ENERGY TRANSFER

November 13, 2015

Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20581

Re: Supplemental Notice of Proposed Rulemaking – Aggregation of Positions (RIN 3038-AD82)

Energy Transfer Partners, L.P. ("ETP"), on behalf itself and Energy Transfer Equity, L.P. ("ETE") (ETP and ETE are referred to in this letter as "Energy Transfer"), respectfully submits these comments in response to the U.S. Commodity Futures Trading Commission's (the "CFTC's" or "Commission's") Supplemental Notice of Proposed Rulemaking, *Aggregation of Positions*, 80 Fed. Reg. 58,365 (Sept. 29, 2015) (the "Supplemental Aggregation Rulemaking"). Energy Transfer commends the Commission for vastly improving the disaggregation criteria for companies that are 50-100% owned by a common parent and urges the Commission to adopt consistent, workable regulations for the disaggregation of all 10% or more owned affiliates that do not share day-to-day derivative hedging strategies or information. We also appreciate the Commission's willingness to continue to improve the position limits proposals to address real-world concerns, especially how entities such as ETP manage their commodity risk. The derivatives markets are important tools for risk management, and the final position limits rules should not adversely affect market participants or introduce more risk by making it more difficult for companies to hedge their commodity risks.

Energy Transfer files these comments to supplement its prior comments dated August 14, 2014, which it incorporates herein, and to add to and support other commenters who have argued that the fundamental determinant for the aggregation of derivatives positions for position limit purposes should be whether the entity has control over the derivatives trading of any 10% to 100% owned affiliates rather than mere ownership interest in such an entity. An overly restrictive position aggregation regime would unduly impact companies, like Energy Transfer, that operate their business through numerous majority- and wholly-owned subsidiaries and affiliates (which, as noted below, include separate publicly traded entities), compared to companies that consolidate and coordinate their derivatives trading at the parent level or within a single company. Energy Transfer does not believe that the position limit proposed rules should make compliance unduly burdensome for some market participants as compared to others merely as a result of corporate structure, especially where there is no trading control between the affiliated companies and thus no material public policy benefit in drawing such a distinction. Therefore, Energy Transfer urges the Commission to adopt a final position limits aggregation rule that (1) provides for the *same control criteria* to all 10% or more owned affiliates, namely, that a firm need not aggregate the positions of 10% or greater owned operating companies where there is an absence of trading

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control among those entities, and (2) clarifies, in writing, in the final rule release, prior guidance on how it expects firms to apply the enumerated criteria.

Accordingly, Energy Transfer supports the basic structure of the Supplemental Aggregation Rulemaking which adopts consistent disaggregation criteria for all 10% to 100% owned affiliates, including the use of a notice filing to seek disaggregation, but seeks additional clarification and guidance on several points in the Supplemental Aggregation Rulemaking. Energy Transfer also supports finalizing the proposed aggregation rules applicable to position limits in a separate procedural process and not delay finalizing these rules simply because it has a separate, substantive, position limits rulemaking proposal outstanding as well. These aggregation rules, which are much improved and will provide greater certainty to market participants, will be applicable in the context of *existing position limits that currently apply to futures contracts traded on exchanges*, and so the Commission should finalize the aggregation rules without regard to its timeline for the substantive position limits rulemaking.

I. Background on Energy Transfer

ETP is one of the largest publicly traded master limited partnerships ("MLPs') in the United States in terms of equity market capitalization. ETP owns and/or operates numerous operating company subsidiaries and participates in several joint ventures across much of the United States primarily related to the transportation, treatment, and the purchase and sale of hydrocarbon commodities critical to this country's economy. ETP's primary activities include (1) natural gas operations, including natural gas midstream and intrastate transportation and storage, and interstate natural gas transportation and storage through Federal Energy Regulatory Commission ("FERC") regulated interstate pipeline companies; (2) NGL transportation, storage and fractionation services; and (3) crude oil and refined products operations, including transportation and retail marketing of gasoline and middle distillates. ETP also owns operating companies engaged in wholesale power related activities, and from time to time acquires the interests in other companies under its partnership structure.

ETP owns interests in several publicly traded entities, and has up to 100% ownership interests in numerous other legal entities. For example, by way of a merger of ETP and certain other related entities, ETP directly and indirectly acquired approximately 11.0 million of Susser Petroleum Partners LP's ("Susser") common and subordinated units (representing approximately 50.1% of SUN's outstanding units). Effective October 27, 2014, Susser changed its name to Sunoco LP ("Sunoco"), traded on the New York Stock Exchange as "SUN." Sunoco's general partner, Sunoco GP LLC, is owned by ETE by way of contribution from ETP on August 21, 2015. Sunoco distributes motor fuels across more than 30 states throughout the East Coast and Southeast regions of the United States from Maine to Florida and from Florida to New Mexico, as well as Hawaii. Starting in fiscal 2014, Sunoco also operates retail convenience stores in Virginia, Maryland, Tennessee, Georgia, and Hawaii, and, by additional acquisitions, stores in Texas, Oklahoma, and New Mexico.

ETP also is the majority owner of the general partner of, and is a minority equity owner of, Sunoco Logistics Partners L.P. ("SXL"; traded on the New York Stock Exchange as "SXL"), which is a publicly traded Delaware limited partnership that owns and operates a logistics business, consisting of crude oil, refined products and natural gas liquids ("NGL") pipelines, terminalling

and storage assets, and crude oil, refined products and NGL acquisition and marketing assets. SXL is a consolidated subsidiary of ETP. Specifically, ETP and one of its affiliates (which in turn is indirectly owned by ETE) own Sunoco Partners LLC, SXL's general partner. ETP also owns a 28.3 percent limited partner interest in SXL, including the issuance of Class B units in October 2015, with the rest owned by public and other unit holders. SXL has various operating and administrative agreements with ETP and its affiliates with regard to its business activities (for example, reimbursements for employee services).

ETP's general partner is Energy Transfer Partners GP, L.P. ("ETP GP"), and ETP GP is managed by its general partner, Energy Transfer Partners, L.L.C. ("ETP LLC"), which is wholly owned by ETE. However, ETE is a separately organized and publicly traded MLP from ETP.

Energy Transfer has committed significant capital to acquire, operate, expand, and construct critical energy infrastructure projects to fulfill its core business functions. Because of financing needs and the physical and trading businesses of the various Energy Transfer operating companies, such operating companies will, when appropriate to do so, seek to reduce their exposure to fluctuations in commodity prices and interest rates resulting from their trading, marketing and system optimization activities by using derivative financial instruments and other risk management tools.

Like many companies with numerous operating company subsidiaries, Energy Transfer manages the risk of its commodity exposure by the combination of a commodity risk policy applicable to relevant derivatives-trading subsidiaries, the imposition of internal position and/or risk limits, and mid/back office and senior-management level oversight of various companies' derivative positions. Although risk and senior management engage in prudent management-level oversight, like many companies, such oversight does not serve to control or coordinate the day-to-day derivatives transactions executed by relevant personnel within the separate companies that use such derivatives. Rather, the day-to-day derivative positions are the responsibility of the specific employees within the relevant operating company that are authorized to engage in such trading or hedging.

Because of the common ownership of certain entities and the nature of the MLP structure (for example, ETE owns a minority interest in ETP along with public shareholders, and certain ETE entities are general partners of ETP or ETP's subsidiaries), Energy Transfer is concerned that overly restrictive aggregation criteria could force aggregation (under ETE) of all operating company derivative positions within the entire MLP structure (i.e., including across all separate publicly-traded entities), even though there is a clear lack of knowledge and trading coordination among the many discrete and separate operating companies. Energy Transfer is also concerned that overly restrictive aggregation criteria could impede future business expansions, acquisitions, dispositions, reorganizations, and other routine corporate activities, despite the fact that many of the affiliated entities engage in separate and independent lines of business and risk management activities.

Since derivatives transactions are not Energy Transfer's core business, but rather are a means to manage its risks and its assets, Energy Transfer does not believe that there is any public policy benefit to require companies like ETE or ETP to aggregate all positions across all affiliated

partnerships and operating companies. Energy Transfer therefore believes that the final aggregation rules should respect organizational structures such as that utilized by Energy Transfer.

As Energy Transfer explains below, and as the Commission appears to recognize in the Supplemental Aggregation Rulemaking, the most appropriate way to address aggregation in decentralized multi-affiliate structures is to adopt a single *control-based* standard allowing companies to seek notice-based disaggregation relief based on a lack of trading coordination, regardless of whether the company is 10% owned or 100% owned, and regardless of the ownership of the general partner of a partnership affiliate. Energy Transfer also believes that the disaggregation criteria and associated guidance on how to apply such criteria should be clear and set forth in any final rule (or at least in the final rule preamble). Finally, Energy Transfer believes that the Commission should further clarify when updated notices must be filed and should provide a reasonable 90-day period following new acquisitions to allow companies to assess the disaggregation criteria and make any necessary disaggregation notice filings.

II. Comments on Supplemental Aggregation Rulemaking

A. Energy Transfer supports the Commission's recognition that majority ownership is not indicative of coordinated trading or direct or indirect influence between operating companies and seeks to confirm that this guidance applies to affiliated companies in an MLP structure

The Supplemental Aggregation Rulemaking, if finalized, would require companies to aggregate positions for position limit purposes based on a company's *ownership* of another entity, but would allow for disaggregation if certain criteria are met. Specifically, companies will not be required to aggregate the positions of an affiliated entity if they have an ownership position of less than 10%. If a company has an ownership or equity interest in another entity of 10% or more (up to 100%), the company may disaggregate those positions for position limit purposes if it they submit to the CFTC a "notice filing" (which is effective upon filing) attesting to meeting the following criteria: that the affiliated companies "(A) Do not have knowledge of the trading decisions of the other; (B) Trade pursuant to separately developed and independent trading systems; (C) Have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities; (D) Do not share employees that control the trading decisions of either; and (E) Do not have risk management systems that permit the sharing of trades or trading strategy."

Energy Transfer welcomes this change and urges the Commission to adopt it. The proposal would streamline the disaggregation process by using the same criteria for all 10% to 100% owned affiliates. As the Commission recognizes in issuing this proposal, having a common parent does not mean that there is any coordinated trading or direct or indirect influence between entities, especially for companies involved in the physical energy business. Energy companies such as Energy Transfer may have ownership interests in various operating companies that are engaged in different business activities or different business segments. For example, as noted, ETP operates natural gas midstream operations in Texas and gasoline retailers on the east coast and other areas. ETP's various majority-owned affiliated companies have different hedging needs and thus engage in different trading strategies. Thus, their derivatives positions are irrelevant to each other's day-

to-day business operations, and these companies do not share trading information, trading strategies, or derivatives positions, let alone operate under centralized control of the derivatives trading.[1]

In fact, there is no need to share derivatives positions among separate affiliates that are kept separate from each other because each such operating company is expected to manage its own risks and earn revenues on a stand-alone basis. The profit or loss of each distinct business depends on how well that company performs based on its own transactions, not based on shared revenues or losses from other affiliates' derivatives positions. If several different businesses could be enhanced by increased coordination or efficiencies of scale, the relevant operating companies would either be merged or otherwise integrated with respect to commodity and derivatives trading, in which case the combined business would expect to aggregate positions for position limit purposes.

Energy Transfer therefore seeks clarification that the fact that an MLP may have a majority interest in the general partner of another MLP does not mean that all positions across all related MLPs must be aggregated. Rather, the Commission should clarify that the aggregation of positions in such a structure, like any other corporate structure, depends on whether there is control of the day-to-day trading decisions of or among the operating companies at issue, regardless of the company's partnership structure.

B. The Commission should clarify how it will apply its precedent to the disaggregation criteria.

Energy Transfer supports the Commission's use of its past practices to clarify the criteria for disaggregation relief in proposed rule 150.4(b)(2)(i), which it stated in the initial aggregation proposal, *Aggregation of Positions*, 78 Fed. Reg. 68,946 (Nov. 15, 2013), at 68961 ("2013 Aggregation Rulemaking"). Specifically, Energy Transfer supports the Commission's guidance that the knowledge and sharing criteria in the proposed rule relate to "employees who control, direct or participate in an entity's trading decisions" and that the proposed criteria do not prohibit sharing of information "solely for risk management, accounting, compliance, or similar purposes and information sharing among mid- and back-office personnel that do not control, direct or participate in trading decisions." *Id.*

Under these standards, Energy Transfer seeks clarification on several points, noted below.

[1] As proposed, the Proposed Aggregation Rule in fact would require increased sharing and coordination of trading information among affiliates, which appear counter to the Commission's interest in ensuring a lack of controlled derivatives trading within a corporate family, by requiring centralized aggregation of positions across the entire corporate enterprise. The better approach is to endorse the continued separation of trading decisions, and not centralize derivatives trading unless the company chooses such centralization.

(1) Separately developed and independent trading systems

The current proposal would include a disaggregation criterion for all 10% to 100% owned affiliates that would require them to "trade pursuant to separately developed and independent trading systems." The Commission's 2013 Aggregation Rulemaking explained that this disaggregation criterion should be interpreted in accordance with the Commission's prior practices in this regard, and that:

> The Commission generally does not expect that this criterion would prevent an owner and an owned entity from both using the same "off-the-shelf" system that is developed by a third party. Rather, the Commission's concern is that trading systems (in particular, the parameters for trading that are applied by the systems) could be used by multiple parties who each know that the other parties are using the same trading system as well as the specific parameters used for trading and, therefore, are indirectly coordinating their trading.

2013 Aggregation Rulemaking at 68961-62.

Energy Transfer supports this clarification and requests that the Commission reiterate this guidance *in the final rule or final rule preamble*. Referring back to a proposed rulemaking for such guidance would only lead to uncertainty as to whether the Commission still intends to take this approach once the rules are finalized. In addition, Energy Transfer requests that the Commission clarify the following.

First, the Commission should further clarify that the above guidance is not limited to off-the-shelf systems or other technologies "developed by" third parties, but rather includes any in-house software or custom modules added to third-party software. Many large trading companies develop their own proprietary trading software or modify third-party off-the-shelf systems to support trade capture and documentation features that they may need. Once developed, the internal or third-party-modified software (but not underlying transaction data or actual positions) may be shared with, sold to, or licensed to affiliated entities. Provided that these internal systems are not used to share trading information with day-day trading personnel or otherwise permit coordinate trading, entities that employ such software should be eligible for the exemption from aggregation.

Second, the Commission should confirm that software and other technologies, regardless of whether they are "separately developed and independent" systems, that merely record, process, and facilitate reports of, trading, but do not establish parameters (e.g., algorithms) for trading, such as trade capture, trade execution, and related report-generation systems for the confirmation, booking and accounting of orders and for any other mid- and back-office functions, should categorically satisfy this criterion so long as they do not enable coordinated trading among affiliates that seek to be disaggregated. Software and systems that merely capture and facilitate transactions, regardless of whether they are considered as "trading systems," do not allow trading "pursuant to" such systems. Rather, such trade capture and recordation systems merely facilitate transactions that are executed by trading personnel.

If the underlying transaction database is improperly shared with other affiliates, such that it permits coordinated trading, such a situation would violate other criteria. For example, the disaggregation criteria require that disaggregated entities not have knowledge of each other's

trading and, thus if the contents of active trade capture databases were shared among affiliates, the entity would be unable to satisfy that criterion. Therefore, the Commission should confirm that such "trade capture" systems, however developed, fall within the scope of the exemption from aggregation.

(2) Sharing of risk management systems

The current proposal would include a disaggregation criterion for all 10% to 100% owned affiliates that states that they may "not have risk management systems that permit the sharing of trades or trading strategy." The 2013 Aggregation Rulemaking explained that this disaggregation criterion:

> generally would not prohibit sharing of information to be used only for risk management and surveillance purposes, when such information is not used for trading purposes and not shared with employees that, as noted above, control, direct or participate in the entities' trading decisions. Thus, sharing with employees who use the information solely for risk management or compliance purposes would generally be permitted, even though those employees' risk management or compliance activities could be considered to have an "influence" on the entity's trading.

2013 Aggregation Rulemaking at 68961. The Commission also noted, at 68,955, that commenters on the 2013 Aggregation Rulemaking said that this proposed amendment "should permit continuous sharing of position information so long as such information is used only for risk management and surveillance purposes and is not shared with trading personnel."

Energy Transfer requests that the Commission reiterate the above guidance related to the "risk management systems that permit the sharing of trades or trading strategy" criterion *in the final rule or final rule preamble*. Referring back to a proposed rulemaking for such guidance would only lead to uncertainty as to whether the Commission still intends to take this approach once the rules are finalized.

Energy Transfer seeks clarification that this disaggregation criterion does not prohibit the sharing of derivative information with senior management or risk committee members that oversee the risks of more than one operating company, including within an MLP structure such as Energy Transfer's, where the information is shared for "risk management, accounting, compliance, or similar purposes." Likewise, Energy Transfer also seeks clarification that if senior management or risk committee members have authority to require that action be taken on a derivatives position if needed to reduce an operating company's exposure or comply with internal risk guidelines – but where they do not otherwise control, direct or participate in trading decisions – then such authority should not be considered as "control" for purposes of disaggregation relief.

In addition, the Commission should also clarify that the disaggregation exemption is available to entities that share trading and position information for risk management purposes, even if such information is shared on *a real-time or end-of-day basis* and even if the entity's risk management systems or personnel have authority to require the reduction of positions to comply with internal credit or position limits, exchange limits, government regulations, or other restrictions that senior management or the risk personnel may impose. The sharing of information

for risk management purposes, even if done in real time and even if the risk management authority provides for reduction in positions (solely for risk management purposes), does not allow affiliated companies to *share or coordinate* trading strategies. Accordingly, the Commission should confirm that entities may use shared risk management services, including real-time data sharing and position reduction mechanisms, so long as they do not permit coordinated or shared trading.

(3) Having and enforcing written procedures

The Supplemental Aggregation Rulemaking includes the following criterion:

> Have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities;

As noted in the 2013 Aggregation Rulemaking, the Commission has applied these same conditions in connection with the Independent Account Controller exemption to ensure independence of trading between an eligible entity and an affiliated independent account controller. Energy Transfer submits that the second sentence of this criterion, beginning with "Such procedures must include," be deleted. The mandated criteria is overly prescriptive and is subsumed by the first sentence, and no showing has been made that such prescriptive criteria is needed in the context of a physical commodity firm as opposed to an Independent Account Controller. Nevertheless, if the Commission retains the second sentence, it should provide guidance that the routing of (1) documents to senior management or risk management personnel and (2) documents that show aggregate, non-granular, or stale trading positions may be acceptable so long as such routing does not allow coordinated trading. The Commission should also clarify in the final rule that "separate physical locations" does not require physically separate buildings, but rather only requires restricted access prohibiting personnel from disaggregated entities from entering the affiliated company without permission or signing-in or, if on the derivatives trading floors, an escort.

C. Updated notice filings

Commissioner Giancarlo requested "public comment on whether the Commission should consider modifying the proposed rule to clarify that an owner filing a notice of trading independence in order to claim an exemption from aggregation under this rule need only make subsequent filings in the event of a material change in the owner's degree of control over its subsidiary's positions." 80 Fed. Reg. at 58,381.

Energy Transfer agrees that updated notice filings related to disaggregation of an owned entity should only be required in the event of a change in its ability to comply with the conditions of the exemption. For example, a mere internal reorganization of an affiliate which still follows the Commission's criterion should not trigger an updated notice filing requirement. Instead, any relevant corporate structure related to the disaggregated entity could simply be updated the next time that the company needs to make a notice filing. Accordingly, we request that the Commission clarify that a subsequent notice filing is only required when the circumstances for disaggregation are no longer met.

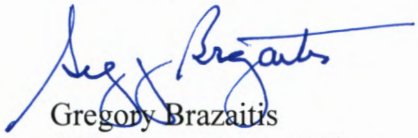
D. Timing of notice filings

Energy Transfer believes that a reasonable amount of time is needed following an investment in a new owned entity to undertake *post-closing diligence* and operational measures to confirm whether seeking or claiming the aggregation exemption is necessary for a given investment. It is not always possible in pre-closing due diligence to engage in such examinations, nor is it possible to require that changes be made to a new investment vehicle prior to closing. Therefore, Energy Transfer suggests that a newly acquired owned entity be provided a reasonable amount of time of 90 days following the acquisition of the greater than 10% ownership interest in which to conduct the necessary internal review to support and approve the notice filing. We therefore respectfully request that the Commission defer the aggregation requirement for a three-month time period following an acquisition or investment but prior to the notice filing deadline.

[Signature Page follows]

We appreciate your consideration of our comments. We stand ready to provide any additional information or assistance that the Commission might find useful.

Sincerely,



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