

September 21, 2011 – The Waiting is the Hardest Part

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It's bad enough if you are a child and await a special holiday or the end of a long car trip (are we there yet, Daddy?); but as citizens it is infinitely harder waiting for government officials to address serious grievances. Of course, I am referring to the delay in the CFTC (or the Justice Department) dealing with allegations of JPMorgan manipulating the silver market and the CFTC imposing legitimate position limits in silver. If I were a six-year old in the back seat on the way to Disney World, instead of a concerned citizen waiting for the government to do the right thing in silver, I'd be over thirty by the time we arrived. That's too long.

Admittedly, this silver manipulation business is not easy to resolve quietly; otherwise it would have been resolved by now. The resolution promises to be messy for many. That said, we are closer to the resolution than ever before. Today, I'd like to explore one reason why I say that – the upcoming public hearing by the CFTC for the final proposed rules for position limits under the Dodd-Frank Act. It's not official yet, but the hearing could come as early as within two weeks, on October 4. That's not written in stone, as there are many who would like to postpone the meeting and the entire matter of position limits indefinitely. We'll only know for sure about a week in advance of any position limit meeting, when the agency announces the official agenda.

But sooner, rather than later, the Commission will hold a meeting and vote on the staff's proposal for the levels of position limits on the 20 commodities of finite supply that don't currently have hard position limits (on an all months combined basis). This will include silver. I can't say what the Commission will say or do about the level of position limits in silver derivatives; but the circumstances dictate that they will say or do something specific to silver. This could and should be a very big deal. I may be making a bigger deal out of this than warranted, so I'd like to explain myself and let you decide for yourself.

The biggest single obstacle to terminating an increasingly obvious ongoing manipulation in silver and the imposition of legitimate silver position limits has been the ability of those opposed to marginalize the issue and shroud it in a blanket of silence. Those who allege there is a silver manipulation (like me) are invariably cast, at best, as outsiders lacking in sophistication and industry knowledge and, at worst, as conspiracy wing nuts with some unspoken personal agenda. This then leads to the position that there is no point in even discussing the merits of the allegations. It's all rather circular with the end result being that there never is an open debate. Silence reigns supreme. As I've written previously, I find this behavior on the part of opponents to position limits and ending the silver manipulation to be repulsive and un-American.

The main antagonists against enacting position limits and ending the silver manipulation appear to be JPMorgan and other leading silver shorts on the COMEX and the CME Group, which owns and operates the exchange. Certainly, both JPMorgan and the CME lead the way in attempting to silence discussion on the issue. After all, even when repeatedly accused of manipulating silver and being sued privately for such, JPMorgan refuses to discuss the matter. Neither do I recall the CME ever commenting. Clearly, if there is ever found to be a manipulation in silver and JPMorgan and/or the CME are found to have been involved, their liabilities would appear to be enormous.

In addition to JPMorgan and the CME and any industry insiders working quietly to derail any attempts to alter the status quo, the prime federal regulator, the CFTC, also has apparently joined in the conspiracy of silence about the matters related to silver. It's been more than three years since the Commission has received many thousands of allegations from the public about a silver manipulation and has basically remained silent (except for Commissioner Chilton), despite a formal investigation by the Enforcement Division for nearly that long. It seems to me that all members of the silence brigade believe by sticking their heads in the sand it will somehow just go away. That's not likely, as the public is becoming more aware and more insistent that something be done; or at the very least, that something be said about silver. I'm not kidding when I suggest that silver is the dirtiest word in these circles and that there must be some secret agreement that it never be openly mentioned.

The thrust of this piece is to suggest that the long wait we have endured to break the code of silver silence may be at hand due to the upcoming CFTC public hearing on position limits (whenever it takes place). At a bare minimum, we should learn where the various commissioners and staff stand on the matter. My confidence that this will be an important mile marker on the road to resolution is based upon how this coming meeting came into existence. It looks like it was done by the book. I mean this quite literally, as in law book. The specific law that I am referring to is the Administrative Procedure Act (APA), which sets out clear guidelines as to how new regulations must be made. http://en.wikipedia.org/wiki/Administrative_Procedure_Act

One of the guidelines set out by the APA is the requirement that the federal agency seeking to enact new regulations solicits input from the public and then considers that public input in formulating the new regulations. Up until now, the CFTC has done a great job of considering public comments in the final rules they have enacted under Dodd-Frank, as evidenced in the Federal Register publication of completed final rulemakings. (I think much of this has come from the leadership of Chairman Gary Gensler). If the Commission remains true to form, they will seriously consider the public comments received for the position limit proposal. The Commission received many times more public comments on the issue of position limits than for all other 50-odd rule making proposals combined. Therefore, it is only fitting and proper that the Commission considers the public comments on position limits seriously and judiciously.

Thereupon rests the basis for my optimism that the point of resolution may be at hand in silver. The Commission first opened the public comment period for position limits on January 26, 2011, with a preliminary end to the comment period being March 28 (60 days). <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=965> Subsequently, given the widespread interest in this issue, the comment period was extended indefinitely. One month into the comment period, there were less than 70 comments submitted, although this was greater than the number of comments received on any other rulemaking proposal. On February 23, I submitted my comment on the issue and released a public article suggesting you do the same. <http://news.silverseek.com/SilverSeek/1298557244.php>

Whereas there were less than 70 comments submitted in the month up until February 23, several thousand were submitted in the month that followed. I didn't beg, threaten or cajole anyone to write in. I made my case as professional as possible and you did the rest. All told, I think that more than 4,000 public comments were submitted requesting that the Commission adopt a position limit in silver of no more than 1500 contracts (7.5 million ounces). The truth is that I don't know how many public comments requested 1500 contracts in silver, as the only way to get an actual count is to open each comment individually, something I haven't been physically able to do without losing count and going stark raving mad.

The point of all this is to demonstrate that there could be no greater outpouring from the public possible on a very specific issue than what occurred with silver position limits. According to the APA, it would appear impossible for the Commission not to comment on the matter of 1500 contracts in silver. Plus, these comments were received more than six months ago, even though the original comment period was supposed to last only 60 days, followed by a consideration and final vote some 60 days beyond that. Therefore, the Commission would appear to be way overdue in dealing with this matter according to the spirit of the APA. By any reasonable standard, time is up on this matter. Surely, it is time for the Commission to speak up and vote.

The reason I am excited by all this is not because I have championed 1500 contracts as being the proper level in silver for more than 20 years. My excitement is derived for a different reason. In all that time, I have never been able to engage anyone in a legitimate discussion of what should be the appropriate level of position limits in silver. Not from the exchange or anyone in the industry, not from the regulator. It was never a case of anyone finding fault with that level and then proposing a different level. It was always a case of silence and no debate. How do you debate something if there is no opportunity for discussion? That's what is so promising about the current situation; it would appear someone is going to have to comment on the specific merits, or lack thereof, of 1500 contracts as a position limit in silver.

Maybe they can weasel out of the debate again and manage to kick the can further down the road, but regardless, you have my profound appreciation for setting the stage. Without you, we would not be at this exciting point. Win, lose or draw, I am thankful beyond description for this set up. At the very least, it should serve as a springboard for further action.

Here's something that I just had to comment on. Many of you have undoubtedly heard of the new book, *Confidence Men*, by Pulitzer-prize author Ron Suskind. It is supposed to be a first-hand and highly critical (negative) account of the current administration, particularly in regards to economic policy and leadership. As you know, I try to remain apolitical. An alert subscriber (Thanks, Bob) sent me a discussion of the book as appeared recently in New York Magazine. Although Suskind generally rips the President and his economic advisors to shreds, he does have some very kind words for some members of the administration. It seems like I am not the only one with a high regard for Gary Gensler. This is what Frank Rich (one of the reviewers) had to say: **Suskind to his credit has found some obscure heroes in the banking world along with Volcker. He also celebrates Gary Gensler, a Goldman alum and apostate who, as an Obama appointee, has mounted a lonely fight to crack down on the regulation of derivatives.**

Fourth paragraph from the bottom

http://nymag.com/daily/intel/2011/09/obamas_economic_quagmire_frank.html

I would assume that Suskind admires Gensler for reasons unrelated to silver and the issues that have caused me to sing his praises in the past. The irony is that I have grown tired of waiting for Gensler (and Chilton) to really step up to the plate on the silver manipulation. But I will quickly shed my doubts if conditions change soon, hopefully based upon the upcoming public hearing on position limits. I've been in the backseat on the way to Disney World for too long. It's time we got there already.

Finally, on a completely unrelated but exceptionally important matter, I'd like to pass along a new idea from my silver mentor and friend, Israel Friedman. Many may remember his beautiful idea several years ago on how to help the housing market by issuing green cards to qualified immigrants who bought real estate. http://www.investmentrarities.com/ted_butler_comentary/12-03-07.html While Izzy's idea was never put into practice, that didn't detract from just how good an idea it was. Years after he wrote the article, I had a run in defending my friend from some pretty prominent people who tried to claim it was their idea.

Izzy's new idea has to do with creating jobs, perhaps the most difficult problem facing the US today. Izzy explained his idea to me a few weeks ago, but I waited to introduce it until after everyone had an opportunity to put forth their specific suggestions for how to create jobs. I've listened closely to the debate and never heard anyone suggest what Izzy proposes. Izzy proposes an attack on the outsourcing of US jobs by American companies to foreign soil. He estimates that millions of jobs can be brought back to the US if the government forces all those corporations that have shipped jobs overseas to bring them back. Izzy says that if punitive taxes are placed on those corporations guilty of shipping jobs overseas, the jobs will quickly return. This can be accomplished with no cost to the government and taxpayers. I think Izzy is correct and that he has come up with another beautiful idea.

Ted Butler

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Silver – \$40.10

Gold – \$1785

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