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November 4, 2015

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Panelists

- **Daniel Schoenberg**
  Aon
  - Dan joined Aon in June 2013. Dan was most recently a Director at Deutsche Bank and served as tax counsel for the bank. Prior to joining Deutsche Bank, Dan was a senior tax associate at the international law firms Fulbright & Jaworski LLP (now Norton Rose Fulbright LLP) and Andrews Kurth LLP. Dan has advised on U.S.-based and European-based acquisitions and divestitures with total values in excess of $15 billion. Representative transactions include Deutsche Bank's staged acquisition of Deutsche Postbank, a leading global industrial company's sales of the assets and stock of its U.S. and foreign subsidiaries and Code Section 355 spin-offs, and the shelved 2008 takeover of Bell Canada Enterprises (which would have been the largest leveraged buyout in history). Dan also initiated, designed, negotiated and executed tax equity investor acquisitions of refined coal production facilities generating potentially $500 million of tax credits for Deutsche Bank.
- **Matthew Heinz**
  Aon
  - Matt joined the Aon team as the National Practice Leader for Reps & Warranties Insurance. He previously worked as a broker in Aon's Private Equity and Transaction Solutions Group (APETS), which served as a national resource in the private equity space for the broader Financial Services Group. APETS provides services both with respect to management liability and transactional liability products, including General Partner Liability, Representations and Warranty, Tax Liability, Contingent Liability, and Litigation Buyout insurance. Matt began his insurance brokerage career at Aon in 2010. Prior to joining Aon, Matt managed and worked as an underwriter in the Mergers & Acquisitions Insurance Group at AIG. Matt began his professional career as a corporate attorney with Proskauer Rose LLP in New York City, where he worked for over four years before entering the insurance field.
- **Max West**
  Aon
  - Max has over 15 years of experience as an underwriter and broker of environmental and professional liability insurance. He specializes in customizing, negotiating and placing environmental insurance for all types of transactions, including but not limited to coverage for developers, lenders, owners and sellers. In addition to his deep technical expertise in matching environmental exposures with appropriate insurance programs, Max has wide-ranging experience in the broader business issues surrounding such applications of insurance. He has been involved in dozens of transactions involving transfers of businesses or real estate, ranging from brownfield deals to portfolios of over a thousand properties.
- **Ethan Lenz**
  Foley & Lardner LLP
  - Ethan is a partner and business lawyer with Foley & Lardner LLP. His practice focuses on providing risk management and insurance coverage-related advice to many of the firm's commercial clients, including advice relative to the negotiation and structure of directors and officers liability insurance programs, representation and warranty liability insurance and a wide variety of other commercial/professional insurance programs. He is a member of the Insurance and Health Care Industry Teams, as well as the Insurance and Reinsurance Litigation Practice.

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Transaction Liability ("TL") Insurance – The Principle

- Why Use TL Insurance/Why is TL Insurance Offered?
  - Favorable loss experience by underwriters has contributed to competitive terms and conditions
  - Policy wording is straightforward; claims experiences are more favorable than pursuing an indemnity against a seller
  - Tax Insurance is easy to underwrite and has virtually no exclusions
  - Insurers are willing to assume the risk related to R&W policies because (i) their required rate of return is more conservative and (ii) of the diversity of their risk portfolio
- How does it work?
  - Insurance capital efficiently removes risks and often is a cheaper and more efficient vehicle than an escrow or purchase price adjustment
  - Most policies are transferrable
  - All insurance markets and Aon are now staffed by attorneys (most ex-M&A) and work on "deal time."
  - Pricing is more attractive, coverage has improved and product usage has dramatically increased over the past few years
  - Extends survival period of reps to buyer without expanding seller's liability, plus full coverage for all reps including the financial statements
  - TL is now used strategically to buy/sell companies in a more cost effective manner with one-time premiums paid up-front
- Current Market Statistics
  - 2013: Aon placed approximately 100 R&W policies in North America, representing approx. $3.5bn in policy limits
  - 2014: Aon expects to place over 150 R&W policies in North America alone, representing nearly $6bn in policy limits
  - Primary users are PE firms; Corporate usage has increased significantly
  - Primary referral sources are outside counsel and investment bankers

TL Insurance Overview – Market and Players

- Increased popularity: 500+ policies underwritten in the US industry-wide
- Insurance market is well-developed
  - Insurance companies and Aon are staffed by former M&A attorneys who work on deal timeframes
  - Policies are customized and underwriting process is streamlined

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TL Insurance Products and Solutions

Product	Description	Impact on Negotiations and General Pricing	General Price Range
Representations & Warranties (R&W)	Buyer policy protects the buyer against loss from unknown breaches of R&W including F/S, which are discovered post-close (or post-signing if structured accordingly). Can extend scope / duration of seller indemnity. Seller policies provide backstop to seller indemnification.	• Increase speed of deal • Favorably impact auctions • Minimize escrow / indemnity caps • Extend survival of seller indemnity • Facilitate clean exit / earlier distribution • Provide credit worthy protection	3-4%*
Tax Indemnity	Alternative to Private Letter Ruling (PLR); protects insured from adverse ruling by IRS or relevant taxing authority regarding anticipated tax treatment of a given transactions or issue. Covers tax, interest, penalties contest costs and gross-up.	• Improve execution by bridging the discount a buyer may put on an issue versus a seller • Can cover 338(h)(10) elections, NOLs, 355(e), transfer pricing, sale of REIT shares, real estate issues, cross-border issues, etc. • No tax opinion needed, though helpful to have	4-5%
Litigation / Contingent Liability / Fraudulent Conveyance	Provides certainty via a "box" or "ring-fence" around existing or likely litigation to protect insured against catastrophic loss that exceeds the expected loss amount.	• Improve execution by bridging the discount a buyer may put on an issue versus a seller • Can function as "signaling capital" • Critical issue is the attachment point	Varies by subject (litigation 7-10%)
Environmental Liability	Can provide "stop-loss" protection by capping expected or unexpected costs of clean-up and/or transferring legal liability and title of real estate through asset divestiture program. Enhances R&W coverage regarding scheduled, non-actionable disclosure	• Improve execution by bridging the valuation a buyer may put on an issue versus a seller • Enhance seller position by eliminating "bad" assets pre-transaction to create a "good" asset • Enhance buyer leverage by taking on "bad" assets at a discount greater than intrinsic liability; possible arbitrage opportunities	Varies by assessed exposure

Cost is expressed as a % of the insurance policy limit purchased; all cost is a one-time premium paid at closing (e.g. 3% x $30m limit = $900,000). The only up-front cost is a due diligence fee payable upon commencement of the formal underwriting process

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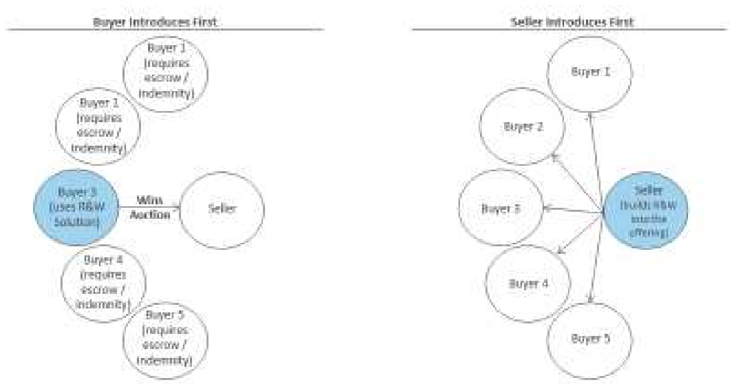
Competitive Dynamics of Introducing TL Solutions as "First Mover"



- If a single buyer in an auction process is the first, and only, potential buyer to introduce the concept it can accomplish the following:
  - Shut down the auction early as the buyer can accept the seller's reps as is, knowing insurance is in place
  - Arbitrage the cost of insurance against the seller's desire for a clean exit
  - Achieve a lower purchase price

- If a seller introduces the concept as part of an auction process to multiple buyers, the seller can potentially mitigate any "discount" that a buyer hopes to achieve, and also obtain a clean exit
- Seller can minimize escrows and indemnity caps
- Seller R&W insurance can be a fall back when buyer demands a traditional escrow and indemnity

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R&W Insurance for Strategic Buyers and Sellers

- Use of R&W insurance for strategic transactions has dramatically increased over the last two years
- Sampling of R&W polices for Strategic Buyers/ Sellers include:
  - $2.85bn acquisition of Firth Rixson by Alcoa Inc. (as disclosed in its Form 8-K dated June 27th, 2014)
  - $3.2bn disposition of an electronics company to a Fortune 50 buyer
  - $3.0bn acquisition of flavoring company by a Fortune 100 company
  - $750mm acquisition by French strategic of logistics company
  - $641mm acquisition by Chinese strategic of financial services company
  - $330mm acquisition by Fortune 50 company of smaller technology competitor
- Other examples include:
  - $1bn acquisition by European publicly traded company of baked goods manufacturer
  - $985mm acquisition by Fortune 1000 defense contractor of a gun accessory maker
  - Fortune 100 manufacturer and government contractor has used RWI on two separate transactions in last two years
  - Fortune 1000 consumer data company has purchased more than 10 buy-side RWI polices in transactions ranging in value up to $2.2bn
  - Publically traded Canadian company in oil and gas space acquires $400mm smaller competitor
  - Canadian publicly traded sporting goods manufacturer acquires competitor for ~100mm
- Aon has placed over $1.1 billion in policy limits for strategic buyers YTD, on over $9.5 billion in Enterprise Value

Sell-Side – Staple Policy in Sale Process

Seller Uses “Stapled Insurance Package” to Minimize Escrow and Indemnity

Situation

- A US private equity firm was preparing to sell a $400M manufacturing company through an auction process
- The target was the last of 15 divestitures of a holding company, and had numerous hanging indemnities from past sales, plus tax (NOLs) and environmental issues
- Seller desired to effect the sale on an "as is" basis and have no surviving indemnities or escrow post-closing

Solution

- Before the auction began, Aon structured and obtained quotes for a package of reps and warranties, tax and environmental insurance in favor of Buyer
- Bidders were told to work with Aon and Seller made it known that it would provide no indemnities
- The R&W policy covered hanging liabilities from prior transactions and reps related to the current transaction
- The SPA had no survival and provided a credit against purchase price for the insurance cost (1% of transaction value)
- Seller achieved more bids and a better sale price than anticipated; the added benefit was that by the insurers' vetting of these risks, the buyer side due diligence process was much smoother, simpler and contributed to the successful auction

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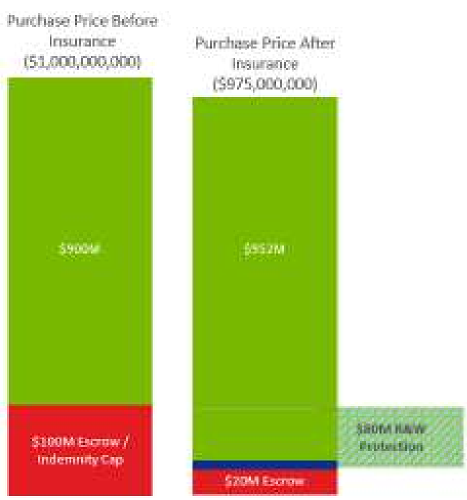
Buyer Uses R&W Insurance Policy to Reduce Purchase Price



Situation

- A US private equity fund was purchasing a manufacturer for approximately $1 billion +/-
- Aon approached the fund about replacing a portion of the escrow/indemnity cap with Buyer-Side R&W insurance hoping that the fund would obtain a purchase price adjustment in the fund's favor

Solution

- Within deal timeframe, Aon negotiated and placed Buyer-Side R&W policy for $80 million excess of a $20M retention/deductible that provided coverage ***broader than the seller indemnity for <$3M of premium***
- In addition, the policy period extended for a full 6 years for all R&W, the retention/deductible was reduced to $4M after 18 months, in tandem with the release of the escrow to seller
- The fund negotiated a purchase price reduction that far exceeded the cost of the insurance

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R&W Insurance Q&A

Q: How long does it take to obtain a policy?
A: Both Aon and the underwriters are staffed with former M&A attorneys accustomed to working on "deal time." Quotes usually take 2-4 business days to receive. Once a carrier is selected, the underwriting process usually takes 7-10 days (but may be compressed as necessary).

Q: What information does Aon need to obtain a quote?
A: (i) Confidential Information Memorandum/ Management Presentation (or other background information about the Company, (ii) financial statements of the target (audited financials and/or a Quality of Earnings report) and (iii) a draft purchase agreement (if available).

Q: How broad is the coverage?
A: The goal of the policy is to match up exactly with the Company/Seller reps and to replicate or enhance the indemnification provisions that would be provided in a typical indemnity construct.

Q: How much does it cost?
A: Average all-in costs are typically 3.5%-4.5% of the policy size (down 40% from 2008).

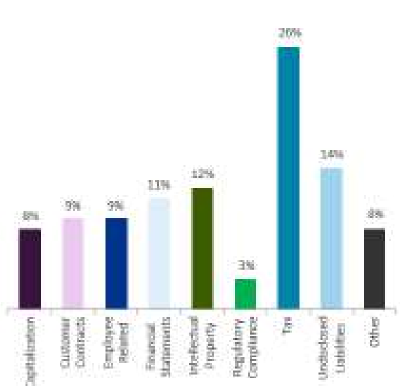
Q: Why would a buyer prefer an insurance policy over a seller indemnity?
A: Insurance policies (i) provide extended survival periods (usually 3 yrs. for general reps, 6 yrs. for fundamental/tax reps), (ii) allow the insured to buy coverage up to 100% of the purchase price and (iii) may provide stronger definitions of Loss than would otherwise be provided in a purchase agreement. In addition, the policy may eliminate the need to seek remuneration from a recalcitrant seller (which is particularly true in the context of a management rollover) and instead collect from a neutral third party in the business of paying claims; Aon and outside counsel would actively assist in the claim process.

Q: Is the insurance policy customized for each transaction?
A: Yes. The goal of each policy is to cover all of the representations and warranties in the applicable purchase agreement, and is tailored to each specific transaction. All polices are 100% "baked" before binding a policy and closing a transaction.

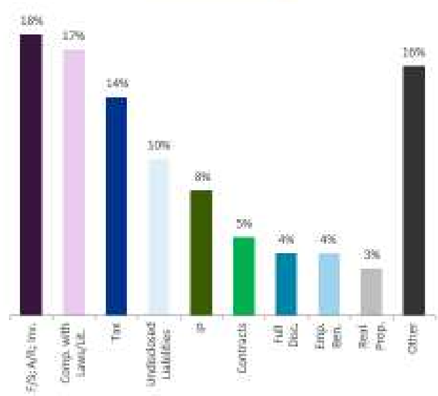
Q: Will pursuing insurance jeopardize the confidentiality of the transaction?
A: No. Aon and each carrier will agree to abide by the terms of the underlying confidentiality agreement or enter into a separate confidentiality agreement (or joinder thereto) with the client.

Q: Will Aon and the insurance markets understand the complexities of each deal?
A: Aon Transaction Solutions team consists of 12 experienced professionals that are former practicing attorneys, CPAs, and/or investment bankers. Similarly, insurers have dedicated groups of former M&A, tax, benefits, and environmental lawyers, litigators, CPAs, engineers and insurance industry veterans accustomed to working with sophisticated clients and their advisors on time sensitive matters. Aon's North American team will close approximately 150 policies this year. Clients include top-tier PE firms, investment banks, and Fortune 100 companies.

R&W Insurance: Claims History



SOURCE: 2014 SRS M&A Post-Closing Claims Study



Tax Insurance Solutions

- Tax Insurance coverage is intended to protect against the failure of a transaction or situation to qualify for its intended tax treatment. Insurers will consider submissions in respect of US Federal, State, local and/or foreign taxes. By providing assurance against the unanticipated or ill-timed occurrence of a tax loss, Tax Insurance is an effective means of protecting against an unpredictable or catastrophic drain on cash flow
- Tax Insurance is a tool that has been in use since the mid-1980s and has become a tried and true means to obtain certainty regarding a tax position where traditional sources of comfort are unavailable, impractical or simply would take too long. Transaction parties often rely upon tax insurance to navigate tax exposures in M&A transactions and taxpayers are now seeing it as a means to address ongoing business tax risk
- *Tax insurance is* ***NOT*** *available for tax shelters. Tax Insurance typically specifies the particular tax treatment which is being insured. It always has an aggregate limit (selected by the insured), can include a "gross up", and generally is available for a non-cancellable term of seven years to address the statute of limitations. Any settlement with the taxing authority must be approved in advance by the insurers.*

Tax Insurance: Sample Transactions

- Tax-Free Reorganizations
- Tax-Free Mergers
- Net Operating Losses
- Partnership Issues
- Structured Real Estate
- Transactions
- Retroactive Change in Law
- Cross-Border Transactions
- Transfer Pricing
- Tax Credits
- Low Income Housing (Section 42)
- Historic Rehabilitations (Section 47)
- Real Estate Transfer Tax
- Consolidated Return Issues
- Tax-Exempt Financings
- Transferee or Successor Liability
- S Corporations / 338(h)(10) Elections

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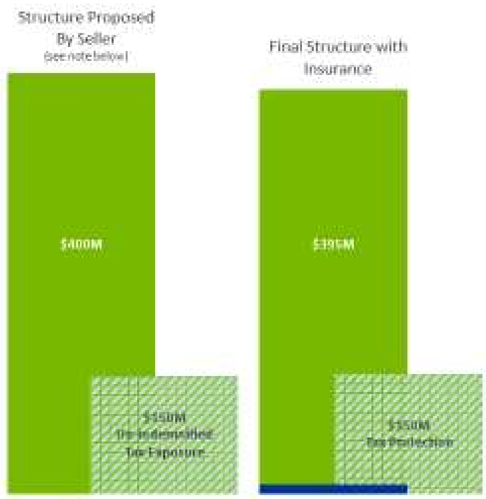
Tax Insurance – Buyer-Side Cross-Border Acquisition



Note:
- Buyer was not going to close without insurance in place due to magnitude of exposure

Situation

- US private equity fund was considering the purchase of a US company with operations in the UK and Europe
- Buyer wanted to rationalize the complex, cross border corporate structure and planned to reorganize in a manner that would be tax free in the UK
- Seller refused to indemnify Buyer for this risk; Buyer was reluctant to proceed due to the magnitude of the risk (120% of equity invested)

Solution

- A tax opinion policy (US$150M) was used to insure against an HMRC challenge above a nil retention
- The term of coverage was on 8-year period, including the statute of limitations plus a 1 year statutory waiting period required for the tax benefit
- The cost of the insurance was $10M (2.5% of transaction value); Seller paid 50% of the premium
- Three difficulties that were overcome in placing the insurance:
  - No written advisor work product;
  - 12-month waiting period before reorganization could be completed ,requiring extended policy term; and
  - Extreme pressure for a timely close by seller

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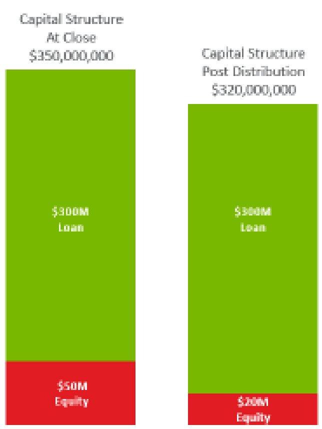
Fraudulent Conveyance Insurance



Note:
- Dividend of $30M paid to PE firm at closing

Situation

- PE firm acquires a publicly traded company (Target) through a tender offer financed by a $300M loan (Loan) and a $50M equity investment by the PE firm
- After completion of the tender offer, PE firm's acquisition sub and the target merge; additional debt financing is used to effect the merger
- Following the merger, Target distributes $30M to the PE firm
- The PE firm's financial advisor provided a solvency opinion with respect to the proposed transaction

Solution

- An insurance policy is arranged that covers the PE firm against claims by a third party alleging fraudulent or preferential transfer or other avoidance action under Federal or State law
- $50M policy; $1M retention; 6 year policy period

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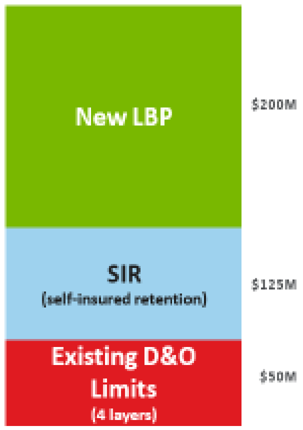
Litigation Buyout (TPG/Oxford Health Plans)



Situation

- Prior to acquisition, market cap declined by $3.5 billion in one day as a result of class action suits that were filed, alleging insider trading and a potential restatement of earnings
- Oxford only had $50M in existing D&O coverage, all of which was expected to "burn" in defense costs
- Objective was to:
  - "Cap" exposure and provide financial certainty
  - Favorably impact ability to refinance debt
  - Provide leverage against plaintiff
  - Allow management to focus on operations and to comfort regulators

Solution

- Purchased $200M in new coverage with an SIR & co-insurance (see striped area) designed to maintain proper incentives
- Wall Street pushed up stock to $44 from $11 in 1 year plus Oxford successfully refinanced bank debt (note: ***CSFB analyst reported "poison pill removed from stock; new insurance a big plus"***) - Wall Street, regulators, doctors, etc., all appeared to be satisfied with the litigation buyout policy
- Insurance "vetted" potential damages and helped solve perception issues among customers, doctors, shareholders, Wall Street, etc.
- Claim ultimately settled 4 years later for $300+ million, i.e., insurers paid claims

- Note: Insurance purchase was publicly disclosed

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Successor Liability for Products Liability

Note:

- Seller only willing to expose the escrow to legacy products liability losses

Situation

- Japanese company buying the US subsidiary of a Chinese parent with Seller retaining pre-closing liabilities
- Buyer was worried that the $4.3M escrow was insufficient given the Seller financials, historic losses, amount of product in the stream of commerce and the Buyer's difficulty in obtaining necessary information during diligence, plus "existing liability claims"
- Seller refused to indemnify Buyer for this risk; Buyer was reluctant to proceed due to the perceived risk (>50% of purchase price)

Solution

- A Successor Liability (SL) policy was purchased to back stop the obligations of the Seller and its insurers ensuring the Buyer would not be out of pocket
- The term of coverage was for a five year, claims made policy, with full prior acts coverage - $25M Legacy Products Liability Policy with $250K / claim and $500K aggregate deductibles
- The one-time premium was $2.1M (4.3% of transaction value)

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