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Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Dear Sir:

Re: Proposed Corporate Governance Rules

The Ontario Securities Commission (OSC) has released a revised draft National Policy 58-201 *Corporate Governance Guidelines* and a revised draft National Instrument 58-101 *Disclosure of Corporate Governance Practices* and has asked for comments on the proposed policy and proposed instrument. Imperial Oil wishes to express its views on one item raised in the proposed policy and proposed instrument, namely the requirement in section 3.2 of the proposed guidelines to have a split between the position of chair and chief executive officer, or alternatively, to have a lead director.

If one goes back to first principles, corporate governance is a matter of process. At its simplest, corporate governance is a process with appropriate checks and balances to prevent abuse by management, namely management acting in its own interest and not in the interest of the shareholders. The independence of the board is an important check and balance, but is not the only check and balance. A board can only exercise its independence if it is given sufficient access to information to exercise such independence. A board must also have sufficient other mechanisms to verify that the information is true and complete, and that no important information has been withheld.

There is a belief by some that splitting the position of chair and chief executive officer, or creating a lead director, is essential in order to both create board independence, and to permit the board to have access to information as well as the means to verify such information. The first point I would make is that the simple, easy structural solutions of splitting the chair and chief executive officer, or of having a lead director, have not provided the desired remedies. Enron, Worldcom and other corporations split the position of chair and chief executive officer, yet suffered tremendous abuses of corporate governance. A recent article on the Wharton School of Business website states that "Wharton faculty members say that there is no evidence that separating these positions, as a general philosophical rule, improves corporate performance".

This leads me to my second point, namely that there is more than one way to achieve these corporate governance objectives. I believe that Imperial has done the hard work to achieve these objectives by taking the following steps that truly make a difference in corporate governance:

- (1) a majority of the Imperial board consists of independent directors;
- (2) all independent directors sit on all committees (and each chairs a committee);
- (3) the annual director survey contains requests from independent directors that are responded to in future board and committee meetings;
- (4) the board and committee agendas contain many standing mandatory reviews (quarterly financial statements, corporate plan, environmental and safety performance, general counsel report) as well as specific approvals for large capital projects;
- (5) the committee chairs participate in the setting of agendas for meetings, and give two reports to Imperial's annual meeting (audit and environment, health and safety);
- (6) Imperial has a strong system of internal controls (even prior to any requirement by section 404 of Sarbanes-Oxley) that, combined with the periodic reports of the internal auditor to the audit committee, give comfort to the independent directors that any management abuse would be discovered;
- (7) Imperial has a "whistleblower" system in place that permits any concerns to be brought to the attention of Imperial's audit committee;
- (8) the audit committee has in camera sessions with both the internal and external auditors;
- (9) the independent directors have in camera executive sessions of the board after each board meeting, chaired by an independent director; and
- (10) the board and committee charters enable the independent directors to hire outside advisors if they believe it is necessary to carry out their function.

I believe that all of the above mechanisms, taken together, meet the corporate governance objectives as well as (if not better than) splitting the position of chair and chief executive officer, or having a lead director. They ensure that directors have independence, and can exercise such independence. Accordingly, I strongly encourage the OSC to amend the proposed policy and proposed instrument to the effect that a corporation is not required to split the position of chair and chief executive officer, but can demonstrate by alternate effective mechanisms that the objectives of the OSC have been met.

Yours very truly,

B.W. Livingston