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BY EMAIL

Ontario Securities Commission
P.O. Box 55, 19th Floor
20 Queen Street West
Toronto Ontario
M5H 3S8

Attention: Jason Koskela, Vice President, Mergers & Acquisitions

Re: Proposed Elements of the Issuer Bid, Take-over Bid and Beneficial Ownership Reporting Regimes for Consideration

Dear Mr. Koskela:

We are counsel to Imperial Oil Limited ("**Imperial**"). We submit this letter to the Ontario Securities Commission (the "**OSC**") in respect of certain proposals relating to the application of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") to issuer bids. While we understand that the Canadian Securities Administrators (the "**CSA**") have published, and are currently soliciting comments on, a CSA Notice and Request for Comment – *Proposed Amendments and Changes to the Issuer Bid, Take-over Bid and Beneficial Ownership Reporting Regimes* (the "**Notice**"), the proposals set forth herein are related to, but outside the scope of, the specific queries and amendments canvassed in the Notice.

Recognizing that Imperial's proposals and input are not directly responsive to the Notice, we reached out to the Alberta Securities Commission (the "**ASC**") to seek guidance on how best to communicate Imperial's input. Tim Robson, Manager, Legal, Corporate Finance at the ASC it was suggested to us that insofar as the Mergers & Acquisition division at the OSC, and in particular yourself, was mandated to undertake a further review of NI 62-104 with respect to issuer bids, Imperial should raise its proposals with you. We are writing further to this advice.

We are also aware of a letter sent by the Investment Industry Association of Canada (now the Canadian Forum for Financial Markets) dated December 20, 2024 (the "**Letter**") addressed to Stan Magidson of the ASC. We understand that the Letter was provided to the OSC and may be considered in the context of future amendments to NI 62-104. While the Letter was limited in its scope to the normal course issuer bid ("**NCIB**") regime, we were interested to learn that a national body for the investment industry shared concerns with the structure and function of the NCIB regime.

While Imperial is generally supportive of the issues raised in the Letter, our primary input relates to two overarching topics: (1) repurchase thresholds in the NCIB regime; and (2) streamlining timing and documentation requirements associated with the substantial issuer bid ("**SIB**") regime. We expand on these topics below and offer specific proposals that we hope may be considered as part of any future review of NI 62-104 with respect to issuer bids.

I. NCIB Repurchase Thresholds

Imperial proposes that the condition in normal course issuer bid exemptions set forth in Section 4.8 of NI 62-104 that the repurchase limit for an NCIB is not more than 5% of the outstanding securities of a class of securities of the issuer be increased to not more than 10% of the outstanding securities of a class of securities of the issuer (the "**10% Limit**").

Imperial believes that certain amendments as proposed in the Notice are consistent with Imperial's proposal.

In particular, the Notice proposes revisions to NI 62-104 which would introduce a new Selective Repurchase Exemption ("**SRE**") permitting an issuer to repurchase up to 5% of a class of its securities within a 12-month period from not more than five persons in Canada, in not more than five transactions. Imperial is supportive of the SRE and in agreement with the policy rationale underlying it.

With respect to the application of the SRE, the CSA acknowledged that the SRE could be stacked with an NCIB and other exemptions to permit the exempt repurchase of up to 20% of an issuer's securities in a given 12-month period. In doing so, the CSA has acknowledged that potentially significant repurchases up to that level would not be anticipated to cause undue market impact, noting that the SRE itself is constrained by the requirement that a liquid market in the securities exists as at the date of the bid.

Many of the same policy rationale underlying the SRE, and indeed the current NCIB regime, may be applied in service of its proposal that the NCIB limit be increased to 10% from 5%. That rationale includes:

1. Expanding the NCIB limit with the 10% Limit would enhance the competitiveness of the Canadian capital markets by retaining the structure of the current NCIB regime while partially addressing the advantages of the relatively less restrictive and prescriptive repurchase entitlements permitted by U.S. capital markets, which are driven primarily by average daily trading volume limits rather than hard annual caps on repurchases.

2. Provides issuer boards with greater capital allocation discretion, recognizing their ongoing corporate obligation to act in the best interests of the issuer in exercising that discretion.

    a. The 10% Limit would rightly empower a board to exercise its business judgment after considering the unique circumstances of the issuer, including its size, liquidity, capital requirements, shareholder and other stakeholder interests and other factors which might agitate for an NCIB greater than 5% in the circumstances. A 5% limitation is inadequate for certain issuers such as Imperial, which can generate significant free cash flow and would benefit from the most efficient mechanism of returning to shareholders as much as determined prudent by the board.

    b. The 10% Limit would provide issuers with greater flexibility to return capital without resorting to more complex, time-consuming and expensive alternatives such as substantial issuer bids or special dividends.

    c. Recognizing the basis for the distinction in application of the NCIB regime and the substantial issuer bid regime, policy concerns with respect to the need to make the issuer bid directly to shareholders are not animated at the 10% Limit. Indeed, as discussed above, the CSA already contemplates with the new SRE the potential for exempt repurchases of up to 20% without the need for a formal substantial issuer bid.

3. Reducing the need for substantial issuer bids

Where an issuer wishes to repurchase more than 5% of its outstanding shares, it may be forced to consider a substantial issuer bid, which is subject to the formal issuer bid requirements of NI 62-104 and involve significant procedural requirements and transaction costs (subject to our comments which follow and addressed to these burdensome implications). A higher NCIB threshold could allow issuers to achieve legitimate capital management objectives through a simpler and less costly process and reduce regulatory burdens.

4. A 10% threshold would better align with the practical realities of modern public markets

Many Canadian issuers maintain substantial public floats and large market capitalizations. For these issuers, a 5% share repurchase limit may represent a relatively modest reduction in outstanding shares and may have little practical impact on the issuer's capital structure. A 10% threshold would allow issuers to implement more meaningful changes and capital management strategies.

For the foregoing reasons Imperial is of the view that an increase in the NCIB repurchase limit to the 10% Limit would be appropriate and beneficial to the Canadian capital markets while not increasing systemic risk or prejudicing shareholders.

That said, we recognize that it may be desirable to condition an increased NCIB purchase threshold in response to potential risks to a broader market application given the diversity of the public capital markets and potential inapplicability to some issuers. For instance, NCIB purchases beyond the existing 5% threshold could be subject to a liquid market determination. In addition, or alternatively, there could be a market notification requirement when the first 5% threshold of an NCIB is completed before commencing the second 5% repurchases. These, and potentially other additional safeguards and conditions, could be considered as part of any future review of NI 62-104 with respect to issuer bids.

II. Substantial Issuer Bid – Timing and Streamlining

We propose that changes are made to the current significant issuer bid regime to (A) shorten the current 35-day deposit period to 20 business days, and (B) streamline the documentation requirements.

1. Shortening the 35-day deposit period.

Section 2.28 of NI 62-104 currently requires an issuer bid to remain open for at least 35 days. We propose that this deposit period is shortened to 20 business days for the following reasons:

a. The 35-day period is longer than necessary in a modern disclosure environment

i. Today, issuer bid circulars are filed electronically on SEDAR+, distributed through electronic intermediaries, and supplemented by continuous disclosure obligations. Shareholders can access the issuer bid circular to supplement the continuous disclosure record almost immediately after launch, reducing the need for a lengthy period to accommodate mail delivery, review and a tendering decision.

ii. A 20-business day period does not significantly reduce the window during which shareholders could consider the proposal, still providing shareholders with several weeks to review the circular, consult advisers, and make a tender decision. It simply acknowledges the practical reality that most shareholders have access to all such information on an immediate basis through SEDAR+ and need less time to consider

b. Alignment with U.S. practice

While U.S. open-market repurchase programs generally are not subject to a minimum duration requirement under Rule 10b-18 and instead rely on disclosure, anti-manipulation and trading restrictions, U.S. issuer tender offers generally must remain open for at least 20 business days, subject to extension in certain circumstances. A 20-business day Canadian minimum period would therefore be more consistent with international standards in developed capital markets and would reduce unnecessary procedural differences.

c. Reduced transaction costs without impacting investor protection mechanisms

i. Every additional day that an issuer bid remains outstanding imposes costs. Shortening the period to 20 business days would reduce these costs without materially affecting investor protection.

ii. A reduction from 35 days to 20 business days would not eliminate other significant protections under NI 62-104, therefore investor protection would remain robust even with a shorter minimum deposit period.

d. Untethered basis for the 35-day deposit period.

i. The 35-day deposit period was first implemented in securities legislation as a result of the Report of the Committee of the Investment Dealers Association of Canada to Review Take-Over Bid Time Limits dated May 13, 1996 chaired by Adam Zimmerman (the "**Zimmerman Report**") and extended the tender period for both take-over bids and issuer bids from the then 21-day period to the current 35-day period. The rationale for those amendments was, among other things, to better balance the interests of target corporations and bidders to ensure that shareholders had adequate time to assess a bid and to give, in the case of a take-over bid, the target board the opportunity to respond and to seek alternatives.

ii. Pursuant to amendments to NI 62-104 adopted in 2016, the tender period for take-over bids was extended to 105 days to allow boards more time to respond to hostile unsolicited bids, communicate with shareholders and find competing offers. Notably, those considerations did not implicate the issuer bid regime and the tender period was left unchanged.

iii. As a result, there is no particular rationale dictating alignment between the take-over bid regime timelines, either as they exist now or as they existed following the implementation of the Zimmerman Report recommendations. The 35-day deposit period is simply a legacy of earlier regulatory revisions and not a calibrated response to changing market conditions since 1996. The issuer bid deposit period should reflect the current reality of much more accessible, robust and timely disclosure about issuers and the speed with which shareholders can therefore analyze the issuer bid and make a tendering determination.

2. Streamlining Form 62-104F2 – Issuer Bid Circular

One of the most meaningful opportunities to reduce regulatory burden in connection with NI 62-104 and the issuer bid regime would be to streamline the disclosure, procedural and documentation requirements applicable to substantial issuer bids, while preserving core shareholder protections.

Recognizing that when NI 62-104 was first adopted in 2008, it was an attempt to consolidate myriad provincial rules and reflect the continuous disclosure requirements and technological realities of the day, we now have nearly 20 years of experience with the practicalities of compliance with the SIB regime that offers guidance for improvement. Supported by more robust and consistent continuous disclosure, greater electronic access to corporate information, improved technological literacy of the investing community, evolving shareholder needs and cross-jurisdictional comparisons, the CSA has an opportunity to reshape the issuer bid circular disclosure requirements for the benefit of all capital markets participants.

While Imperial's specific proposals are still being formulated, and on which Imperial would propose to elaborate in future correspondence, they will reflect the consideration of a number of key principles, including:

- **Incorporation by Reference** – Imperial believes that a number of elements of the issuer bid circular could be addressed by expanding opportunities for incorporation by reference of largely analogous information to what is being solicited in Form 62-104F2.

  Disclosure should be focused on incremental information only, leveraging robust and consistent continuous disclosure obligations by removing or streamlining sections of the issuer bid circular that repeat information already disclosed through continuous disclosure filings. Potential changes, at least in certain circumstances and certain issuers, could include limiting circular disclosure information to:

  - pricing methodology;
  - liquidity impact;
  - effects on non-tendering shareholders;
  - repurchase mechanics; and
  - conflicts of interest.

  The result could be more focused and decision-useful disclosure for investors.

- **Boilerplate Reduction** – Related to the above point, issuer's include significant disclosures in the issuer bid circular on repurchase rationale and purpose, nearly all of which is expressed in the marketplace, self-evident or better communicated in other forms or at other times. Further, it is usually consistent from issuer to issuer, providing nothing incremental to influence a shareholder's determination to tender or not.

- **Enhancing Efficiency of Delivery –**

  The CSA should consider a number of alternatives to expedite the receipt and review of materials by shareholders, including:

  - Considering making electronic delivery the default method of distribution and/or eliminate duplicate mailing requirements where shareholders have access through intermediaries or electronic delivery mechanisms. This could result in faster dissemination of information to shareholders and reduce printing and mailing costs.

- Revisiting its earlier consideration of the potential for AED in the context of SIBs. In that regard, we note that in the CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting* Issuers issued on January 9, 2020 ("**51-405**"), the CSA was considering extending AED to take-over bid circulars and issuer bid circulars and sought and received comments in respect thereof.

  While Imperial appreciates the concern of diminished shareholder engagement and investor protection considerations that seem to have been the basis for not extending AED to issuer bids, the former is an issue that issuers themselves are best positioned and motivated to manage in the context of an issuer bid and the latter is no better served by the existing legislative regime which mandates delivery.

  That is, issuers undertaking issuer bids, particular the most common modified Dutch auction style bids, benefit from shareholder engagement insofar as it is more likely to lead to more accurate and appropriate price discovery. Further, issuers undertaking SIBs are motivated to repurchase a significant number of their own securities or else they would simply rely on exempt NCIB purchases. For such significant buybacks to be successful, shareholder engagement is critical. As such, issuers will be encouraged to ensure that its shareholders are aware of the issuer bid and have a full understanding of the mechanisms by which they can access fulsome disclosure in relation to that bid. Further, those shareholder interests can be effectively reinforced through legislative provisions embodying AED parameters.

  With respect to investor protection, it's unclear how AED, or the extension of NAA as a compromise between AED and delivery, to shareholders in the context of an issuer bid could be any more prejudicial than the current delivery process which often sees materials arrive to shareholders through intermediaries with great delay and limited opportunity to participate, if at all. The AED, or indeed the NAA, approach, properly instituted would create a more efficient, reliable process to access materials and, with NAA in particular, the option to nonetheless receive printed materials if so desired.

  Insofar as the CSA has recognized for a number of years the effectiveness of NAA in relation to other time-sensitive and critical elements of corporate democracy such as information circular delivery, it is difficult to see how the extension of such efficiencies to the SIB context would prejudice shareholders. While perhaps at the time of 51-405, given the inexperience of the Canadian capital markets with alternative delivery methodologies, skepticism as to the effectiveness of its application to issuer bids and heightened concerns as to its prejudice to shareholders were warranted. Given the passage of time, the successful implementation of such delivery methodologies in other time-sensitive contexts and overall increasing technological acumen among the investing public, it is time to revisit the CSA's position.

- **Price History Matters** – All shareholders have access to trading price history information at their fingertips, including over prolonged periods and periods which they themselves may determine more relevant to their assessment of the issuer bid. Compelling the inclusion of specific price history information adds little to no value.

- **Streamlined Notice of Changes –** Consider permitting concise notices for non-material amendments and reserve full supplementary circular requirements for material changes only. This approach could reduce unnecessary filings and administrative burden while maintaining investor protection where changes are material.

- **Alignment with US integration approach** – US self-tender offers reflect the repurposing of an expansive continuous disclosure record paired with deal specific terms rather than a prescriptive set of requirements as in Form 62-104F2.

Imperial would be happy to expand on any of the above points, whether through providing specific proposals as part of any future review of NI 62-104 with respect to issuer bids, or more generally.

III. CONCLUSION

Thank you for your time and consideration of our submission. We welcome the opportunity to discuss in more detail or provide additional information, if helpful.

If you have any questions or require further information in respect of the foregoing, please do not hesitate to contact me at [redacted] or [redacted]

Yours truly,

[redacted]

Keith Chatwin

KC/sd
cc. Scott Gordon, Assistant General Counsel, *Imperial Oil Limited*
Ryley Harrigan, *Stikeman Elliott LLP*