UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED, Plaintiffs, *- against -* HOUSEHOLD INTERNATIONAL, INC., ET AL., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzmán

DECLARATION OF THOMAS J. KAVALER IN SUPPORT OF DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT

I, THOMAS J. KAVALER, declare as follows:

1. I am a member of the bar and the trial bar of this Court and a member of the firm of Cahill Gordon & Reindel LLP, attorneys for Household International, Inc., William F. Aldinger, David A. Schoenholz and Gary Gilmer, Defendants in this action. I submit this declaration to place before the Court certain information and documents referenced in the accompanying Memorandum of Law in Opposition to Plaintiffs' Motion for Entry of Judgment.

2. Annexed hereto as Ex. Kavaler 1 is a true and correct copy of an excerpt of a April 18, 2005 Order of Magistrate Judge Nan Nolan, Dkt. 225.

3. Annexed hereto as Ex. Kavaler 2 is a true and correct copy of a November 13, 2006 Order of Magistrate Judge Nan Nolan, Dkt. 762.

4. Annexed hereto as Ex. Kavaler 3 is a true and correct copy of a January 29, 2007 Order of the Honorable Ronald A. Guzmán, District Judge, Dkt. 935.

5. Annexed hereto as Ex. Kavaler 4 is a true and correct copy of an excerpt of the transcript of proceedings that occurred before the Court during the pretrial conference in this matter on March 12, 2009.

6. Annexed hereto as Ex. Kavaler 5 is a true and correct copy of an excerpt of the transcript of proceedings that occurred before the Court during the trial in this matter on May 7, 2009.

7. Annexed hereto as Ex. Kavaler 6 is a true and correct copy of an excerpt of the proceedings that occurred before the Court during the presentment of Plaintiffs' Motion for Entry of Judgment in this matter on March 25, 2010.

8. Annexed hereto as Ex. Kavaler 7 is a true and correct copy of an excerpt of the Annual Report for the fiscal year ended December 31, 2009 filed on Form 10-K with the United States Securities and Exchange Commission by HSBC Finance Corporation on March 1, 2010.

9. Annexed hereto as Ex. Kavaler 8 is a true and correct copy of an excerpt of the Annual Report for the fiscal year ended December 31, 2001 filed on Form 20-F/A with the United States Securities and Exchange Commission by HSBC Holdings plc on March 13, 2002.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Executed this 15th day of April, 2010, in New York, New York.

/s/ Thomas J. Kavaler
Thomas J. Kavaler

EX. KAVALER 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, on Behalf of Itself and All Others Similarly Situated,	)	
Plaintiff,	)	
v.	)	Case No. 02 C 5893 Magistrate Judge Nan R. Nolan
HOUSEHOLD INTERNATIONAL, INC., et al.	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

NAN R. NOLAN, Magistrate Judge:

This securities class action is before the Court on Lead Plaintiffs' Motion for Protective Order Quashing the Household Defendants' Third-Party Subpoenas. The Household Defendants and Defendant Arthur Andersen LLP ("Andersen") oppose the motion. For the reasons that follow, the Court finds that Lead Plaintiffs have shown good cause for the entry of the requested protective order, and Lead Plaintiffs' Motion is granted.

BACKGROUND

This class action is brought by plaintiffs on behalf of all persons who purchased or otherwise acquired the securities of Household International, Inc. ("Household") between October 23, 1997 and October 11, 2002 ("Class Period"). The [Corrected] Amended Consolidated Class Action Complaint alleges violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 and §§ 11, 12(a)(2), and/or 15 of the Securities Act of 1933. The class has been certified with respect to claims brought pursuant to §§10 and 20 of the Securities Exchange Act of 1934 and the Securities and Exchange Commission Rules promulgated thereunder. PACE Industry Union-Management

history and background of all named plaintiffs was necessary to rebut the fraud on the market theory. The Court rejected defendants' argument and agreed with plaintiffs' position that the investment behavior of a handful of plaintiffs "cannot shed any light on the overall issue of liability, in particular on whether the entire class acted in reliance on the market price of Lucent stock." Id., at *4. The Lucent court held that "discovery as to the investment behavior of the 41 named, non-lead plaintiffs is not . . . probative of the question of class-wide reliance on the market." Id. Because "[c]onclusions drawn from the experience of this handful of named parties cannot be extrapolated to represent the experience of a class of hundreds of thousands of individuals of which the putative class is comprised," defendants' motion was denied. Id. at 6. The court concluded that the discovery sought by defendants "may be appropriate at a later stage in the case . . . once the matter of liability has been adjudicated." Id. The Lucent court explicitly distinguished Easton noting that in that case "[t]he small class size established a strong possibility that discovery of individual class members would be probative of the overall class experience," but found that the 41 non-representative named plaintiffs in Lucent could not fulfill the same purpose as to a class of thousands. In re Lucent, 2002 U.S. Dist. LEXIS 8799, at *5-6.[4]

Similarly, discovery of PACE's investment history is irrelevant to any class-wide liability issues and thus, not essential at this time.[5] Given Plaintiffs' reliance on the fraud on the market

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[4] In addition, the Easton case is distinguished from the present case in that it involved a state law claim for negligent misrepresentation which required a showing of actual reliance by the plaintiffs. Easton, 1994 WL 248172, at *4. No state law claims have been alleged here.

[5] The Lead Plaintiffs recognize that discovery related to PACE's investment decisions may be relevant but contend that discovery should initially be limited to class-wide liability issues. See Plaintiff's Mo. at 6-7 (stating "discovery of information related to PACE's investment decisions and those of its investment advisors might, in theory, give rise to a defense against PACE, such discovery will not further ***any*** defense against the Class as a whole, and, if allowed, will only distract

theory, resolution of individualized reliance issues is not necessary to establishing class-wide liability. Significantly, the Household Defendants have failed to cite any case indicating that even if reliance is rebutted as to a single plaintiff, it necessarily invalidates the class-wide presumption. See 7 Alba Conte and Herbert B. Newberg, Newberg on Class Actions, §22.61, at 285 (4th ed. 2002) (stating "a rebuttal of reliance by a particular class member must necessarily be on an individual basis because there can be no class presumption of nonreliance.").

The remainder of the cases cited by the Household Defendants do not compel the conclusion that discovery into PACE's investment history and decision-making is appropriate or necessary at this stage of the proceedings. Except the In re Grossman v. Waste Mgmt., Inc., 589 F.Supp. 395 (N.D. Ill 1984) case, all of the cases cited by the Household Defendants are pre-class certification cases focusing in part on the use of a plaintiff's investment history to challenge the adequacy or typicality to represent the class. See In re SciMed Life Sec. Litig.,1992 WL 413867 (D. Minn. Nov. 20, 1992); In re Grand Casinos, Inc. Sec. Litig., 181 F.R.D. 615 (D. Minn. 1988); Roseman Profit Sharing Plan v. Sports & Recreation, 165 F.R.D. 108 (M.D. Fla. 1996); In re Harcourt Brace Jovanovich, Inc. Sec. Litig., 838 F. Supp. 109 (S.D.N.Y. 1993); Feldman v. Motorola, Inc., 1992 WL 137163 (N.D. Ill. June 10, 1992). The Court finds these pre-class certification cases not particularly helpful because a class has been stipulated to and certified by the district court in this case. Adequacy and typicality for class certification purposes are not at issue.[6]

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from litigation on the primary issues in this case.").

[6] Additionally, In re SciMed Life Sec. Litig. and In re Harcourt Brach Jovanovich, Inc. Sec. Litig. are distinguishable from the present case because the former case involved state law claims of fraud and negligent misrepresentation which required a showing of actual reliance and the later case involved a claim of direct reliance on the defendants' misrepresentations and omissions as well as fraud on the market theory. In re SciMed Life Sec. Litig., 1992 WL 413867, at *3; In re Harcourt

Finally, the Court finds that the most efficient and expeditious manner of managing this litigation is to delay discovery into individualized issues until after class-wide liability has been determined. The Federal Rules of Civil Procedure and the court's inherent power provide the trial court with broad authority to control the discovery process. See Federal Judicial Center, Manual for Complex Litigation §11.422 (4th 2004); see also Cowen v. Bank United of Texas, 70 F.3d 937, 944 (7th Cir. 1995) (noting that controlling the pace and scope of discovery is a matter of case management and is within the district judge's discretion). Moreover, District Judge Guzman has referred this case to this Court for discovery supervision.

Under the circumstances presented here, bifurcating discovery regarding class liability issues and discovery regarding individualized reliance issues is the most orderly, efficient, and economical way to proceed. See 7 Alba Conte and Herbert Newberg, Newberg on Class Actions § 22:61 (4th ed. 2002) (noting that in securities fraud action "rebuttal of individual reliance . . . may be resolved after trial on common issues"). "[J]udicial economy is better served by a focus upon the materiality of the challenged representations or omissions rather than on individual reliance, in a realm when the harm to the shareholder is a product of the injury to the market by the defendant's practices." Id. Moreover, numerous courts have recognized that individualized issues of reliance may be adjudicated after class-wide issues have been determined. Lucent, 2002 U.S. Dist. LEXIS 8799, at *6 (stating "[t]he discovery sought by Lucent instead may be appropriate at a later stage in the case,

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Brace Jovanovich, Inc. Sec. Litig., 838 F. Supp. at 112. Grossman is also unhelpful because it was rendered in the context of ruling on summary judgment motions as to the each of three named plaintiffs in a securities fraud action and provides no insight into whether discovery of a single class representative's investment history is relevant to rebutting the classwide presumption of reliance or whether such discovery makes sense at this stage of the proceedings for purposes of efficiently managing this litigation.

in which individualized rebuttal proceedings may be pursued to determine whether a claimant may recover, once the matter of liability has been adjudicated."); Eisenberg v. Ganon, 766 F.2d 770, 786 (3d Cir. 1985) (recognizing that individual questions as to reliance exist in every 10b-5 action, and rather than eliminate securities actions, "it would be more efficient to order separate trials, if necessary, limited to the issue of reliance."); In re Laser Arms Corp. Sec. Litig., 794 F.Supp. 475, 495 (S.D. N.Y. 1989) (after holding that individual issues of reliance did not predominate and defeat class certification, the court stated that, "[i]f at a later stage of the proceedings the Court determines that the fraud on the market theory is not applicable because [the company's] securities did not trade in an efficient market, the Court could simply order separate hearings on the reliance issue."); Biben v. Card, 789 F.Supp. 1001, 1003 (W.D. Mo. 1992) (holding first phase of the trial would address liability, the true value of the share, and possibly issues of class-wide rebuttal and the second proceeding will determine individual class member's damages and hear any evidence rebutting the presumption of reliance as to each class member). The Biben court noted that discovery of information for purposes of rebutting the fraud on the market theory as to individual class members "need not occur until after liability is established." Biden, 789 F.Supp. at 1004 n.1. This Court also finds nothing prejudicial about the reservation of the reliance issue until after a determination of class-wide liability, if necessary. Because the Household Defendants have not shown how information regarding PACE's investment history can rebut the class-wide presumption of reliance, the Court concludes that their need for this discovery at this time is outweighed by the burden imposed on the third-parties and the Class.

CONCLUSION

Lead Plaintiffs' Motion for Protective Order Quashing the Household Defendants' Third-Party Subpoenas is granted. The third-party subpoenas are quashed without prejudice to reassertion, if necessary, after a determination of class-wide liability. Defendants are prohibited from pursuing discovery related to individual claims and defenses until after class-wide liability has been determined. Because the Court has granted Lead Plaintiffs' motion, it need not determine the proper scope of the subpoenas at this time.

E N T E R:

Nan R. Nolan

Nan R. Nolan
United States Magistrate Judge

Dated: April 18, 2005

EX. KAVALER 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated,	)	
Plaintiffs,	)	
v.	)	**No. 02 C 5893**
HOUSEHOLD INTERNATIONAL, INC., et al.,	)	**Judge Nan R. Nolan**
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiffs have filed this securities fraud class action alleging that Defendants Household International, Inc., Household Finance Corporation (collectively, "Household"), and certain individuals engaged in predatory lending practices between July 30, 1999 and October 11, 2002 (the "Class Period"). On December 6, 2004, Defendants served 14 third-party subpoenas seeking documents and deposition testimony from investment advisors to Plaintiff PACE Industry Union Management Pension Fund ("PACE"), one of the named class representatives. On April 18, 2005, this court granted Plaintiffs' motion to quash those subpoenas "without prejudice to reassertion, if necessary, after a determination of class-wide liability." *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2005 WL 3801463, at *5 (N.D. Ill. Apr. 18, 2005). In reaching this conclusion, the court observed that, "[g]iven Plaintiffs' reliance on the fraud on the market theory, resolution of individualized issues is not necessary to establishing class-wide liability." *Id.* at *4. The court thus found that "bifurcating discovery regarding class-wide liability issues and discovery regarding individualized reliance issues is the most orderly, efficient, and economical way to proceed." *Id.* Defendants did not appeal this ruling to the district court.

In the meantime, Defendants issued Rule 30(b)(6) deposition notices to all of the named class representatives, including PACE, Glickenhaus and Co., and the International Union of

Operating Engineers Local No. 132 Pension Plan (collectively "named Plaintiffs"). Plaintiffs object that these notices are contrary to the court's April 18, 2005 opinion. Defendants raised the matter with the court at several status conferences, and at an October 19, 2006 hearing, the court asked Defendants to submit relevant authority supporting their oral motion to depose the named Plaintiffs and their financial advisors prior to a determination of class-wide liability. For the reasons set forth here, the court denies the motion to depose and affirms the findings in its April 18, 2005 order.

DISCUSSION

Defendants argue that discovery and depositions of the named Plaintiffs and their financial advisors are relevant to issues other than individual reliance, and are necessary to further the fairness goals of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4 *et seq.* Defendants also claim that the court's April 18, 2005 decision improperly distinguished relevant authority supporting such discovery. The court addresses each argument in turn.

A. Truth on the Market

Defendants first argue that the requested depositions and discovery are relevant to establish the truth on the market defense to Plaintiffs' fraud on the market theory of class-wide reliance. Defendants claim that they intend to "explore information regarding what named Plaintiffs (or their investment advisors if relevant) knew about the nature of and risks inherent in Household's business – not to test their individual reliance, or lack of it, but because such information will help identify what public information was known to the market." (Def. Mem., at 5.) In Defendants' view, they are entitled to take depositions to establish that "the truth was on the market as to the facts as to which the complaint alleges the market was deceived." (*Id.* (citing *Cooke v. Manufactured Homes, Inc.*, 998 F.2d 1256, 1262 (4th Cir. 1993) (affirming partial summary judgment for defendants as to securities fraud claims accruing on or after – but not before – December 17, 1988

based on evidence that "the market was so overwhelmed with information questioning the financial integrity of MH by December 17, 1988, that no reasonable trier of fact could conclude otherwise.").)

The "truth on the market" defense provides that "a misrepresentation is immaterial if the information is already known to the market because the misrepresentation cannot then defraud the market." *Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 167 (2d Cir. 2000). As one court explained, "[i]f the market has become aware of the allegedly concealed information, the facts allegedly omitted by the defendant would already be reflected in the stock's price and the market will not be misled." *Provenz v. Miller*, 95 F.3d 1376, 1391 (9th Cir. 1996) (quoting *In re Convergent Technologies Sec. Litig.*, 948 F.2d 507, 513 (9th Cir. 1991)). *See also Asher v. Baxter Int'l Inc.*, 377 F.3d 727, 732 (7th Cir. 2004) ("[I]f the truth or the nature of a business risk is widely known, an incorrect statement can have no deleterious effect.") The truthful corrective information, however, "must be conveyed to the public 'with a degree of intensity and credibility sufficient to counter-balance effectively any misleading information created by' the alleged misstatements." *Ganino*, 228 F.3d at 167 (quoting *In re Apple Computer Sec. Litig.*, 886 F.2d 1109, 1116 (9th Cir. 1989)). *See also Asher*, 377 F.3d at 732 ("[I]f a cautionary statement has been widely disseminated, that news . . . affects the price just as if that statement had been handed to each investor.")

Contrary to Defendants' assertion, there is no need to depose the individual named Plaintiffs in order to determine what information was on the market at the time of the alleged fraud. The truth on the market defense turns on the representations made to the marketplace as a whole, and not to any individual plaintiff. *Cf. In re Vivendi Universal, S.A.*, No. 02 Civ. 5571(RJH), 03 Civ. 2175(RJH), 2004 WL 876050, at *5 (S.D.N.Y. Apr. 22, 2004) ("[T]he truth on the market defense has nothing to do with plaintiffs' individual claims, which turn on the representation made to them, not to the marketplace.") Indeed, if the market as a whole was privy to corrective information at the time of the alleged fraud, it is irrelevant whether any individual plaintiff was also aware of that

information. Thus, the truth on the market defense is not a valid basis for allowing Defendants to depose the named Plaintiffs prior to a determination of class-wide liability.

B. Fairness

Defendants next argue that fairness requires that they be allowed to depose the named Plaintiffs during the course of discovery. They note, for example, that the PSLRA seeks to discourage disparities in the parties' ability to conduct discovery and to ensure that representative plaintiffs "authentically seek to oversee the litigation and represent the class." (Def. Mem., at 6 (quoting *Burke v. Ruttenberg*, 102 F. Supp. 2d 1280, 1320 (N.D. Ala. 2000).) In support of this assertion, Defendants cite *In re AOL Time Warner, Inc. Sec. Litig.*, No. MDL 1500, 06 CIV. 695, 2006 WL 1997704 (S.D.N.Y. July 13, 2006), in which the court lifted a stay of discovery mandated by the PSLRA where plaintiffs had access to some 14 million documents produced by the defendants. *Id.* at *3. Several plaintiffs had filed some 29 class action complaints against Time Warner alleging a variety of claims for fraudulent accounting in the company's AOL business unit. *Id.* at *1. *See also In re AOL Time Warner Inc. Sec. and "ERISA" Litig.*, 381 F. Supp. 2d 192, 202 (S.D.N.Y. 2004). Those cases were ultimately consolidated into a "primary securities class action," but a number of institutional investors opted-out of that litigation to become plaintiffs in a separate consolidated action. *Id.* Those plaintiffs (the "Opt-Out Plaintiffs") retained the law firm of Lerach Coughlin Stoia Geller Rudman & Robbins LLP – the firm representing Plaintiffs here – to pursue identical lawsuits on their behalf. The Opt-Out Plaintiffs' counsel also actively prosecuted substantially similar lawsuits in the Ohio and California state courts. *Id.*

Shortly after the district court granted in part and denied in part a motion to dismiss the primary securities class action, Time Warner moved to lift the PSLRA stay on discovery to obtain discovery from the Opt-Out Plaintiffs. *Id.*; *AOL Time Warner*, 381 F. Supp. 2d at 248. Time Warner argued that "[Opt-Out] Plaintiff's Counsel's access to the approximately fourteen million

documents Time Warner has produced in the primary securities class action and the Ohio and California actions creates an improper advantage for [the Opt-Out] Plaintiffs and negatively impacts Time Warner's ability to effectively defend itself." *Id.* at *3. The court agreed, noting that in the absence of relief from the discovery stay, "Plaintiffs here enjoy the substantial benefits of discovery, while Time Warner must wait on the resolution of any motions to dismiss." The court found that "[u]nder the unique circumstances of this case, prohibiting Time Warner's discovery of [the Opt-Out] Plaintiffs while [the Opt-Out] Plaintiffs are able to formulate their litigation and settlement strategy on the basis of the massive discovery Time Warner has already produced constitutes undue prejudice." *Id.*

The facts of *AOL Time Warner* are easily distinguishable from those presented here. In this case, there is no parallel litigation proceeding in which Plaintiffs have access to millions of pages of documents while Defendants are not permitted to engage in any discovery at all. Significantly, the *AOL Time Warner* court expressly cautioned that discovery would be limited to ensure that those defendants who had not engaged in discovery in other jurisdictions were "still protected by the PSLRA discovery stay and not deprived of its protection while the balance between [the Opt-Out] Plaintiffs and Time Warner is restored." *Id.* at *3 n.2. The court appreciates that discovery in securities cases is inherently one-sided, as the defendants typically are in possession of the majority of relevant information. The court is also aware of Defendants' decision to stipulate to class certification.[1] Nevertheless, Defendants have not demonstrated any unique circumstances, undue prejudice, or due process concerns that would justify allowing them to depose the named Plaintiffs and their financial advisors prior to a determination of class-wide liability.

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[1] Most of the cases allowing plaintiff depositions to proceed have been at the pre-class certification stage. *See, e.g., In re SciMed Life Sec. Litig.*, No. Civ. 3-91-575, 1992 WL 413867 (D. Minn. Nov. 20, 1992); *Barry B. Roseman, D.M.D., M.D., Profit Sharing Plan v. Sports & Recreation*, 165 F.R.D. 108 (M.D. Fla. 1996); *Feldman v. Motorola, Inc.*, No. 90 C 5887, 1992 WL 137163 (N.D. Ill. June 10, 1992).

C. The April 18, 2005 Decision

Defendants finally urge that the court should reconsider its April 18, 2005 decision. A motion to reconsider is appropriate where (1) the court has patently misunderstood a party; (2) the court has made a decision outside the adversarial issues presented to the court by the parties; (3) the court has made an error not of reasoning but of apprehension; (4) there has been a controlling or significant change in law since the submission of the issue to the court; or (5) there has been a controlling or significant change in the facts since the submission of the issue to the court. *Oange v. Burge*, __ F. Supp. 2d __, 2006 WL 2349933, at *2 (N.D. Ill. Aug. 11, 2006). The only grounds Defendants cite for reconsideration is the court's purported error in distinguishing the facts of *In re Harcourt Brace Jovanovich, Inc. Sec. Litig.*, 838 F. Supp. 109 (S.D.N.Y. 1993). This is not, however, an acceptable basis for reconsideration, as it involves no new facts, arguments, or law, and could easily have been raised back in 2005. *See, e.g., Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, No. 03 C 7713, 2005 WL 4034698, at *1 (N.D. Ill. Dec. 21, 2005) ("Motions to reconsider are not vehicles for rehashing old arguments that have already been rejected . . . Nor should [they] be used to raise new arguments that could have been previously raised.") In any event, the court did not err in its interpretation of *Harcourt*.

The defendants in *Harcourt* served the plaintiffs with a discovery request seeking, among other things, documents concerning other securities litigation to which the named plaintiffs were or had been a party, and information concerning publicly traded securities owned or controlled by the named plaintiffs during the relevant time period. *Id.* at 111. The plaintiffs insisted that their use of the fraud on the market theory of reliance precluded discovery concerning their investment histories and prior involvement in other securities and class action suits. *Id.* at 112. The defendants noted that the plaintiffs were also alleging traditional direct reliance on the alleged

misrepresentations and omissions, and argued that they should be permitted to take discovery to assist in rebutting the presumption of reliance created by the fraud on the market theory. *Id.*

The court agreed with the defendants, holding that "the investment history of a named plaintiff is relevant to a defense of non-reliance on the integrity of the market, and therefore discoverable." *Id.* at 114. This conclusion, however, largely turns on the fact that the plaintiffs were alleging traditional direct reliance in addition to fraud on the market. The court noted, for example, that "[a] named plaintiff who is subject to an arguable defense of non-reliance on the market has been held subject to a unique defense, and therefore, atypical of the class under Rule 23(a)(3)." *Id.* at 113 (citing *Greenspan v. Brassler*, 78 F.R.D. 130, 132 (S.D.N.Y. 1978)). The court also expressly stated that "discovery relating to investment history is proper where direct reliance is alleged." *Id.*

Defendants make much of the fact that the *Harcourt* court cited the following proposition from the Supreme Court's decision in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988):

> The causal connection between the defendants' fraud and the plaintiffs' purchase of stock in such a case is no less significant than in a case of direct reliance on misrepresentations.

838 F. Supp. at 112-13 (quoting *Basic*, 485 U.S. at 242). This statement, however, merely confirms the theory that misleading statements in a fraud on the market case defraud investors even in the absence of direct reliance. *Basic*, 485 U.S. at 241-42 (under fraud on the market theory, [m]isleading statements will . . . defraud purchasers of stock even if the purchasers do not directly rely on the misstatements.") Neither the *Harcourt* court nor the Supreme Court endorsed Defendants' position that the depositions of named Plaintiffs and their financial advisors may properly take place before a determination as to class-wide liability where there is no allegation of direct reliance.

CONCLUSION

For the reasons stated above, Defendants' motion to depose the named Plaintiffs and their financial advisors prior to a determination of class-wide liability is denied.

ENTER:

Nan R. Nolan

Dated: November 13, 2006

NAN R. NOLAN
United States Magistrate Judge

EX. KAVALER 3

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 5893	DATE	1/29/2007
CASE TITLE	Jaffe vs. Household Int'l Inc. et al.		

DOCKET ENTRY TEXT

For the reasons stated in this Minute Order, the Court overrules Household's objection to Magistrate Judge Nan R. Nolan's November 13, 2006 ruling (entered on the docket and served on defendants on November 16, 2006) that denied Household's motion for leave to depose the named plaintiffs and their investment advisors prior to a determination of class-wide liability. The Court adopts the ruling in full.

■[For further details see text below.] Docketing to mail notices.

STATEMENT

Under Federal Rule of Civil Procedure 72(a) a magistrate judge "to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written Order setting forth the disposition of the matter." Fed. R. Civ. P. 72(a). Routine discovery motions are not dispositive. *Adkins v. Mid-Am. Growers, Inc.*, 143 F.R.D. 171, 175 n.3 (N.D. Ill. 1992). The Federal Rules of Civil Procedure grant magistrate judges broad discretion in resolving discovery disputes. *Heyman v. Beatrice Co*., No. 89 C 7381, 1992 WL 245682, at *2 (N.D. Ill. Sept. 23, 1992). A magistrate judge's ruling on a nondispositive matter may only be reversed on a finding that the ruling is "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); *see* 28 U.S.C. § 636(b)(1).

In general, discovery is permitted "regarding any matter, not privileged, that is relevant to the claim or defense of any party." Fed. R. Civ. P. 26(b)(1). Defendants seek to refute plaintiffs "fraud on the market" theory with a "truth on the market" defense. However, the Court agrees with Magistrate Judge Nolan that the "truth on the market" defense is based on representations made to the marketplace as a whole, and not to any individual plaintiff. See *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2006 WL 3332917, at *2 (N.D. Ill. Nov. 13, 2006) ("[I]f the market as a whole was privy to corrective information at the time of the alleged fraud, it is irrelevant whether any individual plaintiff was also aware of that information.") Defendants concede that they may be able to obtain this information through the depositions of stock analysts and given Magistrate Judge Nolan's superior knowledge of the proper scope of discovery in this case and vast experience with the parties during discovery, the Court holds that it was not unreasonable for Magistrate Judge Nolan to deny defendants' motion to depose the named plaintiffs and their investment advisors prior to a determination of class-wide liability.

STATEMENT

The Court disagrees with defendants' argument that Magistrate Judge Nolan's ruling erroneously imposed standards of admissibility, undue prejudice and need. She correctly based her ruling on relevance when she ruled that it was irrelevant whether any individual plaintiff was aware of information that was available to the marketplace as a whole. The Court agrees with the class that any discussion relating to admissibility, undue prejudice and need was due to defendants' framing of the issues.

In addition, the Court overrules defendants' objection to Magistrate Judge Nolan's denying their motion to reconsider her April 18, 2005 order in which she ruled that "bifurcating discovery regarding class-wide liability issues and discovery regarding individualized reliance issues is the most orderly, efficient, and economical way to proceed." *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2005 WL 3801463, at *5 (N.D. Ill. Apr. 18, 2005). Defendants' sole basis for the motion to reconsider was Magistrate Judge Nolan's purported misreading of a case decided by a federal court in the Southern District of New York in 1993, and the magistrate judge properly denied the motion because the motion raised no new facts, arguments or law. It was not clear error to deny such a motion.

Finally, defendants argue that they should be allowed to depose the named plaintiffs as a matter of due process and to further the fairness goals of the Private Securities Litigation Reform Act ("PSLRA"),15 U.S.C. § 78u-4. (Defs.' Objections 14-15; Defs.' Mem. Law Support Deposition Notices & Subpoenas to Named Pls. & Certain Investment Advisors 8.) As discussed above, Magistrate Judge Nolan correctly determined that it was irrelevant whether any individual plaintiff was aware of information that was available to the marketplace as a whole and correctly denied defendants' motion to reconsider the bifurcation of discovery in this case. Further, on October 8, 2004, defendants stipulated that the numerosity, commonality, typicality, adequacy, and predominance required for a class certification was satisfied. Defendants deposed lead plaintiff PACE regarding its investment decisions prior to stipulating to class certification. Defendants have served numerous interrogatories during the course of discovery. Defendants concede that they may obtain the information they seek relating to their truth on the market defense from stock analysts. Based on the particular facts of this case, Magistrate Judge Nolan did not commit clear error when she held that fairness and due process are not offended by the denial of defendants' motion for leave to depose named plaintiffs and their advisors during the first phase of discovery.

For the aforementioned reasons, the Court overrules Household's objection to Magistrate Judge Nolan's November 13, 2006 ruling and adopts the ruling in full.

EX. KAVALER 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, on behalf of itself and all others similarly situated,	)	
Plaintiff,	)	
vs.	)	No. 02 C 5893
HOUSEHOLD INTERNATIONAL, INC., et al.,	)	Chicago, Illinois
	)	March 12, 2009
Defendants.	)	1:30 p.m.

VOLUME 1
TRANSCRIPT OF PROCEEDINGS - PRETRIAL CONFERENCE
BEFORE THE HONORABLE RONALD A. GUZMAN

APPEARANCES:

For the Plaintiff:

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. . .

Peremptory challenges. I think that we're agreed on three; is that right?

MR. DOWD: That's correct.

MR. KAVALER: Yes, your Honor, correct.

THE COURT: Amazing.

The final pretrial order raises the issue of bifurcation of the proceedings. I'm not really sure, I guess, why that would be necessary in this case. Do you want to address that?

MS. FARREN: May I, your Honor?

THE COURT: Sure. Just identify yourself for the record, please.

MS. FARREN: Patricia Farren.

Your Honor, what shape the second phase of this case would take is not something we have to decide today. It's been a given in Magistrate Judge Nolan's orders, as requested by plaintiffs, that our opportunity to delve into issues such as individual reliance or individual damages be deferred, both discovery and any other proceedings on those issues, until after the trial on class -- common class issues, as opposed to individual issues.

Magistrate Judge Nolan, at plaintiffs' request, indicated that that's the way it would be. And we've all acted in reliance on that from the get-go. And as a result, your Honor, defendants were denied first phase discovery on

such issues as individual reliance.

We are agreed that there are common class central issues that have to be decided at this trial; what statements were made, were they false, why were they false, were they material, who made them, did they cause loss causation or were they made with scienter. Those are all common issues.

Individual issues would include a rebuttal of the presumption of reliance that obtains in a fraud in the marketplace case.

Plaintiffs have said in their pretrial order, Judge, that, in effect, there's no such thing as individual reliance defense to a fraud-on-the-marketplace theory of fraud because no one in his right mind would have bought stock that was infected by fraud. And they cite Basic v. Levinson, a Supreme Court case for that proposition.

In fact, Judge, the Supreme Court said exactly the opposite. It said that one of the ways in which a party can defend against fraud on the marketplace, separate individual plaintiff issue, is to show that an individual plaintiff traded or would have traded despite knowing that the statement was false. The Supreme Court said that's something we're entitled to prove.

Magistrate Judge Nolan ruled -- and, by the way, plaintiffs agreed that was relevant at that time -- that when we take discovery and prove it, it has to be in a second phase

after there's some judgment of culpability on the issues that I outlined earlier.

The dispute that the plaintiffs have about -- and the defendants have about what shape that second phase should take, whether or not we get discovery, whether it would just be, as they see it, a simple claims administration process with no ability on our part to examine individual plaintiffs about their reliance or individual damages, that's something, your Honor, that I don't think has to be decided today.

In the first place, we don't think there will be a need for a second phase, with our motion for summary judgment and Rule 50 motions and the trial itself. But if there were by some chance, we'd have plenty of opportunity to re-group at that time and address plaintiffs' arguments that it should just be a simple claims administration process rather than giving defendants the opportunity to take the discovery they were denied in the first phase.

So for now, your Honor, since everyone has agreed that issues of falsity, materiality, scienter and loss causation are common issues that ought to be tried now, disputes we have about what comes next, I respectfully suggest, we could defer.

THE COURT: Okay.

MS. FARREN: Thank you, your Honor.

MR. BURKHOLZ: Spence Burkholz for the plaintiff,

your Honor.

I guess the one issue is this issue of reliance and classwide reliance. And the -- they have one -- they have an opportunity to rebut that presumption through the truth-on-the-market defense. And that's something that they should put on in this trial, and they intend to put on in this trial. They sought some of the plaintiffs' discovery; and your Honor's January 29, 2007, order made clear that they did not need plaintiffs' discovery in order to rebut the presumption reliance on the issue of the truth-on-the-market. So that -- we envision that being litigated in this case. So that's a reliance element that needs to be litigated on a classwide basis.

With respect to the second phase, we envision -- if we're successful with a verdict, liability verdict, a per share damages calculation by this jury, we would envision expert input into a formula on how you calculate damages for the class members in this case. Whether you use LIFO, FIFO, whether you have in-and-out traders, how you would calculate the damages, that formula, that would go into a notice that would go to class members that would then fill out the claim forms.

And then the real issue is what do we do after that. Do we have what they've wanted, which is full-blown discovery on all of the class members in order to rebut that presumption

that they bought the stock based on -- you know, rely on the integrity of the market or they bought it because they thought that there was -- that the price was falsely inflated? I mean, who would buy a stock knowing that there was misrepresentations in the stock price?

So that's the issue with -- really for the second phase that we have a dispute. They want to turn it into mini trials. We think a claim form with the proper question would be appropriate, and we can deal with the individual issues with the claim form process in that simple question that's in there.

But what's important, that we want to make sure is clear, is that the classwide issue of the truth-on-the-market defense, which is one way to rebut this presumption of reliance, will be litigated in this case.

MS. FARREN: May I make a brief response, your Honor?

THE COURT: Yes. I mean, do you agree with that? Is that defense going to be litigated in this phase? Because it appears you only mentioned the possibility of showing individual lack of reliance.

MS. FARREN: It's more than that. It's our entitlement under the Second -- Seventh Amendment to try that issue.

THE COURT: Which issue are you referring to?

MS. FARREN: Well, let's start with what the Supreme

Court said in defining this fraud-on-the-marketplace presumption on which plaintiffs are going to rely in this case.

If you know -- as you know, your Honor, in a normal fraud case, an individual plaintiff would have to show that he or she acted in reliance on the alleged fraudulent statement to his detriment.

In a class action such as this -- and the fraud-on-the-marketplace presumption that plaintiffs have invoked assumes -- creates a rebuttable presumption that if information was sufficiently material, it would have impacted the market and that traders in that market would have relied -- in an efficient market would rely that the price reflects all available information and so forth.

When the Supreme Court in Basic v. Levinson allowed that presumption of reliance on a marketwide basis as an efficiency mechanism, it said that it was rebuttable. Now, it gave two or three ways in which it could be rebutted. A couple of those ways will be issues in this case.

For example, if plaintiffs say that defendants defrauded investors by not disclosing that they were doing certain practices, such as prepayment penalties or high LTV or all the other laundry list they have of allegedly predatory prices, and we can show -- in fact, your Honor, we absolutely will show -- that every single one of these authorized

practices was disclosed, was disclosed early, was actively discussed by analysts, was known to the market, well, then that would trump their fraud-on-the-marketplace presumption. So that type of give and take will be part of this trial, Judge.

But the third factor that the Supreme Court said could be a rebuttal to a fraud-on-the-marketplace presumption is reliance by -- is proof that any given market investor did not, in fact, rely on the integrity of the market; might have had his own reasons -- its own reasons for making the investment.

THE COURT: Let me just stop you right there if I can.

Do you agree with that?

MR. BURKHOLZ: I agree with most of it, except the last part, which is -- it's almost -- it's pretty difficult to rebut that presumption, that somebody would have bought a stock knowing the falsity of the information.

MS. FARREN: Well --

MR. BURKHOLZ: But the other part of the presentation, I agree. We're going to litigate that. They have thousands of -- hundreds of exhibits regarding truth-on-the-market.

THE COURT: But we have agreement on the general proposition that one of the ways to rebut the inference is --

or the presumption -- is to present evidence of the acts, state of mind of individual investors?

MR. BURKHOLZ: That is in a second phase. The thing is there aren't many cases analyzing what you do in a second phase to rebut that presumption.

THE COURT: There's a surprise.

MR. BURKHOLZ: Right. Many of these cases never get there.

THE COURT: That's why I'm asking you. Do you agree that that is one of the ways to rebut the fraud-on-the-market presumption?

MR. BURKHOLZ: Well, I think that there is a reference in Basic to that. Basic was written many years ago. It's unclear how you do that.

THE COURT: They assumed, for example, an efficient stock market. Imagine that.

MR. BURKHOLZ: So it just hasn't been -- we don't have a lot of precedent on how you actually do that after trial.

THE COURT: But I'm not really -- at this point I guess I'm not getting so much as to the how as I am as to the concept that suppose we have a way of doing it, that proof of individual investor's decision-making process or processes is fair game for rebutting the fraud-on-the-market -- the underlying presumption on the fraud-on-the-market theory.

MR. BURKHOLZ: Basic says -- the language in Basic says the individual plaintiff would have traded despite knowing the statement was false. So that is a way to rebut that presumption. How you would do that, I mean, they propose to have every class member come into court and say I bought this stock or didn't buy the stock knowing it was false information. They want to bring pension funds in.

I know the real reason is they want to basically disrupt the process of the claims administration process and not have people file claims in this case if we get a jury verdict.

MS. FARREN: Your Honor, may I be heard on both the merits and what Mr. Burkholz just incorrectly said.

On the merits, your Honor, as Mr. Burkholz just agreed, the Supreme Court did say -- and it's an old case, but it's good law; it's the Supreme Court's instructions to us -- that one way to rebut a fraud-on-the-marketplace presumption is to show that an individual plaintiff traded or would have traded despite knowing the statement was false. Same quote that Mr. Burkholz just gave you. That's the Supreme Court's recipe for how to rebut it. We're entitled to rebut it. We have a Seventh Amendment right to try that. We certainly have a right to discovery on it.

Let me give you a perfect example, Judge. You know that we have three lead plaintiffs. Two of them are so tiny

as to be inconsequential. The only one of any size at all, which itself is a tiny percentage of stock ownership, is Glickenhaus.

Glickenhaus, according to the certification provided by plaintiffs when they filed this complaint, appears to have bought 75 percent of its stock in Household International after plaintiffs' expert says that the fraud started to be revealed and the scam was unraveling.

We have questions for Glickenhaus. Why did you do that, what did you know, did you know and not care, was it not material to you. Those are all excellent questions, Judge, that could form the basis of a sound defense to any fraud-on-the-marketplace presumption. We tried to take that discovery during the discovery -- the fact discovery phase of this case. Magistrate Judge Nolan, at plaintiffs' urging, said, no, you're right. Plaintiffs said -- this is a quote from plaintiffs, your Honor -- that ought to be adjudicated at a later stage; we agree that may be relevant, but it ought to be adjudicated later. And on the basis of that, Judge, we were denied discovery of what Glickenhaus knew and when did it know it and how did it affect its trading decisions. We argued that what it knew and how it made its decisions might impact materiality in this case, in this trial. And the judge said may or may not, but that's an individual issue; and you get to take your discovery on that later, Judge.

So as to Mr. Burkholz' point that we're going to drag in every pension fund in the country, a couple of statistics are very key here.

If we deposed ten entities, Judge, we would capture information on 50 percent of the stock ownership of this company. Plaintiffs weren't included, but the institutional investors who own the lion's share of Household stock were big major sophisticated banks and other funds that -- mutual funds and so forth. We could capture information about 50 percent of stock ownership by deposing only ten of them. We could capture 60 percent by deposing only 15 of them. It may be that one or two sample depositions would tell us what we need to know and whether this is a worthwhile defense or not.

And to repeat, your Honor, once we have that information, we're certainly entitled to a jury trial if there are any factual disputes about it or about the inferences to be drawn from it.

And I won't take more of your time now, Judge, but it should be noted that we do have disputes about the proper determination of damages in this case. Some of that may or may not be a legal issue as opposed to a factual issue.

But if I could come full circle to where I started, we don't have to decide any of that now. We know what issues we're trying now. We should go ahead and try them. We're going to win one way or the other, so this will be moot. And

if it's not moot, we'll bother you again about it.

THE COURT: Well, what about the issue of the continuity of the jury?

MS. FARREN: We've looked into that, your Honor, and there's no requirement that the jury be the same jury. There would be findings of what statements were -- this is a worst case scenario, of course -- what statements were false, who made them, were they made with scienter, what connection was there between alleged inflation that they caused, if they caused any, and deflation down the pike. We'll have all that. They may or may not be the same loss causation days, if you will, that plaintiffs' expert identified. The jury might think he was cherry-picking or got it wrong or used the wrong index or something. So we'll know more then. And at that point, some of the issues of how to apply that learning may be just straightforward legal issues on damages now. Some may be jury questions if there are contested issues of fact; when did you buy or, you know, did you really buy.

But for now, your Honor, none of this is on the table. And it has to be on the table. Plaintiffs' reading of Basic is wrong. So I'll stop bothering you about it; and if and when we have to, we can get into those kind of details.

THE COURT: Well, the concern is that by virtue of the proceedings that we employ here, we may inadvertently lock in or lock out some issue or some procedure that either of you

is going to claim absolutely necessary in the next phase if we don't at this point in time know what the next phase is going to look like.

MS. FARREN: I see your point. That makes sense, your Honor. But on the question of can it be a different jury, because the new jury would take certain found facts as given, it may be a different jury.

THE COURT: The question is, are we better off having the same jury?

MS. FARREN: Well, the problem is, your Honor, we haven't had any discovery on the second phase issues. There might even be issues that would require expert participation. And we specifically moved to do all that back then, with the idea it would be more efficient. And plaintiffs, on two separate motions, vigorously opposed that. So we're sort of stuck with bifurcation.

THE COURT: Well, I guess you are. But at the point in time when we began to prepare to actually put on the trial in this case, which happened I suspect back -- and I don't even know how long ago it was when I said to you folks, no, let's do the trial and we'll take the summary judgment motion with the trial, I would have hoped that the issue that you're placing before me now would have been placed squarely before us with all of its -- all of its intricacies for a determination as to how we're going to proceed.

I am -- I'm very concerned at this point that we will be virtually guaranteeing one side or the other a possible entire panoply of appeal issues by proceeding down a track and trying certain issues and setting certain parameters in this proceeding that then someone is going to argue have trampled or made impossible the rights that you think you were entitled to with the proceeding subsequent to this as you see it in your minds. That is really a -- I mean, that would be a true disaster in terms of time and resources.

MS. FARREN: I could see that, your Honor. But if -- you know, if you'd look at the bifurcation section in the PTO, I think it's Section 5, we cite several cases in which -- or which demonstrate that this exact type of bifurcation as between common class right issues of falsity, scienter, materiality and loss causation, creating then collateral estoppel as to any similar issues that might come up on a classwide basis in the second phase, is, in fact, a commonplace way to do it and has been done before. It's --

THE COURT: Sure.

MS. FARREN: And, furthermore, we apologize that this didn't come to the Court's attention sooner; but we really believed this had been addressed and determined. Twice this issue came up before Magistrate Judge Nolan, in each case our arguing that it would be more efficient to do our discovery now because it could have an impact on trial on the issues and

so forth. In each case, the magistrate judge ruled that -- and, in fact, with plaintiffs' support and encouragement -- that this be left for a second phase. And, therefore -- and one of those, by the way, orders did go up to your Honor on our objection; and the magistrate judge's ruling was sustained.

So please forgive me, your Honor. We didn't know that this wasn't generally understood until we saw plaintiffs' draft PTO when they said, to my knowledge for the first time, that they just envision some sort of claims administration process, as though this were a routine settlement rather than a due process issue in which we're entitled to discovery and trial.

MR. BURKHOLZ: Two points, your Honor. One, I don't -- there's a distinction between the three named plaintiffs in this case and the thousands of absent class members. I mean, do they envision telling this jury that you're going to have to come back a second time -- which prejudices us, they're thinking they'll have to come back a second time, and then bringing in absent class members and putting them on the stand and trying the case with all the absent class members? I mean, I thought we had a class action here, not a bunch of individual cases.

MS. FARREN: Your Honor, that's why I refer you to Section 5 of the draft PTO and the cases that explain, it's

not retrying this case. Let's assume for arguendo that plaintiff --

THE COURT: It's not retrying the case; but it is, in essence, presenting evidence again on a key issue in the case, which is the presumption that -- of reliance.

MS. FARREN: That was our argument.

THE COURT: Which is part of the case. So --

MR. BURKHOLZ: Judge, just one more point.

THE COURT: Go ahead.

MR. BURKHOLZ: Let's say they got the discovery that they wanted to rebut this presumption of the three named plaintiffs and we litigated that in front of the jury, what would happen with the rest of the absent class members, and we won. They would still want to take all the discovery of those people and bring them forth for a trial, so we'd be in the same place.

MS. FARREN: Your Honor, it would be a very limited trial, if, in fact, a trial were needed once we took the discovery. Like Glickenhaus, did you buy after the alleged fraud supposedly was revealed or did you have an automatic trading program that would have bought Household stock irrespective of what the market was doing and so forth.

As I said, your Honor, we could encompass 60 percent of the ownership by looking at only 15 large institutional investors.

Glickenhaus and PACE and the other named plaintiff -- lead plaintiff are tiny, and we don't have any interest -- we would like to hear from them, of course, having been shut down during fact discovery. But we don't have any intention, your Honor, of dragging every small investor in here. We need to know what the 15 big institutional investors -- what they did, whether or not they can prove reliance on an individual basis, whether we can -- I should put it correctly. Whether we can rebut the rebuttable presumption of reliance as to them by simply finding out the facts that we were denied during fact discovery.

THE COURT: Okay. Anything else?

MR. BURKHOLZ: Nothing else.

THE COURT: All right.

MS. FARREN: Thank you, your Honor.

THE COURT: We will take the issue under consideration. And what I mean by the issue is not necessarily what the second phase is going to look like, but the only issue that I really have to decide right now, which is, whether not knowing precisely what the second phase is going to look like, we're somehow impeded from going forward with this proceeding. And I suspect that the answer to that is probably going to be, no, we're not impeded from going forward. But I think that there are certain considerations regarding findings in the record that we're going to make

which will be carried forward in the second phase that are going to have to be addressed, given that you both have such diametrically different ideas of what the second phase should look like.

The problem, of course, is that if a class action is going to mean anything, it's going to mean that we don't have to bring before the Court every single investor in this case on any issue, including the issue of reliance.

On the other hand, the claim of a constitutional right to challenge the presumption of reliance to a jury, if taken to its logical extreme, would require giving the defendant the right to bring in every single investor, which would, of course, destroy the entire concept of a class action. So how we balance those concerns is the question.

Okay. We are in the process of working through some of the many motions in limine that have been filed. One of the issues that seems to flow across several of them is the use of the term -- for me, at any rate, is the use of the term predatory lending practices. And I would like to ask the plaintiffs what -- to what use is that term going to be put in your case-in-chief?

EX. KAVALER 5

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, on behalf of itself and all others similarly situated, Plaintiff,	)	
vs.	)	No. 02 C 5893
HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	)	Chicago, Illinois May 7, 2009 10:30 a.m.

VOLUME 26
TRANSCRIPT OF PROCEEDINGS - TRIAL
BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

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JUROR STUBBS: Gail Stubbs.
THE COURT: Ma'am, did you hear the verdicts as published by the Court?
JUROR STUBBS: Yes.
03:00:45 THE COURT: And do these verdicts constitute your individual verdicts in all respects?
JUROR STUBBS: Yes.
JUROR BERARD: James Berard.
THE COURT: Sir, did you hear the verdicts as
03:00:55 published by the Court?
JUROR BERARD: Yes.
THE COURT: And do these verdicts constitute your individual verdicts in all respects?
JUROR BERARD: Yes.
03:01:03 JUROR HUNT: David Hunt.
THE COURT: Sir, did you hear the verdicts as published by the Court?
JUROR HUNT: Yes.
THE COURT: And do these verdicts constitute your
03:01:11 individual verdicts in all respects?
JUROR HUNT: Yes.
THE COURT: Very well.
Any other motions before I release the jury?
MR. DOWD: None from the plaintiffs, your Honor.
03:01:22 MR. KAVALER: Yes, your Honor. We believe the

verdict is fatally inconsistent in a number of ways, which we're prepared to detail to the Court. I'm not sure if you need the jury to be present. Obviously it's up to you.

Primarily it's the interspersal of the yeses and nos when juxtaposed again Professor Fischel's leakage model, whatever the -- whatever our position on the leakage model ab initio might have been, it certainly doesn't work that way. And certainly a verdict which contains both yeses and nos but nevertheless adopts Professor Fischel's leakage damage model is fatally flawed and internally inconsistent.

THE COURT: Okay.

MR. KAVALER: We have other things we'll say at the appropriate time, but that is something which I thought should be mentioned before the jury retires.

THE COURT: All right. Does the plaintiff have anything to say?

MR. DOWD: No, your Honor. We think the verdicts are consistent.

THE COURT: Very well.

Ladies and gentlemen, that constitutes your jury service in this case. And I might add, quite a long, diligent and some might even say heroic service it has been. I want to personally thank you for your patience, your attentiveness and your persistence as jurors in this case. I don't need to tell you, it has been a difficult case. It has been a long case.

It has been a complicated case. But it has been an important case. And as such, I thank you for having taken the time out of your lives at what I know is considerable cost both personal and pecuniary to many of you to do this.

03:03:09 I also tell you that you should consider yourselves to some -- in some respect fortunate to have had the opportunity to take part in what is a fundamental aspect of our democratic way of life. You have served your country today without having to join the military, pay anything extra

03:03:39 in taxes or volunteer for community service. And we very much appreciate it, and you should be proud of it.

We'll be back for any of you who wish to stick around to talk to you if you want to -- have any questions for me, if there's anything you want to ask, anything you want me to

03:03:57 explain. But you need not stick around.

Now, you are not required to and I would advise you not to speak to anyone about your jury service after you leave here today. It's done. You have done your duty. You have finished. You have done it well. Put it behind you and move

03:04:15 on.

Retire to the jury room.

(Jury out.)

THE COURT: Date for motions?

(Brief pause.)

03:05:06 THE COURT: Does anybody need a date for motions?

MR. KAVALER: Your Honor, I'm waiting to hear if Mr. Dowd has anything to say.

MR. DOWD: Not at this time, your Honor. Did you ask for a date for motions?

03:05:16 THE COURT: Motions, yes.

MR. KAVALER: Your Honor, we will be making formal motions. But at this time, I want to renew the 50(a) motion. And specifically I want to observe to the Court that -- there's a couple of points. Professor -- the jury has

03:05:35 selected Professor Fischel's more dubious by far, legally and economically, damage model to the exclusion of anything else. So we renew the motion on that ground since that model, in our view, is not legally permissible and cannot sustain a judgment.

03:05:48 Secondly --

THE COURT: Let me ask you to -- I mean, the record will reflect that you have reserved -- I'm ruling that you're reserving any issues you wish to raise in a written motion. So how much time do you want to file a motion? That's really

03:06:04 what we need to --

MR. KAVALER: Your Honor, let me say this: I won't repeat everything I've said previously. And I appreciate your Honor's comment.

To the extent the jury has found against the

03:06:14 defendant Gilmer on restatement, I believe the record contains

no indication whatsoever that he had any involvement in the underlying accounting. They also found that he's not a control person. So it's a little hard to understand what evidentiary basis there is for a finding against him on a restatement.

Also, the failure to include Andersen in question number five for the allocation, I believe fatally infects the allocation.

But I take your Honor's point. I want some guidance from the Court as to what motions you want us to make when.

THE COURT: Well, you're right. What I'm asking you for is a date for motions on the jury verdict. I mean, we also have to, of course, address what we're going to do with the rest of the case. But I think the first step is a date for motions and resolution of any motions on the jury verdict.

MR. KAVALER: You're exactly right. My point simply, your Honor, is there is a jurisdictional ten-day limit which applies to motions directed to a judgment. Since there's no judgment, I don't believe we're under the jurisdictional ten-day limit. So I would be inclined to ask you for 30 days. If your Honor has any doubt about that, however, we will comply with the requirement that we file the notice of motion and motion within ten days. And then we would ask you -- you have the power to give us up to 60 days for a brief. We would ask you for the maximum time available for the brief.

Separate independent question --

THE COURT: Well, I think that's what we should do. I think that's what we should do.

MR. KAVALER: Okay.

03:07:32 THE COURT: I'm not going to make a ruling on whether the ten-day period applies in this situation. I have seen arguments both ways on that question. So you can do as you like. But if you're asking for time subsequent to the ten-day filing --

03:07:57 MR. KAVALER: We are, your Honor.

THE COURT: I will give you the time. You're asking for 60 days?

MR. KAVALER: I am, your Honor.

THE COURT: Okay. 60 days. And in response, how

03:08:09 much time do you want?

MR. DOWD: I guess -- 60 days seems like an awful long time --

THE COURT: It is.

MR. DOWD: -- to get to the second stage. I would

03:08:19 hope that counsel could do it in ten or 20 or 30.

THE COURT: Let me just suggest to you that we don't have to forgo moving forward on the second stage while you are briefing and the Court is ruling on the issues raised with respect to the verdict. We have a verdict, and that's more

03:08:36 than sufficient for me to justify moving forward with the

other aspects of the case.

MR. DOWD: Fair enough, your Honor. Then I would ask for 30 days to respond if he gets 60.

THE COURT: 60 plus 30 and a reply in 15.

03:08:48 MR. KAVALER: Thank you, your Honor.

With regard to phase two --

THE COURT: I would be happy to have, within 21 days, briefs from the parties as to how they feel we should proceed on phase two.

03:09:12 MR. KAVALER: Simultaneous briefing, your Honor?

THE COURT: Yes, simultaneous briefing.

Anything else?

MR. KAVALER: May I have one second, your Honor.

THE COURT: Sure.

03:09:25 (Brief pause.)

MR. KAVALER: That's all for us today, your Honor.

MR. DOWD: Your Honor, just one question. I know sometimes jurors come up to the lawyers. I don't know what the rules here are in the Northern District of Illinois. I

03:09:34 know in some jurisdictions --

THE COURT: In view of the fact that this case is still pending, I'm going to instruct both sides not to have any intercourse with the jurors regarding their jury verdict, regarding their deliberations or any aspect of this trial.

03:09:51 MR. DOWD: Thank you, your Honor.

MR. KAVALER: Very good, your Honor.

THE COURT: Very well.

(Which were all the proceedings had.)

* * * * *

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Nancy C. LaBella — May 8, 2009

Official Court Reporter — Date
United States District Court
Northern District of Illinois
Eastern Division

EX. KAVALER 6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, on behalf of itself and all others similarly situated, Plaintiff,	)	
vs.	)	No. 02 C 5893
HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	)	Chicago, Illinois March 25, 2010 9:30 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD A. GUZMAN

APPEARANCES:

For the Plaintiff:

COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
BY: MR. SPENCER A. BURKHOLZ
MR. MICHAEL J. DOWD
655 West Broadway
Suite 1900
San Diego, California 92101
(619) 231-1058

MILLER LAW LLC
BY: MR. MARVIN ALAN MILLER
MS. LORI A. FANNING
115 South LaSalle Street
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Chicago, Illinois 60603
(312) 332-3400

For the Defendants:

CAHILL, GORDON & REINDEL LLP
BY: MS. PATRICIA FARREN
MR. THOMAS J. KAVALER
80 Pine Street
New York, New York 10005
(212) 701-3000

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Official Court Reporter
219 South Dearborn Street
Room 1222
Chicago, Illinois 60604
(312) 435-6890
Nancy_LaBella@ilnd.uscourts.gov

THE COURT: If you wish -- I'm not telling you you have to or that I want you to or that it would be best for you to respond.

MR. KAVALER: Understood.

THE COURT: I'm just asking you if you want to respond.

MR. KAVALER: I would like to respond. I would like 30 days. And since Mr. Burkholz has appended an affidavit of an expert who has never been subject to Daubert process in this case and has never made a Rule 26 submission in this case, I would like permission within those 30 days to take that expert's deposition.

THE COURT: That won't be necessary. But I'll give you 21 days to respond --

MR. KAVALER: Very good.

THE COURT: -- to the motion.

THE CLERK: April 15th.

MR. KAVALER: Tax day.

THE COURT: If I understand correctly the plaintiff's allegations, really what you're alleging is that there are transfers here that are essentially fraudulent to the creditors.

MR. BURKHOLZ: Well --

THE COURT: Is that correct?

MR. BURKHOLZ: Well, there are transfers that are

putting at risk the assets of the defendants.

THE COURT: Well, they're fraudulent to the creditors because they're not made in the ordinary course of business; they're being made for the purpose of avoiding the judgment?

MR. BURKHOLZ: That's correct.

THE COURT: Now, we all understand that if that were the case, there are, of course, post-judgment proceedings that would be available. And that -- if my understanding is correct, and it's been I guess since I practiced state law that I've looked at this -- that that would leave the individuals responsible for those transfers liable on the full amount, not just the corporation. Is that your allegation?

MR. BURKHOLZ: Our allegation, again, is that there are transfers to other HSBC entities and transfers to the parent corporation that are dissipating the assets of Household, the subsidiary.

THE COURT: And the corporation is not getting back anything in return of value; is that correct? Because if they're getting back value for the transfers, then there's no dissipation of anything. You just have a different asset. You have, say, money instead of paper or you have money instead of a building.

MR. BURKHOLZ: Well, there's an issue as to what they're getting back in value. And there's also an issue as to their running off -- their only asset is their receivables,

the loans that they made before 2009. And they are running those off of their balance sheet.

THE COURT: But what I'm trying to get to is what that really means, running them off of the balance sheet. I think in very simple terms. If they're selling this valuable asset and getting the value of the asset in return in some other way, then there's not a problem, is there?

MR. BURKHOLZ: If they're getting equal value, there probably isn't a problem with an asset transfer.

THE COURT: If they're getting a reasonable market value, then it really becomes essentially a transaction in the ordinary course of business for which they're getting value. And there's nothing wrong with it as far as the judgment that's possible against them down the road.

If, however, they're not getting value, then you have a problem; is that right? Am I stating it correctly?

MR. BURKHOLZ: That's one of the issues.

The second issue --

THE COURT: What else?

MR. BURKHOLZ: -- is basically, like I said, winding down the remaining asset, which are their receivables.

THE COURT: Well, winding down is another term that we need to define. If by winding down you mean that they are transferring, selling, exchanging their receivables and not getting a reasonable return, then we can possibly classify the

winding down as a transfer of -- a fraudulent transfer as well.

MR. BURKHOLZ: Right. And --

THE COURT: But if they're getting enough return on it, then they're entitled to do whatever they want with their assets as long as they're not dissipating them for the purpose of avoiding the judgment.

MR. BURKHOLZ: And on the face of the filings, it raises questions. And our clients are creditors of this entity, just like there are other creditors of this entity, which are their bondholders, who also -- many of them happen to be stakeholders in the parent corporation. So they have an interest in the parent corporation getting assets, possibly to their detriment as bondholders, but they could get the benefit as a stakeholder or bondholder in HSBC. These are some of the issues that we see that are concerning us.

THE COURT: Okay. Well, I think for me the basic issue is what I've indicated here. If the transfers -- whether you call them winding downs of receivables, whether you call it selling of their most valuable business sector, whatever you call it, whether you call it upstreaming or transferring out of the country or whatever name you want to give it -- the question is, is the value of the company being dissipated because the company is not getting back in exchange for these various transfers a sufficient, reasonable return

that could then be used to pay off whatever judgment finally is entered. And if that's the case, I think that if that is happening and that is intentionally being done, then I think the individuals responsible for doing it -- never mind the corporation -- the individuals within the corporation face personal liability for whatever dissipation of assets there is.

And it seems to me that if ultimately you want relief at this point in time, that it may be necessary to identify who those individuals are; that is, how is this happening. Because the relief may go to them as well as the corporation. It's a serious allegation you're making here. It's a serious allegation that involves an intent, I think, to evade the processes of this Court.

We have gone through a great deal of trouble in terms of resources and time in this case to try to reach a just conclusion. And any attempt by anyone to nullify those efforts in any way by making them essentially useless at the end of the day is a serious, serious allegation.

How much time do you want to reply to the response?

MR. BURKHOLZ: Seven days is enough.

THE COURT: Carole.

THE CLERK: April 26th.

THE COURT: And we will either issue a ruling or ask you folks to come back. It may be that an evidentiary hearing

will be necessary, depending on what our determination is on the issues of law.

Okay. Anything else?

MR. KAVALER: That's all, your Honor.

THE COURT: Thank you.

MR. BURKHOLZ: Thank you.

MR. KAVALER: Thank you.

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Nancy C. LaBella *March 26, 2010*
Official Court Reporter

EX. KAVALER 7

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2009

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 1-8198

HSBC FINANCE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**86-1052062**
(State of incorporation)	**(I.R.S. Employer Identification No.)**
26525 North Riverwoods Boulevard, Mettawa, Illinois	**60045**
(Address of principal executive offices)	**(Zip Code)**

(224) 544-2000
Registrant's telephone number, including area code

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	**Name of Each Exchange on Which Registered**
Floating Rate Notes due March 12, 2010	New York Stock Exchange
4.625% Notes due September 15, 2010	New York Stock Exchange
5.25% Notes due January 14, 2011	New York Stock Exchange
6¾% Notes due May 15, 2011	New York Stock Exchange
5.7% Notes due June 1, 2011	New York Stock Exchange
Floating Rate Notes due April 24, 2012	New York Stock Exchange
5.9% Notes due June 19, 2012	New York Stock Exchange
Floating Rate Notes due July 19, 2012	New York Stock Exchange
Floating Rate Notes due September 14, 2012	New York Stock Exchange
Floating Rate Notes due January 15, 2014	New York Stock Exchange
5.25% Notes due January 15, 2014	New York Stock Exchange
5.0% Notes due June 30, 2015	New York Stock Exchange
5.5% Notes due January 19, 2016	New York Stock Exchange
Floating Rate Notes due June 1, 2016	New York Stock Exchange
6.875% Notes due January 30, 2033	New York Stock Exchange
6% Notes due November 30, 2033	New York Stock Exchange
Depositary Shares (each representing one-fortieth share of 6.36% Non-Cumulative Preferred Stock, Series B, no par, $1,000 liquidation preference)	New York Stock Exchange
Guarantee of Preferred Securities of HSBC Capital Trust IX	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ (Do not check if a smaller reporting company) Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of February 26, 2010, there were 65 shares of the registrant's common stock outstanding, all of which are owned by HSBC Investments (North America) Inc.

DOCUMENTS INCORPORATED BY REFERENCE

None.

Canada On November 30, 2008, we sold the common stock of HSBC Financial Corporation Limited, the holding company for our Canadian business ("Canadian Operations") to HSBC Bank Canada. The sales price was approximately $279 million (based on the exchange rate on the date of sale). At the time of the sale, the assets of the Canadian Operations consisted primarily of net receivables of $3.1 billion, available-for-sale securities of $98 million and goodwill of $65 million. Liabilities at the time of the sale consisted primarily of long-term debt of $3.1 billion. As a result of this transaction, HSBC Bank Canada assumed the liabilities of our Canadian Operations outstanding at the time of the sale. However, we continue to guarantee the long-term and medium-term notes issued by our Canadian business prior to the sale. As of December 31, 2009, the outstanding balance of the guaranteed notes was $2.3 billion and the latest scheduled maturity of the notes is May 2012. Because the sale was between affiliates under common control, the book value of the investment in our Canadian Operations in excess of the consideration received at the time of sale which totaled $40 million was recorded as a decrease to common shareholder's equity. Of this amount, $46 million was reflected as a decrease to additional paid-in-capital and $6 million was reflected as an increase to other comprehensive income (loss), primarily related to foreign currency translation adjustments. There was no tax benefit recorded as a result of this transaction. Our Canadian Operations were previously reported in the International Segment.

The following summarizes the operating results of our Canadian Operations for the periods presented:

	Year Ended December 31,	
Income (Expense)	**2008[1]**	**2007**
	(in millions)	
Net interest income and other revenues	$ 486	$ 554
Provision for credit losses	(199)	(162)
Operating expenses	(279)	(247)
Income before income tax expense	8	145
Income tax expense	(26)	(54)
Income (loss) from discontinued operation	$ (18)	$ 91

[1] Amounts shown for 2008 represent totals from January 1, 2008 through November 30, 2008.

4. Receivable Portfolio Sales to HSBC Bank USA

General Motors and Union Plus Credit Card Receivable Portfolios In January 2009, we sold our General Motors MasterCard receivable portfolio ("GM Portfolio") and our Union Plus MasterCard/Visa receivable portfolio ("UP Portfolio") with an aggregate outstanding principal balance of $6.3 billion and $6.1 billion, respectively, to HSBC Bank USA. At December 31, 2008, the GM and UP Portfolios were included in receivables held for sale with a lower of cost or fair value of $6.2 billion and $5.9 billion, respectively. The aggregate sales price for the GM and UP Portfolios was $12.2 billion which included the transfer of approximately $6.1 billion of indebtedness, resulting in net cash proceeds of $6.1 billion. The sales price was determined based on independent valuation opinions based on the fair values of the pool of receivables in late November and early December 2008, the dates the transaction terms were agreed upon, respectively. As a result, during the first quarter of 2009 we recorded a gain of $130 million ($84 million after-tax) on the sale of the GM and UP Portfolios. This gain was partially offset by a loss of $(80) million ($(51) million after-tax) recorded on the termination of cash flow hedges associated with the $6.1 billion of indebtedness transferred to HSBC Bank USA as part of these transactions. We retained the customer account relationships and by agreement we sell additional receivable originations generated under existing and future accounts to HSBC Bank USA on a daily basis at a sales price for each type of portfolio determined using a fair value which is calculated semi-annually. We continue to service the receivables sold to HSBC Bank USA for a fee.

See Note 23, "Related Party Transactions," for further discussion of the daily receivable sales to HSBC Bank USA and how fair value is determined.

Auto Finance Receivable Portfolio In January 2009, we also sold certain auto finance receivables with an aggregate outstanding principal balance of $3.0 billion to HSBC Bank USA for an aggregate sales price of

$2.8 billion. The sales price was based on an independent valuation opinion based on the fair values of the receivable in September 2008, the date the transaction terms were agreed upon. As a result, in the first quarter of 2009 we recorded a gain of $7 million ($4 million after-tax) on the sale of these auto finance receivables. We will continue to service these auto finance receivables for HSBC Bank USA for a fee.

5. Strategic Initiatives

As discussed in prior filings, we have been engaged in a continuing, comprehensive evaluation of the strategies and opportunities for our operations. In light of the unprecedented developments in the retail credit markets, particularly in the residential mortgage industry, this evaluation resulted in decisions to lower the risk profile of our operations, to reduce our capital and liquidity requirements by reducing the size of our balance sheet and to rationalize and maximize the efficiency of our operations. As a result, a number of strategic actions have been undertaken since mid-2007 and continued into 2009 which are summarized below:

2009 Strategic Initiatives

Auto Finance In November 2009, we entered into an agreement with Santander Consumer USA Inc. ("SC USA") to sell our auto loan servicing operations as well as $1.0 billion in both delinquent and non-delinquent auto loans currently held for sale (approximately $400 million of which we will purchase from an affiliate, HSBC USA Inc. prior to close) for $904 million in cash and enter into a loan servicing agreement for the remainder of our U.S. auto loan portfolio, including those auto loans serviced for HSBC USA Inc. The transaction is currently expected to close in the first quarter of 2010. Under the terms of the sale, our auto loan servicing facilities in San Diego, California and Lewisville, Texas will be assigned to SC USA and the majority of the employees from those locations will be offered the opportunity to transfer to SC USA at the time of close. SC USA will provide servicing for the auto loans it purchases, as well as for the remaining HSBC auto loan portfolio we had previously serviced. As a result of this decision, in the fourth quarter of 2009, we recorded $3 million relating to one-time termination and other employee benefits. Additional costs incurred as a result of this decision are not expected to be material. While this business is currently operating in run-off mode, we will not report it as a discontinued operations after this transaction because we will continue to generate cash flow from the on-going collection of the receivables, including interest and fees.

Facility Closures During 2009, we decided to exit certain lease arrangements and consolidate a variety of locations across the United States to increase our operating efficiencies and reduce operating expenses. As a result, we have or will exit certain facilities and/or significantly reduce our occupancy space over the next 12 to 18 months in the following locations: Bridgewater, New Jersey; Minnetonka, Minnesota; Wood Dale, Illinois; Elmhurst, Illinois; Sioux Falls, South Dakota and Tampa, Florida. Additionally, we have decided to consolidate our operations in Virginia Beach, Virginia into our Chesapeake, Virginia facility. As a result of these decisions, during 2009 we recorded $3 million relating to one-time termination and other employee benefits, of which $2 million were paid to the affected employees during the fourth quarter of 2009. We also recorded $4 million related to lease termination and associated costs and $3 million related to impairment of fixed assets. The restructuring liability relating to these decisions was $5 million at December 31, 2009.

In the fourth quarter of 2009, we decided to consolidate certain servicing functions currently performed in Brandon, Florida to facilities in Buffalo, New York and Elmhurst, Illinois. As a result of this decision, we recorded $3 million relating to one-time termination and other employee benefits. At December 31, 2009, the restructuring liability relating to this decision was $2 million.

Consumer Lending Business In late February 2009, we decided to discontinue new customer account originations for all products by our Consumer Lending business and close all branch offices. We continue to service and collect the existing receivable portfolio as it runs off, while continuing to assist our mortgage customers by using appropriate modification and other account management programs to maximize collection and home preservation. The following summarizes the restructuring liability relating to our Consumer Lending business recorded in 2009.

of $7 million. We continue to service these auto finance receivables for HSBC Bank USA for a fee. Information regarding these receivables is summarized in the table below.

- In July 2004 we purchased the account relationships associated with $970 million of credit card receivables from HSBC Bank USA and on a daily basis, we sell new originations on these credit card receivables to HSBC Bank USA. We continue to service these loans for a fee. Information regarding these receivables is summarized in the table below.
- In December 2004, we sold to HSBC Bank USA our private label receivable portfolio (excluding retail sales contracts at our Consumer Lending business). We continue to service the sold private label and credit card receivables and receive servicing and related fee income from HSBC Bank USA. We retained the customer account relationships and by agreement sell on a daily basis substantially all new private label receivable originations and new originations on these credit card receivables to HSBC Bank USA. Information regarding these receivables is summarized in the table below.
- In 2003 and 2004, we sold approximately $3.7 billion of real estate secured receivables to HSBC Bank USA. We continue to service these receivables for a fee. Information regarding these receivables is summarized in the table below.
- The following table summarizes the private label, credit card (including the GM and UP Portfolios), auto finance and real estate secured receivables we are servicing for HSBC Bank USA at December 31, 2009 and 2008 as well as the receivables sold on a daily basis during 2009, 2008 and 2007:

		Credit Cards					
	Private Label	General Motors	Union Privilege	Other	Auto Finance	Real Estate Secured	Total
				(in billions)			
Receivables serviced for HSBC Bank USA:							
December 31, 2009	**$15.6**	**$ 5.4**	**$5.3**	**$2.1**	**$2.1**	**$1.8**	**$32.3**
December 31, 2008	18.0	-	-	2.0	-	2.1	22.1
Total of receivables sold on a daily basis to HSBC Bank USA during:							
2009	**$15.7**	**$14.5**	**$3.5**	**$4.3**	**$ -**	**$ -**	**$38.0**
2008	19.6	-	-	4.8	-	-	24.4
2007	21.3	-	-	4.2	-	-	25.5

Fees received for servicing these loan portfolios totaled $697 million, $444 million and $434 million during 2009, 2008 and 2007, respectively.

- The GM and UP credit card receivables as well as the private label receivables that are sold to HSBC Bank USA on a daily basis at a sales price for each type of portfolio determined using a fair value calculated semi-annually in April and October by an independent third party based on the projected future cash flows of the receivables. The projected future cash flows are developed using various assumptions reflecting the historical performance of the receivables and adjusting for key factors such as the anticipated economic and regulatory environment. The independent third party uses these projected future cash flows and a discount rate to determine a range of fair values. We use the mid-point of this range as the sales price.
- In the second quarter of 2008, our Consumer Lending business launched a new program with HSBC Bank USA to sell real estate secured receivables to the Federal Home Loan Mortgage Corporation ("Freddie Mac"). Our Consumer Lending business originated the loans in accordance with Freddie Mac's underwriting criteria. The loans were then sold to HSBC Bank USA, generally within 30 days. HSBC Bank USA repackaged the loans and sold them to Freddie Mac under their existing Freddie Mac program. During the three months ended March 31, 2009, we sold $51 million of real estate secured loans to HSBC Bank USA for a gain on sale of $2 million. This program was discontinued in late February 2009 as a result of our decision to discontinue new customer account originations in our Consumer Lending business.

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, HSBC Finance Corporation has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on this, the 1st day of March, 2010.

HSBC FINANCE CORPORATION

By: /s/ Niall S. K. Booker
Niall S. K. Booker
Chief Executive Officer

Each person whose signature appears below constitutes and appoints P. D. Schwartz and M. J. Forde as his/her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him/her in his/her name, place and stead, in any and all capacities, to sign and file, with the Securities and Exchange Commission, this Form 10-K and any and all amendments and exhibits thereto, and all documents in connection therewith, granting unto each such attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he/she might or could do in person, hereby ratifying and confirming all that such attorneys-in-fact and agents or their substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of HSBC Finance Corporation and in the capacities indicated on the 1st day of March, 2010.

Signature	Title
/s/ (N. S. K. BOOKER) (N. S. K. Booker)	Chief Executive Officer and Director (as Principal Executive Officer)
/s/ (R. K. HERDMAN) (R. K. Herdman)	Director
/s/ (G. A. LORCH) (G. A. Lorch)	Director
/s/ (B. P. MCDONAGH) (B. P. McDonagh)	Chairman and Director
/s/ (S. MINZBERG) (S. Minzberg)	Director
/s/ (B. R. PEREZ) (B. R. Perez)	Director
/s/ (L. M. RENDA) (L. M. Renda)	Director
/s/ (E. D. ANCONA) (E. D. Ancona)	Senior Executive Vice President and Chief Financial Officer
/s/ (J. T. MCGINNIS) (J. T. McGinnis)	Executive Vice President and Chief Accounting Officer

EX. KAVALER 8

As filed with the Securities and Exchange Commission on 13 March 2002

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 20-F/A

☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

or

✓ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended 31 December 2001

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission file number: 1-14930

HSBC Holdings plc
(Exact name of Registrant as specified in its charter)

N/A	United Kingdom
(Translation of Registrant's name into English)	(Jurisdiction of incorporation or organisation)

10 Lower Thames Street
London EC3R 6AE
United Kingdom
(Address of principal executive offices)

Securities registered or to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of Each Class	Name of Each Exchange on Which Registered
Ordinary shares, nominal value US$0.50 each.	London Stock Exchange
	Hong Kong Stock Exchange
	Euronext Paris
American Depositary Shares, each representing 5 Ordinary shares of nominal value US$0.50 each.	New York Stock Exchange

Securities registered or to be registered pursuant to Section 12(g) of the Securities Exchange Act of 1934:

None
(Title of class)

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Securities Exchange Act of 1934:

None
(Title of class)

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the period covered by the annual report:

Ordinary shares, nominal value US$0.50 each 9,354,627,521

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ✓ No ☐

Indicate by check mark which financial statements Item the registrant has elected to follow:

Item 17 ☐ Item 18 ✓

Certain Defined Terms

Unless the context requires otherwise, 'HSBC Holdings' means HSBC Holdings plc and 'HSBC' means HSBC Holdings together with its subsidiary undertakings. Within this document the Hong Kong Special Administrative Region of the People's Republic of China is referred to as 'Hong Kong' or 'Hong Kong SAR'.

Where reference to constant currency is made, comparative data, as expressed in the functional currencies of HSBC's operations, has been translated at current period exchange rates.

Information About the Enforceability of Judgements Made in the United States

HSBC Holdings is a public limited company incorporated in England and Wales. Most of HSBC Holdings' Directors and executive officers live outside the United States. Most of the assets of HSBC Holdings' Directors and executive officers and a substantial portion of HSBC Holdings' assets are located outside the United States. As a result, it may not be possible to serve process on such persons or HSBC Holdings in the United States or to enforce judgements obtained in US courts against them or HSBC Holdings based on civil liability provisions of the securities laws of the United States. There is doubt as to whether English courts would enforce:

- certain civil liabilities under US securities laws in original actions; or
- judgements of US courts based upon these civil liability provisions.

In addition, awards of punitive damages in actions brought in the United States or elsewhere may be unenforceable in the United Kingdom.

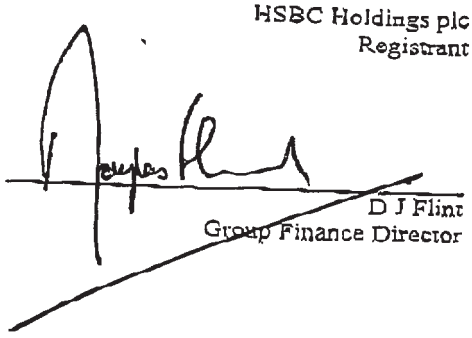
Exchange Controls and Other Limitations Affecting Security Holders

There are currently no UK laws, decrees or regulations which would prevent the transfer of capital or remittance of dividends and other payments to holders of HSBC Holdings' securities who are not residents of the United Kingdom. There are also no restrictions under the laws of the United Kingdom or the terms of the Memorandum and Articles of Association of HSBC Holdings concerning the right of non-resident or foreign owners to hold HSBC Holdings' securities or, when entitled to vote, to do so.

Signatures

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant certifies that it meets all of the requirements for filing on Form 20-F and has duly caused this annual report to be signed on its behalf by the undersigned, thereunto duly authorised.

HSBC Holdings plc
Registrant



D J Flint
Group Finance Director

Date: 13 March 2002