Reactive

M&A insurance

Client objection handling

By now, you may have spoken to your clients about their deal exposure and perhaps even presented a quote for coverage. But they still aren't convinced.

To help you explain their exposure and the value of M&A insurance as a form of protection, we've put together some of the most common client objections along with key talking points to help you respond.

We know the business inside out...

1

- **Mistakes happen**. Sellers often believe that because they know their business inside out, insurance is an unnecessary cost. However, businesses are complicated and mistakes happen. The changing nature of industry regulations and unknown business fraud are common triggers for buyer claims.
- **Our policy provides coverage in these scenarios**. Our policy is designed to cover financial loss and defense costs arising from innocent misrepresentation by the sellers.
- **An M&A policy offers peace of mind**. During a sale, a retiring seller is often financially realizing their career's work. An M&A policy allows a seller to walk away from a deal without fear of future claims for as little as 1-3% rate on line.

I know the buyer – they won't claim against me...

2

- **Buyers need to put themselves first**. Sellers often have excellent relationships with buyers, which leads to the misconception that a buyer will not make a claim against them. However, the buyer's management team is compelled to do what is best for the business and owe a duty to their shareholders. If there is a breach of representations in the agreement, the buyer's management team would not be doing their job if they did not bring forward a claim.
- **Buyers are often compelled to make claims**. When a buyer acquires a business, the rate of return is paramount, and an underperforming business can incentivize a claim. This is a difficult scenario for the buyer. A claim can cause friction between the buyer and the seller, and the buyer will likely prefer not to make a claim, especially if the seller remains part of the business.
- **An M&A policy can help bridge this gap**. This is where an M&A policy can be extremely useful. If the buyer must make a claim against the seller, they can do so knowing that a policy will step in to protect the seller's proceeds.

ACQUIRECOVER

I've never had an issue before...

3

- Some issues can lay dormant. A seller may believe that because they have never experienced any major issues within their business, there is no need to obtain insurance. However, there are a multitude of issues which may not arise for a significant amount of time. For instance, the seller may represent that no income taxes are owing based on the enquiries they have made, but the company could be audited a few years later and unknown tax liabilities could come to light.
- Representations are long tailed. Representations in an acquisition agreement are usually given for up to 6 years in North America (7 years in the rest of world), which leaves a long time for liabilities to present themselves.
- Buyers valuations are often based on a multiple of profits. Due to the sale of the business, even a minor issue which would have been remedied in the ordinary course can lead to a large claim, as the claim value could be brought on a multiplied basis.

My buyer is not purchasing R&W / W&I insurance...

4

- Buyers' motivations are different to sellers. Insurance is becoming more common for M&A transactions, but there are reasons why a buyer might be comfortable without a policy. They may be taking on misrepresentation as a business risk, or they may be comfortable because of the indemnification rights the sellers have provided. They may have negotiated a robust set of representations and a large escrow, in the knowledge that the sellers are on the hook for misrepresentations.
- The buyer's risk appetite is unlikely to be the same as the seller. As sellers are the ones who are exiting their businesses, they should look to shift the risk of financial loss due to a misrepresentation to the insurance market.

I'm already covered by my insurance...

5

- Your existing insurance is unlikely to provide coverage for a breach of representations. Sellers may believe that they do not need an M&A policy if they already have management liability insurance in place. Unfortunately, this is unlikely to be the case. A tailored M&A policy provides coverage specifically for the breach of the representations and warranties, or breach of contract claim. While there can be some overlap between management liability and M&A insurance, management liability insurance does not offer the same level of protection as a fit-for-purpose M&A policy in the case of a buyer claim.