

March 18, 2010 – It's the Message, Not the Messenger

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When I first learned that I would not be invited to the March 25 CFTC public hearing on precious metals position limits, I admit that I was more than a bit surprised and disappointed. After all, this was my signature issue, one on which I had pressed the CFTC and the exchanges for more than 20 years. In fact, until very recently, I was virtually alone in having advanced the issue of establishing legitimate speculative position limits in silver, along with the enforcement of bona fide hedge exemptions to those limits.

My surprise was heightened because I had previously received an unsolicited telephone call from the CFTC back in January (I didn't write about it then as I considered it confidential). The call from the agency (the first I can recall in 25 years) was a request to me to help them identify who I thought would make good prospective panelists for the precious metals hearing. It was a very pleasant and constructive conversation. Needless to say, I was encouraged because it suggested to me that I was dealing with a different CFTC than I had been dealing with for more than two and a half decades.

At this point, I would imagine that you would now expect me to launch into an attack on the CFTC for the personal slap in the face for the non-invitation. How they can't handle the truth or my testimony; about how I am going to ask you to petition the CFTC to reconsider inviting me. Instead, I am going to suggest no such thing. In perhaps the biggest surprise of all, I'm going to try to convince you otherwise, namely, that after careful consideration, how I feel this is potentially a very constructive development.

It has to do with the reason I'm not going to the meeting. It wasn't related to my knowledge or record on the matter of position limits; it had to do with me personally. More specifically, it had to do with my past dealings with the Commission regarding unresolved findings and fines for my involvement in an incident that occurred in 1984 in orange juice futures, when I was a broker for Drexel Burnham. Long time readers know I have discussed this before, and I don't want to rehash it here, as we're talking about something dating back from 25 years ago. For the record, no client suffered losses, no claims were made of any financial harm to my clients, nothing occurred that was substantive; this was all record-keeping in nature. I strongly disagreed with the Commission's findings then and still do.

When I asked why I wasn't invited, it was suggested to me that pointed questions about the OJ affair would come up during the meeting and that could prove to be a distraction to the important business at hand. That is something which I would choose to avoid at all costs. The issue at hand is much too important to risk compromising it with unrelated distractions. Besides, I have no desire to be bushwhacked in a Washington, DC political ambush. I am an analyst, not a political infighter. I know enough that you don't bring a knife to a gun fight; you avoid such match-ups. I feel extremely grateful to have been forewarned.

Although I have been criticized by some for taking the high road with the CFTC in my writings over the past nine months, I intend to maintain that approach and not get dragged down to the level of those who would attack me personally. Whether this high road approach succeeds eventually is less important to me than doing what I believe is the right thing. Maybe I'm naïve, but I believe the issue of the silver manipulation will be determined by the facts and not dirty political tactics. Of course, the minute I feel that there is no chance the Commission will ever do the right thing, I will say so. It is a circumstance I truly hope never comes, but you have my word I won't conceal any change in my belief and will change strategies immediately.

Most importantly, at the same time I was told I was not invited to the public meeting, it was also suggested to me that I would be given the opportunity to present my case to CFTC staff in person. I was also invited to submit written material on the matter of position limits for the record. I am extremely encouraged by this development. Not once, through multiple silver inquiries over the past 25 years, have I ever been afforded the opportunity to deal with anyone at the agency face to face. Nor was I ever able to speak with anyone there on the telephone.

As an analyst, I am actually encouraged by the implications behind the intended ambush. Recently, I wrote how, when confronted with the facts in silver concerning concentration and manipulation, often the response involves a personal attack on the messenger, instead of a factual rebuttal of the message. The attempted ambush confirms to me that there are few good reasons for maintaining the status quo in silver position limits. You don't resort to gutter tactics in a high-level debate if the facts are on your side.

Please don't write to the Commission asking them to reconsider, as you have my word I would not attend the meeting in any event. I am more encouraged with the opportunity to make my case one on one with CFTC staff. I will be calling on you soon enough to write to the Commission in the public comment period after the meeting. Save it until then.

Please don't interpret my absence as rendering the meeting less relevant in any way. Nothing could be further from the truth. This meeting promises to be one of the most important meetings for silver investors in CFTC history. I plan to observe the proceedings closely and strongly urge you to do the same. I learned more from the energy hearings last summer than I could ever have imagined. Before the meeting next Thursday, I will lay out what I'll be looking for and will certainly provide detailed commentary afterwards. Seeing the proceedings with your own eyes and listening with your own ears is a rare window of opportunity for a good look into the regulatory process. Don't worry if you can't watch it live, as it will be recorded.

I can't emphasize strongly enough how fortunate we all are that such a meeting will take place and that there will be panelists there to raise important issues and answer the Commission's questions. I have reviewed the proposed questions from the Commission to panelists and those questions are on the money, much to the Commission's credit. Equally important will be the remarks from those thought to be naturally opposed to any position limit changes, i.e., the exchange, JPMorgan, etc. The potential stakes here are enormous and you can be sure they will come prepared and sound convincing at first. But, I assure you, those arguments will be shown to be vacuous.

The issue of legitimate position limits in silver and the short-side concentration is one that I have been involved with for 25 years. That there will be a public meeting to consider this issue is beyond my wildest dreams. Some will say that the lack of my presence at the meeting just proves the agency will never act on the silver manipulation. I don't agree. Yet. The jury is still out on that decision and we will learn the verdict soon enough.

There is a process at work here, as there always is in any important regulatory matter involving the federal government and where great financial outcomes are at stake. This meeting is part of the process, and the issue won't be resolved on that day. I admit that the timeline has been agonizingly slow given that silver is a crime in progress. As much as we would like to accelerate the process, I think we should focus instead on the fact that there clearly is a process underway considering the issue of silver position limits. You have been an integral part of this process and it is imperative that you continue to participate. The message and the process are more important than the messenger and the time elapsed.

I'll probably release this in the public domain, as I feel it may benefit subscribers and increase interest for the coming meeting. I will also probably suggest, at some future point, what non-subscribers might write in during the yet to be announced public comment period, perhaps in an abbreviated release. I am sensitive to publishing for free what you are paying for and will strive to ensure subscribers are receiving sufficient value-added commentary. As I'm sure you realize, this is like walking a fine line and I welcome your input. I also have a hefty backlog of unanswered questions and emails which I intend to deal with. In the perverse manner of how these things work, the questions that require greater time and effort to answer are more easily postponed. Don't be shy about asking again

Ted Butler

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