

## September 30, 2020 – The DOJ/CFTC/JPMorgan Settlement

As widely telegraphed over the past week, the US Justice Department and Commodity Futures Trading Commission (along with the SEC) have settled the precious metals spoofing/manipulation case which first came into view in November 2018 with the announcement of a guilty plea by a former JPMorgan trader. The total fine of \$920 million was the largest in CFTC history and the settlement included a Deferred Criminal Prosecution Agreement, the third (by my count) such agreement involving precious metals manipulation (BankAmerica and Scotiabank had previously entered into DPA's involving precious metals manipulation).

<https://www.justice.gov/opa/pr/jpmorgan-chase-co-agrees-pay-920-million-connection-schemes-defraud-precious-metals-and-us>

As expected, the settlement narrowly focuses on spoofing, the illegal short term trading device and not the much more serious long term suppression of silver (and gold) prices that I claim JPMorgan has been guilty of since 2008. As such, any claims by victims of JPMorgan's illegal activities would have to show damage from very short term trading, a difficult and expensive undertaking. As I have explained previously, were the Justice Department and CFTC to have alleged a long term suppression of prices by JPMorgan that would have, effectively, put the bank out of business a period. Accordingly, no such finding was possible.

I'm not going to spend too much time on summarizing the case to this point, as it would be more instructive to look ahead and I believe there is plenty to anticipate as a result of the settlement. As long term subscribers might be aware, I began my focus on JPMorgan's manipulation of silver and gold a year before I started this subscription service (in August 2009) when I discovered, via the August 2008 Bank Participation Report that JPM became the largest short seller in COMEX silver and gold as result of its takeover of Bear Stearns in March 2008. Subsequently, of the more than 1100 articles I have penned on these pages, almost all have featured and accused JPMorgan of manipulation. (I've sent all my articles to JPMorgan and the CFTC, as well as the CME Group).

As a result of a number of my articles around the time of the August 2008 Bank Participation Report and reader petitions, a formal 5 year investigation was initiated by the CFTC into silver manipulation, involving the DOJ and which was later reported to have focused on JPMorgan. Although that investigation was concluded with no charges, I continued to allege that JPMorgan was manipulating the silver and gold markets.

On April 30, 2018, I called and wrote to the Public Integrity Section of the FBI, complaining that the CFTC was guilty of malfeasance in allowing JPMorgan to amass a perfect trading record in COMEX silver and gold futures, in which it never suffered a trading loss when shorting excessive amounts of metals contracts and then used its ability to suppress prices to accumulate massive amounts of physical silver and gold on the cheap. Based upon the timeline of the case and recent reporting on Bloomberg, I'm convinced my complaint prompted the Justice Department to take a closer look at JPMorgan, the first step of a process that concluded yesterday.

So while the Justice Department took a pass on going after JPMorgan on the much more serious grounds of price suppression and the accumulation of physical silver and gold at the manipulated

prices it created by excessive short selling, at least it dinged JPM pretty good and, most importantly, brushed the bank back from hugging the plate (a baseball term for intimidation). While the \$920 monetary penalty is the largest in CFTC history, it's widely acknowledged that to JPMorgan, it is no more than nickels and dimes.

The same cannot be said of the Deferred Criminal Prosecution Agreement; particularly because this is not JPMorgan's first DPA. The only thing worse is a straight criminal prosecution, which would, effectively, put a financial institution out of business (think Arthur Anderson). Although individual traders from JPMorgan still face criminal prosecution, that's quite different than the bank itself being so charged. More than any amount of a monetary fine, a DPA carries serious ramifications and you can be sure that it has gotten JPM's attention – just as it did BankAmerica/Merrill Lynch and Scotiabank, which also agreed to DPA's for precious metals spoofing/manipulation. It's getting to be easier to name those banks not (yet) agreeing to a DPA for spoofing.

Make no mistake, none of these banks would be so foolhardy as to knowingly violate the terms of their agreements with the Justice Department. And these agreements are not limited to spoofing; they include all manner of activities that can be considered illegal or manipulative. You can be sure that every attempt will be made at JPMorgan and the other banks, even those not charged, to remain on the up and up in precious metals for the foreseeable future. As such, this is not a big inducement to continue the decades-old COMEX manipulation. And that's the first big takeaway.

I know the popular prevailing opinion is that JPMorgan got a wrist slap and it will soon be back to manipulating silver and gold. I would respectfully disagree. Criminal activity is not well-served when it is under close scrutiny by those capable of putting the criminals in prison or out of business. Suddenly, the landscape for continued price manipulation in silver (and gold) has gotten quite inhospitable. The old way of doing business would appear to have changed. Let me be clear in what I am saying. I think this settlement is far more significant than is widely believed.

I will acknowledge upfront that just because I have been on JPMorgan's case like white on rice since the fall of 2008 and engaged in attempting to end the COMEX silver manipulation for more than 35 years, does it mean that my take is correct. If I turn out to be wrong, I will admit it, as and when the evidence dictates. But at this point, I believe the settlement is a seminal event in what has been a lifetime journey for me. Not just because of the settlement, but including other important factors as well, I believe the price path ahead for silver will be markedly different from the past.

In addition to confirming (at least to me) that my complaint of April 30, 2018 to the FBI was what tripped off the fresh look by the Justice Department into JPMorgan months later, I learned something important from the Bloomberg article written in advance of the just-announced settlement.

<https://www.bloomberg.com/news/articles/2020-09-28/inside-the-jpm-precious-metals-desk-called-a-crime-ring-by-prosecutors>

What I learned from the article was that spoofing – the entering of orders immediately canceled and intended to manipulate prices in the very short term – was a trading device developed by JPMorgan and other banks to offset the effects of High Frequency Trading (HFT) – computer to computer operations run by non-bank trading firms. I did know that the banks were the main practitioners of spoofing (due to repeated public charges), but never knew why that was so. Let's face it, I and most of you aren't engaged in high-speed computer to computer trading, as it has nothing to do with long

term analysis and investment.

Yet, at the same time, as I described just a few days ago in the weekly review, this HFT and high-speed computer to computer trading has come to dominate not just silver and gold, but trading in all markets. I'm not excusing in any way the banks resorting to the illegal practice of spoofing to counterbalance the price-controlling influence of widespread and all-encompassing computer to computer trading, I'm just explaining that I learned something I feel is important from the Bloomberg article.

As a result, it seems to me, at a minimum, that the crackdown by the regulators on spoofing by the banks means that an important counterbalance to the all-pervasive influence of computer to computer trading has just been eliminated, or largely so, making HFT even more of a price influence than otherwise. I can't imagine this was the Justice Department's or CFTC's intent, but the road to (price) perdition is paved with good intentions. It's hard for me to see how the settlement doesn't strengthen the influence of high-speed computer to computer trading. What does this mean for silver and gold?

Well for starters, as I discussed on Saturday, this should increase price volatility and the magnitude of both up and down price moves. There's little question in my mind that the sharp, near \$10 price rise in silver in mid-July, followed by the more recent sharp, near \$7 price selloff, reflects the growing influence of high speed computer to computer trading, aided by the forced withdrawal from spoofing by the banks. I am not necessarily putting a value judgement on this development, just trying to analyze the facts as they appear. That said, I think the price discovery process is nuts, but it is what it is.

Therefore, it seems most reasonable to expect sharper up and down moves than we've seen until now and position ourselves as appropriately as possible - meaning first to be mentally prepared for big down, but especially big up moves in silver. In fact, I don't have much difficulty seeing a fairly quick up move in silver, whenever it starts, of \$20 or more due to the effect of now-unencumbered high-speed computer to computer trading, coupled with silver's spectacular fundamentals and the inevitability of an industrial user/investor rush to the physical metal.

Overarching the retreat from spoofing by the banks and the strengthening of HFT, of course, is the likely behavior of the 8 big shorts in COMEX silver and gold. While the Justice Department and CFTC will remain silent on this issue, from fear of attracting attention to the main reason for silver's long term price suppression, the CFTC's own data reveal a remarkable change of pattern over the past year or so in gold and more recently in silver. It's no secret that these big shorts have suffered mightily (despite very recent relief on the latest selloff) for the first time where they have always enjoyed previous consistent success. And the big shorts have certainly appeared to have lost their previous appetite for shorting in near-unlimited quantities on rallies of late.

I am not suggesting the risk of selloffs is a thing of the past. What I am suggesting is that a confluence of forces have aligned that promise to propel silver (and gold) prices far higher than is currently imagined. While it is in the eye of the beholder as to whether the just-announced settlement between the DOJ/CFTC and JPMorgan was a wrist slap or a seminal event, I would suggest it could be both. Lost in the settlement is the fact that JPMorgan still has managed to pull off the double cross of the ages against its former big short partners in crime. In fact, its agreement with the regulators puts it in perfect position to do the one thing that would make the bank the most money possible, namely, nothing.

If JPMorgan abides by the terms of the Deferred Criminal Prosecution Agreement it has just entered into with the Justice Department and ceases to spoof or otherwise engage in manipulative trading practices, it's hard for me to see how silver (and gold) prices don't soon soar. In effect, the DOJ and CFTC have given JPMorgan the go-ahead to make a bloody fortune (on top of the bloody fortune it has already amassed). By not adding to shorts or engaging in spoofing to offset HFT high-speed computer to computer trading, there's no reason prices won't soar at some point.

I still reckon that JPMorgan or its insiders hold at least 700 million ounces of physical silver and 25 million ounces of physical gold on which more than \$20 billion in open profits have accrued (despite the recent selloff). And my estimates may be too low. For instance, I claim that JPMorgan has been accumulating physical metals for some 9 years. In the case of gold, JPM's holdings would amount to less than one percent of all the gold bullion in the world (less than a half of one percent of all the gold in the world). But seeing how long JPM has been accumulating physical metal and has, effectively, unlimited buying power, is it inconceivable that it could have accumulated, instead of less than one percent of the world's gold bullion, less than two percent? That would give it 50 million ounces of gold. Just sayin'.

If the settlement does result in JPMorgan sitting on its hands and allowing silver and gold prices to soar, then we are about to enter a new era — quite different than the past several decades. If, however, JPMorgan and the other big shorts quickly resort to past practice, as most widely believe, and add aggressively to short positions on the next rally, then what I just opined will be wrong and I will admit as much. But it has been quite some time — more than six months since either JPM or the other big COMEX shorts have aggressively added to silver and gold shorts on the COMEX and I believe it is no coincidence that the lack of new shorting contributed mightily to what were the greatest price rallies in gold and silver in history. And I see no reason that, if the lack of shorting continues, even greater rallies lie ahead.

Finally, the fact that the settlement has now been finalized and widely publicized means that more observers, not less, are now at least somewhat aware that JPMorgan and other banks have engaged in illegal trading activities in COMEX silver and gold. With that greater awareness comes a greater sensitivity to suspicions or allegations of additional illegal activities in the future. Certainly, if JPMorgan (or the big 8) adds aggressively to short positions on the next rally, in addition to admitting that my premise about the future was wrong, you can be sure that I will do everything in my power to convince the regulators to get after these slimy crooks and SOBs. Count on it.

As far as this Friday's COT report, both gold and silver were down sharply during the reporting week, by nearly \$60 in gold and \$1.50 in silver, before both recovered to finish marginally lower on yesterday's cutoff. Gold's total open interest fell by 13,000 contracts over the reporting week,

although that may have been a result of the approaching first notice of delivery day in the COMEX October contract (today). Silver's total open interest was unchanged. Strictly a guess, but I would suspect some further improvement in net positioning (managed money selling/commercial buying) in each, restricted by the still washed-out nature of the market structures.

Today is the end of the third quarter and with it comes an important financial settlement date. I still believe last week's sharp price smash was primarily intended to lower the outstanding total loss to the 8 big shorts as much as possible and I am somewhat surprised (and relieved) more downward pressure wasn't exerted into today. At publication time, despite the selloff today, the big 8's total loss is up from Friday's close by \$900 million to \$12.8 billion. From the end of the second quarter, the loss is up by nearly \$3 billion and from the end of the third quarter in 2019, the total loss is up by more than \$10 billion.

Ted Butler

September 30, 2020

Silver – \$23.55 (200 day ma – \$19.26, 50 day ma – \$26.02)

Gold – \$1897 (200 day ma – \$1730, 50 day ma – \$1950)

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