

# Transactional Insurance – Market Overview and Key Issues

University of Texas  
14<sup>th</sup> Annual Mergers & Acquisitions  
Institute

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## Mergers & Acquisitions Transactional Insurance

### Overview of Transactional Insurance Solutions

#### Representations & Warranties Insurance

- Used by private equity and strategic buyers to increase competitive position in auctions – offer sellers a limited or no indemnity deal
- Facilitates clean exits – sellers avoid escrows and holdbacks, and distribute proceeds to investors
- Acceptance and use of product has increased dramatically over last five years

#### Tax Insurance

- Insure tax positions to facilitate transactions
- Covers taxes, penalties, interest and contest costs in the event of a challenge by the IRS or other tax authority
- Wide range of tax issues can be insured, including:
  - Tax-free mergers
  - S-corporation issues
  - Net operating losses
  - Alternative energy credits
  - Sales and use tax

#### Contingent Liability/Pending Litigation/Other Insurance

- Used by buyers and sellers to transfer risk on contingent exposures to insurers
- Pending litigation
- Environmental
- Successor liability
- Fraudulent conveyance
- Loss portfolio transfer
- Antitrust consent
- Legislative contingency
- Fund liquidation

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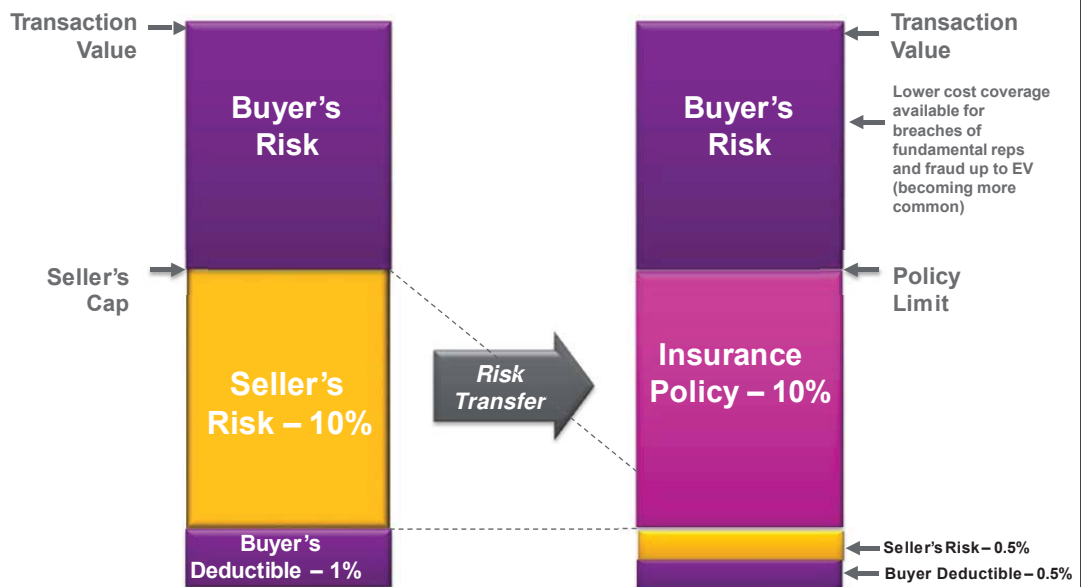
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## REPRESENTATIONS & WARRANTIES (“R&W”) INSURANCE OVERVIEW

<p><b>Purpose</b></p>	<ul style="list-style-type: none"> <li>• Provides insured with coverage for breaches of covered representations and warranties in acquisition agreement</li> </ul>
<p><b>Cost</b></p>	<ul style="list-style-type: none"> <li>• One time premium payment typically in range of 2% to 3.25% of coverage limits purchased, plus underwriting fee, excess brokerage fee (if applicable) and applicable taxes</li> </ul>
<p><b>Market Capacity</b></p>	<ul style="list-style-type: none"> <li>• Over 20 U.S. underwriting markets including carriers and managing general underwriters that underwrite on behalf of one or more insurers</li> <li>• In excess of ~\$1 billion in coverage limits available for a single deal</li> <li>• Global market</li> </ul>
<p><b>Parties</b></p>	<ul style="list-style-type: none"> <li>• Deal parties (buyer, seller, respective counsel)</li> <li>• Underwriters</li> <li>• Insurance brokers (sophisticated brokers and underwriters now staffed by many former M&amp;A and/or insurance attorneys)</li> <li>• Underwriting counsel</li> </ul>

## R&W INSURANCE

R&W Insurance Replaces Seller’s Risk



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First appeared as part of the conference materials for the  
14<sup>th</sup> Annual Mergers and Acquisitions Institute session

"How Representation and Warranty Insurance is Changing the Game"