

June 26, 2019 – Stranger Than Fiction

Yesterday, the Department of Justice and the Commodity Futures Trading Commission announced yet another settlement, both criminal and civil, for “spoofing” and market manipulation in COMEX precious metals, this time against Merrill Lynch, a unit of Bank of America. The infractions occurred hundreds of times starting at least in 2008 and continuing through 2014. While Merrill Lynch and Bank America settled criminal charges via a deferred prosecution agreement and a \$25 million fine, separate criminal charges are pending against a number of former individual traders.

<https://www.justice.gov/opa/pr/merrill-lynch-commodities-inc-enters-corporate-resolution-and-agrees-pay-25-million>

<https://www.cftc.gov/PressRoom/PressReleases/7946-19>

Considering that a straight criminal charge and/or conviction could easily have resulted in, effectively, putting Merrill Lynch out of business (many cities, states and government entities are forbidden from doing business with convicted felons), Merrill and BAC got off easy. For the umpteenth time, price manipulation is the most serious market crime possible and Merrill just dodged a bullet that could have been fatal.

Not so lucky, of course, were the many victims of Merrill Lynch’s criminal activities who are unlikely to collect a penny for the long-running gold and silver price manipulation. Apparently, this is what comes of high-level corporate crime in the US – a wrist slap of a fine, a dubious trophy on some prosecutor’s mantle and an avoidance of the real issues.

What makes this all stranger than fiction is that the settlement covers nearly the exact time period that the CFTC (with DOJ involvement according to the late Bart Chilton) was involved in a formal five year investigation into a COMEX silver investigation which ended in 2013 with no findings of wrongdoing. Neither the CFTC nor the Justice Department could find anything wrong with silver (or gold) back then, but now each can recite chapter and verse about all the wrongdoing that took place at that time. What are the odds that the CFTC could have been inundated with more allegations of a silver manipulation than any other complaint in its history and for it to conclude repeatedly those allegations had no substance, only to come back years later saying plenty was wrong? Thanks for nothing.

Strangest of all is that the regulators are doing everything possible to avoid the 800 pound gorilla in the room – the real precious metals manipulation being run by JPMorgan since it acquired Bear Stearns in 2008. You know, the one by which JPM was the largest futures contract short seller on the COMEX and then used the resultant depressed prices to accumulate massive amounts of physical gold and silver. Next to what JPMorgan has done over the past decade, the spoofing charges are relatively child’s play.

I will admit that spoofing (the entering and immediate cancellation of large orders solely intended to manipulate prices in the short term) was so repetitive and serious enough to result in the complete surrender by Merrill Lynch and Bank of America to everything alleged by the DOJ in return for the prize of only a deferred criminal prosecution agreement. And it is good that spoofing has finally been cracked down on as those of us who complained about it for years would attest. But spoofing is only one of many tools used in the real price manipulation run by JPMorgan.

One thing is certain the DOJ has the means, should it so choose, to truly crack down on anyone for spoofing or market manipulation, including JPMorgan (since it has an ongoing case on that aided by a criminal guilty plea by a former trader). Complicating matters for JPMorgan is that, unlike Merrill, it already has in place an outstanding criminal deferred prosecution agreement with the DOJ from the Madoff scandal (how many such agreements are allowed before you are considered a stone-cold crook?).

There can be no doubt that the Justice Department went light on Merrill and Bank America to avoid the consequences and aftermath of a straight criminal finding, as was possible under the law. How would it impact the financial system and serve the public good to, effectively, put either out of business? That goes in spades for JPMorgan. But whereas spoofing is largely a thing of the past, JPMorgan still looms large in the much more significant ongoing silver and gold manipulation or at least it has until very recently.

The Nov 6 announcement by the Justice Department of a criminal guilty plea by an ex-trader from JPMorgan for spoofing and market manipulation, as well as there being an ongoing investigation of same did not immediately bring an end to JPM's real manipulation (contrary to my hopes and expectations at the time). I say this because on the rally in gold and silver prices that commenced a week after the DOJ's announcement and that lasted until the end of February, JPMorgan did as it always had done on every silver and gold rally over the past 11 years, namely, sold short enough in COMEX futures to cap both rallies. Gold and silver prices then declined into the end of May and JPMorgan bought back all of its added COMEX short sales at a profit the same as it had done continuously since early 2008. And yes, JPMorgan continued to accumulate physical silver as well.

Over the past four weeks, there has been a very spirited rally in gold and a much less than impressive rally in silver. Since May 28, gold has surged by as much as \$160 (12.5%), while silver has struggled to rise by as much as a dollar or so (7%). The only documented cause for the rise in the gold price has been massive managed money buying in COMEX gold futures, although the past few days has seen some significant net deposits in GLD, reflecting net investment buying due to the COMEX-induced price increase. While there has also been significant managed money buying in silver, that buying has not caused silver prices to rise as sharply as gold prices, either because it was not sufficient enough or because the sellers were much more aggressive in silver than they were in gold.

The great unknown at this point, particularly in silver, is the extent of short selling by JPMorgan into this rally. My sense is that JPM has been a moderate short seller in gold, but I am unsure about its short selling in silver. JPMorgan did go into the silver rally net long by about 6000 contracts or so, and while I believe it has sold out its longs (at profits), I'm not sure if it has added COMEX silver short positions. This Friday's COT report might shed some light on this, as will the following COT and Bank Participation reports scheduled for Monday July 8.

As far as what to expect in Friday's COT report, I'm going to stick with my previous guesses of 50,000 net contracts in gold and 15,000 net contracts in silver for managed money buying and commercial selling, although higher numbers in gold wouldn't surprise me. My main concern is what JPMorgan may have done.

I've noticed a literal explosion of commentaries extolling the virtues of an impending silver price explosion, given how badly it has lagged the gold rally. I'm certainly not about to argue with an explosion in silver prices, although I do note with curiosity that few expecting such an explosion point to developments on the COMEX. If we do get an explosion in silver prices, it must be related to COMEX positioning and, more specifically, the positioning (or lack thereof) of JPMorgan.

With so many managed money contracts having been bought over the past four weeks, leading to what must be considered a bearish market structure in gold, it wouldn't be surprising to witness a price setback. On the other hand, we are still miles above the key moving averages in gold (not so in silver), and if the managed money traders remain true to past form, they will be reluctant to sell until such averages are penetrated to the downside. The most comparable previous time in gold to now was the run up in 2016, when massive managed money buying wasn't liquidated until much later in the year.

To be sure, if we do experience a sharp selloff in gold or silver (not something I'm predicting), it will be for the sole reason of managed money selling on the COMEX. Still lost in all the new talk of Justice Department findings of manipulation through spoofing is the recognition that the proof of bigger ongoing manipulation is right in front of us. Why should a handful of large paper traders on the COMEX dictate to the rest of the world what prices should be? What is strangest of all is that the manipulation is so obvious and in your face that most can't seem to focus on it. Speculative paper positioning should never set prices, yet it clearly does.

It seems to me that the Justice Department sees the silver manipulation clearly, but is reluctant to drop the hammer on JPMorgan for fear of the consequences of finding JPM criminally culpable. It just demonstrated that in the case against Merrill Lynch. At the same time, however, neither can the DOJ address simple questions directed to it.

<http://silverseek.com/commentary/questions-only-doj-can-get-answered-17543>

Unfortunately for the DOJ, the case against JPMorgan is so straightforward so as to be inescapable. Being the largest paper short seller for more than a decade and then using the resultant depressed prices to accumulate more physical silver (and gold) than anyone in history is such a cut and dried market manipulation that a jury of 12 year olds could decide the matter in minutes. Yes, I understand that putting JPMorgan out of business works against the collective interest, but so does letting these crooks continue to manipulate.

The only practical alternative is for the Justice Department to force JPMorgan to end the silver (and gold) manipulation quietly and without the repercussions of straight criminal charges. Regardless of the precise format such an order would involve, the direct visible result would be an explosion in the price of silver, practically the minute JPM lifts its heavy hand off the price. I think most silver investors and producers could live with that.

Ted Butler

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Silver – \$15.26 (200 day ma – \$14.94, 50 day ma – \$14.82)

Gold – \$1413 (200 day ma – \$1274, 50 day ma – \$1308)

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