

Nov. 25, 2009 – The Measure of a Man

The Measure of a Man

I want to revisit an issue that I have already written about on many occasions. It is an issue I think about morning, noon and night. The issue is what the CFTC will or won't do about the silver manipulation, JPMorgan's concentrated short position and the matter of legitimate speculative position limits. More precisely, my thoughts are preoccupied with what Chairman Gary Gensler will or won't do, as he is the one who will steer the Commission's direction. As I indicated recently, it may be more of a question of what he can do, rather than what he wants to do, given the realities of the situation.

As regular readers know, I have been extremely complimentary towards Chairman Gensler and optimistic about what he may accomplish in ending the silver manipulation. I have been steadfast in my high opinion of him, calling him the greatest chairman in the history of the CFTC. Heretofore, I had been one of the agency's harshest critics. I know that I have been in the distinct minority in my opinion, with overwhelming doubt or even hostility displayed towards him by those who took the time to write to me about the chairman. To be fair, a small number of readers have agreed with me. The truth is that no one knows for sure what Chairman Gensler will do about the silver manipulation. In fact, I have had some recent doubts – not about him, mind you, but with the whole situation. More than ever, I am convinced Gary Gensler is the perfect man for the task. More and more, I am somewhat overwhelmed by the daunting nature of the task. I'll explain that more fully in a moment.

The prompting for this article is a recent prominent profile of Gary Gensler in USA Today. I think it conveys an accurate measure of him, as a man and as a regulator.
http://www.usatoday.com/money/companies/management/profile/2009-11-23-gensler23_CV_N.htm This profile came as no surprise to me, given my consistent praise for him. I already knew most of this information about Gensler, having sought out as much about him as was available, since his nomination last December. That investigation was the basis for my high opinion of him, as well as the clear and consistent manner in which he spoke of the issues that mattered.

Since I am intensely private about my own personal life, I was reluctant to mention how he was recently widowed and raising three children as a single dad. It's certainly not anything that he went out of his way to hide, as he proudly introduced his daughters at his senate nomination hearing. Admittedly, I may be overly sensitive in this matter. In the interest of full disclosure, this facet of his life made a particularly strong impression on me, as I was also a single dad of two young daughters (age 3 and 4) for a time, many years ago. My own circumstances were different (an unsought divorce) and I remarried, with my new wife of 36 years raising them with more love than if they were born to her. Still, the memory of being alone with my children is a sharp memory. You can't help but identify with someone who has shared a very unique experience.

Everything about Gensler suggests he is the perfect man for the job. While you can never look into a man's heart, especially someone you haven't met or spoken with, there are other ways to take his measure. He is certainly no shrinking violet, making more public statements and media appearances than any CFTC chairman in history. He's odds-on the smartest guy in any room I can imagine walking into. He has a clear sense of purpose about his regulatory mission. He can't be in it for the money, as he is reportedly the wealthiest appointee in the administration. If his goal was more wealth, he could accomplish that a thousand ways better. He's certainly not arrogant, as he is the only public official to ever admit to shortcomings and mistakes for his role in the financial deregulation of ten years ago. Most importantly, he comes across as sincere and genuine when he expresses his concern for the American people. What else could be desired in a public official?

In my opinion, what drives Gary Gensler is what drives all great men – his reputation and his legacy. I believe he is more concerned with how he can help his country and teach his children by example and be remembered than anything else. When you get down to it – what else is there? He is out to accomplish a monumental task – the proper regulation of a system that has operated for too long with no proper or effective regulation. If he succeeds, it will cap off a lifetime of achievement few could even imagine. I'm trying not to sound overly dramatic, but there are some very big stakes here that few seem to recognize. And I can't imagine a better man for the job than Gensler. Now, to those recent doubts of mine.

The Problem

I know it may sound crazy, but as hard as overall financial regulatory reform may be, that task is easy when compared to the specific problem of the silver manipulation. More and more, I have the impression that the silver manipulation has grown so severe that its resolution is the single biggest challenge that Chairman Gensler faces. If he doesn't handle silver correctly, it may destroy everything he is out to achieve, including his reputation. That is an outcome I dread.

Let me interject something here for subscribers who are naturally concerned with their investments in silver. Nothing I am saying here is negative to the price of silver. On the contrary, the problem I speak of is precisely that silver will soon explode in price amid great fanfare. Nothing can prevent that and I am more certain of the coming silver price explosion than ever before. I'm still not sure if we will see a final sell-off first, but the explosion is close at hand. I spend so much time writing about the silver manipulation and Gary Gensler because I feel those are the most important factors in place right now. I think it is imperative to understand the real underlying story in any investment item if you hope to profit from it on a long-term basis.

My doubts that Chairman Gensler will handle the silver problem correctly lie in the simple fact that there is no clear cut and clean solution. That's because the manipulation has lasted for so long. Now, only distasteful and messy remedies are available, like shutting down the COMEX silver market or the repudiation of the rights of long contract holders in some manner. I know Chairman Gensler is as smart as they come, but it's not a matter of coming up with a clever solution that quickly solves the problem quietly. If that were the case, such a solution would have been put in place by now. But you just can't blink your eyes and click your ruby slippers and make a 500 million ounce silver short position, with 200 million held by one entity, disappear.

In fact, as I have been writing, the concentrated short position of JPMorgan has been growing over the past couple of months, as evidenced in the CFTC's own data. That is the one thing that I can't reconcile. At the same time that Chairman Gensler has been speaking out, clearly and consistently, about the need to restrict concentration, his agency is reporting that the most extreme market concentration in history has grown dramatically more extreme. What the heck is going on? Is JPMorgan so arrogant as to thumb its nose at the Chairman? Or are they, with or without government direction, selling more in a desperate attempt to contain the price? The situation is so clear and extreme, that it won't alter the final resolution, except for the short term timing and price direction. Regardless of that timing or short term price direction, the price of silver is going much higher. But the additional short selling by JPMorgan makes matters worse.

The reputation I worry most about is not mine, but Gary Gensler's. I know there will be no orderly price resolution to the silver manipulation and the excessive short position. If there is an orderly resolution, I will admit it and move on. On the other hand, a disorderly silver price resolution, in my opinion, does threaten the reputation of the chairman and all the important work he needs to accomplish in order to help the American people and our markets and to preserve his legacy. To see him derailed by something not of his making is not fair and just. But it is now six months since he has been sworn in as chairman and the honeymoon is over. Many hundreds of citizens and investors have written to him about the specifics in silver, including legitimate position limits. Gary Gensler is smart enough to know that this silver manipulation exists and that it is very much a crime in progress. A crime he swore to prevent or eliminate in his oath of office. He must honor his oath.

Up until now, the Chairman has not even uttered the word silver in any of his many public statements or appearances. This, despite the fact that he has received more complaints from ordinary investors about silver than about all other markets combined. Silver has become the dirtiest word in the regulator's language. They will constantly investigate it; because the allegations are too credible to ignore, but will never discuss it in an open and aboveboard manner. Not that I'm personally offended in any way, but it still strikes me as odd that I have never been contacted in the current or past investigations, even though I'm the reason all these silver investigations were initiated. Such avoidance undermines the very trust and transparency the regulators seek to promote. It's time for Chairman Gensler to break his agency's reluctance to confront a serious problem. If he is man enough admit to his own failings at Treasury ten years ago, surely he can admit to regulatory failings at the agency he now leads.

I know that this silver resolution will be messy no matter what course the Chairman takes. But it must be confronted at some point. It's a matter of market integrity. I still think the best course is for the Chairman to confront it directly. Admit there was a manipulation and announce that the agency will work with victims to assist them in collecting damages. He won't have to assist current silver investors. Admit to JPMorgan's involvement and the government's possible involvement, if the government asked for their help with taking over and managing Bear Stearns' short positions. Close the COMEX, if you feel it is necessary. But get it over with, so he can continue with the important regulatory reform he's embarked on. Pull this bandage off quickly.

SLV Update

Yesterday, another 4.4 million ounces of silver was deposited into the big silver ETF, SLV. This brings the running month's total deposits to 20.5 million ounces and the total amount of silver in this exchange traded fund to more than 297 million ounces. I take this as further confirmation that my earlier estimates that the SLV was owed silver for as many as 30 to 40 million ounces, due to share short selling, was reasonable. Considering heavy share volume yesterday and for the past week or so, millions more ounces are still owed to the fund. As a reminder, we are soon approaching the first of the year when new index fund buying from rebalancing and new fund inflows have been regular occurrences. This portends more physical demands for silver.

Over the past month or so, more than 28 million ounces have flowed into the four largest silver ETF-type investment vehicles (SLV, the London and Swiss ETFs, and the Central Fund of Canada). This represents more than 50% of the total world mine production over that time (55 million ounces). Just for the sake of comparison, in that same period of time, approximately 570,000 ounces of gold were accumulated by the world's gold ETF-type investment funds, or less than 10% of the world gold mined for the month (6.25 million ounces).

I know that silver has slightly lagged the price of gold recently, and may continue to do so, especially if a sell-off develops. That is clearly not due to a lack of physical silver buying, as the above indicates, but due to manipulative considerations, such as JPMorgan selling short an additional 55 million paper ounces on the COMEX during September and October. Longer term, the extremely tight supply situation in silver, which can develop into a true shortage in a literal New York minute, makes silver's coming outperformance a near-certainty. In the meantime, gold's rise is great for silver. Happy Thanksgiving.

Ted Butler

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