

February 8, 2012 – Enough is Enough

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The journey to justice and truth is often long and arduous, but must never be abandoned. The alternative is to live a life lacking substance. But neither should the journey be unnecessarily prolonged. These things tend to creep up on you day by day, but we have passed the point of the CFTC taking too long for deciding if the silver market has been manipulated in price. Enough time has passed.

Having started in August 2008, we are now at the 3.5 year mark in the current investigation into silver by the Enforcement Division of the Commodity Futures Trading Commission (CFTC). Never has a similar investigation taken this long. Considering that the current silver investigation is the third such inquiry by the Commission into alleged downside price manipulation by large commercial participants on the COMEX, the agency has spent most of the past decade investigating silver. As recently as this past November, the Commission reaffirmed that the silver investigation is ongoing. Still, the issue is unresolved.

<http://www.cftc.gov/PressRoom/PressReleases/silvermarketstatement>

The current silver investigation began due to revelations I discovered and wrote about in the CFTC's Bank Participation Report of August 2008. This report indicated one or two US commercial banks held a concentrated short position which was unprecedented and uneconomic in terms of real world supply and demand. I asked the question "how can one or two US banks holding a short position equal to 25% of annual world production not be manipulative?" That question has not been answered by the Commission to this day. Later, I discovered that it was basically only one US bank, JPMorgan, which was the big COMEX silver short.

<http://news.silverseek.com/TedButler/1226344970.php>

Not for a moment do I believe that the CFTC initiated the current silver investigation (or the previous two) just because I wrote a few articles. The key was that so many readers took it upon themselves to write to the Commission and their elected officials about the issues of concentration and manipulation in the silver market. Simply put, there would have been no silver investigations had not great numbers of you petitioned the regulators. Please think about that for a moment. It is beyond extraordinary that the agency has investigated and continues to investigate such a small market like silver. That can only be because of public pressure and that the evidence was compelling. Most remarkable of all is that the core allegation in all three silver investigations has remained the same — manipulative short selling by large commercial interests on the COMEX.

In the two prior investigations of May of 2004 and 2008, the Commission's Division of Market Oversight (DMO) concluded that the silver market was not manipulated.

<http://www.cftc.gov/files/opa/press04/opasilverletter.pdf>

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/silverfuturesmarketreport0508>

Particularly puzzling in the 2008 report was the contention by the DMO that the concentration on the short side in COMEX silver wasn't unusually large and that the biggest short sellers regularly changed places, so that there wasn't one big permanent short. The report was issued on May 13, 2008 or two months after JPMorgan acquired Bear Stearns and its concentrated short position in COMEX silver. How the DMO could overlook the transfer of the most concentrated short position in the history of the commodity markets is beyond comprehension. Subsequently, I have come to believe that Bear Stearns' forced acquisition was caused by the giant silver short position going against it (silver was at a 27-year price high at the time of the takeover) and not mortgage-related difficulties. In this article, I accused the DMO of lying.

<http://news.silverseek.com/SilverSeek/1261415180.php>

Unlike the current silver investigation, the previous investigations were concluded by the Commission in months, not years. Timing aside, all three silver investigations share a commonality apart from stemming from the same basic core allegation of manipulative short selling. That commonality is the Commission's refusal to conduct a fair and balanced investigation. I confess to being the instigator behind all three silver investigations (with you being the enabler). Not once, in any of these investigations has the agency ever contacted me or anyone I know who is familiar with the allegations. I even complained to the CFTC's Inspector General about the one-sidedness of the process. How can you conduct a balanced investigation on manipulative short selling when you only question one side, the shorts?

The real problem with the findings of the CFTC of no manipulation in their previous investigations is two-fold. First, it provides a shield and comfort to the perpetrators of the manipulation in that they can continue to hide behind the agency's findings in the furtherance of an active crime in progress. The longer the CFTC takes to act or report on its current investigation the comfort to the manipulators is maintained, at a cost to nearly everyone else. Second, the prior findings put the agency in a tricky spot. Because the Commission had previously found nothing amiss in the silver market on two separate occasions, if the agency uncovers any wrongdoing in silver in the current investigation it will, effectively, contradict its former findings. Obviously, it will be loath to do so.

The fact that the Commission will contradict its former findings should it now find something wrong in silver may explain the unprecedented delay on the part of the Enforcement Division to act. But the reluctance to reverse the former findings is a weak excuse for the Commission to fail in its most basic mission, namely, preventing fraud, abuse and manipulation. Most importantly, the silver manipulation is a crime in progress and the Commission's delay in terminating it has allowed for untold continuing damage to thousands of market participants at the hands of the manipulators. Not once, but twice in 2011 did the silver market plunge by 35% in a matter of days on deliberate price moves lower. It is impossible for a world commodity to suddenly plunge 35% in days without some radical change in real supply and demand in a free market. Aside from proving that the silver market is still manipulated, these price plunges would not have occurred had the Commission acted expeditiously in concluding its current silver investigation.

Every day that the Enforcement Division stalls in concluding its investigation allows the silver manipulation to fester. At the very least, the Commission should have privately forced the end of the silver manipulation by jawboning the big commercial traders before now. Jawboning large traders with questionable positions is a time-honored Commission practice. It is clear that the COMEX commercial traders are behaving in a collusive manner. This can be seen in COT data which verifies the commercials generally act in a unified manner and the practice of High Frequency Trading, which is just a fancy term for trader collusion.

The present and ongoing nature of the silver manipulation cannot be over-emphasized. This is what makes the situation so unusual. I understand that the Commission has little real experience with intervening in an active and ongoing manipulation. Like most regulatory and law enforcement agencies, the CFTC deals with dissecting wrongdoing after the fact, rendering punishment and then proscribing new rules to prevent a recurrence. I admit it must be a daunting task for the agency to consider taking on the most powerful of market participants, including JPMorgan and the CME Group, should it act to end the silver manipulation. There has been no instance, of which I am aware, of the CFTC ever busting up a manipulative crime in progress in history.

Undoubtedly, this lack of experience is also responsible for the delay in the Enforcement Division's failure to conclude and act on its silver investigation. But that doesn't mean the agency shouldn't step up and do the right thing. After all, the case has largely been made for them already by independent analyses and the verifiable data in the agency's own statistics. In addition, price action alone during 2011 points to a manipulation in progress, as world commodities don't suddenly plunge 35% for no good reason. In many ways, the Enforcement Division's job has been made easy by the thousands of petitions the agency has received in matters related to silver. Certainly, the prime silver manipulator, JPMorgan, has already been clearly identified.

There has never been a situation before of the public continuously pressuring a regulator to end a crime in progress with that regulator refusing to act. Such a situation only undermines confidence in our institutions and the rule of law. Three and a half years is far too long for the CFTC to investigate allegations involving the most serious market crime possible — manipulation. Enough is enough. Either the agency should act against the silver manipulation or fully explain why there is no manipulation. This silver investigation has taken so long that at some point blame moves from the manipulators to those responsible for ending it. Undoubtedly, that transfer of blame has begun to occur.

This is the last time I intend to ask that you write to the Commission or, more importantly, to your elected representatives. Simply ask your Congressman or Senator why such an important investigation should take so long. This investigation has taken so long that chances are that you might be writing to a different elected official than previously.

Ted Butler

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Silver – \$33.75

Gold – \$1731

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