

capital thus created (Contingent Capital 2005), as well as the 2007 authorization to acquire treasury stock, see the section below, *Statutory disclosures pursuant to Art. 315(4) HGB and explanatory report according to Art. 120(3) clause 2 AktG*.

Statutory disclosures pursuant to Art. 315(4) HGB and explanatory report according to Art. 120(3) clause 2 AktG

Breakdown of capital stock, stock classes

MAN AG's capital stock amounts to an unchanged €376,422,400, divided into 147,040,000 fully paid-up no-par bearer shares, these subdivided according to Art. 4(1) of the Memorandum & Articles of Incorporation (the "Bylaws") into 140,974,350 shares of common, and 6,065,650 shares of nonvoting preferred, stock. Each no-par share represents a notional €2.56 interest in the capital stock. According to Art. 4(2) clause 2 of the Bylaws, no stockholder may insist on the issuance of a physical share certificate.

Both stock classes rank for dividend, however, a cumulative preferred dividend of €0.11 per share of preferred stock being payable in advance from net earnings and another €0.11 per share of common stock subsequently. If net earnings do not suffice to pay the preferred dividend, the balance short is payable in arrears (without carrying interest) from the succeeding year's net earnings prior to the distribution of any dividend to common stockholders.

Common stock is voting, preferred stock nonvoting. Pursuant to Art. 140(2) German Stock Corporation Act ("AktG"), this does not apply in cases where (i) the preferred dividend has not or not fully been paid for any one fiscal year and (ii) the arrears plus the full preferred dividend have not been paid in the succeeding fiscal year. In any such case, (i) preferred stockholders have a voting right until such arrears have been duly paid and (ii) the preferred stock is included when calculating any capital majority required by the law or Bylaws. Moreover, preferred stockholders are entitled to vote pursuant to Art. 141(1), (2) clause 1 in conjunction with Art. 141(3) AktG. According to these provisions, a resolution of approval is required of the preferred stockholders when adopting a resolution at a general meeting which would cancel, revoke or limit the preferred dividend, or result in the issu-

ance of preferred shares that rank prior to, or *pari passu* with, the existing nonvoting preferred stock in terms of distribution of profits or corporate assets.

In all other respects, the same rights and obligations attach to all the shares.

Restrictions on voting or share transfer

We are not aware of any voting restrictions except for those on preferred stock and imposed by the law, such as under the terms of Art. 136 AktG. The same applies *mutatis mutandis* to share transfers except that shares granted to Executive Board members under the MSP (MAN Stock Program) are subject to a waiting period. For details see the Board Compensation Report.

Shareholdings above 10 percent

The provisions of Sec. 21(1) German Securities Trading Act ("WpHG") require any investor that, by way of acquisition, disposal or otherwise, reaches or crosses above or below a threshold of 3, 5, 10, 15, 20, 25, 30, 50 or 75 percent of a listed company's voting capital, is obligated to report so to the listed investee (i.e., MAN AG) and to BaFin (German Federal Financial Supervisory Authority). Sec. 28 WpHG prevents a stockholder who has failed to comply with this reporting obligation from exercising voting rights for as long as the violation of Sec. 21(1) continues.

Pursuant to Sec. 21(1) clause 1 WpHG, Wolfsburg-based Volkswagenwerk AG notified MAN AG in February 2007 that its voting interest in MAN AG had crossed above the 25-percent mark, then coming to 29.9 percent. No further direct or indirect shareholdings in MAN AG which equal or exceed 10 percent of the voting rights have been reported or are known to us.

Appointment and removal of Executive Board members, amendments to the Bylaws

The appointment and removal of MAN AG's Executive Board members are governed by Arts. 84 and 85 AktG as well as Art. 31 German Codetermination Act ("MitbestG") in conjunction with Art. 5 of the Bylaws. Accordingly, the Executive Board shall have not less than two members. The Supervisory Board is entitled and authorized to appoint an Executive Board member for a maximum 5-year term of office and revoke the appointment if for good cause.

The provisions of Arts. 179 et seq. AktG apply to any amendment of the Bylaws. Accordingly, any amendment to the Bylaws requires a special resolution (i.e., with a minimum 3-quarter majority) of the capital stock present or represented at the vote thereon. Art. 10(5) of the Bylaws entitles and authorizes the Supervisory Board to vote on amendments that affect only the wording of the Bylaws.

Executive Board powers, also to issue and repurchase stock

The Executive Board's powers are governed by the provisions of Arts. 76 et seq. AktG in conjunction with Art. 6 of the Bylaws. Accordingly, the Executive Board is responsible for managing and conducting the business of the Company and representing the Company in and out of court.

The disclosures below describe the Executive Board's powers to issue and/or repurchase MAN shares. In 2007, none of these authorities was exercised.

Authorized Capital 2005

According to the resolution by the annual general meeting of June 3, 2005, MAN AG's Executive Board is authorized, after first obtaining the Supervisory Board's approval, to increase the Company's capital stock on or before June 2, 2010, by an aggregate maximum of €188,211,200 (50 percent of the capital stock) through one or several issues of bearer shares of common stock in return for cash and/or contributions in kind (Authorized Capital 2005).

While stockholders must generally be granted a subscription right, the Executive Board is authorized, subject to the Supervisory Board's prior approval, to exclude

the stockholders' subscription right in the case of a non-cash capital increase for the purpose of acquiring other enterprises, any equity interest therein or other material assets from these. In a stock issue in return for cash contributions, the Executive Board is authorized, subject to the Supervisory Board's consent, to exclude the stockholders' subscription right (i) where required to grant the creditors of convertible, or holders of warrant, bonds issued or issuable by the Company or its subsidiaries the right to subscribe for new stock to the extent they would be entitled to upon exercise of their conversion or option rights (antidilutive provision), and/or (ii) if the issue price of new shares is not more than 5 percent below market and provided that the total stock issued pursuant to Art. 186(3) clause 4 AktG does not exceed 10 percent of the capital stock. Such shares shall be counted toward this limit as (i) by application of this proviso (whether direct or extended by virtue of other authorizations) have been issued or sold during the term of this authority up to the date of its exercise, and (ii) have been or will be issued in accordance with the terms of convertible or warrant bonds issued when this authority is exercised hereunder, and/or (iii) to apply fractions toward the rounding of the capital stock. For additional details, see Art. 4(3) of the Bylaws.

According to the statement of May 24, 2005, the Executive Board will exercise this authority when increasing the capital against noncash contributions for the purpose of acquiring other enterprises or equity interests therein or other material assets, only up to an aggregate €75,284,480 (20 percent of the current capital stock).

Issuance of convertible/warrant bonds; Contingent Capital 2005

At their annual meeting on June 3, 2005, the stockholders further authorized the Executive Board (endorsing this resolution on May 10, 2007), subject to the Supervisory Board's consent, to raise an aggregate maximum of €1.5 billion on or before June 2, 2010, by issuing once or several times in return for cash convertible and/or warrant bonds with a maximum term of 20 years as from issuance date. The bondholders will in this case be granted warrants or conversion privileges for subscribing for new bearer shares of MAN AG common stock at a maximum of €76,800,000 (around 20 percent) of the capital stock, all subject to the detailed convertible or warrant bond terms.

This authority also covers the option of guaranteeing bonds issued by other MAN companies and granting MAN AG shares in settlement of the conversion or option rights conferred by such bonds.

Concurrently, by resolution of the annual general meeting of June 3, 2005, the capital stock was conditionally increased by up to €76,800,000 (authorized but unissued capital), divided into a maximum of 30,000,000 bearer shares of common stock. The contingent capital increase will only be implemented to the extent that (i) holders of convertible or warrant bonds which had been issued by MAN AG or MAN companies by dint of the resolution of authorization of June 3, 2005 (endorsed by resolution of the annual general meeting of May 10, 2007) in return for cash, exercise their bond rights and (ii) such rights are not settled or satisfied other than by stock issue. The new stock will for the first time rank for dividend for the year of issuance (Contingent Capital 2005).

Stock repurchase

The authority conferred by resolution of the annual general meeting of May 19, 2006, to repurchase treasury stock was superseded at the effective date of the resolution of the annual general meeting of May 10, 2007.

The resolution adopted by the stockholders at their annual meeting on May 10, 2007, authorized the Executive Board, after obtaining approval from the Supervisory Board, to repurchase on or before November 9, 2008, once or several times MAN AG common and/or nonvoting preferred stock. The authority is capped throughout at an aggregate 10 percent of the capital stock, any other treasury shares held by, or assigned under the terms of Arts. 71d and 71e AktG to, the Company always being counted toward this cap. Such treasury stock may also be reacquired by other MAN companies and/or third parties for the account of MAN AG or other MAN companies.

Such treasury shares may be acquired via stock exchange or by public offering to the holders of the respective stock class. If acquired via a stock exchange, the purchase price excluding incidentals may not be more than 10 percent above or below the price quoted for the respective stock class at the opening auction of that market day's Xetra trading (or any comparable successor system). In a public offering, the bid price or bid price range per share (excluding purchase incidentals) may not be

more than 20 percent above or below the closing price quoted for the respective stock class in Xetra trading (or any comparable successor system) on the third market day prior to the bid's public announcement. If the total stock offered for repurchase exceeds MAN's bid volume, the share offers shall be accepted pro rata. The preferential acceptance of small share numbers may be stipulated to the legally permitted extent, however, not in excess of 100 shares offered by any one stockholder for repurchase by MAN.

The Executive Board is further authorized, subject to the Supervisory Board's prior approval, to use repurchased treasury shares of common stock also in a way other than by (i) sale on stock markets or (ii) public offering to all stockholders, such as for any other lawful purposes while excluding stockholders from subscription. This option shall, in particular, also apply in cases where the repurchased common stock (i) is sold at a price that is not significantly below market, and/or (ii) is used as consideration in a business combination or for the acquisition of other enterprises or any equity interest therein, and/or (iii) is used to settle or satisfy conversion or option rights granted to holders of convertible or warrant bonds which had been issued by MAN AG or MAN companies. The shares transferred by dint of this authority may not exceed an aggregate 10 percent of the capital stock if used to settle or satisfy conversion or option rights granted while excluding the stockholders' statutory subscription right pursuant to Art. 186(3) clause 4 AktG. Such shares shall be counted toward this cap as (i) by direct or indirect application of this provision were issued or sold up to the date of their use while this authority was in force and effect, and (ii) were issued or are issuable at the date of their use in conformity with the terms of convertible or warrant bonds floated in accordance with this provision.

As resolved by the annual general meeting of May 10, 2007, the Executive Board is further authorized, subject to Supervisory Board approval but without any further vote by a stockholders' meeting, to redeem and withdraw any treasury shares of common and/or nonvoting preferred stock.

Major MAN agreements terminable upon a change of control in the wake of a takeover bid

As mentioned above under *Funding of the MAN Group*, MAN AG made agreements with banking syndicates for credit facilities of €2.0 billion and €1.0 billion.

Such agreements can be terminated with immediate effect if and when one or several entities or individuals (either jointly or severally) gain control over MAN AG.