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Mr. Peter Lee
Editor
Euromoney
Nestor House, Playhouse Yard
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Dear Mr. Lee:

We were very disappointed to read *Euromoney's* April issue cover article on naked short selling, which largely parrots irresponsible allegations asserted by lawyers in various litigations filed around the U.S. against DTCC and numerous broker dealers. The article fails to reflect a true understanding of the complicated securities clearing and settlement programs it discusses, fails to report that most of the litigations have, to date, been dismissed, withdrawn or are subject to dismissal motions, and, perhaps most egregiously, accepts as true characterizations of DTCC's stock borrow program ("SBP") that seriously misrepresent it and are wildly erroneous.

While DTCC provided your reporters with written material on many of the issues raised, this information was ignored. In addition, there was little effort to fact-check information about DTCC, nor was there an opportunity to directly rebut allegations contained in the article.

In repeating the essential theme of the lawsuits filed against DTCC that the SBP is at the root of naked short selling (because SBP borrowed shares allegedly are delivered to buyers in place of the shares the naked short sellers fail to deliver), the article fails to acknowledge that, in reality, only a small percentage of all deliveries (about 1.6%) are filled by shares borrowed through the SBP, although this information was provided to your reporter. This fact puts the lie to the claim, oft repeated by those seeking to misrepresent the program and, unfortunately, prominently reported by *Euromoney*, that short sellers feel "Who cared if you didn't own what you sold – the DTCC would make good on your delivery." Had the reporters done their homework, they surely would have realized that brokers who fail to deliver (and are never relieved of their legal obligation to fulfill these contracts) aren't relying on the SBP to fill open delivery obligations. It's hard to believe that DTCC would have been such a prominent part of *Euromoney's* story if the reporters had understood this basic fact regarding the SBP and what it *doesn't* do.

It's similarly shocking that *Euromoney* would refer to the lawsuits filed against DTCC without mentioning the outcome of most of these cases: that they have been dismissed or withdrawn. Indeed, *Euromoney* refers to the *Sporn* litigation in California, without mentioning that only last month the federal judge involved *dismissed the amended complaint in its entirety*. Plaintiff is now on his *third* version of the complaint, in a futile effort to keep the case alive. (The main case is *not* pending before the Ninth Circuit Court of Appeals, as *Euromoney* erroneously reported.) New motions to dismiss are scheduled to be heard on May 2. Apparently Sporn's lawyer failed to mention the case history to *Euromoney*, and *Euromoney* apparently did no checking of its own. Again, the information on these cases was given to your reporters by DTCC, but appears to have been ignored by them.

2. Some Specific Mistakes in the Story

In addition to these general errors, there are very specific mistakes in *Euromoney's* reporting:

- *Euromoney* repeatedly refers to the SBP as relying on a "lending pool" maintained by DTCC. Nothing of the sort exists. Securities remain credited to the independent DTC accounts of lending members until and unless the member informs NSCC on a daily basis that a position is available for the SBP and NSCC needs the shares to fulfill a delivery obligation that day. All of this is accomplished electronically, and there is no "pool" of shares. The notion that there could be more shares in the (non-existent) "pool" than were actually issued demonstrates a fundamental failure to understand how the system works.
- While making much of the fact that brokers don't force buy-ins, *Euromoney* never reports that NSCC has no power to compel its members to buy-in open positions. It is up to the broker to determine whether it wishes to buy-in. NSCC is not a regulator nor does it exercise enforcement powers. Those powers reside with the federal and market-based regulatory agencies.
- After going through a confused example regarding the sale of hypothetical XYZ shares, *Euromoney* stumbles badly when it reports that "Buyer A and Investor B" could sell the same [XYZ] shares as a result of the SBP. In fact, if Investor B's broker, Broker B, had lent the shares to NSCC, and Investor B later advises Broker B that he wishes to sell, Broker B must recall the loan, go into the marketplace, or force a buy-in order to settle Investor B's sale. Nothing about the SBP enables Broker B to sell shares that it otherwise could not have sold. It is simply untrue that Buyer A and Investor B "could sell the same shares," and *Euromoney* should know better than to suggest that they could.
- Another red herring is the issue of what information NSCC shares with the public. NSCC does not disclose information regarding open positions – this is confidential information and, if disclosed, could be used to manipulate the market. Indeed, Regulation SHO does not require NSCC to disclose *any*

confidential customer information to the marketplace; Regulation SHO only requires NSCC to report certain information to the SEC, the national exchanges and the NASDAQ, which NSCC certainly does.

- Much is also made regarding the delivery of physical share certificates. Another red-herring. DTC routinely honors requests by its participants (acting on behalf of their customers) to withdraw a paper share certificate. What has not been permitted by the SEC are attempts by issuers (i) to remove securities *that they don't even own* from DTC; and (ii) to prevent their publicly held shares from being deposited at DTC.

The *Euromoney* article ends by noting that the naked short selling issue is “a confusing tale,” and that it is. But nothing in the *Euromoney* article contributes to making the issue *less* confusing. Indeed, by parroting allegations of plaintiffs’ lawyers, failing to conduct an independent investigation and reporting erroneous facts, the *Euromoney* article, unfortunately, only contributes to the uncertainty and confusion surrounding the naked short selling controversy.

As a publication covering capital markets globally, we would have expected you to give greater care to this type of story. This article is far from the customary high standards of journalism normally associated with your publication. The insinuations and misinformation contained in this article are extremely troubling to us, and should be to you. We will not accept silently this type of sloppy, one-sided journalism.

DTCC has been an integral part of the capital market system in the U.S for over 30 years, providing automated post-trade processing of \$1 quadrillion in securities transactions in 2004. We’re one of the most highly regulated companies in the world (by the SEC, the Federal Reserve and the New York State Banking Department). Throughout DTCC’s history, we have repeatedly demonstrated our resolve to protect the integrity of our financial markets, including during the horrific attacks of September 11, 2001. DTCC personnel stayed at their desks to ensure that \$280 billion of transactions were settled that day, and kept operating throughout that week to settle a total of \$1.8 trillion in securities transactions.

We’re asking that our rebuttal be published in your next issue as a letter to the editor and that *Euromoney* acknowledge that inaccurate and misleading statements occurred.

Sincerely,

Larry Thompson
First Deputy General Counsel
DTCC