July 3, 2019 – Merrill Lynch versus JPMorgan

The recent settlement between the Justice Department (and the CFTC) and Merrill Lynch (a unit of Bank of America) draws inevitable comparisons with what a similar agreement might look like between the DOJ and JPMorgan. After all, the Justice Department announced back in November that it was engaged in an ongoing investigation into spoofing and market manipulation in precious metals futures following a criminal guilty plea by a former JPM trader. There can be no doubt that the subject of the settlement with Merrill Lynch and the ongoing investigation surrounding JPMorgan are one and the same, namely, spoofing and market manipulation.

In fact, itâ??s hard to imagine two cases being more closely linked, since both involve spoofing, the now-discredited trading practice involving the entry and immediate cancellation of orders whose sole intent is to manipulate prices in the very short term. Because traders for Merrill Lynch and JPMorgan were involved in spoofing for years and conducted it on hundreds, if not thousands of occasions, the systemic nature of the infractions indicates all sorts of breakdowns in the internal regulatory safeguards of the banks involved. This is why Merrill Lynch and Bank of America completely capitulated and agreed to a deferred criminal prosecution agreement.

How could there be any legitimate defense for Merrill not knowing its traders were systematically manipulating on the COMEX? Ignorance is not a defense. Donâ??t be fooled by the relatively light fine of $25 million imposed by the DOJ (there was an additional $25 million levied by the CFTC). Iâ??m convinced the monetary fines were deliberately set low (by the DOJ and CFTC) so as not to attract too much attention to the seriousness of the deferred prosecution agreement itself. Itâ??s a strategy that worked, as there was minimal mainstream media attention to the Merrill capitulation. Had the fine been a billion dollars or more, which it could have easily been, media attention would have been intense. But since the fine was only $25 million, few actually read the prosecution agreement.

Ironically, Merrill Lynch and Bank America (and JPMorgan in the future) have the CFTC to blame for getting nailed for spoofing. How so? Well, if the CFTC (and the CME Group) had done its job and cracked down on spoofing when it first appeared a decade or so ago and eliminated a trading practice that was completely devoid of any economic legitimacy, neither Merrill, JPMorgan nor anyone else would have engaged in the corrupt practice. In other words, the weak or compromised regulators, by failing to eliminate spoofing from the get go, ended up encouraging the very practice that has come to ensnare Merrill Lynch and JPMorgan and others.

I believe there is a similarity in the larger manipulation by which JPMorgan has depressed prices in order to acquire massive amounts of physical silver (and gold) on the cheap. Had the CFTC stepped up to the plate when it discovered JPMorgan was manipulating silver in 2008, there would likely be nothing to be resolved on that score. But by treating it with kid gloves, the CFTC encouraged JPMorgan to manipulate silver (and gold) for more than a decade. Just as the spoofing jig came to be up, so shall JPMorganâ??s much larger and far more serious scam.

But if the similarities between the spoofing cases of Merrill Lynch and the (pending) case against JPMorgan are strong, the differences are even more pronounced. When the announcement of indictments of individual traders in the Merrill Lynch case was first made last July 18, there was not the slightest hint that the traders were working with many other traders within the firm or with any supervisory knowledge or had learned to spoof from more senior traders, as was the case in the Nov 6 announcement about the trader pleading guilty who had worked at JPMorgan. (Please note â?? neither Merrill Lynch nor JPMorgan were named in either announcement, as this is DOJ policy until an indictment or settlement is announced).

https://www.justice.gov/opa/pr/two-connecticut-men-charged-deceptive-trading-practices-executed-us-commodities-markets

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

There is a world of difference between what Merrill Lynch and Bank of America copped to, namely, failing to properly supervise a couple of rogue traders and what JPMorgan is alleged to have fostered in the Nov 6 announcement â?? operating a virtual spoofing and manipulation breeding laboratory. Please donâ??t take my word for it, just read the two announcements for yourself. What JPMorgan did was many, many times worse than what Merrill Lynch admitted to. But thatâ??s just the tip of the iceberg.

While there was spoofing going on for years at Merrill Lynch, the same was occurring at just about every bank that dealt in COMEX futures. Funny how spoofing was largely an illegal market practice almost unique to banks. Thatâ??s because the illegal practice of spoofing is closely tied to market making, which is just another tool used to rip off the managed money traders. Thatâ??s reflected in the fact that the vast majority of spoofing cases involve traders for banks.

The biggest difference between Merrill Lynch (and Bank of America) and JPMorgan when it comes to precious metals is in size and dominance. Merrill is a flea compared to the elephant that is JPMorgan. As Iâ??ve disclosed previously, I started out as a commodity broker at Merrill Lynch in 1972 and Iâ??m not intending any disrespect towards the firm. For years, Merrill was the leader in retail and institutional commodity transactions, but as time transpired, it moved more into securities and investment management and away from commodities. In fact, I was a bit taken aback to see ex-traders from Merrill Lynch even show up on the spoofing radar. Certainly, neither Merrill Lynch nor Bank of America has any presence to speak of in COMEX deliveries and Bank America holds no OTC precious metals derivatives in the OCC quarterly derivative report. Merrill Lynch isnâ??t even a clearing member of the COMEX any longer.

On the other hand, JPMorgan is the top gun, big mama and head honcho of all things precious metals, particularly silver and gold. In fact, Iâ??m not sure who number two is, since JPMorgan is so firmly entrenched as number one. JPMorgan has been the undisputed leader in OTC precious metals derivatives for more than 20 years, even before the merger between JPMorgan and Chase Manhattan Bank in 2000. Since acquiring Bear Stearns in 2008, JPMorgan has largely been the leading short seller in COMEX silver and gold futures contracts. JPMorgan has been the custodian of the largest silver ETF, SLV, since its inception in 2006, giving it unique status to convert shares of SLV into physical metal (which is how it accumulated at least 250 million oz of silver). JPM now owns the largest COMEX-approved silver warehouse, which holds more than 150 million oz of silver since opening in April 2011 (it also holds 50 to 100 million oz in other COMEX-approved silver warehouses). JPMorgan has been the leading stopper (taker) of silver deliveries on COMEX futures contracts for itself and clients and the biggest issuer of silver deliveries for clients, as well as in gold for most of the past decade.

Simply put, JPMorgan is, by far, the largest entity in both silver and gold derivatives and physical dealings, so much so that it dominates all aspects of precious metals. If anything, I may be overstating Merrill Lynch as being a flea compared to the elephant that is JPMorgan in precious metals dealings, because Merrill may not be as large as a flea. To be sure, there was a heck of a lot more spoofing going on at JPMorgan than there ever was at Merrill Lynch. Thatâ??s obvious from the original press releases from the Justice Department. Therefore, the punishment should be much greater for JPM than it was for Merrill Lynch. But it doesnâ??t stop there.

While spoofing does manipulate prices in the short term (both up and down), it is far from being the cause of the suppressed price of silver since 2011. The sole cause for silverâ??s depressed price is JPMorgan shorting into every silver rally for more than a decade. JPMorgan used spoofing as a tool to aid in its price suppression scheme because its motivation was to acquire physical metal on the cheap. No one else, least of all Merrill Lynch, had any motivation to buy physical metal on the cheap â?? just JPMorgan. Â Â Â Â Â Of course, in addition to having the clear intent and motive to depress silver prices for the past 8 years, JPMorgan also had the means and opportunity to do so. Am I leaving anything out?

Therefore, what JPMorgan did was many, many times worse than what Merrill Lynch did. Basically, Merrill Lynch failed to properly supervise two or three rogue traders that resulted in a combined $50 million fine and the acceptance of a criminal deferred prosecution agreement (an extremely serious admission). What would be the appropriate punishment for JPMorgan? (No, being drawn and quartered is off the table). In addition to spoofing on a much larger scale than Merrill, JPMorgan single-handedly suppressed silver prices for nearly a decade so that it could acquire 850 million ounces at artificially depressed prices. Thereâ??s simply no comparison in the gravity of what JPMorgan did, relative to Merrill Lynch.

Finally, there is a world of difference in the harm done to individual investors and mining companies between spoofing and the deliberate price suppression scheme conducted by JPMorgan. Very few will be able to recover damages as a result of spoofing, which is a short term manipulation. But were JPMorgan be found to have depressed silver prices for nearly a decade (as it should be), the damages would be immense and relatively easy to recover.

The problem is what can the Justice Department do about this? If it truly cracks down on JPMorgan in any near-proportionate level with how it handled Merrill Lynch, JPMorgan is dead meat. But putting JPMorgan out of business is simply unacceptable. More unacceptable, as I previously opined, is letting these stone-cold crooks continue to manipulate silver prices. This argues for a behind-the-scenes workout in which JPMorgan ends its silver manipulation with no great fanfare.

It would not be right for me to continue to openly call JPMorgan as crooked when it comes to silver (and gold) were my allegations shown to be unfounded. But no one â?? not JPMorgan, the CFTC, the CME Group or the Justice Department â?? insists that I cease my allegations. I believe there is a good reason why no one is trying to shut me up â?? my allegations are so well-founded and substantiated that the mere acknowledgement of them must be avoided, lest it lead to a legitimate open debate. I can live with that, knowing full-well that in time enough will recognize that there can be no greater manipulation than being the largest paper short in order to buy the most physical metal in history.

In developments since Saturdayâ??s review, Mondayâ??s sharp selloff had me suspecting it was the start of yet another wash, rinse and repeat flush out to the downside, following the big managed money buying over the past month. As a result, I broke out JJ Caleâ??s â??Got the Same Old Blues Againâ?•, something always quite apropos on past occasions.

https://www.youtube.com/watch?v=8JvyxKJToJs

The version with Leon Russell adds some funk (both should be played on the loud side)

https://www.youtube.com/watch?v=RvQZQwZaG10

However, before I could really get into the resignation of the dastardly commercials ripping the rug out from the managed money traders yet again, prices, particularly for gold, turned sharply higher yesterday and into yesterday evening. As I write this on Wednesday morning, gold is up for the week by $5 and silver is nearly flat, remarkable comebacks from the depths of the lows on Monday. Since day to day price volatility has expanded and price movements have proven to be so counterintuitive and unpredictable, no telling what prices will be at publication time.

Also largely unpredictable, at least for me, is what the next COT report will indicate for the reporting week ended yesterday. (By the way, I intend to publish brief comments late Monday when the holiday-delayed report will be issued). I wouldnâ??t expect additional managed money buying and commercial selling, particularly in silver (given its generally rotten price action), but I am also unsure about how much managed money selling may have occurred. The big increase of 10,000 contracts in goldâ??s total open interest on Monday seemed highly counterintuitive, but my guess is that it might be due to an increase in spread-related positions, a regularly-occurring (but still inexplicable) phenomenon which seems to happen at the beginning of the month preceding a coming big delivery month (August in gold). In any event, rather than speculate wildly as to what specific positioning may have occurred, I think this is a good time to just wait and examine the data closely on Monday.

The strong price action in gold has undoubtedly put financial pressure on the 8 big commercial shorts, leading to suggestions that a number of them might be in trouble and prone to panic and rush to cover on higher prices (for the very first time). While the sharp Monday selloff brought some relief to the big shorts, the price snapback yesterday and into today has increased financial pressure on them. Iâ??ll recap the running money scoreboard when I signoff in a bit.

Back in the summer of 2016, the 8 big shorts in gold and silver were out a combined $4 billion (the most ever) and managed to weather the storm, finally buying back added shorts on a break-even basis in the late fall as gold and silver prices declined sharply. Iâ??ve likened these big manipulative shorts to Count Dracula, very hard to kill and unless a wooden stake is driven through their hearts, donâ??t write them off. Still, the open losses accruing over the past month in gold (not in silver) are notable and this is a fluid situation.

Iâ??m still convinced the key to whether some of the big commercial shorts get overrun or not is the role of JPMorgan, lord and master of all things in gold and silver. Simply put, if JPMorgan lends its strong manipulative shoulder to the commercial shorting effort, the odds are greatly reduced for a panicky commercial short covering. But if JPMorgan only pretends to be participating on the short side or is half-hearted in that effort, then weâ??re talking about a whole other matter.

Thatâ??s because JPMorgan holds so much physical silver and gold that it can do what it pleases and canâ??t possibly turn out to be anything but aces for itself no matter what occurs. I can easily see JPM adding some new shorts, but not participating fully on the short side in the end as a way of demonstrating to the regulators (should they ever ask) that JPM wasnâ??t responsible for a price explosion (even though it would make a fortune in that event). Should JPMorgan not add enough new shorts to fortify the overall commercial shorting effort, thereby double crossing the other commercials, it is game over for the other shorts. All we can do is monitor Mondayâ??s and future COT and Bank Participation reports for clues of this.

Along these lines, Iâ??m still a bit thunderstruck with the data in the last COT report which indicated a record large net long position for the four largest traders in COMEX silver futures, both on an absolute basis (at 67,328 contracts), as well as a near-record (set the prior week) in that the number of contracts in the concentrated long position was greater than the concentrated short position (52,901 contracts). What makes this development so strange is that since May 28, the concentrated long position in silver has grown by nearly 18,000 contracts on little more than a one dollar rise in the price of silver. The concentrated short position grew by 6551 contracts over this time.

At the same time, the concentrated long position of the 4 largest traders in COMEX gold futures, on a rally of as much as $160, actually declined by nearly 3500 contracts, to 76,821 contracts; while the concentrated short position grew by nearly 72,000 contracts to 165,773 contracts. Â Please know that Iâ??m just presenting the hard data as recorded in the COT reports; the interpretation of the data is less certain.

I would have thought the concentrated long position in silver wouldnâ??t have grown much considering the anemic price rally and that the concentrated long position in gold would have grown much larger and not actually shrink as it did. While Iâ??m puzzled at the increase in big long positions in silver and not in gold, Iâ??m not discouraged by these events, because it represents an unexplained anomaly of a type that suggests a sea change in price performance ahead. It is beyond preposterous that silver is as cheap as it is relative to gold (and everything else) and the only possible explanation is the price manipulation on the COMEX. Maybe some big buyers are waking up to the manipulation and trying to take advantage of it.

A subscriber asked me why some big traders would be buying silver and not gold, but I canâ??t read minds, even if I knew who the traders were (I donâ??t). I did tell him that if it were up to me that I would be buying silver instead of gold. The simple answer is the data indicate that buying by very large traders has occurred in silver, but not who the buyers were or why they bought. I do suspect some type of JPMorgan involvement, but only because it is so central to everything in silver and gold.

At todayâ??s prices as of publication time, I would calculate that the 8 big commercial shorts in gold are sitting on an open and unrealized loss of just over $1.75 billion. (Silver hasnâ??t rallied enough to result in meaningful losses to the big shorts). The open losses to the big gold shorts might be less if they successfully day-traded the big gold reversal last Tuesday, as I suspect, but Iâ??m leaving that out. In order to follow this on your own, Iâ??m using a concentrated net short position of roughly 25 million ounces of gold (247,793 contracts as of June 25) and an average shorting price of $1350. Each dollar movement adds or subtracts $25 million to the open loss.

There will be a weekly review on Saturday that wonâ??t include COT commentary, which Iâ??ll send separately late Monday.

Ted Butler

July 3, 2019

Silver – $15.34Â Â Â Â Â Â (200 day ma – $14.97, 50 day ma – $14.85)

Gold – $1421Â Â Â Â Â Â Â Â Â Â (200 day ma – $1279, 50 day ma – $1321)

Date Created
2019/07/03