October 21, 2010 – Position Limit Delay?

Position Limit Delay?

The big news this week was the revelation that the CFTC may delay the imposition of speculative position limits as required under the new Dodd-Frank Wall Street Financial Reform Act. The revelation came as a result of the open public CFTC hearing held on Oct. 19. Other CFTC news this week involved another revelation; that of a letter made public of one CFTC judge accusing a fellow judge of improprieties. I'll briefly comment on that matter at the conclusion of this position limit discussion.

I don't think I need to remind anyone that I consider position limits in silver to be a sure way of ending the silver manipulation. It is an issue I have advanced for 25 years and to this day, I remain amazed by how little public commentary has been devoted to silver position limits. I have been in a continuous state of elation, bordering on disbelief, ever since Gary Gensler was sworn in as chairman and immediately began to champion the idea of legitimate speculative position limits in commodities of finite supply. After wandering in the desert for 25 years, I was euphoric that finally here was a CFTC chairman in office who appeared to be an honorable public servant with real market intelligence. In a reversal from being one of the CFTC's harshest critics, I began calling Gensler the greatest chairman in CFTC history. Does the possible delay in the implementation of position limits alter my opinion? My answer may surprise you.

The first thing you should do is to get as much first hand information as possible before you accept what anyone may say on this matter, including me. To do that, please spend some time listening to or reading what the CFTC commissioners and staff said themselves. You can do this by watching the recorded webcast of the public hearing and reviewing the official statements. All can be found here http://www.cftc.gov/PressRoom/Events/opaevent_cftcdoddfrank101910.html Yes, this takes time and effort, but there's nothing better than direct information versus someone else's opinion of that information.

My quick conclusion is that any delay is no big deal at this point. I freely admit that my initial conclusion may be wrong and I reserve the right to change my mind as new facts may dictate. Let me give you my reasoning and then, as always, you should decide for yourself.

My first reaction when watching the webcast and reviewing the statements was a bit of surprise that the main issue of this public meeting revolved around position limits. I confess to having skipped the live broadcast because the items on the proposed agenda didn't interest me much, because the words Â?position limitsÂ? weren't included in the press release announcing the hearing. I don't mean to sound myopic and I acknowledge that the Commission has many important rulemakings ahead of it because of Dodd-Frank; but I am only interested in position limits and the silver manipulation. Quite frankly, I was also surprised that the Commission had said so little about position limits up until this hearing, as the implementation deadline was scheduled for mid-January 2011, just three months from now. But after this hearing, I think I have a better understanding of why so little has been said by the Commission about position limits recently. This is one monster hot potato.

More than ever, I am convinced that position limits is the key to ending the silver manipulation (along with physical shortage). I believe, with thanks to many of you who have written to them, that the importance of this issue has dawned upon the Commission. I think Gensler understood it from the get-go, but now the full Commission has caught up. I think they are all alarmed with the consequences of the silver manipulation. Exactly a year ago, I wrote of the ramifications of the silver manipulation in an article entitled, Â?The Bomb Squad.Â? http://news.silverseek.com/SilverSeek/1257430207.php I haven't changed my mind.

Let me be as clear as I possibly can be Â? the issue of position limits is basically a silver specific matter. The issue of position limits is not really a current problem in any other commodity, including gold. It is only a problem in COMEX silver. Let me clarify that. There are two issues with position limits; the actual level of the limits in each commodity and the granting of exemptions to those limits for bona-fide hedging purposes. Exemptions to position limits are a potential problem in every commodity, but none more so than in silver with its shocking concentrated short position compared to real world production and inventories. Hopefully, the Commission will adopt fair and consistent criteria for exemptions in all commodities. It's not that complex Â? eliminate exemptions for all but actual producers and consumers of commodities. Crooked NY banks should never be granted exemptions in any case.

But the matter of the levels of position limits is only a silver problem. Silver is the only commodity that needs to have its level of position limits radically reduced. This is what the Commission is up against. And just like I described in Â?The Bomb Squad,Â? no one wants to be the first to utter the dirtiest word in the regulators' world Â? silver. So, they have danced around the issue. But thanks to Dodd-Frank, the dance music is ending. Sooner, rather than later, someone (other than me and you) will be forced to say what the proposed limits in silver (and all other commodities) must be. Then the jig is up.

Let's look at what the various Commissioners have said about position limits in this hearing and why they want imposition of limits delayed (see the link above). Commissioner Dunn says he wants to hear from the public on the issue before implementation. What public? The public has submitted many thousands of comments on this very issue. The public wants silver position limits to be no more than 1500 contracts and has said so in the clearest terms. This is akin to election officials throwing out a lopsided result they didn't like and calling for repeated unnecessary additional elections. The people have spoken on this issue.

Commissioner O'Malia wants to delay position limits until we build a solid foundation for those limits. But what could be sounder than an equitable formula that treats all commodities the same? This is what I proposed in my 1% of world production formula, which hundreds seconded.
http://www.cftc.gov/LawRegulation/DoddFrankAct/OTC_26_PosLimits.html

Commissioner Sommers (with some support from Chairman Gensler) wants to delay position limits until the CFTC staff can determine the size of the OTC market, which could take a year or more. Pardon my language, but this is ass-backwards. Who gives a damn what the level of open interest is in the OTC markets? That's what led us to the current predicament in silver. We are talking about regulating derivatives markets. All these paper contracts emanate (are derived) from host (cash) markets. The level of position limits in derivatives shouldn't be based upon other derivatives; it should be based upon the common denominator of the host physical market. Again, my 1% of world production formula makes knowing the size of the OTC paper market immaterial.

In Gensler's defense, he wasn't calling for a delay in proposing position limits beyond the mid-January deadline required by Dodd-Frank; he was suggesting proposing the actual limits or formula for those limits by the deadline, with some type of phase-in schedule of imposition. That's fine. In his shoes, I would do the same thing. No one wants to be responsible for setting off the silver bomb. I understand that. But what I also think I understand is that the silver bomb is going to detonate regardless of the how delicately the approach to defuse it. Silver is a manipulated market. When that manipulation ends, the price will explode. Nothing can change that. Delay will only hurt the Commission.

My advice to Chairman Gensler and the other Commissioners is to put the blame for the silver manipulation where it belongs Â? on the manipulators (JPMorgan and the other big shorts as well as the CME). Do what needs to be done with silver position limits, but don't allow anyone to point to the CFTC as the originator of the manipulation. This silver manipulation began before any Commissioner took office. Sure, the CFTC should have done a lot more and did it earlier to end it, but we can't turn back the clock. Right now, the silver manipulation is a crime in progress. Every day that passes with the Commission not addressing it is a black stain on the agency's reputation and a disservice to the American people and silver investors everywhere. Get away from defending an indefensible crime and get on the offense by going after the true criminals Â? the big silver shorts. Don't let this silver manipulation interfere with your important work at hand.

In summary, the talk of position limit delays is not overly concerning at this point. In fact, I'm encouraged by it. That will remain true unless and until evidence emerges that the Commission is actively working to prevent legitimate silver position limits from coming into existence. Right now, that does not appear to be the case. The next important date appears to be November 30, when the Commission should propose some type of limits or formula for limits.

As far as recent reports of a retiring CFTC administrative law judge making allegations of improper behavior by a fellow ALJ, the reports appear credible. If true, it is a black eye to the agency at a critical juncture. However, I think the commentary pointing to this being some type of proof that the CFTC is involved in the manipulation of silver (and gold) are far-fetched. The allegations against the ALJ were related to bias in reparation cases, which have nothing to do with enforcement or investigation of manipulation. When you have a manipulated market like silver, where the Commission has been particularly negligent to date, it's easy to make all sorts of unjustified accusations. I understand the frustration of dealing with a manipulation in progress (like today's sell-off), but if allegations are made, then those allegations must be credible and based upon fact. I don't see how this Â?badÂ? judge has had any connection to the silver manipulation and I would disregard suggestions to the contrary.

Ted Butler

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Silver – $23.20

Gold – $1324

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