

## Protecting Your Investment in an M&A Transaction

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Prior to buying a new car, an informed consumer typically asks about the warranty associated with the purchase. The automobile industry has dictated a standard package of 3 years or 36,000 miles of bumper-to-bumper coverage for any new car. This means that if something happens to the car (that is not the fault of the new owner), the Seller (dealership/manufacturer) has the responsibility to cover any costs associated with fixing the car.

Buying or selling an insurance agency is no different. A Buyer will expect, and in most cases require, the same type of assurances from the ownership of the selling agency. A Seller will be asked to make specific representations regarding the agency. Certain clauses are customarily included within a purchase agreement to provide these types of assurances by a Seller. During the negotiation process, these provisions are typically sensitive topics for a Seller but very important to a Buyer. It is essential to understand what will be expected of a Seller to ensure no surprises pop up during negotiations. It is also important to note that a Buyer will also be asked to provide certain assurances, but typically not as extensively as the Seller.

Representations within a purchase agreement are statements made by a Buyer and Seller about the current condition of their respective businesses. Typical Seller Representations include, but are not limited to, accuracy of financial statements, lien-free assets, absence of undisclosed liabilities, state of accounts receivable & payable, entity structure, proper authority to enter into this type of agreement, and taxes.

The purchase agreement will require the Seller to provide relief to the Buyer if losses are suffered due to a breach of a Representation. An indemnification clause will be included to give guidance on the amount of relief that is available. Typically a minimum threshold, also known as a basket, must be exceeded before a Buyer is entitled to payment for the breach. This eliminates the need to address multiple small claims until they reach the threshold. Baskets can work in one of two ways: they can be viewed as a deductible amount where the seller is only responsible for amounts over and above the basket amount, or the entire amount could be due, but not until the basket amount is reached.

A cap will typically also be used for indemnification. This is important to a Seller because it will limit their maximum liability to a specific dollar amount. It is very common within the insurance industry for the indemnification cap to be equal to the guaranteed purchase price for the agency.

	Agency Average	Bank Average	Nat'l. Broker Average	Total Average
Indemnification Cap % of Purchase Price	83%	80%	80%	80%
Time Period Indemnification (yrs)	2.00	2.60	2.42	2.43
Basket % Pro Forma Revenue	0.6%	1.0%	0.9%	0.9%
Basket % Guaranteed Purchase Price	0.6%	0.6%	0.8%	0.7%
Escrow % Pro Forma Revenue	10.8%	12.1%	10.6%	11.2%
Escrow % Guaranteed Purchase Price	6.7%	7.0%	5.5%	6.1%
Time Period for Escrow (yrs)	1.5	1.5	1.36	1.42

*Data set includes transactions from MarshBerry's database spanning from 2008-2010. Buyers involved in these transactions include banks, credit unions, national brokers and independent agencies.*

Some buyers will also require that an escrow account be established to hold a portion of the guaranteed purchase price. This provides assurances to the Buyer that the Seller has available resources to meet potential indemnification claims. There will be a finite period in which indemnification claims can be made, called a Survival Period, and the escrow period typically will mirror this same timeframe.

It is important to note that some breaches of representation are not subject to the indemnification cap or timeline. These typically include liabilities from taxes and anything dealing with fraudulent activity by the Seller. The above mentioned items and thresholds are always negotiable within a purchase agreement. The important thing to remember is that they are common in most agreements and you should be prepared to discuss them with your legal counsel and the Buyer or Seller across the negotiation table from you.

## MarshBerry M&A Advisory Services

### Deal Strategy

1. Acquisition Planning
2. Deal Return Modeling
3. Strategic Options Analysis
4. Alternative Buyer Comparison

### Deal Preparation

1. Sale Preparation Management
2. Offering Memorandum Development
3. Strategic Pitch Book Design
4. Candidate Profile Creation

### Deal Representation

1. Buy Side Representation
2. Sell Side Representation
3. Letter of Intent Development / Negotiation
4. Creative Deal Structure Alternatives

### Deal Analysis

1. Agency Fair Market Valuation
2. Market Comparables / Deal Benchmarking
3. After-Tax Return Optimization
4. IRR, ROI and EPS Analysis

### Deal Execution

1. Diagnostic and Confirmatory Due Diligence
2. Intangible Asset Allocation - GAAP Reporting
3. Fairness Opinion
4. Definitive Agreement Best Terms / Conditions

### Post-Deal Management

1. Post-Closing Integration
2. Goodwill Impairment Testing
3. Peer-to-Peer CEO Exchange
4. Earn-Out Maximum Consultation

## SNL Financial M&A Advisor Rankings

Insurance Broker Merger & Acquisition Deals  
1997-2009

Rank	Firm	1997 - 2010 # of Deals	2009 # of Deals
1	Marsh Berry & Co. Inc.*	275	23
2	Hales & Co. Inc.	123	14
3	Reagan Consulting Inc.	113	7
4	Mystic Capital Advisors Group, LLC	95	11
5	Macquarie Capital Advisors Group, LLC	44	8
6	Bank of America Merrill Lynch	22	2
7	B.H. Burke & Co., Inc.	16	0
7	Harbor Capital Advisors, Inc.	16	0
9	Keefe Bruyette & Woods, Inc.	15	0
9	Sica Consultants, Inc.	15	3
11	North Bridge Advisors, Inc.	13	0
11	Sandler O'Neill & Partners, L.P.	13	1
13	Philo Smith & Co.	10	0
14	Credit Suisse (USA) Inc.	9	0
15	Business Management Group, Inc.	8	0
15	Curtis Financial Group, LLC	8	0
15	J.P. Morgan Securities, Inc.	8	0
18	Boenning & Scattergood, Inc.	7	0
18	Gill and Roeser Holdings, Inc.	7	0
18	Nexus Group, Inc.	7	0
21	2nd Generation Capital Corporation	6	0
21	Garland McPherson & Associates, Inc.	6	0
21	Goldman, Sachs & Co.	6	0
24	Lazard Freres & Co. LLC	5	0
24	Wells Fargo Securities, LLC	5	0
26	Austin Associates, LLC	4	0
26	Nomura Securities International, Inc.	4	0
26	Piper Jaffray & Co.	4	1
26	Russell Miller Corporate Finance, Inc.	4	0
26	UBS Investment Bank	4	0

All States // Completed Transactions  
Whole deals as reported by SNL Financial, January 15, 2010

\* MarshBerry has closed 28% of total deal flow since 1997

MarshBerry's clients are committed to realizing their fullest potential with respect to growth, profit, survival and shareholder value. Our agent, broker, bank and carrier clientele engage us to achieve their goals within the retail and wholesale channels of the insurance distribution system. Our unparalleled industry-specific services include consulting, performance benchmarking, peer-to-peer exchange networks, merger and acquisition intermediation and producer recruiting.