



U.S. COMMODITY FUTURES TRADING COMMISSION

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Heath Tarbert
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January 28, 2020

The Honorable Alex X. Mooney
Member of Congress
United States House of Representatives
2440 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Mooney:

Thank you for sharing your concerns related to the precious metals markets. I appreciate your interest in the regulatory and enforcement work carried out at the Commodity Futures Trading Commission (CFTC).

Ensuring our futures markets function for all Americans is a top goal for me as Chairman. We should regulate our markets based on clear principals that provide certainty while also fostering innovation. However, those who participate in our markets must also play by the rules. I am committed to being tough on those who break the rules and will continue to support robust oversight and enforcement when necessary.

The CFTC's Division of Enforcement (DOE or Division) may pursue, with the approval of a majority of the Commission, enforcement actions against individuals and companies whose conduct violates the Commodity Exchange Act (CEA) or the regulations pursuant to its statutory authority. The Division may file these enforcement actions either in federal court or in administrative proceedings.

The Division may obtain information relevant to its investigations through a number of avenues, including other CFTC Divisions, industry self-regulatory organizations, other governmental authorities, whistleblowers, victims, cooperating witnesses, self-reports, customer complaints, and members of the general public, as well as through the use of tools, means, and methods the Division has developed internally.

At the conclusion of an investigation, the Division may recommend that the Commission initiate administrative proceedings or seek injunctive and ancillary relief in federal court. When the Division obtains evidence that gives it reason to suspect criminal violations of the CEA may have occurred, it may refer the matter to the Department of Justice or the appropriate state authority for prosecution. Criminal activity involving commodity-related instruments can result in prosecution for criminal violations of the CEA and for violations of other federal criminal statutes.

CFTC's enforcement actions and penalties are civil in nature and are set out in statute by Congress.

In your February 5, 2019 letter you reference both the Department of Justice's recent criminal charges against former JP Morgan Chase & Co. trader John Edmonds and the Commission's September 25, 2013 announcement that it was closing an investigation into alleged manipulation of COMEX silver futures. Since the 2013 announcement, the Commission has authorized the filing of 22 enforcement actions charging a total of 14 companies and 12 traders, including Edmonds, with manipulation, attempted manipulation or spoofing involving gold, silver or other precious metals futures. (*See In re John Edmonds*, CFTC Docket No. 19-16 (Jul. 25, 2019)).

The Commission obtained monetary relief totaling \$80,629,585 in settlement of 20 of these actions; the Commission continues to litigate two of these actions. Please see the attached document for a list of enforcement actions.

Your letter also referenced previous correspondence addressing a list of questions put forth by the Gold Anti-Trust Action Committee. I asked CFTC staff to carefully review and provide responses to those questions. Please see the attached memo with those responses.

Again, thank you for your interest and concern regarding allegations of illegal conduct in the precious metals markets. Please know that I am committed to being tough on those who break the rules and will continue to support robust oversight and enforcement when necessary.

If you have further questions or need additional information, please feel free to reach out to Summer Mersinger, Director of Legislative and Intergovernmental Affairs at 202-418-6074.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heath P. Tarbert", with a long horizontal flourish extending to the right.

Heath P. Tarbert
Chairman & Chief Executive

RESPONSE MEMO TO CHAIRMAN TARBERT FROM CFTC DIVISION OF MARKET
OVERSIGHT AND DIVISION OF ENFORCEMENT

Chairman Tarbert – Below you will find detailed responses to the questions from the Gold Anti-Trust Action Committee. If you have any follow up questions or concerns, please let us know.

- 1) *GATA asserts that recently on certain trading days in the New York futures markets there have been big discrepancies between the preliminary gold open interest and the final open interest reported. Is this correct? If so, what explains it? Does it imply market manipulation?*

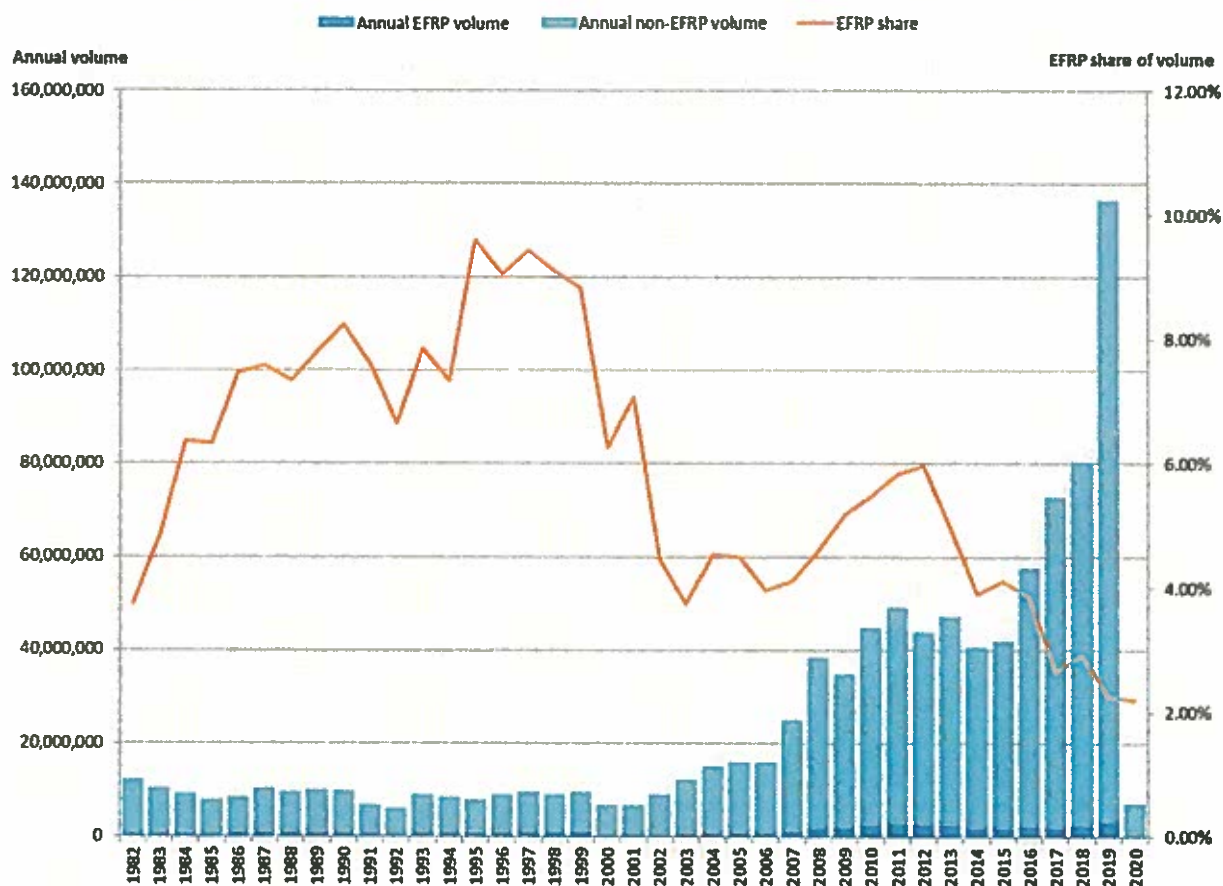
Designated contract markets (DCMs) or exchanges are registered trading platforms for futures and swaps products. As registered entities they must comply with CFTC rules and regulations, which include a list of Core Principles that require risk controls, safeguards for trading and clearing, as well as reporting requirements that ensure transparency into the markets. The CFTC relies on accurate reporting by the exchanges and the exchanges are subject to rule enforcement reviews. The information that comprises open interest is collected at the end of the day. As such, discrepancies between the estimated open interest and the official exchange figures can occur and do not necessarily indicate market abuse.

- 2) *GATA asserts that in recent months there has been a huge increase in the use of the “exchange for physicals” emergency mechanism of settling gold futures contracts in the New York market. Is this correct? If so, are these “exchange for physicals” settlements genuine, representing metal really changing hands between wholly independent parties, or are they mere accounting devices for concealing questionable and possibly manipulative trading between parties actually working together? What explains this development?*

Going back as far as 1982 with our permanent records data, COMEX gold EFRP* volume as a percentage of total futures volume has been declining steadily since 2012. In 2019, EFRPs accounted for 2.3% of total COMEX gold futures volume, the smallest percentage share in the entire period. The orange line on the chart below shows the falling share of EFRP volume in COMEX gold. The share of futures volume accounted for by EFRPs peaked in 1995 at 9.6% and averaged 5.8% annually from 1982 to 2019.

***It is important to note that this data covers all Exchanges of Futures for Related Positions (EFRPs) – this includes Exchange for Physical (EFP – futures for spot/forward), Exchange for Risk (EFR – futures for swap/OTC derivative) and Exchange of Option for Option (EOO – option on future for OTC option).**

COMEX Gold EFRP analysis



- 3) *GATA asserts that huge amounts of gold futures are being traded daily in the New York market, even as the exchange operator reports that little metal is registered as available for delivery. Is this correct? If so, is this trading genuine or just speculative or even manipulative of prices? Does the commission have an opinion on the great disproportion alleged between the number of futures contracts traded and the volume of metal available for delivery?*

Futures that make or take delivery, including gold and silver, make up a small percentage of the overall futures trading volume in any commodity. Additionally, futures markets have the important function of providing a forum for the transfer of risk without the immediate obligation to make or take delivery of a physical product.

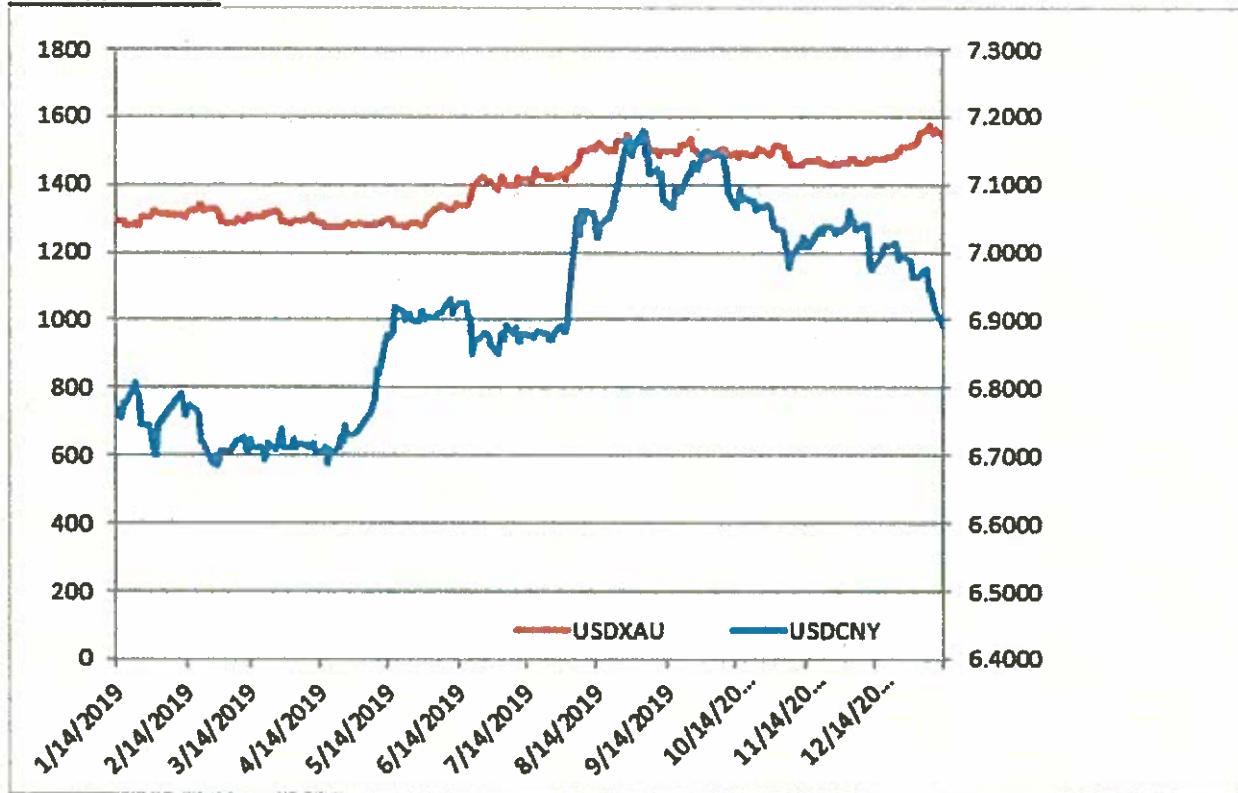
- 4) *GATA asserts that in recent months there has been an extraordinarily close correlation between the gold price and the value of the Chinese yuan. Is this correct, and, if so, has the commission been aware of this correlation? If there has been such a correlation, does it suggest that certain entities are trading gold and the yuan to control their prices, undermining the free markets? Has the commission investigated this?*

The chart below reflects price moves in gold and the yuan over the last twelve months and does not reflect a correlation between the two.

Furthermore, a correlation between the price of gold and the value of the Chinese yuan does not necessarily signal that there is illegal activity being conducted in CFTC regulated markets.

CFTC's Division of Enforcement works to protect market participants from illegal activity such as fraud, manipulation and disruptive trading practices in the markets regulated by the Commission. Disclosure of the existence or content of an investigation is generally prohibited.

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5) *GATA asked whether the commission's regulatory jurisdiction covers futures trading by the U.S. government and other governments – or by brokers acting for the U.S. government or for other governments trading with the U.S. government's approval. Please let me know whether the commission has such jurisdiction.*

The CFTC has exclusive jurisdiction over futures trading on trading facilities registered with the Commission as Designated Contract Markets.

- 6, Please let me know whether the commission is aware of the U.S. government and other governments trading in the U.S. futures markets directly or indirectly.

Pursuant to Section 8 of the Commodity Exchange Act and except as otherwise specifically authorized, the Commission may not publish “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.”

1. In re Mitsubishi Corporation RtM Japan Ltd., CFTC Docket No. 20-07 (Nov. 7, 2019); spoofing; NYMEX platinum and palladium futures; \$500,000 (CMP); Press Release [8075-19](#).
2. In re Morgan Stanley Capital Group Inc., CFTC Docket No. 19-44 (Sep. 30, 2019); spoofing; gold, and other precious metals futures; \$1,500,000 (CMP); Press Release [8031-19](#).
3. In re Mitsubishi International Corporation, CFTC Docket No. 19-46 (Sep. 30, 2019); spoofing; silver and gold futures; \$400,000 (CMP); Press Releases [8031-19](#) and [8046-19](#).
4. CFTC v. Michael Nowak and Gregg Smith, No. 1:19-cv-06163 (N.D. Ill. Filed Sep. 16, 2019); spoofing; attempted manipulation; use of a manipulative and deceptive device; gold, silver, platinum, palladium futures; Litigation Pending; Press Release [8013-19](#).
5. In re Christian Trunz, CFTC Docket No. 19-26 (Sep. 16, 2019); spoofing; gold, silver, platinum, palladium futures; sanctions determination reserved; Press Release [8014-19](#).
6. In re John Lawrence, CFTC Docket No. 19-27 (Sep. 16, 2019); spoofing; gold, silver, platinum, palladium futures; \$130,000 (CMP); Press Release [8015-19](#).
7. In re Heraeus Metals New York LLC, CFTC Docket No. 19-28 (Sep. 16, 2019); spoofing; COMEX precious metals futures; \$900,000 (CMP); Press Release [8015-19](#).
8. In re Corey D. Flaum, CFTC Docket No. 19-15 (Jul. 25, 2019); spoofing; attempted manipulation; gold, silver, platinum, palladium futures; sanctions determination reserved; Press Release [7983-19](#).
9. In re John Edmonds, CFTC Docket No. 19-16 (Jul. 25, 2019); spoofing; gold, silver, platinum, palladium futures; sanctions determination reserved; Press Release [7983-19](#).
10. In re Merrill Lynch Commodities, Inc., CFTC Docket No. 19-07 (June 25, 2019); spoofing; manipulation and attempted manipulation; COMEX gold, silver, platinum and palladium futures; \$11,500,000 (CMP); \$2,364,585 (Restitution); \$11,100,000 (Disgorgement); Press Release [7946-19](#).
11. In re The Bank of Nova Scotia, CFTC Docket No. 18-50 (Sep. 28, 2018); spoofing; CME gold and silver futures; \$800,000 (CMP); Press Release [7818-18](#).
12. In re Geneva Trading USA, LLC, CFTC Docket No. 18-37 (Sep. 20, 2018); spoofing; gold, heating oil, RBOB gasoline, and platinum futures; \$1,500,000 (CMP); Press Release [7797-18](#).
13. In re Victory Asset, Inc., CFTC Docket No. 18-36 (Sep. 19, 2018); spoofing involving CMOEX copper and gold futures and NYMEX light sweet crude oil futures; manipulative scheme involving COMEX and LME copper futures; \$1,800,000 (CMP); Press Release [7796-18](#).
14. In re Michael D. Franko, CFTC Docket No. 18-35 (Sep. 19, 2018); spoofing involving CMOEX copper and gold futures and NYMEX light sweet crude oil futures;

- manipulative scheme involving COMEX and LME copper futures; \$500,000 (CMP); Press Release [7796-18](#).
15. CFTC v. James Vorley and Cedric Chanu, No. 1:18-cv-00603 (N.D. Ill. filed Jan. 26, 2018); spoofing and a manipulative and deceptive scheme; gold, silver, platinum, palladium futures; litigation pending; Press Release [7686-18](#).
 16. CFTC v. Andre Flotron, No. 3:18-cv-00158 (D. Conn. filed Jan. 26, 2018); spoofing and a manipulative and deceptive scheme; gold, silver and other precious metals futures; \$100,000 (CMP); Press Releases [7685-18](#) and [7867-19](#)
 17. In re HSBC Securities (USA) Inc., CFTC Docket No. 18-08 (Jan. 29, 2018); spoofing; precious metals futures, primarily gold; \$1,600,000 (CMP); Press Release [7684-18](#).
 18. In re UBS AG, CFTC Docket No. 18-07 (Jan. 29, 2018); attempted manipulation and spoofing; precious metals futures, including gold and silver; \$15,000,000 (CMP); Press Release [7683-18](#).
 19. In re Deutsche Bank AG and Deutsche Bank Securities Inc., CFTC Docket No. 18-06 (Jan. 29, 2018); manipulation, attempted manipulation and spoofing; gold, silver, platinum, palladium futures; \$30,000,000 (CMP); Press Release [7682-18](#).
 20. In re Arab Global Commodities DMCC, CFTC Docket No. (Oct. 10, 2017); spoofing; copper futures; \$300,000 (CMP); Press Release [7627-17](#).
 21. In re David Liew, CFTC Docket No. 17-14 (June 2, 2017); manipulation, attempted manipulation and spoofing; gold and silver futures; sanctions determination reserved; Press Release [7567-17](#).
 22. In re Simon Posen, CFTC Docket No. 17-20 (July 26, 2017); spoofing; gold, silver, and copper futures; \$635,000 (CMP); Press Release [7594-17](#).