Position Limit Recap<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

A good number of subscribers have been asking about the status of position limits and what to expect next. Questions about timetables and possible effects on the price of silver are asked most often. Let me address the timing issue first – if the proposed limits are enacted as expected, the all-months-combined limits will probably come in no sooner than a year from now and maybe a lot longer, depending on court challenges from the financial industry. As far as price impact, I believe that is an ongoing phenomenon. There have already been price impacts felt and more will come; this is more of an ongoing process rather than a big impact on one specific date. Of course, these are merely my personal impressions, but I think it advisable not to focus with too fine a precision on a position limit event. It seems clear to me that the initiator of position limits, the CFTC, is not remotely interested in enacting any regulation that would disrupt or roil the markets. Nor should they be.

Please allow me a short recap of the issue of position limits. The issue first appeared on center stage shortly after Gary Gensler was sworn in as CFTC chairman in May 2009. He clearly came into the office with a mandate to prevent a repetition of 2007 -2008, in which crude oil and grain prices first exploded and then collapsed. Since excessive speculation appeared to play a strong role in that price volatility, Gensler pursued the thought that the surest remedy for excessive speculation and concentration in any market was through the enactment of legitimate speculative position limits. In the case of the grains, where federally-imposed position limits were already in place, emphasis was placed upon the elimination of any exemptions to position limits on a non-bona fide basis. Eventually, the enactment of position limits, combined with only allowing bona fide hedging exemptions to those limits became part of the Dodd-Frank Act, which became law on July 21, 2010 and the agency has worked since then to comply with the new law.

Separately and predating the push by the CFTC to enact position limits in 2009, I had promoted the enactment of legitimate position limits in COMEX silver since the early 1990's as a remedy to ending the silver manipulation that I have been alleging since the mid 1980's. Make no mistake, the CFTC's push and my quest for enacting position limits was only related in principal; other than that, they were not connected. We would be deluding ourselves if we thought silver was forefront in the minds of the CFTC in its push for speculative position limits. I latched on to Gensler's push for position limits by arguing that the need for position limits was most acute in silver, due to its unprecedented concentration on the short side. I argued on the merits as best I could, but it's necessary to keep a proper perspective. The impetus behind position limits for the CFTC was energy and food climbing in price— the real hot button consumer issue; not any concern by it that silver was kept too low in price.

Because of the agency's predisposition towards reining in speculation on the long side of energy and food and not the short side of silver, it became clear that the CFTC was not really listening to public comments about position limits in silver. This came despite many thousands of repeated public requests to restrict silver position limits to no more than 1500 contracts (7.5 million oz). The question of what the proper level for position limits should be in other commodities never really came up, so the Commission approved a plan for position limits based upon a fixed percentage of total open interest over 28 markets, including silver. With total COMEX silver open interest around 100,000 contracts, the formula would result in an all-months-combined position limit of around 4500 contracts. That's better than no limit, but a far cry from the 1500 contract limit that I argued for.

The question now is whether the agency will be able to enact the approved position limits over industry objections? I don't know. I do know that the financial industry will try to delay and derail the enactment of position limits because it represents a threat to the pricing control that very large market participants currently enjoy. If I had to bet, I'd go with the financial industry. For this and other reasons (such as the limits in silver were watered down anyway), I believe it would be a mistake to expect positive developments in silver position limits. If they do come great; just don't count on them.

I always strive to be objective in what I write, particularly with ideas that I initiate, such as position limits in silver. I believe much good has come from the whole position limit experience over these past years in terms of education and engagement. I also believe there will be further dividends down the road. But I think it would be a mistake to place too much expectation in the silver price landscape being suddenly jolted due to position limits at this time. The record is clear; many thousands of the public educated themselves on the issues and petitioned the Commission on the specific issue of position limits in silver. There was no other public outpouring on any other commodity. Even though the public spoke, the Commission did not listen. The problem is not with the public or its stance on position limits; the problem is that the Commission won't listen or act.

If this comes as a disappointment to many, I can understand that. Not to be disappointed might indicate a lack of appreciation of the matter. How do you think I feel? After two decades of promoting position limits in silver, a great opportunity suddenly arose that elevated the issue for all to see. Many thousands of observers came to learn of and embrace the issue. In the end, the Commission, fearing a backlash from industry, opted to ignore the public and sought to placate industry insiders by refusing to discuss position limits in silver. Despite the attempted appeasement, industry is still relentlessly attacking position limit reform. So much for appeasement.

I Was Wrong

There is one matter upon which I have concluded that I was wrong. I don't recall writing about it extensively in articles, although I'm sure I must have written something about it. I do know that I answered scores of emails over the past couple of years when readers questioned me on it. The question was, "Ted, even if meaningful position limits are enacted, what's to prevent large traders from evading those limits by setting up accounts in different names?" My answer, based upon my own personal experience as a former commodity broker and trader, was that there were detailed financial disclosures that all large traders had to file which specifically questioned any such relationships. To misrepresent true ownership of a large trading entity was perjury and subject to criminal prosecution. After all, setting up phony accounts would be an easy way around position limits and for evading detection on concentration. My answer was always that the commercial manipulators in silver would never resort to lying on these forms. They were crooked through and through, but they would never stoop to lying about it on mandated government disclosure documents.

As I said, I was wrong. However, it's not so much that the silver manipulators have lied on these official disclosure forms, as I doubt they have. Besides, I wouldn't have any way of knowing that (even if I had access to these forms). But it doesn't matter if they have lied; the crooks have figured an end-run around the intent of the law. It has recently dawned on me that the silver manipulators have already set in place the mechanism for evading position limits and concentration. Even if the CFTC had instituted legitimate position limits in silver of 1500 contracts, the COMEX commercial crooks probably could have evaded such limits as well. The proof is right in front of us.

One needs to look no further than the silver price action and the documented data that flows regularly from the CFTC to see the proof. As I have been explaining for months, it is impossible for a world commodity to drop in price by 35% in a matter of days without some obvious and drastic change in world supply and demand. Impossible, that is, in a free market. It is not something that has ever occurred in any world commodity. Yet silver did so on two occasions in 2011. That the CFTC has not commented on or brought a charge against the perpetrators of these two silver takedowns, unprecedented in any other commodity, is shameful.

Worse, concurrent with the two silver takedowns in 2011, the Commission has published data that prove the sell-offs were intentional. On the late-September silver price smash, as I have previously reported, a total of 32,500 net COMEX silver futures contracts were eventually bought by a group of commercials as a result of price decline. That's the equivalent of 162 million oz of silver or 22% of the total annual world mine production. It's also impossible for a small group of traders to buy such a large quantity of any world commodity by accident; it had to be intentional and involved collusion by these traders. It's doubly-impossible for such a purchase to occur on a drastic fall in price.

Every week, I review the latest data in the Commitment of Traders Report (COT). I zero in on what the big concentrated traders, like JPMorgan, have done, as well as a group of commercials traders I refer to as the raptors. The raptors are smaller commercials who act in collusion with JPMorgan to rig silver prices to their advantage. Of the 32,500 net contracts bought by the commercials in total on the silver price smash starting in late-September, JPMorgan (the big 4 category) and the raptors bought 32,000 contracts, or more than 98% of the total (based upon the COT's from September 6 thru Dec 27).

I have previously made the allegation that such concentrated trading activity could not possibly occur without collusion. Where I now admit to being wrong is for not realizing that this collusion is directly related to these commercial traders intending to evade any possible position limit restrictions. The raptors have collusively teamed up expressly to manipulate the silver market while evading position limits. No one trader could pull off buying 98% of the 162 million oz, as it would show up like a sore thumb in the COTs and even the CFTC would have to notice that. But by acting in unison through multiple accounts, only a COT analyst intently studying the raptors as a group (which I've done for years) could uncover the collusive behavior. I always knew that the raptors were acting collusively; it's just that I didn't realize the illegal activity was also intended to evade any legitimate position limit regime that might appear.

It's OK to make mistakes and be wrong; it's all part of the human condition. What matters most is learning from our mistakes and not repeating them. That goes for the CFTC as well. By virtue of the □impossible□ price smashes in silver and their own proof that it was based upon collusive activity among a small group of traders intent on frustrating any position limit restrictions, the Commission has been given a clear challenge by these commercial criminals. The agency can continue to appease the financial industry despite mounting evidence of illegal activity or it can put an end to it.

What does this all mean for silver investors? The first thing it means is that not much has changed and that's mostly good. Manipulation is bad but it has created a bargain silver price. We always knew it was likely to take a physical shortage to break the yoke of manipulation. We came real close to that breaking point a year ago as silver surged to near $50 on physical market considerations. That same set up can and will appear in the future. A potential bonus was the possibility that the CFTC (since it was their prime mission to begin with) might intervene to end the manipulation before the physical crunch hit. This was the great hope with the issue of position limits. It still is; except that now it's time to stop hoping that the process the agency was pursuing would prevail. Instead, the evidence of the evasion of position limits by the raptors amid the intentional takedowns in silver might be what prompts the agency to stand up to the crooks at JPMorgan and the CME Group.

Please don't take anything I've written here as being negative to the long term prospects for silver, as that would be another mistake. Let's keep it to only one a day.

Ted Butler

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Silver – $ 31

Gold -$1659