The Year in Review<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

No, I haven't lost track of the calendar. The year I intend to review is the one ending yesterday, May 26. On that date, one year ago, the chairman of the CFTC, Gary Gensler, was sworn into office. I started writing about Chairman Gensler from the get-go, eventually labeling him the greatest chairman in CFTC history and the most likely regulator to end the silver manipulation. So what's my take a year later?

Before I get into how I would rate Gensler, let me set the stage a bit. I make a big deal about him moving against the manipulation, given his role as chief commodity regulator. In turn, I focus on the silver manipulation because its demise would surely jolt the price of silver and allow it to trade at free market levels. In terms of importance, the manipulation and the pending physical silver shortage are at the top of the heap of potential big movers of the silver price. It has come to a point where I'm trying to handicap which one will hit first, or will there be a photo-finish. In any event, I do believe either one going off will activate the other.

It also must be mentioned that not only did I become a strong supporter of the policies Gensler ushered in, such as transparency, OTC derivatives reform and the return of hard position limits, my support was in distinct contrast to my previous stance with the CFTC for over 20 years. I based my change on readily available public evidence. I didn't change my mind on a whim; I judged the facts as presented. Gensler seemed to hit the road running, setting a tone that I had never witnessed in decades of dealing with the agency. The new chairman said and did all the right things.

After a rigorous Senate confirmation process, in which he was pressed on his intent to eliminate excessive speculation, Gensler jumped right into the fray, with his July 7 statement on position limits in which he announced public hearings.
http://www.cftc.gov/ucm/groups/public/@newsroom/documents/speechandtestimony/genslerstatement070709_b.pdf What followed was truly remarkable. In countless speeches, congressional testimony, and media appearances, Chairman Gensler was a man on a mission to reform commodity trading. He became the most frequent user of the term concentration (after me). I could hardly believe my eyes and ears. If you had told me, prior to his appointment that a CFTC chairman would soon speak openly about manipulation and concentration and the need for position limits I would have looked at you sideways. Yet, that is exactly what transpired.

Earlier this year, the process that Gensler put into motion culminated in a public hearing on the issue of position limits in precious metals. In the public comment period following that hearing, almost 3000 comments were received, an extraordinary number for such a narrowly focused issue. Even more remarkable, 95% of the comments pertained to silver and the need for position limits to be reduced to 1500 contracts and to throw out phony exemptions to that limit. It is not possible for the public to be more specific than that.

In terms of what he has accomplished to date in overall derivatives regulation and debate, no chairman has ever come close to what Gensler has achieved. On that basis alone, he qualifies as the greatest leader ever of the CFTC. But what about silver? After all, the manipulation of silver is a crime in progress. The agency's own data confirms ongoing fraud and abuse through the concentrated short position of JPMorgan and other large commercial traders on the COMEX. A year after Gensler's confirmation, the silver manipulation still exists. All the good he has brought to the regulatory process must be measured against this one colossal failure to act. Early on, I wrote how this silver issue, and how he handled it, would be the defining factor in his legacy. I still believe that.

One other thing should be kept in mind. Prior to Chairman Gensler's tenure, the CFTC regularly issued statements over the years that it had looked hard, but found no wrongdoing in the silver market. Since his confirmation, there has been no statement that all is well in the silver market, in spite of an ongoing (22 months old) investigation by the Enforcement Division. At least we haven't had to listen to more pablum from the agency that there is no silver manipulation.

Of course, that's a far cry from him openly addressing the situation in silver, something that Gensler must do at some point.

I know the vast majority of observers haven't agreed with my take on Gensler. I respect that. But, just because you are in the minority, it doesn't mean you are automatically wrong. I am familiar with being in the minority. I remember being really alone when I first tried to convince the CFTC or anyone of the silver manipulation starting some 25 years ago. Since that time, many have come to learn of the silver manipulation. Of course, that doesn't mean I will be right about Gensler doing the right thing here. In fact, that's the purpose of this year end review; to bring some closure to the issue of will he or won't he? I've previously acknowledged that Chairman Gensler may well-be the quality individual and dedicated public servant that I perceive him to be, but he may still not be capable of applying the rule of commodity law to silver, due to unknown political pressure of some type. So, what's it going to be?

While I can't put a precise timetable on the exact point at which the silver manipulation will destruct, it's much easier to conclude when you no longer believe someone will act. I'm at that point with Chairman Gensler. Time's up. Don't get me wrong I'm not suggesting that it's important what I believe. I'm simply noting that, at some point, if someone doesn't do what he should do, you stop behaving as if he will. And adjust your efforts appropriately.

It's important to put this into perspective. One year isn't very long in a manipulation that has lasted for 25 years. One year is an eternity while you are waiting for the regulators to deal with a clear crime in progress. And let me put something else into perspective, namely, the actual damage being sustained by real silver investors in the wait for Gensler and the CFTC to do the job and enforce the law they took an oath of office to uphold. That actual damage is minimal and temporary. The minute the silver manipulation ends, with or without help from the regulators, the price will surge and silver investors will dance with joy. Having had to wait will seem a distant thought, replaced with the new thought of how much more silver should have been bought during the wait.

Investors and traders who had been forced to sell on the intentional sell-offs, because of leverage and margin considerations, should have legal recourse to recover damages when the manipulation is obvious in hindsight, even though leverage and margin were never recommended (aside from options). It is important to these damaged silver traders that the authorities pursue the manipulation, including both the CFTC and the Justice Department. (By the way, I did receive another email from a long-time reader, who forwarded his exchange with the DOJ, in which they confirmed they were carefully considering the allegations of anti-competitive activity in silver futures. That's makes two I've received). Further, I wouldn't be surprised if private legal action was soon taken by silver traders damaged by the manipulation. In turn this should bring additional pressure on the shorts to cover and on the regulators to step lively.

I think Chairman Gensler hasn't acted against the silver manipulation because he had a more important issue to deal with — the big financial regulatory reform soon to become law. I first wrote of this back on Dec. 13, in “Landmark Legislation.” It's not that he doesn't see the evidence of manipulation in silver; he's way too smart not to see. Gensler has been the go-to guy, behind the scenes, on OTC derivatives issues with the House, Senate and Administration. It is truly impressive what he is on the verge of achieving. I think he wanted to see the big financial reform package finalized before confronting the silver manipulation. He knows there's no easy way to diffuse the silver bomb. The minute the regulators move against the silver manipulators, the price goes boom. Gensler didn't want the silver price bomb detonating before financial reform was made law, as that may have threatened its passage.

Of course, maybe I'm wrong. Maybe setting off the silver bomb is something that Gensler will never do, regardless of reform passage. Maybe Gary Gensler will take the normal bureaucratic safe way out in dealing with the silver crime in progress, and never lift a finger if it threatens to be messy. This, too, will soon be evident. It will be a personal disappointment to me, but I'll live with it. The real question is how Gensler will live with not having served the American people, a sentiment he has often invoked. While I don't look forward to disavowing my former praise and eating my previous words, it seems to me if he hasn't moved against the silver manipulators within a month of the President signing the financial reform bill into law, he probably never will. At least, not before it's obvious to all. Such a development would diminish us all.

What does this mean to silver investors? It doesn't change anything. You should be fully invested, prepared for volatility but secure in the knowledge that the manipulation is drawing to an end, whether the regulators act or not. The manipulation still allows us all to buy silver at an artificially discounted price. The end of the manipulation will allow us to consider selling at a free market price. Many signs suggest the transition will be soon.

Ted Butler

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