November 3, 2010 – The $100 Billion Excuse

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We all make mistakes from time to time; it's part of the human experience. Certainly, I include myself in this (if you are interested in my mess-ups, my wife conveniently maintains the complete list). Given the inevitability of human error, I've become less interested in how people screw-up and more interested in how they fess-up to their missteps. Besides, I'm a big believer that we learn more from our mistakes than from what we do correctly. Therefore, I've become less tolerant of those who refuse to admit when they've made a mistake and resort to excuses, instead of learning from what they did wrong. The blaming of someone or something else instead of facing up to an error is widespread. And it stinks.

Organizations and institutions are run by humans, so they make mistakes as well. In some ways, that's the history of the world. Mistakes by institutions may also be inevitable, but the consequences can be more serious given their size and scope. For that reason more attention should be placed on how they react to their mistakes. I don't I have to tell anyone how infuriating it has been to never hear a big institution admit the role they played in the great financial crises we have lived through these past few years. It's always somebody else's fault. It is very hard to learn from mistakes if those mistakes are never acknowledged. Whatever happened to honesty is the best policy?

This loss of honesty has led to creativity in offering excuses. We've travelled far from the dog ate my homework or my alarm clock didn't go off, to world-class spinning and tale-weaving. This is particularly true in institutional excuse fabrication. And for very good reason Â? the stakes have grown enormously. If an organization messes up and openly admits it, the liability can be staggering. This leads me to the point of this article Â? the institutional lack of honesty in the coming termination of the great COMEX silver manipulation.

Let me start by stating the obvious. There has been a blatant and documented ongoing downward silver manipulation in force for two decades, due to concentrated short-selling on the COMEX. The main entities responsible for the manipulation have been the COMEX itself (now owned by the CME Group, Inc.) and the primary regulator, the CFTC, who has allowed it to continue. In the last two and a half years, a third entity, JPMorgan, has emerged as the poster-child of the manipulation as a result of their take-over of Bear Stearns in March 2008 and Bear's concentrated silver short position. The CFTC'S August 2008 Bank Participation Report indicated that JPMorgan , either alone or in concert with another US bank, held short the equivalent of 25% of the world annual silver mine production. It is not possible for such a concentrated position not to be manipulative.

As time has progressed, more market participants have become aware of the silver manipulation. More will in the future. This growing awareness has now resulted in the CFTC starting to sing a different tune than their previous tune – no problem, no matter what the evidence. In turn, the CFTC's apparent shift has now resulted in actual lawsuits being filed against JPMorgan and others for manipulating silver. More suits will be filed. The outcome of the suits is less important than the fact that they have been and will be filed. That's because these lawsuits are unprecedented, in that there has never been, to my knowledge, a civil commodity manipulation lawsuit ever filed before the CFTC filed manipulation charges. That's proof of how obvious and blatant the silver manipulation has become.

In light of the clear silver manipulation and the growing awareness of it, what has been the reaction of the main entities responsible for it? The CFTC seems to be coming to grips with the reality of the silver manipulation, thanks largely to Chairman Gensler and Commissioner Chilton, in my opinion. They have a long way to go, but they may be finally on the right path. In the case of the exchange and JPMorgan, their response has been silence. They can't remain silent forever, of course. Sooner or later, they will have to respond directly to the allegations of manipulation and the looming issue of legitimate position limits in COMEX silver. The silence by the exchange and JPMorgan to date has been nothing short of extraordinary. I never imagined such high-powered institutions would behave in such a manner, namely, to remain silent in the face of direct and widespread allegations of serious wrongdoing. Then again, what the heck can they say?

Whatever they do say, it better be good. That's because the army of well-paid lawyers for the CME and JPMorgan know they have to come up with a 100 billion dollar excuse. Not that it would cost that much to cover the concentrated silver short position, but because the legal liability of their actions could come to cost them even much more than $100 billion. If my allegations of a long-term silver manipulation are true (and increasingly that appears to be the case) the list of parties damaged is a mile long. And this says nothing of reputational consequences.

In the spirit of constructive suggestion, let me offer an alternative to the expected dishonest excuses soon to come from the CME and JPMorgan to explain their manipulation of the silver market. Instead, come clean and fess-up. Skip the lies as to why it was someone else's fault and make amends. Forgo the legal scorched earth strategy and do something constructive.
Sure, there will be many billions of dollars in restitution to be paid, but the CME and JPMorgan (and the other big shorts) can do the country a favor by manning-up and doing the right thing. Set a good example for a change. Maybe I'm naÃ¯ve to expect such exemplary behavior by our important financial institutions, but I am truly worried that a fight by them in this silver matter could result in their demise. We would all be diminished by that unfortunate result.
My advice to the CME and JPMorgan is to work with the CFTC to fix this.

No matter what course the CME, JPMorgan and the CFTC take, silver investors should expect the ultimate outcome will be shockingly higher prices. Given the tremendous stakes at hand, we must prepare for price volatility, especially if the CME and the big shorts decide to dig in and lie and fight. That's their choice and not ours. Our only choice is to not lose silver positions due to their dirty tricks. As always, if we do sell-off big, it will be because of the CME and the JPMorgan and the other big shorts, not for any other reason. One thing is for sure – this silver business is serious and will not be quietly resolved.

In late-breaking developments, the CFTC has appointed someone who appears to be the right choice as their new Enforcement Director. David Meister seems to me to be of the same mold as the Enforcement Director of the SEC, Robert Khuzami, who is one bad dude when it comes to dealing with violators of the law. I wish Mr. Meister well and I wouldn't feel good at all if I were involved in the silver manipulation. http://www.cftc.gov/PressRoom/PressReleases/pr5930-10.html

Here's timely story from a reporter who has grasped the silver story as well as anyone.
http://www.citywire.co.uk/money/qanda-silver-price-manipulation-will-we-get-answers/a446000?ref=citywire-money-latest-news-list

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Silver – $24.50

Gold – $1348

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