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No Undisclosed Liabilities Schedule: What to Disclose

> Laurent Capital is an independent M&A advisory firm headquartered in San Jose, California. It advises owners of founder-owned, family-owned and sponsor-backed B2B companies on sales, acquisitions and recapitalizations.

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Executive Summary

A **no undisclosed liabilities** (NUL) representation is a statement by the seller that the company has no liabilities or obligations of any kind beyond those on a stated balance sheet or identified elsewhere, subject to negotiated qualifications (www.goodwinlaw.com). Goulston & Storrs, a law firm (in a September 2024 article republished by JD Supra), reports that across the American Bar Association (ABA) Private Target Deal Points Studies an NUL representation appeared in **92% to 99%** of reported transactions (www.jdsupra.com), and the 2023 edition drew on **108** acquisition agreements (media.taftlaw.com). Goodwin, another law firm, separately relays SRS Acquiom data that **97%** of 2024 deals in SRS's 2025 study contained one (www.goodwinlaw.com). The samples differ and should not be added together.

The practical point for an owner or CFO is that the clause is only as wide as its wording. In two public-company agreements signed in autumn 2025, one NUL representation reaches liabilities "whether or not required to be recorded or reflected on a balance sheet under GAAP" (www.sm-energy.com), while the other covers only liabilities that would be required by GAAP to be reflected on the balance sheet (www.alkermes.com). Those agreements illustrate drafting variety; they are not private-company benchmarks. Practitioner sources report that the broader, non-GAAP form is the majority approach, with GAAP-limited language a minority position that is becoming more common (www.jdsupra.com). Knowledge qualifiers on this representation are very rare, appearing in less than 6% of reported transactions (www.jdsupra.com).

This report therefore proposes an **obligation-to-evidence register**: a fact-gathering and reconciliation aid that starts from the representation's actual population, reporting date and exceptions, then looks beyond the general ledger to contracts, operating logs and the managers who hold the facts. It keeps two questions apart. One is whether a commitment is recorded under accounting rules, where recognition depends on tests such as "probable and reasonably estimable" (viewpoint.pwc.com). The other is whether the same fact falls inside the representation and needs a schedule reference. Disclosure to the buyer outside the schedules generally does not relieve the seller of the duty to list an item (www.arnoldporter.com).

The evidence base has limits. SRS Acquiom's claims report covers more than 850 acquisitions whose escrows were fully released between Q3 2022 and Q2 2024 (www.srsacquiom.com), and Goodwin reports that undisclosed liability claims were 24% of breach-of-representation claims in that sample (www.goodwinlaw.com). That is a historical frequency within one service provider's cohort, not a 2026 market-wide rate or any seller's probability of a claim. This article is educational, not legal, tax or accounting advice.

Introduction and Background

Owners preparing to sign a sale agreement often assume that a clean trial balance answers the "no undisclosed liabilities" question. It does not, for a simple reason: the representation is a contractual statement with its own population of obligations, its own reference date and its own exceptions, while a trial balance is a record produced under accounting rules. The two overlap, but they are not the same set. The NUL representation is described by practitioners as one of the principal tools by which buyer and seller allocate the risk of unknown target liabilities (www.jdsupra.com).

This report is written for founders, family owners and chief financial officers (CFOs) of business-to-business companies with roughly $5 million to $150 million of revenue who are close to signing. It addresses a narrow decision: which potentially unrecorded commitments deserve factual inquiry and review with transaction counsel and the company's certified public accountant (CPA) before the representation is made. It does not tell any seller what to disclose or withhold, does not offer a model clause, and does not set an accounting recognition policy. Nothing here is legal, tax or accounting advice, and those professions decide treatment. Price-adjustment mechanics such as working capital pegs and debt-like items are outside this article's scope and are covered elsewhere.

Three boundaries organize the analysis. First, **representation coverage is separate from balance-sheet recognition**: a fact can require examination under the NUL representation, the contracts representation and the financial statements representation even if it is not recorded as a payable. Second, **not every unbooked commitment is a liability, and not every disclosed obligation is an indemnifiable breach**; those conclusions belong to counsel. Third, the data available are historical and drawn from specific cohorts, so they inform preparation but do not predict outcomes.

The sections that follow define the representation, compare real agreement wording, explain why accounting records and representation scope diverge, set out the register, cover disclosure schedule mechanics, and review what the available studies can and cannot show. Hypothetical examples are labeled as such.

Definition and Taxonomy: What the Representation Covers

The basic structure

Goodwin describes the NUL representation as an affirmation that the target has no liabilities or obligations of any kind, except those on its balance sheet or otherwise identified, subject to negotiated qualifications (www.goodwinlaw.com). Permanent Equity's deal-terms guide adds that the representation effectively requires

the seller either to disclose unknown liabilities in the disclosure schedules or to remain exposed after closing (www.permanentequity.com). It matters most in a stock sale, where liabilities pass to the buyer by operation of law (www.permanentequity.com).

Three drafting families

Practitioner sources describe a spectrum rather than a single clause.

- **Buyer-oriented form.** Fredrikson calls this "a blanket warranty" that there are no liabilities other than those reflected on the balance sheet (www.fredlaw.com). The ABA study's buyer-favorable formulation is the same idea: no liability except those reflected or reserved against in the balance sheet (media.taftlaw.com).
- **GAAP-limited seller form.** The seller restricts the representation to liabilities of a nature required to appear on a balance sheet under generally accepted accounting principles (GAAP). Fredrikson notes this form eliminates the immaterial, the unforeseen and the highly contingent (www.fredlaw.com).
- **Middle-ground forms.** Buyers who resist GAAP limits often accept narrower alternatives, such as materiality qualifiers or specified exclusions, rather than a knowledge qualifier (www.permanentequity.com).

Goulston reports that NUL representations are usually not qualified by reference to GAAP, in approximately 60% to 80% of reported transactions across the ABA studies (www.jdsupra.com). It also notes the seller-friendly GAAP qualification is seen more often over time while remaining a minority position (www.jdsupra.com). The reason GAAP language is consequential is that GAAP liabilities can be a relatively narrow subset of a target's known and unknown liabilities (www.jdsupra.com). Ordinary-course business obligations, including significant contract commitments, are typically not liabilities included on a GAAP balance sheet (www.jdsupra.com), and liabilities that cannot be disclosed on a balance sheet because they are unknown would be excluded as well (www.jdsupra.com).

Exceptions and the reference date

Most forms have exceptions keyed to a **reference balance sheet date**. Sellers often seek a carve-out for ordinary-course liabilities incurred since that date (www.jdsupra.com), and a seller-oriented sample excludes liabilities disclosed on any other schedule (www.jdsupra.com). Goodwin's seller-favorable sample adds a Material Adverse Effect (MAE) qualifier, which it says sets a very high bar for buyer claims (www.goodwinlaw.com). Exceptions are where the owner's preparation work concentrates, because the date and the carve-outs define what must be traced.

Qualifiers and overlap with other representations

Knowledge qualifiers are uncommon here. Goulston puts them at less than 6% of reported transactions. Where a knowledge standard is used in agreements generally, Fredrikson notes it is usually constructive knowledge on a reasonable or due-inquiry basis, not purely actual knowledge (www.fredlaw.com), and the same guide calls a knowledge qualifier a non-starter because the buyer's purpose is to avoid carrying unknown liabilities (www.permanentequity.com). Sellers argue the representation may conflict with topic-specific representations (www.jdsupra.com) and describe a broad version as redundant or duplicative

(www.jdsupra.com). Goulston observes that NUL representations are usually within the indemnity basket and cap, so the buyer already bears some unknown-liability risk (www.jdsupra.com). For the register, the lesson is overlap: the same fact (a warranty obligation, a supplier minimum) can sit under the NUL representation and under topic representations at once.

Reading the Population, Date and Exceptions in Real Agreements

Wording differs enough between negotiated agreements that a seller should read the actual draft, not a summary. *Table 1* below compares five publicly filed agreements on four dimensions: the population of obligations, the link to GAAP, the reference date, and the exceptions. The two autumn 2025 public-company agreements are the most recent; the three older filings include asset purchase agreements, which are structurally closer to a private-company sale. None is presented as a model clause or as evidence of lower middle market prevalence.

Agreement	Population of obligations	Link to GAAP recognition	Reference date and exceptions
SM Energy / Civitas merger agreement, dated as of November 2, 2025, Section 3.7 (www.sm-energy.com)	Liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise (www.sm-energy.com)	Expressly extends to liabilities whether or not required to be recorded or reflected on a balance sheet under GAAP (www.sm-energy.com)	Exception for amounts accrued or reserved in the balance sheet as at June 30, 2025 (www.sm-energy.com); ordinary-course exception that does not cover liabilities from certain claim types (www.sm-energy.com); exception for amounts not reasonably expected to have a Company Material Adverse Effect (www.sm-energy.com)
Alkermes / Avadel transaction agreement, dated as of October 22, 2025, Section 6.1(g) (www.alkermes.com)	Liabilities of any kind whatsoever, accrued, contingent, absolute, determined, determinable or otherwise (www.alkermes.com)	Limited to liabilities that would be required by GAAP to be reflected on the balance sheet (www.alkermes.com)	Exceptions include ordinary-course liabilities consistent with past practice since the balance sheet date (www.alkermes.com); a separate sentence addresses off-balance sheet arrangements described in SEC documents (www.alkermes.com)
Luna Technologies / Micron Optics asset purchase agreement, October 15, 2018, Section 3.13 (www.sec.gov)	Liabilities with respect to the Business or the Purchased Assets only (per the filed text quoted in the next cell)	Limited to the type required to be reflected on a balance sheet under "Applicable Accounting Principles" (www.sec.gov)	Exception for liabilities reflected or reserved in the Balance Sheet or Interim Balance Sheet (www.sec.gov)
Mobivity / Sequence LLC asset purchase agreement (filed form, blank date), Section 3.08	Broad "any kind whatsoever" form for the Business, plus existing conditions that could reasonably be expected to result in a liability (www.sec.gov)	No GAAP-recognition limiter appears in the filed text (per the provisions quoted in this row)	Exception for liabilities disclosed or provided for in the unaudited balance sheet as of August 31, 2012 (www.sec.gov)

Agreement	Population of obligations	Link to GAAP recognition	Reference date and exceptions
Labor Ready / MDT Personnel asset purchase agreement, dated as of February 4, 2013, Section 5.5 (www.sec.gov)	Indebtedness or Liabilities of the Sellers	Reaches liabilities whether or not GAAP requires them to be reflected on a balance sheet (www.sec.gov)	Exceptions for items reflected, reserved or described in the Balance Sheet or notes (www.sec.gov); balance sheet date of December 31, 2011 (www.sec.gov); ordinary-course exception tied to a $10,000 threshold (www.sec.gov)

The table shows four variables that a register must pin down before any fact is traced. First, the **population** can be limited to a business or purchased assets (Micron Optics) or extend to the company and subsidiaries (SM Energy). Second, the **GAAP link** can narrow the clause (Alkermes) or deliberately widen it (SM Energy). Third, the **reference date** is a specific balance sheet, not "today", so the same obligation can fall on either side of it. Fourth, the **exceptions** are not uniform: a threshold, an ordinary-course carve-out, a materiality-type qualifier and a schedule exception each require different evidence. The Mobivity example also shows that some forms look at conditions that could reasonably be expected to result in a liability, which is a different inquiry from asking what is on the ledger (www.sec.gov).

Two cautions apply. The ABA's 2023 study sample consisted of 108 acquisition agreements (media.taftlaw.com), 18% of them asset deals (media.taftlaw.com), so even the best-known prevalence data mix structures. And a public-company merger agreement is a different negotiation setting from a private-company sale; the SM Energy and Alkermes clauses show variety, nothing more.

Why a Clean Trial Balance Does Not Settle the Scope

Accounting rules govern when an obligation is **recognized** on the balance sheet or **disclosed** in notes. The representation governs what the seller **states to the buyer**. This section summarizes, from standard-setter reproductions and accounting-firm guidance, why those sets diverge. It is an orientation, not accounting advice.

Contingencies: recognition and disclosure are different tests

Under the loss contingency guidance (Accounting Standards Codification, or ASC, 450-20), PwC states that a loss contingency is accrued if it is both probable and reasonably estimable (viewpoint.pwc.com), and that disclosure is required when it is not both probable and reasonably estimable (viewpoint.pwc.com). KPMG's handbook explains that if a loss is not probable, no contingent liability is recorded (kpmg.com), that disclosure applies when a loss is at least reasonably possible (kpmg.com), and that a remote loss is neither recognized nor disclosed (kpmg.com). PwC adds that disclosure is generally not required for an unasserted claim (viewpoint.pwc.com). A matter outside both recognition and disclosure can still be inside a broad NUL representation, which is why a general ledger review alone does not close the question.

The Securities and Exchange Commission (SEC) staff has said, for public registrants, that a statement that a contingency is not expected to be material does not satisfy the disclosure requirement where a material additional loss is reasonably possible (www.sec.gov). That is a public-company rule, cited only to show that "not expected to be material" is no substitute for analysis.

Commitments, leases, warranties and customer credits

- **Purchase commitments.** ASC 440 defines an unconditional purchase obligation as an obligation to transfer funds in the future for fixed or minimum amounts or quantities of goods or services (kpmg.com). KPMG notes the disclosure rules turn on whether the obligation is recognized on the balance sheet (kpmg.com) and that disclosure is triggered only when specific characteristics, including negotiation as part of arranging financing for the providing facilities, are present (kpmg.com). A supplier minimum can therefore be outside both the ledger and the notes of a private company and still be a commitment the buyer will ask about.
- **Leases and service contracts.** Lessees record a right-of-use asset and a lease liability for leases other than short-term ones (viewpoint.pwc.com), but variable payments based on performance or use are excluded from lease payments (viewpoint.pwc.com). EY notes that judgment may be required in applying the lease definition to contracts with significant services (www.ey.com).
- **Warranties.** KPMG, reproducing ASC 460, states that losses from warranty obligations are accrued when the contingency conditions are met (kpmg.com). An unresolved repair obligation that has not been estimated can sit short of that threshold.
- **Customer credits and rebates.** PwC lists price concessions, volume discounts, rebates, refunds and credits as forms of variable consideration under the revenue standard (viewpoint.pwc.com), notes that a refund liability is an obligation to transfer cash (viewpoint.pwc.com), and observes that consideration payable to a customer includes credits applied against amounts the customer owes (viewpoint.pwc.com). Whether a service credit is recorded depends on facts and estimates that the CPA assesses.

Events after the balance sheet date

PwC distinguishes events providing additional evidence about conditions that existed at the balance sheet date from events about conditions that did not exist then (viewpoint.pwc.com). The NUL representation asks a different question: whether the obligation falls inside the stated population and exceptions, which often include an ordinary-course carve-out for the period after the reference date (www.jdsupra.com). The register therefore records the **date incurred** for every item.

Off-balance-sheet items in diligence

Advisory firms treat unrecorded items as a standard diligence subject. Plante Moran lists warranty accruals, earned but unpaid employee benefits and purchase commitments among commonly unreported liabilities in sell-side diligence (www.plantemoran.com). Baker Tilly says diligence adjustments can include the effects of unrecorded or under-recorded liabilities (www.bakertilly.com), and Grant Thornton notes that management interviews often surface potential off-balance sheet liabilities (grantthornton.ch). For public companies, the SEC's Regulation S-K Item 303 asks for analysis of material cash requirements from known contractual and other obligations (www.ecfr.gov), even where certain arrangements result in no obligations being reported on the consolidated balance sheet (www.ecfr.gov). Auditors search for unrecorded liabilities, a procedure the CPA Journal calls fundamental and almost universally applied (www.cpajournal.com). A private seller can borrow the logic of those procedures.

The Obligation-to-Evidence Register

The register is a working document for the CFO, transaction counsel and the CPA. It does not decide treatment. Its purpose is to make sure that facts are found, dated, owned and cross-referenced before the representation is given.

Step 1: Start from the representation, not the ledger

Obtain the draft representation and extract four items:

- **Population:** company only, subsidiaries, or business and purchased assets.
- **Reference date:** the specific balance sheet the exceptions key to.
- **GAAP link or its absence:** whether the clause reaches obligations that accounting rules do not record.
- **Exceptions:** ordinary course, thresholds, schedules and qualifiers.

Ask counsel how overlapping representations, such as contracts, financial statements, warranty and compliance, interact with it; sellers most often point to the financial statements representation as existing protection (www.jdsupra.com). Everything in the register is then keyed to that structure.

Step 2: Name evidence owners across functions

A 2015 Arnold & Porter alert notes that sellers must rely on employees in each unit of the organization to prepare schedules (www.arnoldporter.com), and a sell-side law firm cautions that the work cannot be delegated entirely to lawyers (aegislaw.com). For this register:

- **Finance:** accruals, reserves, payables aging, vendor statements, subsequent disbursements.
- **Sales and customer success:** credits, rebates, most-favored-customer terms, refund commitments, open customer disputes.
- **Operations and service:** warranty and repair logs, service-level misses, open work orders, return authorizations.
- **Procurement:** minimum-purchase and take-or-pay terms, open purchase orders, supplier disputes.
- **Human resources:** earned but unpaid benefits, severance and retention promises, pending changes in terms.
- **Legal or contracts administration:** guarantees, indemnities, side letters, letters of credit.

Step 3: Build the register

Table 2 below shows the proposed columns, populated with four **(Hypothetical Example)** rows. Every figure and counterparty is invented to illustrate the format. Amounts that cannot be known are recorded as an explicit unknown range rather than left blank, and a commitment ceiling is never added to a balance already recorded.

Item	Entity / counterparty	Contract / trigger	Amount or range	Date incurred	Possible exception	Ledger location	Operational evidence	Owner	Counsel / CPA review	Schedule ref. / change
Customer service credits (hypothetical)	OpCo / Customer A	Master agreement service-level schedule; uptime below threshold	Unknown; range to be set from monthly uptime data	Months of the service-level miss	Ordinary-course carve-out if after reference date	Possibly contra-revenue or none	Uptime reports, ticket log	Head of Operations	Open	To be assigned; new since v1
Supplier minimum purchase (hypothetical)	OpCo / Supplier B	Supply agreement annual minimum; shortfall at period end	Commitment $600K; purchased to date $450K; unfulfilled $150K (not summed)	Contract signing; shortfall measured at period end	Contract-performance carve-out, if the draft has one	Purchases only; commitment likely off-ledger	Contract, purchase order history	VP Procurement	Open	To be assigned
Unresolved warranty repair (hypothetical)	OpCo / Customer C	Product warranty clause; repair notice received	Unknown range pending engineering estimate	Date of customer notice	Scheduled under warranty representation, if listed	Warranty reserve, if any	Service tickets, return log	Service Manager	Open	Cross-reference to warranty schedule
Disputed vendor invoice (hypothetical)	OpCo / Vendor D	Services agreement; invoice of $120K	$120K invoice; $90K recorded; $30K disputed	Invoice date	Open question for counsel	$90K in payables	Invoice, dispute correspondence	Controller	Open	Updated after vendor reply

Step 4: Reconcile, do not net

The register's discipline is reconciliation. Using the hypothetical invoice row:

- Invoice amount: $120K (hypothetical).
- Recorded in payables: $90K (hypothetical).
- Difference: $30K, described as disputed by the company (hypothetical).

The reconciliation shows only that $30K is not recorded. It does not establish that the $30K is legally owed, deductible or recoverable; those conclusions belong to counsel and the CPA. Similarly, for the supplier minimum, the $600K commitment and the $450K already purchased are not two exposures. The register shows the commitment, the portion already performed and the remainder, and counsel decides what the representation requires.

Step 5: Track events between the balance sheet date, signing and closing

Add a "date incurred" and "change since prior version" entry for every row, and refresh the register at signing and again before closing. A sell-side law firm notes that disclosures are usually made as of signing because the schedules are attached to the agreement (www.goulstonstorrs.com), and that an update to the schedules is essentially an amendment to the representations (businesslawtoday.org). New facts arising after signing therefore need a decision about notice, not silence (see the next section).

Disclosure Schedules: Effective Disclosure, Updates and the Record

What a disclosure schedule is

Goulston describes disclosure schedules as containing fact-specific disclosures or exceptions to specific statements in the representations (www.goulstonstorrs.com). Arnold & Porter separates **lists**, where the schedule supplies information a representation calls for, from **exceptions** (www.arnoldporter.com), and says exceptions limit the scope of the seller's representation (www.arnoldporter.com). A seller-side firm states the practical consequence in plain terms: items properly disclosed on the schedules are not breaches of the representations (aegislaw.com), a point counsel will qualify for the agreement at hand.

Data-room upload is not the same as scheduled disclosure

Arnold & Porter states that providing an item to the buyer separately from the schedules generally does not relieve the seller of its obligation to schedule it (www.arnoldporter.com). A seller-side firm adds that thin schedules tend to trigger more diligence questions, not fewer (aegislaw.com). Cross-referencing language also varies. A 2015 Morgan Lewis seminar deck, offering sample drafting rather than market data, shows a "reasonably apparent on its face" standard for applying a disclosure to other sections (www.morganlewis.com). Whether a disclosure applies beyond the section where it appears is a drafting point for counsel, and the register should record both the section the item is scheduled under and any other representation it touches.

Over-disclosure and under-disclosure

Practitioner views are balanced:

- **Arguments for fuller disclosure:** Arnold & Porter says over-disclosure can be useful to a seller because it reduces the risk of liability (www.arnoldporter.com), and Benchmark International says it tends to be better than under-disclosure, tempered by the buyer's likely reaction (benchmarkintl.com). Heritage Law notes that listing exceptions lets the seller avoid post-closing liability for misrepresentations (www.heritagelawwi.com).
- **Cautions:** pages and pages of disclosure might make the buyer concerned about the level of risk (www.arnoldporter.com), and the schedules are not the proper forum in which to first inform the buyer of bad news (www.arnoldporter.com).

None of these sources decides what a particular seller should schedule; the owner, CFO and counsel make that call fact by fact.

Timing and ownership

Arnold & Porter says sellers generally prepare the first draft (www.arnoldporter.com) and that the process is iterative and concurrent with negotiating the agreement (www.arnoldporter.com). One sell-side firm advises starting when the letter of intent (LOI) is signed (aegislaw.com) and says four to six weeks is normal (aegislaw.com); Morgan Lewis observes that schedules are all too often ignored until late in the process (www.morganlewis.com). The register is built to start early for this reason.

Updates between signing and closing

Update rights vary, and each point below is an agreement-specific term for counsel:

- **Silence:** where the agreement is silent, the seller likely cannot update unilaterally (www.goulstonstorrs.com).
- **Compromise:** the seller cannot update so as to cure breaches in effect at signing but may update for new matters (www.goulstonstorrs.com).
- **Location:** where updates are allowed, they usually appear in the interim covenants section (businesslawtoday.org).
- **Closing conditions:** representations commonly must remain true and correct as of closing (www.goulstonstorrs.com), and buyers may be less willing to allow updates against a negative representation such as a "no liabilities" statement (businesslawtoday.org).
- **Notice and indemnity:** Goulston, citing the ABA studies, adds that a majority of reported deals include an express obligation on the seller to disclose breaches (www.goulstonstorrs.com) and that buyers' indemnification rights are increasingly not limited by permitted new disclosures (www.goulstonstorrs.com).

Representations and warranties insurance (RWI) adds another layer. A practitioner summary says coverage will not extend to newly disclosed facts unless the insurer expressly agrees (businesslawtoday.org), a 2015 Faegre Drinker summary lists issues identified in the disclosure schedules among common RWI exclusions (market terms may have changed since) (www.faegredrinker.com), and a COVID-19-era Haynes Boone alert says the "interim breach" exclusion is generally defined as a breach whose facts and circumstances occurred between signing and closing and of which a member of the buyer's deal team obtained actual knowledge (www.haynesboone.com). RWI was identified on approximately 46% of deals in SRS Acquiom's 2026 deal terms study, as summarized by Fasken (www.fasken.com). Policy terms are for the broker and counsel.

Preserving the agreed record and assigning follow-up

After signing, the register becomes a record. Suggested practices for discussion with counsel (not legal advice):

- **Freeze a version** at signing and at closing, with the schedule references each item carries.
- **Keep the evidence file** (contracts, logs, correspondence) addressable by register row.
- **Assign a named owner** after closing for each open item, with a date for the next review.
- **Log changes** between versions.

Data Analysis and Evidence

The evidence on NUL representations comes from several unlike cohorts. *Table 3* below sets them side by side so that their samples and periods are not confused, and so that the reader can see what each can and cannot support. No trend is calculated across them.

Source (publisher)	Sample as stated	Period	What it can inform	What it cannot show
ABA Private Target Deal Points Study, 2023 edition (ABA M&A Market Trends Subcommittee, via Taft-hosted copy)	108 acquisition agreements (media.taftlaw.com); 18% asset deals (media.taftlaw.com); deal values $30 million to $750 million per Goulston (www.jdsupra.com)	2023 study	Prevalence of NUL representations (92% to 99% across studies) and drafting forms	Claim frequency; seller outcomes; micro-cap deals
SRS Acquiom 2024 M&A Claims Insights Report	More than 850 private-target acquisitions (www.srsacquiom.com) valued at approximately $168 billion with SRS as shareholder representative (www.srsacquiom.com); 518 indemnification claims and 200 earnout milestones (www.srsacquiom.com)	Escrows fully released Q3 2022 to Q2 2024 (www.srsacquiom.com)	Historical claim composition in that cohort; Goodwin reports 24% of breach claims were undisclosed liability claims (www.goodwinlaw.com)	A 2026 market-wide rate; any individual seller's probability; page is undated and the report is form-gated
SRS Acquiom 2026 M&A Earnouts & Claims Study	1,174 private-target acquisitions (www.srsacquiom.com); 366 indemnification claims (www.srsacquiom.com)	Deals closed from 2009 to as recent as mid-2026 (www.srsacquiom.com)	Headline claim frequency: nearly three out of ten private deals experience an indemnification claim (www.srsacquiom.com)	Anything about NUL claims specifically; not poolable with the 2024 cohort
SRS Acquiom 2026 Deal Terms Study	2,300+ private-target acquisitions (www.srsacquiom.com)	Deals closed 2020 to 2025 (www.srsacquiom.com)	General deal-term trends (rolling page)	NUL data (none on the free page); prevalence figure of 97% comes from the 2025 edition via Goodwin (www.goodwinlaw.com)

The table's main message is about denominators. The 97% prevalence figure that Goodwin attributes to SRS Acquiom's 2025 study (deals from 2024) is secondhand and carries a split in which 81% of such representations favored the buyer and 19% the seller (www.goodwinlaw.com). The ABA range of 92% to 99% comes from a different sample of publicly available deals. It is also secondhand: the September 2024 Goulston article gives both nine and ten as the number of ABA studies behind the range, and this report did not read the ABA charts to resolve that, so the same caveat applies to the figure here as to the other secondhand statistics. Both point in the same direction (the clause is nearly universal), but neither supplies a number for a particular lower middle market seller, since the ABA 2023 deal values ran up to $750 million.

On claim data, Goodwin reports that undisclosed liability claims have more than doubled since 2022 in the SRS dataset it cites (www.goodwinlaw.com), and that the underlying cohort is more than 460 breach-of-seller-representation claims (www.goodwinlaw.com) for deals with fully released escrows between Q3 2022 and Q2 2024 (www.goodwinlaw.com). Goodwin also reports a median resolution time of 14 months for undisclosed liability claims (www.goodwinlaw.com) and, citing a separate insurer study, that these claims tend to have lesser individual severity than other claims (www.goodwinlaw.com). On the cause, Goodwin's own explanation is commentary: an undisclosed liability not covered by another representation may come as a greater surprise to a seller and trigger stronger resistance (www.goodwinlaw.com). This report treats that explanation as the author's view, not as measured causation.

Three discrepancies should be kept visible:

- **Claim counts differ** across the SRS-related sources (518 in the claims report (www.srsacquiom.com), more than 460 in Goodwin's footnote (www.goodwinlaw.com), 366 in the later study (www.srsacquiom.com)) because the cohorts and filters differ.
- **GAAP prevalence is secondhand.** Roughly 60% to 80% of reported transactions are not GAAP-qualified (www.jdsupra.com), consistent with the statement that the non-GAAP form has been the majority approach, but the underlying ABA charts were not independently read for this report.
- **Periods vary** from source to source.

Readers should treat every figure as historical, attributed and sample-specific.

Implications and Future Directions

For sellers. The representation's reach is a negotiated variable, and the register is most useful when it is built against the draft wording rather than a generic checklist. Because the GAAP link can widen or narrow the population (compare the SM Energy and Alkermes wording in *Table 1*), the first question for counsel is what the clause covers; the second is how the register's rows map to it. Owners considering a GAAP-limited ask should hear from counsel what it would mean for the register's facts; Permanent Equity's guide notes buyers resist such limits because they would exclude unknown contingent liabilities (www.permanentequity.com).

For the CFO. The register extends the finance team's existing controls: the search for unrecorded liabilities that auditors apply and the diligence topics advisory firms list are starting points, but the representation also asks about commitments that accounting rules may never record. The CFO is also the person best placed to coordinate evidence owners.

For advisers. An M&A adviser can help an owner organize the process, timeline and evidence flow, but legal sufficiency belongs to transaction counsel, and recognition and tax treatment belong to the CPA.

Directions to watch. SRS Acquiom's current earnouts and claims study describes a larger and more recent cohort than the 2024 claims report (www.srsacquiom.com). Future editions may show whether the claim patterns Goodwin describes persist; this report cannot say. The ABA releases its Private Target studies periodically (www.jdsupra.com). Until then, preparation, not prediction, is the useful posture.

Frequently Asked Questions (FAQs)

What is a no undisclosed liabilities representation? It is a seller statement that the company has no liabilities or obligations of any kind other than those on a stated balance sheet or otherwise identified, subject to negotiated qualifications (www.goodwinlaw.com). It allocates the risk of unknown liabilities between the parties.

How does an undisclosed liabilities representation appear in a purchase agreement? It sits among the seller's representations and warranties, with exceptions keyed to a balance sheet date, ordinary-course carve-outs and schedule exceptions, as the agreement table above illustrates.

What is a disclosure schedule in an M&A deal? It is an attachment to the purchase agreement that provides fact-specific disclosures or exceptions to specific statements in the seller's representations (www.goulstonstorrs.com).

What are off-balance-sheet liabilities in due diligence? Accounting-firm guidance uses the term loosely for commitments and exposures not fully reflected in the financial statements, such as warranty accruals, unpaid benefits and purchase commitments. Which items are recognized, disclosed or neither depends on accounting rules and facts (viewpoint.pwc.com).

Is a knowledge qualifier common in a no undisclosed liabilities representation? No. Goulston reports qualifiers in less than 6% of reported transactions (www.jdsupra.com), and a buyer-oriented guide treats them as a non-starter.

What does a GAAP carve-out do to the representation? It limits the clause to liabilities of the type GAAP requires on a balance sheet, which can exclude ordinary-course commitments and unknown liabilities (www.jdsupra.com). Some agreements instead say the clause applies whether or not GAAP requires recording (www.sm-energy.com).

Do contingent liabilities have to be disclosed when selling a business? Accounting disclosure and contract disclosure are different questions. Accounting guidance ties accrual to probable and reasonably estimable losses (viewpoint.pwc.com) and disclosure to at least reasonably possible ones (kpmg.com), while the representation's reach depends on its wording. Counsel decides.

What are seller disclosure schedule exceptions in the lower middle market? No source reviewed for this report supplies lower middle market prevalence data for schedule exceptions; the ABA 2023 study sample is the closest public reference, and it included deals valued up to $750 million. Owners should rely on their own agreement and counsel.

Conclusion

A clean trial balance records what accounting rules require the company to record. The no undisclosed liabilities representation asks something wider or narrower depending on its words, and the two can part ways in either direction. The useful preparation is therefore to read the representation's population, reference date and exceptions with counsel, to trace potentially unrecorded commitments through contracts, operating logs and the managers who hold the facts, and to keep a dated register that distinguishes what is recorded, what is committed and what remains unknown.

The available evidence supports a narrow set of conclusions. The representation is nearly universal in reported private-target deals (www.jdsupra.com); its GAAP and knowledge qualifiers are drafting choices that vary; data-room access does not by itself replace scheduled disclosure; and historical claims data come from specific cohorts and cannot be read as a probability for any seller. Decisions about what to disclose, how to schedule it and how it is treated for accounting and tax belong to transaction counsel and the company's CPA.

Source links

Links cited in this article, in order of first appearance. Full addresses are provided for readers using extracted text.

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