August 16, 2012 – The Measure of a Man (Revisited)

The Measure of a Man (Revisited)

An article in Monday's NY Times created a surge of both previous and current thoughts for me. It was a highly complementary story focusing on the accomplishments of Gary Gensler, chairman of the CFTC, in general and as related to the recent LIBOR manipulation settlement. All in all, it was an accurate presentation of the facts, as I know them to be. The only catch is that all the facts were not presented. http://dealbook.nytimes.com/2012/08/12/libor-case-energizes-gensler-and-the-c-f-t-c/

As a subscriber to the paper, I know that the NY Times has a liberal stance and is favorably inclined towards Gensler, even mentioning him in a recent lead editorial as a worthy candidate for the role of US Treasury Secretary. As a subscriber to other papers, including the Wall Street Journal, I know that others are not so favorably inclined towards him and the dramatic regulatory reform he is trying to accomplish. In considering what has transpired since he became chairman of the CFTC in May 2009, I can understand and accept all the praise and criticism of Gensler, depending upon one's political persuasion. In my real time observation of all the 15 different CFTC chairmen and acting chairmen since 1986 (when I started complaining about the silver manipulation), there can be no question that Gensler has impacted the direction of the agency like no previous chairman. Depending how one feels about financial regulatory reform, you either love or hate Gensler; there is no in-between. That, alone, is a measure of his impact.

As long-time readers know, I became enthusiastic about Gensler shortly after he assumed office, based exclusively upon what he said and proposed to do and not on who he used to work for (Goldman Sachs and the Treasury Dept). How could I not praise him? After all, here was someone, thrust into the role of chief US commodity regulator, who began insisting on position limits as a way of preventing concentration and manipulation; something that I had proposed for more than 20 years in COMEX silver. Please read the original article, Â?The Measure of a ManÂ? (hit Â?view allÂ? in the article section and scroll down about 300 articles to November 25, 2009).

As praiseworthy as I was on Gensler, I knew that none of the reforms he was proposing (which ultimately were incorporated into the Dodd-Frank Act), were undertaken with silver in mind. I knew that his focus was on energy and foodstuffs, given the financial crisis and the surge and bust in commodity prices just prior to his assumption of office. But my reasoning was that the reforms that Gensler was pushing for would automatically impact the silver manipulation because silver had the greatest concentration on the short side than any major commodity. I knew that legitimate position limits were the antidote for concentration and manipulation, so it mattered little to me that Gensler's intent to reform important regulations had its origins away from silver. By instituting legitimate speculative position limits in all commodities, silver would be included and the manipulation would be brought to an end. So I thought and wrote.

I think a fair reading of my original article and all the other articles I wrote about Gensler raised the question of whether silver would be included in his quest for legitimate position limits. In other words, I quickly labeled him as the greatest chairman in CFTC history, although I was uncertain (but hopeful) what the results would be for silver. I do remember writing on several occasions that the silver manipulation issue would ultimately be the deciding factor in determining Gensler's performance rating and professional legacy. There's no doubt in my mind that Gensler is a good and honest man, still the smartest guy in most rooms and a dedicated public servant trying to get something important accomplished (in Dodd Frank) in an inclusive teamwork manner. Any suggestion to the contrary is bunk. Yet I am more convinced than ever that silver will ruin his lasting reputation and that of the Commission. One Â?FÂ? on a report card can do the trick.

Just because I was previously so praiseworthy of Gensler doesn't make it right for me to unjustly criticize him now. But I also have a responsibility to follow up on matters I have written about frequently. What makes for a failing grade for Gensler (and the Commission) is the flat out rotten track record he has created in silver. Let's face it; silver is more blatantly manipulated than any other commodity. The evidence of that lies in the documented concentrated short position of JPMorgan and others, along with the collusive nature of the commercial trading on the COMEX. That is the guts of the silver manipulation and the manifestation of that are the pricing patterns that defy free market explanations. Since silver has remained manipulated for the entire four years of the current formal investigation and Gensler's entire tenure and because preventing manipulation is the agency's prime mission, this equates to a regulatory failure of epic proportions.

That's quite a conflicting set of circumstances; the greatest chairman in CFTC history versus perhaps the greatest regulatory failure ever. How is it possible to reconcile those two things? How could Gensler be as good as I claim and at the same time allow silver to remain manipulated? There is only one way that could occur in my mind, namely, something is interfering with the regulatory process and Gensler's behavior when it comes to silver. To cut to the chase (we've been here before) it almost has to be the current Treasury Secretary, Timothy Geithner. Gensler's under orders, as well as the Commission, to lay off JPMorgan and the silver manipulation, since they got a free pass at the time of the Bear Stearns takeover. Nothing else explains the lack of action by the Commission on silver.

If my take is correct, this is a case of someone (the Treasury Sec) putting himself above the law. This is outrageous and even if there is some thin legal cover, it is wrong on many levels. Truth be known, I never had a high opinion of the Treasury Secretary and since this piece is about the measure of Gary Gensler, I'm going to focus on how he has failed the American people and his oath to protect their interests. I recognize that most everyone has a boss or someone they answer to and this explains Gensler's behavior, but I'm talking about the legacy of a professional reputation. Doing what you are told to do, even if you know it is wrong, does not result in a sterling reputation.

The main failure here is most likely a mistaken impression that if the silver manipulation was terminated the resulting sharply higher price would somehow damage US interests. How and why? I've yet to hear a logical explanation of why a high and free market price for silver would undermine the country or the financial system. At near $50 in April 2011, I don't recall anyone fretting about the end of the world. It would likely damage the public image of the CFTC, but that could prove to be temporary depending on the Commission's handling of the matter. Left on its current course, more damage, in the form of the growing lack of public confidence in our markets and regulatory institutions, comes from the CFTC's failure to end the silver manipulation.

On several occasions over the past few years, the agency has solicited public comment on the important issues in silver, including the level of position limits. In those public comments and in separate private comments sent to Commissioners, many thousands responded that the proper level in silver be 1500 contracts for an all months combined amount. More people wrote in on this issue for silver than for any other commodity in all of agency history. Chairman Gensler and the other commissioners ignored these public comments without any open discussion and arbitrarily decided on an amount more than three times larger, effectively defeating the prime purpose of limiting speculative positions. To make matters worse, even the higher limits haven't been implemented and JPMorgan still sits with a position three times the too high level.

Even if we didn't go through the phony process of a silver investigation with no true investigative digging and public comment periods where the public's overwhelming sentiment were ignored, we have had to endure something worse. Despite the dog and pony show of a phony investigation and the disregard of public comments solicited by the agency, the silver market had to absorb the two most pronounced manipulative price events in commodity market history; in May and September of 2011. To this day, I have seen no official comments from the agency on these two unprecedented price events. Even Commissioner Chilton seems to have erased them from his memory and speaking points. It would have been better and of greater service to the American people if the CFTC issued a public warning to avoid silver because it was manipulated and they had no intention of dealing with it; much better than what the agency actually did, namely, pretend to be regulating the silver market when there was no effort extended.

The main blame must be put on Gensler. Whether that does any good is arguable, but the alternative of pretending all is well is unacceptable. Gensler and all the other commissioners took an oath to uphold the law and protect the interests of the American people. Neither he nor they have done so in silver. Despite all the talk of the need for transparency, no transparency has been allowed in silver; no open discussion of the issues of obvious concentration or collusive trading, no answering for extraordinary silver pricing events. It has become open knowledge that silver is different from all other commodities when it comes to genuine regulation.

I'm not given to ranting with no constructive purpose in mind. In this case I think it may be that the truth shall set you free. It's intended to Chairman Gensler and the other commissioners. The continuation of the silver manipulation by JPMorgan and others (the CME Group) represents a violation of your oath of office to uphold the law and serve the people. It also represents an extreme threat to lasting reputations. You may think you are doing the right thing, but too many market facts suggest otherwise.

As is always the case, regulatory actions are not required to terminate a commodity manipulation. Sooner or later, all commodity price manipulations do and must end with physical imbalances. Silver is no different and the signs are increasing that indicate we are getting close to a physical market resolution. This is the physical market version of the truth shall set you free. Silver is going a lot higher in price in the end, no matter how we ultimately measure the role of anyone involved.

Ted Butler

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Silver – $28.20

Gold – $1618

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