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November 1, 2019

The Honorable William P. Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Barr,

First, I write to commend you for opening a prosecution into illegal manipulation in the silver futures market.

The Department's prosecution, along with several ongoing class-action lawsuits involving illegal "spoofing" in futures trading, in addition to illegal collusion in the London Gold Fix and London Silver Fix, may help eventually restore confidence in U.S. futures exchanges.

As you know, the Commodities Futures Trading Commission (CFTC) itself conducted a multi-year investigation into allegations of manipulation in the silver market during the same period of time at issue in the Department's pending racketeering case.

However, the CFTC ultimately closed its investigation, claiming it could not find any evidence of wrongdoing (a decision publicly criticized by CFTC Commissioner Bart Chilton at the time).

The CFTC has not provided any explanation for its prior failures to protect the precious metals markets from the pervasive illegal behavior of the kind uncovered by U.S. Attorney John H. Durham of the District of Connecticut and the Justice Department's Criminal Division.

At the same time, the CFTC is also apparently unwilling to answer a few straightforward questions which I and others have repeatedly posed, including questions about unusual activity relating to the emergency "Exchange for Physical" (EFP) mechanism.

The EFP mechanism enables market participants wishing to take physical delivery of their gold and silver futures contracts to bypass the traditional delivery mechanism at the COMEX, instead settling contracts for a certificate to receive delivery off the public exchange, usually in London.

Inexplicably, the use of EFPs (in both gold and silver) has exploded over the past two years. Furthermore, I have learned that a large proportion of these EFP certificates are NOT, in fact, delivered upon. Instead, they are cancelled quietly (without public disclosure) at a cash premium.

Perhaps U.S. bullion banks find a short-term benefit in having this emergency release valve for gold and silver delivery demands at the COMEX (which might otherwise be more challenging to fulfill with gold and silver in the U.S.). However, regulators in London and Europe may become uncomfortable with the assumption of an increasingly large amount of gold and silver liabilities from U.S. markets, and they could take actions to curtail the practice as it increases.

Given the sheer volume of claims for physical gold and silver that are now being transferred almost daily to European markets, there appears to be some danger of a systemic issue if long holders become less willing to settle their "Exchange for Physical" certificates for cash and instead insist on receiving actual physical delivery.

Given the CFTC's delays in answering questions about these notable developments, I would like the Department of Justice to examine this matter and provide me with the scope and purpose of EFP use, its legality, and whether full disclosure of EFP activity is (or should be) required.

Additionally, please let me know whether the CFTC's jurisdiction extends to trading by the U.S. government and/or its agents or if such activity is exempt from oversight.

With the recent explosion in EFPs, the CFTC's failure to detect and/or prosecute criminal manipulation by participants in the precious metals markets is disturbing and needs to be addressed.

Sincerely,

Alex X. Mooney

Alex X. Mooney
Member of Congress