

REPRESENTATIONS & WARRANTIES

Insurance Services | Risk Management | Employee Benefits



In a Merger & Acquisition (M&A) transaction, the Seller is usually required to indemnify the Buyer for breaches of the representation and warranties made in the Purchase & Sale Agreement. Additionally, the seller may also be required to fund an escrow to insure funds are available in the event of a breach.

A large escrow may prove unattractive either because a better return may be got elsewhere for the funds, the seller may wish to maximize his immediate funds, or if the Seller is a private equity investor, his ability to wind down partnerships and return funds to investors may be impeded.

From the Buyer's point of view, warranties without a substantial escrow or an insurance policy to back them up provide no guarantee that the Buyer will be indemnified for any losses if a breach occurs.

To smooth these obstacles, several insurers have developed Representations & Warranties (R&W) insurance products which reduce or replace a Seller's indemnification and escrow requirements in an M&A transaction. R&W insurance is a value added financial product that can contribute to completion of a transaction and can serve to overcome blocks in negotiation between Buyer and Seller.

R&W insurance comes in two forms. Either the Buyer or the Seller can be the insured. The premium, coverage and underwriting process is slightly different depending on which party is purchasing. A typical policy pays excess of a retention, which is determined by the underwriter and the insured. Premiums depend upon the individual risk, but generally range from 3% to 5% of the policy limit. Each policy is drafted individually.

THE PROCESS

1. Interested parties provide initial information:
Transaction overview:
 - a. Buyer, Seller, and advisors
 - b. Rational for transaction
 - c. Most recent draft of Sale and Purchase agreement (if available)
 - d. Financials of target
2. Underwriter provides initial indication: likely premium and coverage and request for further information which is likely to include (depending on type of policy sought):
 - a. Due diligence request list
 - b. Data room index
 - c. Due diligence reports
3. Interested parties go to legal review (at which point fee becomes payable) – outside counsel on behalf of underwriters provide report to underwriters
4. Underwriters provide bindable quotation

**MARKETS:**

- AIG; Hartford; CNA & Lloyds (Ambridge) & other London markets

PRICING PARAMETERS:

- 3-5% or limit, can be excess of a traditional retention that generally starts at \$250,000 and/or excess of an escrow fund (rate higher for a buyer policy due to broader coverage)
- \$25,000 non-refundable underwriting fee (due at time of legal review).

NEXT STEPS:

- Provision of initial information needed
- Approximately a week after receipt underwriters will provide non binding indications
- Select underwriter to go to legal review with
- Upon the insured's decision the underwriting survey process will begin and it will take 1-2 weeks to secure bindable terms.

Woodruff-Sawyer is one of the largest independent insurance brokerage firms in the nation, and is an active partner of International Benefits Network and Assurex Global. For 90 years Woodruff-Sawyer has been partnering with clients to implement and manage cost-effective and innovative insurance, employee benefits and risk management solutions, both nationally and abroad. Headquartered in San Francisco, Woodruff-Sawyer has offices throughout California and in Portland, Oregon.

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