

September 28, 2013 – Weekly Review/CFTC and JPM

Weekly Review

Compared to actual news developments, it wasn't much of a price week in gold and silver, as silver shed 5 cents (0.23%) and gold added \$11 (almost 1%) for the week. As a result of gold's outperformance, the silver/gold ratio widened out slightly to almost 61.5 to 1. While there are many reasons why I expect silver to vastly outperform gold in the long term, there is only one reason that comes to mind as to why silver may underperform gold in the short term. That reason is because JPMorgan holds a long market corner in COMEX gold futures and a short market corner in COMEX silver.

Since the big news this week was the announcement by the CFTC that it was closing its five year silver investigation, along with the growing regulatory travails of JPMorgan, I'm going to run through the usual format quickly, so I can get to those issues.

Turnover, or movement into and out from the COMEX-approved silver warehouses remained active this week at more than 4 million ounces. For the second consecutive week, total inventories rose; this week by 2.8 million oz, to 165.4 million oz. The rapid turnover is still unique to COMEX silver and not gold, copper or any metal traded on the NYMEX/COMEX and still points to overall physical tightness.

I was (pleasantly) surprised that there was no withdrawal of metal from the big silver ETF, SLV, and instead an inflow of near 4.5 million oz over the past week or two. It seems reasonable that some of this metal was deposited to reduce the short position in SLV, but we won't be able to determine that until the next short report. This also points to physical tightness. The short report published this week didn't show much for SLV, as the short position in SLV declined slightly and was, therefore, inconclusive. The standout in the short report was the 5 million share (500,000 oz) reduction in the big gold ETF, GLD, the first meaningful decline in GLD's short position in months. In the percentage of shares held short compared to total shares outstanding, GLD is still double that of SLV, which is unusual on an historical basis.

<http://www.shortsqueeze.com/?symbol=slv&submit=Short+Quote%99>

I commented on Silver Eagles sold by the US Mint on Wednesday and there is nothing new to report as sales for Silver Eagles are still only updated on Mondays. The standout observation is still in how many more Silver Eagles are being sold compared to Gold Eagles.

The changes in this week's Commitments of Traders Report (COT) were hard to predict given the price violence in the reporting week, which included the wild price ride on and after the Fed's no taper announcement. I knew that the commercials were selling when gold and silver prices jumped sharply late Wednesday and into Thursday and also knew that the commercials were buying on the extreme price weakness on the Friday after the announcement. But I didn't know what the net effect would be for yesterday's report as of the Tuesday cut-off.

As it turned out, the changes for the week weren't dramatic, but my point is that there were big changes in position intra-reporting week. The COT report is a snap shot of positions as of the close on Tuesday. As such, if the commercials and speculators put on big positions one day and take them off on another day within the reporting week, when the report comes out it looks like not much took place in terms of the changing of positions. But the reality is that there were big changes within the week which can't be seen in the report. That was the case this week.

In gold, the total commercial net short position grew by a fairly modest 6200 contracts, to 71,500 contracts. This puts the total commercial net short position still firmly at a bullish historical level. By commercial category, the four biggest shorts (not JPM) added to their short position by 4300 contracts. There were unusual changes in the big 5 thru 8 shorts, which bought back nearly 7000 contracts and the raptors which sold out around 9000 longs. The changes in these last two categories were unusual enough to make it appear an error, but the good news is that this is separate from calculating what JPMorgan is up to. For those trying to follow it directly from the report, the key figure for JPM's long position in gold are changes in the concentrated long position of the four largest longs.

I would calculate JPMorgan's market corner on the long side of COMEX gold to have increased by 2000 contracts to 64,000 contracts. Once spreads are removed (as they must be) from total open interest, JPMorgan's market share rose over the 20% mark (20.3%). To my knowledge, there has never been a net market share in any large futures market of 20% by one entity where the CFTC didn't move against the obvious market corner (except in COMEX silver, of course).

In COMEX silver, the total commercial net short position fell by 2600 contracts, to 19,600 contracts. This is the lowest total commercial net short position in six weeks and, like in gold, still very low and bullish in historical terms. By commercial categories, the raptors did most of the buying, adding 1900 contracts to a long position now totaling 30,900 contracts. The big 4 shorts (definitely JPMorgan) bought back a bit less than 500 contracts, but I'm going to leave JPM's concentrated silver short position at 14,000 contracts (70 million oz). This means that JPMorgan is still short almost 15% of total COMEX open interest (minus spreads). Next week, the Bank Participation Report will also be published and this always allows for the monthly recalibration of what JPMorgan holds. Precision aside, what JPM holds is always too much.

More on CFTC and JPM

When the announcement that the CFTC was closing its five year old silver investigation with no charges being proposed, I had about two hours to compose something before my self-imposed 3 PM deadline. Looking back, I wouldn't change anything I wrote on Wednesday, although now that I have had more time to think about it, there are a few additional thoughts I'd like to share. In addition, there have been new developments, since Wednesday, regarding JPMorgan's regulatory matters that are nothing short of unprecedented. I'll also comment on what the price implications may be for silver and gold and what I intend to do next in terms of ending the silver manipulation.

The timing of the CFTC's announcement (aside from the inconvenience to my deadline) seemed unusual in that it came amidst numerous regulatory developments for JPM, including the matter of the CFTC coming closer to accusing the bank of manipulation in the London Whale case, according to published reports. The great irony, of course, is that the CFTC is only considering manipulation in the London Whale matter because it was a whale of a position; meaning the position was so large that it must be considered a market corner and, therefore, manipulative to the price of the securities in question. This is, obviously, the exact same circumstance in COMEX gold and silver, where JPMorgan holds both a long side corner in gold and a short market corner in silver. When a market corner exists it is impossible for prices not to have been manipulated.

Yet the CFTC has closed its silver investigation despite clear evidence of market corners in COMEX silver and gold, as revealed in the agency's own published data. As I reported on Wednesday, the CFTC left out any mention of the huge percentage holdings, or market corners, in COMEX silver (and gold) by JPMorgan that caused the agency to investigate in the first place. But at the same time, the CFTC is pressing JPM on the London Whale's corner. What gives? I have some new thoughts on that question which constitute quite a change in my original thinking in one aspect.

Before I share those thoughts, let me say that the CFTC announcement on the silver investigation didn't come out of thin air, either in timing or language. In my opinion, it was very much related to other regulatory developments at JPMorgan and it would be a mistake to view it as coincidental. The announcement never once mentioned the word "concentration" which was at center of my original complaint. (Believe it or not, there was a time, in 2009 and 2010, when that word was the most used by Chairman Gensler). The announcement stated that the complaints received in 2008 involved differences between COMEX prices and retail silver products. Huh? I don't think I ever raised that issue; it was always JPMorgan's concentrated position or market corner. Besides, in September 2008, there was no unusual discrepancy between COMEX silver prices and prices for retail forms of silver; those discrepancies developed in November. <http://www.cftc.gov/PressRoom/PressReleases/pr6709-13>

Let me go one step further and point out that if the CFTC or JPMorgan could have refuted the sole issue that led to the original investigation and all subsequent allegations of manipulation on my part, both would have done so. In a real sense, I am trying to help the agency and JPM explain away the data and market facts and have them shoot down my allegations that JPMorgan is manipulating silver and gold prices. Yes, I'm trying to make it easy for the CFTC and JPMorgan to make this all go away for good and even put me out to pasture (only figuratively speaking please). It's simple "all either has to do is explain why JPMorgan's historic (over the past 5 years) concentrated holdings of as much as 25% to 40% of the COMEX gold and silver market wouldn't necessarily be market corners and manipulative to prices. If either could offer a legitimate explanation, there would be no allegations on my part.

But that legitimate explanation does not exist and both the CFTC and JPMorgan are trying their best to avoid even a discussion of concentration in COMEX gold and silver for fear it would open a can of worms. So the only alternative is to close the investigation with no full explanation and for JPMorgan to continue to ignore credible allegations of illegal market behavior. As it turns out, the CFTC had no other practical choice but to lie.

The new regulatory developments around JPMorgan (since Wednesday) are so mind-boggling that they have caused me to change my mind about a previous strongly held opinion. Published reports indicate that there may be a new settlement of some mortgage improprieties by JPMorgan of as much as \$11 billion, which is double the total fines paid so far by the bank for the past two years. On Thursday, there was a face to face meeting between JPM's CEO, Jamie Dimon, and US Attorney General Eric Holder. I can't recall such a meeting ever happening before. What was most revealing were the actual words spoken by the AG at an unrelated press conference afterwards.

Sometimes, it pays to listen directly to the source data when available, as what I've read of the meeting didn't match up to the AG's actual words. What I heard him saying was that the Justice Department was making it a priority to go after those that manipulate financial markets. What do you hear? (Sorry about the annoying commercial - click on the three minute video with the AG's picture) <http://www.cnbc.com/id/101054761> If I were able to have asked AG Holder a question at that time, it would be - Mr. Attorney General, does that priority by the Justice Department apply to the gold and silver market manipulation by JPMorgan?

Sometimes, when you are witnessing historical events contemporaneously, it's hard to put things in proper perspective. History is always written after events occur. But the legal fines and settlements of JPMorgan are stunning in size and variety. Even more shocking is how much the US Government's current actions against JPMorgan is at extreme odds with former relations between the government and the bank, say prior to the last year or so. If anything, JPMorgan appeared to be the USG's favorite bank previously, but no longer is that the case. It makes me question the conviction of so many that JPMorgan is acting on behalf of the US Government in manipulating silver and gold. If the USG and JPM are as thick as thieves in the gold and silver manipulation, as many contend, wouldn't the government be cutting the bank some slack in all the other matters?

And it's not just that all the fines and settlements are materially significant; because the settlements are related to some of JPMorgan's most profitable business lines, it is reasonable to conclude profits from those lines will be crimped in the future. After all, in addition to paying many billions of dollars in fines and settlements, JPMorgan has had to agree to curtail the way it formerly conducted business. The overall fortunes of JPMorgan have turned decidedly negative in a remarkably short period of time and this sudden change in fortunes has caused me to change a long term and strongly held previous conviction.

In the past, I've always felt that the silver manipulation's end would likely be nothing more than a write-off of a few billion dollars for JPMorgan should the bank buy back its silver short position and incur losses in that process. I've always felt that the biggest risk to JPMorgan was the legal liability, both civil and criminal, that would result from the termination of the manipulation making it obvious that JPM had manipulated the price of silver. But by and large, a rapid run up in the price of silver would have no big impact on the rest of the world. The CFTC's announcement of the closing of the silver investigation, combined with all the related actions of the US Government against JPMorgan has convinced me that the government is now worried about what any actions against JPMorgan for manipulating gold and silver prices might mean for the financial system. Please allow me to explain.

The CFTC had two choices in its silver investigation. It could drop the investigation and close the case without bring charges (which it did), essentially lying. In this case, there was no market reaction, except most of the public observers being disgusted and frustrated at the CFTC. The only other choice was for the CFTC to bring charges against JPMorgan for manipulating the silver (and gold) price. If you contemplate what this choice would have had on the silver price, you would quickly conclude it would have had a profound effect. Quite simply, all hell would have broken loose if the CFTC charged JPMorgan with manipulation.

Such a charge would have set off a series of certain events, including the price of silver racing towards the sky, the setting in motion of an unending series of civil lawsuits against JPM (even if the government charges failed in the end), likely serious criminal charges and a rush by investors world-wide to buy a commodity that the US Government was asserting was artificially depressed in price by the most important bank in the US. Further and most importantly, in JPMorgan's current weakened state, I'm not so sure that the bank could have handled the litigation onslaught by countries and mining companies and investors who have been damaged ever since JPMorgan first took over the concentrated short positions from Bear Stearns in 2008. Surely there would be punitive damages and the clearest case for racketeering (RICO) charges ever, if the CFTC had decided to charge JPM for manipulating silver (and gold) prices.

Please remember that JPMorgan may be the most systemically important bank in terms of our financial system. Five years ago, Lehman Brothers' bankruptcy and AIG's near bankruptcy and bailout almost pushed us over the edge. Think about what a sudden similar demise to JPMorgan might portend to the financial system today. Now think about the likelihood that any federal agency would do anything to hasten JPMorgan's demise today. Not only is JPMorgan too big to fail, it is certainly too big to fail by intentional government action.

In simple terms, there was no possible way that the CFTC might set in motion a sequence of events that included JPMorgan becoming besieged to the point of bankruptcy; which is precisely what a decision to file charges of silver manipulation could and, most likely, would have led to.

I am saying, due to JPMorgan's suddenly fragile financial and regulatory situation, this is not the time for the CFTC to charge the bank with the silver and gold manipulation that JPMorgan is certainly guilty of. It may sound crazy, but after trying (more than anyone) for almost 30 years to end the silver manipulation, for me to state that now is not the time for the CFTC to bring charges openly. Yeah, I'm also saying that were I in a position of leadership at the CFTC and the US Government, I would have lied too, as the potential negative consequences to so many millions of innocent families from a financial system failure is a risk too great to bear. All I would ask you to do is to think this over for a while before you rush to judgment about the morality of lying for the greater good. If after this contemplation, you feel that what I'm saying is wrong, please share your thoughts with me; just think about it first.

Ok, so what does the CFTC's announcement mean for silver prices and what can I do about it next? Latter first Â? since I never wanted this last silver investigation in the first place, I'm not interested in another investigation. I will continue to point out the facts and convey my analysis to the agency, but I'm going to increase the pressure on JPMorgan and most particularly the bank's board of directors. Certainly that includes sending each director any and every thing I write about the bank from now on.

These directors have a clear and mandatory responsibility to deal with allegations of manipulation by the bank and they can be held personally liable for failing to do so. Considering the legal hot water that the bank finds itself in, it is logical the directors should be sensitive to allegations of the type I make. Of course, the CFTC's announcement might embolden the bank to lash out at me, but one day at a time.

What does the CFTC's announcement portend for the price of silver? I know the immediate reaction by most observers is that silver is now doomed and the manipulation can and will go on forever, now that JPMorgan has been given the green light to behave as before. I don't see it that way; in fact, I think this may be an extremely positive development for silver. As always, I'm speaking in the long term, as I continue to profess ignorance about price movements in the short term. How could this announcement possibly be good for silver long term; have I lost my mind? I don't think so, at least not quite yet.

As I indicated on Wednesday, any possible regulatory resolution now will come from behind the scenes, not in full view. This was always the way it should have been dealt with and the agency's announcement renders a private solution as the only possible course. This situation is too treacherous for full transparency at this point, given JPMorgan's weakened and rapidly deteriorating legal and financial status. My only real concern, as has been the case all along, is if the CFTC resorts to intentionally fabricating the public data it publishes in the COT and Bank Participation Reports. It has not done so up until now, to my knowledge, and I don't expect (and hope) that to change.

But why would the announcement be good for silver prices? By demonstrating that the agency couldn't directly address the issue of JPMorgan's market corners publicly, it actually raises the odds it will do so privately. Lying (for the greater good) in the announcement involved more than one person at the agency. I don't think most everyone in government (aside from elected officials) is bad; there are many conscientious individuals, certainly at the senior level. I think that enough conscientious individuals at the agency know the real circumstances of the silver and gold markets and JPMorgan that they knew that they couldn't choose charging JPMorgan openly at this time. Their only choice was to lie in the announcement, but resolve to deal with the issue privately. After all, what's to gain otherwise? The price of silver is already down to and below the cost of production for many miners, what good would it do to push it dramatically lower?

The knockout punch for the ending of the silver manipulation was always in the physical market. In addition to the announcement having avoided the market corners by JPMorgan, it had nothing to do with the inevitable silver shortage. I can't say the announcement would accelerate the silver shortage, just that it wouldn't delay it either. Since the CFTC's announcement has absolutely no bearing on the inevitable silver shortage, it should be looked at as a non-event in the potency of the coming knockout punch.

Assuming my assessment is correct, the real

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