

# M&A Insurance for LP-led secondaries

**HOWDEN**

The sale of limited partner (“LP”) interests has remained a predominant feature of the secondaries market, with transaction volumes exceeding \$60 billion in 2022. However, these transactions have largely remained uninsured, with buyers relying on traditional forms of recourse under the transaction documents.

Applying a market-leading approach and extensive experience from GP-led secondaries and buyout transactions, Howden placed one of Europe’s first warranties and indemnities (“W&I”) insurance policies on an LP-led secondaries transaction in Q4 2022. This facilitated nil recourse liability and a clean exit for the selling LP, while providing absolute cover for the incoming LP buyer with broad policy protection from A-rated insurers.

While recent data indicates that the growth of GP-led secondaries has outpaced that of LP-led transfers, the latter remains the core of

the secondaries market. Macroeconomic events of 2022 and 2023 have caused LPs to re-evaluate and rebalance their portfolios, to manage over-allocation and the “denominator” effect, or simply to require liquidity. Despite the number of these transactions taking place, they have largely remained uninsured due to non-availability of the traditional underlying comfort factors and prerequisites for W&I insurance. Pre-requisites such as due diligence, disclosure, and a fulsome data room, which are not a common feature of LP exits.



In Q4 2022 Howden supported a leading global secondary private equity buyer in their acquisition of fund interests from four selling vehicles (managed by the same ultimate seller). The underlying interests consisted of investments in three funds managed by the same general partner. The sellers intended to wind up the selling vehicles and achieve a clean break, which meant that all recourse was to be transferred to an insurance policy covering:

- A standard set of fundamental warranties speaking to title, capacity, and authority;
- A wider set of non-fundamental warranties including compliance with laws, distributions and contributions, litigation, conduct since cut-off date, etc.; and
- A customary scope of Excluded Obligations, including those speaking to LP clawbacks and seller and partnership taxes.

Borrowing from principles agreed and developed by Howden on GP-led secondaries transactions and direct buyouts, Howden structured a policy that provided absolute cover for all warranties and Excluded Obligations without any seller awareness qualification.

The output of a W&I policy is typically a function of the available diligence. However, given the very limited diligence and disclosure on this transaction (as is standard on LP transfers more generally), Howden worked closely with the buyer and its lawyers to undertake a targeted, DD-style Q&A exercise focused on ownership, historic commitments, and liabilities related to the interests being acquired. The process included:

- A focused title report to allow absolute cover for fundamental warranties as well as Excluded Obligations speaking to partnership documents;
- DD-style questionnaires with the exiting seller, incoming buyer, and a limited set of questions for the general manager of the underlying funds;
- Q&A focused on the subject matter of warranties and Excluded Obligations; and
- No specific requirement for a disclosure letter or data room.

The participation of the underlying GP, even though limited, provided additional comfort for the insurer. This allowed a true “clean break” for the exiting LP and a robust recourse mechanism for the incoming buyer.



## Contact us

While the LP-led secondaries market may be more mature, it remains largely untapped in the application of M&A insurance. Howden can help structure an insurance product that can act as a deal tool to unlock negotiations, enable cash release and provide robust protection for incoming LPs. To discuss further, please get in touch with our secondaries team.



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