

## September 25, 2013 – Five Years/Unfair Comparison?

### Five Years Was Enough

Today, the CFTC announced it had closed its formal silver investigation began in September 2008. The Enforcement Division decided not to recommend to the Commission that any charges be brought in silver. <http://www.cftc.gov/PressRoom/PressReleases/pr6709-13>

Undoubtedly, to those (like me) that are convinced that silver has been and is manipulated in price, the announcement doesn't seem to offer any substantive evidence that silver wasn't manipulated; just an affirmation that the investigation was thorough. The announcement touched on many issues, but not the key issue – the degree of concentration on the short side of COMEX silver (and gold) held by one or two US banks in the August 2008 Bank Participation Report. Shortly afterward, it came to be known that JPMorgan was the big bank holding the concentrated short positions as a result of the Bear Stearns takeover.

This was the key issue and the announcement, effectively, left it out. This is not surprising. This investigation was only initiated, in my opinion, because the Commission couldn't answer a simple question, namely, how a 30% net market share by JPMorgan wouldn't be manipulative to the price. Such a large percentage of market share had always been prosecuted by the CFTC in the past for being a market corner and manipulation. Rather than answer that simple question, the Commission initiated an expensive taxpayer funded investigation designed to avoid answering the real question.

Today's announcement confirms something I felt for years, namely, that the agency would intend to close the investigation without specifically addressing the documented concentration on the short side of COMEX silver. There's good reason for that – there's no way market corners by JPMorgan could ever be legitimately explained away. The most likely outcome was always that the agency would say in the end – “we looked real hard for wrongdoing, believe you me, but didn't find any and we can't tell you anymore because of confidentiality considerations.”

The truth is that I was kind of annoyed when this investigation was announced five years ago because I thought we needed another silver investigation like I needed a hole in my head. It was a cop out move by a weak agency designed to deceive the public and pander to the crooks at JPMorgan (although I didn't know JPMorgan was so crooked back then). All that was needed was a simple explanation for why a 30% market share wouldn't be manipulative to price and no such answer existed.

What makes today's announcement particularly unfortunate is what has transpired in silver since the investigation began five years ago. It was bad enough in 2008 when JPMorgan drove silver prices from \$21 to under \$9; but the worst of the silver manipulation was what occurred while the CFTC was investigating. There were two unprecedented 30% and 35% price declines in a week in 2011 with not the hint of legitimate supply/demand explanations. In any other world commodity, such extreme price declines would generate CFTC investigations on their own merit; just not in COMEX silver (and gold).

This is the third official denial in nine years by the CFTC that the silver market was manipulated. The first two came in May of 2004 and 2008, with very long public letters explaining why the silver market wasn't manipulated. The last explanation in May 2008, occurred two months after Bear Stearns' losses on their concentrated short positions in gold and silver caused the investment bank to fail. Of course, the agency's 15 page denial of a silver manipulation left that out. Despite the length of the latest investigation, the CFTC has chosen a brief one-page and non-responsive explanation to close the matter. If you were looking to bury the issue and avoid transparency, this is the way you would do it.

Since I have some experience in these matters (having caused all three investigations), let me pass on some brief thoughts. The first two silver manipulation denials by the CFTC caused many people to initially question whether silver was manipulated as I contended. Over time, more came to be convinced that silver was manipulated by the flow of facts and developments, despite the CFTC's denials. My sense is that the announcement today will convince no one (except the stalwart manipulation deniers) that silver isn't a rigged market. If anything, the public response to the announcement is many times more hostile to the agency than in previous denials. For a regulator, this is hardly welcome news. I think the announcement was more a case of the agency growing weary of hearing complaints about the ongoing investigation, perhaps the longest in government history.

I don't think the agency believes what it announced today will convince anyone that silver is a free market; not when all the evidence points the other way. For the agency's sake and particularly its chairman, Gary Gensler, I hope this public announcement is very different from what private steps the agency may be taking. Let's face it — the odds of the CFTC coming out and finding that manipulation existed in silver after denying it forcefully for two decades were too remote to calculate. It just wasn't going to happen. It's always wise to put yourself in the other guy's shoes.

If I was in Gensler's shoes, I probably wouldn't allow the agency to be embarrassed by admitting to having blown something right under their noses for 28 years; but that doesn't mean I would do nothing either. The way this silver manipulation should have been ended long ago was behind the scenes and as quietly as possible. This announcement makes that possible, as the alternative is for it to blow up and inflict greater damage on the agency. Considering recent regulatory developments for JPMorgan, there has never been a worse time in history for the bank to be charged (as it should be) with manipulating silver and gold prices. JPM is a systemically important financial institution and for it to be charged in a long term and ongoing price manipulation in gold and silver could lead to its demise. There are very serious consequences to the financial system should that occur and no one in the position of authority would risk that knowingly. That said, JPMorgan's manipulation must and will still end for the good of us all.

Certainly, past experience between CFTC public denials of a silver manipulation and future price action is not especially troublesome. The price of silver when the first public denial of a silver manipulation by the CFTC was issued in May 2004 was \$5.60 and the price in May 2008 was under \$17. On an historical basis, CFTC denials of manipulation are not necessarily negative to the prospective price.

One thing the denial today may result in is a new aggressiveness by JPMorgan in dealing with those who accuse the bank of price manipulation in gold and silver. In other words, if I keep calling JPMorgan crooked, the announcement today might clear the way for reprisals by the bank. The only problem is that the facts point more than ever to JPMorgan being the market crook I allege them to be, so backing off isn't an option to me. Here's the article I was writing when the CFTC announcement was released.

### An Unfair Comparison?

I can't help but to be struck, although not completely surprised, at the continuing flow of regulatory news concerning JPMorgan. I have been alleging that JPMorgan has been manipulating the price of COMEX silver (and gold) for more than five years and have been expecting regulatory developments in that market; but I can't say that I was expecting the deluge of other regulatory actions of late against the bank. One development, in particular, appears to connect the unexpected to the expected.

Of all the current regulatory woes befalling JPMorgan, the most troublesome and potentially damaging is the apparent insistence by the federal commodities regulator, the CFTC, to demand that the bank admit to having manipulated the price of derivatives securities as a result of the London Whale debacle. The size of the reported monetary penalty, \$100 million, appears not to be the obstacle (it's sad that a \$100 million fine is not more of deterrence). Instead, the sticking point is JPMorgan's aversion to admitting to manipulating the derivatives in question for fear of the potential consequence of that admission in other markets. Here's a story from yesterday's NY Times on the matter. Please pay particular attention to the passages related to the CFTC.

<http://dealbook.nytimes.com/2013/09/23/jpmorgans-legal-hurdles-expected-to-multiply/?hp>

The reason why JPMorgan is reluctant to admit to having manipulated prices in the London Whale matter is because there is an easy to prove pattern between the banks' behavior in many derivatives markets. The similarity is JPM's pattern of coming to control prices by means of a dominant market share. In simple terms, JPMorgan corners markets in a serial manner by insisting on being the biggest fish in the pond of most markets it deals in. The problem with that market strategy is that it runs counter to US commodity and antitrust law which is to restrict dominance and control. Of course, this is at the heart of my allegations of manipulation of COMEX silver and gold by JPMorgan.

Perhaps the worst thing for JPMorgan in their clash with the CFTC in the London Whale case is how easy it is to recognize that the bank doesn't have a leg to stand on in contesting charges of manipulation. Let's face it Â? JPM's trader was called the London Whale because of the large size of the position; this is exactly the circumstance in COMEX gold and silver. Either JPMorgan held a dominant and controlling market share, or market corner, in the London Whale derivatives or it didn't. If JPMorgan didn't hold a market corner in the derivatives by virtue of the size of the position, the bank wouldn't agree to anything and the CFTC wouldn't be threatening enforcement action, period.

Up until this point, the exact market share held in the London Whale case by JPMorgan has not been revealed, to my knowledge, and the problem for JPM is how to keep attention to that market share from public view. I'm sure JPMorgan would go to whatever level was necessary to keep that market share confidential, but I don't know if the CFTC case has advanced too far for it not to become public. If I had to bet, this may be the sticky point in CFTC/JPM negotiations and for good reason. Talk about the intricacies of credit default swaps and most folks' (including mine) eyes glaze over; talk in simple terms of market share and market corners and that's much easier to understand.

What it comes down to is how much of a market share JPMorgan's position represented of the derivatives market in question. Did JPM hold 5%, 10%, 15% or more of the credit default swap market involved? At some point, a large enough percentage share of a market automatically becomes a corner on that market and, therefore, becomes manipulative to the price. In a nutshell, this is what's at issue in this case and every case of potential market manipulation. Even today's announcement by the CFTC doesn't negate this.

It seems to me that a greater percentage of market shares may be tolerated in highly specialized derivatives markets dominated by large sophisticated traders (including banks and hedge funds), like in the London Whale derivatives, than in broad markets involving world commodities, like silver and gold. In other words, the percentage of concentration or market share allowed to be held by any one trader should always be lower the larger a market is in terms of the number of participants. Holding a 15% to 25% market share in COMEX gold or silver, for instance, is much worse than holding that percentage in a credit default swap.

The broader a market, the smaller the market share held by any one entity should be allowed. This principle is embodied in the proposed formula for position limits by the CFTC. For a market the size of COMEX gold futures, the proposed formula calls for no more than 2.5% to 3% of the market be held by any one trader. In contrast, JPMorgan holds close to 20% of that market on the long side currently, down from 25%. In December, JPMorgan held 20% of COMEX gold on the short side and succeeded in rigging gold prices lower by \$500 and making more than \$3 billion in ill-gotten gains.

The important point is that the dominant market share, or corner, that JPMorgan held in the London Whale derivatives matter is the exact same issue in COMEX gold and silver derivatives, only with a different name. Perhaps I should refer to JPMorgan as the Gold or Silver Whale since the term has the same meaning as the London derivatives trader. The glaring similarity between the London and Gold and Silver Whale trades (aside from JPMorgan orchestrating all of them) is that all crossed the threshold of a position becoming large enough to be a market corner and, therefore, be manipulative to price. But it is in the differences between the London Whale and the Gold and Silver Whale that sets you back.

One difference is that the London Whale market corner and manipulation is over; the gold and silver market corners held by JPMorgan still exist and are still manipulating the price. The Gold and Silver Whale trades are still a crime in progress and that makes it a lot worse. Another difference is that the CFTC had no clue and offered no warnings about the London Whale's position until after it self-destructed and became visible. In gold and silver, the agency publishes the data that prove gold and silver market corners and manipulation by JPMorgan exists; yet even with this data refuses to intercede in the crimes in progress or even comment on the five year old formal silver investigation into this matter.

I have recently commented on the likelihood of the existence of some agreement or arrangement between the US Government and JPMorgan, stemming back to when JPMorgan was asked to take over Bear Stearns and its big concentrated COMEX short positions in gold and silver. It would appear something is holding the CFTC back from ending the market corners and manipulation by JPMorgan in gold and silver.

A new thought Â? since market manipulation is clearly the most serious market crime possible and no agreement would appear legal if it sanctioned criminal activity; any agreement between the USG and JPMorgan could be considered to be on the shakiest grounds possible. Maybe some secret court would approve an agreement by the US Government and JPMorgan to manipulate gold and silver prices, but certainly, such an agreement would not likely stand the test of public scrutiny or approval.

Here's another new thought along those lines directed to the members on the board of directors for JPMorgan (to whom I'll send this article). Even if there was an agreement stemming from the Bear Stearns takeover giving wide latitude to JPMorgan to manipulate gold and silver prices, it was an agreement no responsible director would tolerate for long. Board directors have a responsibility to insure that the bank operates honestly and ethically and in full compliance with the law; that's the purpose for having a board of directors, to ensure integrity. By continuing to manipulate gold and silver prices, JPMorgan has become a criminal enterprise quite apart from the never-ending headlines of bad conduct in other lines of business. How any director could tolerate this reputational threat is incomprehensible.

While I'm not giving up on pushing the regulators to do the job they swore to do (even after today's announcement), the end of the silver manipulation will be brought about for sure when there isn't enough metal to go around. Therefore, it's wise to monitor the verifiable clues that reflect developing supply and demand. One result of the current long market corner in COMEX gold and short market corner in COMEX silver held by JPMorgan is that, by definition, it has priced gold to be relatively more expensive than silver than it would be without the existence of the market corners. Or that silver is much cheaper to gold than it would be without the corners.

I want to be careful here ^? I'm not saying gold is expensive and can't go higher; I'm saying that gold looks expensive relative to silver, particularly considering JPMorgan's position in each. I think this can be seen in two key demand factors that are highly comparable for gold and silver; ETF flows and US Mint statistics.

From the beginning of the year, roughly a third of the metal (14 million oz) in the big gold ETF, GLD has been redeemed and liquidated, the largest liquidation in the history of this ETF. At the same time, the silver metal holdings in the big silver ETF, SLV, have actually increased by 6% this year, despite silver falling more in price. What this suggests is that investors intuitively recognize that silver's price is too low relative to gold and this accounts for the disparity between the holdings of each.

The statistics from the US Mint look even more revealing. Silver Eagles have been vastly outselling Gold Eagles all year, but the pace since the end of May has been unprecedented. Starting in June, Silver Eagles are outselling Gold Eagles in total ounces by more than 100 to 1. This means that almost twice as much money has been going into Silver Eagles than has been going into Gold Eagles since June. Never has this occurred before.

[http://www.usmint.gov/about\\_the\\_mint/index.cfm?action=PreciousMetals&type=bullion](http://www.usmint.gov/about_the_mint/index.cfm?action=PreciousMetals&type=bullion)

Since the amount of gold in dollar terms is hundreds of times greater than the dollar amount of investable silver, it is incredible that more money is going into silver ETFs than gold ETFs this year and beyond incredible that much more money has been going into Silver Eagles than Gold Eagles since June. While there may be different explanations for these phenomena, one that fits nicely is an intuitive and collective market recognition that silver is much cheaper relative to gold and, therefore, a much better investment buy as a result of JPMorgan's long market corner in gold and short market corner in silver.

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Silver – \$21.85

Gold – \$1335

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