

## Jennifer Wisinski and Rachael Apfel in *The Review of Securities & Commodities Regulation: Current Trends in Indemnification Provisions in Acquisition Agreements*

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Indemnification provisions serve a critical role in private acquisition agreements by allocating risk between buyer and seller. In recent years, M&A lawyers have witnessed a significant shift in the content of these provisions. Notably, many of the changes can be attributed not to whether it is a “buyer’s market” or “seller’s market,” but whether the buyer purchased representation and warranty insurance (“RWI”) for the transaction. Who would have expected that RWI would have had such a significant impact on the negotiation and drafting of a purchase agreement? And, what will happen if and when this insurance is not as available or affordable as it is today — will we see a shift back?

This article summarizes recent trends in indemnification provisions, as well as recent developments on how to protect the seller’s attorney client privilege for deal communications following a sale. Although the attorney-client privilege provision generally is not considered to be part of the indemnification provisions, it can nonetheless have a significant impact on post-closing disputes.

Excerpted from [The Review of Securities & Commodities Regulation](#). To read the full article, click [on the PDF linked below](#):

[Wisinski-Apfel-Indemnification-Provisions.PDF](#)