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Disclosures in accordance with section 315(4) of the *Handelsgesetzbuch* (HGB – German Commercial Code) and explanatory report in accordance with section 120(3) sentence 2 of the *Aktiengesetz* (AktG – German Stock Corporation Act)

**Composition of share capital, classes of shares**

MAN Aktiengesellschaft's share capital is unchanged at €376,422,400. It is composed of 147,040,000 no-par value bearer shares with a notional value of €2.56 each. In accordance with Article 4(1) of the Articles of Incorporation/Bylaws, the no-par value shares are divided into 140,974,350 common shares and 6,065,650 nonvoting preferred shares. All shares are fully paid up. Under Article 4(2) sentence 2 of the Articles of Incorporation/Bylaws, stockholders may not claim delivery of physical share certificates.

All shares have the same dividend rights; however, a cumulative preferred dividend of €0.11 per preferred share is payable in advance from net retained profit to holders of preferred stock, as well a further €0.11 per common share as a subordinate right to holders of common stock. If there is insufficient net retained profit to pay the preferred dividend, the shortfall is payable in arrears, without interest, from the net retained profit of the subsequent fiscal years before the distribution of a dividend to the holders of common stock.

The common shares are voting shares, while preferred shares do not generally carry voting rights. Under section 140(2) of the AktG, this does not apply if the preferred dividend is not paid in a year, or is not paid in full, and the shortfall is not made good in the following year in addition to the full preferred dividend for that year. In such cases, holders of preferred stock have voting rights until the shortfalls are made good, and the preferred shares must be included in the calculation of any capital majority required by the law or the Articles of Incorporation/Bylaws. The holders of preferred stock also have voting rights in accordance with section 141(1) and (2) sentence 1 in conjunction with (3) of the AktG, under which a consenting resolution by the holders of preferred stock is required if the Annual General Meeting adopts a resolution to revoke or limit the preferred dividend or to issue preferred stock that would rank prior to or equal with the existing nonvoting preferred stock in the distribution of profit or the net assets of the Company.

The same rights and obligations attach to all shares in all other respects.

**Restrictions affecting voting rights or the transfer of shares**

Other than restrictions on voting rights for preferred shares and restrictions by virtue of statutory provisions, for instance under section 136 of the AktG, MAN Aktiengesellschaft is not aware of any restrictions on voting rights. The same applies to the transfer of shares, except for shares received by members of the Executive Board, certain managing directors, and other beneficiaries at MAN companies under the MAN Stock Program (MSP), to which lockups (vesting periods) apply. Details are contained in the report on Executive Board remuneration.

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### **Shareholdings exceeding 10% of the voting rights**

Under the *Wertpapierhandelsgesetz* (WpHG – German Securities Trading Act), any investor who reaches, exceeds, or falls below certain shares of the voting rights of the Company by virtue of acquisitions, disposals, or by other means, is required to notify this to the Company and the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin – Federal Financial Supervisory Authority). In accordance with section 21(1) of the WpHG, the relevant thresholds in this respect are 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, and 75% of the voting rights of the Company. Under section 28 of the WpHG, any violation of this notification obligation results in holder being barred from exercising the corresponding voting rights for the period for which the notification obligations under section 21(1) of the WpHG were not satisfied.

Under section 315(4) no. 3 of the HGB, all direct and indirect interests that exceed 10% of the voting rights must be disclosed.

Volkswagen Aktiengesellschaft notified MAN Aktiengesellschaft in February 2007 in accordance with section 21(1) sentence 1 of the WpHG that the share of voting rights held by Volkswagen Aktiengesellschaft had exceeded the limit of 25% and amounted to 29.9% at that time. In addition, Porsche Automobil Holding SE and its controlling shareholders notified us in September 2008 in accordance with section 21(1) of the WpHG that – because Porsche Automobil Holding SE had assumed control of Volkswagen Aktiengesellschaft – Volkswagen Aktiengesellschaft’s 29.9% interest is also attributable to Porsche Automobil Holding SE and its controlling shareholders (for details of the notification see the “Equity” chapter in the notes to MAN’s consolidated financial statements). We have not been notified of, nor are we aware of, further direct or indirect interests in the capital of the Company that reach or exceed 10% of the voting rights.

### **Appointment and dismissal of members of the Executive Board, amendments to the Articles of Incorporation/Bylaws**

The appointment and dismissal of members of the Company’s Executive Board is governed by sections 84 and 85 of the AktG and section 31 of the *Mitbestimmungsgesetz* (MitbestG – German Codetermination Act) in conjunction with Article 5 of the Articles of Incorporation/Bylaws. Under these provisions, the Executive Board must consist of at least two members. It falls within the responsibility of the Supervisory Board, and it is entitled to do so, to appoint the members of the Executive Board for a maximum term of office of five years and to revoke the appointment for cause.

Sections 179 et seq. of the AktG apply to amendments to the Articles of Incorporation/Bylaws. Under these provisions, the general meeting may resolve to amend the Articles of Incorporation/Bylaws by a majority of at least three-quarters of the share capital represented when the vote is taken. Under Article 10(5) of the Articles of Incorporation/Bylaws, the Supervisory Board is authorized to resolve amendments to the Articles of Incorporation/Bylaws that affect only the wording of the Articles of Incorporation/Bylaws.

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**Powers of the Executive Board, in particular to issue and repurchase shares**

The powers of the Executive Board are governed by sections 76 et seq. of the AktG in conjunction with Article 6 of the Articles of Incorporation/Bylaws. These provisions require the Executive Board to manage the Company at its own responsibility and to represent the Company both in and out of court.

The powers of the Executive Board to issue or repurchase shares are presented in the following. The corresponding authorizations were not exercised in fiscal 2008.

**Authorized Capital 2005**

The Annual General Meeting on June 3, 2005 resolved to authorize the Executive Board of the Company to increase the share capital, with the consent of the Supervisory Board, by up to €188,211,200 (= 50%) by issuing bearer shares of common stock on one or more occasions against cash contributions and/or noncash contributions in the period up to June 2, 2010 (Authorized Capital 2005).

The stockholders must generally be granted preemptive rights. However, the Executive Board is authorized, with the consent of the Supervisory Board, to disapply preemptive rights when shares are issued against noncash contributions for the purpose of acquiring companies, investments in companies, or significant assets of companies. In the case of cash capital contributions, the Executive Board is additionally authorized, with the consent of the Supervisory Board, to disapply preemptive rights

- (i) to the extent necessary to grant the holders of convertible bonds or bonds with warrants that are or will be issued by the Company or its Group companies a right to subscribe for new shares to the extent to which they would be entitled after exercise of their conversion rights or options (antidilution provision); and/or
- (ii) if the issue price of the new shares is not more than 5% lower than the quoted market price and the shares issued in accordance with section 186 (3) sentence 4 of the AktG do not in the aggregate exceed 10% of the share capital. Shares issued or sold by direct or indirect application of this provision on the basis of other authorizations during the term of this authorization count towards this limit until the time of utilization. Shares issued or issuable by virtue of convertible bonds or bonds with warrants issued at the time of utilization in accordance with this provision also count towards this limit; and/or
- (iii) to realize any fractions needed to round the share capital. Further details are governed by Article 4 (3) of the Articles of Incorporation/Bylaws.

In a statement dated May 24, 2005, the Company's Executive Board announced that it would only exercise the authorization to increase the Company's share capital against noncash contributions for the purpose of acquiring companies, investments in companies, or significant assets of companies up to a maximum amount of 20% of the existing share capital (= €75,284,480).

**Issuance of convertible bonds and/or bonds with warrants, Contingent Capital 2005**

By way of a resolution of the Annual General Meeting on June 3, 2005, supplemented by a resolution of the Annual General Meeting on May 10, 2007, the Company's Executive Board

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was authorized, with the consent of the Supervisory Board, to issue convertible bonds and/or bonds with warrants of MAN Aktiengesellschaft in the aggregate principal amount of up to €1.5 billion and an original maximum maturity of 20 years on one or more occasions until June 2, 2010, and to grant the bondholders options or conversion rights on new bearer shares of common stock of MAN Aktiengesellschaft with a notional interest in the share capital of up to €76,800,000 (approximately 20%) as specified in greater detail by the option or conversion terms. The bonds are issuable against cash contributions.

The authorization also includes the option to guarantee bonds issued by other Group companies and to grant shares of MAN Aktiengesellschaft to settle the conversion rights or options conveyed by these bonds.

At the same time, the Annual General Meeting on June 3, 2005 resolved to contingently increase the share capital by up to €76,800,000, composed of up to 30,000,000 bearer shares of common stock. The contingent capital increase will only be implemented to the extent that the holders of conversion rights or options under bonds issued for cash consideration by MAN Aktiengesellschaft or its Group companies by virtue of the authorizing resolution of the Annual General Meeting on June 3, 2005, supplemented by the resolution of the Annual General Meeting on May 10, 2007, exercise their conversion rights or options, and provided that other forms of settlement are not used. The new shares carry dividend rights for the first time for the fiscal year in which they are issued (Contingent Capital 2005).

### **Stock repurchase**

The resolution on May 10, 2007 to purchase the Company's own shares was superseded when the authorizing resolution of the Annual General Meeting on April 25, 2008 to purchase the Company's own shares took effect.

The resolution of the Annual General Meeting on April 25, 2008 authorized the Executive Board to purchase common and/or nonvoting preferred stock of the Company, with the consent of the Supervisory Board, on one or more occasions until October 24, 2009 up to a maximum total amount of 10% of the share capital. Together with other treasury shares held by the Company or attributable to the Company in accordance with sections 71d and 71e of the AktG, the shares purchased by virtue of this authorization may not account for more than 10% of the existing share capital at any time. The shares may also be purchased by other Group companies and/or third parties for the account of MAN Aktiengesellschaft or other Group companies.

The shares may be purchased on the stock exchange or by means of a public offer to the holders of the class of shares concerned. If the shares are purchased on the stock exchange, the purchase price (net of transaction costs) may not exceed or fall below the price for the relevant class of shares determined by the opening auction on the trading day in XETRA trading (or a comparable successor system) by more than 10%. In the case of a public purchase offer, the bid price or the bid price range per share (net of transaction costs) may not exceed or fall below the price for the relevant class of shares determined by the closing

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auction in XETRA trading (or a comparable successor system) on the third market day after the date of the public announcement of the offer by more than 10%. If the total stock tendered exceeds the volume of the purchase offer, it must be accepted on a proportionate basis. The terms of the offer may provide for preferred acceptance of small numbers of shares to the extent provided by law, but in any case up to no more than a maximum of 100 shares tendered per shareholder.

The Executive Board has been additionally authorized, with the consent of the Supervisory Board, to use purchased shares of common stock of the Company for all purposes permitted by law in addition to sale on the stock exchange or by a public offer to all stockholders, and to disapply stockholders' preemptive rights. This applies in particular if (i) the purchased shares of common stock are sold at a price that is not materially lower than the quoted market price, and/or (ii) to the extent that they are used as consideration in a business combination or to acquire companies or investments in companies, and/or (iii) to the extent that they are used to settle options or conversion rights granted by the Company or a Group company when bonds were issued. The shares transferred by virtue of this authorization may not in the aggregate exceed 10% of the share capital where they are used to satisfy conversion rights and options issued in corresponding application of section 186 (3) sentence 4 of the AktG. Shares issued or sold by direct or indirect application of this provision during the term of this authorization shall count towards this limit until the time of utilization. Shares issued or issuable by virtue of convertible bonds or bonds with warrants issued at the time of utilization in accordance with this provision shall also count towards this limit.

The Annual General Meeting on April 25, 2008 further authorized the Executive Board to redeem the Company's own shares of common stock and/or nonvoting shares of preferred stock with the consent of the Supervisory Board, but without any further resolution by the Annual General Meeting.

**Material agreements of the Company that are subject to a change of control upon a takeover bid**

As already described above in the "Man Group funding" chapter, MAN Aktiengesellschaft has agreed credit facilities of €2.0 billion and €0.4 billion with banking syndicates.

Each of these agreements may be terminated with immediate effect if one or more legal entities or natural persons obtain control of MAN Aktiengesellschaft either individually or collectively.