ENERGY TRANSFER

August 4, 2014

Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington DC 20581

Re: ***Notice of Proposed Rulemaking – Aggregation of Positions (RIN 3038-AD82); Position Limits for Derivatives* (RIN 3038-AD99)**

Energy Transfer Partners, L.P. ("ETP"), on behalf itself and Energy Transfer Equity, L.P. ("ETE"), which is the indirect owner of ETP's general partner (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") reopening[1] of the comment periods on its *Proposed Rule, Aggregation of Positions*, 78 Fed. Reg. 68946 (Nov. 15, 2013) (the "Proposed Aggregation Rule"), and *Proposed Rule, Position Limits for Derivatives*, 78 Fed. Reg. 75,680 (Dec. 13, 2013) (the "Proposed Position Limits Rule"). Energy Transfer commends the Commission for its careful and close attention to these rulemakings and its willingness to consider (and reconsider) comments from those affected by the proposed rules. Energy Transfer also appreciates the Commission's June 19, 2014 public roundtable regarding the two position limits proposals. The roundtable elicited a number of insightful comments on, and highlighted the Commission's sincere interest in, some of the real-world consequences of, and difficulties in complying with, overly restrictive position limits rules, particularly with respect to aggregation and bona-fide hedging exemptions.

ETP and ETE, along with Regency Energy Partners LP ("RGP") and Sunoco Logistics Partners, L.P. ("SXL"), are organized as separate, publicly-traded master limited partnerships ("MLPs"). As explained below, ETE owns indirectly the general partner of ETP and RGP, and SXL's general partner is owned by ETP. As a result of the Energy Transfer organizational structure, Energy Transfer may have a unique perspective on the proposed rules that may not be addressed in the comments of other market participants.

Energy Transfer files these comments to add support to the comments already filed and to the many roundtable participants who recommended, based on Commission precedent and real-world practical considerations – especially for end users who use derivatives primarily to hedge and manage risks associated with owning physical assets, like the Energy Transfer companies – that the fundamental determinant for the aggregation of positions should be trading control, not ownership interest. An overly restrictive 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, include separate publicly traded entities), compared to companies that consolidate and coordinate their derivatives trading at the parent level or

[1] *Position Limits for Derivatives and Aggregation of Positions*, 79 Fed. Reg. 30,762 (May 29, 2014).

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within a single company. Energy Transfer does not believe that the proposed rules intended to make compliance unduly burdensome for certain 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 provides for the same control criteria to be applied to all ownership interests in operating companies above 10% ownership: namely, that a firm need not aggregate the positions of 10% or greater owned operating companies where there is an absence of trading control among those entities.

With respect to the Proposed Position Limits Rule, Energy Transfer supports the comments filed by energy market participants seeking to preserve, and not overly restrict, the availability of and process for obtaining bona-fide hedge exemptions for end users such as Energy Transfer and the related MLPs.

I. Background on Energy Transfer

ETE's, ETP's, RGP's, and SXL's organizational structures are based on business considerations wholly unrelated to derivatives trading, and are set forth in each MLP's public filings. 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. ETE is a separately organized and publicly traded MLP from ETP, RGP, and SXL.

ETP is one of the largest publicly traded 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) more recently, through its combination with Sunoco, crude oil and refined products operations, including transportation through SXL and retail marketing of gasoline and middle distillates through its Sunoco Inc. and Mid-Atlantic Convenience Stores ("MACS") operating companies, the latter two of which are indirectly owned by ETP. 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.

SXL, which operates a crude oil and refined products transportation business, is a separate publicly traded MLP traded on the New York Stock Exchange. SXL's general partner is owned by ETP, which also owns a minority interest in the shares of SXL.

ETP and ETE hold minority interests in the common shares of RGP, another publicly traded MLP, which is based in Dallas, Texas and which is engaged primarily in the gathering and processing, contract compression, contract treating, transportation, fractionation and storage of

natural gas and natural gas liquids ("NGLs"). Similar to ETP, RGP's general partner (Regency GP LP) is indirectly owned by ETE through ETE's 100% ownership of Regency GP LLC, the general partner of Regency GP LP.

Energy Transfer has committed significant capital to acquire, 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 by using derivative financial instruments and other risk management mechanisms and by their trading, marketing and system optimization activities.

Like many companies with numerous operating company subsidiaries, Energy Transfer will oversee the risk of its derivatives positions by the combination of a commodity risk policy applicable to relevant derivatives-trading subsidiaries, the imposition of risk limits, and senior-management level oversight of various companies' derivative positions. Although senior management engages in prudent management-level oversight, like many companies, such oversight does not serve to control or coordinate the day-to-day trading of the positions placed by its authorized employees within separate companies with separate trading strategies. 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.

Because certain ETE entities are general partners of ETP and RGP, and because an ETP entity is the general partner of SXL, Energy Transfer is concerned that overly restrictive aggregation criteria could force aggregation (under ETE) of all operating company derivative positions (i.e., including across all separate publicly-traded entities) within the entire MLP structure, even though there is a clear lack of knowledge and trading control among the many discrete and separate operating companies. Energy Transfer is also concerned that overly restrictive aggregation criteria could impede future business expansions, acquisitions, reorganizations, and other typical corporate activities that do not change the operating-company level control of derivatives trading.

Since derivatives trading is not Energy Transfer's core business, but rather is 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, ETP, RG, and SXL 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 suggests below, the most appropriate way to do this is to adopt a single standard allowing companies to seek disaggregation relief based on a lack of trading control, regardless of whether the company is 10-50% owned or 50-100% owned. Energy Transfer believes that the same disaggregation criteria should apply to *all* owned entities, regardless of whether they are minority-owned or majority-owned (i.e., all companies greater than 10% owned should be afforded the same disaggregation standard).

II. Comments on Proposed Aggregation Rule

A. Majority ownership is not indicative of coordinated trading or direct or indirect influence between operating companies.

The Proposed Aggregation Rule distinguishes, for position limit aggregation purposes, between 10% or less owned entities, on the one hand, and 10-100% owned entities on the other. The proposal further divides the 10-100% owned entity category into categories that reflect (1) 10-50% ownership ("minority ownership"), and (2) greater than 50% to 100% ownership ("majority ownership"). If an operating company is majority-owned, additional, and more restrictive (and, Energy Transfer believes, unworkable), disaggregation conditions would be applied.

In support of restrictive disaggregation conditions for majority-owned entities, the Proposed Aggregation Rule states: "majority ownership (i.e., over 50 percent) is indicative of control, and this standard addresses the Commission's concerns about circumvention of position limits by coordinated trading or direct or indirect influence between entities." 78 Fed. Reg. at 68,946. Energy Transfer shares the Commission's concern, but 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.[2]

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, in which case the combined business would expect to aggregate positions for position limit purposes. The Commission has included a changed-circumstance standard in proposed rule 150.4(c)(4) that applies equally well to majority-owned as it does minority-owned affiliates. The Commission could thus address

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[2] 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.

concerns about trading coordination by requiring all companies to aggregate positions if trading separation no longer exists.

Other participants in the June 19 roundtable also commented that ownership of different business entities does not mean that there is any trading control between those entities or any common controlling person or group controlling the trading of multiple entities. Rather, business entities owned by a common parent may be kept separate for a number of sound commercial reasons, including operating in different geographic regions, having different commercial objectives, or for other reasons such as regulatory or tax considerations.

Because a majority-owned affiliate relationship does not necessarily mean coordinated trading or direct or indirect trading influence, Energy Transfer recommends that the Commission revise its Proposed Aggregation Rule to adopt a single, uniform standard based on trading control that applies to all companies that are 10-100% owned. To achieve this, the Commission should re-write proposed rule 150.4(b) to make it clear that the disaggregation criteria in proposed rule 150.4(b)(2) apply to all ownership of greater than 10% of an owned entity: specifically, section 150.4(b)(3) should be deleted and any conforming changes should be made to proposed rule 150.4(c) to reflect such deletion. The better test is whether the company in fact exercises coordination or control (which the criteria in proposed rule 150.4(b)(2) are well suited to address), and not presumed coordination and control based on ownership. Toward that end, if a majority-owned company can satisfy the criteria of trading independence and lack of control in proposed rule 150.4(b)(2), that company should be entitled to disaggregation relief.

B. The experience of exchanges and their oversight tools eliminate the need for restrictive disaggregation rules for majority-owned entities.

At the June 19 roundtable, CME Group, Inc.'s representative (Tom LaSala, Managing Director & Global Chief Regulatory Officer) noted that he does not see a real distinction between the over 50% and the 10 to 50% ownership level because CME's testing is the same for both categories. CME, for example, looks at control based on: (1) the structure of an organization; (2) shared technology; (3) separation of entities; and (4) any trading in concert. In light of the experience of the exchanges, and in view of the technological tools available to the exchanges and to the Commission to surveil for coordinated trading activities, there is no need for onerous separation conditions for majority-owned entities.

C. The conditions in proposed rule 150.4(b)(3) are overly restrictive and preclude disaggregation for many otherwise qualifying companies.

Energy Transfer appreciates that the Commission offered an alternative disaggregation relief process for majority-owned affiliates in proposed rule 150.4(b)(3). However, the proposed conditions for majority-owned affiliates are overly restrictive and all but preclude the use of this disaggregation process for related companies such as those in the Energy Transfer partnerships.

Under proposed rule 150.4(b)(3), a company may disaggregate derivative positions held by majority-owned affiliates only upon (initially) filing an application with the Commission

demonstrating that it lacks trading control over that affiliate based on the same criteria used for minority-owned affiliates, plus:

- a certification that the majority-owned entity is not required under U.S. generally accepted accounting principles to be, and is not, consolidated on the financial statements of the parent ("consolidated financial statement certification");

- a certification by each representative (if any) of the company that is on the owned entity's board of directors that he or she does not control the trading decisions of the owned entity; and

- a certification by the company that either all of the majority-owned entity's positions qualify as bona fide hedging transactions, or the owned entity's positions that do not so qualify do not exceed 20 percent of any position limit currently in effect ("all/20% certification"). The disaggregated company also must agree to a three-month hiatus from disaggregating if the all/20% certification becomes untrue.[3]

These three additional conditions would effectively preclude disaggregation by Energy Transfer notwithstanding, as discussed above, that there is no shared or common control over the derivatives trading among the various affiliated entities. Moreover, as Energy Transfer explained above, these three additional conditions are not needed because the criteria in proposed rule 150.4(b)(2) are sufficient to establish a lack of trading control.

The consolidated financial statement and the all/20% hedge certifications, in particular, are not relevant to determining trading control, and could pose significant challenges to publicly traded companies, even those hedging the risk of their physical assets. The filing of consolidated financial statements is required in certain cases under the accounting rules when a company has a controlling financial interest in another company, such as a majority voting interest, which is not the same thing as controlling the day-to-day derivatives trading of the subsidiary. The consolidated financial statement certification, therefore, would prevent Energy Transfer, which owns operating companies but does not centrally control the derivatives trading, from relying upon this disaggregation provision.

Likewise, whether a majority-owned entity's derivatives transactions qualify as bona-fide hedges does not help the Commission determine whether such positions are the product of controlled or coordinated trading. The availability of the bona fide hedge exemption is only relevant to whether that entity may seek a higher position limit level to accommodate its hedging needs. The Commission rejected the "crowding out" provision in a prior position limits rulemaking, which rejected reducing the speculative limit levels for companies also engaging in bona fide hedges[4]; this condition would similarly reduce the speculative positions limits

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[3] Disaggregation would not be permitted under proposed rule 150.4(b)(3) unless and until the Commission approves the application. Yet, the Proposed Aggregation Rule contains no timeframe for the Commission to act on such an application.

[4] *See Position Limits for Derivatives*, 76 Fed. Reg. 4752, 4756 (Jan. 26, 2011) ("A 'crowding out' provision would have limited the ability of a trader that hedges or acts as a swap dealer to take on speculative positions once certain

available to a hedging entity, and therefore only serve to reduce liquidity while doing nothing to demonstrate trading control.

E. Disaggregation for majority-owned entities should be available upon a notice filing.

Energy Transfer is mindful that fact-based determinations of trading control for majority-owned entities could add to the Commission's administrative challenges if the rules require the Commission to review individual applications for disaggregation. *See* 78 Fed. Reg. at 68,956. However, the Proposed Aggregation Rule already provides for individual CFTC determinations because the initial determination for majority-owned entities in proposed rule 150.4(b)(3) is by individual Commission action. *See* proposed rule 150.4(c)(2).

Energy Transfer recommends, therefore, that disaggregation filings be notice filings for both minority- and majority-owned entities (i.e., all entities with a greater than 10% ownership interest). The Commission could then rely on the exchanges to perform their traditional role of policing disaggregation compliance based on the criteria set forth in the notice filings and through their, and the exchanges', monitoring and surveillance capabilities. At a minimum, the Commission could provide for notice filings for all non-financial entities and require a Commission determination only for other entities such as swap dealers.

F. 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). *See* 78 Fed. Reg. at 68,961. 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 rule 150.4(b)(2)(i) 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. First, Energy Transfer seeks clarification that the disaggregation criteria do 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.

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positional thresholds were exceeded. ...The Commission has determined to not propose a 'crowding out' provision at this time.").

Second, Energy Transfer 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.

Finally, Energy Transfer seeks that, if the Commission declines our request to treat minority- and majority-ownership the same for aggregation purposes, and retains the certification of lack of control condition in proposed rule 150.4(b)(3)(iii), the term "control" in such section shall be construed the same way as "control" in proposed rule 150.4(b)(2)(i). There is no basis to apply a different control test for purposes of this rule 150.4(b)(3)(iii). If the Commission does retain additional criteria for majority-ownership, Energy Transfer also asks the Commission to delete sections 150.4(b)(3)(i) and (iv) (the consolidated financial statement certification and the all/20% certifications) for the reasons stated above.

III. Comments on Proposed Position Limits Rule

With respect to the Proposed Position Limits Rule, Energy Transfer supports the comments filed by energy market participants seeking to preserve, and not overly restrict, the availability of and process for obtaining bona-fide hedge exemptions for end users such as Energy Transfer. Specifically, Energy Transfer supports the comments filed by market participants concerning (1) continuing to permit bona-fide hedges of anticipated merchandising transactions, including those related to energy commodity transportation and storage assets[5]; (2) eliminating the requirement that all bona fide hedges fit within an enumerated hedge, or at least providing for an efficient and time-limited process for obtaining a non-enumerated bona-fide hedge exemption[6]; (3) not precluding hedges as a result of an unduly restrictive interpretation of the "economically appropriate" prong of the bona-fide hedge exemption, but rather allowing market participants to evaluate their portfolios and reduce their exposures in accordance with risk management practices they deem appropriate in their business judgment[7]; and (iv) ensuring that the process and reporting requirements for obtaining and maintaining Commission hedge exemptions are not overly burdensome.[8] Energy Transfer respectfully urges the Commission to

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[5] *See, e.g.*, the February 10, 2014 comments of the American Petroleum Institute ("API") at 5-6; February 10, 2014 comments of the Commercial Energy Working Group ("CEWG") at 16-28; February 10, 2014 comments of CME Group, Inc. ("CME") at 56-59; February 10, 2014 comments of the National Energy Marketers Association ("NEMA") at 4; February 10, 2014 comments of the Natural Gas Supply Association ("NGSA") at 19-25 (see also NGSA's June 26, 2014 comments); February 10, 2014 comments of Plains All American Pipeline, L.P. ("PAAP") at 6-8.

[6] *See, e.g.*, API comments at 4-5; CME comments at 46-55; February 10, 2014 comments of the Coalition of Physical Energy Companies ("COPE") at 14-18; February 10, 2014 comments of Intercontinental Exchange, Inc. ("ICE") at 9-11; February 10, 2014 comments of the International Energy Credit Association ("IECA") at 6-10; NGSA comments at 6-14.

[7] *See, e.g.*, API comments at 3-4: CEWG Comments at 6, 11-14; CME comments at 61-62; COPE comments at 10-11; February 10, 2014 comments of Edison Electric Institute and the Electric Power Supply Association ("EEI/EPSA") at 11-16; IECA comments at 10-11, 26-28; NGSA comments at 14-16.

[8] *See, e.g.*, COPE comments at 24; EEI/EPSA comments at 16; February 10, 2014 comments of the Futures Industry Association ("FIA") at 27-30, 35-39; IECA comments at 11; PAAP comments at 3-4.

consider these comments in light of the costs and benefits of an overly restrictive position limits regime on derivatives end users such as Energy Transfer.

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

Sincerely,

Gregory Brazaitis
Chief Compliance Officer
Energy Transfer Partners, L.P.