

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

DOCKETED  
NOV 04 2002

LAWRENCE E. JAFFE PENSION PLAN, On  
Behalf of Itself and All Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et  
al.,

Defendants.

No. 02-C-5893

CLASS ACTION

Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

MARC ABRAMS, On Behalf of Himself and All  
Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et  
al.,

Defendants.

No. 02-C-5934

CLASS ACTION

EISBERRY HOLDINGS, LTD., On Behalf of  
Itself and All Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et  
al.,

Defendants.

No. 02-C-6130

CLASS ACTION

FILED  
OCT 18 2002  
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MEMORANDUM OF LAW IN SUPPORT OF  
THE GLICKENHAUS INSTITUTIONAL GROUP'S  
MOTION TO CONSOLIDATE RELATED ACTIONS FOR  
VIOLATIONS OF THE SECURITIES EXCHANGE  
ACT OF 1934 AND TO PRESERVE DOCUMENTS

20

JEFFREY P. JANNETT, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et  
al.,

Defendants.

No: 02-C-6326

CLASS ACTION

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BERNARD DOLOWICH, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et  
al.,

Defendants.

No. 02-C-6352

CLASS ACTION

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RONALD A. HANSCHMAN, On Behalf of  
Himself and All Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et  
al.,

Defendants.

No: 02-C-6859

CLASS ACTION

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GERALD M. FRIEDEL, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et  
al.,

Defendants.

No. 02-C-7067

CLASS ACTION

**I. INTRODUCTION**

Pending in this Court are seven related securities class action lawsuits (the "Related Actions")<sup>1</sup> alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") against defendants Household International, Inc. ("Household" or the "Company"), William F. Aldinger ("Aldinger") and David A. Schoenholz ("Schoenholz"). The pending cases are:

<b>Abbreviated Case Name</b>	<b>Case No.</b>	<b>Date Filed</b>
<i>Jaffe v. Household International, Inc., et al.</i>	02 C 5893	8/19/02
<i>Abrams v. Household International, Inc., et al.</i>	02 C 5934	8/20/02
<i>Eisberry Holdings, LTD v. Household International, Inc., et al.</i>	02 C 6130	8/28/02
<i>Jannett v. Household International, Inc., et al.</i>	02 C 6326	9/5/02
<i>Dolowich v. Household International, Inc., et al.</i>	02 C 6352	9/6/02
<i>Hanschman v. Household International, Inc., et al.</i>	02 C 6859	9/25/02
<i>Friedel v. Household International, Inc., et al.</i>	02 C 7067	10/2/02

Glickenhau & Co., PACE Industry Union-Management Pension Fund and International Union of Operating Engineers Local No. 132 Pension Plan (the "Glickenhau Institutional Group"), seek to consolidate these Related Actions pursuant to Rule 42(a) of the Federal Rules of Civil Procedure.<sup>2</sup> All Related Actions assert substantially the same claims and raise substantially similar questions of fact and law. These cases allege securities claims on behalf of a class of persons who purchased or otherwise acquired Household securities between October 23, 1997 through August 14, 2002 inclusive (the "Class Period"). Consolidation of these actions in this Court is appropriate because each case arises from the same set of operative facts and raises identical questions of law.

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<sup>1</sup>On October 4, 2002, plaintiff Marc Abrams filed a Motion for Finding of Relatedness which is currently pending before this Court.

<sup>2</sup>Concurrent with the filing of this Motion to Consolidate Related Actions for Violations of the Securities Exchange Act of 1934, the Glickenhau Institutional Group has filed a Motion for Appointment as Lead Plaintiff and for Approval of Lead Plaintiff's Choice of Lead Counsel. Under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), the consolidation motion must be heard by the Court before hearing the lead plaintiff motion. 15 U.S.C. §78u-4(a)(3)(B)(ii).

The Glickenhau Institutional Group therefore respectfully requests that the Court consolidate the Related Actions into one action for all purposes.

## II. SUMMARY OF PENDING ACTIONS

The Related Actions are brought against Household, its Chairman and Chief Executive Officer Aldinger and its President and Chief Operating Officer Schoenholz (the "Individual Defendants")<sup>3</sup> on behalf of a class of investors who purchased or otherwise acquired Household securities during the Class Period. ¶1.<sup>4</sup> The plaintiffs in these actions allege that defendants violated §§10(b) and 20(a) of the Exchange Act and Securities and Exchange Commission ("SEC") Rule 10b-5 by misrepresenting Household's financial results, causing Household's shares to trade at artificially inflated levels throughout the Class Period. ¶¶2, 3, 55.

In order to cause Household's securities to trade at artificially inflated levels, defendants misrepresented Household's financial results by failing to properly amortize the Company's co-branding agreements (its expenses associated with its marketing initiatives together with its affinity agreements), and by improperly "re-ageing" Household's accounts, thereby concealing the Company's actual delinquency status. ¶¶2, 37. As a result, defendants caused the Company's financial statements to violate Generally Accepted Accounting Principles ("GAAP") and SEC rules. ¶44.

Household is principally a non-operating holding company engaged in three reportable segments: consumer, credit card services and international. ¶¶1, 9. Household's consumer segment includes consumer lending, mortgage services, retail services and auto finance businesses. *Id.* The credit card services include the domestic MasterCard and Visa business. *Id.* The international segment includes foreign operations in the United Kingdom and Canada. *Id.*

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<sup>3</sup>The *Jaffe, Eisberry*, and *Dolowich* complaints name Arthur Andersen LLP, the Company's auditor during the Class Period, as an additional defendant. Following entry of an order granting this motion and the appointment of lead plaintiff, a consolidated complaint will be filed by the lead plaintiff that will resolve any differences in the various cases.

<sup>4</sup>Unless otherwise indicated, all paragraph references ("¶") are to the complaint in *Abrams v. Household International, Inc.*, No. 02 C 5934, filed on August 20, 2002.

On August 14, 2002, the same day as the Individual Defendants in their respective capacities as CEO and COO were required to certify the veracity of their financial statements, Household announced the restatement of its financial statements since 1994. ¶10, 38. Specifically, consultations with its new auditor, KPMG, concerning the amortization of various credit card co-branding, marketing and affinity agreements led Household to restate earnings by \$386 million. *Id.* Household will now amortize its co-branding agreement over one year (this was previously done over the life of the contract); expense marketing initiatives as incurred (this was previously done over the life of the agreement); and amortize affinity agreements over ten years (this was previously done over thirteen years). *Id.*

Household also manipulated its reported results during the Class Period by "re-aging" delinquent accounts. ¶¶11, 39. Account re-aging refers to the practice of resetting to current, accounts that would otherwise be delinquent. *Id.* This practice manipulated the reserve ratio of non-performing assets and reserve ratio to charge-offs and caused assets to be overstated and charge-offs to be understated. *Id.* Household's reported credit quality deteriorated year-over-year in the June 2002 quarter. ¶¶12, 40. The Company's re-aging policy caused these figures to understate Household's delinquency and charge-off experience. *Id.*

Household also created an earnings boost from pension income in fiscal 2001. ¶13, 41. Specifically, while companies typically record a periodic pension *expense* to reflect the amount of future employee benefits earned during a period (and sometimes as a result of under-funded pension plans), Household has recorded *income* from the Company's pension plan in each of the past three years. *Id.* Household's pension assumptions led the Company to recognize approximately \$38 million of pension income in fiscal 2001, compared with approximately \$33 million of pension income in 2000, and \$26 million of pension income in 1999. ¶14, 42. Absent this boost, reported earnings for 2001 would have been reduced by \$.05 per share, to \$3.86 from the reported \$3.91. *Id.*

Defendant Arthur Andersen issued unqualified audit opinions for each of the Company's annual reports on Forms 10-K during the Class Period. In those opinions, Arthur Andersen certified

that it had audited the Company's financials in accordance with GAAP, and that, in its opinion, the financial statements were presented fairly in all material respects. *Jaffe Compl.*, ¶60.

On August 14, 2002, Household admitted that it inappropriately recorded transactions included in its 1997-2002 results, and has restated those results to remove millions in improperly reported revenues, such that its 1997-2002 financials were not a fair presentation of Household's results and were presented in violation of GAAP and SEC rules. ¶44. Household's shares thus traded at an inflated level during the Class Period thereby causing plaintiffs to suffer damages. ¶56.

### III. ARGUMENT

#### A. The Court Should Consolidate These Related Actions for Purposes of Efficiency

Consolidation pursuant to Rule 42(a) is proper when actions involve common questions of law and fact.<sup>5</sup> *Ikerd v. Lapworth*, 435 F.2d 197, 204 (7th Cir. 1970); *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284-85 (2d Cir. 1990); *Dollens v. Zions*, No. 01 C 5931, 2001 U.S. Dist LEXIS 19966, at \*5-\*7 (N.D. Ill. Dec. 4, 2001). The Court has broad discretion under this rule to consolidate cases pending within this District. *See id.* Courts have recognized that class action shareholder suits are ideally suited for consolidation under Rule 42(a) because consolidation expedites pretrial proceedings, reduces case duplication, avoids the contacting of parties and witnesses for inquiries in multiple proceedings and minimizes the expenditure of time and money by all persons concerned. *Johnson*, 899 F.2d at 1284-85. Consolidating related shareholder class action suits simplifies pretrial and discovery motions, class certification issues and clerical and administrative management duties. *Id.* Consolidation also reduces the confusion and delay that may result from prosecuting related cases separately. *Id.*

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<sup>5</sup>Rule 42(a) allows this Court to order consolidation of separate actions:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Fed. R. Civ. P. 42(a).

The Related Actions pending before the Court should be consolidated because they involve virtually identical factual and legal issues. The Related Actions each assert class claims on behalf of purchasers of Household shares for alleged violations of the Exchange Act, name the same defendants, and involve the same factual and legal issues. They were each brought by investors who purchased or otherwise acquired Household shares during the Class Period in reliance on the integrity of the market and were injured by the fraud that defendants perpetrated by issuing materially false and misleading statements and concealing material information, which artificially inflated the prices of Household securities. Consolidation is not only proper, but it is also necessary.

**B. The PSLRA Requires that the Question of Consolidation Be Decided Prior to the Appointment of Lead Plaintiff**

The PSLRA provides, among other things, for consolidation of substantially similar actions.

The PSLRA states in pertinent part:

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination [of appointment of lead plaintiff under §21D(a)(3)(B)] until after the decision on the motion to consolidate is rendered.

15 U.S.C. §78u-4(a)(3)(B)(ii).

The PSLRA establishes a two-step process for resolving lead plaintiff and consolidation issues where plaintiffs have filed more than one action on behalf of a class asserting substantially similar claims. The court must first decide the consolidation issue and thereafter decide the lead plaintiff issue, "[a]s soon as practicable" after the consolidation motion has been decided. *Id.* Given that the selection of lead plaintiff and lead counsel is the necessary first step to prosecute the actions, the Glickenhau Institutional Group urges the Court to grant the consolidation motion as soon as practicable and consolidate these related actions under the lowest case number. A prompt determination is reasonable and warranted under Rule 42(a), given the common questions of fact and law presented by the actions now pending in this District.


**C. This Court Should Order the Preservation of Documents**

Through this motion, the Glickenhau Institutional Group also requests the Court to order the preservation of documents, including, but not limited to, electronically stored documents, relating to this litigation in accordance with §21D(b)(3)(C) of the Exchange Act, 15 U.S.C. §78u-4(b)(3)(C), both prior to and after the filing of any motion to dismiss. In complex securities cases involving companies with numerous employees, such an order is appropriate and will prevent the loss of key documents, whether through inadvertence or otherwise.

**IV. CONCLUSION**

For the reasons stated above, and in order to promote judicial economy, the Glickenhau Institutional Group respectfully requests that the Court consolidate the Related Actions identified herein, and require the preservation of documents in this action.

DATED: October 18, 2002

  
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