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the Commodity Futures Modernization Act effectively deregulated certain over-the-counter (OTC) derivatives by specifically stating that they were outside the jurisdiction of the Commodity Futures Trading Commission.

What's more, technology has revolutionized the way assets are traded—at least in stocks and many commodities. The use of electronic trading platforms in these markets has opened them up, making pricing and trading activity transparent to everyone. But the credit markets have remained closed and secretive, Bradley says. And today's regulatory structure—with the SEC overseeing stocks, the CFTC overseeing commodities and the U.S. Treasury overseeing the credit markets—reinforces what Bradley thinks are illusory distinctions among the markets.

"The notion that the commodities markets are somehow different in 2009 than equities and the credit markets is just baloney and bunk," he says. "The [only] difference is that they are in different divisions of the investment banks; different divisions that have different profit centers." Bradley says that the new regulatory structure should have all asset classes traded openly on electronic platforms that incorporate clearing.

Although everyone has an opinion, no one knows what that new regulatory structure will be. But certain concepts are emerging that are likely to be major components of the new structure. Through interviews with analysts and experts, SFO has identified five areas where important regulatory changes are likely.

**1. CREATING A SYSTEMIC RISK REGULATOR**

The most consistently mentioned reform is the creation of a systemic risk regulator. "It's going to happen, but the question is, how do you do it?" Zubulake says. Should it be an existing regulator, a combination of regulators, an entirely new agency? Inherent in the decision are political power plays among various agencies and the congressional committees that oversee them. It is no surprise, for example, that Barney Frank (D-Mass.), the chairman of the House Financial Services Committee, and Chris Dodd (D-Conn.), chairman of the Senate Banking Committee, have said that the Federal Reserve should have that role.

But some are wary of giving the Fed the job. Zubulake, for example, thinks the Fed already has too much on its plate. Instead, he proposes the decades-long idea of merging the CFTC and the SEC.

The latest idea—and maybe the most politically palatable—is to form a council of regulators. In testimony before Congress in May, FDIC Chairman Sheila Bair suggested a council consisting of the Fed, U.S. Treasury Department, FDIC and SEC be charged with keeping an eye on systemwide risks. She mentioned that it may be appropriate to add other prudential supervisors to this council.

And then there is the question of how and whether any systemic regulator's power can be global. Those companies that are typically "too big to fail" are those with multinational operations that make investments in markets around the world, so a systemic regulator with only U.S. authority might be ineffective.

**2. TAXING TRADES**

In February, Representative Peter DeFazio (D-Ore.) introduced a bill that proposes a 0.25 percent transaction tax on the "sale and purchase of financial instruments such as stock, options and futures." Although that bill is unlikely to go anywhere, the concept of a fee on transactions to help pay for the regulatory structure remains a possibility, according to Zubulake.

The SEC already...

