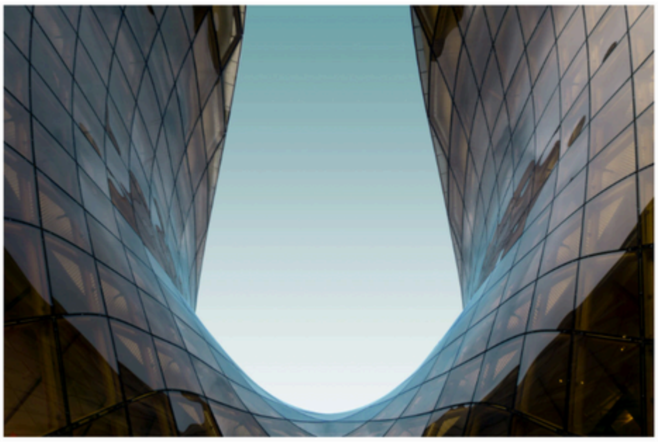

The rise of RWI in GP-led secondaries

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14.10.2025 – Articles

As representation and warranty insurance (RWI) becomes standard in GP-led transactions, Sidley Austin's Gertner, Goldstein and Lowe detail why this matters and how it's being implemented.

As GP-led secondary transactions have surged in recent years, so too has the use of representation and warranty insurance (RWI). Both GPs and LPs are looking for ways to manage risk and protect themselves from potential liabilities.

In a continuation fund, for example, RWI acts as a safety net for both sides. It covers breaches of the representations and warranties made during the deal. For the buyer (the new fund and its LPs), RWI means they're covered, to the extent of the policy, if any of the seller's warranties turn out to be inaccurate. For the seller (the existing fund's investors), it means proceeds can be distributed straight away, without needing to hold back funds for possible claims.

A quick refresher: what's a GP-led secondary?

A GP-led secondary is a process driven by the fund sponsor to give existing LPs liquidity while the GP continues managing the asset(s). It can take many forms – a continuation vehicle, a strip sale, a tender offer or a preferred equity structure, to name a few.

The motivations vary, but the main benefits tend to include:

Liquidity: Some LPs want to exit early for strategic or liquidity reasons. A GP-led deal can provide liquidity, when other alternatives may not be as attractive.

Extended hold: The GP might see further growth potential in the assets and want to hold for longer. A GP-led allows that while letting LPs choose whether to stay invested or cash out.

Market timing: Favourable market conditions can make it a good moment to restructure the fund, bring in new investors and fund follow-ons.

Resetting carry: Over time, the incentive alignment under an existing carried interest structure may diminish. Moving assets into a new fund resets the carried interest, re-aligning incentives for the GP team and the investors.

Where RWI fits into the process

Every GP-led is slightly different, but the steps usually look something like this:

- Placement agent engaged to manage investor outreach and structure the deal.
- Due diligence at fund level and portfolio level to assess financials, tax and any change-of-control considerations.
- Sounding out existing investors to check appetite and readiness.
- NDAs signed and a data room opened for potential investors.
- Auction and structuring to secure bids and finalise deal terms.
- RWI arranged to cover potential breaches of reps and warranties.
- Documents negotiated and signed.
- LP or LPAC approval obtained.
- LP elections: Existing LPs choose to roll or sell.
- Closing and syndication: Lead investors may syndicate interests to smaller participants post-close.

Why RWI matters in GP-leds

Existing LPs want a clean exit, without future liability. That's why these deals are usually done with very limited – and heavily qualified – representations. They're also often no-seller-indemnity transactions, meaning the selling fund has no ongoing obligations to the buyer if those reps turn out to be false.

That leaves buyers exposed. Unless there's outright fraud, they have no recourse if something proves inaccurate.

Enter RWI. In a traditional M&A deal, RWI steps into the seller's indemnity obligations, covering breaches of reps and warranties. Historically, insurers were cautious about GP-leds because of the lighter diligence and the dual role of the GP (both seller and buyer), but over the past few years, insurers have warmed to the structure. There are now multiple providers willing to cover these transactions, albeit with some limits compared to standard M&A policies.

How RWI in GP-leds differs from M&A-style insurance

In M&A, RWI covers unknown risks and requires deep, market-standard diligence. Anything not diligenced, or that's flagged as a known issue, won't be covered.

In GP-leds, diligence is typically lighter and the reps often "knowledge qualified". The GP, after all, is on both sides of the table. In a normal acquisition, that lack of independence would make insurers nervous. But RWI underwriters have adapted. They'll still cover GP-leds, but usually add those knowledge qualifiers directly into the policy wording.

So while the coverage isn't as broad as in a full-blown M&A process, RWI in GP-leds still provides meaningful protection for LPs in the new fund – particularly where there'd otherwise be none.

Cost and who pays

Premiums usually sit around 1.7%-2% of the policy limit, with coverage typically set at 20% of the transaction value. Underwriting fees also apply.

Who picks up the bill varies. Traditionally, the selling fund paid. More recently, continuation vehicles have taken on all or part of the cost. The trend seems to be swinging back towards allocating some to the selling fund – but as ever, it's up for negotiation.

A few practical tips

RWI has become a standard feature in GP-leds, especially single-asset deals, and it's likely to stay that way.

The key is timing. Bring in an insurance broker early. While policies can be placed in a few days, a few weeks is far more realistic – and safer. That lead time allows the indemnity structure, diligence and policy terms to be properly aligned, avoiding last-minute surprises.

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Footnote: Helena Anderson (Trainee Associate) also contributed to this article.