejudice any of such obligations or prejudice or dismiss such obligations.
- 2.2 the Amendment Agreement. The principal terms of the Amendment Agreement are that the Senior Credit Agreement will be amended such that the limitations on the Subsidiary's guarantee and indemnity obligations referred to in paragraph 1.7 are removed such that the Subsidiary's obligations under the Senior Credit Agreement will extend to all obligations of the Senior Obligors under the Senior Finance Documents including any monies used to acquire shares in the Company. The principal terms of the Senior Credit Agreement have been outlined at paragraph 1.6 above;
- 2.3 the Supplemental Debenture. The principal terms of the Supplemental Debenture are that the obligations of the Subsidiary currently secured under the Debenture are amended such they are extended to include all obligations of the Senior Obligors under the Senior Finance Documents including any monies used to acquire shares in the Company. The accession of the Subsidiary to the Mezzanine Credit Agreement pursuant to the Mezzanine Accession Agreement also means the obligations of the Subsidiary secured under the Debenture extend to all the obligations of the Mezzanine Obligors under the Mezzanine Finance

Documents. The principal terms of the Debenture have been outlined at paragraph 1.8 above.

- 2.4 the Priority Deed of Accession. The principal terms of the Priority Deed of Accession are that the Subsidiary will accede to the Priority Agreement. The Priority Agreement sets out the priority of security between the parties thereto and the Subsidiary acknowledges the priority of security between the parties and the subordination of their respective rights as creditors. The Subsidiary, as an obligor, covenants, inter alia, that it:
- 2.4.1 will not make any payment or receive or retain payment of or in respect of, or purchase, redeem or acquire, any of the Junior Debt (as defined therein) in cash or in kind except in accordance with the terms of the Priority Agreement;
  - 2.4.2 will not discharge any Junior Debt by set-off, any right of combination of accounts or otherwise;
  - 2.4.3 will not create or permit to subsist any security interest over any of its assets for any of the Junior Debt except in accordance with the terms of the Priority Agreement;
  - 2.4.4 will not give any financial support to any person for or in connection with the Junior Debt except in accordance with the terms of the Priority Agreement;
  - 2.4.5 will not allow any Junior Debt to be evidenced by a negotiable instrument;
  - 2.4.6 will not take or omit to take any action whereby the ranking and/or subordination of the Junior Debt provided for in this Agreement may be impaired;
  - 2.4.7 shall indemnify each Hedging Bank and Junior Creditor (as defined therein) for the amount of any Turnover Receipt (as defined therein) paid by that Hedging Bank or Junior Creditor to the Security Agent and such third party costs and expenses incurred by it, and agrees that the Hedging Debt or the Junior Debt (as defined therein and as appropriate) will not be deemed to have been reduced or discharged in any way or to any extent by the receipt or recovery of the relevant Turnover Receipt; and
  - 2.4.8 will give a guarantee to each Hedging Bank on the same terms as contained in the Senior Credit Agreement.
- 2.5 the Intra Group Funding Agreement. The principal terms of the Intra Group Funding Agreement are Subsidiary agrees to lend moneys (the "**IGFA Facilities**") to the Parent and the Acquirer (the "**IGFA Borrowers**") on the terms and conditions thereof, to enable the IGFA Borrowers to meet their debt service requirements under the Senior Credit Agreement and the Mezzanine Credit Agreement as they fall due. The principal terms under which such IGFA Facilities are made available are as follows:

- 2.5.1 the IGFA Facilities shall be applied by the IGFA Borrowers in or towards the discharge or satisfaction of interest, principal, costs, fees, expenses, charges and other sums falling due under the Senior Credit Agreement and Mezzanine Credit Agreement (together referred to as the "Documents");
  - 2.5.2 the IGFA Facilities will be available to the IGFA Borrowers so long as they have any outstanding obligations in respect of the facilities granted pursuant to the Documents or any refinancings thereof;
  - 2.5.3 the IGFA Facilities may be redrawn once repaid or otherwise discharged;
  - 2.5.4 the IGFA Facilities shall bear interest at a rate to be agreed between the relevant IGFA Borrower and the relevant lender from time to time;
  - 2.5.5 the IGFA Facilities shall remain outstanding on inter-company loan account until repaid;
  - 2.5.6 no lender shall be obliged to make any amount available if an Insolvency Event (as defined in the Intra Group Funding Agreement) has occurred;
  - 2.5.7 any IGFA Facilities advanced, together with any interest thereon shall be repayable on demand but such demand shall not be made unless demand has been made by the Senior Finance Parties or the Mezzanine Finance Parties under the Documents;
  - 2.5.8 there is a right of set-off between the lenders and the Borrowers in respect of inter-company indebtedness.
- 2.6 The principal terms of the Dividend Loan Agreement (if entered into) will be that:
- 2.6.1 the Acquirer will make an uncommitted, on demand facility of an amount up to £130,000,000 available to the Company, the Subsidiaries and certain other subsidiaries of the Company in order to assist (i) the Company to pay dividends to the Acquirer (ii) the Company to refinance part of the Company's existing indebtedness with the Acquirer and (iii) the Subsidiary and the other subsidiaries of the Company to pay dividends to the Company;
  - 2.6.2 interest will be payable at a rate to be agreed between the parties but at a rate approximately equivalent to the blended interest rate payable by the Acquirer under the Senior Credit Agreement and the Mezzanine Credit Agreement;
  - 2.6.3 in the absence of a demand from the Acquirer, the Company, the Subsidiary and certain other subsidiaries of the Company will be required to make interest and principal repayments to the Acquirer at the same times and on the same terms as the Acquirer is required to make interest and principal repayments under the Senior Credit Agreement and the Mezzanine Credit Agreement; and
  - 2.6.4 each of the Subsidiary's rights and obligations under the Dividend Loan Agreement are, at all times, subject to the terms of the Priority

Agreement and the terms of the Priority Agreement will prevail over the terms of the Dividend Loan Agreement in the case of any inconsistency.

**RIDER 5**

**Yates Group Limited**  
**(Company No. 00478794)**

**Form 155(6)(b)**

The amount of cash to be transferred to the person assisted is:

Any amounts lent under the Intra Group Funding Agreement.

Any amounts paid by the Subsidiary to the Acquirer under the Dividend Loan Agreement.

**RIDER 6**

**Yates Group Limited**  
**(Company No. 00478794)**

**Form 155(6)(b)**

The date on which the financial assistance is to be given is:  
within 8 weeks from the date hereof.



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**Private & confidential**

Yates Group Limited  
Peter Yates House  
Manchester Road  
BOLTON  
BL3 2PY

Our ref dai/5

Contact Dave Irvine  
0161 2464166

18 October 2004

Dear Sirs

**Auditors' report to the directors of Yates Group Limited pursuant to Section 156(4) of the Companies Act 1985**

We have examined the attached statutory declaration of the directors dated 15 October 2004 in connection with the proposal that Forno Vivo Limited, of which this company is a holding company, should give financial assistance for the purchase of this company's entire issued ordinary share capital.

This report is made solely to the company's directors as a body in accordance with section 156(4) of the Companies Act 1985. Our work has been undertaken so that we as the company's auditors might state to the company's directors those matters we are required to state to them in a report under section 156(4) of that Act and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's directors as a body for our work under section 156(4) of that Act or for this report.

We have enquired into the state of the company's affairs in order to review the bases for the statutory declaration.

We are not aware of anything to indicate that the opinion expressed by the directors in their declaration as to any of the matters mentioned in Section 156(2) of the Companies Act 1985 is unreasonable in all the circumstances.

Yours faithfully

*KPMG LLP*

KPMG LLP



KPMG LLP:  
KPMG LLP, a UK limited liability partnership,  
is a member of KPMG International, a Swiss  
cooperative

Registered in England No OC301540  
Registered office:  
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London EC4Y 8BB