# December 26, 2012 – Malfeasance

Malfeasance

I received some great feedback from subscribers in my solicitation for suggestions on how to deal with the silver manipulation going forward (some of which I've yet to respond to personally). All were constructive and greatly appreciated. One, from across the pond, struck a nerve. Actually, it was the perfect word at the center of what George from the UK suggested that caused a bit of a jolt in me. The word was malfeasance. George even included a Wikipedia link for the equally perfect term, malfeasance in office – http://en.wikipedia.org/wiki/Malfeasance_in_office

In truth, George had previously written to me about this subject and may have even used the term before, but for some reason it had not clicked with me. You know how it is Â? sometimes the light only goes on in your head if you are ready for it to go on. Thanks to George's persistence and how recent events have played out in my mind, the light bulb lit up for me this time. Like George, I believe the Commodity Futures Trading Commission is, and has been, guilty of malfeasance in office when it comes to their handling of the silver manipulation. I want to think further on what to do about it, but first I want to make the case.

I recognize the seriousness of such an allegation and please be assured that I would not advance it if I had any doubts as to its accuracy. Come to think of it, I don't know what other word would better describe the CFTC's handling of COMEX silver other than malfeasance. If negligent dereliction of duty in fulfilling a clear official responsibility is malfeasance, then that is what the agency and its commission and staff are guilty of regarding the silver market. You or I didn't choose the Commission's primary mission Â? protecting the public and our markets from fraud, abuse and manipulation. Yet thousands have petitioned the agency for years about the ongoing fraud, abuse and manipulation in COMEX silver to no avail. What makes the CFTC's reaction to the silver manipulation a truly special case of malfeasance is that the agency has disregarded a continuous stream of public demands that the silver scam be ended.

No one would argue that the CFTC has a responsibility to prevent fraud, abuse and manipulation in every regulated futures market, including COMEX silver. I think it is easy to demonstrate that the Commission has shirked its official responsibilities and has not treated silver as it treats other markets. Last week, I termed the agency's special treatment of silver as un-American and unfair, but malfeasance is a much better description. Here are a few specific reasons why I believe the CFTC is guilty of malfeasance when it comes to silver.

In May 2008, the CFTC published a letter which stated emphatically that there was nothing unusual about the concentration on the short side of COMEX silver. It was the second such public letter in four years. http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/silverfuturesmarketreport0508. Subsequent events now prove that the Commission deliberately misled the public because the 16 page letter omitted the essential fact that the largest COMEX silver short, Bear Stearns, had failed two months prior to the letter, most likely because of losses on its concentrated short silver position. That concentrated short position has been held by JPMorgan to this day. I'd like to see someone hold the agency responsible for the malfeasance of lying to the public and Congress, as I first alleged here – http://news.silverseek.com/SilverSeek/1261415180.php

Ever since JPMorgan took over Bear Stearns in 2008, the bank has maintained the big concentrated short silver position, expanding the short on every price rally to any level necessary to cap the price. When the agency's Bank Participation Report of 2008 first revealed that the big silver short position was held in the US bank category, the agency quickly announced a formal silver investigation by their Enforcement Division in response to the hundreds of public complaints it received. This new investigation came just months after the May 2008 public letter denying there was anything wrong in silver. We are now into the fifth year of a never-ending investigation that has only wasted taxpayer money because it was never intended as a bona fide effort to uncover the truth. Public officials squandering taxpayer funds on a phony investigation intended only to delay and obfuscate is a special kind of malfeasance in office.

While the more than four year old silver investigation has dragged on, silver has experienced a number of unprecedented price smashes that can be directly traced to the manipulation and concentrated short position. This is akin to the FBI being tipped off but still allowing a bank robbery or kidnapping to take place. On two occasions in 2011 and over the course of a week or less, the price was smashed more than 30% lower for no legitimate economic reason, other than to benefit the big short sellers. Had such similar price events occurred in any other commodity, whether already being investigated or not, the CFTC would have interceded or at least explained in detail why the price declines occurred. Not only did the Commission not intercede in the manipulative silver takedowns or explain them, there has never been an official mentioning of the silver price events in May and September 2011, despite them being unprecedented. That the agency refuses to acknowledge any price event in silver, no matter how severe and obvious, even in the face of an ongoing formal investigation, is official malfeasance in office of the highest order.

Worst of all is that the evidence of the silver manipulation and the concentrated short position comes from the CFTC itself in the form of its Commitment of Trader Report data and correspondence to lawmakers and this evidence has been presented to the Commission on hundreds of occasions. It's a very special case of malfeasance in office that features a refusal to uphold the law and sworn oaths of office even when the public directly demands the law be upheld for years on end.

I think what needs to be done to deal with the CFTC's malfeasance in their handling of the silver manipulation is to attempt to remove the commission and relevant staff from their current positions. The time to petition them to uphold the law has long passed. None of them have come close to doing the right thing in silver for long enough not to warrant anything short of their dismissal. Any such failure in the private sector would have resulted in dismissal long before now. Rather than spend time speculating on why the Commission won't do its job, I believe the time is better spent on working to remove those public officials who won't do the right thing even after swearing an oath that they would do so. Too much time has been wasted already on regulators who refuse to regulate.

## Tech Fund Follow Up

Another reader and long-time friend dropped me a note after Saturday's review on technical funds, asking me if I was aware that one of the funds I mentioned had announced that they were exiting the business at year-end. I told him that I wasn't aware of that, but added that I wasn't particularly surprised either. I stopped monitoring the fund a year or so ago. The fund in question, John W. Henry & Co, had been in business since 1982, so its demise is no small thing http://www.jwh.com/home.asp

I had mentioned this particular technical fund frequently over the years, mainly because it was one of the very few which maintained a detailed and transparent record of its performance on a monthly basis. In addition, John W. Henry was a legend in the futures industry and epitomized the mechanical technical approach using moving averages. In this article from almost seven years ago, I highlighted the first of what turned out to be a series of rotten performance for years to come for the fund. From over $3 billion in assets under management to $100 million is quite a fall. http://www.investmentrarities.com/ted_butler_comentary/01-24-06.html

While there may be many causes given for the fund's demise, to my mind there is one principal reasonÂ? the commercials figured out the fund's Â?codeÂ? and used it against the fund. Actually, that wasn't very hard to do as the code was simple Â? buy on the way up (thru the moving averages) and sell on the way down. In my opinion, the commercials bled this fund to death, constantly tricking them into buying and selling because it was easy to do because the commercials have come to behave collusively and have captured the pricing mechanism.

It really is the perfect crime Â? the commercials (led by JPMorgan and the CME Group) have the ability to rig prices higher and lower, thereby controlling when the tech funds buy and sell. What makes it perfect is that the commercials can always claim they are buying on lower prices and selling on higher prices and there is no law against that. But there are laws against dominating and controlling a market, as well as concentrated positions and collusive behavior; although those laws are not observed in silver.

In fact, the demise of John W. Henry & Co is another supporting bit of evidence of how advanced the silver manipulation has become. The way I see it, the fund's strong performance for most of its 30-year existence, only to be hammered over the last seven years, is a clear measurement of the commercials' growing paper market dominance. If any single trading approach could be the absolute worse way to behave in the silver manipulation, it had to be Henry's. (The best approach being buying and holding physical silver). That's because the fund added aggressively to long positions as silver (and gold) prices advanced and then sold out in a panic whenever prices crashed. Since we've seen an increasing series of big, gradual moves up in silver prices only to be followed by breathtaking and manipulated price crashes, I suppose it was only a matter of time before Henry's mechanical trading pattern would have tapped him and his investors out.

If I had to bet, it would be that the introduction of HFT over the past few years in COMEX silver was the final nail in the fund's coffin. And I can't help but think that this development is just another piece put into place in the giant jigsaw puzzle of the decades-old silver manipulation nearing completion. There aren't that many remaining pieces left.

Ted Butler

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Silver – $30

Gold – $1661

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