ROGERS INSURANCE LTD. | Acera INSURANCE

Representations & Warranties

This coverage protects parties involved in a merger or acquisition from costly liabilities. Inaccuracies in representations and warranties can result in financial loss where buyers can be left without the ability to recover losses, and sellers can be forced to hand back a portion of the purchase price.

Purchasing representation and warranties insurance allows buyers to distinguish a bid, sellers to reduce indemnity obligations, and both to close deals with ease and confidence.

Coverage Highlights

- Coverage is available for transactions valued between $20 million and $1 billion.
- Up to $50 millon in coverage is available for any single transaction, and larger programs can be structured on a case-by-case basis.
- Coverage can be customized to individual transactions.
- Policy periods generally align with the survival period of the representations and warranties set forth in the acquisition agreement.
- Buyer-side coverage can extend beyond the survival period of the representations and warranties that the buyer is receiving from the seller in the acquisition agreement.
- The typical premium is two to four per cent of the amount of insurance purchased.
- Deductibles are usually one to three per cent of the transaction value (based on variables such as the type of business being acquired, the nature and scope of the representations and warranties being insured, the due diligence, etc.).

Key Advantages for Sellers

- Reduces the risk of contingent liabilities, arising from future representations and warranties claims, allowing sellers to lock in their return on investment and cleanly exit a business or industry.
- Distributes all (or most) of the proceeds to investors, or uses proceeds to pay down existing debt.
- Protects passive sellers who have not controlled, or been actively involved in the management of the target business, from unintentional non-disclosure or breaches of representations and warranties.
- Expedites a sale, and potentially increases the purchase price, by eliminating obstacles to closing, such as indemnity negotiations.

Key Advantages for Buyers

- Enhances protection for breaches of representations and warranties, supplementing the indemnification provided by the sellers.
- Extends the duration of representations and warranties, affording buyers additional time to detect and report problems that may exist with the acquired business.
- Distinguishes a bid, in a competitive auction, by accepting a lower than customary indemnification from the sellers and supplementing this indemnification with representations and warranties insurance.
- Protects relationships with sellers who may become the buyer's key employees or commercial business partners after the closing.

Sellers Request Coverage to:

- Reduce the risk of contingent liabilities
  - The seller wants to lock in their return on investment or reduce the risk of contingent liabilities associated with the sale (e.g., a seller wants to completely exit a line of business).
- Facilitate a distribution of sale proceeds
  - The seller needs all or most of the sale proceeds to pay down existing debt (e.g., a financially distressed seller), or the seller needs to distribute sale proceeds to investors (e.g., a financial seller).
- Help achieve strategic goals
  - The seller wants to get a better price by expanding the pool of potential buyers and offering an indemnity greater than it would otherwise provide, or the seller wants to eliminate obstacles to completion of sale.
- Supplement their due diligence and disclosure process
  - The seller is concerned about unintentional non-disclosure and has not controlled the management of the business for a substantial period of time.
- Meet financial obligations
  - The seller desires greater certainty in the sale price and wants to reduce the risk of contingent liabilities.
- Address stakeholder concerns
  - The seller wants to provide additional comfort to its board of directors, lenders, advisors and other stakeholders.

Buyers Request Coverage to:

- Obtain a desired level of seller indemnification
  - The buyer wants to increase the aggregate indemnification amount provided for in the acquisition agreement (e.g. buyer is in a weak negotiating position, a competitive auction situation or acquiring a business from a financially-distressed seller).

- Obtain a desired duration of indemnification
  - The buyer wants to extend the survival periods provided for in the agreement (e.g., from one year to three years).
- Distinguish their bid from other bids
  - By requesting a lower than customary level indemnification, a buyer can distinguish their bid in an auction.
- Improve their ability to collect on the indemnity
  - The seller is having, or may have, financial difficulties. Pursuing claims for indemnification may be fraught with practical difficulties and may be expensive or may have dissolved or otherwise ceased to exit post-closing.
- Protect their deal
  - The buyer wants to avoid the risk of losing a critical deal by entering into a long and contentious negotiation with the seller over the appropriate level of indemnification. The buyer believes insurance will be less costly than the increased consideration the seller will demand to provide an equivalent level of indemnification.
- Protect key relationships
  - The buyer values a pre-existing commercial relationship with the seller, and/or its affiliates, and wants to avoid a long and contentious negotiation over the level of indemnification and possibility of suing the seller in the event of a breach.
- Supplement their due diligence efforts
  - The buyer is entertaining a new and unfamiliar line of business, or geographical area, and wants protection above and beyond the seller's indemnity.