3.3.4 Release of retained profit share – normal vesting

The vesting period is established for each retained profit share allocation by the BRC, according to the prevailing market conditions and having regard to regulatory and remuneration trends at the time of allocation (refer to section 3.3.1 above for further commentary). The BRC established the following release schedule for retained profit share invested in the Post-2009 DPS Plan and the MEREP:

Role	Release schedule
Executive Committee Members (including Managing Director and Chief Executive Officer), Designated Executive Directors	one-fifth in each of years 3–7
Other Executive Directors	one-third in each of years 3–5
Staff other than Executive Directors	one-third in each of years 2–4

For each year's allocation, once the vesting period has been determined it will remain fixed for that allocation. Retained profit share is released immediately after it vests.

3.3.5 Forfeiture of retained profit share whilst employed – 'Malus'

From 2012, the Board will have discretion to reduce or eliminate unvested profit share amounts (Malus) where it determines that an Employee's action or inaction has caused Macquarie significant reputational harm, caused a significant unexpected financial loss or caused it to make a material financial restatement.

For the purposes of Malus, 'Employee' includes Executive Committee and Designated Executive Directors or other such Directors as the BRC identifies from time to time as being material risk takers, Code Staff under the FSA Remuneration Code and senior risk and financial control staff, as identified by the BRC.

A significant unexpected financial loss is defined as an impairment charge or provision or other loss as determined by the BRC, over and above the ordinary course of business, directly attributable to the relevant employee, having regard to factors such as Return on Economic Capital or profitability as determined by the BRC.

In considering whether to exercise the discretion to reduce or eliminate an Employee's unvested profit share, the Board will take the following matters, events or circumstances into account:

- the quantum of the actual loss or damage and any impact on Macquarie's financial soundness
- whether there has been a breach of internal risk management requirements and/or regulatory or legal requirements and if so, the extent of the breach
- whether Macquarie's directions, policies, protocols, practices and/or guidelines have been breached
- whether the individual has exhibited recklessness or wilful indifference
- whether any known information at the time of the action or inaction was deliberately withheld; and
- the individual's level of responsibility/accountability for for the action or inaction.

Macquarie has always had, and continues to have, the ability to terminate staff for such circumstances, at which time any unvested profit share would have been forfeited in full.

3.3.6 Early vesting and release of retained profit share

As approved by shareholders in December 2009, the Board, the BRC or the Executive Committee under delegation from the BRC has discretion to accelerate the vesting of retained profit share and/or reduce the retention period, including where an Executive Director's employment ends on the grounds of genuine retirement or redundancy (subject to the disqualifying events provisions).

In considering whether discretion should be exercised in a particular case of genuine retirement, factors including, but not limited to, the following matters, events or circumstances may be taken into account:

- whether the Executive Director demonstrates that he/she is genuinely retiring from the industries within which Macquarie operates and competes
- whether the Executive Director is likely to work at any time in the future within the industries within which Macquarie operates and competes
- whether the Executive Director is likely to work full-time in any capacity, including directorships or consultancy
- whether the Executive Director has facilitated an appropriate succession strategy
- the Executive Director's length of service with Macquarie reflecting a sustained contribution and commitment to Macquarie, with an expectation of at least 10 years of service as an Executive Director.

If an Executive Director dies or becomes wholly and permanently unable to work while employed by Macquarie, 100 per cent of their retained profit share will vest and (subject to the disqualifying event provisions) be released to the Executive Director or, in the case of death or incapacity, to the Executive Director's legal personal representative.

In certain other limited exceptional circumstances, discretion may be exercised to accelerate the vesting of retained profit share and reduce the retention period on the grounds of business efficacy. If the discretion is exercised, all relevant factors will be considered on a case by case basis and will include consideration as to whether exercise of the discretion is in the best interests of Macquarie.

In all cases where discretion is exercised, the Board, the BRC or the Executive Committee under delegation from the BRC may impose such other conditions as it considers appropriate.

Under the current remuneration arrangements, in the year to 31 March 2011, discretion has been exercised in relation to six executives who transferred employment for the following reasons:

- internalisation of the management of the Fund for which they provided services
- sale of some or part of the business for which they provided services
- transfer of employment to the joint venture for which they provided services.