

Representations & Warranties Insurance (RWI)

Fast Facts

- ✓ RWI allocates certain financial risks to the insurer for losses resulting from breaches of the sellers' representations and warranties in the acquisition agreement.
- ✓ When the buyer is the insured (buy-side RWI policy), RWI can replace or reduce the need for a holdback or escrow, or it can supplement the protection provided by a holdback or escrow.
- ✓ When the sellers are the insured (sell-side RWI policy), they remain liable under the M&A agreement and RWI compensates them for covered losses within the holdback or escrow layer, or for clawback risk with respect to covered losses the buyer claims against sellers outside a holdback or escrow layer.
- ✓ In the U.S. market, several thousand RWI policies bound annually among 20+ underwriting shops.
- ✓ RWI premium typically ranges from ~3%–3.5% of the insured amount (downward trend over the last few years is resulting in many opportunities pricing below 3%).
- ✓ RWI retention (deductible) typically ranges from ~1%–2% of the transaction value (downward trend over the last few years), often dropping to a lower level 12–18 months after closing.
- ✓ Underlying transaction sizes typically range from ~\$20M to well over \$1B, although larger and smaller transactions may qualify.
- ✓ Available coverage amounts typically range from ~\$4M–\$40M per policy, with certain insurers able to provide \$40M+ per policy and with smaller limits (e.g., ~\$2M–\$3M) sometimes available for smaller transactions; for larger transactions, insurance towers (similar to lending syndicates) can provide hundreds of millions of dollars in RWI coverage.
- ✓ Common RWI industry exclusions typically include known or expected breaches, purchase price adjustments, breaches of covenants, predictions or forward-looking statements, unfunded/underfunded pension plans, net operating loss (NOLs) and, for sell-side RWI policies, seller fraud; deal-specific exclusions and “deemed” wording may also apply. Certain underwriting shops exclude COVID-19 matters, others review the risk case-by-case.
- ✓ Following submission of preliminary underwriting materials and receipt of non-binding quotes, which generally takes several business days, the formal underwriting process generally takes 1–2 weeks and requires payment to the RWI insurer of a non-refundable underwriting fee (typically ~\$25,000–\$50,000, depending on transaction size, complexity level, etc.), with tighter time-frames sometimes feasible.

Contact

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