Directors' Report – Remuneration Report
for the financial year ended 31 March 2011
continued

3.3.7 Disqualifying events

On leaving Macquarie, an Executive Director will not be entitled to receive any of their unvested Transitioned Amounts or retained profit share from 2009 and future years if the Board, the BRC or the Executive Committee under delegation from the BRC determines, in its absolute discretion, that the Executive Director has during the period of employment with Macquarie or since leaving:

(a) committed an act of dishonesty (including but not limited to misappropriation of funds and deliberate concealment of a transaction)
(b) committed a significant and wilful breach of duty that causes material damage to Macquarie
(c) joined a competitor of Macquarie Group
(d) taken staff to a competitor or been instrumental in causing staff to go to a competitor or
(e) otherwise acted, or failed to act, in a way that damages Macquarie, including but not limited to situations, where the action or inaction leads to a material financial restatement, a significant financial loss or any significant reputational harm to Macquarie or its businesses.

If an Executive Director leaves Macquarie and the discretion to release unvested retained amounts is exercised as described in section 3.3.6 'Early vesting and release of retained profit share', the release will occur over the period from six months to two years after the Executive Director leaves. Different disqualifying event provisions will apply at the six month, one year and two year timeframes as follows:

– **retained profit share from all but the last two years** – released on the expiry of six months following the end of employment (the 'First Period') provided the Executive Committee has determined that none of the disqualifying events (a), (b), (c), (d) and (e) set out above occurred during the First Period
– **retained profit share from the second year prior to the end of employment** – released on the expiry of a further six months following the end of the First Period (the 'Second Period') provided the Executive Committee has determined that no disqualifying event occurred during the First Period and disqualifying events (a), (b), (d) and (e) set out above have not occurred during the Second Period
– **retained profit share from the year prior to the end of employment** – released on the expiry of a further 12 months following the end of the Second Period (the 'Third Period') provided the Executive Committee has determined that no disqualifying event occurred during the First Period, disqualifying events (a), (b), (d) and (e) set out above have not occurred during the Second Period and disqualifying events (a), (b) and (e) set out above have not occurred during the Third Period.

3.3.8 Tax events

The Board or its delegate has discretion to change the terms of the MEREP awards, including the vesting date, to avoid situations of undue hardship or to maintain business efficacy. The Board, the BRC or the Executive Committee under delegation from the BRC, may exercise discretion to early release MEREP awards where an employee terminates employment and, as a result, this triggers a tax liability in respect of any unvested equity award. Where this occurs, the employee has not received the underlying shares and may not receive the full number of shares on which they are being taxed for a considerable time due to continued vesting conditions and other restrictions beyond cessation of employment (for example, the two year clawback period described in section 3.3.7).

The number of shares released would be limited to the number with an aggregate value equal to the tax liability (see below). The employee would be required contractually to agree to repay an amount equal to the value of the shares released in the event that the BRC deem a disqualifying event has occurred. Approval for early release of Macquarie shares under these circumstances for Executive Committee members will reside with the BRC.

Where an employee terminates employment, and a tax liability arises in respect of retained MEREP awards, Executive Committee and/or the BRC will determine whether to allow early release after, considering, amongst other things, the possibility of the operation of the forfeiture rules. For example, if there is a high risk of forfeiture, early release would not be made.

If a decision to allow early release is made, sufficient shares will be released to the employee to fund the estimated tax liability. Subject to the *Trading Policy*, the employee is then able to sell these shares and use the cash to fund the tax liability. The remaining MEREP awards will be held within the MEREP until the post-termination retention period ends.

3.3.9 Minimum shareholding requirement for Executive Directors

The retention arrangements also impose on Executive Directors a requirement to hold Macquarie ordinary shares equivalent to the aggregate of five per cent (being the deemed after-tax equivalent of 10 per cent) of their annual gross DPS allocation for the past five years (for the wider Executive Director population) or 10 years (for Executive Committee members). These shares cannot be hedged.

This requirement remains but is satisfied through the equity retention arrangements.

Macquarie does not seek retention beyond this period because it considers that executives who are unable to diversify their personal portfolio may seek to leave, thereby creating an unintended consequence.