

Representation & Warranties Insurance 101

The Coverage

Reps & Warranties insurance (RWI) is a transactional risk solution that protects the Insured (typically, the buyer) from losses due to breaches of the seller's representations and warranties in the transaction agreement. Each policy is bespoke, with coverage ideally mirroring the reps and warranties in the transaction agreement, so long as it is fairly balanced. To achieve broad coverage, buyers must conduct and share with the insurance market adequate due diligence which supports the validity of the seller's representations and warranties. Areas that are not diligenced thoroughly, taking into context the deal size and scope, are excluded from coverage. The policy is also not intended to cover items identified in due diligence, disclosed or specific indemnities. Other insurance solutions such as tax or contingent liability can be viable risk-transfer solutions for known issues excluded by R&W insurance.

Quoting Process

Obtaining Non-Bindable Indication Letters ("NBILs") from markets typically requires 2-4 business days. To obtain NBILs, the buyer should provide the following:

1. Any required NDA / Joinder / Confidentiality Agreements
2. Any offering document, management presentation or CIM prepared in connection with the transaction
3. The target company's most recent financial statements
4. A list of the third-party diligence providers (i.e., legal, financial, tax, etc.)
5. A draft of the Purchase Agreement (if available)

Key Data Points

Exclusions and Heightened Risks

Each market's terms will vary depending on their underwriting expertise, claims history, and overall appetite. NBILs outline upfront deal-specific exclusions and heightened risks. Exclusions will remain throughout underwriting, no matter the diligence presented. Conversely, heightened risk are areas where markets concentrate their attention during underwriting. If diligence is adequate and clean, the market should have comfort covering the topic. If diligence is not adequate or if issues are flagged, an exclusion will be proposed.

Retention

Initial retentions are typically 1% Total Enterprise Value ("TEV"). They reduce to 0.5% TEV after 12 months.

Pricing

Pricing varies depending on the state of the market, but typical premiums range between 3-4% Rate-on-Line (also referred to as ROL, or premium as a percent of limit). The premium is paid once, covering the full policy term.

Policy Duration

Coverage for general representations and warranties is offered for 3 years; coverage for fundamental and tax representations and warranties is offered for 6 years.

Market Selection

Vanbridge prepares a marketing summary and requests a call with our client and their counsel. Top competitors are determined based on a combination of economics and initial coverage positions. Markets will also provide comments on the purchase agreement and may read out or modify reps for purposes of the policy. Much of our discussion will focus on the proposed exclusions, heightened risks, and purchase agreement modifications, as well as the diligence streams and any gaps or known issues already identified. Once in agreement on the leading market, we proceed into underwriting. This entails executing non-reliance letters with the market and sharing copies of all third-party diligence reports, working drafts of the purchase agreement and Disclosure Schedules. Underwriting typically lasts 5-10 days depending on the readiness of the buyer and its advisors.

Meet the Team

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 Reps & Warranties insurance or to integrate these products into your next transaction, contact a member of our team today.



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