

March 23, 2010 – Game Day

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In less than 48 hours, the CFTC's March 25 public hearing on position limits in precious metals is scheduled to commence. The list of panelists has been published, as well as the toll free listen-in conference call instructions <http://www.cftc.gov/newsroom/generalpressreleases/2010/pr5798-10.html>

The instructions for viewing via web broadcast have not been made available just yet, but should be available by the time of the meeting. Please check the main web site prior to the start of the hearing www.cftc.gov If you can't watch or listen in live, the hearing will be recorded and available for later review.

I strongly urge you to watch or listen, either live or to the recorded version afterward. Pay attention to the questions asked by Chairman Gensler and the other Commissioners and, particularly, the follow up questions and the tone in which the questions are asked. That's what I'll be looking for. I'm hoping, just like I experienced in the three-day energy hearings last summer, to learn just where the Chairman and the other commissioners stand on the issue. It was remarkable to me that the energy hearings laid out the clear blueprint for what followed over the past nine months. This hearing might do the same. Don't expect any declarative statements to that effect, as this will be very subtle and couched in nuances. While I will provide my take on all this later, I feel it's important for you to view it on your own, at the very least in order to keep me honest.

This meeting is a very big deal. I would put it on a par with the most seminal events that have occurred in silver history, like the introduction of the first silver ETF, SLV. In a moment I'll try to explain why. Even though I won't be there (I note, with interest, that neither will JPMorgan), it does not diminish my appreciation of the meeting's importance. I am grateful that the one panelist I did recommend for inclusion will be there (I prefer to leave his name confidential). Truth be told (and I don't know exactly why as I won't be at the meeting), in terms of anticipatory excitement, it ranks up there for me with the two NYC Catholic high school football championship games I was fortunate to play in a couple of hundred years ago.

I think my excitement has to do with my sense of what the meeting signifies. This may sound contradictory, but I'm not expecting any great resolution at the end of this day's hearing, in terms of proposed rule changes or other findings. I expect some colorful testimony and questioning, but it may turn out that much of the testimony, especially by banking and exchange representatives, will prove dull and uneventful to a general observer. It may appear to be just another pointless regulatory meeting in an endless parade of government meetings on the surface. But, if you step back for a moment, I think you might be able to appreciate why I'm so excited about this hearing.

I can't deny my incredulity that such a meeting is actually taking place. Not to beat it to death, but the very subject of this hearing, namely, precious metal position limits, concentration and possible manipulation, is what I have written about for 20 years. Trying to comprehend that the CFTC is actually holding a public hearing on my issues, after 20 years' worth of nothing but rejection, is incredible beyond description to me. It has me in a bit of a daze. I wish I could describe it more intelligently. That many others have taken up the issues recently (with and without proper citation), is also a bit overwhelming.

Aside from how the meeting touches me personally or you as investors, I'd like to introduce a thought that I think is important. The one thing that the meeting will do is to put the issues of position limits and concentration on the map. At a minimum, this public meeting certifies and historically records the importance of these issues. Regardless of the outcome, Thursday or in the future, there will be an undeniable acknowledgement that the issues of position limits and concentration were officially recognized. To me this is monumental.

Yes, it is true that I have a stack of letters from the CFTC over the years denying there was any problem with position limits or concentration in COMEX silver, and those letters are still prominently displayed and easily available on the Commission's web site. But this meeting is different. It brings these issues in full and public view of the entire Commission. This has never happened before. What makes it so significant is the stage it sets for the future.

With the matter of position limits and concentration in the silver market having been fully recognized and discussed in a public hearing, in the event of a problem in the future (example, shortage), no one at the Commission will ever be able to claim they didn't have any hint of that problem. If we do have any problem in silver in the future, it will be because the concentration on the short side on the COMEX finally resulted in an actual shortage of physical material. This coming silver shortage is the necessary and unavoidable result of the downward price manipulation. It's not a question if such a shortage will arrive, just when it will become visible.

When that silver shortage arrives, it will certainly generate wide interest. Silver is a small market, to be sure, but a shortage will garner disproportionate attention. As is the always the case in such matters, attention will be placed upon who can be blamed. Normally, I would agree that "greedy hoarders" and speculators would be the likely candidates. But because so much previous attention about a potential problem was written publicly by me and others, it is less likely that blaming the buyers of silver will work this time, especially now that the Commission is meeting publicly on this very issue. That's the critical point here "the public meeting records forever the Commission being put on advanced notice of a potential problem.

Imagine if there had been official and public regulatory meetings discussing in advance the specific problems that faced Enron, Bernie Madoff, Lehman Bros, or AIG. How could the regulators sidestep the blame? That's what I see at stake here in this public meeting by the CFTC; it makes it impossible to deny that the specific forewarning were given in advance of a future silver problem. To my knowledge, there has never been anything quite like this. There has never been years (decades) of direct warning of a specific problem to come, culminated by an official public meeting on that problem. All that's missing is the realization of the problem. That realization will come.

The real irony is that when the problem does surface in the silver market, the composition of who will be laying the blame on the regulators will likely take a dramatic turn. Now, it is the silver investor and advocate of free markets who is heaping blame on the Commission for not doing its job; but later these current critics will likely lose their passion for critique, softened by the comfort of great investment returns. In a twist, those benefitting from the current silver manipulation, including the industrial silver users, will be clamoring for the regulators' heads for not acting sooner. (Let me acknowledge this thought came from my wise friend, Izzy Friedman). For the sake of market integrity and the future integrity of the CFTC itself, I hope the Commission acts in advance of a silver shortage.

We should all be extremely grateful that Chairman Gensler has arranged for such a public meeting on such an important topic. My sense is that this meeting would not take place without him. To the extent it has been visible; watching him navigate the important regulatory reform process has been a real pleasure. I am also grateful for the opportunity to respond to an invitation to submit comments to the Commission prior to the public meeting, which I have done. I'm travelling for the next day or so, and will have limited Internet access, but plan to make available to subscribers the comments I submitted to the Commission late tomorrow or before the hearing on Thursday. As a preview, I tried to make my comments very specific to the issues at hand and constructive. Don't be disappointed if it doesn't sound like a pitch for you to buy silver. You should already know that.

Ted Butler

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