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November 2, 2023

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Mergers and Acquisitions  
100 F Street, N.E.  
Washington, D.C. 20549-3628

Attn: Tiffany Posil, Chief  
Christina Chalk, Associate Chief  
Blake Grady, Special Counsel

Re: Request for Relief Relating to a Modified Dutch Auction Tender Offer

Dear Ms. Posil, Ms. Chalk and Mr. Grady:

Imperial Oil Limited, a corporation governed by the *Canada Business Corporations Act* (the “**Company**”), proposes to undertake an issuer tender offer (the “**Offer**”) to purchase for cancellation up to a specified maximum aggregate dollar amount (the “**Specified Maximum Dollar Amount**”) of common shares (the “**Shares**”) of the Company at a price per Share in cash which will be not less than a specified minimum dollar amount per Share (the “**Specified Minimum Price**”) and not more than a specified maximum dollar amount per Share (the “**Specified Maximum Price**”). These figures will each be determined prior to commencement of the Offer and will be disclosed prominently in the documentation for the Offer. The combination of the Specified Maximum Dollar Amount, the Specified Minimum Price and the Specified Maximum Price will have the effect of establishing the maximum and minimum number of Shares that the Company would be committed to purchase under the Offer, subject to the satisfaction or waiver of the conditions to the Offer. The Offer is structured in the same manner as the issuer tender offer undertaken by the Company in November 2022 (the “**November 2022 Offer**”) and in relation to which a similar request for relief was made on November 2, 2022 and relief granted on November 2, 2022 (a copy of which relief is enclosed with this request).

The Offer is being conducted pursuant to Canadian statutory requirements, except that the Company has applied to receive, and anticipates receiving, routine exemptive

relief from the Alberta Securities Commission and Ontario Securities Commission to exempt the Offer from the Canadian proportionate take-up and associated disclosure requirements (and one other matter not pertinent to the relief sought herein) (the “**Exemptive Relief**”). The Exemptive Relief will be relied upon by the Company in each other Province and Territory of Canada pursuant to Multilateral Instrument 11-102 Passport System, giving the Exemptive Relief application throughout Canada.

We are writing on behalf of the Company to request that the staff of the Division of Corporation Finance of the Securities and Exchange Commission (the “**Commission**”) grant exemptive relief with respect to Rule 13e-4 (“**Rule 13e-4**”) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), to permit the Company to proceed with the Offer in compliance with the applicable laws of Canada including the Exemptive Relief. The Offer will be structured to comply in all material respects with the Exchange Act and the regulations thereunder as well as the Commission staff’s prior guidance on modified “Dutch auction” tender offers, except for the exemptive relief requested herein. The Offer is not being conducted in reliance on the Commission’s multijurisdictional disclosure system for Canadian issuers.

## **Background**

The Company is one of Canada’s largest integrated oil companies, headquartered in Calgary, Alberta. It is active in all phases of the petroleum industry in Canada, including the exploration for, and production and sale of, crude oil and natural gas.

The authorized share capital of the Company consists of 1,100,000,000 Shares. As of October 31, 2023, there were 554,945,083 Shares issued and outstanding. As of such date, Exxon Mobil Corporation (“**ExxonMobil**”) beneficially owned 386,241,378 Shares, which in the aggregate represented approximately 69.6% of the issued and outstanding Shares.

The Company is a “foreign private issuer” as defined in Rule 3b-4(c) under the Exchange Act, and a reporting issuer in each of the provinces and territories of Canada, and the Shares are registered under Section 12(g) of the Exchange Act and are listed on the Toronto Stock Exchange (“**TSX**”) and have unlisted trading privileges on the NYSE American LLC (“**NYSE American**”).

The single largest market for the Shares is the TSX, where approximately 290 million Shares were traded during the twelve months ended September 30, 2023. Approximately 119 million Shares were traded on NYSE American during that same period.

## **The Offer**

### *Structure*

The Company proposes to make the Offer on terms to be described in an Offer to Purchase and Circular (the “**Offer to Purchase**”), Letter of Transmittal and Notice of Guaranteed Delivery (together, the “**Offer Documents**”), which will be sent to all holders of Shares (the “**Shareholders**”). The Offer Documents will be substantively the same as those used in the November 2022 Offer.

A Shareholder wishing to tender its Shares to the Offer will be able to do so in one of three ways: (i) by making an auction tender at a specified price per Share (the “**Auction Price**”) within the range proposed by the Company (i.e. a modified “Dutch auction” procedure) and for a specified number of Shares (an “**Auction Tender**”); (ii) by making a purchase price tender pursuant to which it agrees to tender a number of Shares to the Company at the Purchase Price (as defined below) (a “**Purchase Price Tender**”); or (iii) by making a proportionate tender pursuant to which the Shareholder agrees to the purchase by the Company of a number of Shares owned by it that will result in the Shareholder maintaining its proportionate equity ownership in the Company following completion of the Offer at the Purchase Price (a “**Proportionate Tender**”). ExxonMobil has advised the Company that it intends to participate in the Offer by making a Proportionate Tender.

An Auction Tender allows a Shareholder to specify the price, being not less than the Specified Minimum Price or greater than the Specified Maximum Price, at which the Shareholder is willing to have its Shares purchased by the Company. Under a Purchase Price Tender, a Shareholder does not specify a price, but rather the Shareholder’s Shares will be deemed to have been tendered at the Specified Minimum Price, and such Shares will be purchased at the Purchase Price determined as described below. Under a Proportionate Tender, a Shareholder also does not specify a price, and such Shares will be deemed to have been tendered, and will be purchased, at the Purchase Price, which will be determined only by Auction Tenders and Purchase Price Tenders. All Shares purchased in the Offer, whether pursuant to Auction Tenders (including Shares tendered at or below the Purchase Price), Purchase Price Tenders, or Proportionate Tenders, will be purchased at the same Purchase Price.

Shareholders may deposit some of their Shares pursuant to an Auction Tender and deposit different Shares pursuant to a Purchase Price Tender. Shareholders who make an Auction Tender and/or a Purchase Price Tender cannot make a Proportionate Tender<sup>1</sup>, or

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<sup>1</sup> This is because a Shareholder that makes a Proportionate Tender will not be permitted to also make an Auction Tender or Purchase Price Tender.

vice versa. Shareholders may not deposit the same Shares pursuant to more than one method of tender or pursuant to an Auction Tender at more than one price. Subject to the limitations described in this paragraph, all Shareholders will be able to make a Proportionate Tender.

The Offer Documents set forth (i) the Specified Maximum Dollar Amount that the Company may spend under the Offer, (ii) the Specified Minimum Price, (iii) the maximum number of Shares that may be purchased under the Offer (calculated as the quotient of the Specified Maximum Dollar Amount divided by the Specified Minimum Price), (iv) the Specified Maximum Price and (v) the minimum number of Shares that may be purchased under the Offer, assuming that the Offer is fully subscribed (calculated as the quotient of the Specified Maximum Dollar Amount divided by the Specified Maximum Price).

The Purchase Price will be denominated in Canadian dollars and the payment of amounts owing to Shareholders whose Shares are taken up under the Offer will be made in Canadian dollars. However, Shareholders may elect to receive the Purchase Price in U.S. dollars. The exchange rate that will be used to convert payments from Canadian dollars into U.S. dollars will be the rate available from the depositary and foreign exchange service provider under the Offer, on the date on which the funds are converted, which rate will be based on the prevailing market rate on such date.

#### *Purchase Price and Proration*

The Company will determine the Purchase Price payable per Share (the “**Purchase Price**”) based on the Auction Prices and the number of Shares specified in valid Auction Tenders and Purchase Price Tenders (considered for purposes of determining the Purchase Price to have been tendered at the Specified Minimum Price). The Purchase Price will be the lowest price that enables the Company to purchase that number of Shares tendered pursuant to valid Auction Tenders and Purchase Price Tenders having an aggregate purchase price not to exceed the “**Auction Tender Limit Amount**”, which is the aggregate purchase price of Shares tendered pursuant to Auction Tenders and Purchase Price Tenders that the Company must take up in order that, on consummation of the Offer, each Shareholder tendering Shares pursuant to Proportionate Tenders will maintain its same proportionate interest in the Company following completion of the Offer. The Auction Tender Limit Amount will be equal to (i) the Specified Maximum Dollar Amount less (ii) the product of (A) the Specified Maximum Dollar Amount and (B) a fraction, the numerator of which is the aggregate number of Shares owned by Shareholders making valid Proportionate Tenders, and the denominator of which is the aggregate number of Shares outstanding at the time of expiry of the Offer. Any Shareholder who owns fewer than 100 Shares and tenders all of such Shareholder’s Shares pursuant to an Auction Tender at or below the Purchase Price or pursuant to a

Purchase Price Tender (each, an “**Odd Lot Holder**”) will be considered to have made an “**Odd Lot Tender**”.

With respect to the proration of Shareholders making Auction Tenders or Purchase Price Tenders:

- If the aggregate purchase price for Shares validly tendered pursuant to Auction Tenders (at prices at or below the Purchase Price) and Purchase Price Tenders (such aggregate amount, the “**Aggregate Tender Purchase Amount**”) is less than or equal to the Auction Tender Limit Amount, the Company will purchase at the Purchase Price all Shares so tendered pursuant to Auction Tenders (at or below the Purchase Price) and Purchase Price Tenders.
- If the Aggregate Tender Purchase Amount is greater than the Auction Tender Limit Amount, the Company will purchase a portion of the Shares so tendered pursuant to Auction Tenders (at or below the Purchase Price) and Purchase Price Tenders, determined as follows: (i) first, the Company will purchase all such Shares tendered by Shareholders pursuant to Odd Lot Tenders; and (ii) second, the Company will purchase on a pro-rata basis solely within that portion of Shares tendered pursuant to Auction Tenders and Purchase Price Tenders (i.e., not including Proportionate Tenders, which are taken up in a separate proration pool as described below) having an aggregate purchase price, based on the Purchase Price, equal to (A) the Auction Tender Limit Amount, less (B) the aggregate amount paid by the Company for Shares tendered pursuant to Odd Lot Tenders, in each of the cases set forth in clauses (i) and (ii) of this paragraph, at the Purchase Price.<sup>2</sup>

By contrast, Shareholders making Proportionate Tenders are prorated in a separate proration pool, in which the Company will purchase at the Purchase Price that portion of the Shares owned by such Shareholders that results in such tendering Shareholders maintaining their proportionate equity ownership in the Company following completion of the Offer.

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<sup>2</sup> Similar to the pro rata calculation described in Rule 13e-4(f)(3) and corresponding Canadian rules, the proration percentage for each individual Shareholder within the Auction Tender/Purchase Price Tender pool will be calculated as (1) the number of Shares such Shareholder has tendered at or below the Purchase Price, divided by (2) the total number of Shares tendered pursuant to Auction Tenders (at prices at or below the Purchase Price) and Purchase Price Tenders (i.e., the Aggregate Tender Purchase Amount). Shares that are tendered above the Purchase Price will not be taken into account and therefore excluded from the proration calculation.

As a result, the Offer, in effect, consists of two separate proration pools, one for Auction Tenders and Purchase Price Tenders, and the other for Proportionate Tenders. The first proration pool of Auction Tenders and Purchase Price Tenders is prorated based on the total number of Shares tendered by the Shareholders that tender in Purchase Price Tenders or Auction Tenders at or below the Purchase Price, while the second proration pool of Proportionate Tenders is prorated based on the number of Shares necessary for such Shareholders to maintain their existing ownership percentages, as described above.<sup>3</sup>

The number of Shares that the Company will purchase pursuant to the Offer and the aggregate purchase price will vary depending on whether the Aggregate Tender Purchase Amount is equal to or less than the Auction Tender Limit Amount. If the Aggregate Tender Purchase Amount is equal to the Auction Tender Limit Amount, the Company will purchase Shares pursuant to the Offer for an aggregate purchase price equal to the Specified Maximum Dollar Amount; if the Aggregate Tender Purchase Amount is less than the Auction Tender Limit Amount, the Company will purchase proportionately fewer Shares in the aggregate, with a proportionately lower aggregate purchase price.

#### *Hypothetical Scenarios*

To illustrate the effect of the terms of the Offer where the Proportionate Tender option is available to Shareholders, we have considered the following hypothetical scenarios: (i) fewer than the Auction Tender Limit Amount of Shares is tendered pursuant to the Auction Tenders (“**undersubscribed**”), (ii) exactly the Auction Tender Limit Amount of Shares is tendered pursuant to Auction Tenders (“**fully subscribed**”), and (iii) more than the Auction Tender Limit Amount of Shares is tendered pursuant to Auction Tenders (“**oversubscribed**”). In addition, we have also considered hypothetical scenarios in the oversubscribed setting where a Proportionate Tender option is not available to Shareholders.

#### *A. Offer is Fully Subscribed or Undersubscribed.*

If the Offer is exactly fully subscribed or undersubscribed, all Shares tendered pursuant to Auction Tenders and Purchase Price Tenders will be taken up and paid for by the Company without proration. The Purchase Price will necessarily be the single highest

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<sup>3</sup> The provision of two separate proration pools is different from the proration contemplated by Rule 13e-4(f)(3) and corresponding Canadian rules (which requires that Shares be taken up and paid for according to the number of Shares tendered by each Shareholder). Although all Shares tendered at or below the Purchase Price in a given pool are prorated at the same aggregate rate within that pool (subject, in the case of Auction Tenders and Purchase Price Tenders, to the special treatment of Odd Lot Tenders), the proration factors of the two pools are unlikely to be the same.

price, at or below the Specified Maximum Price, specified by Shareholders tendering pursuant to Auction Tenders or, in the unlikely event of there being only Purchase Price Tenders, the Specified Minimum Price.<sup>4</sup>

*B. Offer Oversubscribed.*

If the Offer is oversubscribed, the aggregate purchase price of the Shares tendered pursuant to Proportionate Tenders taken up at the Purchase Price would be equivalent to the product of (A) the Specified Maximum Dollar Amount and (B) a fraction, the numerator of which is the aggregate number of Shares owned by Shareholders making valid Proportionate Tenders, and the denominator of which is the aggregate number of Shares outstanding at the time of expiration of the Offer. The Specified Maximum Dollar Amount minus such amount will then leave a fixed aggregate dollar amount of Shares, referred to above as the “Auction Tender Limit Amount”.

Shares tendered pursuant to Auction Tenders and Purchase Price Tenders will be taken up at the lowest Purchase Price which would allow the Company to take up the Auction Tender Limit Amount. Shares tendered at prices higher than this Purchase Price would not be taken up in the Offer. Shares tendered pursuant to Auction Tenders (at prices at or below this Purchase Price) or pursuant to Purchase Price Tenders would be taken up by the Company at the Purchase Price as follows: (i) first, the Company will purchase all Shares tendered by Shareholders pursuant to Odd Lot Tenders; and (ii) second, the Company will purchase on a pro-rata basis that portion of Shares tendered pursuant to Auction Tenders and Purchase Price Tenders having an aggregate dollar amount (based on the Purchase Price), equal to (A) the Auction Tender Limit Amount (already allocated to Proportionate Tenders as described above), less (B) the aggregate amount paid by the Company for Shares tendered pursuant to Odd Lot Tenders.<sup>5</sup>

*C. Offer Oversubscribed Where Proportionate Tender Option Not Available.*

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<sup>4</sup> This analysis assumes that at least one Share will be tendered pursuant to an Auction Tender or a Purchase Price Tender. If no Shares are tendered pursuant to Auction Tenders or Purchase Price Tenders, no Shares will be taken up in the Offer, and any Shares tendered by Shareholders pursuant to Proportionate Tenders would be returned to such Shareholders. This is due to the fact that the Purchase Price payable per Share will be based on the Auction Prices and the number of Shares specified in valid Auction Tenders and the Purchase Price Tenders (considered for purposes of determining the Purchase Price to have been tendered at the Specified Minimum Price). Therefore, if there are no Auction Tenders or Purchase Price Tenders, the Purchase Price will not be established, in which case no Shares tendered pursuant to Proportionate Tenders or the Offer generally will be taken up.

<sup>5</sup> As discussed in note 4 above, proration will be calculated similar to the pro rata calculation described in Rule 13e-4(f)(3) and corresponding Canadian rules.

If the Proportionate Tender option were not available, then tendering Shareholders (including ExxonMobil) only would be able to make Auction Tenders or Purchase Price Tenders. Shares tendered (other than Odd Lots) pursuant to Auction Tenders at or below the Purchase Price and Shares deposited pursuant to Purchase Price Tenders would be purchased on a pro rata basis according to the number of such Shares so deposited such that the Purchase Price for the Shares will be the lowest price at or above the Specified Minimum Price, but not exceeding the Specified Maximum Price, that would enable the Company to purchase the maximum number of deposited Shares having an aggregate purchase price not exceeding the Specified Maximum Dollar Amount. Given that the Specified Maximum Dollar Amount is fixed, the actual number of Shares purchased in an oversubscribed Offer would vary inversely with the Purchase Price. If the Purchase Price is the Specified Minimum Price, the actual number of Shares taken up in the Offer would equal the maximum number of Shares that would be disclosed in the Offer to Purchase. If the Purchase Price exceeds the Specified Minimum Price, the number of Shares purchased would be less than such maximum number of Shares.

If a Proportionate Tender option was available, the aggregate number of Shares tendered pursuant to Proportionate Tenders would effectively create a ceiling (i.e., the Auction Tender Limit Amount) on the aggregate number of Shares that could be taken up pursuant to Auction Tenders and Purchase Price Tenders in the aggregate since sufficient Shares would always be taken up from Shareholders tendering pursuant to Proportionate Tenders so that such Shareholders maintain their percentage interest in the Company.

Shareholders tendering via Auction Tenders and Purchase Price Tenders will be prorated according to the number of Shares tendered by such Shareholders that have tendered in Purchase Price Tenders or Auction Tenders at or below the Purchase Price; however, due to the ceiling described above, the net effect of the Proportionate Tender option would be that Shareholders tendering via Auction Tenders and Purchase Price Tenders in the aggregate would likely be prorated at a different rate when compared to the proration of Shareholders tendering via Proportionate Tenders. With a Proportionate Tender option, there will be two proration pools: (1) Shareholders that tender via Auction Tenders and Purchase Price Tenders will be prorated within one proration pool set by the Auction Tender Limit Amount (with the proration percentage in the aggregate determined by dividing the Auction Tender Limit Amount by the Aggregate Tender Purchase Amount), and (2) Shareholders tendering via Proportionate Tenders being prorated in a second proration pool based solely on maintaining their percentage interest; by contrast, without a Proportionate Tender option, all Shares that are accepted for

payment would be prorated in a single proration pool according to the total number of Shares tendered and accepted for payment.<sup>6</sup>

### **Rule 13e-3 Considerations**

The Company does not intend for the Offer to have, and does not believe that the Offer is a part of, or is in furtherance of a series of transactions that, taken together, will have a reasonable likelihood or purpose of producing, directly or indirectly, a Rule 13e-3 effect, as defined in Rule 13e-3(a)(3) under the Exchange Act.

As of October 31, 2023, the Company had 554,945,083 Shares outstanding. Giving effect to a Specified Maximum Dollar Amount of \$1,500,000,000 and a Specified Minimum Price of \$78.50 per Share, the maximum number of Shares that could be purchased in the Offer would be approximately 19,108,280, or approximately 3.4% of the total number of outstanding Shares. Assuming the requested relief is granted and ExxonMobil makes a Proportionate Tender, all issued and outstanding Shares are tendered for purchase and the maximum number of Shares is taken up in the Offer, the public float of Shares (i.e., those not held by affiliates) after giving effect to the Offer would be reduced by approximately 5,808,931 Shares from approximately 168,703,705 Shares to approximately 162,894,774 Shares (or approximately 3.4% of the public float prior to the Offer), with affiliates' ownership being reduced by approximately 13,299,349 Shares to approximately 372,942,029 shares. In such an Offer, non-affiliate Shareholders would be expected to tender approximately 30% of the 19,108,280 total Shares accepted for purchase. Assuming a proportionate amount is tendered by non-affiliate holders in the United States and holders in Canada as an Auction Price or Purchase Price Tender, the public float in the United States would be expected to be reduced by approximately 3,194,913 Shares.

The effects referred to in Rule 13e-3(a)(3)(ii) that would result in application of Rule 13e-3 include: (i) causing any class of equity securities of the Company subject to Section 12(g) or Section 15(d) of the Exchange Act to become eligible for termination of registration under Rule 12g-4 or Rule 12h-6, or causing the reporting obligations with respect to such class to become eligible for termination under Rule 12h-6, or suspension under Rule 12h-3, or (ii) causing any class of equity securities of the Company which is listed on a national securities exchange or authorized to be quoted in an intern-dealer quotation system of a registered national securities association to be neither so listed nor

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<sup>6</sup> While it is always the case in an oversubscribed partial tender offer that the more shares that tender will reduce the number of shares accepted for payment from any one particular shareholder, ExxonMobil, given the size of its Share ownership, can have a significant influence on the pricing and which Shares are taken-up, the effects of which would be mitigated using a Proportionate Tender option.

authorized. Pursuant to Rule 12h-6, which pertains to termination of Exchange Act registration or reporting obligations by a foreign private issuer, the Company believes the number of record holders of the Company's shares on a worldwide basis and with U.S. addresses are both well above the 300 record holders threshold, with over 9,000 holders of record of common shares worldwide and over 800 holders in the United States. While the Offer could be expected to result in a decrease of the number of holders of record, the Company expects the number of holders of record to remain well above 300 persons.<sup>7</sup> In addition, during the twelve-month period before September 30, 2023, the average daily trading volume of the Shares on NYSE was approximately 22% of the world-wide trading volume. The Company does not believe that the Offer would reduce that percentage to 5% or less (the threshold for deregistration under Rule 12h-6(a)(4)(i)). Finally, the Shares are not listed on a national securities exchange or authorized to be quoted on an inter-dealer quotation system of a registered national securities association.

As will be disclosed in the Circular, the purpose of the Offer is to return capital to the Company's Shareholders and not to effect, or be the first step in effecting, a Rule 13e-3 transaction. The Company therefore does not believe that the Offer would have a reasonable likelihood or a purpose of producing a Rule 13e-3 transaction.

### **Discussion of Exemptive Relief Requested**

While the relief requested in this letter would not be available under Rule 13e-4 even if the Tier II exemption were available (which, due to the ownership of ExxonMobil which is a U.S. shareholder, it is not), the Company has considered the U.S. ownership of its non-ExxonMobil Shares pursuant to the instructions to paragraph (h)(8) and (i) of that rule. Broadridge Financial Solutions on behalf of the Company performed a look-through analysis following those instructions as of October 12, 2023, which is a date no more than 60 and no later than 30 days following the public announcement of the Offer on October 12, 2023, inquiring of brokers, dealers, banks and other nominees (among other things) the number of, and shares held by, accounts and their addresses. The results of such inquiry indicate that, as of such date, in excess of 45% of the total issued and outstanding Shares held by holders other than ExxonMobil (i.e., of the public float) were held by non-U.S. resident holders. Accordingly, the Company believes that U.S. ownership of Shares other than those held by ExxonMobil represents no more than 55% of such float.

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<sup>7</sup> Note that, using the method of calculation set forth in Rule 12g5-1 and Exchange Act Rule Compliance & Disclosure Interpretation 152.01, considering securities held in street name by a broker-dealer as held of record only by the broker-dealer, the Company believes there would not be any meaningful reduction in the number of holders of record.

Except for the Exemptive Relief described below (and one other matter not pertinent to the relief sought herein)<sup>8</sup>, the Offer is being made in compliance with, and subject to, applicable Canadian regulatory requirements. Such requirements listed in the letter include, among others, required disclosure items; minimum deposit period; mandatory withdrawal rights; rules regarding when securities must be taken up and paid for; and prohibitions on the issuer purchasing shares during the offer (other than pursuant to the offer). These requirements and others parallel the protections applicable to U.S. tender offers under the Williams Act.

Rule 13e-4(f)(3) under the Exchange Act requires that if an issuer tender offer is for fewer than all of the outstanding equity securities of a class, and if the number of securities tendered exceeds the number that the issuer is bound or willing to take up and pay for, the issuer must accept and pay for the securities as nearly as may be pro rata, disregarding fractions, according to the number of securities tendered by each security holder during the period that the offer remains open. Stated differently, tender offer proration mandated by Rule 13e-4(f)(3) involves the application of the same proration factor for all shareholders and all shares tendered.

As described above, the Offer will have two separate proration pools: one for Auction Tenders and Purchase Price Tenders, and a separate pool for Proportionate Tenders. Although there is a mathematical possibility that Shares tendered pursuant to Auction Tenders and Purchase Price Tenders and Shares tendered pursuant to Proportionate Tenders will all be subject to proration at the same rate, this possibility is statistically unlikely.

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<sup>8</sup> In addition to the Canadian proportionate take-up relief obtained by the Company, the Company has also sought and obtained relief from Canadian extension take-up requirements. Specifically, if all of the terms and conditions of the Offer have been complied with or waived by the date the Offer is initially scheduled to expire (the "Initial Expiration Date") but the aggregate purchase price for Shares validly tendered pursuant to Auction Tenders and Purchase Price Tenders is less than or equal to the Auction Tender Limit Amount, the Company may wish to extend the Offer if it believes that it is in the best interests of the Company to do so. The Canadian extension take-up requirements would prohibit the Company from doing so due to the Purchase Price and mechanics required to facilitate the availability of Proportionate Tenders in the Offer. Under the extension take-up requirement contained in Section 2.32 of NI62-104, an issuer may not extend an issuer tender offer if all the terms and conditions of the issuer tender offer have been complied with or waived unless the issuer first takes up all the securities deposited and not withdrawn under the issuer bid. For U.S. law purposes, consistent with Rule 14e-1, the Company would issue a press release no later than 9:00 a.m. (Eastern time) on the next business day after the scheduled expiration date with such press release disclosing the approximate number of Shares deposited to date. Since these procedures to extend the Offer would be in compliance with Rule 14e-1(d), receiving exemptive relief from the extension take-up requirements does not trigger the need for relief under the U.S. tender offer regulations.

The Company has applied to receive, and anticipates receiving, relief from Canadian proportionate take-up and disclosure requirements pursuant to the Exemptive Relief. The Canadian proportionate take-up requirements require an offeror to take up and pay for securities deposited pursuant to an issuer tender offer proportionately according to the number of securities deposited by each depositing securityholder. See Section 2.26 of National Instrument 62-104 – Take-over Bids and Issuer Bids (“**NI 62-104**”).<sup>9</sup> The Canadian proportionate take-up disclosure requirements require an issuer tender offer to disclose that the issuer will take up proportionately according to the number of shares tendered pursuant to the offer. See Item 8 of Form 62-104F2 to NI 62-104. While in the United States the goal of allowing the majority shareholder to participate in the return of cash while maintaining its current ownership interest could be achieved under the Exchange Act and related rules through the use of a private repurchase agreement between the Company and the majority shareholder (i.e., pursuant to an agreement entered into prior to the first public announcement of the Offer and consummated only after the Rule 13e-4(f)(6) restriction had lapsed), the Company understands that under Canadian securities laws an offeror such as the Company is compelled to make the issuer bid to all holders subject to such bid by sending the same bid and on the same terms to each such holder, including any majority or major shareholders. Canadian regulators are concerned with any arrangement in which a majority shareholder is afforded opportunities that are not available to other shareholders on an equal basis and therefore apply incremental scrutiny to any transaction involving a majority shareholder to protect minority shareholders.<sup>10</sup> Accordingly, majority or major shareholders of Canadian issuers undertaking issuer tender offers (which are known as substantial issuer bids) are afforded the same rights of participation within the substantial issuer bid as any other shareholder, including by way of Proportionate Tender.

The Commission has in the past provided exemptive relief for Canadian issuer tender offers that contained a Proportionate Tender feature, including in connection with

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<sup>9</sup> The Canadian “proportionate take-up” requirements are substantially the same as the pro-rata requirements of Rule 13e-4(f)(3).

<sup>10</sup> Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* specifically scrutinizes issuer bids of this nature and transactions involving related parties of an issuer (such as major shareholders) generally, requiring holders of securities of the same class to be treated identically on a per security basis to avoid incremental regulatory requirements.

the November 2022 Offer.<sup>11</sup> The Commission has also granted exemptive relief<sup>12</sup> from various provisions of the tender offer rules where, as here, U.S. ownership exceeded the 40% limit of Rule 13e-4(g) or the Tier II exemption. The relief being sought by the Company in connection with the Offer is also similar to the relief from the Canadian proportionate take up and disclosure requirements that historically were obtained in Canadian modified “Dutch auction” issuer tender offers.<sup>13</sup>

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<sup>11</sup> See *Imperial Oil Limited Issuer Tender Offer* (November 2, 2022 and May 4, 2022) (permission to provide a Proportionate Tender option in modified Dutch auction tender offer). See also BRP Inc. no action letters (available June 23, 2021 and June 13, 2019); Thomson Reuters Corporation no action letter (available August 28, 2018). The offer by Thomson Reuters provided shareholders with the ability to tender their shares using an Auction Tender, a Purchase Price Tender or a Proportionate Tender in a manner similar to the Offer. See also the Shell Canada Limited no action letter (available April 30, 1997), which provided for shares to be tendered pursuant to either Auction Tenders or Proportionate Tenders, and the Schedule 13e-4 of Imperial Oil Limited (filed publicly June 28, 1996), in which shares could also be tendered pursuant to either Auction Tenders or Proportionate Tenders (although we acknowledge that the Staff did not take action in the case of Imperial Oil Limited). In each of the Thomson Reuters, Shell Canada and Imperial Oil offers, the majority shareholder advised the company it would tender its shares pursuant to a Proportionate Tender.

<sup>12</sup> See, e.g., *Class B Conversion Offer for Companhia Paranaense de Energia – Copel* (March 17, 2021) (U.S. ownership of approximately 42.0%; use of a dual offer structure with purchase of Brazilian shares during pendency of the U.S. Offer); *Standard Industries, Inc. cash tender offer for ordinary shares of Braas Monier Building Group S.A.* (October 25, 2016) (U.S. ownership approximately 43.0%; permission to extend acceptance period and purchase tendered shares in compliance with German law); *Offer by Stork Holdco L.P. for Songbird Estates Plc* (December 19, 2014) (U.S. ownership of approximately 58.8%; payment within 14 calendar days); *Oak Leaf B.V., Acorn B.V. Offer for D.E Master Blenders 1753 N.V.* (May 21, 2013) (U.S. ownership of 59.5%; payment within six Dutch trading days); *Coca-Cola Hellenic Bottling Company S.A. and Coca-Cola HBC* (March 14, 2013) (U.S. ownership of approximately 50%; payment within five Greek business days); *Vimpelcom Ltd, Altimo Holdings & Investments Ltd and Telenor ASA Offer for all outstanding common shares, preferred shares and American Depositary Shares* (February 5, 2010) (U.S. ownership of approximately 44.4%; payment within 15 days); *Offer by Singapore Technologies Semiconductors Pte Ltd for STATS ChipPAC Ltd.* (March 15, 2007) (U.S. ownership of up to 54.80%; payment within 14 calendar days); *Offer by Alcan, Inc. for Common Shares, ADSs, Bonus Allocation Rights and OCEANES of Pechiney* (October 8, 2003) (U.S. ownership of approximately 35%-45%; payment within three weeks); *Serono S.A. Offer for All Outstanding Ordinary Shares, ADSs, OCEANES and Warrants of Genset* (September 12, 2002) (payment within 18 French trading days); *Proposed Exchange Offer by Technip, S.A. for all of the outstanding ordinary shares and American Depositary Shares of Coflexip, S.A.* (August 20, 2001) (U.S. ownership of 50.6%; payment within 15-21 French business days); *Exchange Offers by Telefonica, S.A.* (June 5, 2000) (U.S. ownership of 54.3%; payment within 10 business days).

<sup>13</sup> See, e.g., MDS Inc. no action letter (available February 28, 2007), PetroKazakhstan Inc. no action letter (available June 10, 2004). See also the Schedule 13E-4F filings of DataMirror Corporation (February 11, 2005), Descartes Systems Group Inc. (June 4, 2003), Quebecor World Inc. (April 28, 2003), and Russel Metals Inc. (March 6, 2000). While none of these offers gave shareholders the

We respectfully submit that the rationale for the Commission's granting of relief in connection with those other Canadian issuer tender offers applies equally here. First, the policy reasons for having a U.S. pro rata requirement are fully addressed by the Offer. The purpose of the pro rata requirement is to "allow all shareholders a fair opportunity to participate in the offer." Proposing Release No. 14234 under the Exchange Act (December 8, 1977) (in reference to Section 14(d)(6) of the Exchange Act, the third party tender offer counterpart of Rule 13e-4(f)(3)). During the period the Offer is open, all Shareholders will have an equal opportunity to tender all, none or some portion of their Shares.<sup>14</sup> Shareholders who tender Shares pursuant to Auction Tenders and Purchase Price Tenders will be subject to proration on an equal basis with other Shareholders tendering Shares pursuant to Auction Tenders and Purchase Price Tenders and, in the case of the Offer, will tender such Shares with advance knowledge that ExxonMobil is tendering its Shares pursuant to a Proportionate Tender. Shareholders who tender Shares pursuant to Proportionate Tenders have voluntarily opted out of participating in the Auction Tender and Purchase Price Tender side of the Offer, and have elected to be prorated as described above, with advance knowledge that Shares tendered pursuant to Auction Tenders and Purchase Price Tenders may be prorated at a different rate. In fact, the option to tender Shares pursuant to Proportionate Tenders gives Shareholders the added ability to maintain their percentage ownership without having to "guess" the appropriate number of Shares to tender and the appropriate price to specify to achieve this result.<sup>15</sup>

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option to tender shares pursuant to a Proportionate Tender feature, each of these offers, like the Offer, included a modified Dutch auction process and, accordingly, relief was granted in Canada from the proportionate take-up and disclosure requirements.

<sup>14</sup> However, Shareholders wishing to take advantage of the preference afforded to Odd Lot Holders must tender all of their Shares.

<sup>15</sup> We believe that it is unlikely that giving Shareholders the alternative to tender Shares pursuant to Proportionate Tenders has a depressive effect on the Purchase Price and the inclusion of the feature may, in fact, have the opposite effect. Such Shareholders, including ExxonMobil, tender Shares knowing that the Purchase Price may be determined to be the lowest price within the price range set for Auction Tenders. Such Shareholders are thus willing to tender Shares at such low price, and if they were not given the option to tender Shares pursuant to a Proportionate Tender would more likely be among the lowest bidders participating in the Auction Tenders, as such Shareholders are by definition more interested in maintaining a fixed percentage ownership than in ensuring Shares are only sold at a high price. This is due to the fact that Shareholders that have agreed to tender their Shares pursuant to Proportionate Tenders will have agreed to have the Purchase Price set by those Shareholders tendering through Auction Tenders-if the Purchase Price (within the Specified Minimum Price and the Specified Maximum Price) was a priority, such Shareholders would likely have made Auction Tenders.

In addition, we believe that the provision in the Offer for Proportionate Tenders and the utilization of that method of tender by ExxonMobil is beneficial to public Shareholders, and therefore to U.S. Shareholders, in two ways. First, the mechanics of the Proportionate Tender isolate those Shareholders that elect to tender in this manner from the determination of Purchase Price and the aggregate number of Shares tendered, neutralizing the potential effect of tendering choices by those Shareholders on those results of the auction. As explained above, the Purchase Price will be determined entirely by Shareholders that make Auction Tenders or Purchase Price Tenders; a Shareholder that makes a Proportionate Tender accepts that Purchase Price, whatever it is determined to be (and hence is, in capital markets terminology, a “price taker”). Similarly, because the number of Shares tendered by Shareholders that elect to tender by Proportionate Tender are proportionate to the number of Shares tendered by Shareholders that elect to tender by means of an Auction Tender or a Purchase Price Tender, the latter shareholders determine the aggregate number of Shares tendered to the Offer (and hence a Shareholder that makes a Proportionate Tender is also a “volume taker”). Thus, when a Shareholder participates in the Offer by making a Proportionate Tender, it cedes to Shareholders that tender in another manner control over the outcome.

By contrast, if major Shareholders were to participate otherwise than by way of Proportionate Tender, it could distort or even determine the results of the auction. For example, ExxonMobil could effectively set the Purchase Price by tendering by Auction Tender a number of Shares that, at the Specified Minimum Price (or, in practice, a higher price per Share), equaled the Specified Maximum Dollar Amount. ExxonMobil could also, for example, tender all of its Shares by Purchase Price Tender and appropriate to itself a disproportionately large portion of the volume of Shares taken up, and any premium paid, under the Offer.

Finally, while, as explained above, in the case of an oversubscribed Offer, a Proportionate Tender would affect proration of Shares tendered by Auction Tender or Purchase Price Tender, if the Proportionate Tender option were unavailable, ExxonMobil’s tender of all or a substantial portion of its Shares under another option would constrain take-up of Shares by other Shareholders either by affecting proration or by excluding take-up of Shares tendered at prices per Share in excess of the Purchase Price, likely determined by ExxonMobil. In addition, it would be impracticable for ExxonMobil to tender and achieve its objective of maintaining its existing ownership positions; this would require an accurate estimate of the prices and number of Shares

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In addition, if such Shareholders “guessed” wrong and, at a price below the Purchase Price, tendered more Shares than necessary to maintain their proportionate interest, the Purchase Price would be lower than if a Proportionate Tender option was available.

tendered by other Shareholders, with incorrect estimates potentially producing results significantly different from the objective of maintaining their exact ownership positions.

As importantly, the Proportionate Tender mechanics are intended to eliminate the potential influence of major Shareholders on the outcome of the Offer between such major Shareholders, on the one hand, and all other Shareholders in the aggregate, on the other hand. Because major Shareholders tender proportionately with other Shareholders in the aggregate, they cannot gain financially from those other Shareholders, as they would if they tendered disproportionately more Shares and the Purchase Price per Share fell or if they tendered disproportionately fewer Shares and the Purchase Price per Share rose.

For the reasons described herein, we submit that the relief requested below should be granted because it would be consistent with the public interest and the protection of investors and would further the purposes intended by the policy and provisions of the Exchange Act.

Based on the facts set forth herein, the Company respectfully requests that the Commission issue exemptive relief from Rule 13e-4(f)(3) under the Exchange Act to allow for the two separate proration pools as described herein.

If you have any questions or comments with respect to this matter, or need additional information, please contact Patrick S. Brown at 310-712-6603 (brownp@sullcrom.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Pat B", written in a cursive style.

cc: Burke A. Vindevoghel  
Robert A. Joseph  
Counsel, Imperial Oil Limited

November 2, 2023

Division of Corporation Finance  
Office of Mergers and Acquisitions  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-3628  
United States of America

Attn: Tiffany Posil, Chief  
Christina Chalk, Associate Chief  
Blake Grady, Special Counsel

**Re: Modified Dutch Auction Tender Offer for Shares of Imperial Oil Limited (the “Company”)**

Ladies and Gentlemen:

We are acting as Canadian legal counsel to the Company in connection with the Company’s offer to purchase for cancellation up to a specified maximum aggregate dollar amount of common shares (the “**Shares**”) of the Company at a price per Share in cash which will be not less than a specified minimum dollar amount per Share and not more than a specified maximum dollar amount per Share, all on the terms and conditions to be set forth and described in an offer to purchase and accompanying issuer bid circular, together with the related letter of transmittal and notice of guaranteed delivery (collectively, the “**Offer**”).

In such capacity, we have been requested to review the letter, dated November 2, 2023, prepared by Sullivan & Cromwell LLP on behalf of the Company requesting certain relief in connection with the Offer (the “**Letter**”) and to provide you this letter to support the description of Canadian Securities Laws (as defined below) and market practice, and in particular to support the statements relating to National Instrument 62-104 *Take-over Bids and Issuer Bids* (“**NI 62-104**”) and the exemptive relief to be obtained by the Company in respect of the proportionate take-up and associated disclosure requirements of NI 62-104, each as described in the Letter (the “**Support Letter**”).

For the purposes of this Support Letter, we have only examined an electronic copy of the Letter and no documents have been reviewed by us in connection with this Support Letter other than the Letter. Accordingly, the views expressed in this Support Letter are limited to the Letter and the Canadian legal matters described therein.

Our opinion below is expressed only with respect to the laws of the Provinces of British Columbia, Alberta, Ontario and Quebec (collectively, the “**Jurisdictions**”) and of the laws of Canada applicable therein. For the purposes of this opinion, the term “**Canadian Securities Laws**” means collectively the applicable securities legislation, rules, regulations and where applicable, blanket orders, of the Jurisdictions.

Our opinion is expressed with respect to the laws of the Jurisdictions in effect on the date of this opinion. We have no responsibility or obligation to (i) update this opinion, (ii) take into account or inform the addressee or any other person of any changes in law, facts or other developments subsequent to this date that do or may affect the opinions we express or (iii) advise the addressee or any other person of

any other change in any matter addressed in this opinion. Nor do we have any responsibility or obligation to consider the applicability or correctness of this opinion to any person other than the addressee.

Based on the foregoing and subject to the qualifications set out below, we are of the opinion that the descriptions of Canadian Securities Law in the Letter are fair, accurate and, as regards the aspects of the Offer described in the Letter for which relief has been requested therein, complete in all material respects and, in our view, the descriptions of Canadian practice in the Letter are fair, accurate and, as regards the aspects of the Offer described in the Letter for which relief has been requested therein, complete in all material respects.

Yours truly,

A handwritten signature in cursive script, appearing to read "Stikeman Elliott", positioned below the text "Yours truly,".