While there is still a dearth of commentary on the topic, I continue to be obsessed with the ultimate outcome of the Justice Department's investigation into JPMorgan's role in the COMEX precious metals manipulation. Will the outcome be determined by a full and fair adjudication of the rule of law or on the whim of personal or political leanings at the very top of the Justice Department? Time will tell, of course, but in the interim I thought it appropriate to compare the current DOJ investigation to a prior official investigation of silver market manipulation – the infamous five year formal investigation by the CFTC's Division of Enforcement initiated in September 2008.

Actually, the CFTC's investigation of 2008 was not the first official review by the agency into allegations of a silver market manipulation, but the third such undertaking by the Commission in less than five years; the first two of which occurred in May of both 2004 and 2008. Those two prior reviews resulted in 15 page public letters in which the Commission explained that excessive and concentrated short selling in COMEX silver futures had nothing to do with the depressed price of silver and presented no problem.

https://www.cftc.gov/sites/default/files/files/opa/press04/opasilverletter.pdf

https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/silverfuturesmarketreport0508.pdf

Remarkably, the CFTC's public letter of May 13, 2008, made absolutely no mention of what was the most significant development in silver market history two months earlier – the failure of the largest concentrated short seller in COMEX silver and gold, Bear Stearns, and its takeover by JPMorgan – even though the specific theme of the letter was that concentrated short selling was a non-issue. Talk about a lie by omission.

What led to the CFTC initiating yet a third formal review of silver market manipulation in September 2008, this time by its Enforcement Division, just a few months after the release of its second public letter in May 2008, was the outpouring of public comments in reaction to the August 2008 Bank Participation Report, which indicated an extremely large and non-economic concentrated short position in both COMEX silver and gold futures by one or two US banks. Subsequent official correspondence between the CFTC and lawmakers revealed that the concentrated short position was held by JPMorgan, as a result of it acquiring Bear Stearns in March 2008. That's when I began referring to JPMorgan as the big silver crook and price manipulator, something that has continued to this day.

Despite the hopes of many (including me) that the formal investigation begun in September 2008 by the Enforcement Division would finally root out and terminate the silver market manipulation inforce for more than 20 years to that point, those hopes proved to be unfounded. As subsequent events bore out, including an interim report by the Commission on the status of the investigation and how many man-hours were expended, as well as witnesses and documents reviewed, the investigation went nowhere and five years after it was initiated, it was announced the findings were inconclusive to the bringing of charges of manipulation and the investigation was terminated.

With the benefit of hindsight, it is now clear that the CFTC had argued for so long and so consistently that nothing was amiss in the silver market, not only in the two public letters of 2004 and 2008, but in countless other letters to lawmakers and myself since 1986, that it had put itself in a bind about ever admitting something was wrong in the silver market. It is now quite clear that the reason the Commission initiated a formal investigation in September 2008 was because it couldn't answer basic questions about the effect that JPMorgan's concentrated short position had on the price of silver. It still can't. So instead, it initiated a fraudulent and wasteful investigation to avoid answering simple questions and to kick the can down the road, before allowing the phony investigation to die five years later in 2013. It was the consummate example of "not on my watch".

That's the tale of the CFTC's investigation(s) into a silver market manipulation; an exercise designed to go nowhere, avoid the obvious and only initiated under the duress of public pressure. To think that these were the actions from the primary federal commodities regulator to the most serious market crime possible is downright shameful and why I have long given up on any further hope that the agency would ever do the right thing when it came to silver. And that's where things would stand were it not for the sudden and surprise emergence of a separate investigation into silver market manipulation – this time by the Department of Justice.

Let me be quick to highlight the differences between the phony CFTC investigation and the one announced on Nov 6 by the Justice Department. The DOJ is not the primary federal commodities regulator, although it is the primary adjudicator of the rule of law in the US, as well as the primary regulator of serious antitrust issues, which would include an artificial setting of the price of silver. Nor is the Justice Department accustomed to initiating investigations designed to go nowhere. Ditto for the Justice Department having any past finding that all was hunky dory in silver. Finally, there is not the slightest hint of public pressure on the DOJ to investigate a possible silver market manipulation – something else prodded it to do so.

Moreover, whereas the CFTC took great pains to publicly announce its investigation of silver in 2008 with great fanfare, only to end up with absolutely nothing to show for it in the end; the Justice Department offered no big announcement until after the investigation was well under way and after it had already secured a criminal guilty plea, which was entered and accepted a month earlier and sealed until Nov 6. Remarkably, the time period covered in the guilty plea dovetailed with the supposed investigation of the CFTC from 2008 to 2013 in which no actionable findings were uncovered.

To those who might argue that there was no public announcement of an investigation into a COMEX/NYMEX precious metals manipulation by JPMorgan by the Justice Department on Nov 6, I would simply ask that they reread the announcement (including the attached charging document and guilty plea). To be sure, the Justice Department and other federal agencies usually don't confirm nor deny the existence of investigations, but a careful reading of the announcement leaves no other possible conclusion than that such an investigation is under way. Importantly, the announcement and related documents clearly indicate the ongoing investigation is centered on the other traders employed by the bank that employed the trader pleading guilty and the bank itself, since the illegal activities were designed to benefit the traders and the bank itself.

https://www.justice.gov/opa/pr/former-precious-metals-trader-pleads-guilty-commodities-fraud-and-spoofing-conspiracy

The question of what motivated the Justice Department to get involved still looms large and there is no hard data definitively pointing to the answer. The trader pleading guilty left JPMorgan's employ in late 2017, after 13 years of employment (starting when he was around 22 years old). It is unknown if his termination of employment had anything to do with the DOJ's looking into the matter, but if it did, it suggests it has been looked at by the Justice Department for a full year or so – meaning the investigation should be quite advanced.

Alternatively, it is possible that what alerted the Justice Department to this matter was my phone call and letter to the FBI on April 30, 2018, as previously disclosed ("Another Possibility" on Nov 13). As a reminder, my contact with the FBI was primarily intended to lodge a complaint of public corruption against the CFTC for its willful malfeasance in refusing to end the silver manipulation, its main mission. Therefore, I'm still puzzled and intrigued by the lack of any attribution by the Justice Department to the CFTC for assisting with the ongoing investigation to this point. In the Nov 6 announcement, the DOJ credits the FBI for the ongoing investigation into the matter, but doesn't indicate what tripped off the FBI originally. Hopefully, this is something that will be revealed in the fullness of time.

Please allow me to introduce yet another possibility for what the FBI/DOJ may be looking at as it investigates activities in COMEX precious metals centered on JPMorgan. Even if the DOJ began investigating COMEX/JPM before I called and sent my letter of April 30, it doesn't change in any way the fact that I did contact the FBI then. Therefore, if an investigation was already under way, then there's no way that the information I provided wouldn't be of some interest to the investigators. After all, what investigator/prosecutor wouldn't be interested in information that would aid and bolster the case?

One of the problems I've faced over the decades in contacting any and every one I could think of to expose the silver manipulation is that all of my contacts were ultimately referred back to the CFTC, as it was the primary/default final authority when it came to commodity related matters. Let's face it, that's the way the system is structured. If one has a complaint about aviation safety, that matter will ultimately end up with the Federal Aviation Administration. Ditto with issues related to the safety of food or drugs, which would end up with the Food and Drug Administration.

But because the CFTC was and is conflicted when it comes to the issue of silver manipulation, my complaints entered a closed-loop system. I'd continue to complain, always providing new facts and reasoning and the CFTC would always automatically deny or ignore anything I said because it had already backed itself into a corner due its past denials and due to the concessions granted to JPMorgan as a result of its takeover of Bear Stearns in 2008.

It was the attempt to break that closed-loop system of certain rejection by the CFTC to anything I alleged that prompted me to contact the FBI with a complaint of public corruption by the CFTC for not doing its most basic job – preventing manipulation. I didn't contact the FBI for any reason other than seeking to get someone in the position of authority to look at the facts in silver other than the CFTC, which I'm convinced is severely compromised. And what better authority to dig into silver/JPM than the world's premier investigative and forensic force, the FBI, backed by the premier arbiter of the rule of law – the Department of Justice?

As I've indicated previously, there's no way of knowing whether the Justice Department's investigation is confined to the narrow and obvious circumstance of spoofing or if the DOJ fully grasps the much broader and more serious issue of JPMorgan manipulating prices for more than a decade for the purposes of guaranteed trading profits and the accumulation of physical metal on the down low.

These are the issues that should most concern the DOJ in its role as final arbiter of antitrust violations and the rule of law. But as they say, you can lead a horse to water, but you can't necessarily make him drink. In the interest of encouraging the DOJ to drink up the full measure of JPMorgan's illegal activities, I do send them my articles (certainly including this one).

While I am most hopeful that the Justice Department will see the full picture and undertake the appropriate legal remedies, any man should be aware of his limitations. It's not up to you or me, it's a matter that will be decided at the very highest levels of the Justice Department and we would be kidding ourselves not to acknowledge that political and other considerations will play into the mix. In other words, anyone claiming to know how this will turn out knows not of which he speaks.

That said, I am struck by the stark contrast between the two investigations; the CFTC's phony and designed-to-fail investigation of 2008-2013 and what looks like the no-nonsense investigation by the Justice Department currently under way. The CFTC couldn't find anything wrong in silver after more than 30 years of pretending to look; the DOJ came up with a criminal guilty plea for openers of what it claims is an ongoing investigation of one bank – and you know which bank. In that one important sense, the differences couldn't be starker.

As much as I'd like to insure that the Justice Department sees the full picture and even prod it on its investigative journey, there is not much leverage or pressure one individual can apply either on the Justice Department or on the rhythm of the tides. Then again, by announcing the criminal guilty plea and the ongoing investigation on Nov 6, the Justice Department has obligated itself to bring this issue to a satisfactory resolution and no external pressure could hope to equal that. In some sense, as a result of the DOJ's announcement, it now "owns" the issue of JPMorgan and a COMEX silver manipulation and I, for one, hope that whatever the resolution, the Justice Department, the FBI and the US Attorney fare better in terms of their collective reputations than did the CFTC in this very same matter. The resolution can never arrive too soon, as this is a major market crime in progress; but it is hard for me to see, based upon what was announced on Nov 6, for the DOJ to come up with the same crappy "never mind" non-resolution that the CFTC came out with in 2013.

Onto other developments since Saturday's review. I received an interesting email from a subscriber that I'll simply reproduce here, as well as my response

Ted,

I was wondering if you are aware of JP Morgan selling naked calls in SLV during the last 10 years, knowing it was able to keep the price below the strike and having those options expire worthless profiting even more from its manipulation.

I'm not sure if there is data published on this. If they have, this would broaden the number of traders affected by this illegal behavior and make additional charges possible.

Thanks,

Rob

Rob,

Thanks. This is something I’ve thought about often (since I’ve been on the other side). Unfortunately, there is no hard data that I know of. The closest is options data on futures in the combined future/options COT data, but even that is limited and inconclusive

But if the DOJ can show JPM did suppress the price, it may not matter much as to whether they were the option sellers or not, because it would be easy to show the bank was responsible and liable for damages caused to option buyers. The key, of course, is getting the DOJ to show that JPM did what we know it to have done

Best

Ted

This is similar to the point I made in my article of December 26, 2018 – “The Solution”, in which I laid out how, if JPMorgan were to be found by the Justice Department for having manipulated the price of silver since 2008, it would be liable for damages to all those hurt by the manipulation – such as actual producers of silver which were all forced to accept lower prices.

This is why price manipulation is the most serious of all market crimes and why it is supposed to be the CFTC’s main mission to guard against. That’s because it’s not just those actively participating in COMEX silver futures that are damaged by a price manipulation – everyone in the world of silver is affected because the price has been set artificially. Certainly option buyers would have been cheated by JPMorgan should the bank be found to have manipulated the price, as I allege, regardless of whether JPMorgan was an options seller or not.

Due to the continuing government shutdown, there will be no Commitments of

Traders (COT) report this Friday for the fifth straight week. On what would have been yesterday's cutoff, the total open interest in COMEX gold futures is now higher by just over 100,000 contracts from the date of the last published COT report as of Dec 18. For silver, yesterday's total open interest is up 16,000 contracts from Dec 18, so Saturday's discussion on what the likely market structure might be is still valid (and still a guess).

Doing what I tell myself not to do and trying to decipher meaning from daily price action; silver did close below its 200 day moving average on Friday and continued lower in trading through yesterday and earlier today. There did appear to be some managed money selling on the moving average penetration to the downside, but the selling was somewhat underwhelming. Maybe not enough time below the moving average has transpired and there will be more selling on still lower prices; but if that managed money selling doesn't take place, the rationale for lower prices peters out and my thoughts turn to why the selling didn't occur?

Mingled with those thoughts is what role JPMorgan has played in the commercial selling since Dec 18 and, more specifically, what influence has the Justice Department's investigation had to this point? These are questions to be answered in time, but not at this time. But should JPMorgan have changed its evil and manipulative ways and/or the DOJ means business, the odds are much greater that the typical wash, rinse and repeat cycle may have also changed and we won't experience the normal price flush out. Wouldn't that be a nice change?

Maybe all my hopes about the Justice Department doing the right thing are pie in the sky fantasy that will be dashed in the end. Still, I've yet to receive a good answer as to why the DOJ would say and do what it said and did on Nov 6 if it were just fooling around and deliberately sending out false signals? With that in mind, it is too often the case that great opportunities appear unexpectedly that are not taken advantage of. Silver sure looks like such a great opportunity should the Justice Department do the right thing.

Ted Butler

January 23, 2019

Silver – $15.36 (200 day ma – $15.38, 50 day ma – $14.87)

Gold – $1284 (200 day ma – $1253, 50 day ma – $1253)