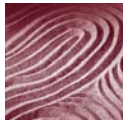
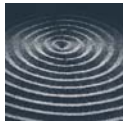


**MILLER  
THOMSON** LLP

Barristers & Solicitors  
Patent & Trade-Mark Agents



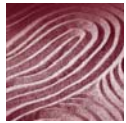
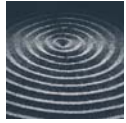
# **Climate Change: Canadian Public Company Disclosure Requirements**

Jay M. Hoffman  
Virginia Huang

May 30, 2008



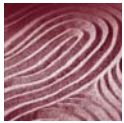
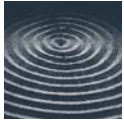
# What is Climate Change Disclosure?



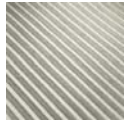
- At the most basic level, climate change disclosure is designed to communicate and explain to the capital markets the climate change risks and opportunities facing a particular public company.



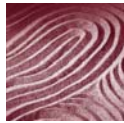
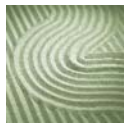
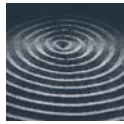
## Risks



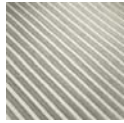
- The Carbon Disclosure Project Report 2007 outlines the risks and opportunities related to climate change.



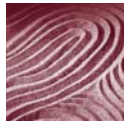
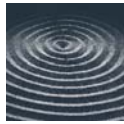
## Risks



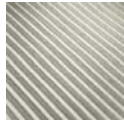
- physical damage to property and infrastructure due to extreme weather and changing weather and temperature patterns;
- potential for increased operating costs due to the internal cost of meeting emissions-reduction compliance obligations;



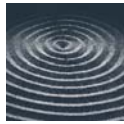
## Risks



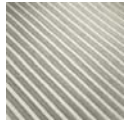
- higher energy costs due to generator pass-through of CO<sub>2</sub> costs in the price of electricity, or through energy taxes and levies;
- dampened demand for energy products due to high-cost burdens and demand management measures, and for fossil fuel-derived energy, in particular;
- legal claims against directors and officers for misrepresentation (including material omissions) in secondary market disclosures,



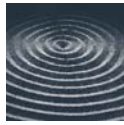
# Risks



- losses incurred as a result of climate change–related infrastructure damage and the cost of replacing capital assets that carbon constraints have rendered inefficient or uneconomic;
- impact on brand value and reputation as a result of stakeholders becoming concerned with the GHG emissions performance of a company;
- higher credit, borrowing, and insurance premiums, as financial intermediaries integrate carbon considerations into their risk profiling; and
- impact on transportation demand and transportation network use;



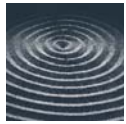
# Opportunities



- the ability to out-compete sectoral peers on energy efficiency, driving down the costs of energy and improving margins and business profitability; and
- the opportunity to differentiate one's company from its competitors, thus enhancing the corporation's reputation.



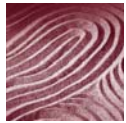
# Opportunities



- increased demand for GHG-friendly materials and products, leading to new markets and revenue streams;



- increased demand for clean and renewable fuels (e.g., wind, ground source heat, photovoltaic, solar thermal, biomass, nuclear), clean fossil fuels (e.g., clean coal) and more efficient generating and end-use technologies—all of which drive opportunities for new technology innovation;



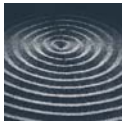




# Financially relevant climate change information

- internal energy costs;
- costs of investments in technology or process adjustments required to achieve emissions reduction objectives in the future;
- costs or savings associated with existing emissions reduction activities;
- estimates of contingent liabilities associated with future emissions, and of company ability to pass costs on to consumers or other third-parties; and
- estimates of liability for asset retirement obligations

# Voluntary disclosure initiatives

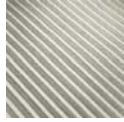


- Global Framework for Climate Risk Disclosure
  - Principles and information that investors often consider when analyzing an investment's climate risks.
- Carbon Disclosure Project (CDP)
  - Voluntary survey conducted by investors to request information about climate change and carbon risk management strategies from companies around the globe
- Global Reporting Initiative (GRI):
  - Principles and indicators that organizations can use to measure and report their economic, environmental, and social performance
- Other forms of disclosure:
  - Analyst briefings
  - Sustainability reports
  - Special reports on climate risk

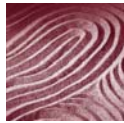
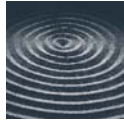


# Mandatory Disclosure Under Canadian Securities Laws

- Prospectus and continuous disclosure requirements.
- Majority of the disclosure is required under mandatory continuous disclosure obligations of public companies under Canadian Securities Laws
- Continuous disclosure
  - Annual Information Form
  - Management Discussion & Analysis
  - Financial Statements
- CEO and CFO certifications
- Audit committee review
- OSC Staff Notice 51-716 *Environmental Reporting*



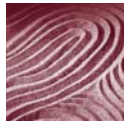
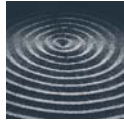
# Continuous Disclosure



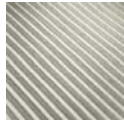
- Annual Information Form (“AIF”)
- Management Discussion & Analysis (“MD&A”)
- Financial Statements (“F/S”)
- CEO and CFO Certification
- Role of the Audit Committee



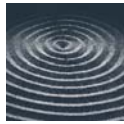
# Annual Information Form



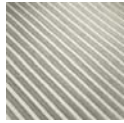
- An AIF is a disclosure document intended to provide material information about the issuer and its business at a point in time in the context of its historical and possible future development.
- The AIF describes the issuer, its operations and prospects, risks and other external factors that impact the issuer specifically.



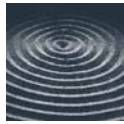
# Annual Information Form



- Financial and operational effects of environmental protection requirements on the capital expenditures, earnings and competitive position of the company in the current financial year and the expected effect in future years.
- Environmental policies that are fundamental to the company's operations and the steps to implement such policies.

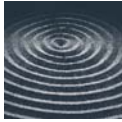
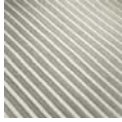


# Annual Information Form



- Risk factors (environmental risks, and any other matter that would influence an investor's decision-making).
- Mining companies must disclose all environmental liabilities to which its mineral projects are subject, the extent to which the estimate of mineral resources and mineral reserves may be materially affected by environmental issues, and the environmental conditions of development and production properties.

# Annual Information Form – Examples of Disclosure Regarding Climate Change



- **Enbridge:** “Climate change is an issue of strategic and operational importance to the Company. Enbridge Inc.’s CSR Committee of Enbridge’s Board of Directors has specific oversight responsibility for all climate-change related activities and the development of a carbon management strategy for the Company. The Climate Change Sub-Committee (CCSC), a management committee, meets monthly and provides a technical focus for the corporation that supports all climate-change-related activities across Enbridge Inc., including EPI. The CCSC reviews business and environmental risks associated with climate change and identifies policies and actions to mitigate this risk. This committee also oversees the development of consistent internal methodologies for greenhouse gas (GHG) inventories and reporting, and approves the reporting protocols to be used. The Company’s parent, Enbridge, has taken, or is taking, many steps to improve the quality of GHG reporting and performance including: undertaking an independent third-party audit of the GHG emissions data management system for the Canadian operations; investing in sustainable energy, and studying the viability of deploying new technologies to help reduce the Company’s GHG emissions.”

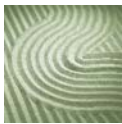
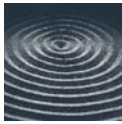
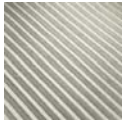




# Annual Information Form – Examples of Disclosure Regarding Climate Change

- **Suncor:** “Changes in environmental regulation could have an adverse effect on us from the standpoint of product demand, product reformulation and quality, methods of production and distribution costs, and financial results. For example, requirements for cleaner-burning fuels could cause additional costs to be incurred, which may or may not be recoverable in the marketplace. The complexity and breadth of these issues make it extremely difficult to predict their future impact on us. Management anticipates capital expenditures and operating expenses could increase in the future as a result of the implementation of new and increasingly stringent environmental regulations. Compliance with environmental regulation can require significant expenditures and failure to comply with environmental regulation may result in the imposition of fines and penalties, liability for clean up costs and damages and the loss of important permits.”

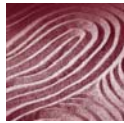
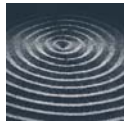
# Annual Information Form – Examples of Disclosure Regarding Climate Change



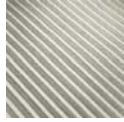
- **TransAlta:** “On a longer time horizon, TransAlta Utilities anticipates future environmental regulatory developments in areas such as climate change, air quality and water. Regulatory changes and policy developments are tracked in all relevant jurisdictions in Canada and the United States. Effective July 1, 2007, the Climate Change and Emissions Management Amendment Act was enacted into law in Alberta. Under the legislation, baselines and targets for GHG intensity are set on a facility by facility basis. The legislation requires a 12 percent reduction in greenhouse gas emission intensity from a baseline of the average of 2003 to 2005 emission levels. TransAlta’s climate change strategy addresses the potential competitive risks to its fossil generation plants. The strategy includes increased use of less carbon-intensive fuels such as natural gas and renewable resources, continued investment in emission offsets and internal efficiency improvements, and development of clean combustion technology. TransAlta continues to be an active participant with governments in the development of climate change policy in the international, national and provincial arenas.”



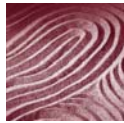
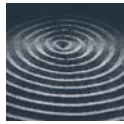
# Management Discussion & Analysis



- MD&A is meant to supplement the financial statements prepared by the issuer in order to provide investors with a commentary of current financial results and the future prospects of the issuer.
- Management will need to consider the regulatory MD&A requirement for disclosure and discussion of known trends, demand, commitments, events or uncertainties that are reasonably likely to have an effect on the company's business or future performance.
- The test is whether the direct or indirect impact of climate change is material. In other words, whether it is likely to impact investors' decision making.



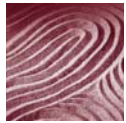
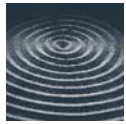
# Management Discussion & Analysis



- Must consider both qualitative and quantitative factors in determining materiality.
- Environmental issues should be disclosed if they are reasonably likely to have, a current or future material effect, direct or indirect, on the company's:
  - financial condition
  - results of operations
  - liquidity
  - capital expenditures
  - capital resources



# Management Discussion & Analysis



- Discuss important trends and risks that have affected F/S, and trends and risks that are reasonably likely to affect them in the future.
- Discuss environmental issues that have affected the value of any significant projects that have not yet generated operating revenue.
- Analyze the operations for the most recently completed financial year, including commitments, events, risks or uncertainties that will materially affect the company's future performance and any unusual events or transactions.



## MD&A – Examples of Disclosure Regarding Climate Change

- **Suncor:** “There remains uncertainty around the outcome and impacts of climate change and other environmental regulations. We continue to actively work to mitigate our environmental impact, including taking action to reduce GHG emissions, investing in renewable and alternate forms of energy such as wind power and biofuels, accelerating land reclamation, the installation of new emission abatement equipment and pursuing other opportunities such as carbon capture and sequestration.”

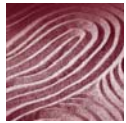
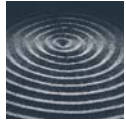


# MD&A – Examples of Disclosure Regarding Climate Change

- **TransAlta:** “The corporation has implemented a four-component strategy that manages future risk associated with climate change regulation and develops competitive business advantages. The cornerstones of the strategy are:
  1. Internal operational improvements which lower the emissions of our generation operations. These include plant upgrades, intensive equipment maintenance, efficiency improvements, and fuel decision choices.
  2. Purchase of emission reduction offsets outside our operations. TransAlta Corporation (including TransAlta Utilities) has been a Canadian leader in this area and has created an offsets portfolio that will allow us to meet emission targets at competitive costs
  3. Renewable energy investments particularly in the wind area, which reduce our emissions intensity and diversify our fuel mix, and
  4. Investments in clean coal technology development which provide long-term promise for large emission reductions from fossil fired generation. TransAlta Corporation is a founder of the Canadian Clean Power Coalition, an industry consortium developed to build Canada’s first clean coal power plant generation. TransAlta Corporation is a founder of the Canadian Clean Power Coalition, an industry consortium developed to build Canada’s first clean coal power plant.”



# Financial Statements



- To be prepared in accordance with GAAP and includes the affect of environmental issues on the financial condition and results that might reasonably be expected to affect an investor's decision-making.
- Company must disclose environmental issues that may materially affect a company's financial performance.





# Financial Statements – Examples of Disclosure Regarding Climate Change

- **Suncor:** “For more than 15 years, we’ve pursued a vision of sustainable development. Suncor was the first oil sands company to voluntarily adopt an internal Climate Change Action Plan and report annually on our progress. We have made industry-leading investments in renewable energy sources, including wind power and biofuels. And we’ve realized reductions in the intensity of water use and air emissions company-wide. For example, total water use at our oil sands operations has been reduced by about 40% over the past five years and Suncor plans to proceed with our next major expansion without requesting any increase to our water licence. On greenhouse gases, emissions per barrel at our oil sands plant have been cut in half compared to 1990 levels. However, while emissions per barrel at Suncor have been slashed, we face ongoing challenges as total emissions have increased with the expansion of our operations.”

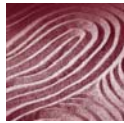
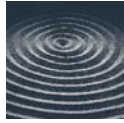


## Financial Statements – Examples of Disclosure Regarding Climate Change

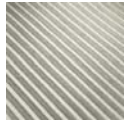
- **TransAlta:** “Emission allowances are recorded on the balance sheet at historical cost. Allowances granted to TransAlta Utilities or internally generated are recorded at nil. TransAlta records our emissions liability on the balance sheet using the best estimate of the amount required to settle our obligation in excess of government-established caps and targets. To the extent our compliance costs are recoverable under the terms of contracts with third parties; these amounts are recognized as revenue in the period.”



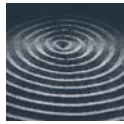
# CEO and CFO Certification



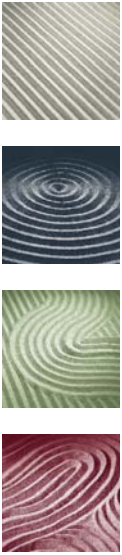
- CEO and CFO are responsible for establishing and maintaining:
  - Disclosure controls and procedures to ensure that information is communicated to management; and
  - Internal controls over financial reporting
- CEOs and CFOs must certify:
  - that the F/S fairly present all material respects the financial condition, result of operations and cash flows of the company
  - that filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading



## Role of the Audit Committee

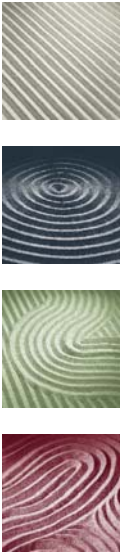


- Responsible for reviewing the company's F/S and MD&A before the company publicly discloses the information.
- The audit committee must be satisfied that adequate procedures are in place for the review of the company's public disclosure of financial information.



## **OSC Staff Notice 51-716 *Environmental Reporting (February 2008)***


- OSC reviewed the disclosure of 35 reporting issuers in the following industries: environmental services, industrial products, mining, oil and gas, steel, transportation services, and utilities
- OSC concluded that issuers must improve disclosure regarding environmental matters in their continuous disclosure documents (annual financial statements, annual management's discussion and analysis and annual information form).



## **OSC Staff Notice 51-716 *Environmental Reporting***

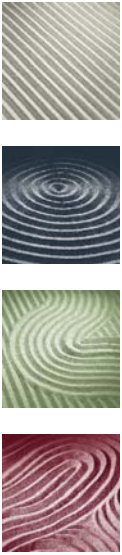
OSC found that additional disclosure is required with respect to:

- Estimates reflected in financial statements
- Potential liabilities not reflected in financial statements
- Financial and operational effects of environmental protection requirements
- Environmental policies fundamental to operations
- Environmental risks



# OSC Staff Notice 51-716 *Environmental Reporting: Summary of Key Points*

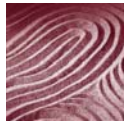
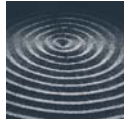
- Issuer should assess whether, due to the nature of its operations, it should address environmental risks in its continuous disclosure documents.
- There should be a comprehensive discussion of material commitments, events or uncertainties, including asset retirement obligations (AROs), that are reasonably likely to have an effect on the issuer's business in the MD&A
- Issuers should quantify any accounting estimates and explain any uncertainty related to the estimate in their financial statements.



# OSC Staff Notice 51-716 *Environmental Reporting: Summary of Key Points*

- Material contingent environmental liabilities should be included in an issuer's MD&A and AIF whether or not the liability has been accrued in the financial statements or disclosed in the notes to the financial statements.
- Companies should quantify the costs associated with environmental protection requirements and the impact or potential impact of these costs on financial and operational results in its AIF.



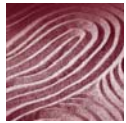
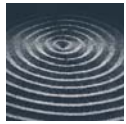


## **OSC Staff Notice 51-716 *Environmental Reporting: Summary of Key Points***

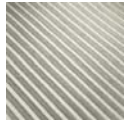
- Companies should evaluate and describe the impact or potential impact environmental policies have on the issuer's obligations and quantify the costs associated with environmental policies in its AIF.
- Any risks related to national or international environmental laws are material and should be disclosed.



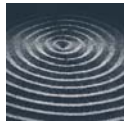
## **Petition to the SEC (*September 2007*)**



- A group of state officials, state pension fund managers and environmental organizations have petitioned the SEC to require companies to assess and disclose their financial risks from climate change and legislation.
- The SEC has not yet responded to the petition.



# Conclusions



- Trend to an increasing amount of available information regarding climate change
- Demand for more disclosure and analysis to be made by public companies
  - Eg. OSC Staff Notice 51-716, SEC petition, demand by institutional investors (ie. Carbon Disclosure Project)