

December 5, 2018 - Is the CFTC Incompetent?

I ask you to overlook any insult implied in the title, as I intend a more serious question - Is the Commodities Futures Trading Commission capable of fulfilling its main mission, protecting the futures markets against manipulation? For the moment, I'll set aside what I believe is the Commission's failure to crack down on the increasingly blatant manipulation of the silver and gold markets, largely at the hands of JPMorgan. Instead, I direct your attention to a case not involving silver or gold.

Late Friday, a federal judge dismissed all charges against the investment firm DRW brought by the CFTC pertaining to manipulation of an interest rate swap position. The ruling was a crushing defeat for the CFTC in that the judge, essentially, questioned why the charge of manipulation was brought in the first place, since the Commission couldn't even show that any artificial price was created. The Wall Street Journal had extensive coverage of the case, but I wasn't sure if that coverage was behind a pay wall, so I'll provide an alternate link

<https://www.chicagobusiness.com/finance-banking/drws-wilson-scores-big-win-market-manipulation-case>

The judge's ruling goes to the heart of my question as to whether the CFTC fully recognizes what market manipulation actually entails. To be sure, the Commission has a singular poor record in prevailing in any manipulation cases that go before a judge and the Hunt Brothers case for manipulating silver prices may be the last major case in which the CFTC prevailed, more than 35 years ago. (In the interest of full disclosure, a former client of mine and firm I worked more than 30 years ago were sued for attempted manipulation of the frozen orange juice futures market, but that case was also summarily dismissed by one of the agency's own administrative law judges).

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It sure seems like a waste of resources for the CFTC to keep pursuing failed attempts to prove manipulation, to say nothing of the message it sends to anyone thinking of contesting manipulation allegations from the agency. Fear from potential wrongdoers quickly fades from a watch dog that barks, but doesn't bite. And it's not just contested manipulation cases that the agency has failed at miserably; the big recent case against Monex was similarly dispatched in an embarrassing defeat for the agency. And if the CFTC can't prevail against firms a fraction of the size and legal might of a JPMorgan, what chance does the agency stand against Mr. Big Crook himself?

In fact, I'm starting to believe that the CFTC may have done everyone a favor by not taking on the crooks at JPMorgan for manipulating silver and gold prices, since its likelihood of success was too remote to contemplate. For sure, the ineptness of the CFTC has necessarily prolonged the pain and suffering of everyone adversely exposed to artificial silver and gold prices, but had the agency tried and failed, as would have been almost certain, JPM may have gained an even greater immunity against future prosecution. The CFTC's own record indicates that it is incapable of confronting JPMorgan - even if it wanted to.

There is only one regulatory force capable of engaging the super crooks at JPMorgan of the all the 17,000 law enforcement agencies in this country. The best news is that the Justice Department may have begun that engagement in earnest. The DOJ is certainly on the trail of JPM and its misdeeds in silver and gold, by virtue of its Nov 6 announcement of a criminal guilty plea by a former trader of the bank. Other shoes are set to drop, but there can be no assurance that the Justice Department fully comprehends the true scope of JPM's decade long manipulation. (Yes, I've taken to sending my missives to Justice).

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I've previously used the analogy of my fear that the DOJ's announcement of a guilty plea against a single trader as being similar to the police pulling over a serial killer for a traffic violation and not knowing any better, letting him go after minor traffic citations. Let me fill that in by adding that someone is desperately trying to warn the police not to let the killer go in the form of me sending the DOJ the most explicit and accurate analysis of what JPMorgan has done in silver and gold over the past decade. Let JPMorgan convince the Justice Department that it is not the silver serial killer I allege the bank to be and let's settle this issue once and for all time.

If (and that's a very big "if") the DOJ truly gets its arms around the enormity of what JPMorgan has pulled off in silver and gold, namely, its perfect trading record and accumulation of metal on the down low, and moves against these crooks, I am hard-pressed to think of anything more monumental in the history of the silver market. As you know, I have studied silver very closely for the better part of my adult life, as well as its history and everything about it, and I can think of no past or prospective development more significant than whether the DOJ takes the JPMorgan-contrived manipulation by the horns. I can't say that the DOJ will or won't bust the scam, of course, but if it does, nothing could be more profound.

And it is more than beyond remarkable that the media, whether mainstream or Internet alternative, is behaving as if the DOJ busting down the doors of the JPMorgan silver warehouse is not remotely possible. Unless the DOJ spoke with a forked-tongue in its Nov 6 announcement, a notion hard for me to conceive, a strong follow through would look like the high probability bet. Unless of course, one believes the DOJ is just an arm of the same government running the metal manipulation in the first place. I don't.

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Turning to other matters since the Saturday review, gold and silver prices had rallied through yesterday's cutoff for the COT reporting week; with gold up more than \$20 and silver by 40 cents. For gold, it was the highest daily close in five months and the highest daily close for silver in a month. The gain in silver penetrated its 50 day moving average, allowing it to join in with gold on the plus side of that key moving average. COMEX trading volume was fairly heavy.

As such, it is reasonable to expect a deterioration in the market structure of both COMEX gold and silver, namely, managed money buying and commercial selling. While I think the actual contract numbers could be significant (around 10,000 net contracts in silver and 25,000 in gold), it is important to recognize that the market structure in each had been extremely bullish for so long (many months) that it started to look normal. In reality, however, the prolonged period of bullish market structures was highly unusual in that it persisted for as long as it did.

Previously, when gold and silver market structures became as bullish as they have been recently, the resultant rallies were always quite quick to develop. Admittedly, the rallies never got too far as the commercials and particularly JPMorgan, were always very aggressive in selling into the managed money buying that occurred on the rallies. But that changed this year, particularly in silver, as JPMorgan became much more aggressive in adding to silver short positions than previously.

I've chronicled it on these pages as it developed, but the story this year to me appears to be JPMorgan making a concerted effort mid-year to buy back and rid itself of COMEX gold short positions, which it did to the tune of 100,000 net contracts. JPM did add around 30,000 new gold short contracts during October, but appears to have bought those added shorts back through the last COT report.

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Meanwhile in silver, JPMorgan turned In April from its past practice of being the short seller of last resort (after the other commercials, the raptors, had finished selling out long positions), into being the silver short seller of first resort - preemptively shorting silver even before the other commercials unloaded long positions. On the silver rally to \$17.25 on June 12, JPMorgan had added 20,000 new shorts to a total net short position that amounted to 40,000 contracts (200 million oz). It subsequently bought back its entire silver short position into the price depths of September/October, pocketing hundreds of millions of dollars in ill-gotten profits, before adding another 15,000 new silver shorts thru the beginning of Nov. With the DOJ announcement on Nov 6, JPM arranged for (rigged) prices lower and bought back the added 15,000 short contracts thru the latest COT report.

More than ever before, the key question to be answered in this Friday's Commitments of Traders and Bank Participation Report is whether the stone cold crooks at JPMorgan added to silver short positions on, basically, the two day rally on Monday and yesterday. Essentially, that's all that matters. If JPMorgan has or does add shorts, I'll report on it and ratchet up whatever pressure I can exert on the DOJ to nail these crooks. If JPMorgan doesn't add to shorts, I think we'll see it in the price. Either way, I'll report on Saturday.

I don't write much on matters not directly related to silver (or gold) for the simple reason that not many cover the market in the manner I do and, therefore, I feel I have something unique to add. It doesn't mean I don't have strong thoughts on other issues and markets, but I believe there are others more qualified and devoted to those other markets and, therefore, my voice isn't necessary. Besides, there is little less attractive than a know-it-all, someone who purports to be an expert in every topic under the sun.

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With the recent increase in volatility and drama in the stock market, I would direct your attention to a recent missive from John Hussman, someone I've referenced in the past as appearing to me as knowing his stuff. Even if my take on Hussman is wrong (I don't think it is), there are a number of points in his latest article that are worthwhile, including his explanation that the reasons for why markets have moved are most often incorrect and far removed from fact. Lastly, his revelation of him being attempted to be coached to not speak too negatively in a recent CNBC appearance confirmed to me the bias of TV financial "reporting".

<https://www.hussmanfunds.com/comment/mc181128/>

Finally, on this day of national mourning for the passing of our 41st president, George H.W. Bush, let me simply note that he was a combat veteran, dedicated public servant, statesman and genuine family man. The world never has had too many decent people and with his passing, now has one less.

Ted Butler

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Silver - \$14.56 (200 day ma - \$15.58, 50 day ma - \$14.47)

Gold - \$1242 (200 day ma - \$1262, 50 day ma - \$1218)