

# **ANNUAL INFORMATION FORM**



**May 29, 2008**

**ENERGY SAVINGS INCOME FUND**

**May 29, 2008**

**ANNUAL INFORMATION FORM <sup>(1)</sup>**

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<sup>(1)</sup> Except as otherwise indicated, all information in this Annual Information Form is as at March 31, 2008.

All capitalized terms not otherwise defined in the body of this Annual Information Form, shall have the meanings ascribed to them in the Glossary of Terms attached as Schedule "A" hereto.

## **FORWARD-LOOKING STATEMENTS**

Certain statements contained in this Annual Information Form and documents incorporated by reference herein constitute forward-looking statements. These statements relate to future events and future performance. Forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those included in the forward-looking statements. Forward-looking statements are often, but not always, identified by the use of words such as “seek”, “anticipate”, “plan”, “continue”, “estimate”, “may”, “project”, “predict”, “potential”, “targeting”, “intend”, “could”, “might”, “should”, “believe” and similar expressions. The Fund believes the expectations reflected in these forward-looking statements are reasonable but no assurance can be given that these expectations will prove to be correct and such forward-looking statements included in, or incorporated by reference into, this Annual Information Form or as of the date specified in the documents incorporated by reference into this Annual Information Form, as the case may be. In particular, this Annual Information Form, and the documents incorporated by reference herein, contain forward looking statements pertaining to customer revenues and margins, customer additions and renewals, customer attrition, customer consumption levels, distributable cash, the ability to compete successfully and treatment under governmental regimes. Some of the risks that could affect the Fund’s future results and could cause results to differ materially from those expressed in forward-looking statements include, but are not limited to, levels of customer natural gas and electricity consumption, rates of customer additions and renewals, rates of customer attrition, fluctuation in natural gas and electricity prices, changes in regulatory regimes and decisions by regulatory authorities, competition, difficulties encountered in the integration of acquisitions and dependence on certain suppliers. See “Risk Factors” for additional information on these and other factors that could affect the Fund’s operations, financial results or distribution levels. Except as required by law, the Fund does not undertake any obligation to publicly update or revise any forward-looking statements.

## **STRUCTURE OF THE FUND**

### **Energy Savings Income Fund**

The Fund is an open-ended limited purpose trust established by the Declaration of Trust and governed by the laws of the Province of Ontario. The Fund is administered by OESC, which is governed by its board of directors. The principal and head office of OESC is located at Suite 200, 6345 Dixie Road, Mississauga, Ontario L5T 2E6. The corporate head office of the Fund is located at Suite 2630, First Canadian Place, 100 King Street West, Toronto, Ontario, M5X 1E1.

The Fund was established to hold, directly or indirectly, securities of its Affiliates. The Fund's principal assets are its investments in the debt and/or equity securities of OESC, ESIF CT, ESLP, OESLP and Manitoba Energy Savings. The Fund owns beneficially, directly or indirectly 100% of the securities of its Affiliates in the Provinces of Ontario, Manitoba, Quebec, British Columbia and Alberta and in several States of the United States (Reference the Organization Chart on page 2).

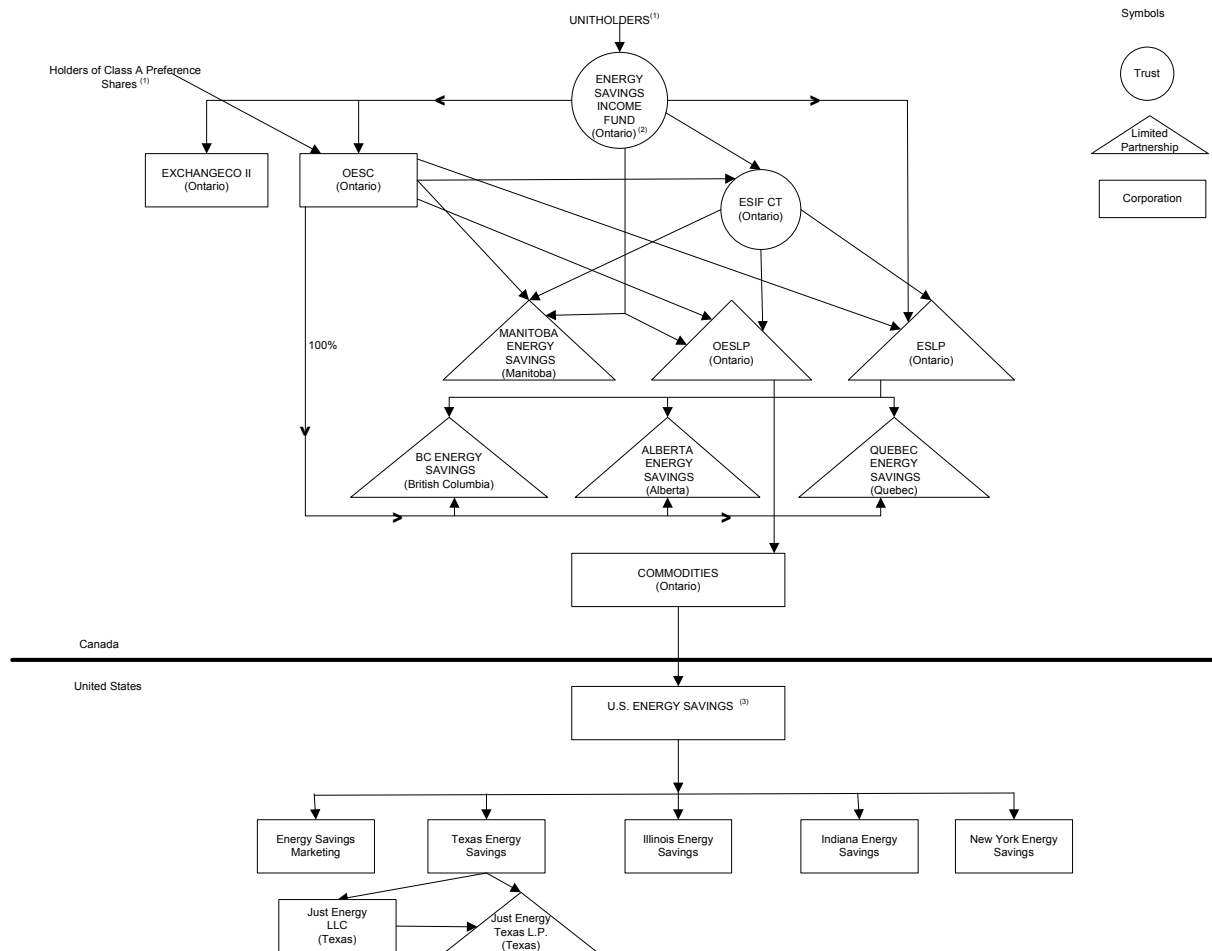
To the maximum extent possible, the Fund makes cash distributions to Unitholders of amounts received and to be received by it arising from interest income, dividends, distributions and other income including royalty, licence and service fees from and with respect to the securities of its Affiliates which carry on business in the Provinces of Ontario, Manitoba, Quebec, British Columbia and Alberta and in the States of Illinois, New York, Indiana and Texas, after expenses of the Fund and its Affiliates and any cash redemptions of Units.

Subject to the terms and conditions of the Declaration of Trust, the Trustee may exercise any and all rights, powers and privileges that could be exercised by a legal and beneficial owner of the assets of the Fund. See “Schedule “C” – Declaration of Trust and Description of Units”. However, pursuant to the Declaration of Trust, the Trustee may delegate such authority and powers as it determines to the Administrator to effect the actual administration of the duties of the Trustee. Pursuant to the Administration Agreement, the Administrator and, by implication, its board of directors, has the exclusive authority to manage the operations and affairs of the Fund. The head office of the Administrator is located at Suite 200, 6345 Dixie Road, Mississauga, Ontario L5T 2E6.

The Fund's business strategy includes providing value to Unitholders by developing and executing sound business strategies in its Affiliates' businesses while reviewing opportunities to expand operations into other jurisdictions and diversifying its operations into related businesses. The Affiliates of the Fund market: (i) natural gas to residential customers, commercial and small industrial customers in Ontario, Manitoba, Alberta, British Columbia, Illinois, New York and Indiana and solely to commercial and small industrial customers in Quebec, and (ii) electricity to residential, commercial and small industrial customers in Ontario and Alberta and in the states of New York and Texas. Energy Savings is reviewing the opportunities to market natural gas and/or electricity in other jurisdictions in the United States.

## Organizational Structure of the Fund

The structure of the Fund and its significant Affiliates and Subsidiaries is set out below:



The Organizational Chart does not include wholly owned inactive subsidiaries incorporated in the Provinces of British Columbia, Alberta and Québec for the sole purpose of protecting the Energy Savings name in each of those jurisdictions and the States of Virginia, Maryland, Massachusetts, Connecticut and Washington D.C.

- (1) At May 15, 2008, there were 102,315,426 Units of the Fund and 6,706,212 Class A Preference Shares of OESC outstanding.
- (2) The equity securities of all Affiliates of the Fund whether trusts, limited partnerships or corporations (except for the Class A Preference Shares of OESC), are owned beneficially, directly or indirectly, by the Fund, subject to a pledge, in most cases, in favour of the Fund's bankers.
- (3) All U.S. subsidiaries (except Just Energy LLC), are incorporated under the laws of the State of Delaware.

## GENERAL DEVELOPMENT OF THE FUND

The Fund completed its initial public offering of 44,000,000 Units on April 30, 2001 at a price of \$2.50 per Unit (post-splits) pursuant to a final prospectus dated April 20, 2001 and completed a subsequent closing of 4,400,000 Units (post-splits) pursuant to the exercise of an over-allotment option on May 16, 2001. Concurrent with the closing of its initial public offering, the Fund, through a series of related transactions, indirectly acquired 100% of the business of OESC's predecessor for a total consideration of approximately \$196,300,000, of which \$93,800,000 or 47.78% thereof was satisfied in cash and \$102,500,000 or 52.22% thereof was satisfied, as a result of the Amalgamation of April 30, 2001 by: (a) the issue of an aggregate of 27,657,620 Class A Preference Shares (post-splits) of which 6,706,212 remain outstanding and are exchangeable into Units on a 1:1 basis and 7,688,084 Class B Preference Shares (post-splits) all of which have been exchanged for Units and (b) the transfer of 5,654,296 Units (post-splits), in each case to the persons who were the former shareholders of OESC's predecessor company. After giving effect thereto, the Fund became and continues to be the sole owner of 100% of the Common Shares and the Exchangeco II Common Shares.

On July 18, 2002, the Unitholders and the holders of Preference Shares approved a subdivision of the Units on a 2:1 basis effective July 31, 2002 on which latter date a certificate of amendment was issued to OESC pursuant to the OBCA subdividing all of its issued and outstanding Common Shares and Preference Shares on a 2:1 basis.

On January 30, 2004 the Fund subdivided its Units on a 2:1 basis and a Certificate of Amendment was issued to OESC pursuant to the OBCA subdividing all of its issued and outstanding Common Shares and Preference Shares on a 2:1 basis.

### **Three Year History**

Energy Savings commenced marketing natural gas in Ontario in the fall of 1997 and by the end of 2004, Energy Savings was marketing natural gas in the Provinces of Ontario, British Columbia, Manitoba and Québec and in the State of Illinois. By the end of 2004, Energy Savings was also marketing electricity to large volume customers in Ontario.

On December 2, 2004, Energy Savings announced the acquisition by Alberta Energy Savings of 90,000 RCEs of deregulated electricity customers and 45,000 RCEs of natural gas customers from EPCOR. At the same time Energy Savings announced that Alberta Energy Savings was granted the Alberta Electricity Marketing Licence to enable it to market Electricity Contracts in Alberta to residential, small to mid-sized commercial and small industrial customers. Alberta Energy Savings commenced marketing activities in Alberta in February 2005.

On May 19, 2005, OESC acquired Electricity Contracts from EPCOR representing approximately 187,000 RCEs for a purchase price of \$6.6 million funded from working capital. As part of the acquisition arrangements OESC also secured wholesale electricity to hedge the expected consumption requirements of the acquired customers all of which are in the Province of Ontario and were primarily residential and small commercial.

On November 7, 2005, Energy Savings commenced marketing Gas Contracts and Electricity Contracts in New York State through New York Energy Savings in the Consolidated Edison territory.

In December 2005, OESLP commenced marketing electricity in Ontario to non-Large Volume Users.

On December 1, 2006, Indiana Energy Savings entered into a supplier aggregation services arrangements with Northern Indiana Public Service Company (NIPSCO) and commenced marketing Gas Contracts to residential, commercial and small industrial customers in the NIPSCO territory in the State of Indiana.

On May 17, 2007, Texas Energy Savings entered into an agreement to purchase all of the partnership units of Just Energy for a consideration of U.S. \$34 million of which U.S. \$16 million, funded through a Credit Facility drawdown, was paid to the vendors (the "Vendors") in cash on May 24, 2007 (the "Closing Date") and U.S. \$18 million was deposited in an escrow account with Computershare Trust Company of Canada ("Escrow Agent") pursuant to an escrow agreement between the Vendors, Escrow Agent, the Fund, OESC and Energy Savings Texas (the "Escrow Agreement"). Pursuant to the Escrow Agreement, on October 9, 2007, the Fund deposited 1,169,399 Units of the Fund with the Escrow Agent for the benefit of the Vendors, in exchange for the cash in the escrow

account, based on the simple average closing market price of Units for the five trading days preceding October 9, 2007. One third of the Units were released from escrow to the Vendors on the first anniversary of the Closing Date and, subject to certain conditions, one third of the Units will be released from escrow to the Vendors on each of the second and third anniversaries of the Closing Date.

Energy Savings (through Just Energy) carries on business in the State of Texas and currently serves residential and commercial customers under short term electricity contracts that represent approximately 130,000 RCEs. The Just Energy executive team are employed under five year employment agreements with Texas Energy Savings. Just Energy commenced carrying on business in the State of Texas through a predecessor entity in November, 2002.

As at March 31, 2008 the Fund, through its Affiliates, (i) held Gas Contracts in Canada and the United States representing approximately 974,000 RCEs; (ii) held Electricity Contracts in Canada and the United States representing approximately 713,000 RCEs.

### **Reorganizations**

When the Fund became a reporting issuer in April 2001, a simple trust on corporation structure was in place. The Fund has never had any directors or individual trustees and was and continues to be governed by the Declaration of Trust which, since April 2001 and has been amended and restated several times. See Schedule "C" for a detailed description of the Declaration of Trust, the Units and the Fund, and see also the Organization Chart on page 1. OESC was the sole operating Affiliate of the Fund in April, 2001 and OESC continues to serve as the attorney and administrator of the Fund pursuant to the Declaration of Trust and the Administration Agreement. While OESC no longer carries on any active marketing activities, its board of directors (listed on page 27 hereof) supervises the business and affairs of the Fund and its Affiliates through the officers of OESC and its Affiliates most of whom are employed by OESC and are listed on pages 27 and 30 hereof.

While OESC is the successor corporation to many amalgamations since April, 2001, its share and loan capital structure remains substantially the same. See "Share and Capital Structure of Ontario Energy Savings Corp.". The OESC Shareholders' Agreement, described in Schedule "B" hereto, was first executed in April 2001. While it has been amended several times, it continues to exist primarily to govern the exchange, on a 1:1 basis, of the remaining 6,706,212 Class A Preference Shares for Units.

The Fund has completed several reorganizations culminating in the April 2007 Reorganization in order to: (i) facilitate the expansion of the Fund's business in Canada and the United States whether organic or through acquisitions, (ii) conserve cash flow and (iii) ensure the continuity of distributions to Unitholders.

#### ***April 2007 Reorganization***

In contemplation of the April 30, 2007 Reorganization, OESLP was formed on June 1, 2005 and on August 1, 2005 acquired substantially all of OESC's marketing business in Ontario. On June 29, 2005 the Unitholders of the Fund and holders of Preference Shares authorized the Fund by special resolution, subject to receipt of a tax ruling, to approve a reorganization of the Fund and its Canadian Affiliates with a view to conserving cash flow for expansion and ensuring continuity of distributions to Unitholders. The Fund received a favourable income tax ruling in respect of the April 30, 2007 Reorganization from the Canada Revenue Agency on March 30, 2007. The objective of the April 30, 2007 Reorganization and the transactions related thereto was: (i) to reorganize the structure of the Fund and its Affiliates into a structure suited to the profitable, expansionary development of the Fund's business in Canada and the United States and (ii) to protect the expectation of Unitholders regarding the returns on their investment in the Fund. As a result of the April 30, 2007 Reorganization the Fund's holding company structure in Canada is now replaced with a trust and partnership structure as depicted in the Organization Chart on page 2.

The April 30, 2007 Reorganization involved a multitude of transactions commencing with the establishment on October 31, 2006 of Manitoba Energy Savings, a limited partnership which purchased substantially all of the assets and certain related liabilities of Energy Savings (Manitoba) Corp. ("Manitoba Corp.") pursuant to an asset purchase agreement dated January 1, 2007. Manitoba Corp. and OESC amalgamated pursuant to the Amalgamation of April 25, 2007 so that Manitoba Energy Savings now carries on the Fund's natural gas marketing business in the Province of Manitoba.

The transactions entered into to complete the April 30, 2007 Reorganization also included a number of agreements between certain Affiliates of the Fund pursuant to which assets, liabilities and securities owned by these Affiliates were transferred to or assumed by other Affiliates and included the Amalgamations of April 30, 2007 which resulted in the continuation of OESC, which employs all of the officers listed on pages 27 to 30.

To accommodate the April 30, 2007 Reorganization: (i) amendments were made to the OESC Shareholders' Agreement and to the Declaration of Trust, (ii) additional Subsidiaries were incorporated and (iii) the ESIF Note Indenture and the Exchangeco II Note Indenture were created.

As a result of the April 30, 2007 Reorganization: (i) the authorized capital of OESC was changed so that, while it includes the Class A Preference Shares (6,706,212 at March 31, 2008 of which continue to be outstanding and which continue to be exchangeable into Units on a 1:1 basis), the Class B Preference Shares were eliminated and replaced by an unlimited number of a new class of non-voting Class B Preference Shares and an unlimited number of a new class of non-voting Class C Preference Shares. All Class B Preference Shares and Class C Preference Shares which were issued, were subsequently cancelled, purchased and/or redeemed to accommodate the April 30, 2007 Reorganization. There are no Class B Preference Shares or Class C Preference Shares of OESC outstanding and OESC has no intention to issue any additional Class B Preference Shares or Class C Preference Shares; (ii) by operation of law (ie., the Amalgamation of April 27, 2007 and the Amalgamations of April 30, 2007), all outstanding Exchangeco Notes and OESC Notes were cancelled effective April 27 and/or April 30, 2007. OESC continues to be bound by the OESC Note Indenture and the OESC Supplemental Note Indenture by operation of law and will, post April 30, 2007 continue to issue OESC Notes thereunder from time to time; (iii) OESC replaced OESC GP as the general partner of B.C. Energy Savings, Alberta Energy Savings, Manitoba Energy Savings, Quebec Energy Savings, ESLP and OESLP and as the trustee of the ESIF Trust Indenture; (iv) Exchangeco II and Computershare entered into the Exchangeco II Note Indenture on terms substantially similar to the Exchangeco Note Indenture except that notes issued pursuant thereto to facilitate the exchange of Class A Preference Shares for Units no longer bear any interest.

The OESC Shareholders' Agreement was amended effective April 30, 2007 pursuant to the Consent and Approval Agreement so that: (i) OESC Exchangeco II replaced Exchangeco as the corporate vehicle to facilitate the exchange of Class A Preference Shares for Units and (ii) all references to the "Class B Preference Shares" were expunged.

The Declaration of Trust was amended for the purpose of accommodating the April 30, 2007 Reorganization and for unrelated housekeeping purposes. The principal changes included amendments: (i) to permit the creation and issuance of a second class of Units designated as "Special Units" solely to facilitate the completion of the Reorganization; (ii) to gradually shift the value of the Fund's business to ESIF CT over time, the Declaration of Trust was amended to provide that where the redemption of Units is not paid in cash, each Unit tendered for redemption will be redeemed by way of a distribution in *specie* of ESIF Notes issued by ESIF CT; (iii) to permit the consolidation of Units; (iv) to permit the distribution of securities owned by the Fund to Unitholders resident in Canada only in circumstances where non resident Unitholders are not prejudiced by such distributions; and (v) necessary or otherwise appropriate to carry out the April 30, 2007 Reorganization.

On December 20, 2007, the Declaration of Trust was amended by Special Resolution, for the sole purpose of providing the Administrator with the discretion to determine that there not be a consolidation of Units on a *pro-rata* distribution of additional Units to all Unitholders.

## **BUSINESS OF ENERGY SAVINGS**

### **General**

Energy Savings' business involves the sale of: (i) natural gas to residential, commercial and small industrial customers under long-term and short-term Gas Contracts; and (ii) electricity to residential, commercial and small industrial customers under long-term and short-term Electricity Contracts. Energy Savings' price protection programs reduce or eliminate customers' exposure to fluctuating energy prices, providing peace-of-mind from volatile energy prices and the ability to plan and budget more effectively. Although Energy Savings' does not promise its customers savings, many of its customers have been able to save money using its programs.

It is Energy Savings' policy to match the estimated requirements of its customers by purchasing offsetting volumes of natural gas and electricity from Commodity Suppliers. Energy Savings derives its gross margins from the difference between the price at which it is able to sell gas and electricity to its customers and the price at which it purchases the offsetting volumes from Commodity Suppliers. In addition to revenues earned by Energy Savings based upon its ability to lock in margins between the price it pays for gas and electricity supply and the price it charges its customers, Energy Savings' cash flows are impacted by the sale and purchase of excess gas and electricity supply.

### ***Natural Gas***

Energy Savings, through its Affiliates, has been continuously marketing Gas Contracts since OESC's inception in 1997. Gas Contracts have historically been primarily for a four or five year term after which time they are eligible for renewal, however short-term products are now being offered. Energy Savings' natural gas customers are, in most cases, charged a fixed gas price for the full term of their contracts as opposed to a variable gas price (WACOG) charged by the LDCs, such as Union Gas and Enbridge Gas in Ontario and Terasen in British Columbia, etc. Although customers purchase their gas supply through Affiliates of Energy Savings, the LDC is still mandated, on a regulated basis, to distribute the gas. Except in Alberta, the LDCs provide billing and, except in Alberta and Illinois, the LDC's provide collection services, including the collection and remittance to Energy Savings' Affiliates or their Gas Suppliers of the commodity portion of each customer's account for a small monthly fee. In Ontario, British Columbia, Manitoba and Quebec each LDC (except for Union Gas) assumes 100% of the credit (receivable) risk associated with default in payment by customers. Union Gas guarantees all receivables except for the receivables attributable to large volume users whose annual consumption is in excess of 700,000 m<sup>3</sup> which account for less than 1% of the total RCEs as at March 31, 2008. To date none of these large volume users have defaulted on their payment obligations.

In Alberta, Alberta Energy Savings receives cash only when the customer has ultimately consumed the gas. Alberta's regulatory environment is different from other Canadian markets where Alberta Energy Savings is required to invoice and receive payments directly from its customers. To facilitate this obligation, Alberta Energy Savings has entered into a five year agreement with EPCOR for the provision of billing and collection services in Alberta. The default rate for payment by Energy Savings' natural gas customers in the Alberta service areas is approximately 2-3% of total revenue in Alberta.

Illinois Energy Savings obtained its gas marketers licence and started test marketing the sale of Gas Contracts in January, 2004 and is currently operating in the NICOR, Peoples and North Shore territories. In Illinois the available natural gas market is approximately 4.0 million customers. While the LDCs in Illinois can be responsible for billing customers for Illinois Energy Savings' commodity charges, Illinois Energy Savings is exposed to the risk of non-payment. The default rate in the Illinois service areas for Energy Savings is approximately 2-3% of total revenue in Illinois.

New York Energy Savings obtained the necessary New York licences and registrations by March 2005 and commenced marketing gas in the State of New York in November 2005. The New York market has 4.8 million natural gas customers.

On December 1, 2006, Indiana Energy Savings entered into a supplier aggregation services arrangement with Northern Indiana Public Service Company (NIPSCO) and commenced marketing Gas Contracts to residential, small to mid-size commercial and small industrial customers in the NIPSCO territory in the State of Indiana. The Indiana market has approximately one million natural gas customers of which management estimates that approximately 9% of residential customers and 21% of commercial customers are on long term contracts.

Energy Savings purchases gas supply in advance of marketing. The utility regularly provides marketers with monthly and annual forecasts so Energy Savings can maintain its supply purchases in line with utility requirements on an ongoing basis. LDCs require some of Energy Savings' Affiliates to inject gas into storage in the summer for delivery to customers in the winter pursuant to a preset delivery schedule. In New York, Consolidated Edison does not provide gas storage capacity to marketers. All gas requirements are met with flowing gas deliveries. In all Canadian markets except for Alberta, the LDCs pay Energy Savings for the gas when it is delivered. In other jurisdictions Energy Savings is paid upon consumption by the customers.



As at March 31, 2008, Energy Savings, through its Affiliates, had Gas Contracts in Canada representing approximately 761,000 RCEs and in the United States representing approximately 213,000 RCEs.

### ***Electricity***

Energy Savings, through OESLP, has been actively marketing for commercial and retail electricity customers in Ontario since December, 2005 (OESC had commenced marketing for commercial and retail electricity customers in Ontario in May, 2002, but indefinitely suspended its marketing activities in late 2002 as a result of provincial regulation). There are approximately 9.6 million RCEs of electricity available for marketing in Ontario and market penetration is estimated by management at approximately 20%. The principles relating to the marketing of natural gas equally apply to the marketing of electricity, except that rather than offering customers a completely fixed price, as is generally the case for natural gas, the Electricity Contracts offer customers price protection for approximately 90 - 95% of their electricity requirements. Customers are likely to experience a small balancing charge or credit each billing due to fluctuations in prices applicable to their load requirements not covered by fixed pricing.

Alberta Energy Savings commenced marketing Electricity Contracts in Alberta in February 2005. The Alberta market has a total of approximately 2.1 million electricity RCEs. The Alberta electricity market is open for residential, commercial and industrial customers. Market penetration is estimated by management at approximately 23% for residential customers and 45% for commercial customers. The default rate for payment by Energy Savings' electricity customers in the Alberta service areas is approximately 2-3% of total revenue in Alberta

The New York market has approximately 8.1 million electricity customers with market penetration estimated at 12% for residential customers and 23% for commercial customers. New York Energy Savings has five offices in New York State. Electricity consumption attributable to Energy Savings' customers is settled through the New York Independent System Operator.

Through the Just Energy acquisition (see "General Development of the Fund – Three Year History"), Energy Savings commenced marketing Electricity Contracts in Texas on May 24, 2007. Just Energy has been marketing electricity pursuant to predominantly short term commercial contracts in the State of Texas since November, 2002. See "General Development of the Fund – Three Year History" on page 3. The Texas market consists of more than 16.0 million residential, small commercial and small industrial RCEs. Texas Energy Savings is exposed to the risk of non-payment in the Texas market. The default rate in the Texas service areas for Energy Savings is approximately 2-3% of total revenue in Texas.

Electricity accounts are automatically balanced daily. In real-time, any supply greater than consumption is immediately sold off into the open market at the spot price, while any shortfall is immediately purchased in the open market at the spot price.

As at March 31, 2008, Energy Savings, through its Affiliates, had Electricity Contracts in Canada representing approximately 609,000 RCEs and in the United States representing approximately 104,000 RCEs.

### **Marketing**

Energy Savings' growth through its Affiliates has been achieved primarily through their own marketing initiatives. Customers are solicited primarily on a door-to-door basis by Independent Contractors, who are not employees of Energy Savings. The elapsed period between the time when a customer is signed to when the first payment is received from the customer varies with each market. The time delays per market are approximately two to six months. The cost for obtaining a new customer and related expenses currently includes commissions payable to the Independent Contractors, salaries paid to the marketing and customer service departments which support the Independent Contractors, salaries paid to customer service representatives who verify the customer contracts, the costs of printing contracts, bonus awards, advertising costs and the costs of promotional materials. The ability of Energy Savings through its Affiliates to contract large numbers of customers at a reasonable cost has been a key ingredient in the success of Energy Savings.

The following chart indicates the approximate number of available RCEs in each jurisdiction in which Energy Savings operates as of March 31, 2008.

<b>Market</b>	<b>Natural Gas RCEs Available to Market</b>	<b>Electricity RCEs Available to Market</b>
Ontario	4,900,000	9,600,000
Manitoba	500,000	-
Alberta	2,500,000	2,100,000
British Columbia	1,100,000	-
Québec	600,000	-
<b>Canada Total</b>	<b>9,600,000</b>	<b>11,700,000</b>
New York	4,800,000	8,100,000
Illinois	4,000,000	-
Indiana	1,000,000	-
Texas	-	16,000,000
<b>United States Total</b>	<b>8,900,000</b>	<b>24,100,000</b>
<b>TOTAL</b>	<b>18,500,000</b>	<b>35,800,000</b>

For fiscal 2009, Energy Savings will be moving away from using RCEs as a measure of growth to a volumetric method.

### Renewals

Legislation and regulations related to the renewal of consumer contracts in general or Energy Contracts in particular can affect Energy Savings' ability to automatically renew customers upon notice, thereby affecting the percentage of existing customers whose Energy Contracts are renewed at the end of their initial term. Ontario's energy regulations permit automatic renewal under specified conditions, but automatic renewal of Electricity Contracts for those who consume less than 150,000 kWh per year is not permitted. On July 30, 2005, consumer protection regulations came into force in Ontario that prevent the automatic renewal of contracts to which the legislation applies (which includes consumer Energy Contracts entered into after July 30, 2005). On November 30, 2005, Alberta's energy regulations were amended to permit the automatic renewal for up to one year of contracts including Energy Contracts, provided automatic renewal is permitted by the terms of the contract itself.

In the Province of British Columbia, the *Code of Conduct for Gas Marketers* provides for the automatic renewal of Energy Contracts. In the Provinces of Quebec and Manitoba, the renewal of Energy Contracts is permitted by means of a wet signature.

In New York, Illinois and Indiana, existing Energy Contracts may be automatically renewed for up to 5 years. In Texas, Energy Contracts may be renewed, however, automatic renewals are restricted to monthly terms.

In fiscal 2008, the renewal rate for Gas Contracts was 82% and the renewal rate for Electricity Contracts was 55%.

### Secured Supply Arrangements

To enable it to meet its supply obligations to its customer base and fix its margins, Energy Savings enters into supply contracts with Commodity Suppliers to purchase all of the natural gas and most of the electricity required to supply its customers. Energy Savings purchases gas and electricity in large volumes on a wholesale basis and is therefore able to secure favourable long-term fixed price supply contracts. By following a policy of purchasing its estimated customer supply obligations in advance, Energy Savings is able to achieve stable and predictable cash flows. Additional cash flows may be achieved through signing up new customers and renewing existing customers to new four or five year Gas Contracts and Electricity Contracts.

In excess of 59% of Energy Savings' natural gas supply requirements and in excess of 51% of its electricity supply requirements are physically purchased from or financially hedged with the Shell Entities pursuant to contractual arrangements with Energy Savings and its Affiliates. Shell Energy assists Energy Savings in managing and balancing its gas requirements and scheduling some of its electricity requirements for a fee pursuant to an energy

management agreement and the Shell Entities have entered into specific gas supply and electricity hedging transactions (the "Shell Transactions") pursuant to certain gas purchase and sale agreements and electricity purchase and sale agreements between Energy Savings' Affiliates and the Shell Entities. Similar contractual arrangements exist in connection with gas purchase and sale agreements as between Energy Savings and its Affiliates, the BP Entities, Bruce Power, Fortis and Constellation (together with the Shell Transactions, the "Transactions").

Each Transaction is specific as to price, volume and term. Energy Savings' financial obligations to the Shell Entities, the BP Entities, Bruce Power, Fortis and Constellation (collectively, the "Secured Suppliers") are secured by a joint security interest over all customer contracts (except for those owned by Alberta Energy Savings), pursuant to the intercreditor agreement and related security agreements described under the heading "Credit Facility" on page 11. If the Secured Suppliers default in their obligations to deliver gas and electricity to Energy Savings, or if Energy Savings or its Affiliates default in their obligations to accept delivery of gas or electricity, under a Transaction, subject to force majeure, the contractual arrangements between them contain provisions requiring the payment of various amounts by the defaulting party to the non-defaulting party, including liquidated damages. To date neither the Secured Suppliers nor Energy Savings or its Affiliates have failed to fulfil their respective obligations.

Energy Savings, through its Affiliates, has also entered into contractual arrangements for the physical purchase or financial hedge of gas and electricity supply from other Commodity Suppliers, predominantly EPCOR. Although the contractual arrangements with these other Commodity Suppliers are not secured on the same basis as the Transactions with the Secured Suppliers, in certain circumstances, security for the obligations of Energy Savings and its Affiliates to these other Commodity Suppliers is provided by way of letter of credit. In addition, EPCOR has security over the customer contracts in Alberta.

## **Revenues**

Information on the Fund's revenues is contained in the Fund's consolidated financial statements and management's discussion and analysis for the year ended March 31, 2008, available on SEDAR at [www.sedar.com](http://www.sedar.com).

## **Competition**

Management of Energy Savings believes it has significant competitive advantages over other ABMs in that it has: (i) a marketing and sales organization which has achieved significant success in commodity sales; (ii) an excellent customer care and customer service process; (iii) a disciplined management of commodity purchases; (iv) an offering priced to achieve stable margin growth vs. customer growth. The industry credibility of Energy Savings' Affiliates is based on the long-term experience of its management team relating to the deregulation of natural gas and their innovations in providing consumer choices within the direct purchase market.

To the extent that Energy Savings is successful through its marketing program in educating customers, it believes that it can be successful in signing LDC customers to Gas Contracts. Energy Savings offers its customers protection against price volatility through fixed price, fixed term supply arrangements, providing peace-of-mind and the ability to plan and budget more effectively. Energy Savings does not view the LDCs as true competitors, but rather as a supplier of last resort for customers. The LDCs are currently not permitted to make a profit on the sale of the gas commodity to their supply customers.

### ***Industry Competition – Natural Gas***

Other than LDCs (discussed below) Energy Savings' largest competitors in Canada are Direct Energy, (which is owned by Centrica plc.), Superior Plus and Universal Energy.

Currently, there are nine certificated alternative gas suppliers in Illinois. Four of those suppliers are direct competitors of Illinois Energy Savings, marketing to residential and commercial customers. Only two of the competitors, Direct Energy and MX Energy, currently offer a five year Gas Contract. There are several energy companies actively marketing short term gas contracts to residential customers in New York and Indiana.

### ***Industry Competition - Electricity***

Competition in the Ontario and Alberta electricity markets is currently limited. Management believes Energy Savings' current active competitors in the electricity markets in Ontario and Alberta to be Direct Energy, Universal Energy and Superior Plus.

Competition in New York and Texas is currently robust. Management believes that the significant competitors to Energy Savings' in New York are Direct Energy, IDT Energy, Accent Energy and MXenergy, and in Texas are Direct Energy, Reliant Energy and TXU Energy.

### ***Energy Source Competition***

Natural gas enjoys advantages over electricity and other fossil fuels, including the fact that it is readily available through vast transmission and distribution systems and has significant environmental advantages compared to other fossil fuels, which should result in consumers continuing to switch to natural gas for their energy needs. However, the price advantage which natural gas at one time enjoyed over these other forms of energy will be diminished if the price of natural gas increases and, to the extent that consumers have the capacity to switch to the use of other forms of energy, such increases in the price of natural gas could result in other sources of energy providing more significant competition to Energy Savings' natural gas offering. With regard to Energy Savings' customer base, while some of its mid-sized industrial and commercial customers may be in a position to select an alternate energy source, this option would normally not be available to its residential, small to mid-size commercial and small industrial customers without significant capital cost. Accordingly, while major industrial users (a market segment not served by Energy Savings) can indeed change from one source of energy to another to take advantage of commodity price differentials, this requires installation of equipment which is generally not economic for residential or small to mid-size commercial and small industrial users. Currently, there is no foreseeable alternative for power.

### **Environmental Protection**

Energy Savings does not view potential environmental liabilities as a significant concern. The Affiliates of Energy Savings never have physical custody or control of the natural gas or electricity or any facilities used to transport it and pass title to the gas and electricity sold to their respective customers at the same point at which they accepts title from their respective Commodity Suppliers. Therefore, any potential liability to the Affiliates of Energy Savings for gas leaks or explosions during transmission and distribution is considered to be remote.

### **Employees**

Energy Savings employed 674 persons as at March 31, 2008 of which 5 constitute the executive group, 49 were employed in the finance and risk management departments, 23 were employed in the legal and regulatory departments, 84 were employed in the information technology group, 120 were employed in the operations department, 13 were involved in the human resources and facilities department and 380 were employed in the customer service, marketing and processing group. Approximately 560 Independent Contractors were involved at March 31, 2008 in the door-to-door marketing of Gas Contracts and Electricity Contracts.

### **Real Property**

While the Subsidiaries and Affiliates of Energy Savings do not own any real property, to carry on its business, Energy Savings and its Subsidiaries and Affiliates lease approximately 171,418 square feet of space consisting of 50,018 square feet of head office and administrative space, 48,000 square feet of a new facility near its Mississauga head office to serve as a call and customer service centre, 67,196 square feet (28 offices) as centres for the contracting of Independent Contractors in Canada and the United States and 6,204 square feet in Houston Texas to serve as its head office in the United States.

### **Industry Regulation**

The OEB is the primary government body responsible for the regulation of the natural gas and electricity distribution industry within Ontario. Pursuant to the *Ontario Energy Board Act, 1998* and the *Energy Competition Act, 1998* (Ontario), the OEB regulates virtually all aspects of the industry including transmission, distribution,

storage, and supply of natural gas and electricity to Ontario consumers. The regulation of the British Columbia natural gas and electricity industry is the responsibility of the British Columbia Utilities Commission pursuant to the *Utilities Commission Act* (British Columbia). The sale of electricity and natural gas in Alberta is regulated by the Alberta Utilities Commission pursuant to the *Electric Utilities Act* (Alberta) and the *Gas Utilities Act* (Alberta), respectively. The marketing of energy products in Alberta is regulated by The Ministry of Service, pursuant to the *Fair Trading Act* (Alberta). The Manitoba Public Utilities Board regulates the natural gas and electricity industry in the Province of Manitoba pursuant to the *Public Utilities Board Act* (Manitoba). The Board oversees all aspects of natural gas marketing within the Province. Marketing natural gas by Energy Savings Quebec in the operating territory of Gaz Metro, in the Province of Quebec, was approved by the Régie de l'énergie under Decision D-2003-180. The Decision provides that Gaz Metro may administer and oversee directly a program to allow commercial consumers (within certain rate classes) to receive natural gas from alternative suppliers. The rules and practices which govern the program are described in an approved Service Agreement executed between the marketer and the utility.

The New York Public Service Commission regulates natural gas and electricity in the State of New York pursuant to the *Public Service Law*. In the State of Illinois, the sale of natural gas is regulated by the Illinois Commerce Commission pursuant to the *Public Utilities Act*. The regulation of the sale of natural gas in the State of Indiana is regulated under the *Indiana Code*, by the Indiana Utility Regulatory Commission. Pursuant to the Texas *Public Utility Regulatory Act*, the Public Utility Commission of Texas regulates the sale of electricity in the State of Texas.

Energy Savings has obtained and maintains all of the licenses required to operate its business in all of the jurisdictions in which it operates.

### **Credit Facility**

OESLP and U.S. Energy Savings have entered into a credit agreement pursuant to which a group of financial institutions have made a \$150 million operating facility available to OESLP and U.S. Energy Savings (the "Credit Facility"). Securities (including notes issued pursuant to the OESC Indenture), owned directly or indirectly by the Fund in "restricted" entities (including OESC, ESIF CT, Exchangeco II, ESLP, OESLP, B.C. Energy Savings, Quebec Energy Savings, Commodities, Manitoba Energy Savings, U.S. Energy Savings, Illinois Energy Savings, New York Energy Savings, Indiana Energy Savings, Texas Energy Savings, Massachusetts Energy Savings and Just Energy) have been pledged to CIBC, as the collateral agent, as security for the Credit Facility. CIBC, as collateral agent, also holds as security for the Credit Facility all Energy Contracts owned directly or indirectly by the Fund, except for those customer contracts owned by Alberta Energy Savings. To compliment the Credit Facility, the Shell Entities, the BP Entities, Bruce Power, Fortis and Constellation and the lenders have entered into an intercreditor agreement (the "Intercreditor Agreement") pursuant to which the Shell Entities, the BP Entities, Bruce Power, Fortis, Constellation and the lenders jointly hold security over substantially all of the assets of the Fund and its active Subsidiaries and Affiliates (other than Alberta Energy Savings). All LDC receipts are directed to bank accounts over which CIBC, as collateral agent, has a blocked account agreement (each a "Blocked Account"). Gas Suppliers and Electricity Suppliers invoice the Affiliates and Subsidiaries of the Fund directly and, provided that no event of default exists under the Credit Facility, the Intercreditor Agreement, the Energy Contracts or the related security agreements, the Affiliates and Subsidiaries of the Fund, on a monthly basis, pay the cost of commodity and related administration fees directly from the Blocked Accounts and remit the remaining proceeds to the Affiliates and Subsidiaries of the Fund. Where an event of default exists, CIBC as collateral agent has the right to exercise control over each Blocked Account in any manner and in respect of any item of payment or proceeds thereof in accordance with the terms of the Intercreditor Agreement. To date, OESLP and U.S. Energy Savings have complied with all covenants under the Credit Facility.

## **RISK FACTORS**

### **Availability of Supply and Dependence on Shell Energy**

The risk of supply default is mitigated through credit and supply diversity arrangements. The Energy Savings' business model is based on contracting for supply to lock in margin. While Energy Savings has the ability to select alternate Commodity Suppliers, subject to certain limitations contained in its agreement with Shell Energy, approximately 59% of its gas and 51% of its electricity supply contracts are currently with the Shell Entities. There is a risk that counterparties could not deliver due to business failure, not deliver due to supply shortage or be

otherwise unable to perform their obligations under their agreements with Energy Savings, or that Energy Savings could not identify alternatives to Shell Energy. Energy Savings continues to investigate opportunities to identify or secure additional Gas Suppliers and Electricity Suppliers. In addition to the Shell Entities, Energy Savings has contracts with other commodity suppliers including the BP Entities, EPCOR, Bruce Power, Fortis and Constellation and over the past three years has reduced its dependency on the Shell Entities by 36% (natural gas) and 14% (electricity).

### **Volatility of Commodity Prices - Enforcement**

A key risk to the Energy Savings' business model is a sudden and significant drop in the market price of gas or electricity resulting in customers leaving their contracts. Energy Savings may encounter difficulty or political resistance for enforcement of liquidated damages and/or enactment of force majeure provisions in such a situation and be exposed to spot prices with a material adverse impact to cash flow. Continual monitoring of margin and exposure allows management of Energy Savings time to adjust strategies, pricing and communications to mitigate this risk.

### **Availability of Credit**

Energy Savings operates in the Illinois, Texas, Indiana and Alberta markets which provide for payment by LDCs only when the customer has paid for the consumed commodity (rather than when the commodity is delivered). Also, in the Illinois and Indiana markets, Energy Savings must inject gas inventory into storage in advance of payment. These factors, along with the seasonality of customer consumption, create working capital requirements necessitating the use of Energy Savings' available credit. In addition, some of Energy Savings' Subsidiaries and Affiliates are required to post collateral in connection with commodity supply contracts, license obligations and obligations owed to certain LDCs. Cash flow and distributions could be impacted by the ability of Energy Savings to fund such requirements or to provide other satisfactory collateral for such obligations. To mitigate credit availability risk and its potential impact to cash flows, Energy Savings has security arrangements in place pursuant to which Commodity Suppliers and the lenders under the Credit Facility hold security over substantially all of the assets of Energy Savings (other than Alberta Energy Savings). Other Commodity Suppliers' security requirements are met through cash margining, guarantees and letters of credit. The most significant assets of Energy Savings consist of its contracts with customers, which may not be suitable as security for some creditors and Commodity Suppliers. To date, the Credit Facility and related security agreements have met the collateral posting requirements of the business. Energy Savings continues to monitor its credit and security requirements. Energy Savings' business may be adversely affected if it is unable to meet its collateral posting requirements.

### **Legislative and Regulatory Environment**

Energy Savings operates in the highly regulated natural gas and electricity retail sales industry in the Provinces of Ontario, Manitoba, Quebec, British Columbia and Alberta and in the States of Illinois, Indiana, New York and Texas. It must comply with the legislation and regulations in these jurisdictions in order to maintain its licensed status and to continue its operations. There is potential for changes to this legislation and these regulatory measures that may, favourably or unfavourably, impact Energy Savings' business model. As part of doing business as a door to door marketing company, Energy Savings receives complaints from consumers which may involve sanctions from regulatory and legal authorities including those which issue marketing licences. See "Legal Proceedings" for information on Energy Savings' litigation. Similarly, changes to consumer protection legislation in those provinces and states where Energy Savings markets to non-commercial customers may, favourably or unfavourably, impact Energy Savings' business model. Energy Savings has a dedicated team of in-house regulatory advisors to ensure adequate knowledge of the legislation and regulations in order that operations may be advised of regulations pursuant to which procedures are required to be implemented and monitored to maintain license status. When new markets are entered, the team assesses the market and determines if additional expertise (internal or external), is required.

In addition to the complaints and class actions referenced herein (See "Legal Proceedings") and litigation in the ordinary course of business, we may in the future be subject to class actions, other litigation and other actions arising in relation to our consumer contracts and marketing practices. This litigation is, and any such additional litigation could be, time consuming and expensive and could distract our executive team from the conduct of our daily

business. The adverse resolution of any specific lawsuit could have a material adverse effect on our ability to favourably resolve other lawsuits and on our financial condition and liquidity.

### **Market Risk**

Market risk is the potential loss that may be incurred as a result of changes in the market or fair value of a particular instrument or commodity. Energy Savings is exposed to market risks associated with commodity prices and market volatility where estimated customer requirements do not match actual customer requirements. Energy Savings is also exposed to interest rates associated with its credit facility and foreign currency exchange rates associated with the repatriation of US denominated funds for Canadian denominated distributions. Energy Savings' exposure to market risk is affected by a number of factors, including accuracy of estimation of customer commodity requirements, commodity prices, volatility and liquidity of markets, and the absolute and relative levels of interest rates and foreign currency exchange rates. Energy Savings enters into derivative instruments in order to manage exposures to changes in commodity prices and foreign currency rates; current exposure to interest rates does not economically warrant the use of derivative instruments. The derivative instruments that are used are designed to fix the price of supply for estimated customer commodity demand in Canadian dollars and thereby fix margins such that Unitholder distributions can be appropriately established. Derivative instruments are generally transacted over-the-counter. The inability or failure of Energy Savings to manage and monitor the above market risks could have a material adverse effect on the operations and cash flow of Energy Savings.

### **Governance**

Energy Savings has adopted a corporate-wide Risk Management Policy governing its market risk management and any derivative trading activities. A Risk Committee, consisting of senior officers of Energy Savings oversees company-wide energy risk management activities as well as foreign exchange and interest rate activities. The Risk Office and the Risk Committee monitor the results and ensure compliance with the Risk Management Policy. The Risk Office is responsible for ensuring that Energy Savings manages the market, credit and operational risks within limitations imposed by the Board of Directors in accordance with its Risk Management Policy. Market risks are monitored by the Risk Office and Risk Committee utilizing industry accepted mark-to-market techniques and analytical methodologies in addition to company specific measures. The Risk Office operates and reports independently of the traders. The failure or inability of Energy Savings to comply with and monitor its Risk Management Policy could have an adverse effect on the operations and cash flow of Energy Savings.

### **Energy Trading Inherent Risks**

Energy trading subjects Energy Savings to some inherent risks associated with future contractual commitments, including market and operational risks, counterparty credit risk, product location differences, market liquidity and volatility. There is continuous monitoring and reporting of the valuation of identified risks to the Risk Committee and the Audit Committee of the Board of Directors. The failure or inability of Energy Savings to monitor and address the energy trading inherent risks could have a material adverse effect on its operations and cash flow.

### **Information Technology Systems**

Energy Savings operates in a high volume business with an extensive array of data interchanges and market requirements. Energy Savings is dependent on its management information systems to track, monitor and correct or otherwise verify a high volume of data to ensure the reported financial results are accurate. Management also relies on its management information systems to provide its independent contractors with compensation information and to electronically record each customer telephone interaction. Energy Savings information systems also help management forecast new customer enrolments and their energy requirements, which helps ensure that the Fund is able to match all of its new customers' estimated average energy requirements without exposing it to the spot market. The failure of Energy Savings to install and maintain these systems could have a material adverse effect on the operations and cash flow of Energy Savings.

### **Reliance on Third Party Service Providers**

In all jurisdictions in which Energy Savings operates, the LDCs currently perform billing and collection services except as follows: in the province of Alberta and the State of Texas, where Energy Savings is required to invoice

and receive payments directly from its customers; in Illinois, where Energy Savings is responsible for collection of defaulted amounts; and in Ontario, where Energy Savings would be responsible for collection of defaulted amounts in respect of certain large volume users in one utility territory. To date, no defaults have been experienced in this last category. In 2005, Energy Savings entered into a five year agreement with EPCOR for the provision of billing and collection services for all of Energy Savings' customers in Alberta. If the LDCs cease to perform these services, Energy Savings would have to seek a third party billing provider or develop internal systems to perform these functions. There is no assurance that the LDCs and EPCOR will continue to provide these services in the future.

### **Customer Credit Risk**

In Alberta, Texas and Illinois, credit review processes have been implemented to manage customer default as Energy Savings has credit risk in these markets. If a significant number of customers were to default on their payments, it could have a material adverse affect on the operations and cash flow of Energy Savings. Management factors default from credit risk in its margin expectations for Illinois, Texas and Alberta.

For the remaining markets, the LDCs provide collection services and assume the risk of any bad debts owing from Energy Savings' customers for a fee. Management believes that the risk of the LDCs failing to deliver payment to Energy Savings is minimal. There is no assurance that the LDCs that provide these services will continue to do so in the future.

### **Counterparty Credit Risk**

Counterparty credit risk represents the loss that Energy Savings would incur if a counterparty fails to perform under its contractual obligations. This risk would manifest itself in Energy Savings replacing contracted supply at prevailing market rates thus impacting the related customer margin or replacing contracted foreign exchange at prevailing market rates impacting the related Canadian dollar denominated distributions. Counterparty limits are established within the Risk Management Policy. Any exception to these limits requires approval from the Board of Directors of OESC. The Risk Office and Risk Committee monitor current and potential credit exposure to individual counterparties and also monitor overall aggregate counterparty exposure. However, the failure of a counterparty to meet its contractual obligations could have a material adverse effect on the operations and cash flow of Energy Savings.

### **Competition**

Although Energy Savings believes it is currently either the largest or the second largest ABM of natural gas and electricity contracts in Canada based on the number of contracted customers, management estimates that approximately five other companies (Direct Energy, Superior Energy, MX Energy and Universal Energy among them) and incumbent utility subsidiaries compete with it in the residential, small to mid-sized commercial and small industrial market. It is possible that new entrants may enter the market as ABMs and compete directly for the customer base that Energy Savings targets, slowing or reducing its market share. If the LDCs are permitted by changes in the current regulatory framework to sell natural gas at prices other than cost, their existing customer bases could provide them with a significant competitive advantage. This may limit the number of customers available for ABM's including Energy Savings.

### **Dependence on Independent Contractors**

Energy Savings must retain qualified Independent Contractors although competition among Energy Savings competitors is strong. If Energy Savings is unable to attract a sufficient number of Independent Contractors, Energy Savings revenues may decrease and the Fund may not be able to execute its business strategy. The continued growth of Energy Savings is reliant on distribution channels, including the services of its Independent Contractors. There can be no assurance that competitive conditions will allow these Independent Contractors, who are not employees of Energy Savings or its Affiliates, to achieve these customer additions. Although commission expenses are only incurred in connection with new flowing contracts which are secured by its Independent Contractors, lack of success in these marketing programs would limit future growth of the cash flow of Energy Savings.



Energy Savings has consistently taken the position that its Independent Contractors act independently pursuant to their contracts for service, which provide that Energy Savings does not control how, where or when they provide their services. On occasion, a contractor may make a claim that it is entitled to a benefit pursuant to legislation even though it has entered into a contract with Energy Savings that provides that they are not entitled to benefits normally available to employees and Energy Savings must respond to these claims. Energy Savings' position has been confirmed by regulatory bodies in many instances but Energy Savings is currently appealing the findings of two regulatory bodies (one in Canada and one in the United States). Should Energy Savings be unsuccessful in its appeals, Energy Savings will be required to remit unpaid amounts plus interest and might be assessed a penalty. It could also mean that Energy Savings would have to reassess its position in respect of other regulatory matters affecting its Independent Contractors (such as income tax treatment). Such a decision could have a material adverse effect on the operations and cash flow of Energy Savings.

### **Electricity Contract Renewals and Attrition Rates**

As at March 31, 2008, Energy Savings held long-term Electricity Contracts reflecting approximately 713,000 long-term electricity RCEs, of which 16% renew in 2009, 8% renew in 2010, 21% renew in 2011, 22% in 2012, 30% in 2013 and 3% beyond 2013. Although Energy Savings experienced electricity contract attrition rates of approximately 14% in fiscal 2008, there can be no assurance that this rate of attrition will not increase in the future or that Energy Savings will be able to renew its existing Electricity Contracts at the expiry of their terms. Changes in customer behaviour, government regulation or increased competition may affect (potentially adversely) attrition and renewal rates in the future and these changes could adversely impact the future cash flow of Energy Savings. See discussion under "Renewals". Energy Savings' experience is that approximately 55% of its electricity customers renew at the expiry of the term of their Electricity Contract.

### **Gas Contract Renewals and Attrition Rates**

As at March 31, 2008, Energy Savings had long-term Gas Contracts reflecting approximately 974,000 long-term gas RCEs, of which 13% renew in 2009, 21% renew in 2010, 23% renew in 2011, 19% in 2012, 21% in 2013 and 3% renew beyond 2013. The experience of Energy Savings is that approximately 80% of gas customers renew at the expiry of the term of their Contract. Although Energy Savings has experienced gas contract attrition rates of approximately 13% in fiscal 2008, there can be no assurance that this rate of attrition will not increase in the future or that Energy Savings will be able to renew its existing gas contracts at the expiration of their terms. Changes in customer behaviour, government regulation or increased competition may affect (potentially adversely) attrition and renewal rates in the future and these changes could adversely impact the future cash flow of Energy Savings. See discussion under "Renewals".

### **Cash Distributions Are Not Guaranteed and Will Fluctuate with the Performance of Energy Savings**

Although Energy Savings intends to distribute the interest and other income it earns less expenses and amounts, if any, paid by Energy Savings in connection with the redemption of Units, there can be no assurance regarding the amounts of income to be generated by the Fund's Affiliates and paid, directly or indirectly to the Fund. The ability to distribute and the actual amount distributed in respect of the Units will depend upon numerous factors, including profitability, fluctuations in working capital, debt service requirements (including compliance with Credit Facility obligations), the sustainability of margins, the ability of Energy Savings to match, at favourable prices, their commitment to supply natural gas and electricity to their customers, the ability of Energy Savings to secure additional Gas Contracts and Electricity Contracts and other factors beyond the control of Energy Savings. Management of Energy Savings cannot make any assurances that the Fund's Affiliates will be able to pass any additional costs arising from legislative changes (or any amendments), on to customers. Cash distributions are not guaranteed and will fluctuate with the performance of the Fund's Affiliates and other factors.

### **Commodity Alternatives**

To the extent that natural gas and electricity enjoy a price advantage over other forms of energy, such price advantage may be transitory and consumers may switch to the use of another form of energy. The inherent volatility of natural gas and electricity prices could result in these other sources of energy providing more significant competition to Energy Savings.

## **Investment Eligibility**

Energy Savings will endeavor to ensure that the Units continue to be qualified investments for registered retirement savings plans, deferred profit sharing plans, registered retirement income funds and registered education savings plans. The Tax Act imposes penalties for the acquisition or holding of non-qualified or ineligible investments and there is no assurance that the conditions prescribed for such qualified or eligible investments will be adhered to at any particular time.

## **Nature of Units**

Securities such as the Units are hybrids in that they share certain attributes common to both equity securities and debt instruments. The Units do not represent a direct investment in the natural gas or electricity wholesale business and should not be viewed by investors as shares or securities in any of the Fund's Affiliates. As holders of Units, subject to the *Trust Beneficiaries' Liability Act, 2004* (referred to below), Unitholders do not have the statutory rights normally associated with ownership of shares of a company including, for example, the right to bring "oppression" or "derivative" actions. The Units represent a fractional interest in the Fund. The Fund's primary assets are its direct and indirect interests in the securities of its Affiliates. The price per Unit is, among other things, a function of anticipated distributable income.

## **Redemption Right**

It is anticipated that the redemption right will not be the primary mechanism for Unitholders to liquidate their investments. OESC Notes, Exchangeco II Notes and ESIF Notes (of which none are outstanding) which may be distributed in specie to Unitholders in connection with a redemption will not be listed on any stock exchange and no established market is expected to develop for such OESC Notes, Exchangeco II Notes and ESIF Notes. Cash redemptions are subject to limitations. See "Declaration of Trust and Description of Units - Redemption Right".

## **Unitholder Limited Liability**

The Declaration of Trust provides that no Unitholder will be subject to any liability in connection with the Fund or its assets or obligations and, in the event that a court determines that Unitholders are subject to any such liabilities, the liabilities will be enforceable only against, and will be satisfied only out of, the Unitholder's share of the Fund's assets.

The Declaration of Trust further provides that the Trustee and the Fund shall make all reasonable efforts to include as a specific term of any obligations or liabilities being incurred by the Fund or the Trustee on behalf of the Fund a contractual provision to the effect that neither the Unitholders nor the Trustee have any personal liability or obligations in respect thereof. The Administration Agreement contains such provisions. Personal liability may also arise in respect of claims against the Fund that do not arise under contracts, including claims in tort, claims for taxes and possibly certain other statutory liabilities. As the Fund's activities are generally limited to investing in securities issued by its Affiliates, the possibility of any personal liability of this nature arising is considered remote.

On December 16, 2004, the Government of Ontario passed the *Trust Beneficiaries' Liability Act, 2004* which limits the liability of holders of trust units, in a manner similar to that afforded to holders of shares of Ontario incorporated limited liability corporations. The legislation provides that the beneficiaries of a trust are not as beneficiaries, liable for any act, default, obligation or liability of the trust or any of its trustees that arises after the Act became law if, when the act or default occurs or the obligation or liability arises: (a) the trust is a reporting issuer under the *Securities Act* (Ontario); and (b) the trust is governed by the laws of Ontario. The Fund is a reporting issuer under the *Securities Act* (Ontario) and is governed by the laws of Ontario. However, the courts have not yet had an opportunity to consider this legislation.

The operations of the Fund will be conducted, upon the advice of counsel, in such a way and in such jurisdictions as to avoid as far as possible any material risk of liability on the Unitholders for claims against the Fund.

### **Distribution of Common Shares and Notes on Termination of the Fund**

Upon termination of the Fund, the Trustee may distribute the Common Shares, Exchangeco Common Shares, OESC Notes, Exchangeco II Notes and ESIF Notes directly to the Unitholders, subject to obtaining all required regulatory approvals. There is currently no market for the Common Shares, Exchangeco II Common Shares, Exchangeco II Notes, OESC Notes, or ESIF Notes. In addition, the Common Shares, Exchangeco Common Shares, Exchangeco II Notes, OESC Notes and ESIF Notes are not freely tradeable and are not currently listed on any stock exchange. See "Declaration of Trust and Description of the Fund - Term of the Fund" in Schedule "C".

### **The Fund May Issue Additional Units Diluting Existing Unitholders' Interests**

The Declaration of Trust authorizes the Administrator to cause the Fund to issue an unlimited number of Units for such consideration and on such terms and conditions as shall be established by the Administrator without the approval of any Unitholders. Additional Units have been and will be issued by the Fund on the exercise of the Exchangeco Exchange Rights relating to the Preference Shares. See "OESC Shareholders' Agreement – Exchangeco II Exchange Rights" in Schedule "B", upon the exercise of options to acquire Units under the Fund's 2001 Unit Option Plan, the exchange of fully paid unit appreciation rights for Units under the Fund's 2004 Unit Appreciation Rights Plan and the issue of Units to directors of OESC under the Directors' Deferred Unit Compensation Plan.

### **Restrictions on Potential Growth**

The payout by the Fund's Affiliates of the vast majority of all of their operating cash flow will make additional capital and operating expenditures dependent on increased cash flow or additional financing in the future. Lack of such funds could limit the future growth of Energy Savings and its cash flow.

### **Changes in Legislation**

There can be no assurance that the treatment of mutual fund trusts will not be changed in a manner which adversely affects Unitholders. If the Fund ceases to qualify as a "mutual fund trust" under the Tax Act, the Units will cease to be qualified investments for registered retirement savings plans, deferred profit sharing plans, registered retirement income funds and registered education savings plans.

### **Foreign Exchange Risk**

Affiliates of the Fund have an exposure to foreign currency exchange rates, as a result of their investments in U.S. operations. While the Fund has entered into foreign exchange forward contracts to hedge some of its exposure to fluctuation in cross border cash flows, changes in the applicable exchange rate may result in a decrease or increase in the Fund's income.

### **Capital Asset and Replacement Risk**

The Fund does not invest in a significant capital asset program and the vast majority of capital asset expenditures are with respect to information technology including telephony. The capital asset expenditure cash flow in fiscal 2008 represents 7% of operating cash flow and has been funded through operations. Replacement of capital assets is not considered significant.

### **Material Debt Arrangements**

The Fund's Credit Facility is in the amount of \$150 million. There are various covenants pursuant to the Credit Facility that govern most of the Fund's subsidiaries and affiliates. In addition, the Fund is required to submit monthly reporting covering, among other things, mark to market exposure, borrowing base certificate and a supply/demand projection. To date the Fund has met the requirements of the Credit Facility. Should the Credit Facility be unavailable, there would be a significant material adverse effect as the likely result would be either a replacement facility with increased costs or an inability to operate.

### **Electricity Supply – Balancing Risk**

It is Energy Savings' policy to match the estimated electricity requirements of its customers by entering into offsetting electricity swaps in advance of obtaining customers. Depending on several factors, including weather, Energy Savings customers may use more or less electricity than the volume purchased by Energy Savings for delivery to them. Energy Savings is able to invoice its existing electricity customers for balancing charges or credits when the amount of energy used is greater than or less than the amount of energy that Energy Savings has estimated. In certain circumstances, there can be balancing issues for which Energy Savings is responsible when customer aggregation forecasts are not realized.

### **Natural Gas Supply – Balancing Risk**

It is Energy Savings' policy to match the estimated gas requirements of its customers by entering into offsetting gas physical forwards in advance of obtaining customers. Depending on several factors, including weather, Energy Savings customers may use more or less gas than the volume purchased by Energy Savings for delivery to them. Energy Savings does not invoice its natural gas customers for balancing and, accordingly, bears the risk of fluctuation in customer consumption. Energy Savings monitors gas consumption and has an options strategy that covers forecast differences in customer consumption due to weather variations as well as forecast LDC balancing requirements. The cost of this strategy is incorporated in the price to the customer. To the extent that forecast balancing requirements are outside the options purchased, Energy Savings will bear financing responsibility, be exposed to market risk and, furthermore, may also be exposed to penalties by the LDCs. The inability or failure of Energy Savings to manage and monitor these balancing risks could have a material adverse effect on its operations and cash flow.

### **Disruptions to Infrastructure**

Customers are reliant upon the LDCs to deliver their contracted commodity. LDCs are reliant upon the continuing availability of the distribution infrastructure. Any disruptions in this infrastructure would result in counterparties and thereafter Energy Savings enacting the force majeure clauses of their contracts. Under such severe circumstances there would be no revenue or associated cost of sales to report for the affected areas.

### **Expansion Strategy and Future Acquisitions**

The Fund plans to grow its business by expansion into additional deregulated markets through organic growth and acquisitions. The expansion into additional markets is subject to a number of risks, any of which could prevent the Fund from realizing its business strategy.

Acquisitions involve numerous risks, any one of which could harm the Fund's business, including difficulties in integrating the operations, technologies, products, existing contracts, accounting processes and personnel of the target and realizing the anticipated synergies of the combined businesses; difficulties in supporting and transitioning customers, if any, or assets of the target company may exceed the value the Fund realizes, or the value it could have realized if it had allocated the purchase price or other resources to another opportunity; risks of entering new markets or areas in which Energy Savings has limited or no experience or are outside its core competencies; potential loss of key employees, customers and strategic alliances from either Energy Savings' current business or the business of the target; assumption of unanticipated problems or latent liabilities, such as problems with the quality of the products of the target; and inability to generate sufficient revenue to offset acquisition costs.

Future acquisitions or expansion could result in the incurrence of additional debt and related interest expense, as well as unforeseen liabilities, all of which could have a material adverse effect on the Fund's business, results of operations and financial condition. The failure to successfully evaluate and execute acquisitions or otherwise adequately address the risks associated with acquisitions could have a material adverse effect on Energy Savings' business, results of operations and financial condition. Energy Savings may require additional financing should an appropriate acquisition be identified and it may not have access to the funding required for the expansion of its business or such funding may not be available to Energy Savings on acceptable terms. There is no assurance that Energy Savings will determine to pursue any acquisition or that such an opportunity, if pursued, will be successful.

**Tax**

See "Tax on Income Trusts" on page 31 hereof.

**DISTRIBUTIONS**

The Fund's current distribution policy is described under the headings "Declaration of Trust and Description of Units – Distributions Policy", "Share and Loan Capital Structure of Ontario Energy Savings Corp. – Cash Distributions" and "Risks – Cash Distributions Are Not Guaranteed and Will Fluctuate with the Performance of the Fund's Subsidiaries and Affiliates". In addition, the Board of Directors of OESC, as administrator of the Fund, has adopted a distribution policy which contains quantitative and qualitative guidelines which are reviewed regularly to ensure the Fund is in compliance with the policy.

The following table sets forth the month of payment and the distributions per Unit paid by the Fund on the Units from inception:

<b>Record of Cash Distributions <sup>(1)</sup></b>	<b>Fiscal 2009</b>	<b>Fiscal 2008</b>	<b>Fiscal 2007</b>	<b>Fiscal 2006</b>	<b>Fiscal 2005</b>	<b>Fiscal 2004</b>	<b>Fiscal 2003</b>	<b>Fiscal 2002</b>
<b>\$ Per Unit</b>	<b>\$ Per Unit</b>	<b>\$ Per Unit</b>	<b>\$ Per Unit</b>	<b>\$ Per Unit</b>	<b>\$ Per Unit</b>	<b>\$ Per Unit</b>	<b>\$ Per Unit</b>	<b>\$ Per Unit</b>
April.....	0.10083	0.09292	0.07875	0.07370	0.067	0.056	0.034	-
May.....	0.10083	0.09292	0.07875	0.07370	0.067	0.058	0.039	-
June.....	-	0.09292	0.07875	0.07370	0.067	0.058	0.039	0.025
July.....	-	0.09708	0.08125	0.07370	0.070	0.060	0.042	0.025
August.....	-	0.09708	0.08375	0.07370	0.070	0.060	0.044	0.025
September.....	-	0.10083	0.08375	0.07625	0.070	0.063	0.044	0.028
October.....	-	0.10083	0.08375	0.07625	0.072	0.063	0.048	0.030
November.....	-	0.10083	0.08375	0.07625	0.072	0.063	0.048	0.030
December.....	-	0.10083	0.08625	0.07625	0.072	0.065	0.052	0.030
January.....	-	0.4100 <sup>(2)</sup>	0.08625	0.07625	0.072	0.065	0.054	0.032
February.....	-	0.10083	0.08625	0.07625	0.072	0.065	0.054	0.032
March.....	-	0.10083	0.08875	0.07875	0.072	0.065	0.054	0.032

Notes:

- (1) All amounts reflect cash distributions for the Units on a post-split basis, in respect of each of: (a) the 2:1 subdivision of Units effective on July 29, 2002 and (b) the 2:1 subdivision of Units effective on January 30, 2004. All distributions are paid on the last day of the month to Unitholders of record the 15<sup>th</sup> day of the month.
- (2) Special distribution declared December 20, 2007, payable to persons who are Unitholders at December 31, 2007 as to 50% (\$0.205) in cash (payable as to 1/3<sup>rd</sup> thereof on the last day of each of January, February and March of 2008) and as to 50% (\$0.205) in Units payable by the issuance of Units as to 1/3<sup>rd</sup> thereof on the last days of each of June, September and December of 2008) based on the \$16.70 closing TSX price for Units on December 31, 2007. Similar arrangements were made by OESC to ensure that the special distribution was made available in 2008 to the holders of Preference Shares, unit appreciate rights and deferred unit grants on the December 31, 2007 record date.

**MARKET FOR SECURITIES**

The Units of the Fund are listed for trading on the TSX under the symbol SIF.UN. The following table sets forth the price range and trading volume of Units traded on the TSX for the most recently completed financial year of the Fund ended March 31, 2008 and for the month of April and to May 15, 2008:

<b>Month</b>	<b>High</b>	<b>Low</b>	<b>Close</b>	<b>Volume</b>
May 1, 2008 to May 15, 2008	\$14.15	\$13.50	\$14.15	1,302,497
April 2008.....	\$14.39	\$12.73	\$14.10	3,481,285
March 2008.....	\$13.50	\$12.29	\$13.06	6,619,976
February 2008.....	\$15.60	\$13.22	\$13.44	5,310,885
January 2008.....	\$16.99	\$14.65	\$15.15	4,093,773

<b>Month</b>	<b>High</b>	<b>Low</b>	<b>Close</b>	<b>Volume</b>
December 2007.....	\$16.70	\$14.24	\$16.70	3,126,909
November 2007.....	\$17.66	\$14.51	\$15.00	5,401,272
October 2007.....	\$17.11	\$15.07	\$17.11	4,266,230
September 2007.....	\$15.97	\$14.55	\$15.45	2,462,636
August 2007.....	\$15.30	\$13.03	\$14.98	3,448,727
July 2007.....	\$16.37	\$14.72	\$15.20	5,069,297
June 2007.....	\$15.75	\$14.40	\$15.30	4,516,202
May 2007.....	\$16.23	\$14.05	\$15.29	6,837,175
April 2007.....	\$14.32	\$12.90	\$14.10	7,400,925

Note:

- (1) All amounts in the above table reflect the 2:1 subdivision of Units effective July 29, 2002 and the 2:1 subdivision of Units effective January 30, 2004.

**SHARE AND LOAN CAPITAL STRUCTURE OF ONTARIO ENERGY SAVINGS CORP.**  
(as at March 31, 2008)

**Share Capital**

The authorized share capital of OESC consists of an unlimited number of Common Shares, an unlimited number of Class A Preference Shares, an unlimited number of Class B Preference Shares and an unlimited number of Class C Preference Shares of which, at March 31, 2008, 100 Common Shares, 6,706,212 Class A Preference Shares, no Class B Preference Shares and no Class C Preference Shares were issued and outstanding. No additional Class A Preference Shares, Class B Preference Shares or Class C Preference Shares may be issued. The voting rights attached to the Common Shares are subject to the terms of the OESC Shareholders' Agreement. The following is a description of the rights attached to such shares.

***Common Shares***

Each Common Share entitles the holder thereof to receive notice of and to attend all meetings of shareholders of OESC and to one vote per share at such meetings (other than meetings of another class of shares of OESC). The holders of Common Shares are, at the discretion of the board of directors of OESC and subject to applicable legal restrictions, entitled to receive any dividends declared by the board of directors on the Common Shares. In the event of the liquidation, dissolution or winding-up of OESC or other distribution of its assets among its shareholders, holders of the Common Shares shall be entitled to receive the amounts specified below under the heading "Liquidation, Dissolution or Winding-up".

***Preference Shares***

*Class A Preference Shares*

Except where specifically provided by the OBCA, the holders of the Class A Preference Shares shall not be entitled as such to receive notice of or to attend any meeting of the shareholders of OESC and shall not be entitled to vote at any such meeting. However, pursuant to the Declaration of Trust, the holders of the Class A Preference Shares will be entitled to vote in all votes of Unitholders (including resolutions in writing) as if they were the holders of the number of Units which they would receive if they exercised all of their Shareholder Exchange Rights as of the record dates for such votes and shall be treated in all respects as Unitholders for the purposes of any such votes.

The Class A Preference Shares shall entitle the holders thereof to receive in any year as and when declared by the board of directors of OESC cash distributions in a maximum amount per share equal to the distribution entitlement per share of the Class B Preference Share less 56% of the management bonus payable in respect of each Class A Preference Shares pursuant to the Special Management Incentive Program of OESC for such year. See "OESC Shareholders' Agreement - Special Management Incentive Program" below. Holders of Class A Preference Shares will receive, collectively from dividends and payments under the Special Management Incentive Program of OESC,

in any period an amount not greater than the distributions they would have received if they exercised all of their Shareholder Exchange Rights at the commencement of such period.

In the event of the liquidation, dissolution or winding-up of OESC or other distribution of its assets among its shareholders, holders of Class A Preference Shares shall be entitled to receive the amount specified below under the heading "Liquidation, Dissolution or Winding-Up". Such amount will effectively be the same as, and will in no circumstances exceed, the amount per Class A Preference Share that the holder of such Class A Preference Share would have received had OESC and the Fund been liquidated, dissolved or wound-up on the same date and the Shareholder Exchange Rights relating thereto been exercised immediately prior thereto.

*Class B Preference Shares*

Class B Preference Shares are non-voting and are redeemable at the option of OESC and retractable at the option of the holder, at a price of \$0.01 per Class B Preference Share together with all accrued and unpaid dividends, subject to consent of the holder or OESC, respectively. No Class B Preference Shares were outstanding at year end and no additional Class B Preference Shares may be issued.

*Class C Preference Shares*

Class C Preference Shares are non-voting and are redeemable at the option of OESC and retractable at the option of the holder, at a price of the fair market value of the issued and outstanding Common Shares and OESC Notes on the date such Common Shares and OESC Notes were transferred to a predecessor of the OESC. During the April 30, 2007 Reorganization all issued and outstanding Class C Preference Shares were redeemed by OESC. As a result, no Class C Preference Shares were outstanding at year end. No additional Class C Preference Shares may be issued.

***Liquidation, Dissolution or Winding-up***

In the event of the liquidation, dissolution or winding-up of OESC or other distribution of its assets among its shareholders, the holders of the Class A Preference Shares and Common Shares shall be entitled, after payment of all liabilities of OESC, to share in all remaining assets of OESC as follows:

- (a) the holders of the Class A Preference Shares shall be entitled to share in all such assets to the extent of their *pro rata* share thereof determined by multiplying the amount of such assets by a fraction, the numerator of which is the number of Units which the holders of the Class A Preference Shares would be entitled to receive if they exercised their Shareholder Exchange Rights on the date of such liquidation, dissolution or winding-up of OESC or other distribution of its assets amongst its shareholders, and the denominator of which shall be the number of Units that would be outstanding on such date if all the Shareholder Exchange Rights had been exercised on such date; and
- (b) the holders of the Common Shares shall be entitled to share in all such assets to the extent of their *pro rata* share thereof determined by multiplying the amount of such assets by a fraction, the numerator of which is the number of Units outstanding on the date of such liquidation, dissolution or winding-up of OESC or other distribution of its assets amongst its shareholders, and the denominator of which shall be the number of Units that would be outstanding on such date if all the Shareholder Exchange Rights had been exercised on such date.

**Distribution Policy**

The distribution policy of OESC is to distribute all of its available cash, subject to applicable law, by way of monthly dividends on its Common Shares after; (i) satisfaction of its debt service obligations, if any (and provided no event of default exists under the Credit Facility); (ii) satisfaction of its interest and other expense obligations; (iii) making any principal repayments in respect of the OESC Notes and the Exchangeco II Notes (if any) considered advisable by the board of directors of OESC, with the consent of the Fund and the holders of the OESC Notes and the Exchangeco Notes (if any) by Extraordinary Resolution and Exchangeco II Extraordinary Resolution, respectively; and (iv) setting aside the amounts necessary to pay the bonuses to the Class A Preference Shares under the Special Management Incentive Program (which will in no circumstances amount to a payment in any year in

respect of each Class A Preference Share in excess of the distributions paid on a Unit in such year), and subject to OESC retaining such reasonable working capital reserves as may be considered appropriate by the board of directors of OESC. OESC does not intend to pay dividends on its Preference Shares.

As a result of the March 2004 Reorganization and the August 2005 Reorganization resulting in the creation of ESLP and OESLP, respectively, to the extent funds are available, distributions are also paid on the various classes of units of all limited partnerships and trusts to enable the Fund to meet its obligations to pay distributions on Units to Unitholders.

### **Expenditures**

OESC does not anticipate that significant capital expenditures will be required in connection with the business of the Fund other than to finance future growth and to support letters of credit. Reference the Credit Facility on page 11 hereof. Capital expenditures or other expenditures may be financed with borrowings or additional issuances of Units, from the working capital and cash flow of the Subsidiaries and Affiliates of the Fund and/or pursuant to the Credit Facility.

### **OESC Notes**

The following is a summary of the material attributes and characteristics of the OESC Notes, and is qualified in its entirety by reference to the provisions of the OESC Note Indenture which contains a complete statement of such attributes and characteristics.

The OESC Notes authorized are unlimited and will mature on April 30, 2031, subject to prepayment from time to time as considered advisable by the board of directors of OESC, with the consent of the Fund and the holders of the OESC Notes by Extraordinary Resolution, and subject to extension for an additional ten year term with the consent of the holders of the OESC Notes by Extraordinary Resolution. On December 19, 2007, the Note Indenture was amended by the Second Supplemental Note Indenture to eliminate all interest on any outstanding OESC Notes as of December 19, 2007. All interest payable on the outstanding OESC Notes to December 19, 2007 had been paid in full.

The OESC Notes are issuable only as fully registered Notes in minimum denominations of \$10 and for amounts above such minimum only integral multiples of \$1.

The principal of the OESC Notes is payable in lawful money of Canada. All OESC Notes are registered in the name of the Fund and have been pledged to one of the lenders in its capacity as collateral agent pursuant to the Credit Facility.

### ***Payment upon Maturity***

On maturity, OESC will repay the indebtedness represented by the OESC Notes by paying to the Note Trustee in lawful money of Canada an amount equal to the principal amount of the outstanding OESC Notes, together with accrued and unpaid interest, if any, thereon.

### ***Redemption***

From time to time the board of directors of OESC will review the status of OESC's assets and the economic condition relating to OESC's business and the industry within which it operates. If this review, in the opinion of the board of directors of OESC, indicates that it is unlikely that the indebtedness of OESC evidenced by the OESC Notes could be refinanced on the same terms and conditions upon maturity of such notes, then OESC may, subject to the consent of the Trustee and the holders of the Notes by Extraordinary Resolution, commence principal repayments on the OESC Notes such that in the opinion of the board of directors of OESC, the OESC Notes will be fully repaid upon maturity. In that event, the available cash of OESC will be utilized to the extent required to fund such repayments in lieu of dividends on the Common Shares. In addition, if OESC has available cash, but is prohibited from declaring or paying a dividend or reducing its stated capital under applicable corporate laws, the board of directors of OESC may make principal repayments on the OESC Notes to the extent of such available cash.



Except as aforesaid, the OESC Notes will not be redeemable at the option of OESC or by the holders thereof prior to maturity.

### ***Ranking***

The OESC Notes are unsecured debt obligations of OESC and are subordinate in right of payment to other direct unsecured indebtedness of OESC and all secured debt of OESC.

### ***Default***

The Note Indenture provides that any of the following shall constitute an Event of Default (as defined in the Note Indenture): (i) default in payment of the principal of the OESC Notes when the same becomes due; (ii) the failure to pay the interest obligations, if any, of the OESC Notes when the same becomes due, for a period of 12 months; (iii) default on any indebtedness exceeding \$5,000,000; (iv) certain events of winding-up, liquidation, bankruptcy, insolvency or receivership; (v) the taking of possession by an encumbrancer of all or substantially all of the property of OESC; (vi) OESC ceasing to carry on its business, or a substantial or significant part thereof, in the ordinary course; or (vii) default in the observance or performance of any other covenant or condition of the Note Indenture and the continuance of such default for a period of 30 days after notice in writing has been given by the Note Trustee to OESC specifying such default and requiring OESC to rectify the same.

The Note Indenture also provides that the Note Trustee shall not take steps or actions with respect to an Event of Default without the prior consent of the Fund provided the Fund holds, directly or indirectly, at least 25% of the aggregate principal amount of the outstanding OESC Notes. Certain other provisions under the Note Indenture require the prior consent or authorization of the Fund if the Fund holds, directly or indirectly, at least 25% of the aggregate principal amount of the outstanding OESC Notes.

### **Trustee and General Partner**

OESC serves as the trustee of ESIF CT and as the general partner of each of OESLP, ESLP, Manitoba Energy Savings, Quebec Energy Savings, Alberta Energy Savings and BC Energy Savings. See "Organization Chart".

## **SHARE AND LOAN CAPITAL STRUCTURE OF OESC EXCHANGE CO II INC.**

(March 31, 2008)

### **Internal Reorganization**

Exchangeco II was incorporated to replace Exchangeco as the agent to facilitate the exchange of Preference Shares for Units pursuant to, and to assume its obligations under, the Shareholder Exchange Rights described under the heading "OESC Shareholders' Agreement" in Schedule "B". On April 30, 2007, Exchangeco II entered into the Exchangeco II Note Indenture. The material attributes and characteristics of the Exchangeco II Notes are similar to the material attributes and characteristics of the OESC Notes issued under the Note Indenture (described above under the heading "OESC Notes").

### **Share Capital of Exchangeco II**

The authorized share capital of Exchangeco II consists of an unlimited number of common shares, of which 100 common shares are issued and outstanding and owned by the Fund. The voting rights attached to the common shares are subject to the terms of the OESC Shareholders' Agreement. The following is a description of the rights attached to such shares.

### **Common Shares**

Each common share entitles the holder thereof to receive notice of and to attend all meetings of shareholders of Exchangeco II and to one vote per share at such meetings (other than meetings of a class of shares of Exchangeco II). The holders of common shares are, at the discretion of the board of directors of Exchangeco II and subject to applicable legal restrictions, entitled to receive any dividends declared by the board of directors on the common

shares. In the event of the liquidation, dissolution or winding-up of Exchangeco II or other distribution of its assets among its shareholders, holders of the common shares, after payment of all of the liabilities of Exchangeco II, are entitled to share ratably in all remaining assets of Exchangeco II.

### **Exchangeco II Notes**

The terms and conditions of the Exchangeco II Notes are similar to the terms and conditions of the OESC Notes. The Exchangeco II Notes will be issued in connection with the exercise of the Exchangeco II Exchange Rights designed to facilitate the exchange of Preference Shares for Units pursuant to the Shareholder Exchange Rights. See "Schedule "B" OESC Shareholders' Agreement" below.

## **ESIF CT TRUST AND LIMITED PARTNERSHIPS** (March 31, 2008)

### **Background**

When the Fund became a reporting issuer in April 2001, a simple structure was in place, utilizing only one Ontario corporation, a predecessor of OESC, to carry on the business which, at the time, involved the marketing of Gas Contracts to residential, mid-sized commercial and small industrial customers solely in the Province of Ontario. In early 2002, a decision was made to expand OESC's business beyond Ontario into other provinces of Canada through greenfield operations and acquisitions. See "Development of the Fund". A subsidiary, Manitoba Corp., was incorporated to expand the business into Manitoba which is now carried by Manitoba Energy Savings. To expand the business into the Provinces of Quebec, British Columbia and Alberta, separate limited partnerships were created. Subsidiary corporations were established in several States in the United States (Illinois, Indiana, New York, Texas, Massachusetts, Connecticut, Maryland, Virginia and the District of Columbia), to market Gas Contracts and Electricity Contracts commencing with the marketing of Gas Contracts in Illinois in early 2004. See "Organization Chart".

### **March 2004 Reorganization**

With a view to conserving future cash flow to enable the Fund to further expand its business, especially into the United States, the Fund, as the initial limited unitholder established and interposed ESIF CT between the Fund and ESLP and created limited partnerships in each of Quebec (Quebec Energy Savings), British Columbia (B.C. Energy Savings) and Alberta (Alberta Energy Savings) to carry on the business in those Provinces. See "Organization Chart".

To enable each of the Quebec, British Columbia and Alberta limited partnerships and the United States Subsidiaries of U.S. Energy Savings to carry on business in their respective jurisdictions, a predecessor of OESC transferred its Energy Savings System to ESLP pursuant to the Acquisition Agreement in return for 100 Class A units of ESLP at \$20 per unit (\$2,000) and 3,100 Class B units of ESLP at \$10,000 per unit (\$31 million). Contemporaneously, ESLP entered into separate licence and royalty agreements with each of Quebec Energy Savings, B.C. Energy Savings and Alberta Energy Savings on March 19, 2004 to enable each of Quebec Energy Savings, B.C. Energy Savings and Alberta Energy Savings to use the Energy Savings System to carry on business in each of their respective jurisdictions. On March 18, 2004 ESLP entered into a similar licence and royalty agreement with U.S. Energy Savings to authorize it to enter into agreements to sublicense the Energy Savings System to its subsidiaries in the United States and, in furtherance thereof, U.S. Energy Savings entered into sublicense agreements with Illinois Energy Savings on March 18, 2004, New York Energy Savings on September 1, 2005, Indiana Energy Savings on December 1, 2006 and Texas Energy Savings on July 16, 2007, to authorize each of them to use the Energy Savings System to carry on business in the States of Illinois, New York, Indiana and Texas, respectively.

The following is a summary of the material provisions of the ESIF Trust Indenture, the ESLP Limited Partnership Agreement, the three provincial limited partnerships, the Energy Savings System Acquisition Agreement and the licence and royalty and sublicense agreements referred to above.

### **ESIF CT**

ESIF CT is an open-ended, unincorporated investment trust, established pursuant to the ESIF Trust Indenture for the purpose of investing in the Class A partnership units of ESLP, issuing common trust units to the Fund and issuing

preferred trust units to OESC to finance the acquisition of EPCOR. See "Development of the Fund - Natural Gas Operations". ESIF CT has two authorized classes of units: (i) common units, 100% of which are owned by the Fund and (ii) preferred units, 100% of which are owned by OESC.

The holders of common and preferred units of ESIF CT are entitled to receive non-cumulative distributions if, as and when declared by OESC (as trustee of ESIF CT) out of the net income of ESIF CT, the capital of ESIF CT or otherwise in any year, in such amounts, and on such dates as OESC may determine. All income of ESIF CT in an amount not less than the income of ESIF CT for any taxation year of ESIF CT shall be payable for such year. ESIF CT has the same termination date as the Fund. See "Declaration of Trust and Description of Units - Term of the Fund". After paying, retiring or discharging all liabilities and obligations of ESIF CT, OESC must distribute the remaining part of any sale proceeds, together with any cash forming part of ESIF CT fund, among the unitholders. The fiscal year of ESIF CT ends on March 31 of each year. The assets of ESIF CT are 871,849 Class A units of ESLP, 49,999 Class A units of OESLP and 1 Class A unit of Manitoba Energy Savings.

### **ESLP**

ESLP was established as a Canadian limited partnership pursuant to the ESLP Partnership Agreement. ESLP is owned as to 9 Class A units and 251 Class B units by OESC as general partner, 92 Class A units and 2,849 Class B Units by the Fund as a limited partner and 871,849 Class A units by ESIF CT, a limited partner. Class A unitholders of ESLP are entitled to distributions once the Class B preferred return has been paid.

The ESLP Partnership Agreement provides the partnership is limited to not more than 50 partners, the transfer of its units is restricted and persons who are non-residents of Canada may not purchase or acquire units. The fiscal year end of ESLP is March 31 in each year. The ESLP Partnership Agreement provides for Class A and Class B units. The Class B units are entitled to a preferred return which for a fiscal year is the lesser of: (i) the net income of the partnership for a fiscal year end; and (ii) an amount equal to 14% of the total aggregate subscription price of the Class B units. ESLP was formed for several purposes including: (a) to acquire certain assets from OESC including the Energy Savings System; (b) to enter into separate limited partnership agreements, as limited partner with a predecessor of OESC, as general partner to carry on the Fund's business in each of British Columbia (B.C. Energy Savings), Alberta (Alberta Energy Savings) and Quebec (Quebec Energy Savings); (c) to grant licences to the Energy Savings System to each of the limited partnerships referred in (b) above and to U.S. Energy Savings, in each case in return for royalty payments; and (d) to carry on any business in any jurisdiction related to the Fund's business.

### **Provincial Limited Partnerships**

The material terms and conditions of the limited partnership agreements which govern each of OESLP, Quebec Energy Savings, Alberta Energy Savings, B.C. Energy Savings and Manitoba Energy Savings are similar. Each limited partnership has an authorized capital of an unlimited number of units, is limited to not more than 50 partners, the transfer of units is restricted to persons who are residents of Canada and the fiscal year end is March 31 in each year. Each partnership is managed by OESC as the general partner.

### **Energy Savings System – Acquisition Agreement**

On March 18, 2004, a predecessor of OESC sold its Energy Savings System for use in the Provinces of Quebec, British Columbia and Alberta and in the United States to ESLP in return for Class A and Class B units of ESLP having a paid in capital of approximately \$31 million, subject to adjustment, at which time OESC's predecessor became a limited partner of ESLP as described above. The Acquisition Agreement contained the usual representations and warranties from both OESC's predecessor and OESC GP as general partner of ESLP including as regards title to the assets, no material adverse change, options or litigation and the usual covenants. On January 1, 2007, Manitoba Energy Savings purchased the rights to use the Energy Savings System from Energy Savings (Manitoba) Corp. ("Manitoba Corp"), prior to Manitoba Corp.'s continuance into Ontario and amalgamation with an OESC predecessor (see "April 30, 2007 Reorganization").

### **Licence and Royalty and Sub Licence Agreements**

On March 18 and 19, 2004 OESC GP, as general partner of ESLP (at that date), licenced the Energy Savings System pursuant to separate licence and royalty agreements to each of Energy Savings Quebec, B.C. Energy Savings and Energy Savings Alberta to enable each such limited partnership to use in perpetuity the System for purposes of the Fund's business in each such jurisdiction in return for royalty payments to ESLP in an amount per year equal to 4% of gross revenues of licensee providing no royalties are payable until licensee has earned positive cash flow during each royalty period of at least \$200,000. Each licence and royalty agreement contains terms and conditions relating to support services, obligations of the licensee including business standards and non-competition, confidentiality, royalty payment terms and default. Contemporaneously, on March 18, 2004 OESC GP, as general partner of ESLP, licenced the Energy Savings System to U.S. Energy Savings pursuant to a licence and royalty agreement to enable it to sublicense the System in perpetuity to its subsidiaries and contemporaneously U.S. Energy Savings sublicenced the Energy Savings System to Illinois Energy Savings to enable it to use the System in perpetuity to carry on its business in the State of Illinois. U.S. Royalty payments payable by U.S. Energy Savings to ESLP and by Illinois Energy Savings to U.S. Energy Savings are also based on 4% of annual gross revenues of licensee except that no royalties are payable until the licensee has earned positive cash flow during each royalty period of at least U.S. \$5 million. U.S. Energy Savings subsequently entered into sublicense agreements with New York Energy Savings on September 1, 2005, Indiana Energy Savings on December 1, 2006 and Texas Energy Savings on July 16, 2007. The terms and conditions of each of the above referenced licence and royalty and sublicense agreements are otherwise similar and include provisions dealing with non-competition, confidentiality, support services, business standards, ownership of intellectual property rights, representations and warranties and covenants usual and normal for such agreements.

### **August 2005 Reorganization**

On June 29, 2005 the Unitholders and holders of Preference Shares authorized the Fund to approve an internal reorganization, with a view to conserving cash flow for expansion and to ensure continuity of distributions to Unitholders. The Fund applied to the Canada Revenue Agency for an advance income tax ruling in respect of the reorganization. The proposed reorganization involved several steps some of which did not require an advance income tax ruling. Accordingly, OESLP was formed on June 1, 2005 by OESC GP as general partner which acquired one Class A Unit (\$20) and by ESIF CT as the initial limited partner which acquired 49,999 Class A Units at \$20 per Unit (\$999,980). Effective August 1, 2005, OESLP acquired substantially all of the assets and related liabilities of OESC pursuant to the OESLP Acquisition Agreement, thereby transferring substantially all of OESC's operations and all future marketing efforts in Ontario to OESLP for a consideration of \$300,052,640 paid for by the issue by OESLP to OESC of 30,000 Class B Units of OESLP at \$10,000 per Unit (\$300,000,000) and 2,632 Class A Units of OESLP at \$20 per Unit (\$52,640). Contemporaneously, OESC and OESLP entered into a services agreement pursuant to which OESLP reimburses OESC for various identified out-of-pocket expenses incurred by it on behalf of OESLP including commissions for Independent Contractors (who remained associated with OESC), and various other items including insurance, director/officer fees, salaries, bonuses paid pursuant to the Special Management Incentive Program, marketing fees etc. On August 1, 2005 the OESLP Limited Partnership Agreement was amended to authorize it to carry on business under the trade name "Ontario Energy Savings".

### **CONSTRAINTS ON OWNERSHIP**

See "Declaration of Trust and Description of Units – Limitation on Non-Resident Ownership".

### **ESCROWED SECURITIES**

Pursuant to the Escrow Agreement in connection with Texas Energy Savings' purchase of all of the partnership units of Just Energy (see "General Development of the Fund – Three Year History"), on October 9, 2007, the Fund deposited 1,169,399 Units of the Fund with Computer Share Trust Company of Canada, as Escrow Agent, for the benefit of the vendors. One third of the Units were released from escrow to the Vendors on the first anniversary of the Closing Date and, subject to certain conditions, one third of the Units will be released from escrow to the Vendors on each of the second and third anniversaries of the Closing Date.

As of May 29, 2008, the following Units were held in escrow pursuant to the Escrow Agreement:

<u>Designation of Class</u>	<u>Number of Securities Held in Escrow</u>	<u>Percentage of Class</u>
Units	779,599	0.76%

### **DIRECTORS AND EXECUTIVE OFFICERS OF OESC**

The Fund is administered by OESC pursuant to the Administration Agreement. The names and municipalities of residence of the persons who are the directors (including their year of appointment), and executive officers of OESC and their principal occupations during the five preceding years are as follows:

<u>Name and Municipality of Residence and Year of Appointment for Directors <sup>(4)</sup></u>	<u>Position with the Company</u>	<u>Principal Occupation(s) During Five Preceding Years</u>
John A. Brussa <sup>(2)</sup> Calgary, Alberta 2001	Director	Partner, Burnet, Duckworth & Palmer LLP (law firm)
The Hon. Gordon D. Giffin <sup>(1)(2)</sup> Atlanta, Georgia 2006	Director	Senior Partner, McKenna, Long & Aldridge LLP (law firm)
The Hon. Michael Kirby <sup>(1)(3)</sup> Ottawa, Ontario 2001	Director	Chair of the Mental Health Commission of Canada (currently)  Member of the Senate of Canada (1984 to October 2006)  Chair of the Standing Senate Committee on Banking, Trade and Commerce (until 2006)
The Hon. R. Roy McMurtry <sup>(2)(3)</sup> Toronto, Ontario 2007	Director	Counsel, Gowling Lafleur Henderson LLP (law firm) (currently)  Chief Justice, Province of Ontario (February 1996 to May 31, 2007)
Rebecca MacDonald Toronto, Ontario 2001	Director, Executive Chair and Co-Chief Executive Officer	Executive Chair and Co-Chief Executive Officer of the Company (currently)  Executive Chair of the Company (April 1, 2005 to February 29, 2008)  Chief Executive Officer of the Company (until April 1, 2005)
The Hon. Hugh D. Segal <sup>(1)(3)(5)</sup> Kingston, Ontario 2001	Lead Director	Senior Fellow, School of Policy Studies, Queens University (currently)  Member of the Senate of Canada (currently)  President of the Institute of Research on Public Policy (research institute) (until May 31, 2006)
Brian R.D. Smith <sup>(1)(2)</sup> Victoria, British Columbia 2001	Director	Federal Chief Treaty Negotiator and Energy Consultant (currently)

Name and Municipality of Residence and Year of Appointment for Directors <sup>(4)</sup>	Position with the Company	Principal Occupation(s) During Five Preceding Years
Ken Hartwick, C.A. Milton, Ontario	Co-Chief Executive Officer and President	<p>Co-Chief Executive Officer and President of the Company (currently)</p> <p>President of the Company (March 9, 2006 to February 29, 2008)</p> <p>Chief Financial Officer of the Company (April 5, 2004 to March 8, 2006 and from July 1, 2007 until December 31, 2007)</p> <p>Chief Financial Officer and Senior Vice President, Finance of Hydro One (electric utility) (October 2001 to April 2004)</p>
Peter Bloch, C.A. Toronto, Ontario	Chief Financial Officer	<p>Chief Financial Officer of the Company (currently)</p> <p>Partner and Co-Founder of Tribute/Legacy Pharmaceuticals (pharmaceuticals) (May 2005 to December 2007)</p> <p>Chief Financial Officer and Vice President, Finance and Administration of Gennum Corporation, a TSX listed company (semiconductor company) (2000 to 2005)</p>
Stephanie M. Bird Toronto, Ontario	Vice-President and Corporate Risk Officer	<p>Vice-President and Corporate Risk Officer of the Company (currently)</p> <p>Director and Corporate Risk Officer of the Company (April 1, 2005 to March 31, 2006)</p> <p>Manager, Risk and Analysis of the Company (2003 to March 31, 2005)</p>
Richard R. Early Markham, Ontario	Vice-President, Human Resources	<p>Vice-President, Human Resources of the Company (currently)</p> <p>Vice President, Human Resources of WebHelp Inc. (global business process outsourcers) (July 2001 to April 2004)</p>
Paul Goddard Toronto, Ontario	Senior Vice-President, Sales and Marketing	<p>Senior Vice-President, Sales and Marketing of the Company (currently)</p> <p>Vice President of SemCanada LP (natural gas marketing and energy asset management company) (January 2003 to March 2007)</p>
Deborah Merrill Houston, Texas	Senior Vice-President, Commercial Sales and Marketing	<p>Senior Vice-President, Commercial Sales and Marketing (currently)</p> <p>Vice President, Sales and Marketing of Texas Energy Savings (May 2007 to April 30, 2008)</p> <p>Vice President, Sales and Marketing of Just Energy (May 2002 to May 2007)</p>

Name and Municipality of Residence and Year of Appointment for Directors <sup>(4)</sup>	Position with the Company	Principal Occupation(s) During Five Preceding Years
Michael P. Neylan Belfountain, Ontario	Senior Vice-President and General Counsel	Senior Vice-President and General Counsel of the Company (currently)  Vice President and General Counsel of the Company (April 1, 2006 to April 1, 2007)  Senior Counsel of the Company (May 2005 to April 1, 2006)  Counsel – Securities of Nortel Networks Limited (telecommunications equipment) (July 2002 to March 2005)
Gord Potter Richmond Hill, Ontario	Senior Vice-President, Regulatory Affairs	Senior Vice-President, Regulatory Affairs of the Company (currently)  Vice President, Regulatory Affairs of the Company (April 2005 to April 1, 2007)  Director, Regulatory and Utility Management of the Company (July 2003 to April 2005)
Duncan Stiles Toronto, Ontario	Vice-President, Operations	Vice-President, Operations of the Company (currently)  Director, Operations of the Company (April 2005 to October 2007)  Manager, Operations (April 2003 to March 2005)
Lynn Roy Waterloo, Ontario	Senior Vice-President, Customer Service	Senior Vice-President, Customer Service of the Company (currently)  Executive Director, Customer Care of CAA South Central Ontario (road side assistance) (February 2005 to February 2007)  Vice-President, Client Retention of Manulife Financial (financial services) (December 2004 to February 2005)  Assistant Vice-President, Customer Care of Sun Life Financial (financial services) (January 2001 to December 2004)
Andrew E. Schneider Oakville, Ontario	Senior Vice-President and Chief Information Officer	Senior Vice-President and Chief Information Officer of the Company (currently)  Vice-President and Chief Information Officer of the Company (to April 1, 2007)
Shelley Sheppard Toronto, Ontario	Senior Vice-President, Finance	Senior Vice-President, Finance of the Company (currently)  Vice-President, Finance of the Company (September 2006 to April 1, 2007)  Vice-President, Finance, CHUM Radio (broadcasting) (2002 to 2005)

Name and Municipality of Residence and Year of Appointment for Directors <sup>(4)</sup>	Position with the Company	Principal Occupation(s) During Five Preceding Years
R. Scott Gahn Houston, Texas	Executive Vice-President, U.S. Energy Savings	Executive Vice-President, U.S. Energy Savings (currently)  Chief Executive Officer, Texas Energy Savings, (currently)
Darren Pritchett Ottawa, Ontario	Executive Vice-President, Consumer Sales	Chief Executive Officer, Just Energy Texas LP (energy retailer) (until May 24, 2007) Executive Vice-President, Consumer Sales (currently)  Self-employed National Distributor for Energy Savings (until April 30, 2008)

Notes:

- (1) Member of the Audit Committee. Mr. Kirby is the Chair of the Committee.
- (2) Member of the Compensation and Human Resources Committee. Mr. Smith is the Chair of the Committee.
- (3) Member of the Nominating and Corporate Governance Committee. Mr. Segal is the Chair of the Committee.
- (4) Each of the persons, who are directors of OESC, became a director on the Amalgamation of April 30, 2001 except for: (i) Mr. Smith who was appointed to the Board of OESC on August 21, 2001, (ii) Mr. McMurtry who was elected to the board on June 28, 2007 and (iii) Mr. Giffin who was elected to the Board on June 29, 2006. Each of the persons who is listed above as a director has continued as a director of OESC since their initial appointment. The present term of office of each director will expire immediately prior to the election of directors at the next annual meeting of Unitholders.
- (5) Appointed lead director by the Board of Directors on January 17, 2005.

As at May 15, 2008 the above directors and senior officers of OESC, as a group, beneficially owned, directly or indirectly, or exercised control or direction over approximately 1,463,105 Units of the Fund and 5,263,728 (78%) of the Class A Preference Shares of OESC which Units and Preference Shares together constitute 6,726,833 (6.6%) of the Units of the Fund (diluted).

#### **Cease Trade Orders, Bankruptcies, Penalties or Sanctions**

No director or officer of OESC, or a unitholder holding a sufficient number of securities of the Fund to affect materially the control of the Fund is, as at the date hereof, or has been within the 10 years before the date hereof, a director, or executive officer of any company that, while such person was acting in that capacity: (i) was the subject of a cease trade or similar order or an order that denied the relevant company access to any exemption under securities legislation for a period of more than 30 consecutive days; (ii) was subject to an event that resulted, after the director or executive officer ceased to be a director or executive officer, in the company being the subject of a cease trade or similar order or an order that denied the relevant company any exemption under securities legislation, for a period of more than 30 consecutive day; or (iii) within a year of such person ceasing to act in that capacity become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets.

No director or officer of OESC, or a unitholder holding a sufficient number of securities of the Fund to affect materially the control of the Fund (or any personal holding company of such person), has been subject to any penalties or sanctions imposed by a court relating to securities legislation or by a securities regulatory authority or has entered into a settlement agreement with a securities regulatory authority or any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable investor in making an investment decision.



## **Personal Bankruptcies**

No director or officer of OESC, or a unitholder holding sufficient securities of the Fund to affect materially the control of the Fund, or a personal holding company of any such persons, has, within the 10 years preceding the date of this document, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or became subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold the assets of the individual.

## **Conflicts of Interest**

There are potential conflicts of interest to which the directors and officers of OESC will be subject in connection with the operations of OESC. In particular, certain of the directors and officers of OESC are involved in managerial or director positions with other oil and gas companies whose operations may, from time to time, be in direct competition with those of OESC and the Fund or with entities which may, from time to time, provide financing to, or make equity investments in, competitors of OESC and the Fund. Conflicts, if any, will be subject to the procedures and remedies available under the OBCA. The OBCA provides that in the event that a director has an interest in a contract or proposed contract or agreement, the director shall disclose his interest in such contract or agreement and shall refrain from voting on any matter in respect of such contract or agreement unless otherwise provided in the OBCA. As at the date hereof, OESC is not aware of any existing material conflicts of interest between the Fund or a subsidiary of the Fund and any director or officer of the Fund or a subsidiary of the Fund.

## **TAX ON INCOME TRUSTS**

On December 21, 2006, the Minister of Finance (Canada) (the “Minister”) released draft legislation (the “SIFT Legislation”) relating to the federal income taxation of publicly traded trusts and partnerships. On March 29, 2007, the Minister introduced Bill C-52 in the House of Commons to implement the SIFT Legislation. The Bill received Royal Assent and became law on June 22, 2007. The legislation applies to a publicly traded trust that is a specified investment flow-through entity (a “SIFT”) that was listed before November 1, 2006 (“Existing Trust”), commencing with taxation years ending in or after 2011.

Certain distributions of a SIFT will not be deductible in computing the SIFTs’ taxable income, and the SIFT will be subject to tax on such distributions at a rate that is substantially equivalent to the general tax rate applicable to Canadian corporations. Distributions paid by a SIFT attributable to direct foreign investment income or dividend income or as a return of capital will not be subject to this tax. There will be circumstances where an Existing Trust may lose its transitional relief where its equity capital grows beyond certain dollar limits measured by reference to the Existing Trust’s market capitalization at the close of trading on October 31, 2006.

The Fund is a SIFT as defined in the legislation. Commencing with its taxation year ending December 31, 2011, the Fund will be subject to taxes on certain income earned from investments in its Affiliates. The tax payable by the Fund on those distributions will result in a corresponding decrease to the cash flow distributed to the Unitholders. The Fund is also required to recognize future income tax assets and liabilities with respect to the temporary differences of its assets and liabilities and those of its flow-through Affiliates that are expected to reverse in or after 2011. The Fund expects that a portion of its aggregate temporary differences and those of its flow-through subsidiaries will reverse in or after 2011 and as a consequence it has booked a future tax asset of \$9,421 for the year ended March 31, 2008, of which substantially all is related to temporary differences with respect to items included in “Accumulated Other Comprehensive Income” such as mark-to-market adjustments on financial instruments. The Fund also anticipates possible material changes in such future tax amounts corresponding to the changes in the mark-to-market adjustments in future periods due to the volatile nature of such temporary differences. The Fund expects that it will not exceed its “normal growth” limitations, such that it will not be subject to tax on certain income distributed prior to 2011 and accordingly has not provided for future income taxes on the remaining portion of temporary differences which are expected to reverse prior to 2011. The SIFT Legislation does not affect the current and future tax amounts of the Fund’s corporate subsidiaries. While the legislation will not affect existing income trusts until 2011, it had a material impact on the trading value of Energy Savings’ Units. While the price declines have been felt across the entire income fund sector, management believes that the current Unit price is not representative of the financial strength and sustainability inherent in the Energy Savings model. Management is presently investigating alternative corporate forms and is committed to reinstating value to Unitholders. Any conversion would be intended to increase the long-term value of Energy Savings.

Any conversion to corporate form may have tax implications for holders. No decision has been made and the Fund directors may conclude that maintaining the current structure until 2011 is in the best interests of Unitholders.

### **LEGAL PROCEEDINGS**

There are no outstanding legal proceedings which, individually, are for claims in excess of 10% of the current asset value of the Fund to which the Fund or any of its Affiliate is a party or in respect of which any of their respective properties are subject, nor are there any such proceedings known to be contemplated. On February 7, 2008, the Attorney General for Illinois filed a complaint for damages (restitution to consumers and cancellation of contracts), civil penalties and injunctive relief against Illinois Energy Savings (the "Illinois AG Complaint"). The Illinois AG Complaint alleges that sales agents used deceptive practices in their sale of Energy Savings contracts to Illinois customers. Energy Savings has commenced discussions with the Illinois Attorney General to address and defend the allegations and intends to seek a constructive resolution to the matter. On March 3, 2008, the Citizen's Utility Board, AARP and Citizen Action/Illinois filed a complaint before the Illinois Commerce Commission alleging claims very similar to those in the Illinois AG Complaint. On March 20, 2008, an Indiana resident filed a proposed consumer class action against Illinois Energy Savings in Illinois also based on allegations similar to those made by the Illinois Attorney General. That complaint was initially dismissed by the judge for lack of jurisdiction, with an order that the plaintiff amend and re-file by April 18, 2008. The plaintiff re-filed on April 18, 2008. In New York, we are in discussions with the Attorney General's office in Buffalo concerning the contract and practices of New York Energy Savings; no legal proceedings have been initiated by the NY Attorney General, however, Energy Savings does not anticipate making changes to its business practices or operations as a result of these discussions. On April 4, 2008, New York Energy Savings was served with a verified complaint initiated by a commercial customer in New York that proposes a class action against New York Energy Savings, the Fund and the local utility company on behalf of residents of New York City.

Energy Savings believes that the claims asserted in these matters are without merit and will vigorously contest them. Management believes that the pending legal actions against any of Illinois Energy Savings, New York Energy Savings and the Fund are not expected to have a material impact on the financial condition and liquidity of the Fund.

### **INTEREST OF MANAGEMENT AND OTHERS IN MATERIAL TRANSACTIONS**

There were no material interests, direct or indirect, of directors and senior officers of the Fund, any Unitholder who directly or indirectly beneficially owns, or exercises control or direction over, more than 10% of the Units or any known associate or affiliate of such persons in any transaction within the three most recently completed financial years or during the current financial year which has materially affected or will materially affect the Fund.

### **AUDITORS, TRANSFER AGENT AND REGISTRAR**

The auditors of the Fund are KPMG LLP, Chartered Accountants, Toronto, Ontario.

Computershare Investors Services Inc. at its offices in Toronto, Ontario acts as the transfer agent and registrar for the Trust Units.

### **INTEREST OF EXPERTS**

There is no person or company whose profession or business gives authority to a statement, report or valuation made by such person or company and who is named as having prepared or certified a statement, report or valuation described or included in a filing, or referred to in a filing, made under National Instrument 51-102 by the Fund during, or related to, the Fund's most recently completed financial year other than KPMG LLP, the Fund's auditors. To the knowledge of the Fund, none of the aforementioned persons or companies had any registered or beneficial interests, direct or indirect, in any securities or other property of the Fund or of the Fund's associates or affiliates either at the time they prepared the statement, report or valuation prepared by them, at any time thereafter or to be received by them.

In addition, none of the aforementioned persons or companies, nor any director, officer or employee of any of the aforementioned persons or companies, is or is expected to be elected, appointed or employed as a director, officer or employee of OESC or of any associate or affiliate of OESC, except for John A. Brussa, a director of OESC, who is a

partner of Burnet, Duckworth & Palmer LLP, which law firm renders legal services to OESC, and Gordon D. Giffin, a director of OESC, who is a partner of McKenna, Long & Aldridge LLP, which law firm renders legal services to OESC.

#### **MATERIAL CONTRACTS**

Except for contracts entered into by the Fund in the ordinary course of business or otherwise disclosed herein, the only material contracts entered into by the Fund and/or its Affiliates and Subsidiaries are: the Declaration of Trust, the Credit Facility and the ESIF Trust Indenture each of which is described herein. Copies of the Declaration of Trust, the Credit Facility, the ESIF Trust Indenture are available on the Fund's SEDAR profile at [www.sedar.com](http://www.sedar.com).

#### **AUDIT COMMITTEE INFORMATION**

Multilateral Instrument 52-110 of the Canadian Securities Administrators requires the Fund to disclose annually in its AIF certain information relating to OESC's Audit Committee and its relationship with its independent auditors. Schedule "D" contains additional information contemplated by Form 52-110F1 - "Audit Committee Information required in an AIF", including information with respect to the financial literacy and experience of each member of the Audit Committee. The text of the mandate for the Audit Committee is included at Schedule "E".

#### **ADDITIONAL INFORMATION**

Additional information relating to the Fund may be found on Sedar at [www.sedar.com](http://www.sedar.com). Additional information, including directors' and officers' remuneration, principal holders of the Fund's securities and securities authorized for issuance under equity compensation plans, is contained in the Information Circular of the Fund for its most recent annual meeting of unitholders that involved the election of directors of OESC. Additional financial information is contained in the Fund's audited consolidated financial statements and management's discussion and analysis for the year ended March 31, 2008. Acuity Investment Management Inc. filed a report under National Instrument 62-103 for the period ending March 31, 2008 indicating it held, for managed accounts, 17,998,650 Units of the Fund representing 18.01% of the then outstanding Units of the Fund. The report states that the Units were acquired in the ordinary course of business, for investment purposes only and not for the purpose of exercising control or direction over the Fund.

For additional copies of this Renewal Annual Information Form and the material listed in the preceding paragraphs please contact:

Energy Savings Income Fund  
First Canadian Place  
100 King Street West  
Suite 2630, P.O. Box 355  
Toronto, Ontario  
M5X 1E1

Attention: Corporate Secretary

## SCHEDULE "A" - GLOSSARY OF TERMS

In this Renewal Annual Information Form (including the Schedules hereto), the following terms shall have the meanings set forth below, unless otherwise indicated:

**"ABMs"** means Agents/Brokers/Marketers such as OESLP and its Affiliates. ABMs are market aggregators meaning that they aggregate downstream customers into groups.

**"Acquisition Agreement"** means the acquisition agreement between OESC and OESC GP as the general partner of ESLP dated March 18, 2004 as amended by amending acquisition agreement #1 between the parties dated June 15, 2004.

**"Administration Agreement"** means the administration agreement between the Fund and OESC (as Administrator), dated April 30, 2001, as amended from time to time.

**"Administrator"** means OESC in its capacity as administrator of the Fund pursuant to the Administration Agreement.

**"Affiliate"** shall have the meaning ascribed thereto in the OBCA and includes all direct and indirect Subsidiaries of the Fund and certain limited partnerships, including ESIF CT, ESLP, Quebec Energy Savings, B.C. Energy Savings, Alberta Energy Savings, Manitoba Energy Savings, Just Energy and OESLP.

**"Alberta Energy Savings"** means the limited partnership formed under the laws of the Province of Alberta with the name Alberta Energy Savings L.P. pursuant to a limited partnership agreement dated March 18, 2004, as amended from time to time.

**"Alberta Electricity Marketing Licence"** means licence # 314218 issued on December 1, 2006 by the Alberta Ministry of Government Services to permit Alberta Energy Savings to market electricity to residential, commercial and industrial customers in the Province of Alberta and which is renewable on November 30, 2008.

**"Amalgamation of April 25, 2007"** means the amalgamation pursuant to the provisions of the OBCA of Energy Savings (Manitoba) Corp. and OESC as one corporation under the name "Ontario Energy Savings Corp."

**"Amalgamations of April 30, 2007"** means the amalgamations pursuant to the provisions of the OBCA as part of the April 30, 2007 Reorganization, concluding with the amalgamation on April 30, 2007 of OESC Amalco and OESC GP as one corporation under the name "Ontario Energy Savings Corp."

**"Amended and Restated OESC Shareholders' Agreement"** means the agreement dated March 1, 2005 among the Fund, Exchangeco, OESC and the persons who hold all of the outstanding Class A Preference Shares as further amended and restated effective April 30, 2007.

**"April 30, 2007 Reorganization"** means the corporate reorganization of the Fund and certain of its Affiliates approved by Unitholders and holders of Preference Shares at the annual and special meeting on June 29, 2005 and completed on April 30, 2007.

**"B.C. Energy Savings"** means the limited partnership formed under the laws of the Province of British Columbia with the name ES (B.C.) Limited Partnership pursuant to a limited partnership agreement dated March 18, 2004, as amended.

**"Book-Entry Only System"** means the book-based system administered by CDS.

**"BP Canada"** means BP Canada Energy Company.

**"BP Entities"** means BP Canada, BP Canada Energy Marketing Corp. and BP Corporation of North America Inc.

**"Bruce Power"** means Bruce Power L.P.

"**CIBC**" means Canadian Imperial Bank of Commerce, a Canadian chartered bank.

"**CDS**" means The Canadian Depository for Securities Limited.

"**Clarification and Restatement Agreement**" means the agreement dated as of April 30, 2001 among the persons who were the original parties to the OESC Shareholders' Agreement.

"**Class A Preference Shares**" means the Class A preference shares in the capital of OESC.

"**Class B Preference Shares**" means the Class B preference shares in the capital of OESC.

"**Class C Preference Shares**" means the Class C preference shares in the capital of OESC.

"**Commodities**" means Ontario Energy Commodities Inc., a corporation incorporated under the OBCA on January 25, 2002.

"**Commodity Suppliers**" means Gas Suppliers and Electricity Suppliers.

"**Common Shares**" means the common shares in the capital of OESC.

"**Consent and Approval Agreement**" means the agreement between the Fund, OESC, Exchangeco and the holders of the Class A Preference Shares dated April 30, 2007 as part of the April 30, 2007 Reorganization.

"**Constellation**" means Constellation Energy Group Inc. and Constellation Energy Commodities Group, Inc.

"**Credit Facility**" shall have the meaning attributed thereto under the heading "Credit Facility" on page 11 hereof.

"**Declaration of Trust**" means the amended and restated declaration of trust for the Fund dated April 30, 2001 as amended and restated from time to time.

"**Electricico**" means Ontario Electric Savings Corporation, a corporation incorporated under the OBCA on February 15, 1999 and which amalgamated with a predecessor of OESC pursuant to the Amalgamation of July 1, 2002.

"**Electricity Contracts**" means any and all fixed term price protection contracts for electricity supply between a consumer of electricity and OESLP or one of its Affiliates.

"**Electricity Supplier**" means a person who is an electricity producer or an electricity supply aggregator.

"**Energy Contracts**" means Gas Contracts and Electricity Contracts.

"**Energy Savings**" means all or any one or more of the Fund and the Affiliates thereof as the context implies or may require.

"**Energy Savings Marketing**" means Energy Savings Marketing Corp., a corporation incorporated under the laws of the State of Delaware on December 24, 2003.

"**Energy Savings System**" means the proprietary concepts (including intellectual property and know-how), and methodologies specifically developed by OESC for the business of marketing energy contracts to residential, small to mid-sized commercial and small industrial customers including the unique recruitment, training and evaluation methodology for independent commission contractors, the proven direct marketing and sales methodology, the unique customer care program for inbound and outbound calls and all intellectual property etc., all as more specifically described in the Acquisition Agreement.

"**EPCOR**" means interchangeably EPCOR Utilities Inc. or EPCOR Market and Capital L.P., as applicable.

"**ESIF CT**" means ESIF Commercial Trust I, an open ended investment trust established under the laws of the Province of Ontario pursuant to the ESIF Trust Indenture.

"**ESIF Note Indenture**" means the note indenture dated April 30, 2007 between OESC as trustee for ESIF CT and the ESIF Note Trustee.

"**ESIF Note Trustee**" means Computershare Trust Company of Canada.

"**ESIF Notes**" means the notes issuable pursuant to the ESIF Note Indenture.

"**ESIF Trust Indenture**" means the trust indenture dated March 16, 2004 between the Fund, as the initial unitholder and OESC as trustee, as amended from time to time.

"**ESLP**" means Energy Savings LP, the limited partnership established under the laws of the Province of Ontario pursuant to the ESLP Partnership Agreement.

"**ESLP Partnership Agreement**" means the limited partnership agreement dated March 17, 2004 between ESIF CT as the initial limited partner and OESC GP as the general partner, as amended.

"**Exchange**" means OESC Exchange Inc., a corporation which amalgamated with a predecessor of OESC on March 1, 2005.

"**Exchangeco II Note Trustee**" and "**Exchangeco Note Trustee**" means Computershare Trust Company of Canada.

"**Exchangeco**" means OESC Exchangeco Inc., a company incorporated pursuant to the OBCA on February 23, 2005 and amalgamated with a predecessor of OESC pursuant to the Amalgamation of April 30, 2007.

"**Exchangeco Notes**" means the 13% unsecured notes of Exchangeco issued by Exchangeco to the Fund from time to time pursuant to the Exchangeco Note Indenture.

"**Exchangeco Note Indenture**" means the note indenture dated February 23, 2005, as amended by a supplemental indenture dated March 1, 2005, providing for the issuance of Exchangeco Notes made between Exchangeco and the Exchangeco Note Trustee.

"**Exchangeco II**" means OESC Exchangeco II Inc., a corporation incorporated pursuant to the OBCA on April 25, 2007.

"**Exchangeco II Common Shares**" means the common shares in the capital of Exchangeco II.

"**Exchangeco II Exchange Rights**" means the rights granted by the Fund pursuant to the OESC Shareholders' Agreement entitling Exchangeco II to acquire Units in order to fulfil its obligations under the Shareholder Exchange Rights and to satisfy the purchase price for such Units by the issuance of Exchangeco II Notes to the Fund.

"**Exchangeco II Extraordinary Resolution**" means a resolution passed by the holders of not less than 66⅔% of the principal amount of Exchangeco II Notes outstanding, either in person or by proxy at a meeting of holders of Exchangeco II Notes called for the purposes of approving such resolution, or approval in writing by the holders of not less than 66⅔% of the principal amount of Exchangeco II Notes then outstanding.

"**Exchangeco II Notes**" means the unsecured notes of Exchangeco II issued by Exchangeco II to the Fund from time to time pursuant to the Exchangeco II Note Indenture.

"**Extraordinary Resolution**" means a resolution passed by the holders of not less than 66⅔% of the principal amount of OESC Notes outstanding, either in person or by proxy, at a meeting of holders of OESC Notes called for the purpose of approving such resolution, or approval in writing by the holders of not less than 66⅔% of the principal amount of OESC Notes then outstanding.

“**Fortis**” means Fortis Energy Marketing & Trading G.P.

"**Fund**" means Energy Savings Income Fund, a trust established under the laws of the Province of Ontario and governed by the Declaration of Trust.

"**Gas Contracts**" is the name under which OESLP and its Affiliates market long-term contracts for a customer's natural gas requirements at, in most cases, a fixed price, utilizing the ABC T-Service arrangement in the Province of Ontario and similar contracts and arrangements used by Energy Savings in other jurisdictions where Energy Savings markets natural gas.

"**Gas Supplier**" means a person who is a natural gas producer or natural gas supply aggregator.

"**GJ**" means gigajoules (one billion joules). A joule is a measurement of energy, with one gigajoule being equal to 0.95 million British thermal units or 26.53 m<sup>3</sup> of natural gas.

"**Illinois Energy Savings**" means Illinois Energy Savings Corp., a corporation incorporated under the laws of the State of Delaware on August 29, 2003.

"**Independent Contractor**" means a person who serves in the capacity of an independent contractor to solicit contracts for the supply of natural gas and/or electricity to residential, small to mid-size commercial and small industrial customers.

"**Indiana Energy Savings**" means Indiana Energy Savings Corp., a corporation incorporated under the laws of the State of Delaware on August 29, 2003.

"**Just Energy**" means Just Energy Texas LP, a limited partnership established pursuant to the laws of the State of Texas on May 30, 2006 as a result of the conversion on March 30, 2006.

"**kWh**" means a kilowatt hour, the standard commercial unit of electric energy, with one kilowatt hour being the amount of energy consumed by ten 100 watt light bulbs burning for one hour.

"**Large Volume User**" means an electricity consumer who consumes more than 250,000 kWh of electricity per year.

"**LDC**" means local distribution company, the natural gas or electricity distributor for a geographic franchise area.

"**m<sup>3</sup>**" means a cubic meter or 0.03769 GJs.

"**Manitoba Energy Savings**" means the limited partnership formed pursuant to the laws of the Province of Manitoba with the name Energy Savings (Manitoba) LP pursuant to a limited partnership agreement dated October 31, 2006

"**March 2004 Reorganization**" means the internal reorganization of the Fund described on page 23 hereof.

"**Massachusetts Energy Savings**" means Massachusetts Energy Savings Corp., a corporation incorporated under the laws of the State of Delaware on

"**New York Energy Savings**" means New York Energy Savings Corp., a corporation incorporated under the laws of the State of Delaware on July 22, 2004.

"**Note Indenture**" means the note indenture dated April 30, 2001 providing for the issuance of OESC Notes between OESC and the Note Trustee as supplemented and amended by the OESC First Supplemental Note Indenture and the OESC Second Supplemental Note Indenture.

"**Note Trustee**" means Computershare Trust Company of Canada.

"**OBCA**" means the *Business Corporations Act* (Ontario), as amended from time to time, including the regulations promulgated thereunder.

"**OEB**" means the Ontario Energy Board, a regulatory body which regulates, *inter alia*, the distribution and marketing of natural gas and electricity in the Province of Ontario.

"**OESC**" or the "**Company**" means Ontario Energy Savings Corp., the corporation created by the Amalgamation of April 30, 2007 as part of the April 30, 2007 Reorganization, and, for the purposes of this annual information form, includes all predecessor companies with the name Ontario Energy Savings Corp.

"**OESC Amalco**" means OSEC Amalco Inc. the corporation created by the amalgamation of a predecessor to OESC and OESC Newco pursuant to the OBCA on April 30, 2007 as part of the April 30, 2007 Reorganization.

"**OESC First Supplemental Note Indenture**" means the first supplemental note indenture between OESC and the Note Trustee dated March 1, 2005.

"**OESC GP**" means OESC GP Corp., a corporation incorporated under the OBCA on February 21, 2004 and which amalgamated with OESC Amalco as part of the April 30, 2007 Reorganization to form OESC.

"**OESC Newco**" means OESC Newco Inc., a corporation incorporated pursuant to the OBCA on April 25, 2007 as part of the April 30, 2007 Reorganization.

"**OESC Notes**" means the unsecured, subordinated notes of OESC issued by OESC pursuant to the Note Indenture.

"**OESC Quebec Inc.**" means La Corporation d'économie d'énergie du Québec Inc. a company incorporated under the laws of the Province of Quebec on March 11, 2004.

"**OESC Second Supplemental Note Indenture**" means the second supplemental note indenture between OESC and the Note Trustee made as of December 19, 2007.

"**OESC Shareholders' Agreement**" means the shareholders' agreement dated April 30, 2001 among the Fund, a predecessor of OESC, Exchange and the shareholders and former shareholders of OESC as amended by the Clarification and Restatement Agreement and the Consent and Approval Agreement.

"**OESLP**" means the limited partnership formed under the laws of the Province of Ontario with the name Ontario Energy Savings L.P. pursuant to the OESLP Limited Partnership Agreement.

"**OESLP Acquisition Agreement**" means the acquisition agreement between OESLP and a predecessor of OESC dated August 1, 2005 pursuant to which OESLP acquired substantially all of the assets and certain related liabilities of OESC's predecessor.

"**OESLP Limited Partnership Agreement**" means the limited partnership agreement dated June 1, 2005 between a predecessor of OESC, as general partner, and ESIF CT, as the limited partner, as amended by amending agreement #1 dated August 1, 2005.

"**OESLP Natural Gas Licence**" means Licence Number GM-2005-0316 issued by the OEB to OESLP on July 15, 2005 authorizing OESLP to serve as a gas marketer in the Province of Ontario to July 14, 2010.

"**Preference Shares**" means, collectively, the Class A Preference Shares, the Class B Preference Shares and the Class C Preference Shares.

"**Quebec Energy Savings**" means the limited partnership formed under the laws of the Province of Quebec with the name Energy Savings (Quebec) L.P. pursuant to a limited partnership agreement dated March 18, 2004.

"**RCE**" means a residential customer equivalent which is a unit of measurement equivalent to a customer using, as regards natural gas, 2,815 m<sup>3</sup> (or 106 GJ's) of natural gas on an annual basis and, as regards electricity, 10,000 kWh



of electricity on an annual basis, which represents respectively the approximate amount of gas and electricity used by a typical household.

**"Shareholder Exchange Rights"** means the rights granted by Exchange (now Exchangeco II), to the holders of Preference Shares pursuant to the OESC Shareholders' Agreement entitling the holders thereof to require Exchange (now Exchangeco II), to purchase their Preference Shares and to satisfy the purchase price for such Preference Shares by the transfer of Units to them.

**"Shell Energy"** means Shell Energy North America (Canada) Inc., an affiliate of Shell Oil Company.

**"Shell Entities"** means Shell Energy, Shell Energy North America (US) L.P., Coral Energy Resources, L.P. and Coral Power, L.L.C., all affiliates of Shell Oil Company.

**"Special Management Incentive Program"** means the bonus which each of the holders of Class A Preference Shares is entitled to receive, on a quarterly basis, equal to the amount he would have received had he been a holder of record on the record date for all distributions made on Units in respect of such quarter of a number of Units equivalent to the number of Class A Preference held by him.

**"Special Resolution"** means a resolution passed by a majority of not less than 66 $\frac{2}{3}$ % of the votes cast, either in person or by proxy, at a meeting of Unitholders, called for the purpose of approving such resolution, or approved in writing by the holders of not less than 66 $\frac{2}{3}$ % of the Units entitled to be voted on such resolution.

**"Subsidiary"** shall have the meaning ascribed thereto in the OBCA.

**"Tax Act"** means the *Income Tax Act* (Canada), as amended, and the regulations thereunder.

**"Texas Energy Savings"** means Energy Savings Texas Corp., a company incorporated under the laws of the State of Texas on January 27, 2006.

**"Trustee"** means Montreal Trust Company, trustee pursuant to the Declaration Trust.

**"TSX"** means the Toronto Stock Exchange.

**"Unitholders"** means the holders from time to time of Units and includes, while the Units are registered in the Book-Entry Only System, the beneficial owners of Units.

**"Units"** means the units of the Fund, each unit representing an equal undivided beneficial interest therein.

**"U.S. Energy Savings"** means U.S. Energy Savings Corp., a corporation incorporated under the laws of the State of Delaware on December 4, 2001.

**"WACOG"** means, for any period, the weighted average cost of gas for such period, which is generally derived by weighting the gas volumes by the gas prices paid under specific gas contracts to produce one average price for a gas supply portfolio.

Words importing the singular include the plural and vice versa and words importing any gender include all genders.

All dollar amounts herein are in Canadian dollars, unless otherwise stated.

All share and Unit amounts relating to Preference Shares, Common Shares and Units reflect each of the 2:1 subdivisions effective July 29, 2002 and January 30, 2004.

## SCHEDULE "B" - OESC SHAREHOLDERS' AGREEMENT

(March 31, 2008)

On April 30, 2001 the Fund, a predecessor of OESC, the shareholders of a predecessor of OESC (including former shareholders who were issued Units in lieu of Preference Shares), Exchange, Electrico and the shareholders of Electrico entered into the OESC Shareholders' Agreement which Agreement was amended and restated by the Clarification and Restatement Agreement and further amended by the Consent and Approval Agreement. The following is a summary of the material provisions of the OESC Shareholders' Agreement as amended and restated which does not purport to be complete. Reference is made to the OESC Shareholders' Agreement for a complete text of its provisions.

### Directors of OESC

The OESC Shareholders' Agreement provides that the board of directors of OESC shall consist of a minimum of three and a maximum of ten directors, with the initial number of directors set at eight. The OESC Shareholders' Agreement provides that at least a majority of the directors shall be persons who are not officers or employees of OESC or any of its affiliates (as defined in the OBCA) or persons who beneficially own, directly or indirectly, or who exercise control or direction over, Units representing more than 10% of the outstanding Units on a fully-diluted basis or directors or officers of any such person or any of its affiliates.

### Transfer of Common Shares and Preference Shares

On March 20, 2008, the OESC Shareholders' Agreement was amended to permit the transfer of Preference Shares to persons who were not parties thereto contingent on such parties' simultaneous exchange of such Preference Shares for Units.

Other than the above-indicated transfer, until the Fund is liquidated, the Class A Preference Shares may only be sold or otherwise disposed of pursuant to the Shareholder Exchange Rights and the related purchase for cancellation of such shares by OESC or in the event of:

- (a) a successful takeover bid for all of the Units, in which case the holders of Class A Preference Shares are obligated to sell their Preference Shares to:
  - (i) the successful bidder; or
  - (ii) the Fund, if that takeover bid is not also made to the holders of the Class A Preference Shares or if the price of the bid for the Class A Preference Shares is less than the price per Class A Preference Share described below, in which case the Fund is obligated to purchase the Class A Preference Shares;
    - at a cash price per share equal to the price paid per Unit pursuant to the successful takeover bid multiplied by the number of Units which the holders of the Class A Preference Shares would be entitled to receive if they exercised the Shareholder Exchange Rights relating to the Class A Preference Shares on the date of purchase divided by the number of Class A Preference Shares outstanding; or
- (b) a takeover bid, amalgamation, plan of arrangement or other business combination involving all of the shares of OESC.

If a takeover bid is made for all of the Units and not less than 90% of the Units on a fully-diluted basis (other than Units held at the date of the takeover bid by or on behalf of the offeror or associates or affiliates of the offeror) are taken up and paid for by the offeror, the Fund shall have the option, exercisable within 60 days of the termination of the takeover bid, to require the holders of the Class A Preference Shares to sell their Class A Preference Shares to the Fund at a price per Class A Preference Share determined on the same basis as set forth in paragraph (a) above.

### **Shareholder Exchange Rights**

Pursuant to the OESC Shareholders' Agreement, the Shareholder Exchange Rights granted to holders of Class A Preference Shares entitle the holders thereof to require Exchangeco II to acquire Class A Preference Shares in exchange for Units. The Shareholder Exchange Rights may be exercised with respect to such number of Preference Shares up to the number of Preference Shares held by the relevant holder at such time on the last day of any calendar quarter upon 10 days written notice to the Fund, OESC and Exchangeco II.

In the case of the Class A Preference Shares, the Shareholder Exchange Rights entitle the holder of such shares to receive a number of Units equivalent to the number of Class A Preference Shares in respect of which the Shareholder Exchange Rights have been exercised.

### **Exchangeco II Exchange Rights**

To enable Exchangeco II to honour its obligations pursuant to the Shareholder Exchange Rights, the Fund has granted to Exchangeco II the Exchangeco II Exchange Rights, providing Exchangeco II the right to purchase from treasury, that number of Units required by Exchangeco II from time to time to fulfill its obligations under the Shareholder Exchange Rights. The purchase price for such Units is the market price of the Units to be purchased as at the date of exercise by the Shareholder of the Shareholder Exchange Rights which they are being issued in respect of (determined on the basis set forth under "Declaration of Trust and Description of Units – Redemption Right") and shall be satisfied by the issuance by Exchangeco II to the Fund of Exchangeco II Notes with a principal amount equal to such market price.

OESC is required, subject to applicable law, to purchase from Exchangeco II for cancellation all Preference Shares acquired by Exchangeco II from time to time pursuant to the exercise of the Shareholder Exchange Rights for an amount equal to (the "Preference Share Purchase Price") which as regards: (i) Class A Preference Shares is equal to the market price of the Units exchanged by Exchangeco II for such Class A Preference Shares, (ii) Class B Preference Shares is equal to the redemption price, i.e., \$2.50 per Share, together with all accrued and unpaid dividends thereon, if any, and (iii) Class C Preference Shares, and OESC will satisfy the purchase price by the issue to Exchangeco II of additional OESC Notes in a principal amount equal to the total Preference Share Purchase Price. Once all of the Shareholder Exchange Rights have been exercised and all of the Preference Shares have been purchased for cancellation, OESC and Exchangeco will amalgamate.

Pursuant to the terms of the OESC Shareholders' Agreement, on the earlier of (i) March 31, 2016, (ii) the date of the termination of the employment or consulting arrangement with OESC and a holder of Class A Preference Shares for any reason, (iii) the date of death of a holder of Class A Preference Shares, and (iv) the date upon which a holder of Class A Preference Shares becomes a non-resident of Canada within the meaning of the Tax Act, all of the Shareholder Exchange Rights held by such holders relating to Class A Preference Shares which have not been exercised by such date shall be deemed to have been exercised.

All of the Shareholder Exchange Rights relating to Class B Preference Shares were exercised on or before January 1, 2004.

### **Special Management Incentive Program**

Each of the holders of the Class A Preference Shares is entitled to receive, on a quarterly basis, a management bonus equal to the amount that such holder would have received had he been a holder of record on the record date for all distributions made on Units in respect of such quarter of a number of Units equivalent to the number of Class A Preference Shares held by the individual.

### **Other Matters**

The OESC Shareholders' Agreement also provides that no additional Preference Shares may be issued and that the Fund will not accept an offer or agree to support any proposal involving its Common Shares or Preference Shares unless the same offer or proposal is made to the holders of Preference Shares for their Preference Shares for a consideration based on the consideration for the Common Shares which reflects the percentage indirect interest of

the holders of the Preference Shares in OESC through the Fund on the basis that they had exercised all of the Shareholder Exchange Rights.

## SCHEDULE "C" - DECLARATION OF TRUST AND DESCRIPTION OF UNITS

(March 31, 2008)

### Declaration of Trust

The Fund is an open-ended, limited purpose trust established under the laws of the Province of Ontario and is governed by the Declaration of Trust. The Fund qualifies as a mutual fund trust for the purposes of the Tax Act. The following is a summary of the material attributes and characteristics of the Units and certain provisions of the Declaration of Trust which does not purport to be complete. Reference is made to the Declaration of Trust for a complete description of the Units and the full text of its provisions.

### Activities of the Fund

The Declaration of Trust provides that the Fund is restricted to:

- (a) investing in securities, including those issued by OESC and Exchangeco II;
- (b) temporarily holding cash in interest-bearing accounts or short-term government debt for the purposes of paying the expenses of the Fund, paying amounts payable by the Fund in connection with the redemption of any Units and making distributions to Unitholders; and
- (c) issuing Units (i) for cash or in order to acquire securities including those issued by OESC and (ii) upon the exercise of the Exchangeco II Exchange Rights granted by the Fund to Exchangeco II pursuant to the OESC Shareholders' Agreement.

### Units

An unlimited number of Units may be issued pursuant to the Declaration of Trust. Each Unit is transferable and represents an equal undivided beneficial interest in any distributions from the Fund whether of net income, net realized capital gains or other amounts, and in the net assets of the Fund in the event of termination or winding-up of the Fund. All Units are of the same class with equal rights and privileges. The Units are not subject to future calls or assessments, and entitle the holder thereof to one vote for each whole Unit held at all meetings of Unitholders. Pursuant to the Declaration of Trust, the holders of the Preference Shares will be entitled to vote in all votes of Unitholders (including resolutions in writing) as if they are the holders of the number of Units which they would receive if they exercised their Shareholder Exchange Rights as of the record dates for such votes and will be treated in all respects as Unitholders for the purposes of any such vote. Except as set out under "Redemption Right" below, the Units have no conversion, retraction, redemption or pre-emptive rights.

### Issuance of Units

The Declaration of Trust provides that Units or rights to acquire Units may be issued at the times, to the persons, for the consideration and on the terms and conditions that the Administrator determines. Units may be issued in satisfaction of any non-cash distribution of the Fund to Unitholders on a *pro rata* basis. The Declaration of Trust also provides that immediately after any *pro rata* distribution of Units to all Unitholders in satisfaction of any non-cash distribution, the number of outstanding Units will be consolidated such that each Unitholder will hold after the consolidation the same number of Units as the Unitholder held before the non-cash distribution, providing however that the Administrator may in its sole discretion as part of a resolution of the Administrator approving any *pro rata* distribution of additional Units determine there be no such consolidation of Units.

### Trustee

The Trustee of the Fund is Montreal Trust Company of Canada, 100 University Avenue, 11<sup>th</sup> Floor, Toronto, Ontario, M5J 2Y1.

The Declaration of Trust provides that, subject to the terms and conditions thereof, the Trustee may, in respect of the trust assets, exercise any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof and shall supervise the investments and conduct the affairs of the Fund. The Declaration of Trust prohibits a non-resident of Canada (as that term is defined in the Tax Act) from acting as the Trustee. The Trustee is responsible for, among other things: (i) acting for, voting on behalf of and representing the Fund as a shareholder and noteholder of OESC and Exchangeco; (ii) maintaining records and providing reports to Unitholders; (iii) supervising the activities of the Fund; (iv) effecting payments of distributable cash from the Fund to Unitholders; and (v) voting in favour of the Fund's nominees to serve as directors of OESC.

The Trustee may resign upon 60 days' written notice to the Fund and may be removed by an ordinary resolution of the Unitholders and the vacancy created by such removal or resignation must be filled at the same meeting, failing which it may be filled by the former Trustee.

The Declaration of Trust provides that the Trustee shall act honestly and in good faith with a view to the best interests of the Fund and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Declaration of Trust provides that the Trustee shall be entitled to indemnification from the Fund in respect of the exercise of its powers, and the discharge of its duties provided that it acted honestly and in good faith with a view to the best interests of all the Unitholders.

### **Administration of the Fund**

The Fund entered into the Administration Agreement with a predecessor of OESC on April 30, 2001 pursuant to which OESC has agreed to act as Administrator of the Fund. The Administrator will provide or arrange for the provision of services required in the administration of the Fund. These services may include arranging and paying for annual audit and regulatory public reporting services and costs, arranging for, and paying the cost of, legal counsel, monitoring and co-ordinating the activities of, and paying the fees of, the transfer agent and registrar for the Units, arranging for distributions to Unitholders, and providing reports to Unitholders. All such costs, other than the amounts of the distributions to the Unitholders, are the responsibility of the Administrator. Unitholders may terminate the Administration Agreement by Special Resolution.

### **Cash Distributions**

The amount of cash to be distributed monthly per Unit shall be equal to a *pro rata* share of interest and principal repayments on the OESC Notes and Exchangeco II Notes and distributions, if any, on or in respect of the Common Shares of OESC and the common units of ESIF-CT owned by the Fund (including distributions received by ESIF-CT from the business carried on by B.C. Energy Savings, Alberta Energy Savings, Quebec Energy Savings through ESLP), received by the Fund less: (i) administrative expenses and other obligations of the Fund; (ii) amounts which may be paid by the Fund in connection with any cash redemptions of Units; and (iii) any other interest expense incurred by the Fund between distributions. Any income of the Fund which is applied to any such cash redemptions of Units or is otherwise unavailable for cash distribution will be distributed to Unitholders in the form of additional Units. Such additional Units will be used pursuant to applicable exemptions under applicable securities laws, discretionary exemptions granted by applicable securities regulatory authorities or a prospectus or similar filing.

The Fund receives proceeds from dividends on the Common Shares and may receive distributions on the common units of ESIF-CT owned by the Fund.

### **Redemption Right**

Units are redeemable at any time on demand by the holders thereof. As the Units are issued in book entry form, a Trust Unitholder who wishes to exercise the redemption right will be required to obtain a redemption notice form from his or her investment dealer who will be required to deliver the completed redemption notice form to CDS. Upon receipt of the redemption notice by the Fund, all rights to and under the Units tendered for redemption shall be surrendered and the holder thereof shall be entitled to receive a price per Unit (the "Redemption Price") equal to the lesser of: (i) 90% of the "market price" of the Units on the principal market on which the Units are quoted for trading during the 10 trading day period commencing immediately subsequent to the date on which the Units were surrendered for redemption (the "Redemption Date"); and (ii) the "closing market price" on the principal market on which the Units are quoted for trading on the Redemption Date.

For the purposes of this calculation, "market price" will be an amount equal to the simple average of the closing price of the Units for each of the trading days on which there was a closing price; provided that if the applicable exchange or market does not provide a closing price, but only provides the highest and lowest prices of the Units traded on a particular day, the "market price" shall be an amount equal to the simple average of the highest and lowest prices for each of the trading days on which there was a trade; and provided further that if there was trading on the applicable exchange or market for fewer than five of the 10 trading days, the "market price" shall be the simple average of the following prices established for each of the 10 trading days: the average of the last bid and last asking prices of the Units for each day there was no trading; the closing price of the Units for each day that there was trading if the exchange or market provides a closing price; and the average of the highest and lowest prices of the Units for each day that there was trading if the market provides only the highest and lowest prices of Units traded on a particular day. The "closing market price" shall be an amount equal to the closing price of the Units if there was a trade on the date and the exchange or market provides a closing price; an amount equal to the average of the highest and lowest prices of the Units if there was trading and the exchange as other market provides only the highest and lowest prices of Units traded on a particular day; the average of the last bid and last asking prices of the Units if there was no trading on that date.

The aggregate Redemption Price payable by the Fund in respect of any Units surrendered for redemption during any calendar month shall be satisfied by way of a cash payment on the last day of the month following the quarter in which the Units were tendered for redemption, provided that the entitlement of Unitholders to receive cash upon the redemption of their Units is subject to the limitations that: (i) the total amount payable by the Fund in respect of such Units and all other Units tendered for redemption in the same calendar month shall not exceed \$50,000.00; (ii) at the time such Units are tendered for redemption, the outstanding Units shall be listed for trading on a stock exchange or traded or quoted on another market which the Administrator considers, in its sole discretion, provides representative fair market value prices for the Units; and (iii) the normal trading of Units is not suspended or halted on any stock exchange on which the Units are listed (or, if not listed on a stock exchange, on any market on which the Units are quoted for trading) on the Redemption Date or for more than five trading days during the 10 day trading period commencing immediately after the Redemption Date.

If a Unitholder is not entitled to receive cash upon the redemption of Units as a result of the foregoing limitations, then each Unit tendered for redemption shall, subject to any applicable regulatory approvals, be redeemed by way of a distribution in specie of a *pro rata* number of securities of OESC and Exchangeco II held by the Fund. No fractional Common Shares or OESC Notes or Exchangeco II Notes in integral multiples of less than \$10 will be distributed and, where the number of securities of OESC to be received by a Unitholder includes a fraction or a multiple less than \$10, such number shall be rounded to the next lowest whole number or integral of \$10. The Fund shall be entitled to all interest paid on the OESC Notes and the Exchangeco II Notes and the distributions paid on the Common Shares on or before the date of the distribution in specie.

It is anticipated that the redemption right described above will not be the primary mechanism for holders of Units to dispose of their Units. Securities of OESC and Exchangeco II which may be distributed in specie to Unitholders in connection with a redemption will not be listed on any stock exchange and no market is expected to develop in securities of OESC or Exchangeco II and they may be subject to resale restrictions under applicable securities laws.

Securities of OESC or Exchangeco II so distributed may not be qualified investments for trusts governed by registered retirement savings plans, registered retirement income funds and deferred profit sharing plans and registered education savings plans, each as defined in the Tax Act, depending upon the circumstances at the time.

### **Meetings of Unitholders**

The Declaration of Trust provides that meetings of Unitholders must be called and held for the election or removal of nominees of the Fund to serve as directors of OESC (except filling casual vacancies), the removal of the Trustee, the appointment or removal of the auditors of the Fund, the appointment of an inspector to investigate the performance by the Trustee or Administrator in respect of their respective responsibilities and duties in respect of the Fund, the approval of amendments to the Declaration of Trust (except as described under "Amendments to the Declaration of Trust" below), the sale of all or substantially all of the assets of the Fund, the exercise of certain voting rights attached to securities of OESC and Exchangeco II held by the Fund (see "Exercise of Certain Voting Rights Attached to Securities of OESC and Exchangeco II" below) and the dissolution of the Fund prior to the end of its term. A resolution electing or removing nominees of the Fund to serve as directors of OESC and a resolution

appointing or removing the Trustee or the auditors of the Fund must be passed by a simple majority of the votes cast by Unitholders. The balance of the foregoing matters must be passed by a Special Resolution. Meetings of Unitholders will be called and held annually for the election of the nominees of the Fund to serve as directors of OESC and the appointment of auditors of the Fund.

A meeting of Unitholders may be convened at any time and for any purpose by the Administrator or the Trustee and must be convened, except in certain circumstances, if requisitioned by the holders of not less than 5% of the Units then outstanding by a written requisition. A requisition must state in reasonable detail the business proposed to be transacted at the meeting.

Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy and a proxy-holder need not be a Unitholder. Two persons present in person or represented by proxy and representing in the aggregate at least 25% of the votes attached to all outstanding Units shall constitute a quorum for the transaction of business at all such meetings.

Pursuant to the Declaration of Trust, the holders of the Class A Preference Shares will be entitled to vote in all votes of Unitholders (including resolutions in writing) as if they are the holders of the number of Units which they would receive if they exercised their Shareholder Exchange Rights as of the record dates for such votes and shall be treated in all respects as Unitholders for the purposes of any such vote.

The Declaration of Trust contains provisions as to the notice required and other procedures with respect to the calling and holding of meetings of Unitholders.

#### **Limitation on Non-Resident Ownership**

In order for the Fund to maintain its status as a mutual fund trust under the Tax Act, the Fund must not be established or maintained primarily for the benefit of non-residents of Canada within the meaning of the Tax Act. Accordingly, the Declaration of Trust provides that at no time may non-residents of Canada be the beneficial owners of a majority of the Units. The Trustee or the Administrator may require declarations as to the jurisdictions in which beneficial owners of Units are resident. If the Trustee or the Administrator becomes aware as a result of requiring such that the beneficial owners of 49% of the Units then outstanding are, or may be, non-residents or that such a situation is imminent, the transfer agent and registrar shall make a public announcement thereof and shall not accept a subscription for Units from or issue or register a transfer of Units to a person unless the person provides a declaration that he or she is not a non-resident. If, notwithstanding the foregoing, the Trustee or the Administrator determines that a majority of the Units are held by non-residents, the Trustee may send a notice to non-resident holders of Units, chosen in inverse order to the order of acquisition or registration or in such manner as the Trustee or the Administrator may consider equitable and practicable, requiring them to sell their Units or a portion thereof within a specified period of not less than 60 days. If the Unitholders receiving such notice have not sold the specified number of Units or provided the Trustee or the Administrator with satisfactory evidence that they are not non-residents within such period, the Trustee or the Administrator may, on behalf of such Unitholders, sell such Units and, in the interim, shall suspend the voting and distribution rights attached to such Units. Upon such sale, the affected holders shall cease to be holders of the Units and their rights shall be limited to receiving the net proceeds of such sale.

At •, 2008, non-residents of Canada held approximately 25% of the securities of the Fund on a fully diluted basis.

#### **Amendments to the Declaration of Trust**

The Declaration of Trust may be amended or altered from time to time by Special Resolution of the Unitholders.

The Trustee may, without the approval of the Unitholders, make certain amendments to the Declaration of Trust, including amendments:

- (a) for the purpose of ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Trustee or over the Fund;
- (b) which, in the opinion of counsel to the Fund, provide additional protection for Unitholders;



- (c) to remove any conflicts or inconsistencies in the Declaration of Trust or to make minor corrections which, in the opinion of the Trustee, are necessary or desirable and not prejudicial to the Unitholders; and,
- (d) which, in the opinion of the Trustee, are necessary or desirable as a result of changes in Canadian taxation laws.

On June 27, 2003, the Unitholders and holders of Preference Shares approved a Special Resolution amending the Declaration of Trust to permit the Fund to borrow money and guarantee the obligations of any subsidiary to provide security therefore. On June 29, 2004, the Unitholders and holders of Preference Shares approved a Special Resolution to further amend the Declaration of Trust to expand the investment powers of the Fund as set forth on pages 19 to 21 of the Fund's Management Proxy Circular for its meeting held on June 29, 2004 under the heading "Special Items of Business (a) Proposed Amendment to the Fund's Declaration of Trust" which is incorporated herein by reference (See Sedar reference and project # 794407 at Sedar at [www.sedar.com](http://www.sedar.com)). On December 20, 2007, the Unitholders and holders of Class A Preference Shares approved a Special Resolution amending Section 3.6(a) of the Declaration of Trust to provide that the Administrator may, in its sole discretion, determine that Units issued as part of a distribution not be immediately consolidated after the issue thereto.

### **Term of the Fund**

The Fund has been established for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on February 14, 2001. On a date selected by a Trustee which is not more than two years prior to the expiry of the term of the Fund, the Trustee is obligated to commence to wind up the affairs of the Fund so that it will terminate on the expiration of the term. In addition, at any time prior to the expiry of the term of the Fund, the Unitholders may by Special Resolution require the Trustee to commence to wind up the affairs of the Fund.

The Declaration of Trust provides that, upon being required to commence to wind up the affairs of the Fund, the Trustee will give notice thereof to the Unitholders, which notice shall designate the time or times at which time Unitholders may surrender their Units for cancellation and the date at which the register of Units will be closed. After the date the register is closed, the Trustee shall proceed to wind up the affairs of the Fund as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized by a resolution of the Unitholders, sell and convert into money the Common Shares, the OESC Notes, the Exchangeco II Common Shares and the Exchangeco II Notes and all other assets comprising the Fund in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Fund. After paying, retiring, discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Fund and providing for indemnity against any other outstanding liabilities and obligations, the Trustee shall distribute the remaining part of the proceeds of the sale of the Common Shares, the OESC Notes, the Exchangeco II Common Shares and the Exchangeco II Notes and other assets together with any cash forming part of the assets of the Fund among the Unitholders in accordance with their *pro rata* interests. If the Trustee is unable to sell all or any of the Common Shares, the OESC Notes, the Exchangeco II Common Shares or the Exchangeco II Notes or other assets which comprise part of the Fund by the date set for termination, the Trustee may distribute the remaining Common Shares, OESC Notes, the Exchangeco II Common Shares and the Exchangeco II Notes or other assets in specie directly to the Unitholders in accordance with their *pro rata* interests subject to obtaining all required regulatory approvals.

### **Takeover Bids**

The Declaration of Trust contains provisions to the effect that if a takeover bid is made for the Units and not less than 90% of the Units (other than Units held at the date of the takeover bid by or on behalf of the offeror or associates or affiliates of the offeror) are taken up and paid for by the offeror, the offeror will be entitled to acquire the Units held by Unitholders who did not accept the takeover bid on the terms offered by the offeror.

### **Exercise of Certain Voting Rights Attached to Securities of OESC and Exchangeco II**

The Declaration of Trust provides that the Fund shall not vote its Common Shares, OESC Notes, Exchangeco II Common Shares or Exchangeco II Notes to authorize, among other things:

- (a) any sale, lease or other disposition of all or substantially all of the assets of OESC or Exchangeco II, except in conjunction with an internal reorganization;
- (b) any amalgamation (other than the Amalgamation or the amalgamation of OESC and Exchangeco II as may be contemplated by the OESC Shareholders' Agreement), arrangement or other merger of OESC with any other company, except in conjunction with an internal reorganization;
- (c) any material amendment to the Note Indenture;
- (d) any material amendment to the Exchangeco II Note Indenture;
- (e) any material amendment to the articles of OESC to change the authorized share capital in a manner which may be prejudicial to the Fund or amend the rights, privileges and conditions attached to the Common Shares or the Preference Shares;
- (f) any material amendment to the articles of Exchangeco II to change the authorize share capital in a manner which may be prejudicial to the Fund or amend the rights, privileges and conditions attached to the Exchangeco II Common Shares; or
- (g) the removal of the Administrator,

without the authorization of the Unitholders by Special Resolution.

### **Information and Reports**

The Fund furnishes to Unitholders such consolidated financial statements of the Fund (including quarterly and annual consolidated financial statements) and other reports as are from time to time required by applicable law, including prescribed forms needed for the completion of Unitholders' tax returns under the Tax Act and equivalent provincial legislation.

Prior to each meeting of Unitholders, the Trustee will provide the Unitholders (along with notice of such meeting) all such information as is required by applicable law to be provided to such holders.

OESC has undertaken to provide the Fund with (i) a report of any material change that occurs in the affairs of OESC in form and content that it would file with applicable regulatory authorities as if it were a reporting issuer; and (ii) all financial statements that it would be required to file with applicable regulatory authorities as if it were a reporting issuer under applicable securities laws. All such reports and statements will be provided to the Fund in a timely manner so as to permit the Fund to comply with the continuous disclosure requirements relating to reports of material changes in its affairs and the delivery of financial statements as required under applicable securities laws.

### **Book-Entry Only System**

Registration of interests in and transfers of the Units will be made only through a book-based system administered by The Canadian Depository for Securities Limited ("CDS") (the "Book-Entry Only System"). On April 30, 2001 the Trustee delivered to CDS certificates evidencing the aggregate number of Units subscribed for pursuant to a final prospectus for the Fund dated April 20, 2001. Similar deliveries were made with respect to exercise of the over allotment option on May 16, 2001 and upon the exchange of the subscription receipts for Units on May 8, 2002 and were and will continue to be made in connection with the issue by the Fund of Units pursuant to the exercise of Exchangeco II Exchange Rights and the issue by the Fund of Units on the exercise of options pursuant to the Fund's Unit Option Plan. Units must be purchased, transferred and surrendered for redemption through a participant in the CDS depository service (a "CDS Participant"). All rights of Unitholders must be exercised through, and all payments or other property to which such Unitholder is entitled will be made or delivered by, CDS or the CDS Participant through which the Unitholder holds such Units. Upon purchase of any Units, the Unitholders will receive only a customer confirmation from the registered dealer which is a CDS Participant and from or through which the Units are purchased.

The ability of a beneficial owner of Units to pledge such Units or otherwise take action with respect to such Unitholder's interest in such Units (other than through a CDS Participant) may be limited due to the lack of a physical certificate.

The Fund has the option to terminate registration of the Units through the Book-Entry Only System in which case certificates for the Units in fully registered form would be issued to beneficial owners of such Units or their nominees.

**SCHEDULE "D" - FORM 52-110F1**

**AUDIT COMMITTEE INFORMATION REQUIRED IN AN AIF**

1. **The Audit Committee's Charter.** The text of OESC's audit committee's charter as amended on May 19, 2006 is attached hereto as Schedule "D".
  
2. **Composition of the Audit Committee and Relevant Education and Experience.** At March 31, 2008, OESC's audit committee consisted of Michael J.L. Kirby (Chair), Hugh D. Segal, Gordon D. Giffin and Brian R.D. Smith. All members of the audit committee are independent and financially literate (as those terms are defined in Multilateral Instrument 52-110 – Audit Committees). **Mr. Kirby**, Chair of the Committee, has a PhD in applied mathematics and has been Chair of the Audit Committee for over six years. He has been a member of the faculty of several business schools, including the University of Chicago. For several years in the 1990's he was Chair of the Standing Senate Committee on Banking, Trade and Commerce, the Senate Committee which is responsible for all legislation and regulations affecting business. Until recently, Mr. Kirby was Vice-Chair of the Accounting Standards Oversight Board. Currently, he serves as a director of five TSX listed companies and is chair of the Audit Committee of two of them: The Bank of Nova Scotia and Indigo Books and Music Inc. Mr. Smith became a director of OESC on August 21, 2001 and a member of the Audit Committee on August 13th, 2003. **Mr. Smith** has had significant business experience including serving as Chair of BC Hydro from February 1996 to June 2001 and Chair of Canadian National Railways from 1989 to 1994 where, in both positions he was inextricably involved in strategic financial planning and reporting. In his role as Minister of Education, Minister of Energy and Mines and Attorney General in the government of the Province of British Columbia between 1979 to 1994, Mr. Smith developed an acute understanding of public and private finance matters. Mr. Smith serves on the board and as a member of the audit committee of three Canadian publicly listed companies. **Mr. Segal** was President of the Institute for Research on Public Policy until May 31, 2006 and has been a member of the OESC Audit Committee since 2003. Mr. Segal serves as a director of several TSX listed companies including: St. Lawrence Cement, SNC Lavalin Inc. and Gluskin Sheff & Associates Inc.. He serves as a member of the audit committee of two publicly listed companies. He is a senior fellow at the Queen's School of Policy Studies and an Adjunct Professor at the Queen's School of Business. Mr. Segal developed the ability to assess the general application of accounting principles in connection with the accounting for estimates, accruals and reserves as President, between 1982 and 1991 of a company with \$100 million in sales. Beyond his undergraduate degree and business experience, Mr. Segal studied trade economics at the graduate level and between 1982 and 1991, advised clients on takeovers and merger activity. Between 1996 and 1998 he also served on the staff of a major Bay Street investment firm. Gordon D. Giffin became a director of OESC and a member of the Audit Committee on June 29, 2006. **Mr. Giffin** serves as a director of several TSX listed companies including: Abitibi Bowater Inc., Canadian Imperial Bank of Commerce, Canadian National Railway Company, Canadian Natural Resources Limited and TransAlta Corporation and serves as a member of the audit committee of two of these companies. In addition, Mr. Griffin has practiced law in the private sector representing major corporate clients on business, transactional, regulatory and litigation matters for 30 years, which has provided him with experience relevant to performing his responsibilities on the audit committee.
  
3. **Pre-Approval Policies and Procedures.** Recommendations are made from time to time from management to the Audit Committee for the engagement of all non-audit services. The Audit Committee considers such recommendations for pre-approved at its quarterly meetings or sooner, if necessary providing that where necessary, this function may be delegated to the Chair of the Audit Committee for approval on the basis that the Chair reports all such approvals to the Audit Committee at its next regularly scheduled meeting.
  
4. **External Auditor Service Fees (By Category).** For fiscal 2008, fees charged by KPMG LLP for the audit and related services to the Fund and its affiliates were \$490,100 (2007 - \$360,398). Fees for tax related services amounted to \$97,418 (2007 - \$21,000) and other fees were nil (2007 - \$24,000). Total fees for fiscal 2008 were \$587,518 (2007 - \$405,398). No other services were provided to the Corporation and its subsidiaries by KPMG LLP.

## **SCHEDULE "E" - AUDIT COMMITTEE MANDATE**

### **ONTARIO ENERGY SAVINGS CORP. (the "Company")\***

**\*(as attorney and administrator for Energy Savings Income Fund (the "Fund"))**

#### **1. COMPOSITION**

- (a) Applicable Canadian corporate and provincial securities legislation, regulation and policies and the Toronto Stock Exchange by-laws rules, regulation and policies ("Applicable Legislation") require that an audit committee (the "Committee") be comprised of a minimum of three directors, all of whom will be independent as defined by Applicable Legislation and each of whom shall not have any material relationship with the Fund or any affiliate thereof, i.e., a relationship that could, in the view of the Company's board of directors (the "Board") reasonably interfere with the exercise of a member's independent judgment.
- (b) The Board of Directors of the Company (the "Board") will appoint the members of the Committee annually at the first meeting of the Board after the annual meeting of unitholders of the Fund and shall ensure that the members of the Committee meet the qualifications and other requirements outlined in (a) above.
- (c) Committee members will be appointed for a one year term and may be reappointed subject to the discretion of the Board having regard: (i) to Applicable Legislation and, (ii) the desire for continuity and for periodic rotation of Committee members.
- (d) One of the members of the Committee who is otherwise qualified under Applicable Legislation shall be appointed Committee Chair by the Board. The Committee shall appoint a Secretary. Any Committee member, who for any reason, is no longer independent, ceases to be a member of the Committee.

#### **2. AUTHORITY**

- (a) The Board may authorize the Committee to investigate any activity of the Fund or the Company and any affiliate thereof for which the Committee has responsibility or with respect to those responsibilities imposed on audit committees herein and by Applicable Legislation. All employees are to co-operate as requested by the Committee.
- (b) The Committee may, without the approval of management, retain persons having special expertise to assist the Committee in fulfilling its responsibilities, including outside counsel or financial experts and provide for their remuneration.
- (c) The external auditor shall report to the Committee.

#### **3. MEETINGS**

- (a) The Committee is to meet at least four times per year. The meetings will be scheduled to permit the review of the scope of the audit as presented by the Fund's auditor before commencement of the audit and the timely review of the quarterly and annual financial statements and such other annual filings required to be made by the Fund and any affiliate thereof containing financial information about the Fund and any affiliate thereof including the AIF, MD&A (quarterly and annual), quarterly press releases, reports to Unitholders the management proxy circular and such other disclosure documents applicable to the Fund and any affiliate thereof which contain financial data based upon, derived from or to form part of the financial statements of the Fund and contemplated by Applicable Legislation.

- (b) Meetings of the Committee shall be validly constituted if a majority of members of the Committee are present in person or by telephone conference. Additional meetings may be held as deemed necessary by the Committee Chair or as requested by any member or the external auditors or any director of the Company not a member of the Committee.
- (c) Any member of the external auditors of the Fund is entitled to receive notice of every meeting of the Committee and at the Company's expense, to attend and be heard thereat and, if requested by a member of the Committee, to attend any meeting of the Committee.
- (d) The Committee should require the attendance of the Fund's auditors at least once each year, and at such other times as the Committee deems appropriate in the context of Applicable Legislation and its responsibilities as outlined below. The Fund's external auditor shall be requested to review and comment on all disclosure documents issued by the Fund or the Company containing financial statements or information derived therefrom.
- (e) The Committee shall meet privately with the external auditor at least quarterly excluding members of management other than the Secretary to the Committee.

#### **4. REPORTING**

- (a) The minutes of all meetings of the Committee are to be provided to the Board and to the Fund's auditor. Oral reports by the Chair on recent matters not yet minuted will be provided to the Board at its next meeting. Minutes of all Committee meetings will be subsequently reviewed and approved by the Committee.
- (b) Supporting schedules and information reviewed by the Committee will be available for examination by any director or the Fund's auditor upon request to the Secretary of the Committee.

#### **5. RESPONSIBILITIES**

The general responsibility of the Committee is to assist the Board in fulfilling its oversight responsibilities with respect to: (i) the integrity of annual and quarterly financial statements to be provided to unitholders and regulatory bodies; (ii) compliance with accounting and finance based legal and regulatory requirements; (iii) the independent auditor's qualifications and independence; (iv) the system of internal accounting and financial reporting controls that management has established; (v) performance of the internal and external audit process and of the independent auditor; and, (vi) implementation and effectiveness of the policies of the Fund relating to Risk Management Policy and Procedures, the Policy on Distributions and such other policies of the Fund approved from time to time by the Board or the Committee.

The specific responsibilities of the Committee shall be as follows:

- (a) to review the Fund's quarterly and annual financial statements and any other financial statements of the Fund and its affiliates required to be prepared by Applicable Legislation or otherwise for dissemination to the public, so as to be satisfied they are fairly presented in accordance with generally accepted accounting principles and in accordance with Applicable Legislation and to recommend to the Board whether the quarterly and the annual financial statements and any such other financial statements should be approved by the Board;
- (b) prior to the dissemination to the public, to review the financial information and financial data contained in the Fund's quarterly financial statements, Annual Report to Unitholders and other financial publications of the Fund or any affiliate thereof (including the Fund's interim and year end management discussions and analysis of financial condition and results of operation, annual information form, proxy information circular, quarterly press releases and material and timely disclosure reports containing any financial data) and the financial information contained in a prospectus of the Fund or any affiliate thereof or other document filed with any regulatory authority so as to be satisfied that the financial information and financial data is not significantly erroneous, misleading or incomplete and contains full, true and plain disclosure of all material

facts or as otherwise required by Applicable Legislation and to make recommendations to the Board with respect to all such disclosure documents;

- (c) to be satisfied that management of the Fund and any affiliate thereof have implemented appropriate systems of capture of financial information and internal control over financial reporting and that these are operating effectively;
- (d) to be satisfied that management of the Fund and the Company have implemented appropriate systems of internal control to ensure compliance with Applicable Legislation and ethical requirements and particularly to be satisfied that internal controls over financial reporting and disclosure controls and procedures are in place and that internal controls have been designed and implemented to provide reasonable assurance that the Fund's financial statements and other documents required to be mailed to unitholders or filed with regulatory authorities are fairly presented so as to enable the Chief Financial Officer and the Chief Executive Officer (and any other officer or director of the Company as may be required by Applicable Legislation) to personally certify the Fund's financial statements as required by Applicable Legislation;
- (e) to be satisfied that management of the Fund, the Company and each affiliate thereof have implemented effective systems to identify significant financial and other risks of the business and changes to these risks. The Committee will review reports from management related to these risks and to make recommendations to the Board with respect to a Risk Management Policy;
- (f) to recommend to Board the appointment of external auditors nominated at each annual meeting of unitholders and provide oversight with respect to the external audit engagement. The Committee will also recommend to the Board the re-appointment or appointment of the external auditors and the compensation payable to them. The Committee will pre-approve all non-audit services to be provided to the Fund and its affiliates by the Fund's external auditors providing that where necessary, this function may be delegated to the Chair of the Committee for approval on the basis that the Chair reports all such approvals to the Committee at its next regularly scheduled meeting;
- (g) to be satisfied that any significant or material matter brought to the attention of the Committee by the Fund's external auditors or matters where there is significant disagreement between the Fund's external auditors and Company officers (including the resolution or proposed resolution thereof) are communicated to the Board;
- (h) to be satisfied that all significant matters raised in any report to management by the external auditors are being addressed and dealt with by management in a satisfactory manner and, to the extent they are not, to make a report to the Board;
- (i) to be satisfied that the declaration and payment of dividends and/or distributions by any affiliate of the Fund to the Fund or to any affiliate thereof and the declaration and payment of distributions by the Fund to its unitholders, meet applicable legal requirements and Applicable Legislation and to make recommendations to the Board with respect thereto;
- (j) as and when required by Applicable Legislation or as otherwise required including the laws and regulations in all jurisdictions in which it operates to establish independent procedures (A) for the receipt, retention and treatment of complaints received by the Fund or any affiliate thereof regarding accounting, internal accounting controls or auditing matters, and (B) for the confidential communication of anonymous submissions to the Fund or any affiliate thereof and a member of the Committee of concerns regarding questionable accounting or auditing matters from employees including the submission of those complaints and concerns by logging into [www.whistleblowerir.com](http://www.whistleblowerir.com), selecting the Energy Savings Group or ESG as the company and following the prompts which are available. This service is interactive and anonymous;
- (k) as and when required by Applicable Legislation, to be satisfied that disclosure controls and procedures are in place to ensure that material information required to be disclosed by Applicable

Legislation is recorded, processed and summarized and reported within the time periods specified in Applicable Legislation;

- (l) to ensure that the external auditors report annually on matters of independence;
- (m) to ensure that the external auditors prepare an external audit plan which, with any changes thereto, is reviewed by and acceptable to the Committee;
- (n) to review and approve the hiring policies of the Fund and any affiliate thereof regarding partners, employees (past or current) of the present and former external auditors of the Fund;
- (o) to review semi-annually all expenses relating to consulting and professional services including legal and audit;
- (p) to review semi-annually executive business expenses;
- (q) to review, analyse and implement all necessary procedures, controls and other similar requirements relating to financial matters arising from proposals to amend or introduce Applicable Legislation and the implementation or promulgation thereof;
- (r) once or more annually, as the Nominating and Corporate Governance Committee (NCG Committee) decides, to receive for consideration that Committee's evaluation of this Mandate and any recommended changes. Review and assess the NCG Committee's recommended changes and make recommendations to the Board for consideration;
- (s) to carry out any other appropriate duties and responsibilities assigned to the Committee by the Board; and
- (t) to honor the spirit and intent of Applicable Legislation as it evolves, authority to make minor technical amendments to this Mandate is delegated to the Corporate Secretary, who will report any amendments to the NCG Committee at its next meeting.

The Chair of the NCG Committee, in consultation with the Chair of the Committee, will periodically review the effectiveness of the Committee and the performance of each Committee member and report to the Board on their conclusions.

(Approved as amended by the Board of Directors on May 18, 2006)