Factors to Consider when Selecting a Reps & Warranties Insurance Market

Whether you are a seasoned user of Reps & Warranties insurance ("RWI") or newer to the process, market selection is your most important decision. With 25+ markets, each with a unique risk appetite and underwriting style, this decision can be overwhelming. Below, we outline some of the key considerations helpful in making an informed market selection.

Key Differentiating Factors

Upfront Exclusions

Certain policy exclusions are common to all forms: coverage for any specific indemnities (other than the pre-closing tax indemnity), covenants, collectability of accounts receivable, the amount or availability or usability of Net Operating Losses or similar tax credits, any representation and warranties that are forward-looking, PPP Loan liabilities and CARES Act compliance, and transfer pricing. Deal-specific exclusions are identified when terms are provided by the markets during the submission process and are non-negotiable during the underwriting process, no matter the diligence. It is critical to understand the implication of these exclusions, for example, whether other insurance addressing the exclusion topic may exist, or if any additional information can be shared at the quoting stage to provide the underwriters greater comfort that the issue can be underwritten.

Flagged Heightened Risks

Heightened risks are topics on which underwriters will focus their attention during underwriting. If the buyer's diligence is comprehensive and clean, exclusions would not be expected. However, if known issues are uncovered in diligence, exclusions or deemed disclosures will be proposed. Some markets propose a list of general topics pertinent to the target company's industry or operations while other markets propose more targeted matters identified during their review of the submission. It is important to discuss these topics, the expected diligence and the market's general appetite and flexibility in addressing heightened risks during underwriting to avoid unwelcome surprises during the placement.

Total Cost

The total cost of a RWI policy is comprised of the premium + market underwriting fee ($40k-$50k, + additional if excess markets are required) + any applicable brokerage fee + state surplus lines taxes & fees (~5% of the premium).

Retention

Pressure has been mounting on the markets to provide more competitive retention options. While 1% TEV has been the standard initial retention for years, some markets are offering lower retentions for upper middle market (and larger) deals.

Pre-Negotiated Policy Forms

Policy form negotiation is a time-consuming element of the underwriting process. It is helpful to work with markets where a pre-negotiated policy precedent is in place, whether that be a form agreed between the buyer, buyer's counsel, buyer's broker and the market. This is especially critical for deals on tighter timelines.

Expectations for Underlying Insurance

Adequate underlying insurance is expected by all markets. Depending on the target's operations, specific types of underlying insurance might be deemed a heightened risk. Worse, a market may not be comfortable covering topics such as E&O, Product Liability, Cyber or Environmental or it may only agree to sit excess and no broader than those coverages. Markets require an understanding of the current underlying program, its loss history and how the target intends to maintain prior acts coverage. Increasingly, it is helpful to understand these points at the quoting stage. Full-service brokers, such as Vanbridge, collaborate across their due diligence team, transactional risk team and product specialists to offer solutions to historical insurance program shortcomings thereby addressing the R&W markets' concerns.

Underwriting Style

A market's underwriting approach, bandwidth and experience are important factors to consider. A commercial attitude, ability to execute to the deal timeline and history of crafting innovative solutions help both the overall efficiency of the underwriting process and the overall coverage outcome. While many markets have broad industry appetite, some have invested in teams to address more nuanced or challenging industries; that industry familiarity can also improve efficiencies.

Claims Handling Experience

Claims handling should also be considered. Markets with in-house claims handling capabilities generally provide a smoother process as they can assess claims internally without the need to rely on outside counsel. Generally speaking, markets are keenly aware of how their reputation in handling and resolving claims impacts their overall business. As such, their interests are aligned with the buyers' in ensuring that the claims process run smoothly.

Aggregation Strategy

Lastly, there is value to an aggregation strategy and partnering with select markets for future transactions. Whether the buyer is building out a particular platform or targeting specific industries, efficiencies can be achieved by developing an ongoing relationship and establishing familiarity between the buyer and the insurer.

Next Steps

Please call us to discuss your options. Vanbridge, an EPIC Company offers a comprehensive suite of resources to address your transactional and business insurance needs. By leveraging our internal expertise, dedicated claims team, strong market relationships and long-standing history in the transactional risk marketplace, we support clients from the pre-submission phase up through claim resolution.

To learn more about RWI or to discuss your options, please contact
Greylen Erlacher Mardy at 646.572.9362 | gerlacher@vanbridge.com