WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Kristine Delkus

General Counsel of TransCanada

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THE SPEAKERS

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Executive Vice President & General Counsel, TransCanada

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Shawn Denstedt
Partner, Osler, Hoskin & Harcourt LLP

Susan Hutton
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Partner, Latham & Watkins LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, www.directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor's personal accomplishments in her career and her leadership in the profession, we are honoring Kristine Delkus, General Counsel of TransCanada, with the leading global honor for General Counsel.

TransCanada is a leader in the development and operation of North American energy infrastructure, including natural gas and liquids pipelines, power generation, and gas storage facilities. In addition to its existing portfolio of $46 billion in assets, TransCanada has in development an additional $22 billion in proposed projects, including the proposed Keystone XL and Energy East oil pipeline projects. Her address will focus on key issues facing the General Counsel of an energy infrastructure corporation. The additional topics include responsible development and reliable operations; economics of competing forms of energy; infrastructure and energy regulation; the regulation of international mergers and acquisitions; and energy capital markets.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel.

Jack Friedman
Directors Roundtable Chairman & Moderator

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Kristine Delkus

Executive Vice President & General Counsel, TransCanada

As Executive Vice-President and General Counsel, Kristine has overall responsibility for the management of TransCanada's legal and regulatory affairs, internal audit, and corporate security. She also serves as Chief Compliance Officer for the company.

Since joining the company in June 1995, Ms. Delkus has held a variety of progressively more senior roles with the organization. Prior to her current role, Ms. Delkus was Senior Vice-President, Pipelines Law and Regulatory Affairs. Other roles at TransCanada have included Vice-President, Gas Transmission; Vice-President, Power and Regulatory Law; Vice-President, Law, Trading & Business Development; Associate General Counsel, U.S. Regulatory Law and North American Pipeline Ventures; and Senior Legal Counsel, U.S. Regulatory Law.

Prior to coming to TransCanada, Ms. Delkus worked at Morgan, Lewis & Bockius in Washington, D.C., where she was a senior associate in the government regulation section of a U.S. national law firm, specializing in energy issues. There, she represented natural gas, oil and electric industry clients and trade associations before the Federal Energy Regulatory Commission and Department of Energy and in appellate proceedings before the federal circuit courts.

Ms. Delkus holds a Bachelor of Arts degree (with Honors) in Public Administration from Carleton University. She was awarded her Bachelor of Laws degree from the University of Windsor. Ms. Delkus holds bar memberships in New York, Ontario, and Alberta. She has a variety of publications to her credit.

Ms. Delkus currently serves on the Board of Directors for the Calgary Airport Authority and the National Chamber Litigation Center (NCLC). She is the 1997 TransCanada President's Award recipient for outstanding achievement. She is a former Director of TC PipeLines LP, the Canadian Lymphoma Foundation, and Junior Achievement for Southern Alberta. Ms. Delkus was also named one of Women's Executive Network's Top 100 Women in Canada for 2010.

TransCanada

The past 15 years have marked a period of remarkable growth for our company. Today we are one of the largest gas transmission companies in North America, with a network of 68,000 kilometers (42,000 miles) of natural gas pipelines that tap into every major supply basin. We deliver 20% of the gas consumed in North America every day. We are North America's third-largest gas storage operator.

We are the largest private-sector power company in Canada, with 19 power plants in Canada and the U.S. that produce 10,900 megawatts of electric generation. That's enough to power 11 million homes. We have an ongoing commitment to be part of the solution to the challenge of climate change; one-third of the power we generate is from emissionless sources, including nuclear, hydro, wind, and solar.

We have developed an enviable position in the liquid hydrocarbon transportation business through our Keystone Pipeline system, which delivers one-fifth of Canada's crude oil exports to U.S. markets. Since it began operations in July of 2010, it has safely transported more than 900 million barrels of crude oil from Canada to U.S. markets.

Despite an increasingly challenging and uncertain energy environment, our core business continues to perform well, exceeding our safety targets and delivering solid financial results. To our $59 billion in existing assets, we have an ambitious $46 billion capital program based on commercially secured pipeline and power generation projects. What is driving the need for this investment? North American supplies of oil and gas are growing at unprecedented rates. New technology has unleashed enormous volumes of unconventional resources, volumes that need transport capacity to access existing and growing markets.

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JACK FRIEDMAN: Good morning. I am Jack Friedman, Chairman of the Directors Roundtable. We are a civic group whose mission is to provide the finest programming for boards of directors and their advisors on a global basis. We have done 800 events over 24 years.

Boards of directors have told us that companies rarely get credit for the good that they do. Our programs provide an opportunity for top executives to talk about their companies and the accomplishments of which they are proud. It also gives the audience an opportunity to meet these executives, such as Kristine, whom you may have heard of but may not have met.

Energy, in all its manifestations, is in the news regularly. Today we have a Guest of Honor who participates in that industry. This panel of Distinguished Speakers will discuss new ideas and information on energy which we believe you will find valuable.

First, we will invite Kristine to make her opening remarks. She will be followed by the panelists speaking briefly on their particular topics. One of the big themes for the presentations will be regulation for the whole energy industry. We will have another section on capital markets and M&A in the energy field as well as other topics. To the extent that there's time at the end, we will take a few questions from the audience.

As a brief introduction for Kristine Delkus of TransCanada, she is Canadian and even does curling in her spare time — which makes her a very authentic Canadian. She was educated at Carleton University and the University of Windsor, and had a law firm practice before coming to TransCanada in 1995 as a corporate counsel. I will now ask Kristine to make her opening remarks. Thank you very much for joining us today.

KRISTINE DELKUS: Thank *you*, Jack.

Before I launch into my remarks, I want to take a moment to extend my sincere thanks to members of TransCanada's Legal,

Regulatory, Internal Audit, and Compliance teams, which together comprise the General Counsel group. The sector in which we operate is incredibly complex and poses challenges that require innovation, creativity, tirelessness, a stiff spine, and above all, the ability to work collaboratively as an integrated team, not only with our internal staff, but also with our external advisors, some of whom are seated with us today. This recognition is recognition of the work they do day in and day out.

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While I would like to think that TransCanada has attained its recognition because of its success in building and operating energy infrastructure in North America, the reality is most people in the United States know us as the "Canadian company" that is behind the proposed KXL oil pipeline system that has garnered headlines in the U.S. for the last 6½ years.

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(I say that most people know us as "that Canadian company," but the reality is, only 52% of Americans have ever heard of KXL, and of those who have heard of it, only a small minority claim climate change as an issue for the basis for opposition.)

The KXL system was designed to move oil from the Canadian oil sands to refineries in the Texas Gulf Coast. In September of 2008, we applied for a Presidential Permit to build the facilities that would cross the U.S.–Canada border. That permit is issued by the President of the United States based on a finding that the construction of facilities across the border is in the U.S. national interest. In the years since the permit application was filed, approvals have been received from all of the states that the pipeline would cross — although some of those approvals are in litigation — and almost all of the right-of-way for the pipeline has been secured. However, permission to cross the border has remained elusive. Notwithstanding two Environmental Impact Assessments conducted by the U.S. State Department that found no significant environmental impact from the project, the President has yet to issue a permit, now nearly seven years later.

Now we're gaining headlines in Canada as the company behind the Energy East Oil Pipeline Project, designed to move oil from the Canadian oil sands in the west to markets in eastern Canada. It is a complex project that involves the conversion of 3,000 kilometers of our natural gas pipeline to oil service, and the construction of additional pipeline and related facilities, to extend the system to New Brunswick, where there are refineries and export terminals.

The conversion optimizes our existing pipeline facilities. With the development of the Marcellus natural gas basin, which is in the U.S. northeast, our customers in eastern Canada are sourcing a large part of their natural gas demand from the Marcellus rather than from the western Canadian sedimentary basin, leaving our natural gas pipeline underutilized. Redeployment of part of those underutilized facilities from gas to oil service is an economical solution for both parts of our customer base — oil and gas — and is an efficient use of existing infrastructure facilities.

The Energy East application was filed with the National Energy Board of Canada in 2014. It is the most comprehensive regulatory application in our company's history, and was the result of more than 18 months of planning, field work and stakeholder engagement. We consulted with 7,000 community members, 5,500 land owners, and 155 First Nations and Métis communities across six provinces before even filing the application. That outreach continues today. The development of the initial Environmental Assessment filed with the application involved over 900 environmental specialists and scientists. The initial application to the National Energy Board constituted some 22,000 pages.

I have worked on many pipeline projects in my over 25 years in the energy industry, and some of those projects were even considered controversial at the time. But generally speaking, those projects progressed within a relatively predictable regulatory framework. My value as counsel to the company lay in my ability to answer the fundamental questions that any CEO or board would want answered with respect to gaining project regulatory authorizations. What will be the issues? How long will it take? What will it cost? Unfortunately, answers to those questions no longer come with the high degree of certainty that capital allocation decisions should be based upon.

Historically, the energy sector has been generally accepted by the public because of the role it has played in advancing society's needs, and because of its role in driving economic growth. However, now this acceptance is neither automatic nor unconditional. Energy projects, whether they are oil, gas, or power, have become the rallying cry for well-funded, well-organized, agenda-based activists. The most active and well-funded are those whose sole goal is to ensure that fossil fuels stay in the ground at any cost.

The original Keystone project, comparable in scope and scale to the KXL project, received its Presidential Permit in two years, and that pipeline operates safely today, moving 550,000 barrels per day. In contrast, the KXL project remains in permitting limbo after nearly seven years of exhaustive study. The issues have veered from the expected to the ridiculous. Litigation is relentless. The cost to us of pursuing regulatory approvals has been staggering.

We're certainly not the only company to face opposition and delay. A proposed natural gas pipeline project in Virginia – the Atlantic Coast Pipeline, that is pending before the Federal Energy Regulatory Commission for approvals — is under attack. A propane export facility that was proposed for a zoned heavy industrial site in Portland, Oregon, that had the support of local officials, has now apparently lost that support, and in the face of opposition, is going towards a negative decision. A proposed twinning of an oil pipeline in British Columbia is seeing protests and opposition by local officials.

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Activists long ago deployed a strategy that is simple but, in my view, misguided: stop or delay the construction of facilities to transport the resource from supply to market, and you will slow or shut down the development of the resources — or so the theory goes. Why do I think this is misguided? Notwithstanding the efforts to go after the pipeline projects, there has been no appreciable difference in oil production. Instead, that production finds its way to market by other means — rail, for example — that are less safe and more carbon-intensive than pipelines. Nonetheless, the attacks continue. Let's talk about opposition strategy and its broader impacts.

The segment of the population that is primarily concerned with climate change has learned that by inflaming a community's fears and engendering mistrust of project proponents, they can effectively politicize the permit approval process and unnerve regulators. Activists seek to exacerbate local insecurities, complicating land acquisition and generating constituent unrest to which politicians feel pressure to respond, even where they have no jurisdictional authority to engage.

Environmental groups, communities and other stakeholders have powerful communication tools with instantaneous outreach. In social media, every voice is equal. These groups know that emotion will trump data. Messages about complex issues are dumbed down for the media and the uninformed public. The facts — which, I submit, should be tested through evidentiary processes — are ousted in favor of Twitter and sound bites. Industry is painted as the bad guys, and ENGOs and other NGOs are the good guys. Activists ride the white stallion, while the industry plots the destruction of the planet with dirty petrodollars in their pockets. The corollary to that is that anything the ENGOs say is true, and anything that the industry says is a lie.

We're also witnessing a rise in so-called reports and scientific studies by activists that are released with much fanfare but have not been subjected to peer review or any other form of testing, and are rarely submitted in the regulatory arena, where they *will* be subject to testing. The media is complicit in not challenging the credibility of these studies.

> "We have an ongoing commitment to be part of the solution to the challenge of climate change; one-third of the power we generate is from emission-less sources, including nuclear, hydro, wind and solar." – *Kristine Delkus*

By effectively using social media tools, opposition groups create the impression that opposition is widespread. Vocal opponents lobby their elected officials, while supporters do not actively demonstrate their support at the grass roots level. ENGOs, with their own political and social change agendas, claim to be acting on behalf of the broader public, when there is no evidence that that is the case. (Indeed, polling shows that Americans consistently support KXL two to one.) So-called local protests often involved few, if any, local people, and invariably, the press releases issued by these groups after protests inflate purported attendance exponentially.

Importantly, at the same time, the rule of law and respect for the law and legal process are eroding. The regulatory review process, which was designed to consider the overall public interest based on an evidentiary-based assessment of the facts, and the regulators themselves, are seeing their credibility and impartiality attacked. In response, regulatory review has become bogged down in extensive processes, all in an effort to ensure transparency and inclusiveness in determining whether a project should be permitted. Issues, whether meritorious or not, are being litigated. Courts, and decisions by courts, are derided if not consistent with the outcomes desired by the activists.

And civil disobedience is now an accepted approach by activists looking to gain traction in traditional and social media. You may have seen our tree sitters on our right-of-way; it is not uncommon for our speakers to find protesters chaining themselves to our podiums when we're trying to speak. Last week, we had a helicopter effectively seized out on the right-of-way when protesters surrounded it and would not move far enough back to allow the helicopter to safely take off. That's illegal, and charges are pending, but that is a daily occurrence in the life of trying to develop a project. In the end, it's all about controversy, not consensus.

Equally troubling is the fact that jurisdictional boundaries are becoming blurred. Political response to the rise in activists has resulted in states, provinces and even municipalities becoming increasingly aggressive in asserting their local requirements and establishing local processes, notwithstanding long-accepted divisions of scope of power and concepts of federal preemption. Bad press for a politician trumps disciplined and principled decision-making.

The fact is that the regulatory and legal framework that has allowed for the responsible development of energy infrastructure to meet societal needs, and that has provided a stable framework for economic investment, is unraveling. Instead, the concept of social license or social acceptability granted by stakeholders is displacing decision-making in accordance with the law.

Let's talk a little bit about social license or social acceptability. The need for a social license — acceptance or permission by the public at large — as a necessary precondition to project construction has found its way into the lexicon on infrastructure development. The concept was originally popularized in the context of mining operations in countries that didn't have a stable structure of effective laws. The concept has been broadly defined as existing when a

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project has the ongoing approval of the local community or other stakeholders. It's been embraced on the Canadian regulatory scene — and I would suggest, tacitly in the U.S., as well — and is considered by some to be just as necessary, and perhaps more than any formal authorizations that are required as a matter of law.

It's not surprising that project opponents would promote the concept of a social license to operate as an additional hurdle that must be passed in addition to formal approvals issued through conventional regulatory processes. However, some governments have also adopted the concept as a necessary element of the overall resource development process, and they are reluctant to address tough issues of law and policy without it. The province of Quebec is on the forefront of embedding concepts of social acceptability into their legal framework. The implicit assumption is that a social license is necessary, and that in its absence, projects cannot legitimately proceed, even when formal regulatory approvals based on findings of public interest are obtained.

But what is a social license? How is it earned? Who grants it? How is it measured? Regulatory review processes are established under the authority of duly enacted laws for the very purpose of undertaking the challenge of determining the overall public interest. In making such decisions, is not the overall regulatory process the granting of a social license? The concept of the social license, in effect, rejects the legitimacy of the formal regulatory review process by adding a requirement for something that must be obtained independently, through an unidentified process that exists outside of the established legal system.

Where does this new reality take us? Our regulators have a challenge: they must gain the trust of the public by maintaining transparent and inclusive processes that allow for stakeholder participation while ensuring that their decisions are based on facts and are capable of being rendered within a reasonable time frame.

Policymakers must also take responsibility. The void of clear articulation of policy on climate and energy development encourages the activists to fill the space, and allows them to direct public opinion.

Certainly, we energy companies are keenly aware that concerns with the integrity of energy infrastructure exist in various segments of the North American population. Landowners and communities affected by project construction must be assured that emergency response procedures are robust, and reclamation practices effective. Such concerns are reasonable and can typically be eased through dialogue. We engage with our stakeholders early and often, and our programs are based on principles of transparency, accountability, and consistent communication. Undertaking and managing genuine, open dialogue with people who are affected by energy projects can make the difference between delivery success or failure.

Above all, we must operate safely. Failures such as the BP/Macondo incident in the Gulf Coast, the Enbridge spill in Kalamazoo, or most recently, the pipe break off the coast of California, are preventable and must not occur. This is the industry's obligation.

We at TransCanada will continue to pursue our commercially supported projects, and will do so in a safe, environmentally sound way. At the same time, we understand that the cost associated with gaining project approvals has now increased exponentially, and we must factor that in to our capital allocation decisions.

We recognize that identifying risks and risk parameters have become more difficult. Stakeholder or political delays can outweigh any other risk factor. We also need to be prepared to address, swiftly and decisively, the arrows that will be sent our way.

Here are some quick learnings. Project proponents have to have a clear and comprehensive strategy for public engagement, and it must be developed early in project planning. This includes a robust communications and social media strategy.

Opponents will lever any opportunity to tarnish a corporation's reputation and paint it as an unsafe operator. The pipeline industry in North America is world-leading, and we need to be prepared to defend that record.

We have also learned that any regulatory non-compliance, no matter how minor, will find its way into the media and will be used to smear a company. Comprehensive regulatory compliance plans must be in place, coupled with a communications plan.

We also live in the world of the corporate whistleblower. Threats to a company's reputation may come from within, whether credible or not. Disgruntled employees can be used as powerful weapons by opposition groups and, as noted before, the media thrives on it without deeper examination. Companies must have policies in place to deal with the whistleblower phenomenon.

Sadly, we must be prepared for personal attacks on senior executives and the company's board. Defamatory YouTube videos, while sometimes entertaining — and there are a few of them out there — take their toll

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on senior executives. Invariably, I get asked, "Can't you do something about that? Aren't there laws about this?" It's hard to tell them, "No, there aren't."

That brings me to the end of my remarks. I would ask that we have a balanced conversation about the energy sector. Let's focus on the facts on environmental impact, safety and benefits. Let's respect and support the institutions that are designed and equipped to assess the facts with impartiality. Let's encourage our political leaders to be clear on policy, and then let the regulators do their job.

While I remain optimistic that needed energy infrastructure can and will be built, I am uncertain; that chapter has yet to be written.

Thank you.

JACK FRIEDMAN: Before we move on to the other speakers, I have some questions for you. Could you amplify about the realities of what a corporation can and cannot do regarding social media, including what employees say on it? In Canada, do companies have an obligation to address statements in the marketplace that affect stock prices?

KRISTINE DELKUS: There certainly is a duty if the misstatement is material, and you need to fix that. But let me go back. In the years before KXL, our Communications Group was small; we would issue news releases maybe six, seven times a year, usually based around earnings or acquisitions – something that was material, financially, to the company. Now, we issue news releases almost on a daily basis, and we have a staff that is large and young, and is very adept in social media. We monitor all the blogs; we respond when we need to. We can't respond to everything that comes up. When we think that there is an area that is seriously misunderstood, we will move forward with a complete strategy related to that area: blogs, op-ed pieces, traditional media, and social media. Unfortunately, projects like this take up an inordinate amount of our senior executives' time – our CEO and our COO are on the road probably two, three days a week, speaking to issues and trying to correct the record and create the right understanding of what the project is and isn't. It's very complex.

> "Notwithstanding two Environmental Impact Assessments conducted by the U.S. State Department that found no significant environmental impact from the [KXL oil pipeline] project, the President has yet to issue a permit, now nearly seven years later." – *Kristine Delkus*

JACK FRIEDMAN: It seems that the unfortunate aspect of the new technology is that individuals can easily tarnish a company's reputation anonymously through social media and other communications.

KRISTINE DELKUS: That is true. We have a Code of Business Ethics that requires our employees and former employees to keep materials confidential, and we expect that they abide by it. But disgruntled employees have pursued public platforms to criticize the company and paint it as untrustworthy without basis in fact and sometimes to pursue other objectives. And those criticisms are circulated widely by activists through social media and other platforms without examination.

JACK FRIEDMAN: Thank you. I would like to introduce the distinguished panelists for the program, and then each one will introduce his or her own topic. We have three speakers from Canada: Shawn Denstedt, of Osler, Hoskin & Harcourt; Kemm Yates, of Blake, Cassels & Graydon both from Calgary; and Susan Hutton, of Stikeman Elliott from Ottawa. We also have Mark Sundback, of Andrews Kurth in D.C., and Charles – he goes by "Charlie" – Carpenter, of Latham & Watkins in New York.

That's the lineup on the panelists. Let's start with Shawn.

SHAWN DENSTEDT: Thank you for having me and congratulations to Kristine.

My presentation will provide a brief history of pipeline regulation in Canada. I will discuss the issues that have arisen, how the government has responded to these issues, and areas for improvement. I will also share a few philosophical musings based on my regulatory experience.

TransCanada and the National Energy Board ("NEB" or "Board") have a long history. The concept of the TransCanada Gas Pipeline was put forward by the United States and Canada in the early 1950s. The pipeline was financed jointly by the two countries which fostered cooperative energy development in North America. Certain challenges arose during the initial planning stages. For example, it took TransCanada three years to obtain gas export licenses from Alberta. This delay, later referred to as the "Great Pipeline Debate," had a significant impact on Canadian government. Ultimately, construction of the pipeline was completed in 1958. In 1959, the NEB was established to regulate pipelines in Canada.

The next 50 years were marked by development of the standards that apply to pipeline design, construction, and reclamation. The requirements for filing project applications also came to be during this time. The subsequent standardization of these requirements culminated in the creation of the Canadian Standards Association. Today, the NEB is the most highly respected regulator in the world. Countries around the world defer to the Board's expertise on regulatory matters. At the 2015 Arctic Offshore Development

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Conference in Copenhagen, both Norway and the U.K. looked to the Board for guidance on developing their regulatory regimes.

Since the NEB was established, TransCanada has driven innovation in Canada's energy sector. A prime example is TransCanada's use of X100 steel for its pipelines. The thinness and strength of X100 steel allows it to transport more gas at higher pressures, yet the carbon inputs to develop X100 steel are considerably less. TransCanada is an industry leader when it comes to reclamation, as demonstrated by the company's use of native grasses to reseed right-of-ways in native areas. TransCanada also developed Canada's first plan for a species at risk called the Woodland Caribou, and it was the first company to develop a habitat restoration and offsets plan designed to eradicate net loss of habitat for that species. The Board has supported TransCanada in each of these endeavors.

Fast forward to what has gone wrong. Energy regulation and pipeline opposition began to gain speed in the early 2000s and these forces came to a head with development of the Mackenzie Gas Project. The project involved multiple regulators and over 600 different permits were required. In total, the regulatory process for the Mackenzie Gas Project took 11 years, including two years of public hearings.

Around the same time, the International Energy Agency and the Economic Forum described Canada's regulatory system as "opaque" and "broken." It became evident that Canada would need to repair this broken system in order for its vast oil and gas resources to compete globally.

In response, the federal government proposed three useful solutions. First, time limits were introduced in the regulatory process. From the time an application is deemed complete, the Board has 15 months to render its report. While opportunities still exist to "stop the clock," the time limits provide proponents with regulatory certainty. Second, government placed the public interest determination in the Board's hands. Once the Board makes its public interest determination, other regulators must follow suit. Finally, the Major Projects Management Office was created to manage Aboriginal consultation in the context of Canadian resource development projects.

While these changes are a step in the right direction, the regulatory system still needs to improve in certain areas. An example is the fact that the information requirements in project applications must be modernized. The environmental assessment and regulatory world are so fixated on the details that they lose sight of the big picture. In the case of the Trans Mountain Expansion Project in western Canada, Kinder Morgan received over 15,000 information requests from more than 400 intervenors asking for information above and beyond what was required in the application.

Another area that needs improvement relates to Aboriginal consultation. While there have been steps in the right direction, specific rules for engagement – how to engage, when to engage and which groups to engage – are required. Presently, much of the engagement process is left in the hands of proponents and it is the proponents who are at risk. Fortunately, this risk can be managed through robust consultation management plans, litigation strategies, and stakeholder management.

Similar issues have arisen in the United States. The regulatory review process for the Bayonne Bridge in New Jersey has taken over four years. Raising the deck of the bridge would serve the dual purpose of allowing larger, more energy efficient tankers to pass under the bridge while streamlining traffic flow on the bridge. However, public opposition to the project has caused the regulatory process for the project to grind to halt.

It is important to remember that many ENGOs are disingenuous in their complaints about specific projects. If, as a society, we accept this kind of behavior, it will continue. Governments must resource regulators in a meaningful way, both with staff and with dollars, to ensure that regulators are able to make certain decisions. As a policy matter, the ability of regulators to make the decisions must be reinforced. Finally, government must educate the public on the importance of the regulatory system to a functioning society. If society takes these steps, it can move forward and have a rational debate about both the pros and cons of energy development.

JACK FRIEDMAN: Thank you. I would like to welcome Kemm Yates of Blake, Cassels & Graydon.

KEMM YATES: Thank you very much. You've heard from Kristine and from Shawn about the issues that are arising on both sides of the border in respect to the efforts to obtain approvals for, and implementation of, energy infrastructure. I'm going to speak for a few minutes about two related issues, one being economic regulation and the other being utility finance.

Energy transportation projects, at least attacking them, seems to be the issue *du jour* in the press right now. What you don't see much about in the media are the business and financial arrangements that underpin the investments. All of these projects are underpinned by contracts — contracts between the companies that are going to be

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using the pipeline system and the company that's going to be building and operating the pipeline system.

Those contracts are based on the economic regulatory paradigm that has encouraged private companies to take the risk of substantial investment in energy infrastructure. The contracts that are the underpinning of the transportation infrastructure projects are ultimately subject to regulatory review and enforcement.

The basis of the investment is the economic regulatory paradigm, and that paradigm — at least as it has been understood by utility investors — is under attack — not by agenda-driven environmental activists, but by regulators and by courts. Utility investors are now being told that they, not the customers but the investors, carry the risk of technological and economic developments that impact utility operations. Investors are being denied recovery of prudently incurred costs, not just for facilities that have been stranded by technological or economic developments, but for those subject to upgrade replacement or destruction by natural causes. Those investors are being denied compensation for bearing those risks of non-recovery.

A couple of minutes on what the economic regulatory paradigm is. Economic regulation is a surrogate for competition. Where statutory or natural monopolies exist, economic regulation is imposed to ensure fair pricing. The basis of economic regulation is what sometimes is referred to as the "regulatory compact," and that is, essentially, that a company is granted a franchise in return for which it commits to provide service at a price that includes all the costs prudently incurred in the provision of that service.

Both concepts — the concept of the grant of the franchise, and the concept of rates that recover prudently incurred costs — both of those concepts are under attack. Regulators are increasingly turning to the authorization of competition to control prices, and

to regulation only in cases of market failure. The regulatory compact, which utility investors have believed in for decades, is being challenged, if not denied. Specifically, the concept that regulated utilities are entitled to the opportunity to recover costs prudently incurred in the provision of service is suffering both regulatory and judicial rejection.

The technological and economic developments have precipitated legal and regulatory decisions that transfer risk from customers to shareholders. There should be — and there is — increasing evidence that there, in fact, is consequent impact on utility financing costs for both debt and equity.

Under the traditional regulatory paradigm, utilities are provided an opportunity to recover, through their rates, the costs that they prudently incurred in the provision of service. Those costs include operating costs, capital costs, and financing costs, including a return on investment. By including depreciation in the utility revenue requirement, the companies get return *of* capital. Return *on* capital, which is comprised of a reasonable return — reasonable cost of debt and return on equity — is also part of the revenue requirement. The level of return on equity is determined through the Fair Return Standard, which was established by law by the Supreme Courts of both the United States and Canada. By law, that level of return on capital is required to reflect the risk that the shareholders and debtholders of the investing utility are undertaking to fund the construction and operation of the utility.

On the basis of that — regulatory compact, Fair Return Standard, economic regulatory paradigm — TransCanada, for example, made an investment over time of over $11 billion in the Mainline Facilities that are used to transport western Canadian gas to here and to markets in eastern Canada and the USA.

I now turn to the technological and economic developments that have precipitated this change.

On the natural gas side, the TransCanada Mainline side, the genesis of the issue was the development of effective and economic hydraulic fracturing techniques within an economic recession that impacted both supply and demand. "Fracking" created a sea change in the North American gas transportation industry. Abundant volumes of gas became available in proximity to large markets, which fundamentally changed the economics of transportation.

In the power world, the technological, economic, developmental spectres include distributed generation and rooftop solar. But these developments have given rise to underutilized facilities and to facilities that are no longer used and useful in the provision of utility service. In many cases, the costs of these now stranded facilities have previously been approved by the regulators. Historically, those prudently incurred costs have been for the account of the customers for whom they were incurred — but no longer. These recent judicial and regulatory decisions have moved the risk of technological development from utility customers to utility shareholders.

What precipitated this wave of risk transfer cases was a decision by the Supreme Court of Canada in 2006 that a gain on the disposition of gas utility assets that were no longer used to provide utility service is for the account of the utility shareholders.

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That decision led to a series of decisions by the Alberta regulator that ultimately stipulate that the risk of both stranded assets and technological improvements now lies with shareholders, not customers. Gains and losses on the disposition of gas utility assets are for the account of shareholders. Any stranded assets, regardless of the cause of stranding, must come out of rate base, even where the cause of stranding was not anticipated or contemplated in depreciation provisions. Shareholders are not entitled to return of remaining capital after a destructive fire, and they're not entitled to return of remaining capital in a replacement upgrade situation. The specific example being a power utility which sought to upgrade its metering system to use more technologically advanced meters, and the decision of the regulator was, "You can do that, but you eat the cost of the meters that you're replacing."

Meanwhile, the Canadian federal regulator, the National Energy Board, has taken an even more expansive view, holding in a TransCanada Mainline case that for tolls to be just and reasonable, they must be competitive, and any costs previously found to have been prudently incurred and approved, and included in rate base for recovery through tolls, may now be disallowed if circumstances change such that inclusion of those costs would not result in tolls that are competitive.

We're waiting for two decisions from the Supreme Court of Canada on recovery of prudently incurred costs; they should be issued this summer.

The question is, "So what?" Who cares if there's a regulatory readjustment of risk and reward? Some utilities believe that the transfer of risk is a shift away from this longstanding regulatory compact that will almost certainly be ultimately detrimental to customers through higher costs — higher cost of capital, which leads to higher customer rates — and will also be detrimental to customers through the destruction of the incentive to implement technological advancements and replacements.

> "The segment of the population that is primarily concerned with climate change has learned that by inflaming a community's fears and engendering mistrust of project proponents, they can effectively politicize the permit approval process and unnerve regulators." — *Kristine Delkus*

There is another disincentive to invest, if the higher costs of capital exist but are not allowed to be recovered. There are inevitable capital market impacts to an increase in utility risk, and while the markets have been slow to react to the decisions that I've described, there are now signs that they are starting to wake up to the consequences of the risk transfer. On the debt side, analysts like Standard & Poor's are starting to write about the risk of credit rating downgrades and the increase in corporate debt risks. On the equity side, utilities have sought — not succeeded, as yet — approval of an increase in return to take care of the perceived additional risk.

One regulator has denied any increase to allowed return on equity. It did so because in that particular case, it found that there was no evidence that the transfer of risk to utility shareholders had actually resulted in higher costs. It found on the evidence that there was no impact on the ability to raise debt capital at reasonable rates. It looked, essentially, to debt spreads to do that. There had been no change in the credit rating. Recovery of fair compensation for increased risk of non-recovery of costs is going to be an evidentiary issue as the cases unfold.

For its part, the Canadian federal regulator, in what I would characterize as an exercise in revisionist history, held that TransCanada had already been compensated for the risk of disallowance of prudently incurred costs in the returns that it had been allowed since inception.

These things have been happening in Canada. Are they irrelevant in the USA? I would suggest not. Yes, the U.S. has had its stranded costs issues in both the natural gas and power industries in the past, but that doesn't preclude another round of that debate, given the electrical world moving to distributed generation and roof-top solar panels. The concept of denial of remaining capital in upgrade situations is universal in the utility world. An incentive to utilities not to proceed with technological advances and replacements is antithetical to an effective and efficient utility infrastructure.

Infrastructure is not only challenged with social license issues and the regulatory process issues, but the investment climate is being polluted by decisions that dramatically change the basis on which infrastructure investment is made. That's the last message that I wanted to leave you with.

JACK FRIEDMAN: Before we move on to our next speaker, I have a question. What are examples in Canada or the U.S. where shareholders or creditors incurred losses from shares or bonds issued?

KEMM YATES: I will give you one example. The losses are prospective at the moment, because we're dealing with a fundamental change in the regulatory paradigm. In the case of Alberta, there are now decisions that say that utilities are required, every year, to analyze their rate base and remove from rate base any assets that are no longer used and useful in the provision of service. That, of course, takes you to the discussion of what the "used and useful" standard is. In the United States, "used and useful," as defined in regulatory decisions — and Mark will correct me if I'm wrong about this — but there is, as I understand it, a *necessity* requirement. If the particular

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facility is, in fact, used, that's not dispositive of the question of whether it's used and useful; the issue is whether it's *necessary* to be used. Now that provision has found its way into Alberta legislation, not federal legislation. That's one example where you're going to see the removal from rate base by utilities of facilities that are no longer used and useful, and that crystallizes the loss.

JACK FRIEDMAN: If this decision comes about, shareholders may feel they will get less income in the future and the stock will go down.

KEMM YATES: That's a possibility; it depends on how the market perceives it.

JACK FRIEDMAN: I would like to have Mark Sundback of Andrews Kurth speak, and then we'll be moving on to the capital markets and M&A part of the program.

MARK SUNDBACK: Thanks, Jack. Good morning, all. To start, we'd like to commend the Directors Roundtable for recognizing Kristine's contribution in two different regulatory regimes — the Canadian and the U.S. — across decades. It's a very unusual experience, reflecting a very unusual skill set, and she's exercised leadership in both jurisdictions that's well-deserving of recognition.

Let's talk briefly about some of the factors we've alluded to from the Canadian perspective: developments on the economic and technological fronts, and parallel developments in the regulatory world. Because of economic and technological developments, there is increasing competition among energy industries, as well as within energy industries, and that is also being precipitated by regulators' policy choices. Nonetheless, in a somewhat counterintuitive development, additional regulatory intervention and legal exposure may result to market participants. Let's talk about how that has arisen.

As Kemm and others have alluded to, the natural gas fracking revolution has had a dramatic impact across North America, and that has, among other things, created an increasingly competitive market, not just for natural gas producers vying against each other for markets, but across fuels. For instance, coal used to be the baseload, and still is the baseload generating fuel, but it's projected that in the foreseeable future, natural gas will crowd out coal. That creates increasing competition for the thermal unit to generate the electricity.

There are also pressures from renewables, as Kemm mentioned — not only rooftop solar, but wind. Some of that may be driven by renewable portfolio mandates at the state level; some of it may be driven by tax credits; some of it may represent fundamental increasing efficiencies on the part of the renewable industry. Regardless, to the extent that you have investments associated with providing alternative sources of energy to renewables, you may be faced with some stranded cost issues, and we'll discuss those a little bit more as we go along.

As you know, because of the fracking revolution in the United States, there has been a tremendous flattening of what used to be significant regional price disparities in natural gas. It used to be that there were fundamental discontinuities in price between, for instance, the Gulf Coast and the U.S. northeast, like Pennsylvania. Now, if anything, that situation has been reversed; prices in many areas of the Marcellus and Utica shales are below what they are in the Gulf Coast at various times of the year, and that has generally decreased the price disparities that used to be a major driver of hydrocarbon economics in North America.

Energy transmission methods have also undergone significant change. We're seeing not only a resurgence of oil by pipeline, which was a moribund method of transporting oil for a hundred years, but we're seeing increasing interest in liquefaction of natural gas, not only for export or import, but for use within the United States. For instance, peaking on local distribution company systems is also heightening competition.

Let's talk about what's changed in terms of regulation and how that's impacting competition. Thirty years ago, natural gas was prohibited from being burned in many boilers to generate electricity. It's hard to believe, but that was a statutory prohibition. That's obviously changed, given the fact that natural gas is soon going to be the most popular generation fuel in the States.

Thirty or 40 years ago — and this takes me back to the beginning of my career — natural gas was sold generally by an interstate pipeline in interstate commerce at a single unified bundled rate. Behind that supply acquisition and by a single merchant (i.e., the interstate pipeline), were many different merchants often charging prices that were varied and out of the market in some instances. The competitive pressure was shielded or deferred from those merchants because of the aggregation of that supply in an interstate pipeline merchant. That's obviously changed; now we have a robust, competitive natural gas wholesale market where, to the extent a particular merchant's price is out of line with market circumstances, they're just not going to make the sale, and there's nowhere to hide.

Thirty years ago, natural gas production was still largely price-regulated, either pursuant to statute or federal regulation. That's obviously not the case *directly* any more, although there are constraints on pricing as

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a result of the Energy Policy Act of 2005 and prohibitions against market manipulation, which we'll touch on in a minute.

Finally, and perhaps of most significance, at least for electricity and natural gas, 30 or 40 years ago, natural gas pipelines, by and large — not uniformly — had captive markets. They served a metro area or an area without a lot of head-to-head competition from, for instance, other natural gas pipelines. As a result of construction permitted over the last 30 or 40 years, many natural gas pipelines now face competition not just from alternative fuels, but from other natural gas pipelines that have capacity, that are trying to sell that capacity into their own markets.

One other regulatory development that has definitely impacted competition is the change in the number of participants who market transmission capacity. Thirty or 40 years ago, the transmission owner or operator, subject to the regulation of the applicable jurisdiction, was pretty much the unilateral decision-maker about when and how transmission capacity would be marketed. That's changed. Now, because of various regulatory policies, more stakeholders have an involvement in that decision; whether through regional transmission organizations on the electric side or because capacity release rules implemented by the Federal Energy Regulatory Commission [FERC] allow shippers on pipelines to basically sublet their capacity and compete with the pipeline itself to market transmission services. That's also creating competitive pressures to reduce costs.

What are the consequences that we're seeing? The competition that's being experienced in many markets is actually displacing the traditional role that was played by regulation. Rate regulation used to be the rule. Increasingly, in the States, rate regulation is an interesting academic idea, but the competitive price is often below the rate regulatory price. There's a pipeline that just recently filed a rate case at the FERC, and it acknowledged that on its entire system — this is a major interstate pipeline system that moves over a billion

cubic feet a day — it had just one contract for less than 1% of its throughput that was subject to maximum recourse rates. The rest of its rates were below historic cost-based rate levels. That should tell you something about competition that is facing the industry.

This creates potential issues from a regulatory and legal perspective. It is counterintuitive to think that this increased competition would induce greater legal and regulatory intervention — but, in fact, that may be what we're going to see, and are seeing. To the extent that there's more latitude for market forces in the energy industry, there may be claims that there is additional antitrust exposure that should concurrently arise; whether that's legitimate or not, that claim is certainly going to be made.

To the extent that more participants are transacting across markets, participating in multiple industries, that *also* may raise claims that there is antitrust exposure; for instance, because of influencing different inputs to production in different segments of the energy industry.

Participation across multiple energy industries is also creating direct regulatory issues. To the extent you have the misfortune of following FERC developments, the FERC's anti-market manipulation personnel and reviews tends to key off the notion that market participants may voluntarily take a loss in one market — for instance, the physical market — to produce beneficial financial impacts in another market — for instance, in hedging. That's a very slippery slope; it's somewhat difficult to prove, to the extent that a market participant is engaged in multiple industries; and it's a very troubling notion, because the left hand may not necessarily know what the right hand is doing.

Kristine and others have touched on environmental activism. That, too, is having a regulatory consequence. Even though, from some perspectives, competition is exerting a greater influence in the industry, there is more permitting potentially going on and more avenues for permitting. To the extent that NGOs can throw sand in the gears, even more avenues doesn't translate to more projects or a better regulatory process. It's clear that a lot of NGOs see the regulatory process as a fundraising and profile-raising opportunity, and so their goal is not necessarily to produce good policy, or even to be successful, but to raise their profile in the public eye. We see that with demonstrations now at the FERC. Individuals and organizations are populating the audience of meetings of that Commission, and disrupting them. They'll stand up and start shouting slogans. It's hard to run a regulatory process when you have people who are literally acting out in a way that's more consistent with grade school. We have to be able to have a functional regulatory process — win, lose or draw — in order to accomplish our larger societal goals. We're facing some challenges in that regard, notwithstanding increasing competitive pressures.

As Kemm pointed out, these competitive pressures ultimately may lead to a new round of stranded costs, particularly in the electric industry and potentially in other industries, as well. In the long run, that is going to produce greater regulatory intervention, whether it's denying recovery of those costs, or figuring out a way to re-structure those costs, implementing recovery that's less painful from a consumer perspective. When encountering stranded costs in a regulatory

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paradigm, the one thing you know is, it's not going to be a small regulatory problem; it's going to be a big regulatory problem.

Why don't we stop with that.

JACK FRIEDMAN: I have a question for Kristine. How do you organize your department to handle the different jurisdictions?

KRISTINE DELKUS: We have a lot of law firms working for us! Internally, we have a sizable legal group with expertise in a broad range of fields and a very significant regulatory group. The regulatory group is composed of non-legal professionals who put together regulatory applications and manage those processes. We use external counsel to support or lead permit processes, so whether it's a state department process or a FERC process, we'll have a lead firm. We also have external counsel with expertise in local state and provincial matters, such as regulatory processes, tax, or real estate. Linear infrastructure projects typically require the services of a multitude of firms or expertise. It's a very integrated group of lawyers, and typically we have one or two internal leads that manage those activities.

JACK FRIEDMAN: Thank you. Obviously, one of the big issues of our time, with increasing foreign investment, is the proliferation of regulatory reviews in international M&A.

To start the discussion on this area, let's hear from Susan Hutton of Stikeman Elliott.

SUSAN HUTTON: Thanks very much, Jack. I wanted to first take the time to congratulate Kristine on this very well-deserved award. I think TransCanada, in my experience, is a unique and diverse and growing company, and all of its markets feature unique economics and a high degree of regulation, as you've heard about this morning.

When you combine this with the highly political reality of energy, I think that makes the job of General Counsel anything but routine, and I'm delighted to be here to share this with you in New York today.

Along the lines of building on the remarks about the sectoral regulation, I wanted to speak a bit about regulation from the perspective of international M&A. In part, due to the increasing hurdles facing greenfield investment, and in part due to globalization, M&A is increasingly international. In particular, I want to focus my remarks on what I term the "regulatory diaspora" — the proliferation of regulatory processes governing international mergers and acquisitions.

Over the past two decades, and particularly in the past ten years, the number of regulatory processes applicable to international M&A has grown exponentially. This is true in the antitrust world, where I spend most of my time, and also in the much more subjective and politicized world of foreign investment review, where I also live.

In the competition and antitrust world, the last decade has seen an explosion of merger review regimes. There are now more than 100 countries with some form of merger control applicable to acquisitions in their countries. Mexico is the most recent country to adopt a suspensory merger review regime, which came into force in July 2014. As you might expect, merger control regimes around the world are not identical. There is a wide discrepancy among them: notification thresholds vary as well as the content of the required filings. Some filings are mandatory, others are voluntary; some are "voluntary" with quotation marks. Timelines for review vary widely; and some must satisfy more political standards rather than strictly antitrust.

Regulatory processes are not only more numerous, but also lengthier and more costly than ever. Since 2009, Canada has had a two-stage, U.S.-style merger review process. We used to have a short, relatively streamlined process; and then that put some time pressures on the government, admittedly, and they implemented a U.S.-style "second request," complete with our own version — which we have to call something different, because we're Canadian.

A second request in Canada is called a "supplementary information request" or a "SIR." But the SIR process is — make no mistake — modeled exactly on the second request process in the United States.

Our Competition Bureau has made an effort to streamline the SIRs. They tend to be slightly less onerous than second requests in the U.S., but they're still quite burdensome. The SIR mechanism has been used in Canada in an estimated 50 transactions as of March 2015, out of well over 1,000 notified transactions in Canada. The average completion time for SIRs has actually fallen in those six years, from about 220 days in 2009–2010 to 125 days as of 2013. It still can be quite burdensome. There are no formal studies on the costs of compliance that have been undertaken in Canada of which I am aware, but I've led many such efforts, and the costs, when you factor in the bills from the lawyers, the technology providers, the economists, the document reviewers and everything, are undoubtedly in the millions of dollars. This is coming down somewhat with the advent of electronic tools for reviewing documents, but of course the number of documents is proliferating, as almost every word we say is now captured electronically.

In the United States in 2014, the Mergers & Acquisitions Committee of the American Bar Association's Antitrust Law Section

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did conduct a survey on the costs of second request compliance. The survey results demonstrated that the costs remain high and have, in fact, increased. Among the 17 complete responses, the median cost of compliance with a second request was $4.3 million. This is $1 million higher than the cost that had been found when a similar survey was conducted in 2007.

At the same time, outside of the SIR and the second request process, we've seen a huge increase in the mathematical modeling of competitive effects. The tools and techniques available to the economists have advanced significantly, to the point where econometric analysis can actually win or lose cases all on its own. But econometrics require data; data requires cleaning; and merging parties often pay more to the economists than they do to the lawyers — something people may generally find surprising. Whoever said economics is the dismal profession had it dead wrong.

In addition to the proliferation and increasing cost of antitrust review of M&A, we see an increasing number of countries going beyond competition and also having separate foreign investment review processes. I wanted to take a minute to speak about Canada's foreign investment review regime under the *Investment Canada Act*. This has been in place since 1986. Actually, before then, it was called the *Foreign Investment Review Act*, which was largely seen as a roadblock to investment in Canada and was revamped in 1986 to become the *Investment Canada Act*. In order to secure the Canadian government's approval for the acquisition of control of large Canadian businesses, the investor must demonstrate to the Minister of Industry that the investment is likely to be of "net benefit to Canada." This was a test which, in the late '80s and early '90s, was applied on the basis of the investor's plans, by asking the investor, "What do you plan to do with the business?" The answer in most cases was, "That sounds good; here's your approval." Over the course of the last 15 years, however, we've seen a more formalized process, where it is now routine and expected

> "The fact is that the regulatory and legal framework that has allowed for the responsible development of energy infrastructure to meet societal needs, and that has provided a stable framework for economic investment, is unraveling."
> – *Kristine Delkus*

that any investor subject to review under the *Investment Canada Act* — which is relatively few but still, all of the larger transactions would be subject to that test — must prove that the transaction is of net benefit to Canada by giving legally binding undertakings.

Undertakings are not typically published; they are subject to confidentiality rules. Nonetheless, on headline-making transactions in Canada, we do see a trend toward publicizing some details of the undertakings. For example, we were able to get a glimpse of the detail of these undertakings in the context of last year's takeover of Canada's iconic restaurant chain, Tim Hortons, by Burger King. Tim Horton was a Canadian hockey star, and Canadians will line up a hundred people deep at Tim Hortons — compared to two at other coffee shops — just to buy their cup of Timmies with their double cream and double sugar. The acquisition of the most Canadian of coffee shops by the most American of burger joints was front-page news.

But in addition to undertakings on employment levels and charitable contributions, location of the headquarters, numbers of Canadians on the board and management, etc. — which are the criteria that we're used to in the Act — these undertakings also had them agreeing to expand the Tim Hortons brand at a greater rate, both in the U.S. and internationally. There is a prohibition on cobranding in restaurant locations. So we see a degree of intrusion of the government into some very, very specific aspects of management of the business.

At the same time that the net benefit review has become more intrusive, and along the lines of the "social license" phenomenon that Kristine was describing, we have seen that where the deal is in the headlines, where it's on the front page of the paper, this process, which is largely routine for all the other transactions, does become significantly more political, costly, and uncertain. The transaction that started this trend culminated in November, 2010, when the Canadian government blocked the $38 billion acquisition of Canada's Potash Corporation by Australia's BHP Billiton, concluding that the transaction was not likely to be of net benefit to Canada. The decision was based on the economic criteria cited in the statute, but the decision came after the government of Saskatchewan, where Potash Corp. is based, had lobbied the federal government to block the transaction, and polls showed that an overwhelming majority of Canadians — most of whom had not previously heard of Potash Corporation, nor were previously aware of what potash was — nonetheless, by the time the decision was made, they opposed it. I recall, at the time, that even taxi drivers in Toronto had their radios tuned all day, waiting for that decision; it was truly front-page news.

This does not mean that all controversial transactions are blocked under the *Investment Canada Act*. We saw that in action in 2012, when Chinese and Malaysian state-owned enterprises were eventually allowed to acquire two large Canadian oilsands producers. The firestorm of political controversy ignited by those proposed transactions did delay the decision several months, and at the same time that the decision was announced approving the transaction, the government also announced a strengthening of its State-Owned Enterprise Guidelines for Foreign Investment, which places governance controls on state-owned enterprises investing in reviewable transactions in Canada. We

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also saw the announcement of a policy of closing the door on additional majority state-owned enterprise acquisitions of control of Canadian oil sands projects.

Although the eventual decision in those cases appeared to be based on the factors in the Act, I would suggest that the politicization of foreign investment review in Canada will undoubtedly have an increased impact on the energy sector.

Foreign investment review is not unique to Canada; it's also in the United States to some degree with the national security review provisions under Exon-Florio which were implemented by the Committee on Foreign Investment in the United States (CFIUS). Australia also has foreign investment review, and a number of other countries do as well.

Again, Canada has taken a leaf from the American playbook, and in 2009, we added onto the economic review that already existed in our *Investment Canada Act*: we added on the potential for the Canadian government to institute a national security review of any investment in Canada — it need not be an acquisition of control, so even a minority or a greenfield investment would be covered. National security is not defined; there is no separate body officially responsible for administering these provisions; and no filing is possible. Moreover, no advance consultations are formally possible, although informal consultations are, of course, encouraged.

We have recently begun to see the impact of the national security review provisions; they were implemented in 2009; but it wasn't until about 2012, after the acquisitions of oilsands companies by two state-owned enterprise companies (China's CNOOC and Malaysia's PETRONAS), that we started seeing its impact. Two proposed foreign takeovers of Canadian telecommunications companies failed in 2012 due to the national security provisions. I would suggest that any large acquisition

of energy infrastructure in Canada could easily be also subject to national security review, and national security review is fairly opaque. It will be interesting to see if that review process becomes hostage to public pressure and political events along the lines described by Kristine.

Even with the proliferation of regulatory reviews, I am not suggesting that legal compliance should be seen as an unfair burden. Companies such as TransCanada take their legal obligations very seriously, but the costs can proliferate, and they could end up standing in the way of meritorious transactions, particularly if popular approval becomes an unwritten part of the regulatory requirements.

Listening to my colleagues describe the hurdles facing greenfield energy, I wonder if we are going to suffer the same fate with respect to international M&A. I would say that there is a glimmer of hope on the horizon, and I do want to put in a plug for the International Competition Network (ICN), which was cofounded by Canada about a decade ago. It's an informal group of almost all of the world's competition law enforcement agencies, and the ICN has established a merger working group — of which Canada is the cochair — the goal of which is to promote the adoption of best practices in the design and operation of merger review regimes. They have developed recommended practices for merger notification procedures, and its members meet actively and work toward adopting best practices. Progress is slow, but progress is being made.

In addition, as Canada gains greater experience with national security reviews under the Investment Canada regime, I do hope that that process, too, will become more structured and more predictable, so that the minefield can be navigated.

Meanwhile, I think that all companies which are looking to expand, whether by greenfield investment or by acquisition, will be incorporating detailed regulatory planning at the earliest stages of transactions. We will forever need to be mindful of the adage that all politics are local — and, I might add, so is regulation.

Thank you very much.

JACK FRIEDMAN: Thank you very much. I would like to introduce our next speaker, Charlie Carpenter of Latham & Watkins.

CHARLES CARPENTER: Thank you, Jack. Congratulations, Kristine, on the wonderful recognition here, and thank you for including me on this panel. Jack, on behalf of my home state, thank you for all the wonderful comments on the State of Texas! [Laughter]

JACK FRIEDMAN: I introduce him as a cattle baron because he actually owns a ranch with cattle, although he's based here in New York.

CHARLES CARPENTER: I am based here in New York. What spare time I have, I certainly like to get there.

I'm going to speak today about the current state of the market and trends in energy capital markets and M&A transactions. Before

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we get into those two subcomponents, let's speak a little bit about where we are, how we got here, and how we got to the current state of the market.

From the beginning of 2009 after recovery from the recession in 2008, through 2014, and the fracking and unconventional development of crude oil and natural gas throughout in North America, there was huge demand across the investor world on the debt and equity side for energy products. Through those years, the number of IPOs and M&A transactions was excessive. You saw a huge influx of private equity money into the sector. I would say in 2008, you could almost count on one hand the number of private equity "sector funds" that focused solely on energy transactions. Now, the number of funds that are energy sector-specific has probably tripled and could be possibly four times over.

The world somewhat changed in 2014, as OPEC made the determination not to cut production. We soon witnessed, in the fall of 2014, the drop in crude prices and, of course, natural gas prices, which were already depressed.

In the fall of 2014, beginning with the high-yield bond market, the energy sector really dropped off. Bond prices for several E&P [exploration & production] companies went down to trading at as low as 50 cents on the dollar, many of which have bounced back; some haven't.

That really put a cloud over the entire energy sector in the capital markets. In the fourth quarter of 2014, you really saw a standstill in the number of IPOs, and there were a huge number in the pipeline, and they still remain in the pipeline.

At our firm, we had several partners' meetings of those of us in the Energy Group, wondering what was going to happen and what was in store for us for 2015. We were somewhat worried — as lawyers, we always worry, or we wouldn't be very good at what we do.

The first quarter of 2015 was very, very quiet on the capital market side. The second quarter, we have seen some uptick; there have been a few MLP [master limited partnership] and other IPOs priced recently, very favorable pricing, so it certainly seems like the market is coming back. The third quarter is really going to be our test. There are a number of IPOs in the pipeline, and around July to the first week of August, we'll really see what investor appetite is.

When we look at the current state of the energy market now, rig counts have dropped — Baker Hughes, the oil field services firm, keeps track of the number of rigs, and it's known as the energy industry standard; even the U.S. government uses it for data tracking. But the number of rigs in the U.S. has dropped for 25 straight weeks. Now, in roughly the main shale plays of the Bakken and Eagle Ford, Permian Basin, the number of rigs is less than 50% of where they were from September of 2014.

That has resulted in E&P companies stabilizing and cutting capex [capital expenditure]. They've cut capex for various reasons. Obviously, they're not getting the prices for crude that they once were. The vast majority of E&P companies in the U.S. and North America have what we call "reserve base lending," so every year or every six months, they go in with their banks and determine the value of their reserves, and the amount of capital they have is based off that. You see the headlines, weekly, of certain E&P companies having their borrowing base significantly reduced.

That's resulted in material capital expenditure reductions throughout 2015, and some now announcing going into 2016. There are a couple of pages in the capital markets materials in the handouts that will go into various details on this.

Where are we now? In the capital market side, as I touched, we'll see what the latter part of the second and third quarters will bring to us. What we've seen since 2009 through this

large expansion — we had not only the shale gas and crude revolution, but we had enormously low interest rates throughout North America. The ability to get financing to do transactions was very favorable, and at the same point, investors on the equity side were looking for yield — debt or equity side.

You saw a large number of master limited partnerships, which are public entities structured in a partnership form. I had the honor, in 1998, of representing Goldman Sachs on the initial public offering of TransCanada's MLP TC PipeLines Partners.

Over the years, the number of MLPs has grown immensely. There have been 52 initial public offerings of master limited partnerships since 2012. Going back to the structure, it's structured as a partnership; there is no entity-level tax. The tax flows through to the actual investor — as investors, you get a K1. It complicates your tax returns, but it also provides immense yield, and it's become a great instrument. Current data shows that right now, the market cap for MLPs in the U.S. is over $120 billion, and it has grown significantly and will continue to grow.

The other yield-driven instrument we've seen a lot of over the last four years is what we refer to as "yieldco." Now, to be a master limited partnership, you have to derive 90%

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of your income from qualifying sources, which is basically the transportation or extraction of natural resources. It can get much more complicated than that, but at a high level, that's what you're looking at.

Assets that do not generate qualifying income can be formed as yieldcos, which are in a C corp form. You look for various ways to defer taxes over time through your distributions. We've done some in the solar field and the fields of renewables and power. You're looking for a company that's got long-term contracts with creditworthy parties that can give you enough of a basis to pay a stated yield and grow over a period of time.

Switching over, I want to raise a few of the things we're seeing in the M&A sector. I mentioned the fact of the influx of private equity money over the last five to six years in the industry — right now, we're seeing transactions ranging from the Shell/British Gas transaction of roughly $70 billion, to a lot of smaller independent E&P or midstream companies which may be somewhat in distress but are looking at doing joint ventures with private equity money coming in. The private equity funds are contributing cash to a newly formed entity; the midstream or E&P company will contribute assets; and then they'll jointly share in the production and development of those assets as it goes forward.

A couple of things that really were a surprise — to me, at least — in the energy sector over the last five years is the number of activist investors. They have created a lot of activity in the M&A sector, ranging from CVR, Hess, and other well-known companies. They continue to be very active in the energy sector; they have come in and created a lot of divestitures, M&A activity, and several spin-offs where their view is E&P companies and pipeline companies should be separate. They're going in and forcing boards to spin off their midstream business or E&P business, one or the other.

> "I would ask that we have a balanced conversation about the energy sector. Let's focus on the facts on environmental impact, safety and benefits. Let's respect and support the institutions that are designed and equipped to assess the facts with impartiality. Let's encourage our political leaders to be clear on policy, and then let the regulators do their job."
> – *Kristine Delkus*

Jack, if I had to think about what's in the near future that people are talking about that could generate a lot of activity — you see some of this in the press.

We've got the one sector that is very attractive to investors right now is the LNG [liquefied natural gas] sector. I believe next year, in Sabine Pass, we'll see our first export of LNG in the United States from the Gulf Coast.

The hot topic these days, it seems, is whether or not the government should lift the ban on crude exports that was put in place in the 1970s. They have slowly been making steps, there, by lifting the ban on certain types of distillates that are now being exported, but I think we're going to see this in the press, and it will be a very hot topic, with possibly debates and other activity coming out.

The second component that we're hearing a lot about lately is Mexico. The U.S. and Canada have probably had the best relations of any two countries in the world on energy throughout the years. Mexico passed an energy reform a few years ago, and I believe over the last couple of months, you've started to see some significant investments in Mexico. They have tremendous reserves; they just have never had the infrastructure and government support to develop them. That's certainly something that we're all watching.

JACK FRIEDMAN: Thank you very much. I have a question for Kristine and the panel. Charlie was mentioning Mexico, Canada and the U.S. What is the vision of North America as a whole for the energy industry?

KRISTINE DELKUS: With the evolution of the regulatory structure in Mexico, and the opening up of those markets for investments, Mexico is a platform for our growth. We were early entrants, and were quite successful in securing a number of pipeline projects. What we're seeing now, is other parties coming into the bidding for both power plant and gas projects. But it remains an important vehicle for us. It is not without its challenges. In addition to the kinds of challenges that I've talked about in North America, in Mexico you have societal issues that provide a whole host of security and compliance challenges. It is not an easy jurisdiction in which to operate. Oftentimes, we look at where our proposed facility is sited, and determine whether we can actually put people in there safely and ensure their security. We also put a considerable amount of effort to ensure that our compliance plans relative to anti-bribery legislation is robust.

It's a challenging environment, but an important one for North American energy's overall integration.

JACK FRIEDMAN: TransCanada is listed on the New York Stock Exchange, and a number of companies around the world complain that the regulatory environment is so difficult that they are tempted either not to list here in the first place, or to delist. What perspective might you give, from a foreign company's point of view, about listing in the U.S.?

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KRISTINE DELKUS: We operate in a highly regulated world. For us, it is just one of the costs of our doing business. So long as the rules are understood, we know what we have to do to comply with them; we live with them. It's not a detriment to us, one way or the other.

JACK FRIEDMAN: Would anyone in the audience like to ask a question? Thank you very much.

[AUDIENCE MEMBER:] Thank you to the panel for a good discussion. For the sake of disclosure, I am not an attorney, although I've seen almost every episode of *Law and Order*. I am on the public relations side of the house. My question is, internally, what is the relationship between General Counsel's office and the C-Suite after years of working really well together?

KRISTINE DELKUS: It's absolutely symbiotic. We have to be able to move quickly; so we have effectively a war room approach. We meet at least weekly — CEO, senior execs, Communications, Government Relations, Legal & Regulatory. We deal with the issues of the week. If we have to do it more frequently, we do. It's very easy for lawyers to say, "No, you can't say anything — there could be implications." But sometimes you have to put that aside and look at what the *right* thing is to do; what the *right* thing is to say; and if there are consequences — legal or otherwise — from that, then you accept them and move on; you develop your plans around that.

JACK FRIEDMAN: How do you deal with the demands on the board's time?

KRISTINE DELKUS: It's tough. There's no question we have a lot of information that's presented to them. We try to structure our board meetings around the technical business of the board, but we have strategic issue sessions as part of every board meeting. Leading up to those strategic issues sessions, there are pre-reads for

the board, but we also provide weekly or biweekly updates on those areas that are key to us strategically.

Those updates give our Directors the opportunity to stay apprised on an ongoing basis, so it's not just a quarterly board meeting where memories might fade between meetings. We try to keep that level of education up so that when we get to the board, and we have to have those very hard conversations, we're not starting by reeducating them on where those issues came from and what we talked about before. Still, it's usually demanding on the board.

JACK FRIEDMAN: What are the realities, administratively, of dealing first with the administration, courts, and politicians who oversee your projects?

SHAWN DENSTEDT: In the facilities side of the federal realm, the real issue is the complexity of the information, and the amount of information that gets filed. The board members, themselves, rely on staff to compile all that and reduce it down to an understandable amount of information to make a public interest determination. The real problem is the retention of senior staff and highly qualified staff at the regulator to actually do that function, and that's a real issue.

It pays better to work for industry. Governments need to resource the regulators with those staff and funds as important, because they're the ones that are making those fundamental decisions on what's in the public interest, and they need to be the best people available. It can be a big problem.

JACK FRIEDMAN: Can you comment on trying to get your view across to the people with power to make decisions in Canada?

SUSAN HUTTON: That's an excellent question, and you mentioned antitrust. In competition law in Canada, on the M&A side, our Competition Tribunal officially is the body that has the power to impose remedies, but we hardly ever use it. There were two contested merger cases in the last 10 years; the rest were settled — either they abandoned the transaction, or they settled under a Consent Agreement with the Competition Bureau. That is, with the Competition Bureau *officials* — not judges. This is not modeled on the FTC, where you have a separate commission and then the staff underneath — the Bureau is *all* staff, and those are the people with whom you are negotiating, both whether there will be a remedy and the shape of that remedy, in practical reality. Tribunal proceedings take too long, to be blunt, for transactions often to be resolved there.

That being said, you are able, therefore, to meet with the actual decision-makers if you are not happy with what the case officers are saying to you. You will have an opportunity to meet with their supervisors.

The reality with the *Investment Canada Act* can be quite different. If it's a routine transaction, you are able to meet with the people within the bureaucracy who are effectively making the decision. It's not actually their decision to make as that power ultimately

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lies with the Minister, but most decisions are made on their recommendation. You do have the ability to meet with and look in the eye of people who have a significant degree of influence on that decision in a routine transaction.

When you're on the front page of the newspaper, however, and it's politically controversial, it is a political decision of the Minister as to whether to grant "net benefit" approval, and at that point we will often bring in government relations people and have a two-pronged approach, because it's not ultimately the decision of the people with whom you are meeting.

On national security, the process is frankly opaque; you're never going to meet the people who actually have the issues. They will not really articulate the issues very clearly, because to do so would, they claim, be a breach of national security. If you are into a national security review process where concerns are being raised, it is possible, sometimes, to work through them, but our experience with mitigation agreements in Canada is fairly limited. There have been very few full-blown national security reviews, and a significant number of them have resulted in the failure of the transaction. I do expect that track record will improve as the process becomes more routine within government, but that is where we stand today.

JACK FRIEDMAN: We recently hosted an event on dealing with the U.S. Justice Department. Our keynote speaker was Mayor Giuliani, who used to be a U.S. Attorney in New York. He was adamant about a point. He indicated that lawyers often make a mistake of implicitly, if not explicitly, disrespecting the staff at government offices. It's a big mistake because the top people are so busy that they often rely on the staff's input to reach their decision. When you do business, you don't know who has the ear of whom, so it's best to be nice to staff at every level.

Kemm, in your area, it's very quantitative, obviously; the testimony you have is not environmental; it's more rates of return and accounting. How do you handle administrative hearings?

KEMM YATES: I would say, not just on the economic regulation side, two of the basic laws of Canadian regulatory legal practice are, firstly, the "KISS principle" – you have to keep it simple; and secondly, don't annoy the regulator.

The KISS principle goes to part of what Shawn was saying a few minutes ago. I had one chairman of the NEB [National Energy Board] – former chairman, now – say to me that he didn't object to industry poaching staff from him. What he objected to was the fact that the government required the poached person to be replaced by somebody who just graduated from a university. The comment went to the fact that the board relies on the staff to a large extent, and that it's difficult for them to retain quality staff.

In respect of actually dealing with the regulator in economic regulation, it is very much a public process. Anything that gets filed is public. Once the application is filed, there are no meetings that can take place with the regulator. All of the regulator's dealings with respect to the application are subject to accessed information and once it's in the public domain, the regulators are governed by the rules of natural justice, one of which is that there can not only be no bias, but no appearance of bias. Any kind of regulator contact with the applicants is problematic in terms of maintaining whatever the result is of the regulatory process once you get there.

JACK FRIEDMAN: Mark, is it the same way in the U.S.?

MARK SUNDBACK: There are staff meetings; but, for instance, at the Federal Energy Regulatory Commission, there is a separate litigation staff, and then an advisory staff. To the extent an item has been set for hearing or a decision, the decisional authorities cannot engage in a meeting that's *ex parte*. It's expected to be noticed, and certain state jurisdictions – such as for instance, California – do permit *ex parte* meetings between the regulator and the regulated entity, but at least written materials have to be circulated after the meeting.

It depends on the jurisdiction you're appearing before and the issue, but as a practical matter, to the extent an item has been set for hearing, you are going to have to demonstrate, at the end of the day – presumably before a court, if someone's dissatisfied – that the outcome is based on substantial evidence in the record, and it conforms to norms of the law. You could have a technical conference where all parties are invited and participate.

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JACK FRIEDMAN: We have another question from the audience.

[AUDIENCE MEMBER:] I just wanted to address mergers such as GE/Honeywell or Unocal/Chevron. What could have been done better?

CHARLES CARPENTER: I'm a little bit disadvantaged — I wasn't involved in any of those, but I really don't know, particularly on the Unocal transaction. I'm not sure if it was their failure to really focus on the restrictions beforehand or communicate with the government. But if I had to point at something, that would have to be it.

SUSAN HUTTON: We were counsel to Potash Corp. on the BHP Billiton bid, so I'm restricted in what I can say, and probably would be accused of bias were I to play Monday morning quarterback and tell them what they did wrong. We also represented CNOOC when it acquired Nexen. Nexen was subject to review in Canada and also to CFIUS review in the United States. That was a successful acquisition by the

same Chinese company that tried to acquire Unocal. Companies facing what's going to be a politically controversial transaction have probably learned from those transactions that you cited, unpacked them, and tried to take account of the unknowns and the variables that have probably surprised the would-be investors in those cases, where things quickly ballooned out of control, perhaps to their surprise. You try to use that as a learning experience to put in place risk mitigation strategies and take care of those concerns up front to the extent you can. Again, getting back to the whole social license and social media aspect of things, public opinion can take strange turns. I don't think you can foresee every eventuality. Certainly being prepared and realizing that your transaction is going to have a huge local impact and inspire debate way beyond the front pages *will* be critical to success. That's an excellent starting point.

JACK FRIEDMAN: An executive in the crisis management field said that he had defended a big British company from a takeover from a major American company coming into England. He said that as soon as we heard their public relations program, we knew they were going to lose because the Americans were only focusing on what a great price it was for shareholders. We knew the politicians were concerned about local jobs and businesses and would come in and kill the deal.

I want to thank our Guest of Honor and all of our Distinguished Panelists. I would also like to thank the audience, because in the end, the audience is really what the Roundtable is for. Thank you for joining us.

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Mark Sundback

Partner, Andrews Kurth LLP

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STRAIGHT TALK IS GOOD BUSINESS.®

Mark is a Partner in the Energy section of the Washington, D.C. office. Since 1981, he has been extensively engaged in the representation of energy industry participants before federal and state agencies charged with jurisdiction over energy markets and their participants. His representations have focused on the rates, terms, and conditions associated with gaining access to regulated energy transmission systems, transactions involving changes in ownership of jurisdictional assets; and unbundling matters.

Particularly, Mark's practice includes a wide array of issues under the Natural Gas Act, the Federal Power Act and related federal and state statutes involving the regulation of energy industry participants. He has been involved in counseling and representing before the Federal Energy Regulatory Commission multiple merchants of electric power in the Southeast United States and New England. He is defending entities in the Pacific Northwest that have been accused of charging rates for electricity and capacity inconsistent with the standards of the FPA. He also has appeared before the regulatory commissions of numerous states on behalf of end users and coalitions of market participants.

His work frequently requires the integration of both transactional and regulatory goals. Over the past three years, Mark has forged durable, commercially resilient agreements to transactional and regulatory disputes arising between energy market participants. Some of the disputes had been underway for ten years before resolution. In like fashion, Mark has addressed commercial challenges in negotiating arrangements for new projects, allocating capacity, and designing and implementing open seasons with creative, commercially viable solutions.

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Kemm Yates

Partner

Kemm is an energy lawyer who practises regulatory litigation and arbitration in matters primarily relating to the natural gas, oil, and electricity industries. He represents energy utility, pipeline, producer, and customer interests in diverse proceedings, including facilities, tolls and tariffs, environmental, and energy export cases, before Canada's National Energy Board and various provincial regulatory tribunals.

Kemm has acted as counsel or adjudicator in arbitration proceedings relating to natural gas and power pricing, pipeline tariffs, asset evaluation, and legal contractual issues. He has also acted as counsel at the trial and appeal levels of Alberta courts as well as in the Federal Court of Appeal and the Supreme Court of Canada.

Awards & Recognition

Kemm was named Best Lawyers' Calgary Energy Regulatory Law Lawyer of the Year in 2014 and 2010, and Calgary Natural Resources Law Lawyer of the Year in 2011. He is also recognized as a leading lawyer in several publications, including:

- *The Legal 500 Canada 2015* (Leading Lawyer – Energy – Oil & Gas)
- *Who's Who Legal: Canada 2014* (Most Highly Regarded Individual – Energy)
- *The Best Lawyers in Canada 2014* (Energy Regulatory Law, Natural Resources Law and Alternative Dispute Resolution)
- *The 2014 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada* (Energy (Oil & Gas))
- *The Canadian Legal Lexpert Directory 2014* (Energy [Electricity] and Energy [Oil & Gas])
- *The 2014 Lexpert Guide to the Leading US/Canada Cross-border Corporate Lawyers in Canada* (Energy – Oil & Gas)
- *The Lexpert Guide to the 100 Most Creative Lawyers in Canada* (published 2006)

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In 2015, Blakes was named one of Canada's Best Diversity Employers by Mediacorp Canada Inc. for the fifth time, and Canada Law Firm of the Year for the seventh consecutive year in the Who's Who Legal Awards. Thanks to our clients, we were once again the top-ranked Canadian firm in Chambers Global: The World's Leading Lawyers for Business and selected as one of the most innovative law firms in the BTI Brand Elite.

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Our Calgary office acts on some of the largest and most complex transactions in Canada, and on major cross-border and international transactions, requiring expert legal advice, sensitivity to clients' business objectives and a co-operative team approach. With more than 100 lawyers, we have the depth, experience and resources to provide timely strategic legal services for all types of business transactions and disputes.

The strength and diversity of the Alberta economy has enabled the Calgary office to develop a broad business law practice, including corporate/commercial, securities, oil and gas, electricity, tax, structured finance, private and public debt, banking, real estate, civil litigation and dispute resolution, regulatory, labor and employee benefits, intellectual property, and environmental matters.

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Shawn Denstedt
Partner

OSLER

Shawn is national co-chair of the firm. His practice is comprised of energy, mining, environmental, regulatory and aboriginal law matters. Shawn advises companies in a variety of industries, including the energy and mining industries.

He has been engaged in a number of international assignments, including advising the Federal Republic of Nigeria on the development of its oil sands regulatory system and acted for the Government of Vietnam and PetroVietnam on the development of their offshore regulatory regime (funded by the World Bank).

He has also advised Canada's largest energy industry associations (CAPP, CEPA, and EPIC) in respect to regulatory reform for energy project development. Shawn has appeared in major regulatory proceedings before the: Alberta Energy Regulator (Energy Resources Conservation Board); Alberta Utilities Commission; National Energy Board; Federal Environmental Assessment Joint Review Panels; Ontario Energy Board; Alberta Environmental Appeal Board; and various other appeal boards. He has successfully represented clients in the development of multibillion-dollar projects, including oil sands projects, shale gas projects, LNG projects, hydroelectric projects, offshore developments, and mining projects.

He has also advised clients on their obligations to Aboriginal groups and negotiated resource development and impact benefit agreements with Aboriginal groups on behalf of resource developers.

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Our lawyers, students, and staff engage fully and often in helping our communities become better places to live and work for everyone, because we think that's an important responsibility as a leading organization.

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Susan Hutton

Partner

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Susan Hutton is a senior partner in Stikeman Elliott's Competition and Foreign Investment and International Trade practice groups. She has provided Competition Act and Investment Canada Act advice in respect of numerous complex mergers and acquisitions; for example: Reynolds Consumer Products/Novelis Foil Products, MTS Allstream/Accelero, CNOOC/Nexen, Astral/BCE, Motorola Mobility/Google, Johnson & Johnson/Synthes and PotashCorp/BHP Billiton. She has guided clients through civil and criminal investigations as well as complaints under the Competition Act, and provides ongoing compliance advice to many clients. The Global Competition Review's Canada survey recognizes Susan as acting for clients in several top-tier deals and describes her as being "among the most talented and well-regarded in the country." She has successfully represented complainants and exporter/importers in dumping and countervailing duty actions and also advises with respect to anti-corruption compliance. She speaks and writes frequently in her field.

Selected Recognition

- Chambers Global's *The Guide to the World's Leading Lawyers for Business* as a recommended lawyer for Competition/Antitrust and International Trade/WTO.

  The 2015 guide quotes sources as saying that "her knowledge of the competition regime is incredible," while others have noted concerning trade litigation that she is "careful, thoughtful, and well-organized on cases."

- *The Best Lawyers in Canada 2015* in Competition Law.
- Global Competition Review's *The International Who's Who of Competition Lawyers & Economists* and *The International Who's Who of Business Lawyers.*

Professional Activities

Ms. Hutton is the Chair of the National Competition Law Section of the Canadian Bar Association (CBA) and is also Chair of the Editorial Board of the *Canadian Competition Law Review*, the journal of the CBA's Competition Law Section. She is also a member of the American Bar Association's Section of Antitrust Law and of the International Bar Association's Competition Law Section.

Stikeman Elliott LLP

Stikeman Elliott LLP is one of Canada's leading business law firms, with offices in Toronto, Montreal, Ottawa, Calgary, and Vancouver as well as in London, New York, and Sydney. The firm is recognized as a Canadian leader in each of its core practice areas — corporate finance, M&A, corporate-commercial law, banking, structured finance, real estate, tax, insolvency, competition and foreign investments, employment, and business litigation — and is regularly retained by domestic and international companies in a wide range of industries, including communications, financial services, insurance, technology, transportation, manufacturing, mining, energy, infrastructure, and retail.

Our 500 lawyers include many of Canada's most prominent business practitioners and leading litigators, and our depth across practice areas enables clients to benefit from efficient, expert teams of lawyers at all levels. The firm has also invested heavily in leading-edge knowledge management and project management systems in order to assure our clients of advice of the highest quality. Our offices frequently work together on major transactions and litigation files, and regularly collaborate with prominent U.S. and international law firms on cross-border transactions of global significance.

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Charles Carpenter

Partner

LATHAM & WATKINS LLP

Charles "Charlie" E. Carpenter is a partner in the New York and Houston offices of Latham & Watkins. Mr. Carpenter focuses his practice on private equity firms and oil snd gas industry participants in private equity investments and acquisitions.

Profile

- Mergers and acquisitions
- Corporate finance
- Private equity
- Securities offerings

Experience

Mr. Carpenter has 20 years of experience in the energy sector, with particular knowledge on master limited partnerships and energy-focused private equity transactions.

Representative transactions include advising:

- Blackhawk Mining in its pending stalking horse bid to acquire assets of Patriot Coal Corporation in chapter 11.
- Blackhawk Mining in its acquisition of James River Coal assets in chapter 11.
- Bridger LLC in its pending US$837.5 million sale of Bridger Logistics to Ferrellgas Partners LP.
- The issuers in two pending initial public offerings of a refinery and its logistics operations as a master limited partnership.
- The underwriters in a pending initial public offering of an LNG tanker master limited partnership.
- Riverstone Holdings LLC in its investment in Foresight Reserves, LP.
- Och Ziff in its US$750 million sale of Arrow Midstream to Crestwood Midstream Partners, LP.
- Tervita in the US$485 million sale of its U.S. operations to Republic.
- Riverstone Holdings LLC in the acquisition of Bridger LLC, a crude logistics company.
- The underwriters in connection with the initial public offering of KNOT Offshore Partners, a master limited partnership in the shuttle tanker business.

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Human Rights Campaign Foundation named us to their prestigious "Best Places to Work for LGBT Equality" list.

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