FOR IMMEDIATE RELEASE
July 10, 2012

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AFR STATEMENT ON APPROVAL OF NEW DERIVATIVES RULES

Washington DC - Americans for Financial Reform, a coalition of more than 250 national, state, and local organizations working together for strong Wall Street reform, issued the following statement:

With today's meeting both the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) have finalized key rules crucial to implementing new Dodd-Frank financial protections. These rules govern the definition of regulated derivatives and also the types of entities that will be regulated under the derivatives oversight framework. With the passage of these rules, the CFTC should begin actual implementation of derivatives protections in CFTC-regulated markets by the end of 2012. Position limits in the commodity markets should also be implemented. This progress is welcome and long overdue, as it occurs a year after the statutory deadline.

The path is now also clear for the SEC to finalize additional rules that will permit it to implement Dodd-Frank protections in the credit derivatives markets it oversees. Abuses in the credit derivatives market were central to the 2008 crisis, so it is crucial for the SEC to move forward in implementing real oversight in this market. We urge the SEC to move rapidly to finalize the additional rules necessary to put derivatives protections in place, and not to fall further behind statutory deadlines.

Although the passage of rules that allow derivatives regulation to move forward is a positive development, the rules do contain significant exemptions that are a threat to effective reform. At a minimum, they must be carefully policed to avoid the development of loopholes in derivatives oversight. Where problems develop the agencies must use their anti-evasion authority and where necessary revise the rules to prevent abuses.

Important exemptions include a 'small bank exemption' to key derivatives clearing requirements that applies to all banks under $10 billion in assets. This will exempt over 98 percent of banks holding 15 percent of total US banking assets from clearing protections. If not carefully monitored, the broad definition of 'hedging commercial risk' in the rule may also allow some commodity and even financial companies to avoid clearing requirements even if they are major players in the derivatives markets. Other major exemptions include a blanket exemption for cooperatives regardless of size and ‘captive finance companies’ who provide financing tied to product sales. In addition, a range of forward contracts and swap-like insurance contracts have been exempted from the definition of ‘swap’ entirely, including reporting requirements. When the full text of the final rules is released, further information will be available on the areas of the market that could be particularly vulnerable to abuse if regulators do not provide proper oversight.

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