March 23, 2011 – Getting Sidetracked

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It happens often with an interesting subject like silver. Something has come up again to delay a planned article on silver investment supply and demand. The new issue concerns news that JPMorgan has been approved by the CME Group and the CFTC to be a NYMEX/COMEX-approved warehouse for gold, silver, platinum and palladium. JPMorgan has been listed as a depository for the past week or so in the daily warehouse inventory tables for each metal, but no metal inflows or outflows or holdings have been recorded for them.

I admit that when I first saw JPMorgan's name listed on the warehouse list, I wasn't exactly overcome with a warm and comfy feeling. Still, I decided to reserve judgment for what impact, if any, this might have on the price of silver. No sense in jumping to conclusions and getting spooked by shadows. After all, JPM is obviously well-entrenched in the precious metals business on many levels, including having a long involvement in the issuance and acceptance of delivery against futures contracts; so there could be many legitimate explanations for why they sought approval to be a licensed exchange warehouse. I still feel that one shouldn't jump to unnecessary or erroneous conclusions.

What prompts this piece is an article that appeared yesterday on the Internet that many of you have questioned me about. http://seekingalpha.com/article/259549-will-jpmorgan-now-make-and-take-delivery-of-its-own-silver-shorts

I don't want to summarize the article for you, preferring that you read it and decide for yourself, but I get the impression that the author seemed to be warning that JPMorgan's approval as an exchange licensed warehouse could be somehow related to them closing out their concentrated silver short position. While he was quick to point out that he could find nothing illegal about JPMorgan being approved as a licensed warehouse, the author was troubled by the fast approval process and later in the article implied that as a vault operator, JPM might be able to delay deliveries to their advantage. Further, he asked if JPM's approval as a warehouse might be related to a silver short sellers' panic.

Simply put, I have serious reservations about the thrust of the article. Since I don't know what the normal time process is for approval of a warehouse, I have no basis to be alarmed on that score. I certainly don't see how being an approved warehouse can be a simple solution to closing out JPM's massive concentrated silver short position. JPM is a very sophisticated market operator, not prone to the blunt fraud of misrepresenting certified metal held in a licensed warehouse. They are akin to professional jewel thieves and would not stick up a 7-11. But I will keep an open mind and I reserve the right to change my opinion on this issue as and when more facts are uncovered. In the meantime, I would like to take this occasion to speak on a broader basis.

I understand the sensitivity that surrounds JPMorgan in the precious metals world, especially when it comes to silver. After all, I believe that I have been largely responsible for creating that sensitivity in the first place. I first became aware that JPMorgan was the big COMEX silver short in the fall of 2008 and have been writing about it since. I only did so after I was sure that what I was writing was supported by verifiable evidence. I discovered that evidence in CFTC public reports and correspondence. Since then, there has been no denial of my allegations by either the regulators (the CFTC and the CME Group) or JPMorgan. The lack of a denial or even a legitimate explanation for the concentrated silver short position has been a public relations disaster and has served to inflame the public.

The allegations of manipulation in the silver market are so serious and the silver investing public is so outraged by the lack of action or response to date, that it tends to attract additional allegations not related to the core issue of manipulation. This Â?piling onÂ? of additional allegations, while understandable, can detract from the core issue. The core issue is that there exists an unusual concentration on the short side of COMEX silver futures held by JPMorgan. Manipulation can only exist if a concentrated position exists. Everything else is a peripheral matter. It does not matter if the concentrated silver short position held by JPMorgan is naked or is hedged with physical or OTC offsets. It does not matter if JPMorgan inherited the concentrated short position from Bear Stearns at the request of the US Government. It does not matter if JPMorgan operates an exchanged- licensed warehouse or not. What matters is the concentrated nature of its COMEX silver short position.

What also matters is that the only known antidote to concentration is the enactment of legitimate speculative position limits, something now lacking in COMEX silver futures. That's why the current position limit process underway by the CFTC, including the solicitation of public comments on the matter, is so important. Fortunately, there has been an outpouring of public response on this issue with well over 3000 comments being made by fellow citizens and investors asking that the Commission institute a 1500 contract position limit in silver. I am hopeful that the large number of comments on silver will finally result, at a bare minimum, in an open discussion by the CFTC on the merits of a 1500 contract level in silver. For more than 20 years, any thought of an open debate has been buried.

Of the more than 3900 public comments on position limits, more than 99% urge the Commission to institute hard position limits on all physical commodities. It will be hard for the Commission to misinterpret the public's collective opinion that they want hard position limits. With a deadline of March 28 for public comments, if you have not yet submitted your comments, please do so. http://comments.cftc.gov/PublicComments/CommentList.aspx?id=965

As we grind on towards a resolution on the issue of the silver manipulation and position limits, I still feel we are fortunate to have Gary Gensler as chairman of the CFTC. In his public statements, he leaves no doubt where he stands on the issue of position limits and concentration and manipulation. I believe that he is creating a record from which he will not back down. Gensler just doesn't strike me as the kind of person out to deceive anyone. He tells you, in no uncertain terms, exactly what's on his mind. On his mind are market integrity and transparency and the rule of law. Here is an excerpt from a speech he made yesterday to his regulatory counterparts in the EU (emphasis added) Â?

> Let me take a moment to discuss position limits. In the U.S., regulators have had the authority to set position limits in the futures markets since 1936 to protect against the burdens of excessive speculation, including those caused by large concentrated positions. Hedgers and speculators both play a role in the marketplace. For instance, when a farmer wishes to lock in a price for their corn or wheat at harvest time, they might sell a futures contract in a marketplace where a speculator provides the other side of that transaction. Similarly, companies hedging energy prices, interest rate movements or currency movements enter into transactions in which speculators may take the other side.

In setting position limits, the CFTC has sought to ensure that the markets were made up of a broad group of market participants with a diversity of views. At the core of our obligations is promoting market integrity, which the agency has historically interpreted to include ensuring markets do not become too concentrated. The Dodd-Frank Act extended our traditional authorities to set position limits on futures to now include the authority to set aggregate limits across all markets and trading platforms on all derivatives that perform or affect a significant price discovery function with respect to regulated markets that the CFTC oversees.

For the full speech, please go here –
http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-75.html

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