Same Issue, Different Circumstances

The CFTC just announced that it will attempt to resolve perhaps the most important rule for commodities markets under the Dodd Frank Act position limits. The Commission has scheduled an open meeting (Dec 9) and has reopened the public comment period for 45 days.
http://www.cftc.gov/PressRoom/PressReleases/pr7072-14#PrRoWMBL

Long time readers know that the issue of speculative position limits in COMEX silver has been a signature issue of mine for decades. They will remember me suddenly singing the praises of former CFTC Chairman Gary Gensler for resurrecting the matter when he first came into office in May 2009 and before Dodd-Frank was even conceived. Quite frankly, in trying to summarize all that has transpired concerning position limits for silver over the past five years, I am overwhelmed by the number of articles I've written on the issue to the point of being incapable of providing any links at this time because there are too many.

I also remember on a number of occasions asking readers to write to the Commission when they solicited public comments on position limits. That these

readers responded in such numbers (well over 10,000 on a cumulative basis) made the collective public request for position limits in COMEX silver the single most responded to request in CFTC history. There never has been and likely will never be such a public outpouring on any other matter. That's saying something and I am deeply appreciative of the collective outpouring.

As it turned out, however, the issue of position limits in COMEX silver was even more important than I suggested (if that was possible). Initially caught off guard by Gensler's rush to implement position limits, the two entities who would be hurt the most by position limits, JPMorgan and the CME Group, put up a fight that succeeded in preventing the imposition of such limits. Now, five years after the issue was first proposed, it appears to me that the CFTC is on the way to finalizing position limits.

I'm intentionally avoiding a personal walk down memory lane, but let me at least summarize why position limits need to implemented. The actual term is speculative position limits and as the term implies, these are the maximum number of futures contracts any one speculator can hold, long or short, in any regulated commodity as determined by the regulators. Simply put, position limits are the only known means to prevent price manipulation. Manipulation, as I'm sure you are aware, is the most serious market crime possible and the

regulators' number one priority.

Market manipulation is only possible if one entity (or a small group of entities) amasses a large and concentrated share of any market, long or short, so as to artificially distort the price. By limiting how much any one speculator can hold in a market to well-below the threshold of market concentration, manipulation becomes impossible. I'm making it sound simple because it is simple legitimate speculative position limits, effectively designed and enforced eliminates the possibility of manipulation. If you are thinking this is a no brainer as a regulatory tool, you'd be correct. Further, to US citizens (commodity law is basically US law), in terms of fairness and common sense, position limits are up there with Mom, apple pie and the American flag.

Who could argue against position limits (and, effectively, be in favor of manipulation)? Only those who would be hurt by the imposition of legitimate position limits, namely, JPM and the CME. Anyone who held a large concentrated position, such as JPMorgan held on the short side of COMEX silver or whose trading revenue would be restricted by position limits, such as the CME, would oppose the enactment of position limits. And these two entities succeeded in preventing position limits for COMEX silver from being enacted until now.

Now some may suggest that JPMorgan and the CME will continue in their successful (to this point) opposition to position limits and the CFTC's attempt to resolve the matter will, once again, get nowhere. I'm on the other side of that argument in that I think the Commission will finally institute position limits in the relative near future. Whether I turn out to be right or wrong lies ahead, but I would like to give you my reasoning, which is remarkably simple.

Position limits were fought by JPMorgan over the past five years because such an enactment would have been a disaster for the bank, which held a massively concentrated short position in COMEX silver during this time. If JPMorgan was forced to buy back its silver short positions in excess of proposed limits or even if the bank were prevented from adding new shorts to cap the price, the price of silver would have soared. Now that JPMorgan no longer holds a massive concentrated short position in COMEX silver (as I hope I have conveyed), the enactment of position limits could very well benefit the bank (if I am anywhere near close on how much physical silver the bank has acquired).

I have noted the remarkable transformation of JPMorgan from being the largest silver short to perhaps the largest silver long in history recently, but I was not

expecting the potential resolution of position limits by the CFTC at this time. Now that both appear at hand, can this just be a coincidence? I can't tell you how many times I have been told and I have suspected on my own, that due to the circumstances under which JPMorgan became the big silver short (by acquiring Bear Stearns at US Government request), there has been a special and unspoken relationship between the regulators and the bank when it comes to silver. In fact, I have come to conclude that Gensler resigned because he knew what JPMorgan was doing in silver was wrong, but he could do nothing about it.

While the issue of position limits is the same paramount regulatory matter I always represented it to be, the circumstances of today (aside from JPM's silver position reversal) are markedly different than what existed in 2009 when Gensler got the issue rolling. Back then, there was no collective sentiment that the big banks were manipulating the price of everything; today the sentiment is widespread. For JPMorgan to wage the same legal attack on position limits today, as it did back then, would most likely result in a different outcome. Now that JPMorgan is no longer the big silver short, I would be surprised if they (or the CME) attempted to derail the CFTC once again. For JPMorgan, it would appear that the issue of position limits has become at worst moot and at best a huge strategic advantage (since they are long physical silver).

The signs of a big buyer of physical silver still appear to be clear. The US Mint continues to sell Silver Eagles at its maximum production rate and may have increased that rate, according to the sales pace so far this month, to more than 150,000 coins per day (7 day week). Yet, reliable reports from the retail dealer front indicate tepid retail demand. To my mind, if broad retail demand is not behind the surge in Silver Eagle sales, then the surge must be explained by the heavy buying of one or a few non-retail buyers (such as JPMorgan).

Since we are less than 500,000 coins from exceeding last year's record total sales of 42,675,000 Silver Eagles, the sales surge this year must cause one to sit up and take notice, particularly in light of reports of weak retail sales throughout most of the year. And for some reason, the pronounced buying from the Mint seems confined to silver, as sales of Gold Eagles trail badly when compared to last year and recent previous years. And forget about sales of Platinum Eagles as they are so low as to question how long the Mint will continue producing them. This adds to my conviction that there is a single big buyer behind the sales of Silver Eagles. Say what you will, but no one buys any investment asset unless that buyer perceives that the price will rise. Clearly, whomever the big buyer of Silver Eagles may be, that buyer expects sharply higher silver prices.
http://www.usmint.gov/about_the_mint/index.cfm?action=PreciousMetals&type=bullion

Also adding to the sense of a large buyer being present in silver is the continued counterintuitive deposit/withdrawal pattern in SLV, the big silver ETF. In Saturday's review, I wondered if the high volume sell-off in SLV on Friday would result in a liquidation of metal holdings or if the short sellers would use the occasion to close out short positions in shares of the trust. Please remember that there is usually a day or two reporting delay between the trading in the SLV or GLD and eventual deposits/withdrawals of actual metal. I hadn't contemplated an actual increase of 2.2 million oz which was reported late Monday, which points, more strongly than anything else, to there being a big buyer on price weakness; hardly a bearish indication.

The second counterintuitive result in SLV occurred yesterday when 2.7 million silver ounces were withdrawn as a result of the price surge on Monday and on the heaviest trading volume of the year. In a normal world, silver's biggest rally and heaviest volume in quite some time would represent net new buying of shares necessitating the deposit of metal into the trust, not a significant withdrawal. In fact, there was a big deposit in the big gold ETF, GLD, as a result of gold's price surge and heavy trading volume in shares of GLD on Monday, despite there having been a nearly continuous withdrawal of metal from the gold trust up until yesterday. In other words, the deposit into GLD made sense; while the deposit on Monday and withdrawal on Tuesday from SLV made no

sense.

The only plausible explanation for the counterintuitive deposits and withdrawals in SLV that comes to my mind is that a large entity has been buying on both weakness and strength whenever there is heavy trading volume. Because the identity of this entity would be revealed as soon as its share holdings exceeded 5% of total shares outstanding, because of SEC reporting requirements, the big buyer quickly transferred shares into metal which results in a withdrawal. Of course, the withdrawal does not represent an actual disposal of metal, it just appears that way, as the real intent is to camouflage a large entity's accumulation of physical silver.

There are only a few entities as powerful and well-connected as JPMorgan which could pull off such a massive accumulation of physical silver (including Silver Eagles and metal in the SLV), so why not revert to the duck analogy if it looks, quacks and walks like a duck, it has to be JPMorgan. Add in that the bank has probably finally allowed the CFTC to adopt position limits and the picture would seem to be complete.

Although I am hardly completely objective in the matter, the CFTC's position limit announcement would seem to support my speculation that JPMorgan may break its previous pattern of aggressively adding to its silver short positions on silver price rallies. At worst, if the enactment of position limits now advances to fruition, I suppose it is possible for the crooks at JPMorgan to cap silver one more time depending on how quickly the Commission moves to enact something that should have been enacted years ago. I guess I'm saying that not only does the CFTC jump as high as JPMorgan instructs it to jump, but also does so when JPMorgan decides. Is this a great country or what? (Yes, that's satire).

It still appears that silver (and gold) is structured to move higher, but in a manipulated market short term price movements are not connected to anything that can be factually relied upon (because there is no way to read the crooks' minds). So the best course would seem to be to use the extremely low price of silver for additional accumulation and to focus on the long term. Certainly, the continued flow of documented facts and events only enhances the future prospects for sharply higher silver prices.

Ted Butler

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Silver – $16.40

Gold – $1210