November 28, 2018 – A Crime in Progress

In medical situations, the most serious injuries in emergency rooms and on the battlefield are handled by triage – care is provided in the order of those needing it most. In business, those adverse developments most critical to the main mission of the enterprise are addressed first. Likewise, for the prosecution and prevention of crime – those illegal activities which are ongoing and most critical to the general welfare of society take precedence over activities that have occurred in the past. Of course, I'm not suggesting that illegal activities of the past shouldn't be pursued, just that they shouldn't take precedence over equally serious crimes in progress.

We now have clear evidence that the Department of Justice, the preeminent US law enforcement authority, is investigating possible criminal precious metals trading violations occurring at JPMorgan from 2009 to 2015. The evidence became clear as a result of the DOJ's announcement on Nov 6 of a criminal guilty plea by one of JPM's long-time traders for participating in a conspiracy to engage in commodities price manipulation, among other violations. The Justice Department doesn't use words loosely and any definition of "participating in a conspiracy" would include involvement with others. I still find the original announcement to be beyond extraordinary.

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

The CFTC, the primary federal commodities regulator, has allowed the ongoing crime in progress of a silver (and gold) price manipulation to continue for decades, despite supposedly conducting a formal investigation of such by its Enforcement Division from 2008 to 2013. Since 2008, with the takeover of Bear Stearns by JPMorgan, the CFTC has most likely been pressured by the US Treasury and the

Federal Reserve to lay off JPMorgan for its increasingly blatant manipulation of the silver market. The result of that failure to regulate and stop a crime in progress is beyond shameful and magnified by the fact that price manipulation is the most serious market crime of all as well as being the CFTC's main mission.

To be sure, the results of the CFTC's (and CME Group's) failure to regulate can be seen in price performance and there is not a silver producer or investor that has not been damaged, perhaps irreparably. Certainly, investor sentiment has been damaged to an extent I've not previously witnessed. Even during the years on end of seemingly-permanent $5 silver from the mid-1980's to the early 2000's, has collective investor sentiment been as poor as it is today. It's not as if it is difficult to understand why investor sentiment is so poor, since price sets sentiment and silver price performance has been abysmal (due to JPM's manipulation).

The problem with collective sentiment, in addition to not being a reliable indicator of future price performance, is that it greatly influences and, I would maintain, distorts the objective perception of ongoing developments. A specific case in point is the recent announcement by the Justice Department. Investor sentiment is so poor and firmly set in place that I sense it is distorting the objective evaluation of what seems to be (to me) a truly astounding development. I'm basing my conclusion on feedback from subscribers and also from comments from outsiders to an article I posted the other day which consolidated some recent missives on these pages.

http://silverseek.com/commentary/silver-scandal-17492

I detect two main themes to many of the comments on the article. One is a strongly-held belief that the silver manipulation has been orchestrated by the US Government and carried out by JPMorgan on the USG's behalf, ostensibly to protect the dollar and the financial system. Therefore, the DOJ's announcement means little against that belief. I have always allowed for this overarching government control as being possible, mostly because I suppose anything is possible in matters that can't be proved one way or another; but I remained convinced that the available data pointed to JPM acting in its own behalf (certainly with dispensation related to taking over Bear Stearns).

Few would argue that the Department of Justice is not an integral part of the US Government and, therefore, it bursting onto the manipulation scene would seem to point to some type of divide in the concept of a monolithic and superseding government policy towards silver. Did the DOJ fail to get the government memo authorizing the silver (and gold) manipulation? At a minimum, the action by the DOJ would seem to confirm my take that the silver manipulation is mostly a JPM production. As always, arguments to the contrary are both solicited and welcomed.

The other main theme uncovered in the comments was the strong belief that the DOJ announcement of a criminal guilty plea was nothing more than the same as others in a never-ending series of garden variety announcements of little fish being sacrificed to protect the big fish, the banks themselves. While I also fully understand this collective sentiment, given the endless number of wrist slaps by the CFTC in spoofing and manipulation cases while ignoring the blatant manipulation is silver and gold, I wouldn't be so quick to lump in the DOJ guilty plea with the wrist slaps by the CFTC.

For one thing, there is a world of difference between a monetary fine (which one either can or cannot afford to pay) and going to jail. More importantly, the previous announcements of wrist slaps by the CFTC were always one-offs, meaning the wrist slaps closed the cases. The DOJ announcement is as different as can be, namely, it appears to be the initial shot fired in what the Justice Department clearly indicates is only the start of an ongoing investigation. (Please re-read the DOJ announcement if you've only done so once or twice, as every time I re-read it, more is revealed).

I fully understand, as a result of the continued dismal price performance and the past CFTC failures to confront the most serious case of manipulation in front of it for three decades, how many would be convinced that the DOJ's involvement matters little. But I believe that is due to the collective sentiment that has developed over the years and is not based upon an objective evaluation of what the Justice Department has accomplished to date. With one announcement, the DOJ has received a criminal guilty plea to manipulation, where I'm hard-pressed to recall even a single criminal guilty conviction of precious metals manipulation. And I have no recollection whatsoever of the Justice Department openly stating in such strong and clear words of an ongoing investigation into (criminal) metals manipulation – just as I know of no prior implication of involvement of the silver crook of crooks, JPMorgan.

Whereas the CFTC never paid the slightest attention to the concept that a crime in progress is the most serious crime of all, the Justice Department sure seems to have its head screwed on right. Let's face it – if the silver manipulation ended tomorrow, it still wouldn't be soon enough for me. But compared to the CFTC (which I'm still not sure is even involved in this case), the DOJ is operating at warp-speed to this point. Remember, you don't go against the likes of a JPMorgan in a potential criminal matter without dotting all the i's and crossing all the t's. Now that I think about it, I'm not sure there is any entity on earth that could really stand up to JPM other than the Department of Justice.

Of course, time will tell if I'm placing too much in the way of expectation on the Justice Department in this matter. What's most remarkable is that prior to Nov 6, I had no expectations for DOJ involvement.

On to other developments since the Saturday review and my Monday COT comments. While I did pick up and comment on the most important takeaway in the latest COT report, namely, the emergence of JPMorgan in buying back a disproportionate number of short silver contracts; given the time restraints (usually I have a night to think things over), I'd like to comment a bit further.

What made JPM's buying of more than 4000 silver contracts in last week's report so unusual was that, also as reported, the managed money technical funds were also very big buyers, buying more than 8000 net contracts. Most usually, as you know, JPMorgan is on the opposite side of whatever the managed money traders do, so to see them both big on the same side begs further analysis. Plus, silver prices were higher during the reporting week, so while it made the managed money buying quite ordinary (although larger than I expected), it made the buying by JPMorgan all the more unusual. (But don't worry, these crooks still made a profit, same as ever over the past ten years).

The obvious question of who was on the sell side is answered in the report as other commercials (raptors) sold to the tune of 6000 contracts, plus other large (non-managed money) traders and smaller non-reporting traders sold for more than 6000 contracts combined. The COT data balance, as they must, but the data do not address the matter of why was JPMorgan buying to the upside, very much out of character.

I think the explanation is that something was motivating JPMorgan to behave very much differently than it usually behaves and that "something" was the same something I have been obsessing about since Nov 6 – the surprise DOJ announcement. As I indicated on Monday, JPMorgan has bought back the entire 15,000 short silver contracts it added over the month of October in the last two COT reports and likely even more given the dismal price performance in the current reporting week (until today). I can't dismiss the notion that JPM was hell-bent to buy back as many short contracts as possible from the moment the DOJ made its announcement.

Friday marks the start of the big December deliveries in COMEX gold and silver and while I know of no way to handicap what JPMorgan may do, I can't help but think it will also be motivated by the DOJ's announcement. Unfortunately, I can't decide if that means it will shy away from stopping deliveries (in its own name) or be emboldened to stop like it might be the last chance to do so. Sorry to be wishy washy.

As far as this week's COT report, price action through yesterday's cutoff would suggest net managed money selling and commercial buying, given the general price weakness into the cutoff date, as well as the renewed penetration to the downside of the 50 day moving averages in both silver and gold. However, I'm reluctant to predict by numbers of contracts, given the generally low net volume and my questioning of the capacity of the managed money technical funds to add to new short positions – there's got to be some limit to these traders' stupidity.

Complicating COT report predictions this week was the extraordinarily large drops in total open interest. From the last reporting week, more than 83,000 contracts have disappeared from total gold open interest and as well as more than 23,000 contracts from total silver open interest. I'm fairly sure that this was spread liquidation ahead of first delivery day and not true net position liquidation, but the COT report on Friday will clear the matter regardless.

For those looking at price primarily, I would imagine the outlook appears to be pretty bleak. I have a much different take based on other matters, although the extremely low price is much more a reason to buy than it is to sell. The other matters, of course, include the new one that came into view on Nov 6. Taken together, it's hard for me to be more bullish than I am currently.

Ted Butler

November 28, 2018

Silver – $14.30 (200 day ma – $15.63, 50 day ma – $14.46)

Gold – $1222 (200 day ma – $1265, 50 day ma – $1216)