

October 19, 2016 – Deutsche Bank's Settlement

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A report issued yesterday indicated that the dollar amount paid by Deutsche Bank for settling the lawsuit last April accusing it of manipulating the price of silver via the London Fix was \$38 million.

<http://www.reuters.com/article/us-deutsche-bank-settlement-silver-idUSKBN12H2HB>

When I first read of the amount, it sounded like a boatload of money, much more than I had previously imagined. Almost immediately, however, there was near universal commentary about how cheaply Deutsche Bank got off the hook. I understand that \$38 million is a mere rounding error compared to the tens of billions of dollars big banks have been collectively fined for recent violations, but regardless, it isn't a trivial amount either. Truth be told, I have no experience or particular insight into the current "market" for class action lawsuit settlements and I would suspect that I'm not alone. I also have no idea whether the Deutsche Bank settlement will lead to an avalanche of similar class-actions suits as is suggested in some quarters, but I have trouble imagining that.

But I do have some particular insights, I believe, regarding allegations about a silver manipulation; having repeatedly raised such allegations with the CFTC and the COMEX going back 30 years, a decade or more before anyone else even raised the issue. And it's not just about being first to spot the silver manipulation; the simple fact is that my allegations have remained consistent over the years and have gotten more specific, centering on JPMorgan since 2008. As previously indicated, I remain puzzled that neither the COMEX (CME) nor JPM are part of the lawsuit which Deutsche Bank settled.

I have also referenced the timeless saying that "the enemy of my enemy is my friend" and I am hopeful that the current suit against other banks involved in the London Silver Fix finds its way to the CME and JPMorgan. At the very least, the \$38 million settlement will help underwrite the costs of pursuing the case for years to come. No doubt the settlement eliminates any financial risk to the plaintiffs' attorneys, always an important factor in any class-action suit. But unless the path leads to the COMEX and JPMorgan, it will miss the heart of the manipulation.

That would be a real shame, considering the case is about a price manipulation of silver, the precise issue that has engulfed me for 30 years. It's virtually impossible, should this class action lawsuit prevail in a court of law in the end (not an out of court settlement), that it would not confirm the allegations I have made consistently over three decades – on that I have no doubt. But I do have doubts that a trial verdict could result in a finding that silver was manipulated in price should it not involve the CME and JPMorgan. Please let me explain why.

For one thing, the lead attorney in bringing the case has stated the reasons for filing were the rash of related lawsuits and settlements in other markets (mortgages, LIBOR, FX, etc.) and reports of investigations by regulators in metals and other financial benchmarks. The idea, and a good one at that, was to file a silver manipulation case for the purpose of getting to the discovery phase, where incriminating evidence could be uncovered and more specific allegations could be pressed. I don't see anything necessarily wrong with this as a legal tactic, although I'm a layman in such matters. Besides, it appears to have been highly successful in Deutsche Bank's case, so what's the problem?

The settlement removes Deutsche Bank from further detailed discovery and exposure and will likely lead to settlements with other banks, as indicated in the above link. The possible additional settlements will be good for the lawyers and some investors involved, but not so good in revealing the true extent and workings of the silver manipulation. Ironically, while Deutsche Bank is a clearing (guaranteeing) member of the COMEX, it rarely surfaces in delivery matters and I've never detected the bank as being a big COMEX futures trading participant. Where JPMorgan, HSBC and Bank of Nova Scotia dominate gold and silver deliveries on the COMEX to the tune of tens of thousands of deliveries for their own accounts so far this year, Deutsche Bank stopped and then re-issued only 12 gold contracts for a customer in June and none in silver this entire year. This suggests it is not a big player in COMEX silver. And if Deutsche Bank isn't a big COMEX player in silver, how could it be a big COMEX manipulator?

http://www.cmegroup.com/delivery_reports/MetalsIssuesAndStopsYTDReport.pdf

This raises the issue of why Deutsche Bank settled. Perhaps it feared that the discovery process might reveal other things unrelated to silver that would be very harmful to the bank considering other problems facing it. In this sense, maybe the \$38 million wasn't terribly expensive to make the matter go away. Perhaps Deutsche Bank feared that because this is a case so complicated that it would be a potentially expensive roll of the dice to be in front of a judge or jury that just might rule against the bank, to say nothing of the reputational risk any trial or verdict might involve. A settlement eliminates those risks.

I have only one problem with the case, namely, that I don't understand it as presented and no one I have spoken with, including the lead attorneys and expert witnesses, seems to understand it either. The case is not a step-by-step primer on how the price of silver is manipulated, it's an attempt (so far very successful) to get inside the banks' workings to learn the exact process. For sure, I know that when bankers are behind closed doors, the chance of collusion and general no good is high and that is likely the case here. And no question, there is a lot of smoke surrounding the London Silver Fix and no one should be surprised if some fire is discovered. I didn't say there aren't crooked players in London involved, just that the silver manipulation is almost solely a COMEX production.

This is more a case of getting to the discovery phase by any means possible. This is where the previous well-known civil cases against JPMorgan for manipulating silver came up short Â? they never made it to the discovery phase or resulted in any meaningful financial settlements. That's the significance of the Deutsche Bank settlement. Again, this appears to be a sound legal approach, but to this point leaves the real manipulators on the COMEX, principally JPMorgan, untouched. And should there be additional settlements that might cutoff further connection to the COMEX and JPM.

In sharp contrast to the current case involving the London Silver Fix, which is seeking to uncover the methodology of the silver manipulation, I try to make the specific case for how silver is manipulated right here twice a week. There's no need for me to search for the smoking gun because I found it long ago in weekly data from the CFTC. So clear is the message in the Commitments of Traders (COT) Report that more study it and write about it than ever before. That's because the pattern of position change in COMEX silver and gold contracts is closely aligned with price change.

I started following the COT reports in the early 1980's, back when they were issued monthly and sent by snail mail. I have marveled at how much the reports have improved over the years, both in timeliness and improved data content. Much of the improvement is due to general technology advances, but even more as a result of the CFTC including more new important data. I'm a harsh critic of the CFTC due to its negligence in dealing with the silver manipulation, but I continue to be amazed at the rich data the agency provides to all for free. Quite ironically, it is the rich data that the CFTC provides in the COT report that lays out the step-by-step process of the silver manipulation.

For starters, the COT report shows us that in gold and silver, the main trading and position changes come down to two groups of speculative traders — the managed money traders and the commercials. While no one argues that the managed money traders are speculators, some still cling to the belief that the commercials are engaged in some type of legitimate commodity hedge. Nothing could be further from the truth, as the commercials on the COMEX are almost exclusively banks and financial institutions speculating against the managed money speculators.

Because there are few, if any real producers or consumers involved in COMEX trading, that automatically means that speculators are setting the price for gold and silver. That's whacky and, I believe, illegal. You've read me make this point incessantly, but you've never read a rebuttal from the CFTC, CME or anyone else. That's because it can't be rebutted. This is the first point a class action suit should be making — that the purely speculative price discovery process on the COMEX automatically creates artificial prices because real producers and consumers are missing.

Perhaps the most important feature of the COT reports is the concentration data, which in gold and silver indicated a degree of concentration on the short side that upends any notion of monopoly as intended in US antitrust law. The concentration data is irrefutably manipulative and should be a cornerstone of any civil suit. It is largely the concentration data, I believe, that allows me to label the CME and JPMorgan as criminal enterprises manipulating the price of silver without any blowback. (Yes, I still send them these articles).

While I wait for a civil silver manipulation case that is based upon the COT report and other public data, there is no bad news in the Deutsche Bank settlement and it will be very good news if future cases move in that direction. It's a question of time and I am hopeful we won't have to wait around for the legal gears to move in that direction. Certainly, my vision of the last selloff to come wasn't predicated on this legal case or any other — just the mechanics of COMEX trading.

On to other developments since Saturday. Sales of Silver Eagles have remained strong through yesterday, suggesting JPMorgan is back on the buy side. Sales of Gold Eagles, which never trailed off as Silver Eagles did over the past few months, have only gotten stronger, on track to be among the best months of the year and perhaps the very best. With a week and a half to go in October, Silver Eagle sales are already higher than the full month totals over the past four months. Something changed in the Silver Eagle buying world and it doesn't appear to be an explosion in retail demand. If it's not the return of JPMorgan, then I'm out of explanations.

<https://competition.usmint.gov/bullion-sales/>

And more silver has found its way into the JPMorgan COMEX warehouse this week, following last week's 2 million oz addition. Through yesterday, another 0.9 million oz have been deposited into JPM's COMEX vault, bringing JPM's share to a record 79.8 million oz of the 173.7 million oz COMEX total silver inventory. As a reminder, the JPMorgan silver warehouse held zero ounces when it relisted as a COMEX warehouse in April 2011. Today the silver in JPMorgan's COMEX warehouse is more than three times greater than the next largest warehouse.

<http://www.cmegroup.com/clearing/operations-and-deliveries/nymex-delivery-notice.html>

It occurs to me, had I not first opined that JPMorgan was accumulating physical silver several years ago in many different ways (Silver Eagles, COMEX deliveries and warehouse movements and through SLV), the continued flow of public data would have inevitably led me to that conclusion eventually. However, to this day I am surprised that more haven't reached that conclusion independently, considering the data flow.

But make no mistake, the massive accumulation of physical silver by JPMorgan since April 2011 may be the most bullish single factor for the metal's future price. I have seen no signs that JPM has abandoned its silver accumulation, although it did back off recently in aggressively stopping delivery of futures contracts on the COMEX due to tightness in the wholesale market. It has been some time since I upped my estimate of what JPMorgan holds and the bank likely holds more than the 500 million oz I estimate.

While it's hard to deny the signs that JPMorgan has reemerged as a buyer of Silver Eagles and has recently brought in more metal to its COMEX silver warehouse as being bullish to price, I continue to believe that the bank's best interest is in engineering lower prices in order to set off additional managed money selling. The 5 million physical ounces that JPMorgan may have acquired in terms of COMEX deposits and Silver Eagle purchases over the past two weeks is only 10% of the 50 million paper ounces it bought back in short COMEX contracts over the past two reporting weeks.

Thinking as a criminal (hat tip to Izzy), the best thing for JPMorgan would be to buy back and cover another 50 million oz (10,000 contracts) or more of COMEX short positions. If it can do that, it would mean JPMorgan would have improved its overall net silver position (physicals minus paper short positions) by 100 million oz (plus whatever new physical it bought). That's an enormous amount of equivalent silver.

Previously, I calculated that JPMorgan had picked up 500 million oz of physical silver over the past 5 years or so, or roughly 100 million oz per year. Over just the past two reporting weeks, JPMorgan has bought half that amount in COMEX futures contracts and stands a chance of doing that again at some point Â? if it can rig lower prices and induce the managed money traders to sell. That's the case for potential lower prices ahead, namely, it would appear to be in JPM's best interest.

Is it possible we won't get that final selloff? Of course it's possible and that is the reason for ignoring short term price gyrations and holding silver on a long term basis. Is it also possible for some resumption in the scam within a scam scenario whereby price rallies cause managed money traders to start to buy again, only to be met by renewed commercial selling? In fact, that's what the past few days look like to me.

Having turned prices down from the highs of the summer, thereby completely eliminating the record horrendous open losses (\$4 billion) held by the commercials collectively in their gold and silver short positions, the commercials have also covered significant numbers of those open short positions. As I just mentioned, JPMorgan has more than participated in that short covering, buying back a disproportionate share compared to times past. This gives JPMorgan and the other COMEX commercials financial leeway to re-short on rallies.

At the same time, however, despite the significant commercial short covering over the past two reporting weeks, on an historical basis, the managed money long position and commercial short position is still large in COMEX gold and silver. As such, from JPMorgan's and rest of the COMEX commercials' perspective, the best outcome would be more of an extended price flush to the downside in which even greater quantities of short contracts could be bought back.

Timing is always tricky and it's quite possible any final flush out to the downside could come after more of a price rally. Sorry not to be more definitive, but reading JPMorgan's crooked mind isn't an exact science. All I can do is measure what the bank does and guess its future intentions. My favorite scenario is still a complete downside flush out at some point and then no looking back in silver.

As far as what Friday's COT report will indicate Â? I don't know, apart from there not being a repeat of the very significant changes witnessed over the past two reports. I thought there was some additional commercial buying and managed money selling as of Friday, but that may have been reversed to some extent Monday and Tuesday. Having come close enough the past two weeks combined, I'll quit while I'm ahead and pass on specific contract predictions.

Ted Butler

October 19, 2016

Silver – \$17.68 (200 day moving average – \$17.22)

Gold – \$1270 (200 day moving average – \$1264)

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