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FROM THE EXPERTS

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I have been looking at and studying price charts for the past 20 years. Sometimes though I need to go back to my textbook "Technical Ana...

By Darin Newsom, DTN Senior Analyst [More...](#)

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But a mandate forcing all OTC products into clearing and/or requiring them to be traded on an exchange would be problematic, he says, if not outright impossible. Currency and commodity markets are global, so trading could just move overseas, he says.

The Kaufman Foundation's Bradley, however, favors putting swaps and derivatives on an exchange and having them use a clearinghouse. It would provide the transparency the market needs to prevent what happened with credit default swaps. "That's what's been missing in this horribly ugly, horribly hidden market," he says. "I argue that the stress tests at the banks were an imperfect way of filling in for a clearinghouse. Clearinghouses are a far more effective way of assessing systemic risk than to have the Fed come in after the fact and try [to] clean up the mess."

4. RE-INSTATING AN UPTICK RULE

The SEC eliminated the uptick rule in July 2007. But the financial meltdown prompted the SEC to revive the regulation. In April, the SEC proposed two distinct approaches to short-selling restrictions. One method would impose a permanent, marketwide short-sale price test based either on the national bid or on the last sale price or tick. The second approach would impose temporary short-selling restrictions on individual securities that experience severe price declines.

Hold does not believe short selling affects the long-term price of a stock and asserts that restricting short selling will drive traders to foreign exchanges. Furthermore, certain market makers in the past have been exempt from short-sale rules or have figured out legal ways around them, he claims. "We know from a lifetime in this industry that whatever rules the regulators create on short selling, somebody will find a legal way around the rules. So it just creates a caste system of haves and have-nots."

In 2003, for example, hedge funds were trading a derivative combination called a bullet that provided a way for them to sell short when others could not, Hold says.

5. NEW REQUIREMENTS

Finally, there is a raft of proposals to change or increase regulations for various players in the financial markets. The Bernie Madoff scandal highlighted the deficiencies in regulations governing investment advisers and broker-dealers. Investment advisers register with the SEC, broker-dealers with the Financial Industry Regulatory Authority.

"There is no doubt that Madoff and others have cynically designed their schemes to fit between the jurisdictional cracks to decrease the likelihood of detection," Stephen Luparello, FINRA's interim CEO told Congress in February. "It does not make sense for two separate, independent regulatory bodies to oversee investment advisers and broker-dealers."

Meanwhile, Geithner has proposed requiring hedge funds with a certain amount of assets under management to register with the SEC. The government attempted to instate a similar requirement in 2006, but it was overturned by the courts, Zubulake says.

Although he expected the hedge fund community similarly to challenge any new rules, the Alternative Investment Management Association came out in favor of registration during congressional hearings May 7. Registration of hedge fund advisers would align U.S. and United Kingdom rules.

END GAME

With so many proposals in the wind, it is impossible to predict the exact changes the next year will bring. The only certainty is that the old regulatory structure is history. As for...

