

May 20, 2011 – Update on Position Limits

Update on Position Limits

A reader asked the other day for an update on the matter of position limits for silver.

No, the matter hasn't been cast aside, although there hasn't been much visible progress. My sense is that the process is unfolding at a normal bureaucratic pace. Considering that there hasn't been a majority of commissioners in favor of implementing hard position limits, that there is even an ongoing process is somewhat remarkable. Even though position limits for physical commodities were mandated by Dodd-Frank, there has been much opposition to them.

Coincidentally, there was a public meeting on Thursday, May 19, at CFTC headquarters by the Agricultural Advisory Committee. As is typical at almost any agency hearing where position limits are on the agenda, the issue soon takes center stage. This latest meeting was no exception. There was a detailed overview given by the Director of Market Surveillance, Stephen Sherrod, concerning the level of position limits and the proposed exemptions to those limits for bona fide hedgers. I'll summarize what Sherrod had to say, but should you be inclined to watch and hear for yourself, the meeting is recorded here –

<http://capitolconnection.net/capcon/cftc/webcastarchive.htm#> Please click on panel two for position limits.

Mr. Sherrod gave a tentative schedule for how the process would work. The agency is reviewing the 12,000 comments received from the public on position limits and he expects staff to have reviewed and to have summarized the comments by the end of May. Then staff will discuss and recommend to the Commission what impact the public comments have had on revising the already proposed level of limits, if at all. This has particular relevance for position limits in silver.

As you know, the level of position limits (and the exemptions to those limits for hedgers) is more critical to silver than for any other commodity. If anything could end the manipulation in silver it would be enactment of a legitimate regime of position limits. That's why I have persisted in this matter for more than 20 years. Fortunately, as many as 4,000 to 5,000 comments of the 12,000 submitted by the public requested that the Commission adopt a level of position limits in silver of no more than 1500 contracts, instead of the near 5,000 contract level that the staff had originally proposed (by formula).

This whole rulemaking process is strictly governed by an important but separate body of law, the Administrative Procedures Act (APA), which requires that input from the public be considered in enacting new rules. Since the public was so demonstrative and specific in their comments about silver, this time and many other times in the past, it will be hard to ignore the public's input. I have no reason to believe that the staff would intentionally ignore the public in regards to silver. That's not to say that the staff will recommend a level of 1500 contracts in silver or any level lower than their original formula, or even if they did, that the Commission would go along. But there's a more important issue here, in my opinion.

What's more important is if the staff and the Commission acknowledge the public's very specific input on silver. Please keep in mind that not one of the 12,000 comments mentioned any specific level of position limits for any other commodity, just silver to my knowledge. That's remarkable. It's hard for me to imagine the staff or the Commission ignoring the silver input from the public, but anything can happen. Up until now, in all the many public meetings on the Dodd-Frank rulemakings, silver has never been singled out. Yet the public has singled silver out very graphically. Therefore, we've created a showdown of sorts.

The importance of this showdown is that we will soon get a sense where the staff and the Commission stand on the matter of position limits for silver and if they differ from the public sentiment. At the very least I would expect a fair and legitimate debate for why the agency either agrees or disagrees with the reasoning behind a 1500 contract level. I don't expect the agency to reject the public's unified input without some justification. That may not sound like much to expect, but you must remember that not once in 20 years has the agency ever fairly addressed this issue.

We'll all learn a lot from how this issue is handled and we should have a sense of that within the next month or so. The matter of position limits won't be resolved for many months, but the important milestone of addressing silver position limits specifically lies dead ahead.

I would be remiss if I didn't mention and commend Commissioner Bart Chilton for his continued public stance in favor of position limits and to enact them right now. In his opening statement to yesterday's meeting, he strongly laid out the case once again.

<http://www.cftc.gov/pressroom/speechestestimony/chiltonstatement051911.html> In quoting from a country song, "Time to Get a Gun," he reminds us that folks can get fed up with no action where action is required. Chilton was referring to Congress getting fed up with the Commission's inaction on position limits in general, but I think it more epitomizes the public being fed up with the lack of action against the silver manipulation.

Ted Butler

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