

Committed Capital

BITE-SIZED TAKES ON PE HOT TOPICS

COMMITTED CAPITAL PODCAST SERIES

Rep and Warranty Insurance: Latest Trends and Developments



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Dechert's Private Equity group presented "Rep and Warranty Insurance: Latest Trends and Developments," a bite-size episode of the firm's Committed Capital Podcast Series. The episode was hosted by Mark Evans (moderator), a private equity M&A partner in the firm's London office and featured rep and warranty insurance experts Craig Schioppo and Emily Standen from Marsh JLT Specialty, New York. The presenters covered the current state of the rep and warranty insurance market, how the market has evolved in response to SPACs, secondaries and other trends as well as the impact of synthetic policies and other innovations in the sector.

HIGHLIGHTS FROM THE EPISODE

State of the M&A Insurer Market – Currently, due to the busyness of the M&A market, insurance carriers are inundated with requests to provide quotes, and so are becoming more selective as to the deals they decide to underwrite. The more favorable market sectors for carriers include healthcare, insurance and the financial sector, whilst carriers are more likely to decline to provide a quote for smaller deals, those with layers of complexity or with aggressively tight diligence timetables.

A Tightening of Acceptable Policy Language – Market participants are witnessing a continuation of the trend for insurance carriers to require tightened representation language in acquisition agreements. This is a reaction to both: (i) an increasing amount of claims being brought to insurers across the M&A market, especially in relation to undisclosed liabilities and material agreements and relationships with customers and suppliers; and (ii) an increasing trend for parties negotiating M&A transactions to allow the insurance market to pick-up liability from sellers, leading to more buyer-friendly representation and warranty language in general.

Near-term Market Trends of Note – The two main areas in which carriers are receiving more quote requests is in relation to SPACs (special-purpose acquisition companies) and the Private Equity Secondaries Market. In these two areas, it is preferable for carriers that the representation and warranties language is strengthened to reflect the reality of the lessened scope of diligence that buyers are typically able to carry out. If traditional, robust diligence processes aren't undertaken, then this may lead to carriers including more exclusions in their policies.

Innovation in the Sector – One area of innovation that is gaining momentum in theoretical discussions, if not yet practical deal-making outside of Europe, is synthetic policies. Synthetic policies involve warranties that are negotiated outside of the acquisition agreement, and are particularly utilized, for example, if the deal involves administrators and a bankrupt company, and there is uncertainty as to whether or not the warranties can be proved true. However, this is not a trend that is likely to grow in the United States or in North America in the near-future, partly due to the fact that the risk profile of coverage in the synthetic universe is higher, and carriers continue to be inundated with requests for quotes and can be more particular with the deals they decide to cover.

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