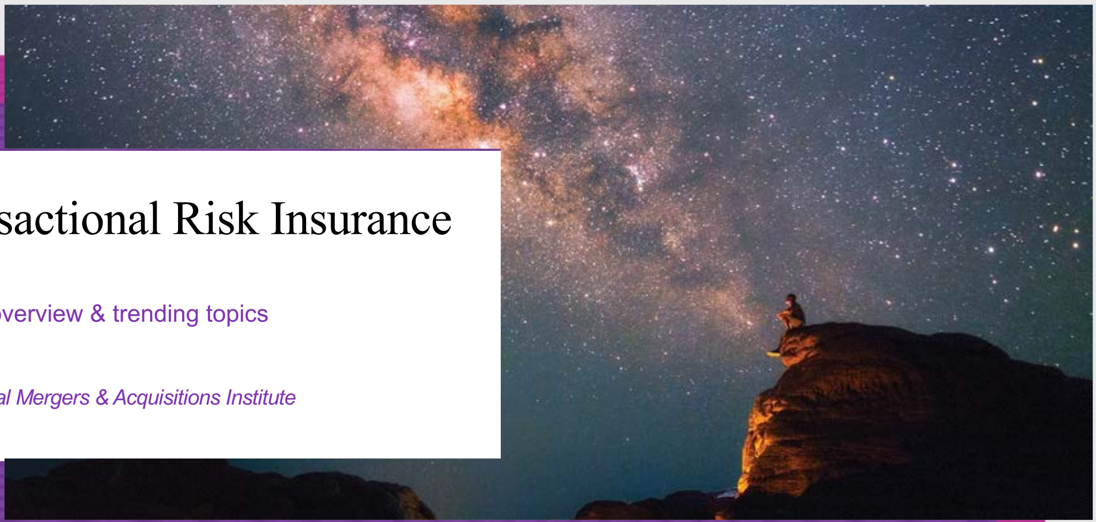
Transactional Risk Insurance

Market overview & trending topics

18th Annual Mergers & Acquisitions Institute

October 2022



wtw

Transactional insurance solutions

Our team offers tailored solutions to transactional risk allocation

Representations and warranties insurance:
Offers protection for **unknown breaches** of target and seller representations and warranties in a purchase agreement

Tax liability insurance:
Offers protection against **a known tax risk or uncertain tax position** that is challenged by a tax authority and is not otherwise covered by an RWI policy. Each placement led by an in-house tax expert

Insurance solutions

Contingent liability insurance:
Offers protection for a **broad range of known contingent risks** for which neither party to a transaction will accept financial responsibility

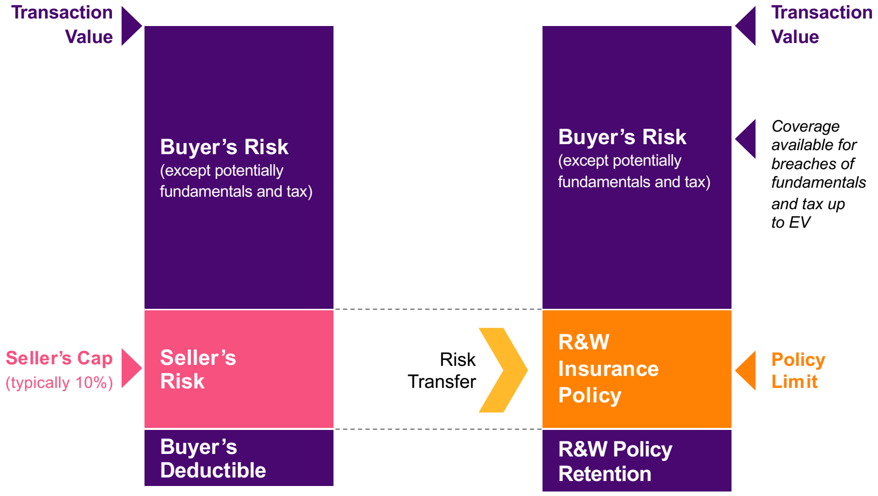
Tailored solutions:
Offers protection across a **wide array of bespoke transactional risks** such as insurance on GP-led secondaries transactions, real estate investments, de-spac transactions, etc.

wtw

Representations and Warranties Insurance (RWI)

R&W insurance

Risk transfer to an insurer mirrors a traditional seller indemnity and works “back-to-back” with a purchase agreement



Benefits and uses

All parties benefit through transferring risk to an insurer

Buyers	Sellers
▪ Receive broader representations under a policy than sellers may otherwise offer	▪ Collect proceeds up front without funds tied up in escrow
▪ Benefit from extended survival periods (customarily 3 years for general representations & 6 years for fundamental representations)	▪ Avoid post-closing contingent liabilities and proceedings
▪ Avoid post-closing proceedings with sellers who may remain active at the company	▪ Reduce the risk of prolonged or contentious negotiation over representations and indemnification provisions in a transaction agreement
▪ Benefit from security where there is concern over the ability to collect indemnification	▪ For minority and passive investors, receive protection from any indemnity obligations arising out of joint and several liability obligations

Overview: Buyer-side coverage

Over 99% of RWI policies are buyer-side policies

	RWI insurance
Term	▪ 3 years for General Reps ▪ 6 years for Fundamental reps ▪ Coverage for 6 years for all reps may be available depending on the deal characteristics
Limit	▪ Insureds select the coverage limit amount according to preference and risk appetite ▪ Coverage available for excess fundamentals and tax risk
Retention	▪ Typically, 1.0% of deal value ▪ Most commonly either split 50/50 with seller, or follow a “no seller indemnity” structure
Fraud	▪ Buyer-side policies cover seller fraud (the definition of fraud is reviewed by underwriters), so long as the insurer maintains subrogation's rights

Title search: Transactional Risk Insurance: Market overview & trending topics

First appeared as part of the conference materials for the
18th Annual Mergers and Acquisitions Institute session
"RWI Update and the Due Diligence and Underwriting Process"